

CONFLICTS OF INTEREST WITHIN THE REGIONAL  
FISHERIES MANAGEMENT COUNCILS

Y 4. M 53: 103-87

ING  
THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE  
COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION  
ON  
ENSURING THAT ALL RULES, REGULATIONS, AND  
LAWS HAVE BEEN FOLLOWED BY THE COUNCIL  
MEMBERS

MARCH 23, 1994

Serial No. 103-87

Printed for the use of the Committee on Merchant Marine and Fisheries



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1994

78-917 cc

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-044285-0



CONFLICTS OF INTEREST WITHIN THE REGIONAL  
FISHERIES MANAGEMENT COUNCILS

Y 4. M 53: 103-87

ING  
THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
OF THE  
COMMITTEE ON  
MERCHANT MARINE AND FISHERIES  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED THIRD CONGRESS  
FIRST SESSION  
ON  
ENSURING THAT ALL RULES, REGULATIONS, AND  
LAWS HAVE BEEN FOLLOWED BY THE COUNCIL  
MEMBERS

MARCH 23, 1994

Serial No. 103-87

Printed for the use of the Committee on Merchant Marine and Fisheries



U.S. GOVERNMENT PRINTING OFFICE  
WASHINGTON : 1994

78-917 cc

For sale by the U.S. Government Printing Office  
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402  
ISBN 0-16-044285-0

## COMMITTEE ON MERCHANT MARINE AND FISHERIES

GERRY E. STUDDS, Massachusetts, *Chairman*

WILLIAM J. HUGHES, New Jersey	JACK FIELDS, Texas
EARL HUTTO, Florida	DON YOUNG, Alaska
W.J. (BILLY) TAUZIN, Louisiana	HERBERT H. BATEMAN, Virginia
WILLIAM O. LIPINSKI, Illinois	JIM SAXTON, New Jersey
SOLOMON P. ORTIZ, Texas	HOWARD COBLE, North Carolina
THOMAS J. MANTON, New York	CURT WELDON, Pennsylvania
OWEN B. PICKETT, Virginia	JAMES M. INHOFE, Oklahoma
GEORGE J. HOCHBRUECKNER, New York	ARTHUR RAVENEL, Jr., South Carolina
FRANK PALLONE, Jr., New Jersey	WAYNE T. GILCHREST, Maryland
GREG LAUGHLIN, Texas	RANDY "DUKE" CUNNINGHAM, California
JOLENE UNSOELD, Washington	JACK KINGSTON, Georgia
GENE TAYLOR, Mississippi	TILLIE K. FOWLER, Florida
JACK REED, Rhode Island	MICHAEL N. CASTLE, Delaware
H. MARTIN LANCASTER, North Carolina	PETER T. KING, New York
THOMAS H. ANDREWS, Maine	LINCOLN DIAZ-BALART, Florida
ELIZABETH FURSE, Oregon	RICHARD W. POMBO, California
LYNN SCHENK, California	HELEN DELICH BENTLEY, Maryland
GENE GREEN, Texas	CHARLES H. TAYLOR, North Carolina
ALCEE L. HASTINGS, Florida	PETER G. TORKILDSEN, Massachusetts
DAN HAMBURG, California	
BLANCHE M. LAMBERT, Arkansas	
ANNA G. ESHOO, California	
THOMAS J. BARLOW, III, Kentucky	
BART STUPAK, Michigan	
BENNIE G. THOMPSON, Mississippi	
MARIA CANTWELL, Washington	
PETER DEUTSCH, Florida	
GARY L. ACKERMAN, New York	

JEFFREY R. PIKE, *Chief of Staff*

MARY J. FUSCO KITSOS, *Chief Clerk*

HARRY F. BURROUGHS, *Minority Staff Director*

CYNTHIA M. WILKINSON, *Minority Chief Counsel*

---

## SUBCOMMITTEE ON FISHERIES MANAGEMENT

THOMAS J. MANTON, New York, *Chairman*

WILLIAM J. HUGHES, New Jersey	DON YOUNG, Alaska
JOLENE UNSOELD, Washington	HOWARD COBLE, North Carolina
GENE TAYLOR, Mississippi	ARTHUR RAVENEL, Jr., South Carolina
H. MARTIN LANCASTER, North Carolina	JACK KINGSTON, Georgia
DAN HAMBURG, California	JACK FIELDS, Texas (Ex Officio)
MARIA CANTWELL, Washington	
EARL HUTTO, Florida	
FRANK PALLONE, Jr., New Jersey	
GERRY E. STUDDS, Massachusetts	
(Ex Officio)	

JIM MATHEWS, *Staff Director*

GREGORY LAMBERT, *Counsel*

ROD MOORE, *Minority Professional Staff*

## CONTENTS

---

	Page
Hearing held March 23, 1994 .....	1
Statement of:	
Cantwell, Maria, a U.S. Representative from Washington .....	5
DeGeorge, Frank, Inspector General, U.S. Department of Commerce, accompanied by Wayne Weaver, Council to the Inspector General .....	7
Prepared statement .....	21
Fields, Hon. Jack, a U.S. Representative from Texas, and Ranking Minority Member, Committee on Merchant Marine and Fisheries .....	4
Manton, Hon. Thomas J., a U.S. Representative from New York, and Chairman, Subcommittee on Fisheries Management .....	1
Torkildsen, Peter G., a U.S. Representative from Massachusetts .....	6
Prepared statement .....	6
Unsoeld, Jolene, a U.S. Representative from Washington .....	4
Young, Hon. Don, a U.S. Representative from Alaska, and Ranking Minority Member, Subcommittee on Fisheries Management .....	2
Additional material supplied:	
Code of Federal Regulations 50 CFR §601.35: Rules of Conduct .....	31
Egan, Timothy (The New York Times, March 7, 1994): "U.S. Fishing Fleet Trawling Coastal Water Without Fish" .....	103
Knauth, Kristin (article published in <i>Government Executive</i> ): "Auditing Up Front" .....	24
NMFS and NOAA (Federal Register, March 11, 1994): Revising regulations concerning the practices, procedures, and operations of the Regional Fishery Management Councils under the Magnuson Act .....	28
Safina, Carl, Ph.D. (National Audubon Society): "Ending Overfishing Before It Ends Itself" .....	106
Unsoeld, Hon. Jolene:	
Sonner, Scott (The Associated Press, March 11, 1993): "Unsoeld Questions Makeup of Fisheries Council" .....	34
Connell, Christopher (The Associated Press, Jan. 1, 1992): "Bush Campaign Aide Wades Into Lobbying Battle Over Fish Processing" <i>The Seattle Times</i> :	63
Wilson, Duff: "A Fishy Situation", Nov. 10, 1991 .....	35
Wilson, Duff: "Federal Conflict-of-Interest Probe Clears Fishery Council Members", Oct. 16, 1993 .....	50
Editorial: "Aging Fisheries Act Overdue for an Overhaul", March 31, 1992 .....	40
Editorial: "Congress, Not Courts, Must Fix Ocean Fisheries", June 17, 1992 .....	41
Anderson, Ross: "Pollock Politics: A Billion-Dollar Tragedy", Aug. 14, 1992 .....	42
Editorial: "Time for Congress to Fix an Irrational Fisheries Act", July 28, 1992 .....	43
Brown, Tom: "Trawlers Ask Fisheries Service for Pollock Season Delay", June 10, 1992 .....	44
Brown, Tom: "Pollock Allocation Plan Extended", Aug. 6, 1992 .....	45
Morgan, Robert F.: "Keeping Our Fisheries Free for Competition", Jan. 30, 1992 .....	46
Looney, Stuart W.: "Fishery Needs Good Management or National Resource Will Be Gone", Dec. 27, 1991 .....	47
Editorial: "North Pacific Fishery Council Needs Makeover", Nov. 17, 1991 .....	48

## Additional material supplied—Continued

Unsoeld, Hon. Jolene—Continued	
The Seattle Times—Continued	
Schaefer, David: "U.S. Urged to Reject Proposal to Split Alaska Pollock Catch", Feb. 22, 1992 .....	49
The Seattle Post-Intelligencer:	
Wilson, Duff: "Government to Investigate North Pacific Fish Council", Nov. 17, 1991 .....	51
Brown, Tom: "Fishing for Answers", May 31, 1992 .....	52
Editorial: "Something Fishy at Alaska Council", Dec. 1, 1991 .....	54
The Washington Post:	
Editorial: "How Many Fish?", Aug. 16, 1991 .....	55
Kenworthy, Tom: "Bush Campaign Aide Seeks Break for Japanese", Jan. 9, 1992 .....	56
The Herald: Editorial "Some U.S. Fisheries in Trouble, NOAA Says", Jan. 15, 1992 .....	57
Brown, Tom (Times Pacific): "Hooked on Pollock" .....	58
McVea, John (Puget Sound Business Journal, Nov. 20-26, 1992): "Politics are Poisoning Northwest Fisheries" .....	61
Daily Journal of Commerce editorial, July 27, 1992: "Ruling Favors Alaska Over Seattle-based Factory Trawlers" .....	62
U.S. Code §208: Acts affecting a personal financial interest .....	33
Communications submitted:	
Subcommittee Staff: Memorandum of March 22, 1994, to Members, Subcommittee on Fisheries Management, on conflict of interest in the operation of the Regional Fishery Management Councils .....	65
Endreson, Robert M. (Hawaii Fishermen's Foundation):	
Letter of March 21, 1994, to Hon. Thomas J. Manton .....	69
Letter of July 22, 1993, to Frank DeGeorge .....	72
Fox, William W., Jr. (NMFS): Letter of February 12, 1993, to Rufo J. Lujan .....	74
Frank DeGeorge (U.S. Department of Commerce):	
Memorandum of June 30, 1992, to John Knauss on North Pacific Fishery Management Council .....	76
Memorandum of June 30, 1992, to Wendell L. Wilkie, II, on North Pacific Fishery Management Council .....	77
Pinciario, Frederick (U.S. Department of Commerce): Memorandum of June 29, 1992, to Frank DeGeorge on North Pacific Fishery Management Council—Conflict of interest matters .....	78
Jones, Bob (Southeastern Fisheries Association): Letter of March 15, 1993, to Hon. Thomas J. Manton .....	90
Lowry, Mike (Governor, State of Washington): Letter of March 10, 1994, to Ron Brown .....	95
The Marine Fish Conservation Network:	
Letter from Bill Mott, dated March 11, 1994, to Hon. Thomas J. Manton .....	97
List of organizations endorsing the Network's agenda as of March 11, 1994 .....	98
Proposed amendments to the Magnuson Act of 1976 .....	99

# CONFLICTS OF INTEREST WITHIN THE REGIONAL FISHERIES MANAGEMENT COUNCILS

WEDNESDAY, MARCH 23, 1994

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
COMMITTEE ON MERCHANT MARINE AND FISHERIES  
*Washington, DC.*

The Subcommittee met, pursuant to call, at 1:30 p.m., in room 1334, Longworth House Office Building, Hon. Thomas J. Manton [chairman of the Subcommittee] presiding.

Present: Representatives Manton, Unsoeld, Lancaster, Hamburg, Cantwell, Young, Coble, Kingston, and Torkildsen.

Staff Present: Jeffrey Pike, Chief of Staff; Sue Waldron, Press Secretary; Jim Mathews, Staff Director; Greg Lambert, Counsel; Lori Rosa, Staff Assistant; Jean Flemma and Frank Lockhart, Professional Staff; Rod Moore, Dave Whaley, Ed Lee, and Margherita Woods, Minority Professional Staff; and Bonnie Bruce, Sea Grant Fellow.

## OPENING STATEMENT OF HON. THOMAS J. MANTON, A U.S. REPRESENTATIVE FROM NEW YORK, AND CHAIRMAN, SUBCOMMITTEE ON FISHERIES MANAGEMENT

Mr. MANTON. Good afternoon, and welcome to what I expect will be our last hearing on the Magnuson Act before we proceed to a markup of the reauthorization. Today we will hear from the Commerce Department's Inspector General on the issue of conflicts of interest within the Regional Fisheries Management Councils.

It has been said that everything you need to know you learn in kindergarten. As we examine the issue of conflicts of interest under the Magnuson Act, I am reminded of the lessons of work and fairness learned in childhood.

We all recall a group called the PTA. Parent Teacher Associations are based on the concept that those most interested in seeing our schools run well will devote their time and effort to make our schools succeed. For the same reasons, the Boy and Girl Scouts look to parents to be troop leaders.

Other experiences of childhood taught us about fairness and we all learned that there were instances when someone treated us unfairly out of selfishness. Other times, however, we unjustly accused our parents, teachers, and friends of being unfair merely because they didn't give us what we wanted.

When Congress created the Regional Fishery Management Councils under the Magnuson Act, it was felt that user groups with an interest in the resource would act in a manner which would protect that resource and ensure the future health of our fisheries. Hence, recreational and commercial fisherman were given a prominent role on the Fishery Management Councils which determine fisheries management and conservation policy.

Now, rightly or wrongly, many people feel the Councils and their members are acting unfairly. If this perception of unfairness is correct, then Congress definitely must take strong action to rectify this problem, including tough provisions to discipline any Council member who allows personal interest to unfairly bias his or her decisions as a Council member. If, however, people are wrong in their perception that Council members are allowing their personal interests to improperly affect their judgment, then we need to set the record straight.

However, even if it comes down to only a matter of perception, if the public has lost faith in the fairness of the Council system because of these perceptions, then the Subcommittee must act to restore confidence in the system.

Although I believe that the overwhelming majority of Council members avoid allowing personal interest to bias their decisions, this issue merits our serious consideration and, if need be, we must take whatever action or actions are necessary to ensure that our Nation's fisheries management and conservation system inspires trust. Today, we begin that process.

I now would like to recognize my distinguished colleague, Don Young, the ranking member.

**STATEMENT OF HON. DON YOUNG, A U.S. REPRESENTATIVE  
FROM ALASKA, AND RANKING MINORITY MEMBER, SUB-  
COMMITTEE ON FISHERIES MANAGEMENT**

Mr. YOUNG. Mr. Chairman, before Mr. DeGeorge begins his testimony today, I would like to briefly review the history of the rights and responsibilities of the Regional Fishery Management Council.

I believe I am the only member of this Committee, the full Committee, that was sitting here when we passed the original Magnuson Act.

When the Fishery Conservation and Management Act was passed by the Congress in 1976, the Councils were created as citizen managers who would provide their knowledge and expertise to the Secretary of Commerce in regard to managing our fisheries in the 200-mile zone.

Because the Secretary of Commerce had the ultimate authority to approve or disapprove fishery management plans, Congress did not intend that the Council members be considered as Federal employees.

Within the next few years, two important events occurred: the Secretary began substituting his judgment for that of the Councils and ignoring the advice of the Councils; and a Department of Commerce General Counsel ruling declared the Council members to be Federal employees.

This not only undermined the Council system established by the Congress but also raised concerns that knowledgeable and experi-



enced individuals would no longer be willing to serve on Regional Fishery Management Councils for fear of being prosecuted under the conflict of interest statutes.

In response, this Committee again made clear in an oversight report that the Secretary was to follow the advice of the Councils unless Council proposals violated the law. In addition, in 1986 the House and Senate adopted an amendment to the Magnuson Act offered by myself and then-Congressman Breaux which exempted Council members from the Federal conflict of interest statutes but required them to fully disclose their financial connections to the commercial fishing industry.

Unfortunately, as fishery management decisions have become more complicated and increasingly involve allocations among U.S. fishermen, those who see themselves on the losing side of a decision tend to raise the conflict of interest issue as a reason why decisions should be overturned.

I have watched the Regional Council operate during the entire 17 years of their existence and I can assure you that the conflict of interest issue is not a new one. It has been raised many times and, strangely enough, always by those who feel that they did not get what they wanted out of a Council decision.

Nevertheless, I read Mr. DeGeorge's statement and we need to ensure, to the extent possible, that decisions are not being made on the basis of personal interest or as a means of achieving personal gain.

As I have indicated to you and our colleagues before, Mr. Chairman, I would be happy to discuss amendments to the Act which provide further protection for the public interest as long as those amendments do not destroy the philosophy underlying the creation of the Regional Fishery Management Councils: that of those directly involved in the fishing industry being given the opportunity to provide their knowledge and expertise, and to regulate themselves under the standards we have established in the Magnuson Act.

Mr. Chairman, I would also suggest respectfully, I have done an awful lot of work on this issue over my last 21 years, and I don't see the unrest in the public as some people are stating.

I see unrest by those that have not been happy with the decisions of the Council but we have reviewed and I think we will hear from Mr. DeGeorge that, in fact, all the rules, regulations and laws have been followed. If they have not, then those people who have not followed those laws, as his report says, would be prosecuted.

But we must maintain the idea of the original Act and that was a citizen advisory council because there are those within every administration I have served with that would like to see all decisions concerning fisheries to be centralized in Washington, DC; and managed by a fish czar.

That is what I am trying to avoid so I look forward to the testimony of the gentlemen today because I think they bring some new light to this issue and they may add something that can improve the Act, but I will insist that the intent of the original Act stays in place. Thank you, Mr. Chairman.

Mr. MANTON. Thank you, Mr. Young. Before I recognize other members for an opening statement, I would just like to point out

to the members that they have in their folders a copy of the Inspector General's report on conflict of interests in the North Pacific Council.

The Inspector General wishes to protect the privacy of the persons involved and has expunged the names of some Council members and Council staff who were subjects of that investigation.

Some Committee members know the names of those involved; however, I ask members respectfully to be mindful of the privacy rights of those persons. They have not been convicted of any crime based on their Council actions nor has the Justice Department sought to prosecute them.

I believe we can do our job and address this matter without unfairly tarnishing the reputations of those involved. I thank my colleagues for their cooperation in this matter.

Mr. YOUNG. Mr. Chairman, may I at this time submit the statement by Jack Fields?

[Statement of Hon. Jack Fields follows:]

**STATEMENT OF HON. JACK FIELDS, A U.S. REPRESENTATIVE FROM TEXAS, AND RANKING MINORITY MEMBER, COMMITTEE ON MERCHANT MARINE AND FISHERIES**

Mr. Chairman, I understand this hearing is being held at the request of one of our members to further review the findings of the Inspector General of the Department of Commerce on conflict of interest charges leveled at members of one of the Regional Fishery Management Councils.

Mr. Chairman, the Magnuson Fishery Conservation and Management Act (P.L. 94-265) establishes the regional councils to "promote domestic commercial and recreational fishing under sound conservation and management principles..." The membership of these councils was specifically crafted to give the users of the resource, who presumably have the most intimate and up-to-date knowledge of the health of the fisheries, the ability to make wise decisions on its use.

I agree that at times there have been "perceived" conflicts of interest. That is why, in the 1986 amendments to the Magnuson Act, we required that Council members disclose their financial holdings in any related businesses which might cause them to have a real or potential conflict of interest.

In the recent Inspector General's report there was no evidence that members or staff of the North Pacific Fishery Management Council had acted to control Council actions to further their own personal financial interests. Nevertheless, it is clear that there are certain people who perceive that direct conflicts do exist.

My concern is that the decisions of all of the councils will be under a cloud of suspicion if the public perceives that any user group may be voting to enhance their claim on the resource. By the same token, it is human nature to expect that conservation organization members, recreational fishermen, or commercial fishermen, will cry "foul" in the future over particular votes that are cast by Council members.

The philosophy of the Magnuson Act is clear. The users of the resource are the best stewards of the resource and are in daily contact with the resource. They are in the best position to make intelligent decisions regarding the wise use of the resource.

Any member of a council that deliberately casts a vote to directly benefit himself financially without notifying the Council that he will directly benefit is wrong.

It is important that the Councils make wise decisions so that fishery resources can be used and enjoyed by future generations without endangering them.

Thank you, Mr. Chairman, and I look forward to hearing from our distinguished witnesses.

Mr. MANTON. Without objection. The chair now recognizes the gentlewoman from the State of Washington, Ms. Unsoeld.

**STATEMENT OF HON. JOLENE UNSOELD, A U.S. REPRESENTATIVE FROM WASHINGTON**

Ms. UNSOELD. Thank you, Mr. Chairman. Since we began a series of Magnuson Act hearings last year, I have repeatedly ex-

pressed my concern based on observations of the North Pacific Council that our Federal fishery management system is rooted in conflict of interest.

The record of our hearings to date indicate similar concerns expressed by 13 separate commercial fishing interests, 6 recreational fishing interests, 7 conservation groups, 6 government officials, and 3 regional councils, and most recently by the Governor of my State, Mike Lowery, who was a member of this Committee and from his observations makes the comment that the dilemma makes clear the need for coordinated Federal leadership to transition the Councils from their existing stature to one of public trust.

Clearly, the diversity of views that have expressed concerns to our Committee sends us a clear message that something must be done. Today we have an opportunity to hear what the Inspector General thinks about this issue, and I very much want to welcome Mr. DeGeorge, and I look forward to his testimony. Thank you, Mr. Chairman.

Mr. MANTON. Thank you. The chair recognizes Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman, I think I will pass.

Mr. MANTON. Moving back to the other side. Mr. Hamburg?

Mr. HAMBURG. It has already been said.

Mr. MANTON. Mr. Lancaster?

Mr. LANCASTER. No statement.

Mr. MANTON. Ms. Cantwell.

#### **STATEMENT OF HON. MARIA CANTWELL, A U.S. REPRESENTATIVE FROM WASHINGTON**

Ms. CANTWELL. Thank you, Mr. Chairman. I do appreciate you holding this hearing today to examine the issue of conflict of interest of the Fishery Management Councils. Today's hearing is a milestone in the Committee's consideration of Magnuson for it is the last hearing the Committee anticipates holding on the reauthorization.

Mr. Chairman and members of the Committee, I cannot over-emphasize the importance of the Magnuson Act to my district in the State of Washington and the Pacific Northwest. Our nation's fishing industry is in trouble. In the Northwest impacts or shortened seasons and limited access are being felt in job reductions and bankruptcies throughout the region.

It is our responsibility to tackle the tough issues and decisions that surround the Magnuson Act and to provide greater stability and certainty to this vital American enterprise. With the completion of this series of hearings, our legislative work will begin in earnest.

Allegations of conflict of interest on Councils whether they are real or perceived must be addressed. Allocation decisions granting a specific share of total harvest to a particular category of fishermen have become an increasingly common mode of resource management by the Councils.

These decisions result in economic benefits to certain sectors of the industry and inevitably in losses to others. The North Pacific Council whose 1991 allocation decision will be the primary topic today has been the subject of many conflict of interest allegations.

If the Council process is to be effective, public confidence in that process must be restored. With the fate of the Northwest fishing industry in the hands of the North Pacific Fishery Management Council, I believe close examination of the decisionmaking process must take place.

If changes are needed, Congress must step in and make sure a fair and equitable process is in place. I also want to thank the Inspector General for taking the time to appear before the Subcommittee today. We look forward to his expertise and experience on conflict of interest issues.

Mr. Chairman, I look forward to working with the Subcommittee as this process moves forward and appreciate my colleagues' attention to what is a very critical Northwest issue.

Mr. MANTON. I thank the gentlelady. The chair recognizes Mr. Torkildsen, State of Massachusetts.

### STATEMENT OF HON. PETER G. TORKILDSEN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. TORKILDSEN. Thank you, Mr. Chairman, and I want to thank you for holding the hearing. The Management Councils, I do think play an important role. I do think it is important not only to keep those with experience in the fishing industry involved, I think we should increase their involvement, and the potential for conflict of interest is there as everyone knows now.

Disclosure, I think, really is the necessary answer, perhaps more complete disclosure so everyone knows what everyone's interests are on the Council, but we need that expertise that people in the fishing community and only those people in the fishing community can bring to the decisions of the Council.

It is an issue that has to be addressed. The public has to have confidence in both the Congress overseeing this issue as well as how the Council makes decisions. I think we can come to some resolution. I certainly hope we can, Mr. Chairman.

I would also ask that the text of my full statement be included in the record.

Mr. MANTON. Without objection it is so ordered.  
[Statement of Hon. Peter G. Torkildsen follows:]

### STATEMENT OF HON. PETER G. TORKILDSEN, A U.S. REPRESENTATIVE FROM MASSACHUSETTS

Mr. Chairman, the Regional Fisheries Management Councils were created to provide an opportunity for local and community input in implementing the goals of the Magnuson Act. Those who live in the areas affected by the fishing regulations imposed under the Magnuson Act have the most insight into the needs of the community. People in the fishing industry have first-hand knowledge of their particular fishing region and can provide valuable insight as to the most effective ways to preserve fish stocks with a minimum impact on fishermen. Because of this expertise, those directly involved in the fishing industry should be represented more, not less, than they are now.

One example of the need for industry representation on the councils occurred last year. I was contacted by a fisherman in my district about starting an experimental fishery for silver hake, commonly known as whiting fish. I assisted this fisherman in getting his views presented to the Council, which then changed the regulations to allow the new fishery.

The presence of knowledgeable representatives of the fishing industry on the Council ensured that the complex, but very logical, proposal he presented was fully understood and implemented by the Council.

The recent blockades in Gloucester Harbor and Boston Harbor are certainly evidence that fishermen want more of a voice in decisions that will severely impact their livelihood. Members of the fishing community have a financial interest in preserving fisheries, but they also have the most incentive to preserve the future of those fisheries.

I urge this Subcommittee to encourage greater, not less, local and community control of fisheries as the Magnuson Act Reauthorization progresses. Thank you.

Mr. MANTON. MR. LANCASTER?

Mr. LANCASTER. No statement.

Mr. MANTON. That concludes the opening statements of the members, and the chair now recognizes Mr. DeGeorge for his testimony.

**STATEMENT OF FRANK DEGEORGE, INSPECTOR GENERAL,  
U.S. DEPARTMENT OF COMMERCE; ACCOMPANIED BY  
WAYNE WEAVER, COUNSEL TO THE INSPECTOR GENERAL**

Mr. DEGEORGE. Mr. Chairman, my remarks are brief—I think I will read the entire statement because it generally covers where I want to go, and it covers about five or six minutes.

Mr. Chairman and members of the Subcommittee, I am pleased to be here to discuss conflicts of interest as they relate to Fishery Management Councils. Two years ago, we reviewed allegations of conflicts of interest against several members and former staff of the North Pacific Fishery Management Council in Alaska.

I might add a point here that this investigation followed an audit we did of the Council concerning a couple of its decisions. We concluded that two members of the Council did vote on matters in which they had a financial interest. However, the Magnuson Act specifically exempts Council members from legal prohibitions on such conflicts, and the two members had properly disclosed their interests, so they did not violate the law.

We also found that another member received a precontractual payment for consulting work while on the Council, but there was no conflict between that contract and his work on the inshore/off-shore issue which occurred before he got the contract. From a legal point of view, again, there was no conflict of interest.

Under the Magnuson Act, the Regional Fishery Management Councils prepare fishery management plans for each fishery within their geographical area of authority that requires conservation and management. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, allocation plans are supposed to be fair and equitable to all fishermen, reasonably calculated to promote conservation, and carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privileges.

Judging from the many articles in the press which discussed allegations about the North Pacific Fishery Management Council and our subsequent investigation, clearly there was a perception that certain members were controlling Council actions to maximize their personal financial interests. However, we found no evidence of any conflicts under the present Magnuson Act.

Let me start by stating that I believe that the laws that apply to other Federal operations in my judgment should also apply to Fishery Management Councils. The existence of concurrent financial interests, whether actually conflicting or not, and whether ex-

empt from prosecution or not, damages the credibility of the Councils. Public confidence in the process that manages a public resource depends on the absence, in my judgment, of even an appearance of conflict.

What then is the solution to the legal and management dilemma associated with these actual or perceived conflicts of interest? First, we must find a legal means of assuring the American public that the decisions made in the regional Councils are for the long-term good of the industry, the resource, and the country, not just for the short-term profit of Council members.

As such, I fully recognize, and I want to reemphasize, I fully recognize the importance of industry participation in the Councils. Certainly industry associations, companies, and individual fishermen must be invited to participate in decisions which will affect their livelihood, their families' future, and the status of their communities.

But those interests can be represented on the Councils without damaging the Councils' ability to conserve and manage such a vital public resource for future generations.

I am submitting attached to the end of my testimony a list of options to mitigate potential conflicts for your consideration. I hope you will accept them for further studies as possible ways to enhance the management and reputation of the Councils. Let me briefly describe a few of them.

One obvious means of mitigating potential conflicts would be to eliminate the statutory exemption from conflicts of interest. We have found, after some research, that this exemption apparently is the only example in Federal law of a direct statutory blanket waiver from the prohibitions against conflicts of interest by Federal officials, which Council members are when they perform Council functions.

Another option would be to expand the membership of the Councils to include citizens with no personal financial interest, but with knowledge or experience in a wide variety of disciplines and who are very interested in the outcome of Council actions.

Many members of boards of directors of Fortune 500 companies have no direct ties to a particular company, but their experience in banking, law, community development, or some other field are helpful to the company.

In a like manner, the Councils might benefit by including members with such experience, as well as members from interested consumer environmental organizations. Indeed, this Committee's report on the original Magnuson Act includes a statement of the Committee's expectation that conservationists, ecologists, and representatives of the scientific community would be considered for membership.

Although the current language of the Magnuson Act allows for the selection of a wide range of members, more explicit language in the Act may indeed send a strong signal that such diverse membership is needed to minimize the conflicts of interest.

Other items we suggest for your consideration are: establishing a mechanism by which Council members recuse themselves from voting on matters affecting their personal financial interests and

requiring financial disclosures to be included in the record of Council action.

Here I want to point out that even as late as just today, I found out that apparently there have been regulation changes, and disclosures are currently kept on file at the regional councils. It is unclear to me whether they are made immediately available at the time of the hearings, but they are on file locally.

The authority and responsibility of scientific, industry, and other advisory panels should be expanded as a means of providing expert information to the Councils.

Another means of mitigating potential conflicts is to ensure that the fishery allocation plans proposed by the Councils are based on sound factual information and proper analysis.

Also, the plans should be written in such a manner as to be understandable and perceived by the public as a basis for the Council's actions. In our February 1992 report on the North Pacific Council's allocation amendments, we found that the Council and NMFS staff had not adequately determined the costs and benefits of various alternatives, such as the changes in employment, income to the inshore and offshore industries, and groundfish prices.

We recommended initial disapproval of the amendments until adequate economic analysis had been performed. The quality of data collected and the status of the fishery must be improved. In some cases, the socioeconomic data is insufficient for preparing the types of analysis needed.

The lack of data appears to be the result of inadequate resources and severe time constraints for the fisheries and NMFS and the Councils to fund and perform adequate economic and scientific data-collection programs.

One way to address the lack of resources would be to combine data collection activities, i.e., NMFS and Councils could form plan development teams composed of experts from a variety of fisheries-related disciplines and interests to prepare and analyze plan options.

As the Subcommittee continues in its effort to find ways of balancing the financial concerns of the affected fishermen with the concerns of the public, keep in mind that regardless of how perfect the theory, how well intentioned the plan, the success of this undertaking depends on the integrity of the decisionmaking process.

In other words, in order to have faith in the decisions being made, the public must perceive that those in charge of approving and implementing a plan are free of direct financial benefits that would influence them to favor individual benefit over the general good.

Admittedly, reducing or eliminating the appearance of a conflict of interest will not solve all the problems of the fishing industry and the resource problem itself. However, it will be a step in the right direction.

Mr. Chairman and members of the Committee, I and my counsel, Mr. Wayne Weaver, will be happy to answer any questions you may have at this time.

[Statement of Frank DeGeorge can be found at the end of the hearing.]

Mr. MANTON. Without objection, we will submit the potential amendments that you propose. The 13 points outlined in your attachment will be made part of the record. Mr. DeGeorge, do you have any knowledge of how many times the regional Council members or staff have been subject to some disciplinary action for conflicts of interest?

Mr. DEGEORGE. I know of a recent case and that is reaching culmination in Honolulu but beyond that I do not know of any specific circumstances. I do not think that there have been many suggestions for actual discipline.

Mr. MANTON. So can we say whether or not there is a real problem which needs to be addressed or is it more a question of public perception at this point?

Mr. DEGEORGE. Well, there is definitely a public perception problem. I think that goes without saying. Beyond that, you have to start asking yourself, should this be the one program or is this program important enough for local input and the direction to in effect have an exception, a blanket exception, to the conflict of interest statutes?

Mr. MANTON. I think you testified that Council members are the only "government employees" who have a blanket waiver exception to the conflict of interest rules?

Mr. DEGEORGE. To the best of my knowledge, Mr. Chairman. We made an exhaustive check. I do not know of any other exception.

Mr. MANTON. If we merely excluded individuals with a financial interest from the Councils, do we solve the conflict of interest problem?

Mr. DEGEORGE. I do not think it can be solved that way. I think what we have to do is have a way of balancing out the decision or the emphasis of giving sole decisionmaking to those people which have inherent interest.

My personal view is that the Councils would be better served to have members that go beyond those who have a direct personal influence such as trawler owners, offshore owners, small boat owners and the owners of processing plants.

I think that you have to expand the consideration beyond those people who are directly impacted because there are an awful lot of people who are indirectly impacted.

Mr. MANTON. And what would some of those categories of people be?

Mr. DEGEORGE. Well, I mentioned in testimony that I would certainly start thinking about somebody who represents the consumer part of the equation, the people, and those people who represent the ecology proportion of the problem.

And I would ask myself whether the Councils could be improved, that is my word, or at least better represented if we had members from the general public, knowledgeable people who had perhaps retired from the industry and had no direct financial interest at the moment.

The way I view the Councils, most of the membership are people who have a direct immediate concern about the allocation of fishery rights. I think the problem extends beyond that even to the point of conservation, to the point of understanding exactly why some-



thing is not working because we have a constant depletion of our fisheries.

Mr. MANTON. To what extent might more stringent financial disclosure criteria deter service on the Councils?

Mr. DEGEORGE. I do not think more stringent disclosure is the answer. The question is when and in what form should financial disclosure information be provided to everyone. A personal investment in the outcome of the discussion and to what extent you want to decide that these should be the exclusive decisionmakers is the issue.

I would put it another way, Mr. Chairman. I think part of the perception problem is that only the people that seem to have a heavy financial interest are the decisionmakers. I think that the public has to be convinced that they also have an interest and that those individuals are making the best professional and independent judgment they can.

That is why I believe that the members should be given the best scientific data. I also think the lawyers that represent the Councils should not also be the NMFS lawyers. There has to be a better perception that the outcome of these deliberations are defensible and fair.

Mr. MANTON. Finally, is the interim final rule published by the Commerce Department on March 11, 1994, sufficient to address your concerns?

Mr. DEGEORGE. No, sir, it does not address the question.

Mr. MANTON. Perhaps either yourself or counsel might outline for us—

Mr. DEGEORGE. As my counsel points out, he might want to add his own comments—the amendment seems only to say that the forms will be available at the Council meetings. I am not sure that you ought to tack them on the front door, but availability is the issue.

I think that when there is a special interest that is directed toward a particular issue there should be as much information available about the decisionmakers as possible. I must admit, Mr. Chairman, I am not an expert. I have just glanced at this document itself.

Mr. MANTON. Does counsel want to add anything to that?

Mr. WEAVER. Well, we think it is a step in the right direction, but we do not think it solves the problem to the same extent the Inspector General has pointed out.

Mr. MANTON. That concludes my first round of questions. I recognize the ranking member.

Mr. YOUNG. Thank you, Mr. Chairman, and I want to thank you, Mr. DeGeorge, for your testimony. One question that bothers me. I have heard members say in the public perception. Have you experienced any outcry from the public other than a request by someone from Congress? Has there been a great banging on your door?

Mr. DEGEORGE. No, there has not been a great banging on my door but I do get copies of what is in the newspapers, and I have read a lot of that.

Mr. YOUNG. Well, to follow up on that, you know that there was a petition from Emerald Sea Foods, Emerald Resources, Sea Hawk, Sea Catcher Fisheries, Swan Fisheries, the Secretary of Commerce,

asking for conflict of interest designations, etc., etc. They issued through the petition request a comment period of time and there were three comments.

Those three comments came from those parties involved and that is all the comments were. There wasn't a general public, there were those that had an interest again in the fisheries, is that correct?

Mr. DEGEORGE. I have not seen the letters, sir.

Mr. YOUNG. They are right here and we will submit them to you. But I keep hearing this public outcry, and I know where this is coming from which reminds me, I think in your testimony there was no violation of law in your finding, was there?

Mr. DEGEORGE. We did not find anyone had broken the law under the present Magnuson Act, and I want to get it in proper perspective. As stated, your statement is exactly correct. However, if it had not been for the legal restraints, there would have been some violations.

Mr. YOUNG. Again, the Congress did that. We did it for a reason.

Mr. DEGEORGE. Yes, sir, you deliberately did that.

Mr. YOUNG. That is right. How many votes did you examine in your investigation?

Mr. DEGEORGE. I have no personal knowledge. I know there were several but I do not know exactly. I would have to provide that for the record.

Mr. YOUNG. Well, I know out of 32 meetings of the Council there were 1,091 votes taken and at no time was there a showing of conflict of interest during that period of those votes. I know that for a fact. The reason I am saying that is, in fact, did you investigate any other Councils other than the one, the North Pacific Council?

Mr. DEGEORGE. No, sir, we have not, not for conflict of interest.

Mr. YOUNG. Only one.

Mr. DEGEORGE. Not for allegations of criminal conflict of interest, no, sir.

Mr. YOUNG. And in your findings there was no conflict but this was the only Council that was investigated, and so when we wrote this law, it was to cover all Councils, that is correct?

Mr. DEGEORGE. That is correct.

Mr. YOUNG. Is it fair to assume there is a conflict of interest by members when only one vote from one Council has been examined?

Mr. DEGEORGE. I would say that would be a preliminary and quick jump to justice but that is not the way we did this review, sir.

Mr. YOUNG. Well, again, the charges were made, the allegations were made and your request to do the investigation was made, you investigated one vote, and now you are making recommendations on that one vote when there are 1,091 votes cast out of 32 meetings. That is not a real fair analysis.

Mr. DEGEORGE. Well, we reviewed a plan, sir, and I do not have specific knowledge whether it was one vote or not. I don't know that is the material issue.

What we found is that save but for the Magnuson Act restrictions, they did violate the law on that one vote. Now we could probably go back and look at others and we may or might not come to the same conclusion.

Mr. YOUNG. But they violated nothing, is that correct? They violated your philosophy but they violated nothing.

Mr. DEGEORGE. Well, the question is if you want the exact answer I would get, sir, is that they met the test of the Magnuson Act.

Mr. YOUNG. That is the law.

Mr. DEGEORGE. That is the law.

Mr. YOUNG. So they did not violate anything. They violated your policy, your philosophy, but they violated nothing.

Mr. DEGEORGE. Well, it is not my law, philosophy or policy, sir. I would suggest that what we had here in the specific case we had a specific request.

Mr. YOUNG. It met the test of the law.

Mr. DEGEORGE. It did not meet the test of violating the law.

Mr. YOUNG. There were no violations.

Mr. DEGEORGE. No, sir.

Mr. YOUNG. OK, thank you. One of the other questions, would it be possible for anybody to vote on these Councils regardless of where they come from without having a conflict of interest? If it is an environmental group, a sport fishing group or a commercial group, a trawling group, an on-base—how in the world can you have someone not have a conflict of interest unless you pick a basket weaver or a psychiatrist or somebody like that?

This is an industry and a resource that has to have knowledge. How do we keep that from having a conflict?

Mr. DEGEORGE. I will have to speak from my personal view, sir. I think there are many, many people that do not have conflicts of interest.

There can be knowledge without having conflict of interest. If I was an educator, I guess I could argue there may be a remote opportunity I would get a grant but certainly not from the Council. They do not have that much money to spend.

I can conceive of instances where there would truly not be a conflict of interest although I do note that I do not specifically understand what the intention of the legislation was. I presume it was to get the most knowledgeable people—individuals who had personal interest in the outcome of the process.

My argument is not that there are not violations or conflicts. My argument is that the panel does not have to be limited to those people who only have an exclusive interest.

Mr. YOUNG. In the truth of the matter, the panel is not limited; it is the discretion of the governor to nominate those. It can be outside the field of fisheries if that is his wish. The Secretary himself can reject or accept those nominations. That is correct.

Mr. DEGEORGE. That is correct but I would suggest the lion's share, or the very high majority of the people, are those people who do have a personal interest.

Mr. YOUNG. And I agree but there was a reasoning, and I mentioned in my opening statement, I am the only one that sat through these hearings and the process that was held and the reason the 200-mile limit was created was, in fact, to give us American fisheries those with the most knowledge.

And I have found in my experience those that have an interest in those fisheries many times take better care of whatever they are taking care of than somebody from the outside.

Now I again will say I think your report is good. I am a little resentful of the idea that someone can sit in a position to make recommendations to a legislative process, when in reality even your statement says it has worked. There has been no violation. The violation, this is the only one, but in reality it has been not violated.

In reality the intent is still intact so, again as I said, Mr. Chairman, you know, you took a little extra time too, I am going to respectfully suggest that we are willing to look at some suggestions to the amendments but the majority of that Council still has to have expertise in the fishing field before we can implement the original intent of the Act.

Thank you, Mr. Chairman.

Mr. MANTON. Thank you. The chair recognizes the gentlewoman from the State of Washington.

Ms. UNSOELD. Thank you, Mr. Chairman. First, just very quickly, the first point in your potential amendments to the Magnuson Act, increase participation on the Councils of knowledgeable individuals who are not actively involved in fisheries. Were you contemplating that would be over and above the current number so it would be an expanded Council or a replacement?

Mr. DEGEORGE. Yes. Yes, I was.

Ms. UNSOELD. Thank you. On your investigation, Mr. DeGeorge, of the North Pacific Council, you concluded that there were no violations of conflicts of interest under the Magnuson Act.

Now some of this you have gone over but I want to get a clear record here. Did any of your findings indicate violations of laws that Council is specifically exempt from and, if so, which laws?

Mr. DEGEORGE. The way that it has been explained to me is that in effect that there were votes taken that benefited individual's financial interests that, in effect, save but for the exclusion in the Magnuson Act, would have been criminal.

Ms. UNSOELD. And those would have been violations of what—

Mr. DEGEORGE. 18 U.S.C. Section 208 which is basically a conflict of interest statute.

Ms. UNSOELD. OK. In the legal background and recommendation section of your report, you state, "Although we uncovered abuses, our investigation did not substantiate any violations of criminal laws. We found that conduct that is forbidden under criminal conflict of interest laws in other context is permitted under the laws established in the NPFMC and the other regional Councils. The legal framework governing the North Pacific Council operations makes this possible. It anticipates and we think invites conflicts of interest but exempts the Council's voting members and executive director from some of the most important laws."

In your experience, Mr. DeGeorge, have you ever encountered a situation where behavior that would otherwise be considered a violation of a criminal statute is exempt simply because it involves a particular industry?

Mr. DEGEORGE. No.

Ms. UNSOELD. Can you conceive of a reason why the fishing industry alone ought to be treated different from the timber, mining, oil industry or for that matter any other industry?

Mr. DEGEORGE. Well, I tried to say earlier, madam, that in effect I do believe that we could have an effective fishery management council meeting the same objectives of all other oversight groups and you have mentioned a few. There are others.

Ms. UNSOELD. Since the Magnuson Act was last reauthorized, there have been countless editorials from the Seattle Times and the Washington Post, urging us to make substantive changes to address the conflict of interest issue.

In our own hearings last year no less than 35 witnesses including three candid Council chairmen have gone on record supporting changes to the Act in this area and now today your testimony reaffirms that basic conclusion and the need to restore public confidence in the system.

Against this background, can you see any reason why the Congress should not seek to amend the Act to address these concerns?

Mr. DEGEORGE. It would be my recommendation that it give consideration to some of the suggestions we have made here and others. Yes, I think it needs to be amended.

Ms. UNSOELD. And in response to my colleague from Alaska, although you may not have had organizations or groups coming to you complaining about this, certainly I as a representative have received from a number of conservation groups and others complaints about it, and when I have that information I am going to submit that also into the record.

[The articles mentioned by Ms. Unsoeld are found at the end of the hearing.]

Ms. UNSOELD. But what is a conflict of interest violation that could occur under this Act? Are there any situations so grievous that it might constitute?

Mr. DEGEORGE. The law addresses one particular set of exceptions to the regulations, specifically the one that deals with a decision that might "be of a particular matter primarily of individual concern." Even our General Counsel has not really defined what that means.

I would presume that if you owned 12 trawlers in Seattle and you made a decision that those 12 trawlers effectively would get 100 percent of the marketplace, that might be of particular interest to you. Yes, that is an exception that the regulations grant, where there could still be a conflict.

The regulations say that you should be prohibited from voting on something which is of a particular financial interest to you and where it can be judged and that is an individual set of circumstances that you are the primary beneficiary of that specific act.

Mr. WEAVER. I might add that that provision is only by regulation and it does not affect the criminal statute which they would still be exempt from if there were full financial disclosure.

Ms. UNSOELD. So if you were part of a small class and that vote ended up benefiting all of the members of that class of entity, would it be a violation?

Mr. DEGEORGE. I do not think so. I think the regulation is trying to be much more precise and say that only when you and a small number of people would benefit from a particular action that could be materially beneficial to that person.

Ms. UNSOELD. I recognize that my time is up, Mr. Chairman, but I would like to include in the record the Marine Fish Conservation Network which represents 73 environmental groups and their comment on the potential conflict of interest issue.

Mr. MANTON. Without objection, so moved. The chair recognizes Mr. Kingston.

Mr. KINGSTON. Thank you, Mr. Chairman. Mr. DeGeorge, I just have a couple of questions, and I know you can have long answers or short answers. I will let you be the judge.

In the situation where a commercial fisherman representative votes to raise the total allowable catch, would that alone constitute a conflict of interest?

Mr. DEGEORGE. Not in my judgment, no, sir.

Mr. KINGSTON. If he voted to lower the allowable catch.

Mr. DEGEORGE. Either way.

Mr. KINGSTON. Either way. Is there any case that a commercial fisher representative could cast a vote on a Council which is not a conflict with his own personal interests?

Mr. DEGEORGE. Well, I could imagine he could become a statesman and vote to push the allocation in a way that was not in his best interest. But a lot of votes that are taken may benefit him and his company, yes.

Mr. KINGSTON. When you say he could become a statesman, is it inherent that they are automatically not a statesman?

Mr. DEGEORGE. No, I think—

Mr. KINGSTON. I just wanted to ask that.

Mr. DEGEORGE. I will accept your definition.

Mr. KINGSTON. Is there any case in which a member of the Council from the recreational fishing community could have a conflict of interest?

Mr. DEGEORGE. A member of the Council?

Mr. KINGSTON. Yes, representing the recreational community.

Mr. DEGEORGE. I guess if the discussion was that nobody could take any more commercial fishing. But, no, I cannot conceive of it, no, not off the top of my head.

Mr. KINGSTON. How about someone from the environmental community?

Mr. DEGEORGE. I would not think so.

Mr. KINGSTON. So commercial fishermen would be the only group in your estimation that could have a conflict?

Mr. DEGEORGE. Well, I would take an individual set of circumstances and review each case, sir, but I think you have to look to where the investments are and where the jobs are and then whether or not the decision moved that in one direction or another.

I would think that the primary people who could conceptually benefit would be commercial fishermen, yes, sir, and that would include the trawlers.

Mr. WEAVER. If I could add something. The statute in question, 18 U.S.C. Section 208, deals with financial interest, conflicts of interest dealing with financial interest, so to really answer your

question, you would have to look at the particular facts of the case and determine whether the individual had a financial interest, and that would assume again that the statute applied to the Council, which it does not if the member makes full financial disclosure as required.

Mr. KINGSTON. Did you look in your investigation of any evidence of vote trading?

Mr. DEGEORGE. I do not understand the term.

Mr. KINGSTON. Well, you know, if you vote for me on this and then I will vote with you and they swapped them back and forth.

Mr. DEGEORGE. My counsel said we did look at it. I do not know what the conclusions were.

Mr. WEAVER. There was inconclusive evidence of anything.

Mr. KINGSTON. The Secretary has power to reject or approve a plan and has some authority to exert in terms of balance in a Council. Do you think the Secretary is doing that?

Mr. DEGEORGE. My experience over the last three Secretaries, sir, is that they generally leave the primary decision pretty much to the fisheries people, the fishery staff, and do not really tend to intrude on the decisionmaking.

Mr. KINGSTON. Mr. Chairman, Mr. DeGeorge, Mr. Weaver, thanks a lot. No more questions.

Mr. MANTON. The chair recognizes Ms. Cantwell.

Ms. CANTWELL. Thank you, Mr. Chairman. Again, Mr. DeGeorge, thank you for being here this afternoon. We had a hearing earlier on the reauthorization process, and I asked the Council chairman who had appeared at that meeting whether they had taken any steps on their own to address conflict of interest which they are able to do under the Act.

Now only three of them had taken any action to further clarify conflict of interest—although many of the chairmen there thought that additional changes did need to be made on this issue of conflict of interest.

Given your experience now and understanding of review of this issue, do you think that it is possible that the Councils can act on their own addressing this conflict of interest?

Mr. DEGEORGE. Well, several Councils, and I do not know the details, ma'am, do have recusal ground rules. I would have to go back and look at the specifics.

Several of them have looked somewhat at how they basically deal with this issue but I do not know the specifics. I haven't had any reason to believe that they have become models or in effect something we would want to suggest as legislation but I know that several Councils are concerned about the issue.

Ms. CANTWELL. So at best you could say it is not conclusive that they can or cannot?

Mr. DEGEORGE. That is correct.

Ms. CANTWELL. My records show that we have somewhere over 1,000 Federal advisory committees that are similarly structured, I mean as far as members being advisory in their decisions that are under the Federal Advisory Committee Act.

Do you see any uniqueness in these Fishery Management Councils that would distinguish them in any way to be different than

these other advisory committees as far as having representatives of various industry sectors making decisions?

Mr. DEGEORGE. No, I do not. I think they should basically come under the advisory committee act jurisdiction.

Ms. CANTWELL. So we definitely have advisory councils with industry people on them making industry-impacted decisions but they are under the conflict of—

Mr. DEGEORGE. Yes, that is the primary difference here.

Ms. CANTWELL. OK, thank you. That is all the questions I have, Mr. Chairman.

Mr. MANTON. Mr. DeGeorge, maybe you could clarify one of the answers you gave to Mr. Kingston about whether or not a sports fisherman could ever be guilty of a conflict. Let me see if I understand you correctly on that point.

Mr. DEGEORGE. I think as our counsel has pointed out, there has to be a financial benefit that would accrue. It is difficult for me to envision then a sportsman, per se, would benefit from a change in fishing allocations but it is conceptually possible but difficult for me to come to a set of circumstances that would suggest he could benefit.

In other words, a sports fisherman, as I understand it, is representative of the people who go out on charter boats and things like that. Individually I guess if he was a member of an association that worked for a group of sports fishermen, I would think possibly he might have some benefits but I don't think so.

Mr. MANTON. The Hawaii case, is that really a conflict of interest issue? From what I read in some of the news accounts, the wife of a lobster fisherman was on the Council and her husband took lobsters illegally.

The boat that he used was leased from another Council member. In that case both Council members, I think, have been charged but I wonder if it is a conflict. It is not something where they voted. I mean they could have gone out and—

Mr. DEGEORGE. You may well be right, Mr. Chairman. I haven't seen the actual documents.

Mr. MANTON. Well, if there is no objection, I am going to add to the record a communication we received from the Hawaii Fishermen's Foundation along with a newspaper account of that incident in Hawaii.

[This account appears at the end of the hearing.]

Mr. DEGEORGE. I would add, sir, I do not think anyone who violates the law ought to be on the Council even if it was not a conflict.

Mr. MANTON. But in terms of our looking at conflicts of interest laws, I am not sure whether that situation—although it is an egregious case, fits the "normal" conflicts of interest pattern.

Mr. DEGEORGE. I agree with you.

Mr. MANTON. I have no further questions. The gentlelady from Washington.

Ms. UNSOELD. Thank you. Mr. DeGeorge, in what the Seattle Times last week called a "gutsy and refreshing change of pace," Governor Lowery of Washington State suggested, as I quoted earlier, that he might nominate objective managers to the North Pacific Council rather than commercial fishermen with an economic



interest in the fishery, and he called on Secretary Brown to take the initiative and develop coordinated Federal leadership, as I stated before, to transition the Councils from their existing stature to one of public trust.

But now, putting it bluntly, from your experience in examining how your agency works, do you think the department is up to the task or does Congress have to get involved before there can be any meaningful change? Do there need to be statutory changes?

Mr. DEGEORGE. As I remember the Governor's letter, he was concerned that he might be disadvantaged because he tried to be fair or equitable as to his neighboring States.

I really would not know how to make a judgment. I think the issue here is whether the rest of the governors would join the Governor of Washington so that in effect we would bring outside expertise to the decisionmaking.

But each governor has the right to nominate three members and I don't see where he would go against his own State's best interest and put people who would not represent the commercial industries and those people who have fishery investments in his own State.

I would say that I do not think it is likely.

Ms. UNSOELD. To summarize the current situation, it is almost impossible unless the individual himself or herself was going to have a financial benefit directly resulting from the vote, the action taken, to have a conflict of interest and even there if it pertained to interest in harvesting, processing or marketing activities and had been disclosed, it would really be still immune from conflict of interest as we know it.

Mr. DEGEORGE. You are correct, as long as there was disclosure.

Ms. UNSOELD. Would you mind elaborating on 11, 12 and 13 on your list of recommendations on possible amendments and how those would work or why you made those recommendations?

Mr. DEGEORGE. Well, 11 says in effect that the scientific statistical Subcommittees have an obligation and generally work with the full Committee to provide information.

The stronger the scientific data and, therefore, the more knowledge of the Committee, and the Subcommittees, the better off we would be, or the more informed the decision.

I think it raises public confidence if the scientific committee had a two-thirds vote on issues. It would help get the best possible data in front of the Committee, to the Council.

12. This is primarily a legal definition but I think the clear preponderance of evidence is to ensure that the votes are based on the best facts that can be obtained. It is all part of making it more difficult to make up judgments, to get the best possible decisions from the Council.

I might add personally that I think that here is where you run into some very tough financial questions because a lot of Councils don't have the staff, don't have the fiscal support of NOAA, and there is not enough money to conduct the necessary economic analysis.

There is sometimes a potential conflict between the NOAA lawyers and the Councils' staff as to who they represent but I think anything that raises the integrity of the data and improves it will

make it more difficult for people to make arbitrary decisions based on individual Council members' personal interests.

Ms. UNSOELD. And that comes out of your observation of the whole agency for a period of time, not just one particular investigation?

Mr. DEGEORGE. That is correct.

Ms. UNSOELD. And how about on 13?

Mr. DEGEORGE. This is again the authority issue as well as individual responsibility. The key is that the authority of the scientific panels should be formalized; they ought to be called on to produce specific data. There ought to be a requirement of certain types of votes.

This is another issue that should move the Councils towards getting to the position of providing the fishery management staff and the Council members with information to make the members as knowledgeable as they can. Public disclosure is fine but scientific information made available within the Council on a prescribed necessary request is in the best interest of everyone.

Ms. UNSOELD. I thank you very much, Mr. DeGeorge, and I thank you for the work that you have done.

Mr. DEGEORGE. Thank you, ma'am.

Mr. MANTON. I see no other members seeking recognition, therefore, we will conclude our hearing for today. Thank you, Mr. DeGeorge, Mr. Weaver, and thank you, Subcommittee members, also.

Mr. DEGEORGE. Thank you, Mr. Chairman.

[Whereupon, at 2:28 p.m., the Subcommittee was adjourned, and the following was submitted for the record:]

## STATEMENT BY

FRANK DEGEORGE  
INSPECTOR GENERAL  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES  
March 23, 1994

Mr. Chairman and Members of the Subcommittee, I am pleased to be here to discuss conflicts of interest as they relate to fishery management councils. Two years ago, we reviewed allegations of conflicts of interest against several members and former staff of the North Pacific Fishery Management Council in Alaska. We concluded that two members of the Council did vote on matters in which they had a financial interest. However, the Magnuson Act specifically exempts council members from legal prohibitions on such conflicts, and the two members had properly disclosed their interests, so they did not violate the law.<sup>1</sup> We also found that another member received a precontractual payment for consulting work while on the Council, but there was no conflict between that contract and his work on the inshore/offshore issue which occurred before he got the contract. From a legal point of view, there was no conflict of interest.

Under the Magnuson Act, the regional fishery management councils prepare fishery management plans for each fishery within their geographic area of authority that requires conservation and management. If it becomes necessary to allocate or assign fishing privileges among various U.S. fishermen, allocation plans are supposed to be fair and equitable to all fishermen; reasonably calculated to promote conservation; and carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges. Judging from the many articles in the press which discussed allegations about the North Pacific Fishery Management Council and our investigation, there was a perception that certain members were controlling council actions to maximize their personal financial interests. We found no evidence of such actions.

Let me start by stating that I believe that the laws that apply to other federal operations should also apply to fishery management councils. The existence of concurrent financial interests, whether actually conflicting or not, and whether exempt from prosecution or not, damages the credibility of the councils. Public confidence in the process that manages a public resource depends on the absence of even an appearance of conflict.

What then is the solution to the legal and management dilemma associated with these actual or perceived conflicts of interest? First, we must find a legal means of assuring the American public that the decisions made in the regional councils are for the long-term good of the industry, the resource, and the country, not just for the short-term profit of council members. As such, I fully recognize the importance of industry participation in the councils. Certainly industry associations, companies, and individual fishermen must be invited to participate in decisions which will affect their livelihood, their families' future, and the status of their communities. But those interests can be represented on the councils without damaging the councils' ability to conserve and manage such a vital public resource for future generations.

I am submitting with my written testimony a list of options to mitigate potential conflicts for your consideration. I hope you will accept them for further study as possible ways to enhance the management and reputation of the councils. Let me briefly discuss a few of them.

---

<sup>1</sup> One former staffperson violated the prohibition imposed on council employees from maintaining financial interests that conflict with their fair and impartial conduct of official duties. The U.S. Attorney's office in Alaska, however, declined to proceed further.

One obvious means of mitigating potential conflicts would be to eliminate the statutory exemption from conflicts of interest. We have found, after some research, that this exemption apparently is the only example in federal law of a direct statutory blanket waiver from the prohibitions against conflicts of interest by federal officials, which council members are when they perform council functions.

Another option would be to expand the membership of the councils to include citizens with no personal financial interests, but with knowledge or experience in a wide variety of disciplines and who are very interested in the outcome of council actions. Many members of boards of directors of Fortune 500 companies have no direct ties to a particular company, but their experience in banking, law, community development, or some other field are helpful to the company.

In a like manner, the councils might benefit by including members with such experience, as well as members from interested consumer and environmental organizations. Indeed, this Committee's report on the original Magnuson Act includes a statement of the Committee's expectation that "conservationists, ecologists, and representatives of the scientific community" would be considered for membership. Although the current language of the Magnuson Act allows for the selection of a wide range of members, more explicit language in the Act may send a strong signal that such diverse membership is needed to minimize conflicts of interest.

Other items we suggest for your consideration are:

- Establishing a mechanism by which council members recuse themselves from voting on matters affecting their personal financial interests;
- Requiring financial disclosures to be included in the record of council action (disclosures are currently only filed with NMFS headquarters); or
- Expanding the authority and responsibility of scientific, industry, and other advisory panels as a means of providing expert information to the councils.

Another means of mitigating potential conflicts is to ensure that the fishery allocation plans proposed by the councils are based on sound factual information and proper analysis. Also, the plans should be written in such a manner as to be understandable and perceived by the public as the basis for a council's actions. In our February 1992 report on the North Pacific Council's allocation amendments, we found that the council and NMFS staff had not adequately determined the costs and benefits of various alternatives, such as the changes in employment, income to the inshore and offshore industries, and groundfish prices. We recommended initial disapproval of the amendments until adequate economic analyses had been performed.

The quality of data collected on the status of the fishery must be improved. In some cases, the socio-economic data is insufficient for preparing the types of analyses needed. The lack of data appears to be the result of inadequate resources and severe time constraints for NMFS and the councils to fund and perform adequate economic and scientific data collection programs. One way to address the lack of resources would be to combine data collection activities, i.e. NMFS and councils could form **plan development teams** composed of experts from a variety of fisheries-related disciplines and interests to prepare and analyze plan options.

As the Subcommittee continues in its efforts to find ways of balancing the financial concerns of the affected fishermen with the concerns of the public, keep in mind that regardless of how perfect the theory, how well intentioned the plan, the success of this undertaking depends on the integrity of the decisionmaking process. In other words, in order to have faith in the decisions being made, the public must perceive that those in charge of approving and implementing a plan are free of direct financial benefits that would influence them to favor individual benefit over the general good. Admittedly, reducing or eliminating the appearance of a conflict of interest will not solve all the problems facing the fishing industry and the resource itself. However, it would be a step in the right direction.

Mr. Chairman and Members of the Subcommittee, I and my counsel, Wayne Weaver, would be happy to answer any questions you may have at this time.

## ATTACHMENT TO THE STATEMENT BY

FRANK DEGEORGE  
INSPECTOR GENERAL  
U.S. DEPARTMENT OF COMMERCE

BEFORE THE  
SUBCOMMITTEE ON FISHERIES MANAGEMENT  
HOUSE COMMITTEE ON MERCHANT MARINE AND FISHERIES  
March 23, 1994

Potential Amendments to the  
Magnuson Fishery Conservation and Management Act of 1976

---

Mitigation of Conflict of Interest

1. Increase participation on the Councils of "knowledgeable" individuals who are not actively involved in fisheries.
2. Include a recusal mechanism, at least where economic allocation decisions are under consideration.
3. Require financial interest disclosures to become part of the record at the time the decision in question is being voted on.
4. Authorize the Secretary to remove members for failure to make full disclosure before voting.
5. Authorize the Secretary to reject a plan if it is passed based on a conflict-of-interest vote.
6. Eliminate the waiver of the federal conflict of interest statute.
7. Eliminate the waiver of the federal conflict of interest statute and replace it with a more tailored exemption.
8. Remove the Councils' exemption from the Federal Advisory Committee Act.
9. Require a written transcript of Council hearings (rather than a summary).
10. Require witnesses to state, under oath, qualifications and interests for full consideration by the Council and other interested parties.
11. Require a two-thirds vote of the scientific statistics committee before an emergency action can be taken.
12. Require fishery management plans to be "based upon a clear preponderance of the evidence in record" to ensure votes are based on presented facts and not preconceived agendas.
13. Expand the authority and responsibility of scientific, industry, and other advisory panels as a means to provide information to the Councils.

# AUDITING UP FRONT

**F**rank DeGeorge's stock-in-trade is hindsight. As Inspector General of the Commerce Department, he spends much of his time reviewing what has already happened, not what may be coming up. That, after all, is how auditors normally work.

But in the field of high-tech procurements, DeGeorge and his staff are indulging in a little foresight these days. A small, controversial—and sometimes influential—unit of his office kibitzes throughout the process as other Commerce agencies develop and install major computer systems.

In its search for efficiencies, the Office of Audits/Information Technology has pried into such huge systems as the National Weather Service's big new satellite and radar system, the Census Bureau's preparations for the decennial population count next year and the Patent and Trademark Office's (PTO's) ground-breaking program to store some 27 million documents on optical disks.

Together these systems, along with 10 other major computer systems Commerce that agencies are buying, will cost more than \$2.4 billion over the next five years. DeGeorge's office says its "front-end" audits of these systems have cut their cumulative cost by \$300 million over the past three years.

The information systems auditing staff may step into the lifespan of a major system just as an agency is developing the idea for it. And it may continue to work with the agency through cost-benefit analysis, design, procurement and systems management. The goal is to streamline expenses "at the front end, before problems can emerge," says John D. Newell, who directs the office and serves as assistant IG for auditing.

The information technology office's approach is somewhat risky, like "trying to take a snapshot of something that's mov-

**A division of the Commerce Department's Inspector General's office is attempting to head waste and inefficiency off at the pass.**

■ BY KRISTIN KNAUTH

ing," says Ronald D. Lieberman, acting deputy assistant IG for information technology audits. "Most IGs come in after a system is running and focus on internal controls—systems development, verification of data and so forth," Lieberman says. "We concentrate on the decision-making process, alternatives analysis, risk factors, whether a proposed system will meet agency requirements. It's much harder to write about something dynamic than something static."

Auditors generally see front-end audits as the "ideal way to operate," says June Brown, IG at the Department of Defense. But such audits are rarely undertaken in the federal government, Brown adds, because they require a large commitment of resources. In 1981, when the General Accounting Office (GAO), which sets standards for federal auditors, sought to require front-end audits in federal agencies, Brown and others opposed the move. "With 2,000 systems being developed in Defense at any time, and each large system taking several years to develop, it would have been impossible to do," she says. "We objected to the deep resources [it] could have entailed."

Such budget-driven realism was again reflected in the GAO's update of auditing standards published late last year. Indeed, the 1988 version of the auditing "Yellow Book," unlike its 1981 predecessor, did not even mention the desirability of such audits.

Today, Commerce's information technology auditing office is the only institutionalized instance of front-end auditing in the federal government, although some other departments use front-end audits on an ad hoc basis. And the office is hardly the focal point of DeGeorge's operation: The \$1.3 million it will spend is only about 11 percent of the Commerce IG's \$14 million budget. And not all of that \$1.3 million goes to support front-end audits.

The front-end approach has its pitfalls. Although the auditors' recommendations are not binding upon agencies and the office has no procurement authority, its approach frequently creates friction with auditees who bridle at the contention that their proposals are needlessly expensive or inefficient. Agency executives must either consent to the office's recommendations, which often entail radical shifts in planning and budgeting, or justify their dissenting opinions.

DeGeorge and his staff have learned to listen to agency viewpoints and in some cases have revised their conclusions in response to counterproposals. Says Newell, "It's not competitive; we're working with the team. We identify problems, they iden-

*Kristin Knauth is a Washington-based freelance writer specializing in business, economics and high technology.*



**Commerce Inspector General Frank DeGeorge** has established the only institutionalized front-end auditing office in government.

tify solutions. The agencies are most concerned with meeting their objectives, while the IG is most concerned with cost-effectiveness—it's a different focus."

Many agency heads say that, ultimately, they appreciate the assistance. Frances Balint, chief of automation at the National Meteorological Center, where the auditing office reviewed a cost/benefit study for upgrading a supercomputer system, says, "It's helpful to have them working for us up front so we can work things out as we go along. When you're ready to move, everyone is satisfied with the package. You don't get delayed later on."

#### **Staffing for Unique Challenges**

Commerce is a crazy-quilt department with agencies as diverse as the National Oceanic and Atmospheric Administration (NOAA), the Census Bureau and the PTO in its bailiwick. The department's 13 major technical systems are spread among these three agencies and the National Institute of Standards and Technology and the International Trade Administration. (See table, page 31.) Together, they will spend more than \$550 million on technical systems in 1989, DeGeorge says, about 18 percent of Commerce's \$3 billion annual budget.

Newell claims that the information technology office's recommendations have saved Commerce more than \$300 million in the

three years since DeGeorge shifted the offices' focus to major systems. The greatest chunk of savings has come from an examination of NOAA's ongoing modernization efforts, according to Lieberman. This includes: \$85 million saved on an advanced radar procurement; at least \$25 million from

**"Isn't it more intelligent to discuss where you're going, even if it may change? But not everyone in the IG community agrees with me."**

—Commerce IG Frank DeGeorge

delaying the launch of an environmental satellite; and as much as \$50 million on planned telecommunications networks for weather data.

DeGeorge conceived the information technology auditing unit five years ago while he was deputy IG, together with then-IG

Sherman M. Funk, in response to the department's need for expert, objective systems analysis. Initially called the Office of Automated Information Systems, the division's focus shifted between 1985-87 from general audits to major technical systems, defined at Commerce as those that either exceed \$100 million in development costs or are critical to the department's activities.

"Much of Commerce's budget goes to systems," DeGeorge says. "We started asking, how do you judge the correctness of these expenditures? We looked at the whole continuum of the procurement process and decided the best way to make something happen is in the design phase, before it becomes bureaucratically locked in."

Some inspectors general differ with this premise, on the grounds that endorsing a system at the design stage makes it impossible to be objective in the final review. "I'm not of that school," DeGeorge says firmly. "We can always say later that we may have been wrong. Isn't it more intelligent to discuss where you're going, even if it may change? But not everyone in the IG community agrees with me."

Creating the information technology office, DeGeorge relates, required combing government and private industry to find a team capable of talking as equals with systems experts, scientists and agency directors—a recruiting challenge given the federal government's low salaries.

"These men have to know enough to force the system managers to answer to a level of accountability, to ask the right questions at the right time," DeGeorge says. "A person with John Newell's skills could probably make a quarter of million dollars a year outside. We had a very tough time bringing federal people in."

The opportunity to audit programs on the cutting edge of technology is key to enticing recruits, says Lieberman, who is trained as a certified public accountant and has audited government systems since 1976. "No two problems are alike, and we deal daily with world-class scientists. It is extremely challenging." Training even the most talented graduates takes three to five years, Lieberman says. So at the moment he is making do with a working staff of 18, leaving five budgeted job slots empty while the new hires come up to speed.

**The information technology auditing staff gets involved in all phases of procurement. It is headed by, from left to right, Ken Giese, Karl Schornagel, John Newell, Ron Lieberman and Bill Lee.**



#### NOAA's Audits

Lieberman's office has been involved in some way with every one of Commerce's 13 major systems, he says. Its three office divisions correspond roughly to the three phases of systems procurement: systems acquisitions, which looks at the entire acquisition strategy, from requirements analysis through design; automated information systems, which audits concept studies and demonstration testing; and computer services, which usually audits installed systems.

The office decides when in a system's lifespan it will begin the auditing process, relying primarily on the five-year plans agencies submit to outline their future automation needs.

To date, the office's largest project has been its review of a massive modernization program for the National Weather Service (NWS), a division of NOAA. The modernization, which began in the late 1970s, may eventually cost more than \$2 billion.

NEXRAD (Next Generation Weather Radar), a multi-agency effort to replace conventional weather radar with advanced Doppler radar technology, is the largest system the office has audited. In 1987, allegations of improprieties in bidding for the \$500 million contract prompted an exhaustive review of the procurement process. The review did not confirm the allegations, but "we determined there was much more work needed before NOAA could decide on a winning contractor. Audit of the winning proposal saved \$85 million," DeGeorge says.

NOAA's National Environmental Satellite Data and Information Service uses satellites to feed data to Earth-based computers to be used in managing global energy resources, food supplies and natural resources. At least two satellites are needed to supply enough data for accurate modeling, but because they are so essential, the satellite data service proposed maintaining a third, "spare" satellite in orbit as well.

The problem with this idea, the auditors say, is that satellites deteriorate faster in orbit than on the ground. Other risks inherent in keeping a satellite in orbit would raise the chances that the spare would not survive long enough to fulfill its mission. Meanwhile, each launch costs NOAA about \$60 million.

Delaying the launches as long as possible could extend each spare's lifetime by a year or more, the IG's office suggested, saving at

least \$24 million in addition to launch costs.

"The fail-safe position that NOAA wanted was terribly expensive," DeGeorge says. "We convinced NOAA that it was safer and much cheaper to keep the spare on the ground as long as possible."

Another planned NWS system, AWIPS-90 (Advanced Weather Interactive Processing System for the 1990s), is a highly sophisticated telecommunications network that will carry satellite weather data among individual weather service offices and the NWS supercomputer that processes it. The system is expected to cost more than half a billion dollars over its 10-year life cycle.

The information technology office became involved with the AWIPS acquisition in 1984, when it audited the initiation phase of the proposal and asked the NWS to prepare a list of alternatives. When the office felt that the alternatives were inadequately explored, it recommended that the National Institute for Standards and Technology (NIST) assess whether existing government systems could be used to meet any of the system's requirements. NIST came up with several specific recommendations to help streamline development and ensure the system's long-term success.

Also following the auditors' recommendation, the federal coordinator for meteorology is developing a national plan to integrate its automated surface observing system, of which AWIPS-90 is a part, with the Federal Aviation Administration's central weather processor to eliminate redundancies in the two systems. "Coordination can save \$10.5 million in the definition phase of the systems development effort alone," Lieberman reported in the IG's semiannual report to Con-

gress for March 1989. In addition, consolidation of development and acquisition efforts could save more than \$40 million, the IG's office estimates.

#### Other Front-End Audits

In 1987, the auditing staff helped persuade the PTO to renegotiate a \$289 million contract for its massive Automated Patent System, first awarded in 1984 as part of a long-range procurement of more than half a billion dollars. (See "Taming the Paper Beast," June.) "We were concerned that ... the PTO had never done an adequate technical analysis of cost proposals for the contract," DeGeorge stated in the September 1988 semiannual report to Congress.

The problem, recalls Thomas P. Giammo, assistant commissioner for information systems at the PTO, was that PTO staff didn't have the necessary expertise to undertake the substantive re-analysis the office recommended. When auditors pointed Giammo to the Defense Logistics Agency for consulting support, a DLA representative spent about a week structuring a program to help the PTO get organized, Giammo says. "It was very, very helpful. We then did the detail work."

As a result of the analysis, the PTO was able to cut its use of contractor staff by 10 percent and to take back almost all jobs involving the operation of the system. A total of about \$20 million was saved by renegotiating the Automated Patent System contract, the IG's office reported.

In June 1987, then-Secretary of Commerce Malcolm Baldrige asked the IG's office to help resolve a delicate trade issue associated with the Automated Patent System by reviewing a subcontract the PTO



was about to award to a Japanese firm as part of the procurement. Trade with Japan was particularly sensitive at the time, in part because the Japanese were excluding U.S. companies from procurements for a major new airport near Tokyo. Moreover, the subcontract in question included the U.S. government's first major purchase of optical storage technology, a purchase that Congress hoped would spur development of a new, national optical disk industry, the IG's office reported.

"Secretary Baldrige wanted the bid reconfirmed in its entirety so that if the Japanese won we could explain it to Congress, and if the Americans won, we could explain it to the Japanese," DeGeorge explains. "It was a very delicate situation."

The IG's office "found no evidence to suggest that the procurement was handled incorrectly... [and] no evidence of favoritism," the office stated in its semiannual report for November 1987. The subcontract was awarded to the Japanese firm.

The office has also had a hand in planning the 1990 decennial census, which will count 250 million Americans at a cost of about \$2.6 billion. Hoping to avoid some of the unnecessary data collection and processing costs and other problems it incurred in the 1980 census, the Census Bureau in 1987 made plans to increase the number of processing offices from 3 to 11, at a cost of \$550 million. The auditors persuaded Census that they could achieve the same results by consolidating the work load in seven centers, thereby saving \$45 million.

At the same time, the IG's office reports, Census agreed to automate some processes that had been done manually at a cost of \$40 million in the 1980 census; savings cannot be estimated until after 1990, when the new procedures are in place. The IG also suggested eliminating some other labor-intensive procedures used to reduce the amount of the census undercount on the grounds that the results did not justify the cost—saving about \$37 million.

#### Turf Wars

Because agencies are in no way compelled to abide by the information technology auditors' recommendations, turf wars with agency heads are a regular feature of its task. While agencies are free to make their own decisions, the IG's office "can make it embarrassing, noisy and uncomfortable" for those that push opposing agendas, DeGeorge admits.

Commerce undersecretary for oceans and atmosphere William Evans and other administrators declined to comment on the ongoing review of National Weather Service systems. Sources within the IG's office say the audit has generated considerable tension be-

tween the IG's office and Weather Service executives.

Giammo of the PTO gives a vivid description of his interaction with the auditing staff. Giammo was new to his job when the auditing office stepped in last year and therefore not personally responsible for the weaknesses they pointed out. Nevertheless, "We boiled at each other across the table for two days," Giammo recalls with wry amusement. "It was not a smooth, gentlemanly interaction. But it was a healthy one, and we ended up with a common consensus."

Giammo observes that many technical decisions "are judgment calls; it's a question of emphasis. In some cases we convinced [the

IG was created for."

At least once, the office's recommendations have resulted in personnel displacement. In September 1987, the office's recommendation to NOAA that its proposed Shipboard Data System III could be implemented using off-the-shelf equipment, rather than new designs, resulted in a design team being disbanded. "Of course, they were very unhappy with what we did. But it gave NOAA \$13 million to use somewhere else," DeGeorge says.

DeGeorge hasn't won them all, of course. "But I'd say we've won 90 percent," he says. "They have every right to disagree with our judgment."

### COMMERCE'S NEW INFORMATION SYSTEMS

Thirteen major information systems are now under development in the Commerce Department. Here's a list, along with conservative estimates from the agencies of what each system will cost over the next five years.

	Estimated Five-Year Cost (\$ in millions)
<b>Office of the Secretary</b>	
Financial Management Information System	\$27
<b>Bureau of Export Administration</b>	
Export Control Automated Support System	\$35
<b>Census Bureau</b>	
Decennial Census Automation	\$134
Census Central Computer Facility	\$143
Geographic Support System	\$245
<b>International Trade Administration</b>	
Commercial Information Management System	\$24
<b>National Institute of Standards and Technology</b>	
Departmental Scientific Computing Program	\$121
<b>National Oceanic and Atmospheric Administration</b>	
Advanced Weather Interactive Processing System	\$339
Navigation Products Program	\$36
Next Generation Weather Radar	\$342
Satellite Operators, Support Systems	\$132
Marine Fisheries Information Technology Project	\$15
<b>Patent and Trademark Office</b>	
Automated Patent System	\$867
<b>Total</b>	<b>\$2,840</b>

Source: Commerce Department

auditors) of misconceptions, that we needed to make tradeoffs they weren't aware of. But I was very impressed with the people. I don't think it would work with less technically competent people." In the final analysis, Giammo says, "I welcome that kind of input. It's good to have an objective opinion."

DeGeorge sees the information technology unit as providing a level of accountability that agency managers would not otherwise have. "We don't work for you or with you; our job is to review your performance," he says. "No one wants to be second-guessed about what you feel is your management responsibility. But that is after all what the

DeGeorge thinks other IGs who audit major systems could benefit from the front-end approach. "Anyone could do this if they were willing to put up with the pain," he says. "It's not that the agencies are trying to run away from anything—they would have the same problem if OMB or GAO walked in. But we do it much earlier in the game. That's the secret to our success, and that's what makes it most difficult."

More and more often, agencies "come to us both for endorsement and for technical assistance, once they realize we're not trying to clobber them," DeGeorge says. "It's not typical, but it is happening more." □

**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 601**

Docket No. [940259-4059; LD. 100793B]

RIN 0648-AG16

**Regional Fishery Management Councils; Guidelines for Council Operations/Administration**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule.

**SUMMARY:** NMFS issues this interim final rule to revise regulations concerning the practices, procedures, and operations of the Regional Fishery Management Councils (Councils) under the Magnuson Fishery Conservation and Management Act (Magnuson Act). This action would foster fuller disclosure and make information easier to access in required financial disclosures of Councils' nominees, voting members, and Executive Directors. It is intended to disclose possible financial conflicts of interest.

**DATES:** This interim final rule is effective April 11, 1994. Comments must be received on or before May 10, 1994.

**ADDRESSES:** Send comments on this interim final rule and requests for copies of NOAA Form 88-195 to: Richard H. Scheefer, Director, Office of Fisheries Conservation and Management, NOAA, NMFS, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

Send comments on collection-of-information requirements to: The Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attention: Desk Officer for NOAA).

**FOR FURTHER INFORMATION CONTACT:** Richard W. Surdi, Office of Fisheries Conservation and Management, room 14600, telephone (301) 713-2337, Silver Spring Metro Center #3, 1315 East-West Highway, Silver Spring, MD 20910.

**SUPPLEMENTARY INFORMATION:****Background**

NMFS received a petition for rulemaking from Emerald Seafoods, Emerald Resource Management, Seahawk Pacific Seafoods, Seacatcher Fisheries and Swart Fisheries asking the Secretary of Commerce (Secretary) to adopt regulations related to: (1) Financial disclosure requirements of

Council members, (2) emergency rulemakings, (3) requirements to balance the membership of the North Pacific Fishery Management Council between different fishing interests, and (4) general procedures for Secretarial review of fishery management plans (FMPs) and regulatory amendments. NMFS published a notice of receipt of the petition for rulemaking and a request for comments on April 15, 1991 (56 FR 15072).

#### Comments and Responses

Three comments were received on the petition for rulemaking. These were from Williams, Kastner and Gibbs (representing the petitioners), American Factory Trawler Association, and Royal Seafoods, Inc. All three commenters supported the petition and, in some cases, expanded on the rationale for adoption of the proposed provisions.

One commenter had an additional comment concerning unconstrained conflicts of interest among Council members. This commenter indicated that there is a fine line between the need for industry expertise and conflicts of interest. The current system, which allows Council members to vote on issues where they have a direct financial interest, crosses over the line of acceptability. Citing E.O. 12674, commenters suggested that NMFS develop a comprehensive set of rules governing Council member conduct on issues in which they have a direct financial interest.

Because E.O. 12674 is specific in that it can apply only to Federal employees, it cannot be used as a basis for regulations governing Council members, who are not Federal employees. Furthermore, Congress provided for industry members to participate in and vote on issues in which they have a financial interest. Paragraph (A) of section 302(b) of the Magnuson Act (16 U.S.C. 1852(b)(2)) provides for the appointment of members based on their occupational experience, and paragraph (B) requires a fair and balanced apportionment of the active participants in the commercial and recreational fisheries under a Council's jurisdiction when making appointments to that Council. Furthermore, guidance for the conduct of Council members specifically, and members of any deliberative body, in general, already exists.

#### Discussion

NMFS has considered the petition, public comments, and other related issues, and decided to proceed with several of the rulemaking suggestions proposed in the petition. The following

paragraphs list the suggestions contained in the petition for rulemaking, provide an explanation as to why NMFS has decided to accept or reject the suggested rulemaking, and describe the changes to be made.

1. Adopt a regulation that provides for meaningful disclosure of the financial interests of Council members.

The petitioners requested six additional areas of information be added to the financial form for Council members, including fisheries participated in, product types produced, gear type used, revenue generated, identity of primary buyers, and financial interest of stockholders in a privately held corporation in which the Council member is a stockholder. NMFS has determined that NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," should be amended to include information concerning the fisheries participated in, the product type produced, and the gear type utilized. This information will better identify the nature of a Council member's financial interest. Additional revisions not noted in the petition are made to delete Part I of the form, which presently is completed by the Agency but is no longer useful, and to add a statement to the General Provisions section concerning penalties for false or incomplete information.

The petitioners also requested that the form be updated every 8 months, on January 15 and June 15. Section 601.37 of title 50 CFR is amended to require that Council members update the form annually, beginning February 1, 1995, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. NMFS finds that requiring updates only as interests are acquired or substantially changed does not provide for disclosure of modest, but important, changes in financial interests and divestitures of interests. Requiring an annual update will bring into focus a member's need to update the current status of his/her interests, particularly in terms of fishery participation, gear utilized, or product types produced.

NMFS also believes it appropriate to make financial disclosure forms more readily available to the public. Section 601.37 accordingly is amended to require financial disclosure forms be available at all Council meetings, and that their availability be so noted on the agenda for each meeting. This provision is in addition to the requirement of having the forms kept on file and available to the public at the Council offices.

2. Adopt a rule that prohibits biological reasons from being used to support an emergency rule unless a Council's Scientific and Statistical Committee (SSC) concurs that a biological justification exists.

NMFS rejected this provision because the Secretary does not have the authority to condition a recommendation for emergency action by the Council on the approval of an advisory body, such as the SSC. NMFS notes, however, that a Council may establish such a condition as part of an FMP.

3. Adopt a rule that requires the Secretary to balance the governor-nominated voting membership of the North Pacific Fishery Management Council (NPFMC) between the at-sea processing fleet and the onshore processing fleet.

NMFS rejected this provision because its enactment would be redundant to an existing provision of the Magnuson Act. Section 302(b) of the Magnuson Act (see also interpretive policy published May 24, 1991, at 56 FR 23856) provides that the Secretary "shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council." Congress established a limited number of seats on the Regional Fishery Management Councils to which the Secretary appoints voting members. Only seven such seats are established on the NPFMC. Considering the broad range of industry sectors, gear types, and other interests that might wish representation on the NPFMC and other Councils, it would be impossible to have every interest represented. NMFS further finds that there are numerous alternatives for having ideas and concerns considered by the Councils and their panels, including participation in committee and panel meetings, testifying at Council meetings, and providing the Council with written testimony, suggestions, comments, or data.

4. Adopt a rule that sets forth clearly the procedures for Secretarial review of regulations and amendments that have been recommended to the Secretary for implementation by a Council.

The petitioners requested rulemaking that would: (1) set forth the review process followed by the Secretary when reviewing a regulation or amendment, and (2) require all final rules promulgated by the Secretary to set forth the procedure followed in reviewing the regulation or amendment. These proposals are rejected. Detailed

information concerning the schedule and timing of the review process for an FMP or amendment is available in the "Operational Guidelines—Fishery Management Plan Process." In addition, a detailed schedule of events and dates is available for final Secretarial review of a specific plan or amendment. Both documents are available to the public upon request from NMFS (see ADDRESSES). A summary of key target dates relative to the date of receipt from the Council follows. The dates noted are target dates only and are subject to change, except those dates specified in the Magnuson Act (so noted by an asterisk).

#### Date and Event

- Day 0\*—Receipt date of FMP or amendment from Council.  
 Day 1\*—Begin Secretarial review and 60-day public comment on the FMP or amendment.  
 Day 9—Assistant Administrator for Fisheries (AA), NOAA, clears proposed rule for continued review and publication in the Federal Register.  
 Day 15\*—Secretary makes such changes as may be necessary and publishes rule with any changes, together with an explanation of changes which are substantive.  
 Day 60\*—Public comment period ends on FMP or FMP amendment and proposed rule.  
 Day 73—Regional Director transmits final rule package to NMFS headquarters.  
 Day 95\*—FMP or FMP Amendment is formally approved, disapproved, or partially disapproved, and Council is notified of decision.  
 Day 110\*—Final regulations published in the Federal Register.  
 Day 140—End of Administrative Procedure Act 30-day delayed effectiveness period. Final regulations become effective.
- The suggestion that all final rules disclose who reviewed the rule or the identity of the person who determined that the rule complied with the national standards is also rejected. It is impractical and of no benefit to identify all those who reviewed the rule or amendment, and to identify what was reviewed. Except for the actual decisionmakers, all reviews are considered advisory.

#### Classification

The AA has determined that this action is necessary for the efficient administration and responsible operation of Councils and is consistent

with the Magnuson Act and other applicable law.

This interim final rule contains a modification to a collection-of-information requirement previously approved by the Office of Management and Budget (OMB) under OMB No. 0648-0182. Several new requirements are added to NOAA Form 88-195, part II, under the section titled "Financial Interests." Each voting member and Executive Director of a Council and new nominees for Secretarial appointment to a Council are required to provide information concerning: (1) Fisheries participated in under Council jurisdiction, (2) the product types produced, and (3) gear types utilized. Council members are required to update the form by February 1 of each year, in addition to updating the form when a financial interest is acquired or substantially changed, as is now required. Part I, which is routinely completed by NMFS, is removed from the form. A request for clearance of this change has received OMB approval. Public reporting burden for this collection of information is expected to increase by 5 minutes per respondent to an average 35 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Please send comments concerning the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to OMB (see ADDRESSES).

Pursuant to section 553(b)(B) of the Administrative Procedure Act, the AA finds that prior notice and comment is contrary to the public interest, because this rule institutes procedural changes that provide increased information to the public regarding possible financial conflicts of interest of individuals involved in establishing fishery conservation and management measures. In addition, public comment was solicited on the petition for rulemaking, and the additional data requirements contained in the financial disclosure form were sent to the regional fishery management Councils for review. This rule is not subject to review under E.O. 12866.

#### List of Subjects in 50 CFR Part 601

Administrative practice and procedure, Fisheries, Fishing.

Dated: March 6, 1994.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 601 is amended as follows:

#### PART 601—REGIONAL FISHERY MANAGEMENT COUNCILS

1. The authority citation for part 601 continues to read as follows:

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

2. In section 601.37, paragraph (a) is revised to read as follows:

#### § 601.37 Financial disclosure.

(a) The Magnuson Act requires the disclosure by each Council nominee, voting member appointed to the Council by the Secretary, and Executive Director, of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the authority of the individual's Council, and of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees, and Executive Directors of Regional Fishery Management Councils" (Financial Interest Form), or such other form as the Secretary, or designee, may prescribe. The report must be filed by each nominee for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary, and Executive Directors, must file an update of the report with the Executive Director of the appropriate Council, with a copy sent to the NMFS Regional Director for the geographic area concerned, on or before February 1 of each calendar year. Individuals must also update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The Financial Interest Forms will be kept on file, and made available for public inspection at reasonable hours at the Council offices. In addition, the forms will be available for inspection at each Council meeting and their availability will be so noted on the Council meeting agenda.

[FR Doc. 94-5644 Filed 3-10-94; 8:45 am]  
 BILLING CODE 3510-22-P

## § 601.35

applicable law, and shall conduct myself at all times according to the rules of conduct prescribed by the Secretary of Commerce. This oath is freely given and without mental reservation or purpose of evasion.

## § 601.35 Rules of conduct.

(a) Council members, as Federal officeholders, and Council employees are subject to most Federal criminal statutes covering bribery, conflict-of-interest, disclosure of confidential information, and lobbying with appropriated funds. In particular, the following provisions apply:

(1) 18 U.S.C. 201—prohibits offer or acceptance of anything of value to influence any official act;

(2) 18 U.S.C. 203, 205—prohibits officials from representing anyone before a Federal court or agency in a matter involving a specific party in which the United States has a direct and substantial interest and in which the official has worked personally and substantially.

(3) 18 U.S.C. 207—prohibits a former official from representing others before a Federal agency concerning a particular matter involving specific parties in which the official participated personally and substantially as a Federal official or which was under the person's official responsibility.

(4) 18 U.S.C. 208—prohibits official acts in a matter in which the official has a personal financial interest. This prohibition does not apply to a financial interest of a Council voting member or Executive Director if the official obtains a waiver under 18 U.S.C. 208(b), or if the financial interest is in a harvesting, processing, or marketing activity that has been disclosed in a report filed under § 601.37.

(5) 18 U.S.C. 209—prohibits an official from receiving compensation for performing Federal duties from a source other than the United States Government. This restriction does not apply to an official who has served for 130 days or less in a 365-day period.

(6) 18 U.S.C. 210, 211—prohibit offer or acceptance of value to procure appointment to public office.

(7) 18 U.S.C. 1905—prohibits disclosure of trade secrets or confidential commercial information except as provided by law.

(8) 18 U.S.C. 1913—prohibits use of appropriated funds to influence a member of Congress to favor or oppose any legislation or appropriation. However, this prohibition does not apply when responding to a request from a member of Congress or a Congressional Committee. Personal communications of a Council member or employee at his own expense that are identified as such are not prohibited.

(b) The Councils are responsible for maintaining high standards of ethical conduct among themselves, their staffs, and their advisory groups. In addition to abiding by the applicable Federal conflict of interest statutes, both members and employees of the Councils must comply with the following standards of conduct:

(1) No employee of a Council may use his or her official authority or influence derived from his or her position with the Council for the purpose of interfering with or affecting the result of an election to or a nomination for any national, State, county, or municipal elective office.

(2) No employee of a Council may be deprived of employment, position, work, compensation, or benefit provided for or made possible by the Magnuson Act on account of any political activity or lack of such activity in support of or in opposition to any candidate or any political party in any national, State, county, or municipal election, or on account of his or her political affiliation.

(3) No Council member or employee may pay, or offer, or promise, or solicit, or receive from any person, firm, or corporation, a contribution of money or anything of value in consideration of either support or the use of influence or the promise of support, or influence in obtaining for any person, any appointive office, place or employment under the Council.

(4) No employee of a Council may have a direct or indirect financial interest that conflicts with the fair and impartial conduct of his or her Council duties. However, an Executive Director may retain a financial interest in harvesting, processing or marketing activities, and participate in matters of general public concern on the Council

**Fishery Conservation and Management****§ 601.38**

which might affect that interest, if that interest has been disclosed in a report filed under § 601.37.

(5) No Council member, employee of a Council, or member of a Council advisory group may use or allow the use, for other than official purposes, of information obtained through or in connection with his or her Council employment that has not been made available to the general public.

(6) No Council member or employee of the Council may engage in criminal, infamous, dishonest, notoriously immoral or disgraceful conduct.

(7) No Council member or employee of the Council may use Council property on other than official business. Such property must be protected and preserved from improper or deleterious operation or use.

(8) No Council member may participate—

(i) Personally and substantially as a member through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise in a particular matter primarily of individual concern, such as a contract, in which he or she has a financial interest; or

(ii) In any matter of general public concern which is likely to have a direct and predictable effect on a member's financial interest unless that interest is in harvesting, processing, or marketing activities and has been disclosed in a report filed under § 601.37. For purposes of this subsection, the member's financial interest includes that of the member's spouse, minor child, partner, organization in which the member is serving as officer, director, trustee, partner or employee, or any person or organization with whom the member is negotiating or has any arrangement concerning prospective employment.

**§ 601.36 Removal.**

The Secretary may remove for cause any Secretarially-appointed member of a Council in accordance with section 302(b)(5) of the Magnuson Act wherein the Council concerned first recommends removal by not less than two-thirds of the voting members. A removal recommendation of a Council must be in writing and accompanied

by a statement of the reasons upon which the recommendation is based.

**§ 601.37 Financial disclosure.**

(a) The Magnuson Act requires the disclosure by Council nominees, voting members appointed to the Council by the Secretary, and Executive Directors of any financial interest of the reporting individual in any harvesting, processing, or marketing activity that is being, or will be, undertaken within any fishery under the jurisdiction of the individual's Council or of any such financial interest of the reporting individual's spouse, minor child, partner, or any organization (other than the Council) in which that individual is serving as an officer, director, trustee, partner, or employee. The information required to be reported must be disclosed on NOAA Form 88-195, "Statement of Financial Interests for Use by Voting Members, Nominees and Executive Directors of Regional Fishery Management Councils," or such other form as the Secretary, or designee, may prescribe. The report must be filed by nominees for Secretarial appointment before the date of appointment as prescribed by the Secretary. Voting members appointed by the Secretary and Executive Directors must file the report with the Executive Director of the appropriate Council prior to taking office. Individuals must update the form at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed. The information required to be submitted will be kept on file, and made available for public inspection at reasonable hours at the Council offices. A copy of the form may be obtained from the appropriate Regional Office.

(b) The provisions of 18 U.S.C. 208 do not apply to an individual who has filed a financial report under this section regarding an interest that has been reported.

**§ 601.38 Security investigations and clearances.**

(a) Access to security classified material is governed by security regulations and procedures issued pursuant to E.O. 12356, 3 CFR part 186 (1982

## 18 USC § 208. Acts affecting a personal financial interest

(a) Except as permitted by subsection (b) hereof, whoever, being an officer or employee of the executive branch of the United States Government, of any independent agency of the United States, or of the District of Columbia, including a special Government employee, participates personally and substantially as a Government officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation, or otherwise, in a judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter in which, to his knowledge, he, his spouse, minor child, partner, organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest—

Shall be fined not more than \$10,000, or imprisoned not more than two years, or both.

(b) Subsection (a) hereof shall not apply (1) if the officer or employee first advises the Government official responsible for appointment to his position of the nature and circumstances of the judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, or other particular matter and makes full disclosure of the financial interest and receives in advance a written determination made by such official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from such officer or employee, or (2) if, by general rule or regulation published in the Federal Register, the financial interest has been exempted from the requirements of clause (1) hereof as being too remote or too inconsequential to affect the integrity of Government officers' or employees' services.

Added Publ. L. 87-819, § 1(a), Oct. 23, 1962, 76 Stat. 1124.

# Unsoeld questions makeup of fisheries council

By SCOTT SOMMER  
The Associated Press

WASHINGTON — The North Pacific Fishery Management Council is riddled with conflicts of interest and should be overhauled to include more non-industry representatives, perhaps conservationists, Rep. Jolene Unsoeld says.

Unsoeld, D-Wash., attacked the council's makeup during a fishery management hearing last week before the House Merchant Marine and Fisheries subcommittee. She said the 11-member council is dominated by industry lobbyists and vessel owners who are causing long-term damage

to the North Pacific's fishery resources.

"I've seen a management system rooted in conflicts of interest," she said. "I've seen over-exploited and over-capitalized fisheries jeopardized by management plans promoting further exploitation and capitalization."

Commercial fishing in Alaska has a direct tie to Northwest fish runs. Some Washington and Oregon chinook are caught off southeast Alaska. In addition, large catches of Northwest chinook and coho off the west coast of Vancouver Island are Canada's retaliation for large harvests of British Columbia salmon off Alaska.

Clarence Pautzke, the North Pacific

council's executive director, defended the panel under questioning from Unsoeld.

"I don't particularly think you would get any better decisions," he said about the idea of overhauling the council. "I don't think conflict of interest is anything more than a perceived problem."

Unsoeld said after the hearing, "It's more than a perception.

"Somehow, science has to play a bigger role than politics in how we manage this resource," she said. "Because of the internal conflicts, we never get to the point of asking how we manage a sustainable resource."

"It is primarily industry oriented. That

may well not be the best formula. Perhaps the composition should be totally changed," she said.

The council is made up of six voting members from Alaska, three from Washington and one each from Oregon and the National Marine Fisheries Service.

It is the only regional council nationwide with a majority of members selected from a single state, said Doug Levy, an aide to Unsoeld.

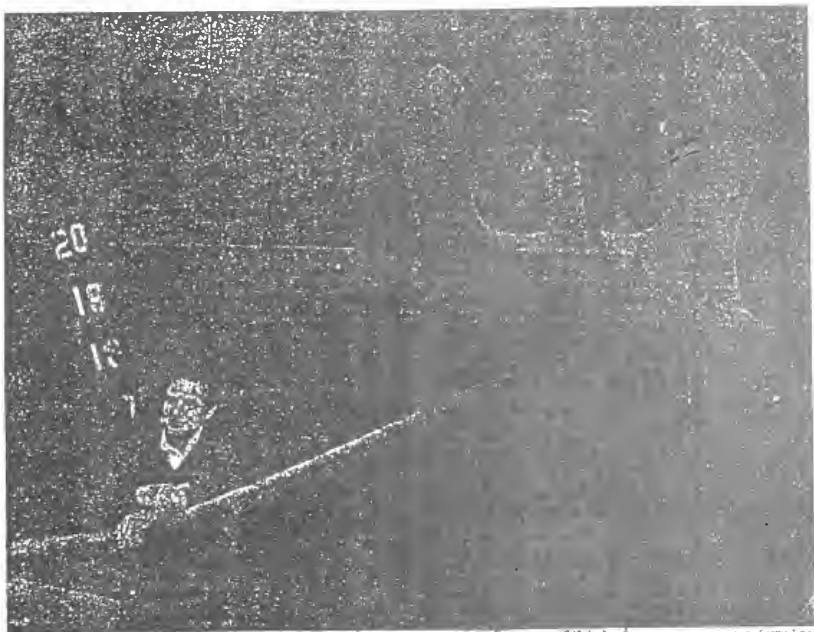
Unsoeld and other Washington lawmakers have been unsuccessful in past attempts to add more Washington members to the panel.



The Seattle Times Sunday, November 10, 1991 — front page story

# A FISHY SITUATION

Critics say members of panel set up to manage rich fisheries zone off Alaska are watching over their own self-interests at the same time



Walter Pereyra, a member of the North Pacific Fishery Management Council, stands next to one of his three factory trawlers, the Valiant, in for minor work at the Lake Union Dry Dock.

by Duff Wilson  
Times staff reporter

**T**he United States' richest fishery is controlled by a federal council so muddled with conflicts of interest that its actions result in millions of dollars in benefits to some council members or their companies.

Critics say self-serving votes by council members are also leading to lost jobs here and artificial higher consumer prices for fish.

The group, called the North Pacific Fishery Management Council, was set up 15 years ago to manage the \$1 billion a year Alaska fishery in the federal zone between three and 200 miles offshore.

But it wasn't until recent years, when American fishermen began fighting American fishermen rather than the Japanese for shares of the resource that the council and its members were viewed as a corrupt

## INSIDE

A case history of one fisherman and how council actions affect him.  
**Business, E 1**

Tammany Hall of the Pacific.

"The politics are so blatant it forces you as a protective measure to become part of the problem," says Walter Pereyra, a Seattle businessman and member of the council. "It's a corrupting process."

Four of the 11 council members own fishing businesses. Two are industry group employees. One is a consultant who makes no secret of the fact he hopes to make money off his inside expertise.

Pereyra, perhaps more candid than most, admitted that he performs government business with an eye on his own trawler company, bottom lines.

"I shouldn't even be on the council making these kinds of decisions that I have a conflict on — absolutely," he said. "I think that's true of every member of the council. It should be in the hands of professional managers."

Pereyra, for instance, loses millions of dollars in potential revenue because of council-imposed limits on fishing for a type of bottom fish called pollock. Pereyra cites scientific studies on optimum yield as trying to get the council to loosen the limits.

Under current practice, most of the council members are appointed precisely because of their industry experience. They are required to file financial disclosure statements and take an oath to vote in the national interest.

But some council members say the national interest is often equivalent to the

Please see **FISHING** on A 1.

A 18 Sunday November 10 1

# Members

## FISHING

continued from Page 1

own business interest  
Consider

■ After he took a \$1,250-a-week job from crab fishermen, council member Larry Cotter changed his vote and tabled a far-reaching rule he'd previously favored and the crabbers opposed.

■ Council member Oscar Dyson voted to allow Japanese fishing companies to take 10 million pounds of cod from the U.S. fishing zone after he struck a private deal for his company to sell them a million pounds of cod fillets.

■ Council member Ron Hegge's three freezer boats kept their current fishing rights while competing trawlers were slashed in a plan approved by Hegge and a council majority in June. Some council observers said Hegge also stands to gain from a fishing-quota plan now under study. Hegge says he could be hurt, not helped, by the plan.

These council members all deny they were considering their private business while they performed their public service. But business people and other observers point to the web of self-interests on the council every time it decides who gets how much of the fish.

"It's a very serious problem, and we're getting situations here that are very, very close to the edge," said Rudy Petersen, a council member from 1982 to 1988 and owner of a Seattle-based factory trawler.

Steve Davis, longtime deputy director of the council staff until he quit in July, said council members take pains to mask their self-interest in scientific rationales.

"When you sit through a council meeting, you'll know there's an underlying motive that's probably the main reason they're doing what they're doing, or a particular council member is pushing a regulation down a particular path," Davis said.

were raised last summer in a plan to shift at least \$250 million of annual fish product from a Seattle-based floating factory fleet to a largely Japanese-owned processing industry on the Alaska shore.

Washington, as a result of the plan, could lose more than 1,000 jobs. Critics say the decision will also mean higher prices for fish by curbing the free market economy.

Seven of the 11 council members live in Alaska, and four of them stood to gain or lose personally from the decision. But they all voted.

The fishery council is exempt from federal conflict-of-interest laws because it is supposed to be an advisory body, with the secretary of commerce making the final decision. The secretary, however, almost never overrules a council decision and is not expected to do so in this case.

That leaves a handful of special interests in charge of a federal resource affecting thousands of jobs and millions of consumers.

The council has no rules on abstaining from votes because of personal interests, no rules against seeking outside work from special interest groups, and no requirements for lobbyists to report their activities or spending.

The council was set up under fishing-industry control because of a distrust of scientists who might set fishing limits too low, according to Bud Walsh, former chief counsel to the Senate Commerce Committee. Walsh worked with Sen. Warren Magnuson of Washington to draft the Fishery Conservation and Management Act in 1976.

Council members are nominated by the governors of Alaska and Washington and appointed to three-year terms by the secretary of commerce. They meet six times a year, usually in Anchorage. Four council members represent government agencies; seven represent fishing interests.

Donald Bevan, former director of the University of Washington School of Fisheries, said the law he helped to draft is not working because of the personal conflicts of fishing-industry members.

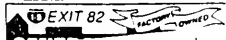
"We might do better with 11 real-estate salesmen who had no conflicts of interest," Bevan said.

"It just isn't good public policy having people with a direct financial interest making decisions on those financial interests. We wouldn't stand still for a minute with a city council run by contractors making decisions on city contracts."

The American Factory Trawler Association recently approached the Department of Justice and the Department of Commerce inspector general to try to have conflict-of-interest charges investigated.

They weren't the first. Lee Alverson, a Seattle consultant and former top federal fishery official, tried without success years ago to interest federal agencies in investigating the council's activities.

Alverson and the trawler association, a Seattle-based group, said in their complaint to the Commerce Department that council



# s of panel set up to manage fisheries zone . . .

members should not "be the recipient of considerable amounts of money from clients who have a great deal at stake in council decisions."

A department attorney responded that the Magnuson Act provided an implied exception to conflict-of-interest laws for council members.

"We're talking about billions of dollars that people can shift around between industry groups," Alverson said, "and they're going to vote for themselves."

Alverson and the Seattle fishing group were especially critical of Corter, a consultant from Juneau.

Corter was appointed to the council in 1986, thanks partly to a last-minute lobbying blitz by the Pacific Seafood Processors Association, a group representing shoreline processing plants. He was upfront about his plans to honor the debt.

"I don't think you will need to spend a lot of time trying to determine how I'm going to vote," Corter wrote the head of the group. President of a longshoreman's

Then one member, representing the Alaska Crab Coalition, had second thoughts.

Corter, the committee chairman, had led the 1988 council discussion on the by-catch plan. But instead of urging a vote to approve, Corter said he, too, had an 11th-hour change-of-mind.

Corter's vote to delay the plan made the difference in the 6-5 vote. It was later killed.

A few months before that meeting, Corter had been paid to take a week-long trip to the Soviet Union to represent the Alaska Crab Coalition in negotiations with Soviet business. Corter said he planned to manage a joint venture for the crab boaters if it succeeded.

**Shortly after the vote**, Corter disclosed he was being paid \$1,250 a week by a group of crab operators for consulting services. Corter said that job about two months later, saying he was nervous about what his employers really expected of him.

"I wasn't, in my opinion, doing

enough work for the amount of money I was receiving," Corter said in a sworn deposition in a recent lawsuit that touched on council conflicts.

In an interview, Corter insisted his private business had nothing to do with his change of vote. He noted that he disclosed the consulting agreement even though he was not required to do so at the time Corter said he voted against the by-catch plan to try to save it, not to kill it, because the National Marine Fisheries Service was going to refuse to enforce the plan.

**The timing of his private deal** indicated he was either negotiating or had already signed on with the crab-boat group at the time of the council meeting.

Corter hears the talk. He grew angry at the allegations his vote was bought.

"If I'm going to be bought off — and I'm sure as hell not — it's not

Continued on next page

**'When you sit through a council meeting, you'll know there's an underlying motive that's probably the main reason they're doing what they're doing, or a particular council member is pushing a regulation down a particular path.'**

Steve Davis

former council staffer

another illustration of how conflicts develop on the council. The committee's job was to decide whether fishermen should be required to toss the fish back or not.

The decision was worth big money to the industry.

After months of work, the committee agreed on a consensus plan.

# ... are charged with watching over their own

Continued from previous page

going to be for a couple thousand bucks," he said. "I mean give me a break."

Cotter said he solicits consulting work from people who attend council meetings and plans to do even more work after he leaves the council next year. Cotter said he turns down some potential work because of council conflicts, adding that he would welcome a federal investigation.

"What I say is, come on and have a major investigation of me. Start with my bank account. Look at my check register."

In Cotter's view, his opponents in the Seattle-based trawler group, the big losers in the vote on fish allocation, are trying to destroy the council process with allegations of conflicts.

"There is smoke, no fire," he said.

Council member Dyson, a career fisherman from Kodiak, has

also found himself accused of putting business interests first.

Shortly after Dyson was appointed to the council in 1986, a company representing 18 Japanese fishing companies signed a contract with Dyson's company to purchase one million pounds of cod products in return for the council and the state of Alaska allowing the Japanese to take about 10 million pounds of cod from the Bering Sea.

It was apparently the first and last such purchase agreement for the Japan Fisheries Association, said the purchase agreement was offered to several other companies in addition to Dyson's. Hastings said U.S. authorities required the Japanese to buy some product if they wanted to fish off Alaska.

"I know the problem at that council now, but at that time I don't think it was even viewed as a problem in conflict of interest," Hastings said.

More recently, Dyson has been

**The stakes have gotten so high that I don't see how any process here can continue to work. There's never been a situation where you put billions of dollars in front of the industry and ask them to police themselves.'**

Gary Brown, economist

a solid vote in favor of giving onshore processing plants a guaranteed amount of fish to buy and sell. And he is one of nine stockholders in a big Kodiak processing plant.

In essence, Dyson is allocating large amounts of money to himself, says Gary Brown, an economist who worked on the onshore trawler group. The decision could be worth millions of dollars to Dyson's company, Brown said.

England, have allowed overfishing to the point of depletion.

Yet council members who are proud of their conservation work, when it comes time to divide up the available fish, are being accused of at least the appearance of voting their financial self-interest.

Hegge, a council member from Anchorage, owns three freezer boats that fish with lines and hooks. Those boats might have lost income if their fishing rights had been cut back as the council is proposing to do with similar onshore freezer boats that fish with nets.

Hegge's boats were exempted from hook-and-line freezer vessels of less than 125 feet in length, were classified as part of the in-shore fleet, which suffered no cutbacks. Hegge and his family own a 78-footer, a 56-footer and half of another 78-footer.

Economist Brown said Hegge did not take a final position on onshore preference issue until after the amendment passed. In fact, that definition was tailored

July, November 10, 1991 A 19

# interests

for Hegge," Brown said.

Hegge denied that, saying he did not benefit from the amendment and would not have been hurt by being classified with the offshore fleet. He said he was voting to prevent the huge and mobile offshore trawl fleet from scooping up too many fish at the expense of the shore-based industry.

Some council insiders also said Hegge stands to gain from a plan for fishing quotas that the council is crafting. The quotas on black cod would replace a limited season on the cod, and they would give some fishermen a guaranteed future harvest right, a right that could be sold to other operators.

"Someone like Ron Hegge stands to do real well," said former council deputy director Davis.

But Hegge said this, too, is an incorrect assumption. He said he has cut back his black-cod fishing in recent years so he would receive a smaller quota than most other black cod fishermen.

"I would be better off personally if we never went to it," Hegge said.

Hegge said he makes his council decisions based on testimony and the national-interest standards of federal law.

"I'm going to vote for the best interests of the resource, not the best interests of Ron Hegge," he said. "I think of my own situation in this sense. I think if it is good for me as a fisherman, I guess, it would be good for the fishermen."

**Three other council members** are accused of conflicts of interest because they are paid to represent a certain viewpoint.

Richard Lauber, council chairman, is a full-time lobbyist for the Pacific Seafood Processors Association, which represents shore plants, the big winners in the billion-dollar onshore-offshore battle.

Henry Mitchell works for western Alaska interests as director of the Bering Sea Fisherman's Association. Bob Alverson manages the Fishing Vessel Owners' Association in Seattle.

They say they vote independently of their associations.

"As soon as council week comes along, I don't feel that I represent anybody but the resource," Alverson said.

Some former council staff members are also being accused of conflicts.

Richard Tremaine, an economist, and Davis, a biologist, were hired this year by LGL Associates, a consulting firm. LGL was paid

## 'I'm going to vote for the best interests of the resource, not the best interests of Ron Hegge.'

Ron Hegge  
council member

about \$15,000 by the shore processors' group to analyze the council proposals on onshore processing preference.

Tremaine worked on the analysis but said he did not use any inside information. Tremaine denied a charge by Brown that he was asked by council staff members to comment on council submissions before they were made public.

Davis, who was in charge of council staff on the onshore preference issue, said he had no conflict because he did not join LGL until after the council made its decision. Davis did not work on the LGL report financed by the shore processors.

Davis accepted the LGL job in April but stayed at the council three more months to finish work on the onshore preference plan. Davis passed out his new business cards at the June council meeting where the onshore decision was being made. He left federal employment July 10 and has recently been seeking industry clients.

Davis has now started speaking out about how the council decision on onshore preference was made by politics, not merit. He had to junk a \$25,000 computer model because of lack of time to do a proper analysis. Davis said that is one big reason why, after 11 years, he quit.

"As analysts, we were kind of being squeezed down a certain path," Davis said. "We felt if we had more time we would have come out stronger against" the onshore preference plan.

**Economist Brown** said he has worked with some of the seven similar councils in other parts of the country but nowhere are the dollars so big or the conflicts so blatant.

More than half of all edible fish in the U.S. is caught off Alaska. The annual value to fishermen is nearly \$1 billion per year, but because the council is allocating the fish in future years, too, the amount that is really at stake is \$5 billion to \$10 billion, Brown said.

"The stakes have gotten so high that I don't see how any process here can continue to work," Brown said. "There's never been a situation where you put billions of dollars in front of the industry and ask them to police themselves."

*Times staff reporter Ross Anderson contributed to this report.*

## EDITORIALS

# The Seattle Times

AN INDEPENDENT NEWSPAPER

Founded August 10, 1896

Alden J. Blethen, 1896-1915

C. B. Blethen, 1915-1941

Elmer E. Todd, 1942-1949

W.K. Blethen, 1949-1967

W. J. Pennington, 1982-1985

John A. Blethen, Chairman Emeritus

Frank A. Blethen, Publisher and Chief Executive Officer

H. Mason Sizemore, President and Chief Operating Officer

Michael R. Fancher,

Mindy Cameron,

Executive Editor and Vice President

Editorial Page Editor

Alex MacLeod,  
Managing EditorCynthia N. Meagher,  
Associate Managing Editor

## THE MAGNUSON ACT

### Aging Fisheries Act overdue for an overhaul

**A**MERICANS tend to ignore our oceans. We worry about toxic dumps while blithely pumping sewage into bays and estuaries. We carefully inspect red meat, but not seafood. We are a society of beef-eating landlubbers oblivious to much of what goes on beyond the high-tide line.

One exception was the 1976 Magnuson Fishery Conservation and Management Act, which "Americanized" the rich fishing grounds in the North Pacific and other U.S. waters, and attempted to kick an old habit of over-harvesting fisheries. Sixteen years later, that act is a success story, a federal law that led to creation of a \$1 billion industry, based in Seattle.

Now that act is seriously overdue for a new look. The regional councils that manage the fisheries are monopolized by fishermen, riddled with multi-million-dollar conflicts of interest that would not be tolerated in the landward oil or timber industries.

As a result, the New England council has "managed" its fishing grounds to the brink of an ecological disaster. In the Pacific, high-tech trawlers targeting cod and pollock inadvertently scoop up and waste untold thousands of crab, halibut and salmon. The federal government spends millions of dollars on research, management and enforcement, then doles out free fishing rights with little regard for the interests of taxpayers or consumers.

For all its successes, the Magnuson Act also perpetuates obsolete management policies that force taxpayers to subsidize the fishing industry to the tune of tens of millions of dollars.

Last December, U.S. Sen. Slade Gorton requested Senate hearings to begin reviewing these and other problems in the Magnuson Act, which is due for renewal next year. In particular, Gorton asked the Commerce Committee to look at the make-up of the Alaska-dominated North Pacific council, which has been under increasing criticism in recent years.

So far, there is no sign that anybody's listening. The committee has scheduled no hearings. Alaskans like the process the way it is.

It's time for Congress to take a serious look at the Magnuson Act, at what does and does not work. First, revamp the regional councils by giving consumers and taxpayers a voice at least equal to that of the fishing groups. Eliminate the council's built-in tilt toward Alaska. Explore ways to reduce or eliminate the waste of valuable protein.

Most important, Congress should reexamine the basic assumptions of the industry by introducing market efficiencies into the byzantine world of fisheries management. Only a serious overhaul of the Magnuson Act will do justice to the owners of the resource - American citizens - and to the memory of the late senator who shepherded the act through Congress and lent it his name.

## EDITORIALS

## The Seattle Times

AN INDEPENDENT NEWSPAPER

Founded August 10, 1896

Alden J. Blathen, 1896-1915

C. B. Blethen, 1915-1941

Elmer E. Todd, 1942-1949

W. K. Blethen, 1949-1967

W. J. Pennington, 1982-1985

John A. Blethen, Chairman Emeritus

Frank A. Blethen, Publisher and Chief Executive Officer

H. Mason Sizemore, President and Chief Operating Officer

Michael R. Fancher,

Executive Editor and Vice President

Mindy Cameron,

Editorial Page Editor

Alex MacLeod,

Managing Editor

Cynthia N. Meagher,

Associate Managing Editor

## THE POLLOCK WARS

Congress, not courts,  
must fix ocean fisheries

**F**EDERAL FISH allocators meet again next week in Alaska to take up the volatile issue of how to divvy up \$1 billion or so worth of Pacific pollock and other groundfish.

But don't expect changes — despite howls of protest from Seattle fishermen and a variety of federal reports challenging their recent management strategy.

The federal Commerce Department has rubber-stamped the plan to bypass the free market and award 35 percent of the lucrative fishery to Alaska shore plants, a decision by a North Pacific Fisheries Council dominated by Alaskans and laced with extraordinary conflicts of interest.

Factory-trawler owners have gone to court, warning the plan will cost Seattle jobs and millions of dollars. A recent cost-benefit study by the National Marine Fisheries Service estimates it will cost that fleet \$619 million over three years.

But instead of backing off, the federal council piles on, awarding the Alaska plants a larger share in 1993 and 1994.

While fishermen and their lawyers squabble over who gets how much of the pollock pie, the pie itself may be shrinking. Chinese, Polish and other foreign fleets fish indiscriminately in adjacent international waters, scooping up untold millions of fish native to U.S. waters.

The scenario rings tragically familiar. Over the past decade, federal fish managers in New England played political games while fishermen ravaged the North Atlantic, eventually turning those rich fishing grounds into a wasteland.

It's the same old problem. In most of the world, fish are managed as a "common resource," available to anybody with a boat. Inevitably, there are too many fishermen and not enough fish, and the fishermen deplete their own livelihood.

Whoever wins in Alaska next week, there is little question that the North Pacific is dangerously close to going the way of the North Atlantic. Allowing fishermen to manage their own fisheries, with virtually no voice for taxpayers, is a blueprint for disaster.

It's time for Congress to face up to the nagging questions of allocation, efficiency and conservation. Fisheries management, in the absence of sound economics, amounts to a clash between 19th century thinking and 20th century technology.

Congress needs to reexamine the North Pacific council and its counterparts around the country, rid them of their absurd conflicts of interest; provide a real voice for taxpayers and consumers, and take a serious look at a rational, market-driven approach to management.

# Pollock politics: a billion-dollar tragedy

The Seattle Times Friday, August 14, 1992

**Ross Anderson**  
Times editorial columnist

**A**LL SCALES and fins and oversized eyes, the Pacific pollock is hardly the stuff of 30-second sound bites and modern congressional campaigns.

Too bad. It seems there are billions upon billions of them swimming around the North Pacific, which is why they have become the focus of a \$1 billion industry, the world's richest fishery, all based in Seattle.

Now something appears to be going terribly wrong on those fishing grounds. The industry is careening toward collapse. We are about to get another harsh lesson in the politics of natural resources. And there's no guarantee we'll even learn from a billion-dollar mistake.

**This week**, three congressional candidates stopped by The Times, and we asked what they would do about the pollock fishery. This is something they should be interested in, since they are campaigning for the 1st Congressional district, which may be the most fisheries-dependent in the state. Here's what they had to say.

Mark Gardner, a TV guy making his first political run, said the problem is over-fishing by foreign fleets.

Sorry. Foreign fishing boats were booted out of the U.S. fishing grounds years ago. This is an American problem.

State Sen. Gary Nelson, says we just have to "enhance" the fishery — more hatcheries and more fish farms.

Wrong fish. Hatcheries and fish farms breed salmon, not pollock. That's like asking a question about cows, and getting an answer about goats.

John Dahl, who comes from a Ballard fishing family, came closer. He wants to change the make-up of the federal council charged with managing that \$1 billion industry.

Maybe. But that won't do it either.

## Here's the problem:

Barely 10 years ago, most of the U.S. fishing industry was too busy fishing for high-value salmon and crab to pay attention to all those pollock and other groundfish. But with lots of help and money from the federal government, enterprising fishermen built the big boats and floating factories they needed to exploit the lucrative pollock.

Asias they built too many boats and fac-



ories. This was inevitable. For more than a century, U.S. fishermen have over-built and over-fished every species they could find — from Alaska halibut to Atlantic haddock to California sardines.

They do this because fisheries are managed as a "common resource," free for the taking — first come, first served. Success is contagious. One fisherman does well, and attracts another. Eventually, there are too many fishermen and not enough fish.

**Meanwhile**, government spends hundreds of millions of dollars to research, manage and allocate the resource, subsidizing the fishermen even as they deplete the resource.

Economists and other scientists who understand the fishing business generally agree on what should be done about this. The main problem, they say, is allocation — deciding which fishermen are entitled to catch the fish and which ones are not.

The solution is to do it the old-fashioned way. Sell it. We should allocate fish the way we allocate trees or oil — auction it off to the highest bidder. The marketplace makes all the tough decisions, and forces the winning bidder to find the most efficient way to harvest the resource without over-fishing it.

There is a bonus. Proceeds from the sale of fishing rights could be used to offset the costs of management.

Sure, fish present some peculiar difficulties — moving around the ocean, for instance. But there are ways to get around that problem.

It's probably too late to try this with established fisheries like salmon. But pollock is a new fishery, offering opportunities to learn from past mistakes.

So why don't we try it? Because the subject never comes up. Ask a congressman about auctioning off fishing rights, and he'll start looking at his watch. Suggest it to most fishermen, and they're likely to toss you overboard.

**For 200 years**, Americans have largely ignored their oceans. We are a landward-oriented, beef-eating society that believes that seafood comes in six-ounce cans or frozen bars coated in batter. Nobody pays attention to fisheries management.

If interest groups are disinterested, then you can count on politicians to follow suit. Legislators, good or bad, respond to squeaky wheels, to some mysterious mix of letters, phone calls, lobbyists and campaign contributions.

If consumers were paying attention, they might register some complaint about a backward management system that seeks to accommodate fishermen — never mind how it affects consumers. But consumers are not paying attention.

**If environmentalists** were paying attention, they might point out that an irrational industry already has depleted the once-rich fishing grounds of the North Atlantic, and is threatening to do the same in the Pacific.

But environmentalists have other things to worry about.

If taxpayers were paying attention, they might grumble about spending hundreds of millions on fisheries management, while giving away the resource to fishermen. But taxpayers aren't paying attention either.

The only voices left are those of the fishermen. They write the letters and make the phone calls. They hire

lawyers to lobby the key congressmen. They organize the cocktail parties in Seattle or Washington, D.C., pumping dollars into the campaign funds of the decision-makers.

Congress, in turn, defers most of the decisions to a narrow-minded, politically loaded federal council, made up mostly of people who work for fishing companies that stand to make millions from those decisions.

They're all busy clawing for a larger piece of the pie. Collectively, all this back-room politics can only lead to the demise of the pollock fishery.

**Chances are**, nobody will notice except the fishermen. By then, it will be too late. Politicians will issue statements regretting the loss of another resource, while fishermen move on in search of new fishing grounds. And the cycle will begin again.

■ Ross Anderson's column appears Friday on editorial pages of The Times

For more than a century,  
U.S. fishermen  
have over-built  
and over-fished  
every species they could find  
— from Alaska halibut  
to Atlantic haddock  
to California sardines.



---

**THE \$1 BILLION FISH FEED**


---

## Time for Congress to fix an irrational fisheries act

**F**EDERAL Judge Barbara Rothstein followed the law last week when she declined to overturn a decision that threatens to torpedo Seattle's factory-trawler fleet.

Obviously, the law itself is the problem. The 15-year-old Magnuson Act helped create a \$1 billion dollar fishing fleet, then allowed the rug to be yanked out from under it. The Seattle-based trawler fleet expects its losses to be measured in millions of dollars and hundreds of jobs.

Here's what happened: For decades, Japanese and other foreign fleets fished freely in the lucrative North Pacific fishing grounds, scooping up pollock and codfish of little interest to U.S. fishermen. In the mid-1970s, Congress passed the Magnuson Act, which extended U.S. jurisdiction out to 200 miles, asserting control over those fisheries.

At the same time, the government offered loans and other incentives to fishermen willing to build the huge, floating factories necessary to exploit that resource. The act was a huge success; by the mid-1980s, fishermen had invested hundreds of millions in factory ships, which were quickly displacing the foreign fleets.

Rising fish prices attracted competing companies, also based in Seattle, which used Japanese capital and political clout to build shore-based plants in Dutch Harbor, Kodiak and other Alaska towns. Still, the offshore fleet had greater mobility and efficiency, so they caught most of the fish.

The shore-based processors turned to politics, using the Alaska majority on the key North Pacific Fisheries Management Council to acquire a guaranteed 35 to 45 percent cut of the fishery — all in the name of keeping jobs in Alaska.

The factory trawlers sued, arguing that they had pioneered the fishery, only to have the rules changed in midstream.

Last Friday, Rothstein rejected their appeal. She had little choice. The Magnuson Act, so successful in creating a high-tech U.S. fleet, failed to anticipate that the fleet would inevitably outgrow the resource. The act provides no rational means of deciding how profits from the resource should be divided. Instead, it created a system of management councils laced with conflicts of interest. The result is economic chaos and ever-increasing pressure to raise fishing quotas, all at huge expense to the taxpayers.

Now the issue moves back to Congress. At first glance, it looks like a political nightmare. Both sides are guilty of waste and greed, and both employ armies of lawyers and lobbyists seeking control of a resource that doesn't belong to either.

Congress does not need to take sides. Instead, it must amend the Magnuson Act so that the fish are allocated on the basis of rational economics and fisheries management rather than raw politics.

Nobody is better prepared to lead that effort than Sen. Slade Gorton, a member of the key Commerce Committee and a staunch advocate of free-market economics.

If he stays above the fray, he betrays the owners of the resource — the American taxpayers. If he dives in, he could help fix an obsolete and wasteful management regime that threatens to destroy one of America's last, great natural resources.

---

**Nobody is better prepared to lead the effort than Sen. Slade Gorton, a member of the key Commerce Committee.**

---

# Trawlers ask fisheries service for pollock season delay

By Tom Brown  
Times Pacific film reporter

The Bering Sea pollock fishery, already torn by conflicts between factory trawlers and inshore processing plants, now has a new problem.

The Seattle-based factory trawler fleet has called on the National Marine Fisheries Service to enter an emergency order temporarily halting the season for a few weeks — a rival group of fishermen —

many of them also based in Seattle — who supply inshore processing plants has voted to voluntarily stop fishing until July 15.

Both groups had previously urged the North Pacific Fishery Management Council to halt the summer pollock season at least a month later than its June 1 opening. The fishermen, they say, June 1 comes too soon after the end of the

pollock spawning season, when adults are in poor shape from the stress of spawning and large numbers of younger fish are often found in prime fishing areas.

"Virtually the entire industry is saying to government, 'Close us down' because this is not a wise use of this public resource," said Ben Larkins, executive director of the American Factory Trawler Association.

He said the group's Washington, D.C., lobbyist had discussed the problem with administration officials and had received encouraging responses. He stressed that action is expected to be taken within the next few days to be effective.

Larkins said that unlike the inshore fishermen, the factory trawlers could not agree among themselves to stop fishing because of possible violations of antitrust law that may not apply to individ-

ual fishermen.

Even with the best will, Larkins said, individual trawler owners could not afford to stop fishing if their competitors continue. Because of the speed with which factory trawlers can catch and process fish, their quota of the pollock catch would be used up quickly and any boats that stop fishing would be left with government action against them, Larkins said.

This summer, for the first time, the North Pacific Fishery Management Council divided the allowable pollock catch, with 65 percent going to the factory trawlers and 35 percent to the inshore fleet. The trawler association has sued, contending the action was illegal.

The inshore fishermen say their decision to halt fishing in their zone could not have been made without the allocation decision.

"The fishermen chose to pro-

tect the resource and ... give the fish more time to recuperate," said Jim McManus, fleet manager for Trident Seafoods. "With a shore-to-shore allocation, it allows everybody to be killing bass."

the factory trawlers were allowed to fish in that zone, we would have to fish in there, too, because they'd be eating part of the quota. Then everybody would be killing bass."

Since the allocation guarantees the inshore fleet 35 percent of the allowable catch, those fishermen can wait a few weeks until the fast-growing pollock have achieved better size.

# Pollock allocation plan extended

by Tom Brown  
Times Pacific Rim reporter

The North Pacific Fishery Management Council has divided up the Bering Sea pollock catch for the next three years — and displeased both factory-trawler operators and onshore fish processors.

At the close of a two-day meeting in Juneau last night, the panel voted 10-1 to continue this summer's allocation of 35 percent to vessels that serve onshore processors and 65 percent to factory trawlers in 1993, then to increase the onshore allocation to 37.5 percent for the 1994 and 1995 seasons.

Before this year, the fishery had been regulated only by total allowable catch, and Seattle's big factory-trawler

fleet took about three-quarters of it.

Joe Blum, executive director of the American Factory Trawlers Association, said the decision would cost the Seattle area many jobs and his members "tens of millions of dollars."

Blum said the trawler group would attempt to convince Commerce Secretary Barbara Franklin to overrule the fishery management council and would seek help from the state congressional delegation.

But the council's action fell considerably short of what the onshore processing plants wanted.

"Obviously, we're not pleased," said John Iani, president of the Pacific Seafood Processors Association, which represents the shoreside plants.

He said his group thought it had

done a good job of justifying an allocation of 35 percent for 1993, 40 percent for 1994 and 45 percent for 1995.

Iani said, however, that the council allocation "provides at least a stable enough supply for our members to continue operating. Without the allocation, they would have been pretty much eaten up" by the factory trawlers.

As the Bering Sea pollock fishery has grown, so have processing capacity ashore and afloat and the conflict between the two sectors. The fishery was worth about \$1 billion last year.

Most pollock, small cod-like fish that thrive in cold northern waters, is turned into surimi, the fish paste used to make artificial crab and other food products. Japan is by far the largest

market.

The Dutch Harbor, Alaska, area now has five big surimi plants, four of which are owned by Japanese companies through subsidiaries based in Washington state.

The factory-trawler fleet, most of which is based in Seattle, numbers about 65 vessels, almost all of which are capable of producing surimi at sea in competition with the onshore plants.

Franklin has 60 days to consider the council's action.

Blum said the trawler association also would continue to pursue a federal court challenge to the procedures that the council followed in allocating the catch. U.S. District Judge Barbara Rothstein last month refused to overturn the allocation system.

# Keeping our fisheries free for competition

**Robert F. Morgan**  
Special to The Times

**D**ESPITE making some positive inroads — at least symbolically — into the balance of trade deficit during his just-completed trade mission to Asia, the real work now begins for President Bush. America's economic ship continues to list. Badly. And, evidence is clear, the country's economic recovery is high. And, reasons clear, without adequate attention to the question remains: What can be done to improve the lopsided business relationship this country has developed with Japan?

Here's a suggestion: Let's start by lending off Japanese attempt to control one of the most promising American industries to have emerged in the last decade — catching and processing groundfish in the U.S. fisheries zones of the North Pacific Ocean.

As recently reported in the Washington Post, the U.S. Department of Commerce is now considering adoption of regulations that would ultimately guarantee nearly one-half of the North Pacific bottomfish resource to the Japanese-controlled shoreside processing plants.

The regulation, as proposed, is analogous to the Japanese regulation that requires Japanese assembly plants in Tennessee — on the condition that GM, Motors, Ford and Chrysler would not sell cars within a three-state radius of the plant, and that they be guaranteed a certain percentage of the American automobile market.

Couldn't happen in America, right? Not in the land

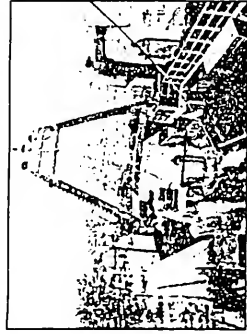
of free enterprise. Yet, the parallels between the fictional automobile scenario and the very real U.S. groundfish scenario are striking, if not downright scary.

In America's Aleutian Islands, the world's two largest seafood companies, both Japanese, have built shoreside processing plants representing a staggering 80 percent of the total onshore processing capacity. To reach that output — and satisfy the huge Japanese appetite for fish and fish products made from pollock-based surimi — these companies are angling for a significant percentage of the catch in the Bering Sea and the Gulf of Alaska. A guaranteed percentage of the catch is being sold to the Japanese. Neither American factors, who own the majority of the segment of the U.S. seafood industry, has asked for such protection.

The inshore/offshore debate, however, is not whether foreign investment — specifically Japanese — should be allowed in America's fishery. Let's be honest: The fishing industry has been operating as a global economy long before a speechwriter made the term part of the American business vernacular. Foreign capital helped make fishing work in America. It still does.

This debate is about the right to compete. That's how we do business in America. And, with swift and effective action by the president and his administration, we can uphold that fundamental right, at least in part.

When you recall how eloquently former Secretary of Commerce Robert Bligh argued on behalf of free enterprise when traveling abroad with President Bush, it is indeed ironic that his department would be considering regulations that would substantially harm



Seafarers / In photo, 1987. Fishermen work to bring up a load of bottomfish in the Bering Sea.

America's ability to compete in overseas fish markets. It is even more ironic when you consider that the regulations, if adopted, would greatly benefit Japanese interests. That's why between now and Feb. 4, we are urging everyone concerned to write the Department of Commerce and urge it to reject this ill-conceived fisheries-management plan.

The Bush administration commitment to free enterprise is a high priority. Our members of the American fishing fleet, our processors, our fishermen, our harvest and processors, pollock and other groundfish species for sale largely to Asian markets — have a direct stake in how America deals with the

new competitive marketplace. Though our industry is only in its infancy, it is one of the few in the U.S. that has a decidedly positive balance of trade with Japan — only within the past decade have U.S. sales

processors begun developing the groundfish resource in the North Pacific. In that relatively short span, the industry has created jobs for approximately 10,000 Americans, and produced in excess of \$800 million of fish products, of which 80 to 90 percent is exported to international markets. All of this has been accomplished through hard work and innovation, as America successfully replaced the Japanese fishing fleets that until the 1980s plied the waters of the North Pacific, often within sight of American shores.

But our satisfaction does not stem wholly from a some sense of accomplishment for having made a positive impact on the balance of trade with Japan.

The American factory trawler fleet learned how to catch and process fish in an efficient and competitive way. We learned to deal with trade barriers, import quotas, tariffs and cultural, social and legal obstacles before we broke into the market. We are succeeding by out-competing foreign fleets on the high seas.

We know the challenges of battling in the global market. The thousands of American men and women across the country who work in the U.S. factory trawler fleet know what it takes to be competitive there. We also know that, in business, as in life, there are no guarantees. We wouldn't have it any other way. Neither should the Japanese.

Robert F. Morgan is president of the American Factory Trawler Association, based in Seattle.

## HARVESTING RIGHTS

### Fishery needs good management or national resource will be gone

The public has been subjected to a barrage of rhetoric by opposing sides in a high-stakes battle over harvesting rights to the billion-dollar North Pacific groundfish resource.

The Pacific Seafood Processors Association (PSPA), largely financed by Japanese conglomerates and abetted by Alaska's not-so-subtle Sen. Ted Stevens, are claiming a pre-emptive right to the groundfish. Their justification, in my opinion, is founded in arrogance and greed.

In a recent column, John Iani, a representative of PSPA, commented presumably to rebut the facts reported by The Times regarding conflicts of interest and self-serving decisions by the North Pacific Fisheries Management Council. Iani would have you believe that this paper and its highly respected reporter compromised their ethics by omitting so-called "facts" to support the position of the American Factory Trawler Association.

The facts are clear, the fisheries council is captured and totally incapable of managing the resource to the net national benefit of the nation as a whole.

Iani is the one gully of omitting facts:

- 1). He knows that AFTA had no influence over The Times or its reporter.
- 2). He knows that The Times thoroughly investigated the facts, having spent significant effort listening to arguments on both sides, including his.
- 3). He did not mention that he and his organization employ as a paid lobbyist the chairman of the council and are in a position to control the council's agenda, debate and priorities of staff members as well as to exercise editorial license over

the staff's work product.

4). He did not mention the unpardonable damage that he and his selfish organization are doing to the public's resource by tying up the limited resources available for conservation and scientific purposes and utilizing it for PSPA's self-serving agendas.

5). He did not mention that editorial boards including the Anchorage Daily News have all referred to the North Pacific Fisheries Council as riddled with conflict and bankrupt as to process. Each of these boards has called for immediate reform.

The Anchorage paper made the analogy of having Exxon, ARCO and BP running the Department of Ecology.

6). He did not mention that collectively his members virtually control the Alaskan fisheries for crab, salmon, halibut and herring. The only resources they do not have in a strangle hold are the groundfish.

The shoreside special-allocation plan now sits with the U.S. secretary of commerce for approval. Rep. John Dingell, chairman of the subcommittee on oversight and investigations of the Committee on Energy and Commerce, has written the secretary demanding what constitutes a full and complete response to the actions advocated by PSPA and responses to the accusations of misconduct by the council.

Unless this system of management of a valuable public resource is changed to take away the opportunity for misconduct and misbehavior, we will continue to be burdened with similar corrupt decisions by the North Pacific Fishery Management Council and other councils across the country. It's easy to predict that without responsible management of America's fishery, we will soon come to a point where we will have nothing to fight over.

— Stuart W. Looney, President,  
Royal Seafoods, Inc., Seattle

# The Seattle Times

WASINGTON'S LARGEST NEWSPAPER • COPYRIGHT © 1991 SEATTLE TIMES COMPANY

## EDITORIALS

A 22 Sunday, November 17, 1991

### CONFLICT OF INTEREST

## North Pacific fishery council needs makeover

**T**HE makeup of the federal council managing the United States' richest fishery does not serve the public interest. Congress should change it.

Consumers, taxpayers, and the resource deserve better than the conflict of interest built into the North Pacific Fishery Management Council by its statutory composition.

The Fishery Conservation and Management Act of 1976 created an 11-member council to manage the Alaska fishery in the federal zone between 3 and 200 miles offshore. It has become a \$1-billion-a-year fishery.

Under the act pushed by the late Sen. Warren G. Magnuson, 7 of the 11 members must be from the fishing industry. There were fears that scientists might set fishing limits too low.

The council's actions have resulted in millions of dollars in benefits to some council members or their companies. A detailed investigation by Duff Wilson in *The Times* last Sunday showed the depth of that self-interest.

The conflict of interest emerged as American fishermen began battling American fishermen, rather than the Japanese, for shares of the resource, which is rich with groundfish.

Conflict charges were raised when the council approved a plan to shift at least \$250 million of annual fish product from a Seattle-based floating factory fleet to a largely Japanese-owned processing industry on the Alaska shore.

Washington could lose more than 1,000 jobs if the advisory council's proposal is accepted by Secretary of Commerce Robert Mosbacher. It could mean higher prices for consumers. This was more than an Alaska vs. Washington fight. At least four of those who voted stood to gain or lose money personally.

The requirement that a majority of the council represent the fishing industry is out of the hands of the governors of Washington and Alaska, who nominate, or the secretary of commerce, who appoints members.

Washington's delegation should begin pushing to change the council makeup. Decision-making belongs with those who are knowledgeable in fisheries but don't stand to gain financially. If Magnuson were alive, he'd undoubtedly agree with that.

*(Seattle Times editorial-staff writers are Mindy Cameron, Luncie Dickie, Don Hannula, Richard Larsen, Terry Tang, James Visek, and Don Williamson.)*

THE SEATTLE TIMES SATURDAY, FEBRUARY 22, 1992

# U.S. urged to reject proposal to split Alaska pollock catch

by David Schaefer  
Times Washington bureau

WASHINGTON — The top investigator at the U.S. Commerce Department is recommending that the department reject a proposed division of the lucrative Alaska pollock industry that would give Alaska canneries the rights to fish previously processed by Seattle-based factory ships.

Inspector General Frank DeGeorge yesterday recommended rejecting the plan approved last summer by the North Pacific Fishery Management Council, which said that 45 percent of the bottom fish caught off Alaska's coast should be reserved for land-based fish processors in Alaska.

DeGeorge briefed some House and Senate members yesterday on his report.

Last year, factory trawlers based in Washington state caught and processed about 70 percent of Alaska pollock and cod, a \$1 billion-a-year industry.

The local companies said as many as 1,000 jobs for Washington state residents could be at stake.

The General Accounting Office found that ownership of the Washington factory trawlers is about 70 percent American, while four of the five Alaska plants are owned by Japanese interests.

The dispute involves the richest fishery in U.S. waters and how the resource is managed under the 1976 Magnuson Act.

Until then, mostly foreign boats fished off Alaska. Former Sen. Warren Magnuson sought to cre-

ate an American industry, and the act named for him established 200-mile fishing limits and set up councils to manage the resource.

As a result, a valuable fish harvest, dominated by factory trawlers from Seattle, developed. In the past five years, however, land-based fish processors have sprung up to compete for the fish.

Finally, the inspector general found that the council did not do an adequate economic analysis of its allocation proposal and, according to a Senate staff member who heard the briefing, said "the process was so flawed that doing an economic analysis now would not solve the problem."

DeGeorge also reportedly said a criminal probe is taking place.

A decision by the Commerce Department on the Alaska plan is due March 5.

Reed Boatwright, a Commerce Department spokesman, had no comment on the draft report or on a Justice Department recommendation that the fish-council decision be rejected.

Jim Gilmore, lobbyist for the American Factory Trawlers Association, said he hadn't seen the report. "But," said Gilmore, "based on what we've seen ... we'd be surprised if the inspector general didn't see the same flaws."

Stuart Looney, president of Royal Seafoods, a Seattle company that operates factory trawlers, has criticized the plan, saying it does nothing to stop the burgeoning number of boats and processors vying for a finite supply of fish.

# Federal conflict-of-interest probe clears fishery-council members

## Report cites abuses, but not illegal acts

by Donn Wilson  
*Seattle Times staff reporter*

Industry members of the group that controls the \$1 billion Alaska fishery did not violate federal conflict-of-interest laws two years ago, according to results of a federal investigation released yesterday.

Two members of the North Pacific Fishery Management Council voted for measures that helped their own companies, the Department of Commerce inspector general found.

But the report said they had disclosed their ownership, so their votes were legal under the unique federal law that set up the council.

A third member, who obtained \$6,000 in contracts from an industry group within four months after his

votes, was not shown to have linked the votes to the contract, so he, too, was cleared.

The investigators said they found the contracts for Alaska businessmen Larry Corter "troubling, but could not establish a violation of law."

"Although we uncovered abuses, our investigation did not substantiate any violations of criminal law," Assistant Inspector General Frederick Pincuro wrote.

The report, dated June 30, 1992, was released yesterday on the order of U.S. District Judge Barbara Rooker. The American Factory Workers Association had sought the release under the Freedom of Information Act. The government, citing privacy, had opposed the release.

The report focuses on the coun-

cil's decision in June 1991, by a vote of 9-2, to give more fish to shore-based processing plants.

The processor association will use the document in its ongoing court challenge. Joe Blum, director of the association, said yesterday.

"It confirms what we were saying," Blum said. "It says that except for the cover the Magnuson Act gives these people, it would be a serious violation." (The act set up the council to allow industry representatives on it.)

The head of the shore-based group had a different view. Vince Curry, president of the Pacific Seafood Processors Association, said the report has no "smoking gun" and virtues there were no ethical violations.

"People who have spent years in the industry with good reputations have been suffering from this char-

ter assassination for some time," he said.

Curry said the trawlers and shore plants should work together to solve problems in a fishing industry including too many boats, too few fish and a depressed market.

The report was reviewed by the

U.S. attorney in Anchorage, who declined to bring any charges.

The investigation was limited. It did not include other allegations of conflicts of interest on other votes by council members, including a case where Corter changed his vote on an issue affecting crab fishermen after

he took a \$1,250-a-week job with them.

Corter is no longer a member of the council. The two council members who were investigated cleared in unqualified terms. Ron Hegge and Oscar Dyson, are members of the group.



# Government to investigate North Pacific fish council

By Dutt Wilson  
Times staff reporter

The North Pacific Fishery Management Council is under increasing scrutiny since disclosures that conflicts of interest may have affected votes on how to control more than \$1 billion worth of fish.

Commerce Department auditors and a U.S. Senate committee will examine the way the business-controlled federal council manages the rich North Pacific fishing grounds.

The Department of Commerce's Office of the Inspector General began investigating the North Pacific Council process about a month ago, according to Wayne Weaver, council's inspector general.

Weaver said auditors are looking at how the council developed its fishery plan.

"We're looking at the economy,

efficiency and effectiveness of the process, anything that affects those types of issues," Weaver said. "Anything anybody brings to us, we'll evaluate."

Complaints about conflicts of interest and a flawed process at the North Pacific Council are not new, but they erupted recently after the council recommended giving fish to some interest groups and taking them away from others.

The accusations were the subject of a report last Sunday by Sen. Slade Gorton, R-Wash., said he too would seek special oversight hearings of the council process by the Commerce, Science and Transportation Committee.

"What we see through all this is the serious question of having people in the industry regulate itself," Gorton said.

The hearings would examine procedures at all eight of the nation's fishery-management

"Yeah, sure, hold an oversight hearing after the cow is out of the barn, and have a committee examine the lock."

Rep. Jim McDermott

councils, which control the industry from three to 200 miles offshore. The Alaska fishery managed by the North Pacific Council is larger than all others combined.

Two House Democrats from Washington state were skeptical about Gorton's plans.

Rep. Jolene Ungeled, D-Olympia, and Rep. Jim McDermott, D-Seattle, said the hearings could be used to divert attention from a recent fishery auction boom, a \$250 million in fish from a Seattle-based fish process-

ing fleet to an Alaska-based shore-processing group.

"Yeah, sure, hold an oversight hearing after the cow is out of the barn, and have a committee examine the lock," McDermott said.

McDermott said some good could come from the hearing. But he said the key to the oversight process is whether the secretary of state is what makes the final decision on fishery plans, makes an independent review and is not influenced by politics.

Rodney Moore, an aide to Rep.

Don Young, R-Alaska and minority co-chair of the House Fisheries and Wildlife Subcommittee, said the council was set up 15 years ago knowing there would be at least some perception of conflicts of interest. Congress has required most seats to be filled by people with knowledge of fisheries, and that has meant people with financial self-interests, he said.

Roddy Moscoso, public-affairs officer for the Commerce Department's National Marine Fisheries Service (NMFS), said last week's Times article on self-serving votes by council members has sparked new questions in the Hill administration.

"What is going to come down to is some sort of revisiting of the law. Several ideas for changing the fishery-council system are being discussed, though none of them seriously yet in Congress.

Rep. John Miller, R-Seattle, a member of the House Merchant Marine and Fisheries Committee, said he would like to see the council expanded to include more academics, citizens and biologists so the group is not controlled by industry.

Lee Alverson, a Seattle consultant, professor, former NMFS official and former council member, said he would like to see a three-member scientific group to rule on recommendations before they reach the secretary of commerce.

Bill Nixon, a top federal scientist in NMFS, said the council is representative of the general consumer. Greenpeace wants an environmental representative Miller and Ungeled tried last year to get two additional seats for Washington and one for Oregon to balance the Alaska contingent, but the measure died in the Senate.

SECTION C  
Sunday, May 31, 1992  
The Seattle Times  
Seattle Post-Intelligencer

## Business

# Fishing for answers

Pollock season at hand, but factory-trawler fleet is facing stormy seas

By Tom Brown  
Times Pacific Rim reporter

**A**fter yet another rancorous skirmish, the commanders in Seattle's billion-dollar salmon war have moved their forces north to the Bering Sea.

The city's fleet of factory trawlers, 65 large vessels that both catch and process fish, are deployed north of the Aleutian Islands for the opening of the summer pollock season tomorrow.

They face a leaner year in the world's richest fishery because of the North Pacific Fishery Management Council's decision to guarantee, for the first time, that 35 percent of the pollock catch will be processed onshore in Alaska, compared with about 25 percent last year.

Another front in the battle was opened Friday in Federal Court. As expected, the American Factory Trawlers Association filed suit against the Commerce Department over the decision to shut the resource.

Other fishing groups are likely to enter the legal battle over the allotment issue as well in the days ahead.

As the trawlers move into place in the Bering Sea, the onshore-based processors — about 80 percent of whose capacity is controlled by Washington corporations owned by two huge Japanese fishing companies — have dispatched crews to five processing plants near Dutch Harbor in the Aleutians. A second fleet of generally smaller boats, most of which also are from Seattle, is standing by to provide fish to the shore plants.

The onshore plants and the boats that serve them stand to benefit from the same rule change that will hurt the trawlers.

Factory trawler operators call the council's decision a politically motivated transfer of wealth from them to their land-based rivals in order to provide new jobs in Alaska at the sacrifice of higher-paying jobs aboard their vessels.

The allocation plan will drastically cut their hauls while propping up onshore plants, they

claim. A cost-benefit study for the National Marine Fisheries Service estimates the allocation plan could cause losses of \$9.9 million to the trawlers over the next three years, transfer value added processing work from the U.S. to Japan and lessen the international competitiveness of the U.S. fishing industry.

"We're getting screwed," said Steve Finley of Emerald Seafoods, a trawler operator.

"There are going to be sanctuaries, no doubt about it," said Robert Morgan, president of the American Factory Trawlers Association and part owner of Oceanraze Inc., which he said has invested \$1 million in three trawlers. "Whether it'll be 10 percent of the fleet or 80 percent, I can't say."

The Pacific Seafood Processors Association, the association for the onshore processors, says the council's decision is a "fatally flawed" decision. "We fishermen want all the catch to be processed in the Bering Sea," they process the fish inefficiently.

The association also has argued that its operations contribute more than the trawler fleet to small Alaska coastal communities, a claim that proved highly effective in Alaska, perennially short of jobs.

It is our position that the managers of the resource ought to look at how the resource is utilized to make sure we're getting the biggest bang for the buck," said John Lam, president of the onshore processors association.

Leslie Kuchin, an assistant professor of economics at the University of Washington retained by the onshore processors to analyze the cost-benefit study for the fisheries service, said the authors of the study were generally "biased" by employing separate data and applying differing standards to vessels that were fundamentally similar for both onshore and on-trawler processors.

"This study simply does not meet professional standards," said another economist hired by the onshore plants, Professor Robert Higgs of Seattle University. "In my view, this study was a joke."

Larry Brown, a Washington, D.C., economics consultant hired by the factory trawlers, said the study "was full rocket science" because it was an afterthought done by a small team working under tight time constraints months after the North Pacific Fishery Management Council had already made a



The pollock-allocation plan is a double whammy for Royal Seafoods. Its trawlers will be hurt by lower catches and its onshore operations at Pier 89 in Seattle — unlike those in Alaska — will not benefit. (Greg Lambert / Seattle Times)



Royal President Stuart Looney said he may lose one of his big customers because of the uncertainties caused by the allocation battle.

decision to allocate the pollock catch. The study is being rewritten and the fight over its validity will be renewed at a council meeting June 23 in Sitka, Alaska.

Then at a special meeting Aug. 3 in Juneau, the

commission is scheduled to consider proposals for pollock allocations through 1995. That meeting is less than two weeks before the terms of commission members Larry Cotter and Ron Higgs, proponents of the onshore processors, expire.

Speculation is that the council will approve cutting the allocation to factory trawlers from 65 percent this summer to 60 percent next year and 55 percent in 1994.

The fundamental problem — one eventually reached in every open-access fishery — is too much expensive equipment seeking too few fish. Despite its amazing productivity, the Bering Sea pollock fishery, at current catch levels, just isn't big enough to support both the factory trawlers and the onshore plants to the extent each would like.

Pollock, small, codlike bottomfish, populate the floor of the Bering Sea in such profusion that it constitutes the world's richest single fishery. No one knows for sure how many pollock there are, which is part of the problem in managing the fishery, but current regulations set the annual catch at about 1.4 million metric tons, or more than 3 billion pounds. That's enough to provide every person in the U.S. a 4

Place see FISH on C 2

## Factory-trawler fleet fishing for answers

### FISH

continued from C 1

source serving each day for 37 days.

Some pollock winds up in supermarket cases, and a lot more is sold as fish sticks, fish-and-chips and the fish sandwiches at fast-food restaurants.

For the bulk of it, whether processed by factory trawlers or onshore plants, is turned into surimi, most of which is shipped to Japan, where it is made into a variety of food products.

Although each side in the dispute is quick to cast aspersions on the other, both are sizable contributors to the Seattle economy.

The trawler companies list crews of about 10,000, about two-thirds of them from Washington state, and have payrolls that totaled \$294 million last year. The trawlers also provide rents to the Port of Seattle and millions of dollars in annual repair and fitting-out work for boatyards.

Some trawler operators, notably Royal Seafoods and Arctic Alaska Fisheries Corp., process their products further in Seattle.

Royal, for example, employs about 400 people at its 15-acre facility at Pier 89. It produces fish sticks, entrees for Jenny Craig frozen meals and fish-sandwich filets for every Burger King west of the Mississippi.

Royal President Stuart Looney said the Long John Silver fast-food chain — the largest single consumer of pollock filets in the U.S. — has indicated it will seek other suppliers because of the uncertainties caused by the Bering Sea allocation battle.

**The allocation plan** is a double whammy for Royal Seafoods. Its trawlers will be hurt by lower catches, and its Seattle shoreside operations, unlike those in Alaska, will receive no benefit.

The onshore plants in Alaska owned by Seattle-area companies employ 3,500 to 4,000 people, many of whom are Washington residents, said Jani of the Pacific Seafood Processors Association. Seattle-based catcher boats working for the Alaska plants employ several hundred fishermen. Companies such as Trident Seafoods, the only one of the major onshore operators that is U.S.-owned, and Unisea also employ about 2,500 at their Seattle-area operations, Jani said.

Factory-trawler operators estimate that initially about 1,000 jobs may be lost to onshore processors in Alaska with larger losses in subsequent years if the allocation is cut further.

Some who have eaten artificial crab know the difference — and might well wonder how it could happen and charges of political manipulation, economic "pre-emption," the giveaway of U.S. resources to a foreign country and Japan-bashing.

**But this** is fishing, where the commonplace expectations of landlubber business people rarely apply. In part, this is because anywhere there's a fish, there's bound to be a politician nearby.

The present Bering Sea fishery was created by politics. The 1976 Magnuson Act created a fishery management zone extending 200 miles off the U.S. coast, which was intended to "Americanize" a bottom fishery that had been developed by European and other foreign fleets in the 1950s and for which no one in the U.S. had an interest in politics.

Not much happened for a few years. But when

more valuable salmon and king crab fisheries began to decline, U.S. fishermen's interest in pollock increased. Seattle-area companies began converting vessels for the pollock fishery and for surimi production.

Factory trawlers are capable of catching vast numbers of fish quickly, and within just three years the fleet had grown to the point where too many boats were chasing too few fish. That left expensive vessels with high carrying costs tied up at docks in Seattle more than half the year because the year's allowable catch could now be landed in two seasons of about 2½ months each.

The two Japanese conglomerates, Taiyo Fisheries Co. and Nippon Suisan Kaisha Ltd., decided to invest in onshore plants in Alaska, increasing Dutch Harbor's processing capacity by about 60 percent and greatly increasing the shoreside demand for pollock. The last of the plants came on line last year — after the factory trawler fleet had already grown to a size larger than the fishery justified.

**With the fishery** heavily overcapitalized, politics again entered the picture, and while the factory trawlers were cleaning up at sea they lost badly ashore.

The Pacific Seafood Processors Association complained to the North Pacific Fishery Management Council that its plants would be pre-empted by the factory trawlers unless the pollock catch was allocated.

In other words, the factory trawlers, which are able to catch and process the fish on the fishing grounds while the catch is freshest, were likely to win a competitive battle with onshore plants that must rely on catch brought to them over often considerable distances by catcher boats.

The council, which The Times reported last fall is dominated by onshore interests and riddled with conflicts of interest, accepted this argument and developed the allocation plan.

Alaska's congressional delegation — Sens. Ted Stevens and Frank Murkowski and Rep. Don Young, all Republicans of long seniority — carried the ball in Washington, D.C. They were helped by Charles Black of the high-powered public affairs firm Black, Manafort, Stone & Kelly and a key adviser to President Bush's re-election campaign. Black is the onshore processors' registered lobbyist.

**The factory trawlers** got strong support from Washington's Democratic congressional delegation, but none from Republican Sen. Slade Gorton, who maintained a careful neutrality, saying he had constituents on each side of the dispute.

Despite written opinions by the Commerce Department's inspector general and the antitrust section of the Justice Department that the allocation program was unjustified, the first year of the program was approved by John Knauss, undersecretary for oceans and atmospheres, on March 4.

The result, the factory trawlers argue, will be to strip public resources arbitrarily from more than 20 small U.S. companies who were there first to subsidize two large Japanese companies that made poor business decisions.

Having been thwarted politically, the factory trawlers are turning to the courts.

However, the trawler operators concede that the track record of challenges to fishery management decisions under the Magnuson Act has been poor. And if a court challenge fails, the way would be opened for them to be pushed out of the fishery altogether.

# Something fishy at Alaska council

Unless U.S. Secretary of Commerce Robert A. Mosbacher takes the right steps to overturn a blatantly wrong Alaskan fishery allocation plan, the best interests of the United States will be hurt as will about 1,000 Washington state fishermen.

At issue is a proposal by the North Pacific Fishery Management Council to reallocate cod and pollock caught in U.S. waters off Alaska in the Bering Sea. The council's proposal would give more of the fish to on-shore processing plants than they now get. On the surface this may seem innocent enough. Probe the matter, as Mosbacher should — and carefully — and we find the stench of corruption.

At present, 70 percent of the fish caught in this particular fishery is taken by U.S. factory trawlers. About 30 percent is taken by fishermen who sell to on-shore processors. The council wants to adopt a rule that would require 45 percent of the catch to be sold to on-shore processors.

Several things are wrong with this proposed rule. It is based upon a flawed analysis of the cost and benefits of this proposed reallocation. Gov. Booth Gardner has made this emphatically clear in a letter to Mosbacher. The council's analysis focuses on the benefits of reallocation, benefits that accrue to the Alaskan on-shore plants but not on the costs, or adverse effects of this

One cost would be the loss of an estimated 1,000 fishing jobs of Washington state residents. In the bargain, however, the companies that employ those fishermen would lose income, thus putting at risk their factory trawler boats as well as the banks that loaned them the money to build the vessels.

Another cost would come in the U.S. balance of payments. Four

of the five on-shore Alaskan fish processing plants that would get the increased catch are owned by Asian businesses. Thus, fish now caught by U.S. firms and sold to foreign buyers instead would be sold by foreign firms.

Finally, as has been reported, the council membership includes people with a financial interest in the Alaskan on-shore processing plants that stand to gain financially from the council's decisions. This apparent conflict of interest warrants Mosbacher's tough scrutiny and action to ensure no conflicts, apparent or real, are allowed to influence any council decisions.

Fishing disputes such as this one are governed by the Magnuson Fisheries Conservation and Management Act, which contains a simple and fundamental principle: Decisions by fisheries management councils are to benefit "the nation as a whole."

**THIS FAIR** and reasonable standard appears in jeopardy if the proposed fish allocation rule is allowed to become law by Mosbacher, who as secretary of commerce has the final rule-making authority under the Magnuson law. In a letter to the secretary, Washington's entire congressional delegation put the matter very well:

"The importance of this decision to the Northwest at large, Washington state in particular and the future meaning of the Magnuson Act's national standards cannot be overstated."

We trust Secretary Mosbacher shares this concern for a fair application of this law and will act accordingly. Mosbacher must make sure that if any reallocation of catch taken from this Alaskan-Bering Sea fishery is allowed such reallocation benefits "the nation as a whole"

A28 FRIDAY, AUGUST 16, 1991

# The Washington Post

AN INDEPENDENT NEWSPAPER

## How Many Fish?

**I**N THE 1960s and early 1970s there was a huge increase in foreign fishing off U.S. shores. The fisheries were depleted, the U.S. catch was much reduced, and in 1976 Congress stepped in. For the purpose of fishing, it extended the 12-mile territorial limit to 200 miles and ordered the foreign boats out of the new zone except with permission. To rebuild and sustain the fisheries, it then tried to tame the new frontier by setting up a system of federal regulation. Lots of luck.

The regulation was not to be direct; regulation even then was a mildly dirty word. The law created eight regional councils mainly drawn from the fishing industry itself. These quasi-public panels were required to develop fishery management plans for each species or broader category of fish offshore. Each plan was to set out an "optimum yield" (OY) and the regulatory means of achieving it. OY was mushily defined, as is Congress's way, as the amount of fish that would be of "greatest overall benefit to the Nation," but taking into account how many fish the biologists thought could be safely caught and still leave each species room to reproduce and sustain itself. All plans had to be approved by the secretary of commerce.

What sounded orderly and impressive enough on paper has in too many fisheries turned out to be a failure in fact. Foreign overfishing has been suppressed—but domestic overfishing has re-

placed it. In some cases the self-regulatory mechanism has performed as it should, but in others neither the councils nor the commerce secretaries meant to back them up have been tough enough. The National Fish and Wildlife Foundation estimates that 14 stocks, representing about a fifth of the stocks offshore, are currently "overexploited." It says that nearly a third of stocks have dwindled rather than flourished since the advent of regulation (for another fourth, this information is not available), and that 10 of the overexploited fisheries are so far gone that it would take them five to 20 years to recover if there were no fishing at all.

Two broad possibilities have been sketched for reform. One is to stiffen the existing system, have the secretary if not the weaker councils crack down, with Congress in reserve to legislate sustainable yields if they aren't imposed administratively. The other is to change the system by limiting entry and somehow introducing ownership to the fisheries on the likely theory that if fishermen are given a salable share in the resource they will be more willing to conserve it. But how and to whom to limit entry? That is the problem, of politics as well as design.

The current regimen is too weak. An important part of the food supply, a natural resource and an industry all three are wasting as a result; the government needs to shift the incentives to save them instead.

# Bush Campaign Aide Seeks Break for Japanes

As President Negotiates in Tokyo, Lobbyist Battles Over Alaska Fish Processing Industry

By Tom Kenworthy  
Washington Post Staff Writer

While President Bush has been in Tokyo on a high-profile mission to wrest economic and trade concessions from the Japanese, one of the senior advisers to his presidential reelection campaign has been at home trying to win favorable treatment from the Commerce Department for a Japanese-dominated sector of the Alaska fish processing industry.

Charles K. Black Jr., who heads the Washington public affairs and lobbying firm Black, Manafort, Stone and Kelly and who was named last month to Bush's reelection leadership team, is one of a bevy of powerful Washington lobbyists locked in a bruising high-stakes battle over allocating the \$800 million-per-year pollock fishing industry in the north Pacific off Alaska.

Black is part of a team representing the Pacific Seafood Processors Association, whose membership includes several Japanese-owned fish processing companies that dominate the Bering Sea onshore pollock processing industry. The onshore processors stand to gain hundreds of millions of dollars over several years if the secretary of commerce approves a June harvest allocation recommendation by the North Pacific Fishery Management Council.

Under the council plan, onshore processors would get control of about 45 percent of the nearly 3 billion-pound pollock catch by 1994, reducing the current 80 percent share enjoyed by their competition—a factory trawler fleet that itself has hired some high-priced Washington help to persuade the Commerce Department to overturn the fishery council's decision.

According to a recent General Accounting Office report, published before another Japanese-owned, onshore processing plant was completed, Japanese interests own about 70 percent of the onshore processing industry. The trawler processing fleet is about 20 to 30 percent foreign-owned, with Norwegian interests holding the largest foreign share.

Jim Gilmore, a Washington representative of the American Factory Trawler Association that is fighting to overturn the fishery council's recommended allocation, said it is "beyond irony" that one of Bush's top campaign advisers is working to advance the interests of Japanese companies at the same time the president is trying to score domestic political points by taking a tough trade line in Tokyo.

"On the one hand we are trying to promote U.S. exports, create jobs in America and fight a recession, and on the other the Commerce Department is considering a regulation that is designed to reduce the value of U.S. exports and that will increase the profits of two Japanese companies at the expense of two dozen at-sea U.S. companies," said Gilmore.

But Black and Dennis J. Phelan, vice president of the Pacific Seafood Processors Association, said the issue cannot be cast as a domestic versus Japanese economic struggle because both parts of the industry have foreign components and because all the jobs at stake are American.

"There is all kinds of foreign involvement on both sides," said Black. "There are a lot of American jobs at stake here that we are fighting for."

Joseph Blum, a fishery council member who is director of the Washington state Fisheries Department, also said it was a "phony argument" to portray the dispute as one between U.S. and foreign interests. "It's a tossup," said Blum, who voted against the allocation formula and wants it overturned by the Commerce Department. "There's foreign investment in both places."

Black declined to say whether he had discussed the issue with Robert A. Mosbacher, who is leaving his post as secretary of commerce to become general chairman of Bush's reelection effort. "I'd rather not get into my assignments," Black said.

The final decision on the fishery council's allocation formula rests with the secretary of commerce, who rarely rejects the decisions of the eight regional councils that regulate fishing catches within the 200-mile U.S. fishing zone. With Mosbacher leaving Commerce, the decision, which is to be made in early March, would pass to secretary-designate Barbara Hackman Franklin if she is confirmed in time by the U.S. Senate.

The battle over pollock—a groundfish processed into surimi paste used mostly in Japan in artificial crab legs and shrimp—also is a fight over jobs between Washington state and Alaska, two states whose congressional delegations have joined the fray. Sen. Ted Stevens (R-Alaska) is aggressively promoting the interests of the communities in his state that depend on onshore processing jobs. The entire

Washington state delegation, in turn, has pressed Mosbacher to overturn the fishery council's decision because the trawler fleet is based primarily in their state.

The issue has also been complicated by charges that the 11-member fishery council is awash in conflicts of interest and that the pollock allocation could directly affect several council members. The Seattle Times reported in November that a number of council members had a financial stake in the pollock decision and other issues before the council. As an advisory body, the council is exempt from federal conflict-of-interest laws.

The conflict-of-interest allegations have prompted Rep. John D. Dingell (D-Mich.), chairman of the House Energy and Commerce subcommittee on oversight and investigations, to begin an inquiry into the matter.

# FISH

from Page 1

ized," meaning that they are being harvested in such volumes that they may not be able to sustain their populations.

"Many resources are severely depleted because of excess fishing," the report said.

Among those considered overused are Pacific Coast salmon, North Pacific albacore tuna, Pacific razor clams and bay scallops. Pacific striped bass, Atlantic salmon and cod, Northeast lobsters and scallops,

"bycatch" of halibut and crab by the ground fish fleets.

And not all of the fish caught by commercial fleets ends up at the fish markets.

The report said thousands of tons of edible fish are wasted annually, either because they are thrown away by fishermen seeking to fill their nets with more valuable products, or because of federal policies to

See FISH, Page 6A

McClatchy News Service

WASHINGTON — A report on the status of marine life in the nation's coastal waters paints a grim picture of diminishing stocks of fish and marine mammals, and huge wastes by the commercial fishing industry.

The report by the National Oceanic and Atmospheric Administration said that 65 species of the most commercially marketable fish and seafoods are considered "overull-

condition."

But even in Alaska waters, which provide about 41 percent of the total U.S. catch, increasing fishing pressure is creating problems, the report said.

Among these are unregulated fishing of domestic stocks in international waters of the Bering Sea, the still unknown relationship between the huge catch of pollock and the population decline of the threatened Steller sea lion and the incidental

## Some U.S. fisheries in trouble, NOAA says

North Atlantic swordfish and various Atlantic and Gulf of Mexico shrimp

The only area where no stocks were in danger of being overfished was off the coast of Alaska, where the report said the North Pacific Fishery Management Council has set conservative ground fish catch quotas below sustainable population levels.

The report said ground fish stocks off Alaska are generally "well managed and in good-to-excellent

discourage fishermen from accidentally catching them while targeting others.

NOAA said the report, which it plans to unveil at a press conference later this month, "can be viewed as a 'report card' on how well the nation is fulfilling its stewardship responsibilities."

But it is clear the agency also views it as a call to action.

Under the 1976 Magnuson Fisheries Conservation and Management Act, the federal government is supposed to regulate the \$4.4 billion annual commercial fishery so as to conserve stocks for long-term, sustainable harvests.

NOAA spokesman Reed Boatwright said, however, that too often actual management decisions have been left to regional advisory councils typically made up of those in the fishing business and the result has been management decisions that result in overfishing.

In a preface to the report, NOAA's assistant administrator for fisheries, William W. Fox Jr., said he is determined to change course.

# HOOKED ON POLLOCK

by Tom Brown  
Times Pacific film reporter

**D**UTCH HARBOR, Alaska — The pollock fishery boom has helped turn the Dutch Harbor town into a cosmopolitan city. Nations, Chinese, Koreans, Japanese, Vietnamese, Filipinos, and others have flocked here in search of opportunity.

At the port, 10 acres of crab pots are strung two stories high, awaiting the haul. Men and women from the Seattle area unload frozen worms from the factory with fishing boats of all sizes and Japanese tramp freighters awaiting car for the hillside are still littered with Quoniam huts, ammunition bunkers and gun emplacements left over from World War II. The rugged, mountainous terrain and North American soil were fought further out on the Alutian chain

Bald eagles are so numerous that they get as much attention as stray dogs and cats in the town. They are reported to be attracted to 41 "beach bars" in some local spots.

Against this colorful backdrop, Seattle's fringe is dotted with every variety of business, from a small fish cannery to a store of Smith Bros.) and dubious pickup lines ("I'd be attracted to you even if we were married").

The male-to-female ratio is always out of whack and home port of perhaps \$15 billion worth of fish.

The Seattle fleet of 65 big factory trawlers, which produce surimi at sea in 100,000-gallon tanks, is the largest in the world. Plants use Dutch Harbor as a giant filling station and grocery store. It is also where the fish are frozen and packed into 100,000-pound blocks. The fish are sold for a dollar a pound, worth of eiders, fish landing soars, net sensors, depth finders, weather faces, satellite navigation and steel ladders. The boats are repaired and repaired and repair or replacement of trawl nets with mouths up to four acres in size and



Pollock swims in the Bering Sea and makes high-quality surimi.

price tags that soar to well over \$100 (surimi when spare parts are included).

The factory trawlers go away, we go away," says Rich Taylor, president of Fishermen's Insurance, which has 11 employees in Dutch Harbor.

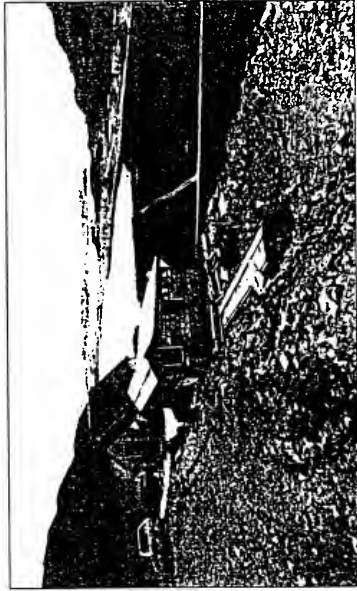
Trig's muscle is evident in the four mammoth plants, here whose primary product is surimi, a fish paste used in cod, halibut and salmon. These plants are owned by the Japanese firm, Nippon Seisan Kaisha, Ltd., an U.S.-owned — and operated through subsidiaries in the Seattle area.

Trig's muscle is evident in the four mammoth plants, here whose primary product is surimi, a fish paste used in cod, halibut and salmon. These plants are owned by the Japanese firm, Nippon Seisan Kaisha, Ltd., an U.S.-owned — and operated through subsidiaries in the Seattle area.

Trig's muscle is evident in the four mammoth plants, here whose primary product is surimi, a fish paste used in cod, halibut and salmon. These plants are owned by the Japanese firm, Nippon Seisan Kaisha, Ltd., an U.S.-owned — and operated through subsidiaries in the Seattle area.

Presses see POLLOCK on C 4

A housing shortage in Dutch Harbor-Unalaska forces people to fit up makeshift houses. This house overlooks the town of Unalaska.









## OPINION

**Politics are poisoning Northwest fisheries**

You don't have to look any farther than Seattle's Pier 66 for proof that recent actions by the North Pacific Fishery Management Council and the Bush administration have inflicted great harm upon the Pacific Northwest economy.

At last count, 18 factory trawler vessels sat idle along Seattle's waterfront because of political decisions made that severely limit the at-sea fleet's access to the groundfish resource that the fleet, ironically, first fully developed.

Last year at this time, I was working aboard one of these boats earning family wages. The at-sea processing fleet employed thousands of people while meeting a multimillion-dollar payroll that directly benefited economic growth in the Pacific Northwest.

Today, that same boat sits tied up at Pier 66. My personal income has declined due to the current administration's political decision. Yet — for the time being — I feel lucky. Unlike some of my colleagues, I still have a job. This time next year, I may not be so lucky.

I am one of 10,000 Pacific Northwest workers fortunate enough to be employed by an at-sea seafood processing industry that has provided me with high wages and important health care benefits. This industry stands to lose over 3,000 of these well-paying jobs because of a political process.

How could this happen at a time when politicians each day claim they're fighting hard for "jobs, jobs, jobs"? Words are not deeds. Those boats sit unused because politicians in Alaska and Washington, D.C., are ignoring the intent of the Mag-

**MANAGING RESOURCES**

John McVea

nuson Act (meant to Americanize our fisheries) while creating a \$101 million net loss to the national economy by guaranteeing a percent of the catch to foreign shoreside concerns in Alaska.

Although Bush proclaims his support for expanded free trade, his administration has stifled our industry's ability to com-

Port of Seattle to be \$348 million.

• The fleet contributed \$500 million to the United States' balance of trade.

If you worry about the effect of more Boeing layoffs on the region, you might also wonder about the potential impacts of losing the at-sea fleet's considerable contributions to our way of life.

What's the solution? Open access to America's fisheries by all segments of the U.S. fishing industry, subject to observance of good conservation practices. That's what the Magnuson Act intended. The American factory trawler fleet should be able to fish for groundfish in the North Pacific and Pacific whiting off the Oregon

***How could this happen at a time when politicians each day claim they're fighting for 'jobs, jobs, jobs'? Words are not deeds.***

pete. Furthermore, we are an American industry that makes a positive contribution to the nation's balance of trade.

While Japanese-controlled shoreside processing plants continue to send their catcher boats out to harvest pollock and other groundfish, our segment of the industry is forced to either tie up its boats or fish outside of American waters. Meanwhile, laid-off workers collect unemployment from the state of Washington to feed their families. Vessels financed by federally guaranteed loans and designed for year-round fishing float dormant.

Sure, the Port of Seattle generates revenue (\$1 per foot per day) on the vessels tied up at Pier 66. But at what trade-off? Consider that just two years ago:

• The at-sea fleet's payroll expenditures totaled \$130 million in Washington state alone.

• The fleet spent \$240 million with Washington state businesses.

• The fleet's economic impact on Washington state was estimated by the

and California coasts, just like everyone else.

Take it from someone who has been there. We are an American fleet that catches and processes groundfish. By law, over 75 percent of our crews are U.S. citizens. We positively contribute to the nation's balance of trade. We make significant economic contributions to local communities and the nation as a whole.

This contribution should be recognized. Since the future of American fisheries is our livelihood, we are committed to long-term preservation and management of the resource. By the same token, employees of the at-sea processing fleet urge our elected officials to be forward thinking. The future of America's at-sea resource is our livelihood — a quality of life that is very important to the Pacific Northwest's vital interests.

John McVea, an employee of Golden Alaska Seafoods, is a technician on the factory trawler Golden Alaska.

## Ruling favors Alaska over Seattle-based factory trawlers

SEATTLE (AP) — Fish-processing plants in Alaska won a key court ruling over Seattle-based factory trawlers Friday as a federal judge refused to overturn government allocations of North Pacific pollock and cod.

The ruling by U.S. District Judge Barbara J. Rothstein is the latest but not the last round in a battle over a \$1 billion annual groundfish industry.

About three-quarters of the catch is now processed aboard the huge trawlers, sometimes called factory ships. Commerce Department allocations announced earlier this year would cut that share to about 55 percent over five years.

According to department estimates, the shift would cost at least 1,000 jobs in Washington state.

On May 29, the American Factory Trawlers Association and two other groups filed suit asking Rothstein to overturn the allocations without a trial.

The lawsuit said the shift exceeded the department's authority under the Magnuson Act, the main law regulating fishing in U.S. waters, and was adopted without following procedures required by the National Environmental Policy Act.

Rothstein rejected those arguments but added that "there are serious questions involved in this lawsuit which are not" covered in the ruling and can be decided only at trial.

Specifically, she said she had not ruled on whether the department should have sought public comment on a cost-benefit analysis that was issued March 5, the day after the allocations were approved, or the association's claim that a supplemental environmental impact statement containing the analysis

(Continued on Page 9, Column 1)

## Fishing

(Continued from Page One)

was adequate.

Sen. Ted Stevens, R-Alaska, issued a statement praising the ruling as "a major triumph for Alaska's fisheries."

The ruling "upheld the government's decision acknowledging the needs of Alaska's fishermen and coastal communities," said Rep. Don Young, R-Alaska.

Bruce Bults of the trawlers association said the ruling "only addressed a very limited number of issues that were included in our complaint. This is round one. It's only round one."

Since Rothstein largely upheld the way in which procedures were followed under the environmental law, the focus will shift to social and economic effects under the Magnuson Act, Bults said.

Also unresolved are contentions that the allocation unconstitutional favored Alaska ports over those in Washington state and that members of the panel that recommended the change were improperly appointed, he said.

The issue has provoked heated battles between the largely Democratic Washington state congressional delegation and the all-Republican Alaska contingent.

Led by House Speaker Tom Foley, Washington's representatives and senators wrote then-Commerce Secretary Robert Mosbacher in October to ask that the allocation issue be returned to the North Pacific Fishery Management Council for further review.

They cited questions raised by the National Marine Fisheries Service about the council's recommended changes in groundfish allocations, including a claim of inadequate environmental analysis.

They also noted that Alaska dominates the council with six of the 11 voting members. There are three from Washington, one from Oregon and one from the federal government.

In January, the trawlers' representative in Washington, D.C., Jim Gilmore, said it was ironic that Bush was in Japan on a mission to boost American business while one of his campaign advisers, Charles R. Black Jr., was lobbying for Japanese interests in the allocation battle by representing Pacific Seafood Processors Association.

About 70 percent of the Alaska shore-based processors that stand to benefit from the ruling are controlled by two Japanese companies, Nippon Suisan and Taiyo Fisheries, while the trawlers fleet is 20 to 30 percent foreign owned, Gilmore said.

Black said the issue was employment rather than foreign control and that a victory for the trawlers would mean "a net loss of American jobs."

Joining the trawlers association in the lawsuit were American Independent Fishermen, a Washington state-based group of owners of small fishing vessels, and Royal Seafoods Inc. of Seattle, which owns a processing plant in Seattle and several trawlers.

Pacific Seafood and 11 other parties joined on the side of Commerce Secretary Barbara H. Franklin and John A. Knauss, undersecretary of commerce for oceans and atmosphere, named as defendants in the lawsuit.

DOCUMENT= 1 OF 98 PAGE = 1 OF 4

ACCESS # ASP1158731

HEADLINE Bush Campaign Aide Wades Into Lobbying Battle Over Fish Processing

Byline: CHRISTOPHER CONNELL

DATE 01/09/92

SOURCE The Associated Press (ASP)

Category: POLITICAL

Origin: WASHINGTON

(Copyright 1992. The Associated Press. All Rights Reserved.)

RE NME

WASHINGTON (AP) - A campaign adviser to President Bush denied Thursday any conflict in his lobbying for a Japanese-dominated group seeking the right to process almost half the pollock caught in the Bering Sea off Alaska.

Pacific Seafood Processors Association, represented by Bush adviser Charles R. Black Jr., would sharply increase its share of the \$800 million annual pollock catch under a proposed new rule.

The allocation is being fought by the American Factory Trawler Association, which now processes almost three-quarters of the fish at sea. Pacific Seafood Processors have onshore processing plants.

Jim Gilmore, the trawlers' Washington representative, called it "ironic" that Bush was in Tokyo trying to boost American jobs while one of his campaign advisers was lobbying for Japanese interests.

Black called that allegation "ridiculous."

"It's not American vs. Japanese at all," said Black, a principal in the lobbying firm of Black, Manafort, Stone and Kelly. "What's at stake here is American jobs, mostly in Alaska ... If the other side won, there'd be a net loss of American jobs."

Black said foreigners hold interests in both the onshore fish processing industry and in the trawler industry.

Conservative columnist Patrick Buchanan, who is challenging Bush for the presidential nomination, said it was "just astounding" that Black was lobbying for Japanese interests.

"We have really got to stop letting our policy in Washington be made by hired lobbyists and registered foreign agents," said Buchanan in Claremont, N.H. He said Bush should force Black to sever his campaign ties or quit representing the fish processors.

- \* Two big Japanese companies, Nippon Suisan and Taiyo Fisheries, control 70 percent of the onshore processing industry. The trawler fleet, which operates primarily out of Seattle, is 20 to 30 percent foreign owned.

Gilmore said the proposed allocations would "cut our revenues by 30 percent. There would be bankruptcies ... and thousands of jobs lost."

"It would cost us higher-paying jobs to create lower-paying jobs"

in the onshore plants, he said.

But Dennis J. Phelan, vice president of the Pacific Seafood Processors Association, said the Japanese invested in onshore processing in Alaska after a 1976 law effectively closed the area to Japanese trawlers.

"It was considered a great victory at the time," said Phelan.

"Now they (the trawler industry) are coming in, trying to Japan-bash this thing, saying, 'How did this happen?'"

He said the trawlers are squeezing out the 125 independent boats, which took 1 million tons of pollock in 1987 but only 200,000 tons in 1990.

The Commerce Department proposed the new rule last month following a recommendation from its North Pacific Fishery Management Council.

The secretary of commerce must decide by March 5 whether to accept the rule. Robert Mosbacher is stepping down as commerce secretary next week to head Bush's campaign, and Bush has nominated Barbara Franklin to succeed him.

Phelan said several prominent Republicans, including Bill Timmons, Tom Korologos and Ed Rogers, are lobbying for the trawler industry.

"This is hardly a situation where the poor, defenseless trawler owners are getting picked on by us and Charley Black," he said.

DE Updated: YY92 MM01 DD11

End of Story Reached

ONE HUNDRED THIRD CONGRESS

GERRY E. STUDDS, MASSACHUSETTS, CHAIRMAN

WILLIAM J. HUGHES, NEW JERSEY  
 EARL WITTO, FLORIDA  
 W. J. DOLY, CALIFORNIA  
 WILLIAM G. LINNEN, ILLINOIS  
 SLOMON P. ORTIZ, TEXAS  
 THOMAS J. MANTON, NEW YORK  
 OWEN B. PICKETT, VIRGINIA  
 GEORGE J. MOCHLAUER, NEW YORK  
 FRANK PALLONE, JR., NEW JERSEY  
 GREG LAUGHLIN, TEXAS  
 JOLENE UNSOELD, WASHINGTON  
 GENE TAYLOR, MISSISSIPPI  
 JACK REED, RHODE ISLAND  
 W. MARTIN LANCASTER, NORTH CAROLINA  
 THOMAS H. ANDREWS, MAINE  
 ELLIZABETH FURSE, OREGON  
 LYNN SCHENK, CALIFORNIA  
 GENE GREEN, TEXAS  
 ALICE L. HASTINGS, FLORIDA  
 DAN HAMBURG, CALIFORNIA  
 BLANCHE W. LAMBERT, ARIZONA  
 ANNA G. ESHOO, CALIFORNIA  
 THOMAS J. BARLOW, III, KENTUCKY  
 BART STUPAK, MICHIGAN  
 BENNIE G. THOMPSON, MISSISSIPPI  
 MARIA CANTWELL, WASHINGTON  
 GARY L. ACKERMAN, NEW YORK

JACK FIELDS, TEXAS  
 DON YOUNG, ALASKA  
 HERBERT H. BATMAN, VIRGINIA  
 JIM SARTON, NEW JERSEY  
 HOWARD COBLE, NORTH CAROLINA  
 CLIFF WELDON, PENNSYLVANIA  
 JAMES M. INHOFE, OKLAHOMA  
 ARTHUR RAYBURN, JR., SOUTH CAROLINA  
 WAYNE T. GIBBERT, MARYLAND  
 RANDY "Duke" CUNNINGHAM, CALIFORNIA  
 JACK KINGSTON, GEORGIA  
 TULLIE R. FOWLER, FLORIDA  
 MICHAEL N. CASTLE, DELAWARE  
 PETER T. KING, NEW YORK  
 LINCOLN DIAZ BALART, FLORIDA  
 RICHARD W. POMEROY, CALIFORNIA  
 HELEN DELICH BENTLEY, MARYLAND  
 CHARLES W. TAYLOR, NORTH CAROLINA  
 PETER C. TORNALISE, MASSACHUSETTS

CHIEF OF STAFF  
 JEFFREY R. PIKE  
 CHIEF COUNSEL  
 THOMAS R. A. TSOOS  
 MINORITY STAFF DIRECTOR  
 HARRY F. BURRIGIANS  
 MINORITY CHIEF COUNSEL  
 CYNTHIA M. WELLS-ROSEN

**U.S. House of Representatives  
 Committee on  
 Merchant Marine and Fisheries  
 Room 1334, Longworth House Office Building  
 Washington, DC 20515-6230**

March 22, 1994

**MEMORANDUM**

**TO:** Members, Subcommittee on Fisheries Management  
**FROM:** Subcommittee Staff  
**SUBJECT:** Hearing on conflict of interest in the operation of  
 the Regional Fishery Management Councils

**INTRODUCTION**

On Wednesday, March 23, 1994, at 1:30 P.M. in 1334 Longworth House Office Building, the Subcommittee on Fisheries Management will meet to continue its series of hearings on the reauthorization of the Magnuson Fishery Conservation and Management Act (Magnuson Act). This hearing will focus on alleged and potential conflicts of interest in the operation of the Regional Fishery Management Councils established under the Magnuson Act. Although the issue of conflicts of interest has already arisen at a number of previous hearings, this hearing was called in response to a request by the Honorable Jolene Unsoeld to specifically examine a recent investigation of the North Pacific Fisheries Management Council by the Commerce Department Inspector General.

The only witness at this hearing will be Frank DeGeorge, Inspector General of the U.S. Department of Commerce.

### **BACKGROUND**

The Magnuson Act created eight Regional Fishery Management Councils (Councils) charged with managing and conserving U.S. fisheries resources through the promulgation of fishery management plans in coordination with the National Marine Fisheries Service (NMFS). In addition to managing fisheries resources for conservation purposes, Councils are responsible for allocating resources among various and often competing users.

Section 302 of the Magnuson Act established the Regional Fisheries Management Councils and the process for appointment of members to the Councils. Congress specifically intended that the Councils should be composed primarily of experts with "hands on" knowledge about fishing and fisheries resources. Hence, Section 302 provides that the voting members of the Councils shall consist of (a) the principal State official responsible for marine fishery management from each state represented on the Council, (b) the regional director of the National Marine Fisheries Service, or his representative, and (c) members appointed by the Secretary of Commerce "who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management, or the commercial or recreational harvest, of the fishery resources of the geographic area concerned."

### **CONFLICT OF INTEREST**

There is no universal agreement on what constitutes a conflict of interest for a member of a Council. Although it is generally agreed that a person who personally profits as a direct result of decisions he makes in his official capacity would have a conflict of interest, there are numerous other instances where there is substantially less agreement. For example, does a recreational fisherman who fishes a specific stock of fish and then participates in an allocation decision on that stock have a conflict. While some would argue the presence of a monetary interest is necessary to create a conflict, others would say that a person's nonmonetary interest could bias his judgement. Similarly, a paid employee of a commercial, recreational, environmental or other interested group may have his judgement unfairly affected by the views of his employing organization. It has also been argued that allocations based on state of residence may lead a Council member, especially the state fisheries official, to act to further his or her state's interest as opposed to the national interest.

### **MAGNUSON EXEMPTION**

The Magnuson Act specifically provides (section 301(k)(7)) that certain actions which in another context would be an impermissible conflict of interest (and a violation of 18 USC 208, the federal conflict of interest statute) are lawful. For example, as long as a Council member makes the financial disclosures mandated by section 302 (k), he is generally not subject to the provisions of 18 USC 208 that prohibit an official from acting in a manner that affects his financial interests. Further, unless they have made the required disclosure, Council members are prohibited by National Oceanic and Atmospheric Administration (NOAA) Regulations from participating in (1) a particular matter primarily of "individual concern" or (2) a matter of general public concern which is likely to have a "direct and predictable effect on a members financial interests" (50 CFR 601.35(b)(8)).

The Inspector General will testify that, "We have found, after some research, that this exemption apparently is the only example in federal law of a direct statutory blanket waiver from the prohibitions against conflicts of interest by federal officials..."



### **INSPECTOR GENERAL INVESTIGATION OF CONFLICT OF INTEREST AND THE NORTH PACIFIC COUNCIL**

On June 30, 1992, Frank DeGeorge, the Commerce Department's Inspector General, forwarded a memorandum to John Knauss, the Under Secretary for Oceans and Atmosphere, regarding alleged conflicts of interest by members and staff of the North Pacific Fisheries Management Council. The Inspector General found that while the actions of certain Council members amounted to a conflict of interest, their actions were permissible and legal because of the exemptions included in section 302 (k) of the Magnuson Act (see above discussion of permissible conflicts).

The Inspector General's investigation involved the inshore-offshore allocation issue and claims that certain Council members voted in a way that advanced their personal financial interests. The critical action involved a Council vote to define "inshore facilities" to include all vessels of less than 125 feet. Three council members may have financially benefited from this decision since they had interests in vessels less than 125 feet. However, the Inspector General found there was no violation of law, since the members disclosed their interests and this was not a "particular matter of individual concern" nor a matter that had a "direct and predictable effect on their financial interests".

A copy of the Inspector Generals memo is attached.

### **POSSIBLE SOLUTIONS**

Numerous fisheries interests have offered a broad range of options to address this matter, ranging from greater financial disclosure to stricter rules dictating when a member must abstain from Council activities due to his or her financial interests. Although a few have suggested revamping the Council system to prevent the appointment of members with financial interests, most observers feel this would be a drastic and unjustified change in the system that allows those with the greatest knowledge and experience to act to manage and conserve the resource.

### ISSUES

- \* Have conflicts of interest led to any illegal actions by Council members or Council staff?
- \* Is there any evidence that Council members have enriched themselves through their actions on the Councils?
- \* Is there any evidence that the management or conservation of any fisheries has suffered as a result of a conflict of interest?
- \* Does the perceived "domination" of Councils by commercial and/or recreational fishing interests that may be guided by short-term economic objectives undermine the goal of long-term conservation of fisheries resources?
- \* What changes might be expected from Councils if the Magnuson Act barred the appointment of individuals who are less likely to have conflicts of interest?
- \* Do improper conflicts exist between Council members' personal financial activities and their service as Council members? If so, how should these conflicts be addressed?
- \* How can the composition of Councils be changed to eliminate perceived or actual conflicts while still maintaining the basic philosophy behind the Magnuson Act?
- \* Is it still reasonable to believe the underlying Magnuson Act principle that members of the various user groups have the greatest interest in the long term survival of the resource and are essential to the successful functioning of the Councils, or should decisions be made by those without a personal financial interest in the fisheries?
- \* Is there fair representation for all interested parties on the Councils? Further, should Congress strengthen the requirement that Councils be "fair and balanced" or significantly alter the composition of the Councils to ensure that certain interests such as commercial or recreational fishermen, consumers, and conservation groups are better represented?
- \* Should the Secretary of Commerce exert greater care when reviewing an FMP to ensure that no conflict of interest has led to the approval of a particular plan?
- \* Should NMFS be authorized to revise Council plans or amendments, especially where there is evidence that a conflict of interest may have "tainted" the decision making process?
- \* Should Councils be allowed to adopt FMP's that grant exclusive harvesting rights to specific individuals while excluding other users? If so, should more stringent conflict of interest rules apply in this situation?

### STAFF CONTACTS

Jim Mathews or Greg Lambert (majority, X-63514)  
 Rod Moore or Bonnie Bruce (minority, X-63520)



March 21, 1994

The Honorable Thomas J. Manton  
 Chairman/House Subcommittee on  
 Fisheries Management  
 534-Ford House Office Bldg.  
 Washington, D.C. 20515

Dear Rep. Manton,

Attached is some additional documentation that I thought might give your committee some idea of the frustration many of us involved with our nations' fisheries have had with the guidelines outlined in the Magnuson Act. Our Foundation has repeatedly voiced our opinion that we do not feel that Magnuson or it's regulations are necessarily broke, but maybe we need to take a closer look at some of the managers that we're asking to implement these regulations.

I would like to request that the attached letters to Mr. Frank DeGeorge and the letter from the Assistant Administrator for Fisheries to the former Chairman of the Western Pacific Council, be included in the record, following your committees' hearings on conflicts of interest. The letter to Mr. DeGeorge demonstrates how some improprieties by council members, simply slip through the cracks. The council members we had asked be placed on administrative leave, were not only able to vote on several major issues, concerning their own operations while their case was pending, but each had a profound impact on the outcome of these issues. Their recommendations to the council were not only inconsistent with that of the NMFS, other council members and the Endangered Species Act, which would have erred towards conservation, but their positions could possibility result in the over-fishing of resources who's long-term sustainable yield is unknown.

These individuals were not only accused of fisheries violations, but also failed to report their involvement with one another (one leasing the vessel to the other and the lease purchase agreement) on their financial/disclosure statements, all of which are part of the public record and I would be happy to supply your committee with copies of these as well if you wish. One of these council members even purchased an additional

305 Hahani Street #181, Kailua, Hawaii 96734

longline vessel to add to his longline operations and failed to let the other council members know that he had in fact acquired yet another vessel. This in itself may not appear significant, however, at the time, the council was considering regulations regarding the transferability of longline permits and the increasing of the harvesting capacity of each vessel and this council member was advocating no restrictions on either. He had purchased a small longline vessel that could barely float and with the new regulations, could transfer that vessels' permit to a vessel twice the size. He also owns a company that operates the largest ice house in the Western Pacific, is the largest bait supplier and is the largest longline gear supplier as well. Obviously it is not in this council members' best financial interest to limit the number of boats or their activities.

The other council member, who was in fact the owner of the company operating the boat when it was caught harvesting illegal lobster, had the nerve to suggest to the council, as a member of the crustaceans committee, which is also on the record, that the lobster fishery quota (the number of lobster that could be harvested) be increased, so the fishery didn't have to be shut down. This after the NMFS scientists told the council that the stocks were in trouble. She was evidently concerned about the lost income from her lobster operation.

All in all, I believe in the system we're working with and feel that our managers have to be free of outside influences. You can't blame the council member for wanting to sell more gear, but he shouldn't be involved in the regulatory process which would ultimately restrict his companies' ability to expand. This individual is even chairman of the council's committee, that in effect, makes decisions in the fishery he and his companies are directly profiting from.

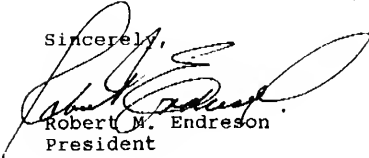
The council process does need people from all sectors of the fishery represented on the council, but maybe not to the degree that these members are. The Magnuson Act should clearly define the criteria for establishing council ethics for both council members and staff. The public's trust and confidence in the council system is what is truly at stake. Whether it's through their actions or simply the perception, to the general public that there has been some sort of violation of the law, the council members cannot give the appearance of any improprieties.

As in the aforementioned case, it has taken nearly 16 months to bring these council members to trial and during that time they continued to participate as voting members on the council. There should also be a mechanism in place that would allow the NMFS Regional Director or the Assistant Administrator of Fisheries to take immediate action and place members of the council suspected and accused of violating the public's trust, on administrative leave, until final resolution of the matter.

I hope that your committee can make the changes necessary for Magnuson to insure that our ocean resources are protected for years to come. We realize that your job is far from easy, however, we appreciate your involvement and the efforts being made by you, your staff and your committee.

If we can be of any further assistance, please feel free to contact our office at 808-262-2476.

Sincerely,



Robert M. Endreson  
President



July 22, 1993

Mr. Frank DeGeorge  
 Inspector General  
 Dept. of Commerce Ste. 7898  
 14th & Constitution Ave. N.W.  
 Washington, DC 20230

Dear Mr. DeGeorge,

For many months now, our Foundation, as well as other organizations, individuals and public officials throughout Hawaii, have been trying to get the Western Pacific Regional Fisheries Management Council (WPRFMC), to address a very serious issue. Unfortunately our attempts have failed and this matter continues to cast doubt on the integrity of both the Council and the Department of Commerce.

Two WPRFMC council members have been accused by the NMFS of violating several fisheries regulations, which involved the illegal taking of over 1600 undersized and egg-bearing lobster, as well as other related fisheries regulations (see attached). This in itself has overwhelming ramifications, since the NMFS and the WPRFMC have now had to close the Lobster fishery altogether. The fishery, according to the most recent data and the NMFS biologists, has been severely overfished.

Enclosed is a report of the incident, as well as a subsequent letter outlining the position of the NMFS, to the chairman of the WPRFMC and what action would be taken if any council member is found guilty of violating these types of regulations. These council members not only violated fisheries regulations, but they also failed to disclose a secret financial commitment to one another, which was inadvertently uncovered by the US Coast Guard and made public at the August 1992 Council meeting. There are other questionable activities by these council members, that seem to suggest that there may be serious conflicts of interest as well.

Our complaint is that there are no checks and balances to correct this situation. When other Dept. of Commerce employees have been accused of illegal activities, even outside of the agency, they're put on administrative leave until the case is either settled or they are found innocent. There are dozens of these cases on record, both here in Hawaii and on the mainland. We had thought that this Dept. of Commerce policy would be standard operating procedure in order to insure the public's trust in the process. However, not only do these council members, who

305 Hahani Street #181, Kailua, Hawaii 96734

have been accused of these violations, remain on the council as voting and active members, but one has even continued to fail to disclose additional financial commitments that may directly effect his motives and participation on the council itself. All this is documented with the NMFS/NOAA and yet their hands seem to be tied by the system itself.

These council members continue to have a major effect on the council process and one continues to chair a very important committee. Many people, who have monitored our situation, from fisheries around the country, have suggested that this is very irregular and not in the best interest of the fishery, nor in compliance with the council member's own oath.

We believe that these individuals should be placed on immediate administrative leave until this matter can be heard and adjudicated by an Administrative Law Judge as provided in 16 U.S.C. ss1858, the Magnuson Fishery Conservation and Management Act. How can the general public be expected to abide by the guidelines and regulations recommended by the council and promulgated by the Secretary of Commerce, if those on the council itself may have repeatedly broken their own regulations?

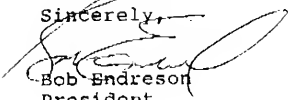
There appears to be significant evidence that the lobsters were in fact illegally taken, as outlined in the enclosed NOVA and we further believe that the criteria designed by the NMFS under Magnuson, supports the removal of council members should they be found guilty of these and other violations of the Magnuson Act.

Your office is our last hope of seeing the integrity of the council process maintained before the September council meeting. As of this writing, these council members will still be permitted to vote on yet another issue that directly effects their own fishing operations, while the charges against them are still pending. We've seen the Clinton administration repeatedly demonstrate that it will not tolerate these types of improprieties that may jeopardize the public's trust and give the perception that ANY federal agency's integrity is in question.

We would respectfully like to request an investigation into this serious situation and would also like any information regarding action taken or obtained by your office, that may be part of the public domain or available under the "Freedom of Information Act".

We pray that your office will see the merit of our concerns.

Sincerely,



Bob Endreson  
President



UNITED STATES DEPARTMENT OF COMMERCE  
 National Oceanic and Atmospheric Administration  
 NATIONAL MARINE FISHERIES SERVICE  
 1335 East-West Highway,  
 Silver Spring, MD 20910  
 THE DIRECTOR

FEB 12 1993

Mr. Rufo J. Lujan  
 Chairman, Western Pacific  
 Fishery Management Council  
 1164 Bishop Street  
 Honolulu, Hawaii 96813

Dear Mr. Chairman:

Section 302(b)(5) of the Magnuson Fishery Conservation and Management Act provides for the removal for cause of any voting member of a Regional Fishery Management Council (RFMC) appointed by the Secretary under provisions of subsection (b)(2). The Secretary may take such action if the concerned RFMC first recommends removal by not less than two-thirds of the voting members and if that recommendation is made in writing and accompanied by a statement of the reasons upon which it is based. This provision of the Magnuson Act is implemented by regulation at 50 CFR 601.36.

This letter is to advise you of the procedure I will follow if I become aware of conduct of a member that may warrant consideration of removal.

I will advise by letter the Chairman of a RFMC and/or its Executive Director, as appropriate, of such information that has been made known to the National Marine Fisheries Service, and include a recommendation that the RFMC review the information in regard to possible consideration of removal of that voting member. Concurrently, I will advise the concerned individual of the information and indicate that the information has been provided to the RFMC.

I will ask the Chairman of the Regional Council and/or Executive Director, as appropriate, to acknowledge receipt of this information and respond within 60 days of receipt to describe the action the RFMC proposes to take.

Matters of conduct that may be considered sufficient to advise the RFMC in relation to possible removal are:

- Commission, while a member of the RFMC,
  - o of fisheries violation(s)
  - o of felony violation(s);
- Falsification or purposeful omission of information required for financial disclosure;

THE ASSISTANT ADMINISTRATOR  
 FOR FISHERIES





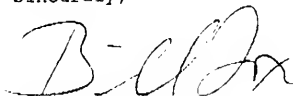
Violations of national security;

- Voting on matters "primarily of individual concern" in which the member has a financial interest; and
- Behavior inconsistent with federal standards of conduct.

The above matters may or may not constitute good cause; I will consider them in context before deciding whether to advise a RFMC of such conduct.

If I advise a RFMC of the existence of good cause for removal of one or more of its members appointed by the Secretary, or if the Council independently becomes aware of good cause, that RFMC should consider whether to recommend to the Secretary the removal of such member or members. If the member in question is a principal State official, the Council should consider whether to make a recommendation to the Governor of a redesignation of that official.

Sincerely,



William W. Fox, Jr.  
(for)



UNITED STATES DEPARTMENT OF COMMERCE  
The Inspector General  
Washington, D.C. 20230

JUN 30 1992

MEMORANDUM FOR: John A. Knauss  
Under Secretary for Oceans and Atmosphere

FROM: Frank DeGeorge *Frank DeGeorge*  
Inspector General

SUBJECT: NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Attached is a report on our investigation into conflict of interest allegations against certain voting and staff members of the North Pacific Fishery Management Council. We are forwarding the report to you because we think it contains information that you should be aware of in your dealings with the Council. The revision of regulations and the need for legislative changes may be indicated by the facts of this particular case.

If you have any questions, please feel free to contact Ric Doery, Assistant Counsel, at 377-1577.

Attachment



UNITED STATES DEPARTMENT OF COMMERCE  
The Inspector General  
Washington, D.C. 20230

JUN 30 1992

MEMORANDUM FOR: Wendell L. Willkie, II  
General Counsel

FROM: Frank DeGeorge <sup>(signed)</sup>  
~~Frank DeGeorge~~  
Inspector General

SUBJECT: NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Attached is a report on our investigation into conflict of interest allegations against certain voting and staff members of the North Pacific Fishery Management Council. We are forwarding the report to you because it exposes some fundamental problems with the operations of the Fishery Management Councils. The Department may be interested in recommending amendments to the Magnuson Act, 16 U.S.C. §§ 1801-1882 (1988), and its implementing regulations, at 50 C.F.R. Part 601.

If you would like to discuss our findings or have any questions, please feel free to have your staff contact Ric Doery, Assistant Counsel, at 377-1577.

Attachment \_\_\_\_\_

JUN 29 1992

MEMORANDUM TO: FRANK DeGEORGE  
Inspector General

FROM: FREDERICK PINCIARO *[Signature]*  
Assistant Inspector General for Investigations

SUBJECT: NORTH PACIFIC FISHERY MANAGEMENT COUNCIL  
Anchorage, Alaska  
National Oceanic and Atmospheric Administration  
CONFLICT OF INTEREST MATTERS  
92DN5-3766

INTRODUCTIONNorth Pacific Fishery Management Council  
Inshore/Offshore Preference Issue

We initiated this investigation upon the receipt of allegations that certain voting and staff members of the NORTH PACIFIC FISHERY MANAGEMENT COUNCIL (NPFMC or the Council) violated conflict of interest laws and regulations. The allegations revolved around the inshore/offshore preference issue (I/O) before the Council. This issue involved a proposal by the NPFMC to amend the Bering Sea/Gulf of Alaska Groundfish Plans by allocating pollock and Pacific cod between inshore and offshore processing interests. The amendment is controversial because it would transfer a large portion of the total allowable catch from at-sea processors (mainly based in Washington State) to shoreside processors in Alaska.

Allegations

We investigated the activities of five individuals. It was alleged that RONALD E. HEGGE and OSCAR DYSON, two voting members of NPFMC, violated conflict of interest statutes when they participated in the deliberations and voted in favor of their personal financial interests on the I/O amendment.

It was also alleged that [REDACTED] (7)(c)  
two former staff members of NPFMC, violated post employment conflict of interest statutes when they accepted employment with LGL Alaska Research Associates, Inc. (LGL), a consulting firm located in Anchorage. Further, [REDACTED] was said to have participated in the I/O amendment at the Council after negotiating for employment with LGL. The amendment was thought to have a financial effect on LGL. [REDACTED] was said to be given (7)(c)  
preferential access to Council information while at LGL and to have helped the staff prepare for discussions on the I/O issue. (7)(c)

Finally, we investigated LAWRENCE P. COTTER, a voting member of the Council, who had a contract with a consortium of companies that would directly benefit from the amendment.

### Legal Background

Although we uncovered abuses, our investigation did not substantiate any violations of criminal laws. We found that conduct that is forbidden under criminal conflict of interest laws in other contexts is permitted under the laws establishing the NPFMC and the other regional councils. The legal framework governing NPFMC operations makes this possible: it anticipates conflicts of interest but establishes an exempting mechanism for the Council's voting members and Executive Director.

The NPFMC is one of eight regional councils established by the Magnuson Fishery Conservation and Management Act, as amended (Magnuson Act), 16 U.S.C. §§ 1801-1882. Regulations promulgated under the Act require that Council members be knowledgeable and experienced in one or more specified areas, including harvesting, processing, or marketing fish. Required experience may also involve holding office in or leading a State, regional, or national organization representing any of these interests. 50 C.F.R. § 601.33.

The regulations, at 50 C.F.R. § 601.35, make clear that Council employees are subject to most federal conflict of interest laws, including 18 U.S.C. § 208 (actions affecting personal financial interests) and § 207 (post employment conflicts). However, the Magnuson Act, 16 U.S.C. § 1852(k)(7), and regulations, 50 C.F.R. § 601.37(b), exempt the voting members of the Council and its Executive Director from 18 U.S.C. § 208 if they disclose financial interests they hold that may come within the jurisdiction of the Council.

The regulations, at 50 C.F.R. § 601.35(b)(4), prohibit Council employees from maintaining financial interests that conflict with their duties. Also, under 50 C.F.R. § 601.35(b)(8), Council members are prohibited from participating in (i) particular matters primarily of individual concern in which they have a financial interest, and (ii) matters of general public concern that are likely to have a direct and predictable effect on their financial interests, unless those interests are properly disclosed.

We report the following findings in the context of these standards.

RONALD E. HEGGEAllegations

By a 9 to 2 vote, the NPFMC decided at its June 1991 meeting to allocate the total groundfish catch. This decision favored inshore interests, allocating to them 35 percent of the groundfish catch in the Gulf of Alaska during the first year of a three-year plan. We examined an allegation that Council member RONALD E. HEGGE personally benefitted when he voted on the I/O issue. The NPFMC defined "inshore" facilities to include all commercial fishing vessels of less than 125 feet in length, leaving longer boats in the "offshore" category. It was alleged that HEGGE voted in favor of this measure, which was tailor-made for three boats he owned.

Findings

HEGGE disclosed in financial disclosure statements filed with the NPFMC that he has a financial ownership in three commercial fishing vessels described as freezer/longliners (boats that use hook and line gear). Those vessels include two 78 foot freezer longliners and one 56 foot longline-crab vessel. He also reported interests in two businesses, Sea Source, and Sitka Fishing Co., and three fishing vessels named Rebecca B., Melissa Beth, and Michelle Ann.

HEGGE told the reporting agent that he and his wife, KATHLEEN HEGGE, owned 95 percent of the 78 foot Rebecca B., and their son, MATTHEW HEGGE owned the remaining 5 percent. The disclosure statement indicated that RONALD and KATHLEEN HEGGE owned 50 percent of the 78 foot Melissa Beth, while HAROLD and MIG THOMPSON owned the other 50 percent. RONALD and KATHIE HEGGE own 51 percent of the 56 foot Michelle Ann, and MATTHEW HEGGE owns the remaining 49 percent.

HEGGE has a family owned business called the Sitka Fishing Company. The Sitka Fishing Company administers the federally required insurance needs for his vessels, providing insurance at a lower cost than buying insurance from other companies. HEGGE also has a fishing business called Sea Source, Inc., which manages the three family-owned fishing boats and pays the skippers and crews. HEGGE operates both businesses from his residence in Anchorage, Alaska.

HEGGE did vote in favor of allocating groundfish. But he stated that he made it plain during the deliberations on the I/O issue that he owned interests in longliner boats, and that he has done so at other NPFMC meetings. Contrary to allegations, he said he did not attend any meetings to discuss the I/O issue in advance of Council deliberations (there were no such meetings) and did

not discuss his vote on the I/O issue with anyone else. HEGGE said there was no attempt by anyone at NPFMC to sway his vote one way or another.

HEGGE claimed that the final vote by NPFMC did not really affect him. His three boats catch from 20,000 to 30,000 pounds of fish in the area affected by the I/O amendment, while his boats catch about 1,500,000 pounds of fish outside this area, in the Bering Sea. He said the amount of fish he catches in the Gulf of Alaska does not represent much of his total catch and, therefore, the I/O decision does not really affect him. HEGGE said he will not change his operation if the measure is approved by the Secretary of Commerce; he will continue to fish mostly in the Bering Sea.

HEGGE said he was not required to abstain from the I/O vote just because he owned three fishing vessels. He once abstained from a vote on an education issue for longliner boats, and was severely criticized by the longliner industry who thought he had "let them down." HEGGE believed that he has done nothing unethical by participating in NPFMC discussions and voting on important issues since he declared his interests and reminded the Council during meetings that he has a personal interest in the matters being discussed. He was responsible for exercising his judgment to vote for the best interests of all parties involved, including voting logically to best preserve fisheries resources.

Records maintained by the Corporations Sections, Department of Commerce & Economic Development, State of Alaska, Juneau, Alaska, corroborated HEGGE's interests in Sea Source, Inc. and the Sitka Fishing Co., as reported on his financial disclosure statements. A cross reference check for the names of RONALD E. HEGGE and [REDACTED] revealed no business interests in Alaska other than these two companies. There were also no corporate listings for [REDACTED]

We reviewed National Marine Fisheries Service (NMFS) records on boats of 125 feet in length or less that are engaged in the groundfish business. The 1991 list encompasses 95 boats, including the three boats owned by HEGGE. The NMFS list did not contain any other boats owned by HEGGE.

We reviewed the transcripts of the meetings at which the Council decided to include boats of 125 feet or less in the "inshore" definition. HEGGE did tell the Council that he owned vessels that would be affected by the decision. The transcripts also show that it was Larry Cotter, another voting member, who introduced the 125 foot definition, not HEGGE. HEGGE thought the Council should adopt a limit on the amount of fish caught, but he went with the majority on the 125 foot definition when it came up for a vote.

Conclusion

RONALD HEGGE voted on a matter before the NPFMC in which he had financial interests. However, because he disclosed his interests in the fishing vessels affected by the Council's decision, he is exempt from the conflict of interest provisions of 18 U.S.C. § 208 and 50 C.F.R. § 601.35(b)(8)(ii). HEGGE did not violate 50 C.F.R. § 601.35(b)(8)(i) by voting on the 125 foot "inshore" definition because this issue affected a large class of boat owners, and is therefore not a "particular matter primarily of individual concern."

OSCAR DYSONAllegation

We examined an allegation that OSCAR DYSON, a voting member of NPFMC, participated in the I/O issue, including the decision to amend the "inshore" definition to include vessels of 125 feet or less, even though he owns vessels of less than 125 feet and is the vice president and part owner of All Alaskan Seafoods, Inc. (All Alaskan). All Alaskan is a seafood processing company that stood to benefit from the vote.

Findings

We determined that DYSON owns a 6.7 percent interest in All Alaskan, a commercial fishing processor headquartered in Seattle, Washington. All Alaskan owns an inshore processing facility, located in Kodiak, Alaska, one floating processor (motor vessel), and a crab processing barge.

(7)(C) DYSON said he is not involved in the daily operations of the firm because he is [redacted] years of age and is a retired fisherman. He said All Alaskan uses its floating processor primarily to process salmon and crab. It functions like an offshore mothership with the important exception that it processes fish within the territorial waters of Alaska (within three miles of shore).

The All Alaskan inshore facility currently processes crab, salmon, pollock, Pacific cod, sole, rockfish, red snapper, and other species of fish, depending on the season. Salmon constitutes the largest portion of the business' operation.

(7)(C) DYSON declared his ownership in All Alaskan and a company known as Peggy Jo, Inc., on financial disclosure statements. He also declared his ownership in the 99-foot catcher boat called the Peggy Jo. DYSON did not disclose his affiliation with [redacted] Inc., because it is a non-



profit organization from which he does not receive any financial compensation.

We reviewed records at the Corporations Sections, Department of Commerce & Economic Development, State of Alaska, in Juneau, which corroborated DYSON's financial interests in All Alaskan and Peggy Jo, Inc. A cross reference check for the name of OSCAR DYSON did not reveal ownership in any other corporations. Records maintained by NMFS showed that the vessel Peggy Jo is included in the 1991 list of groundfish industry boats up to 125 feet in length. There are 95 vessels on the list, all of which come within the Council's definition of an "inshore" interest, as mentioned above.

DYSON admitted that he participated in the I/O issue and in the 125 foot "inshore" amendment. He said his primary concern was to protect the groundfish resource. Some of his decisions benefitted him, and some have not. DYSON said the Magnuson Act allows voting members to have financial interests in the work of the Council because the Council needs knowledgeable members to make informed decisions.

Richard B. Lauber is the chairman of NPFMC and he is a voting member. Lauber said he has never seen any "skullduggery" from NPFMC members on any issue, even though some of the members have had personal opinions on certain issues. Lauber maintained that if any unethical conduct had ever occurred at NPFMC meetings, someone would have reported it to him, and that has not happened.

Lauber said both HEGGE and DYSON have declared their interests on disclosure statements. He recalled that HEGGE even reminded the NPFMC during the June 1991 meeting about his commercial fishing vessels: HEGGE's interests were not secret. Lauber said there is no prohibition against either HEGGE's or DYSON's voting on the I/O issue.

Lauber said neither HEGGE or DYSON are the kind of people who would organize a coalition to lobby for any issue. He saw no evidence that either HEGGE or DYSON attempted to influence the votes of other NPFMC members during the June 1991 meeting.

### Conclusion

OSCAR DYSON voted on a matters before the NPFMC in which he had a financial interest. However, he disclosed his financial interests in activity within the jurisdiction of the Council, and is therefore exempt from the conflict of interest provisions of 18 U.S.C. § 208 and 50 C.F.R. § 601.35(b)(8)(ii). DYSON did not violate 50 C.F.R. § 601.35(b)(8)(i) by voting on the 125 foot "inshore" definition because this issue affected a large class of boat owners. It is not a "particular matter primarily of individual concern," as previously mentioned.

[REDACTED]

### Allegations

[REDACTED] is a former Council staff employee who worked on the I/O issue while employed at the Council. [REDACTED] left the Council to work for a consulting firm, LGL Alaska Research Associates, Inc. (LGL), where he was alleged to have worked on the I/O matter and been given special access to Council staff. It was also said that he helped Council staff prepare for the I/O deliberations.

### Findings

During 1990 and 1991, four NPFMC staff employees left NPFMC for employment with LGL, a wildlife consulting firm located in Anchorage. Those employees were [REDACTED] and [REDACTED]

[REDACTED] of LGL, had decided by the end of 1989 to hire additional staff to handle increasing client needs in fisheries consultation. In May 1990, [REDACTED] hired [REDACTED] from NPFMC. [REDACTED] was a certified fisheries scientist who had experience performing fisheries assessments as a member of the NPFMC staff.

The Pacific Seafood Processors Association (PSPA) is a trade association, located in Seattle, Washington, that represents inshore processing interests in Alaska. In the latter part of 1990, [REDACTED] PSPA's [REDACTED] retained LGL to analyze the NPFMC's I/O study when it became available for public review and comment. The study, in the form of a Supplemental Environmental Impact Statement (SEIS), was designed to evaluate the economic, biological, and sociological consequences of the Council's alternative recommendations on the groundfish industry. The PSPA and most other interested parties were primarily interested in the economic ramifications. The draft SEIS was released by the Council in April 1991.

[REDACTED] is a fisheries economist who was employed by the NPFMC from September, 1987 through March 4, 1991. As a Council economist, [REDACTED] worked on the initial design of the analytical database the Council used to evaluate the I/O issue. He helped code data from a survey of groundfish industry fishermen.

[REDACTED] resigned from his Council staff position on December 22, 1990, but remained on NPFMC's payroll until March 4, 1991 by expending his accrued annual leave and compensatory time. He

began working for LGL on March 5, 1991. ██████████ said that at the time he was working at the Council, he did not know that LGL would contract with PSPA.

One of ██████████ first projects was analyzing the economic aspects of the Council's SEIS for LGL's PSPA contract. ██████████ conducted some background research for LGL on groundfish during March 1991. ██████████ told the reporting agent that he attended public Council meetings in March and April concerning the groundfish industry and attended a lecture at NPFMC. He said he occasionally asked NPFMC staff questions on how they arrived at certain conclusions in the SEIS. He denied that he was given preferential treatment or obtained any non-public information from any Council employee. The NPFMC released the I/O SEIS for public review at its April 1991 meeting. (7)(C)

Clarence Pautzke, Executive Director of the NPFMC, told the reporting agent that ██████████ was not present at any non-public staff meetings at which the I/O issue was discussed, and that ██████████ was not granted access to any non-public or proprietary information on the I/O issue. ██████████ and ██████████ NPFMC economists, said they met with ██████████ to discuss the economic model the Council used to analyze the I/O issue prior to the Council's April 1991 meeting. They too both said ██████████ neither asked for nor received information from the Council that was not available to the public. Neither Pautzke, ██████████ nor ██████████ said that ██████████ attempted to influence their work on the I/O issue. (7)(C)

██████████ completed his critique of the economic analysis and conclusions of the SEIS in June 1991, after the SEIS was published and before the Council vote on the I/O issue. ██████████ an independent consultant from British Columbia, Canada, critiqued the biological portion of the SEIS for LGL. (7)(C)

In 1991 LGL provided consulting services on contracts totaling ██████████. The PSPA paid LGL about \$29,000 for the critique of the SEIS. PSPA was one of ██████████ active LGL clients for that year. Investigation did not disclose that there were any contracts either between LGL and NPFMC or between PSPA and NPFMC. (4)

#### Conclusion

██████████ worked on the I/O issue first as a member of the Council staff and then for a consulting company. He did not violate 18 U.S.C. § 207 by working for the consulting company because the I/O issue was not a particular matter involving specific parties. Further, we did not substantiate that ██████████ represented LGL in an attempt to influence the Council on a matter in which he participated while working for the Council. This investigation did not uncover evidence that ██████████ either (7)(C)

sought or received confidential or privileged information from the NPFMC or helped Council staff prepare for deliberations on the I/O issue.

Allegations

██████████ is a former employee of the NPFMC. He served as ██████████ the team that analyzed the I/O issue for the Council. We received an allegation that in early 1991 ██████████ announced his resignation from the Council to work for LGL Associates where, it was alleged, he developed business from PSPA and the Council. ██████████ did not leave his Council position, however, until July 1, 1991, after the Council vote on the I/O issue.

Findings

██████████ had overall responsibility for analyzing the I/O issue and drafting recommendations for the Council. He decided how to study the groundfish industry, coordinated teams to do the work, and oversaw the project's development.

██████████ told us that during his ten years at the NPFMC, he saw the potential for a consulting firm that offered services in fishery management resources. He discussed his ideas for a consulting "think-tank" with ██████████ while both were employed at NPFMC. ██████████ and ██████████ had been friends for years and shared an interest in forming a consulting business. ██████████ told ██████████ ██████████ of LGL, that ██████████ was interested in employment with LGL, and ██████████ offered ██████████ a position in late March or early April, 1991.

██████████ advised Clarence J. Pautzke, Executive Director of NPFMC of his plans to work for LGL, but he volunteered to remain at NPFMC until the I/O issue came before NPFMC for final action in June 1991. Pautzke and ██████████ agreed that ██████████ would stay at NPFMC through the first week of July 1991, to finish his work. Pautzke announced ██████████ departure for LGL in the April NPFMC newsletter. After announcing his departure, ██████████ handed out LGL business cards at the Council. He told the reporting agent he did so to let his associates know how to contact him when he left. None of the people we spoke to told us otherwise.

██████████ began work at LGL in the second week of July. However, he remained on NPFMC's payroll until September 1991, when his annual leave was exhausted. ██████████ said he has not worked on any PSPA contract for LGL; LGL's ██████████ provided ██████████

timesheets, which showed that [REDACTED] did not work on a PSPA contract. As mentioned above, LGL's consulting work for PSPA was only a small portion of the services LGL performed in 1991. LGL did no consulting work for the Council.

Pautzke asked [REDACTED], Attorney-Advisor for the National Oceanic and Atmospheric Administration (NOAA), Juneau, Alaska, for advice on whether [REDACTED] would violate conflict of interest laws by working for LGL. [REDACTED] requested an opinion from the Office of General Counsel on whether [REDACTED] work for LGL would violate post employment conflicts laws.

Barbara S. Fredericks, Assistant General Counsel for Administration, drafted a memorandum dated November 22, 1991, stating that the post employment restrictions of 18 U.S.C. § 207 do not prohibit [REDACTED] from working for a consulting firm that provides analytical services or from making a presentation to the Council. The basis for this position is that § 207 prohibits only representational activities, and to the extent that [REDACTED] only consults for LGL, he does not provide representational services. Further, [REDACTED] may present his analysis to the Council because the fishery management plan [REDACTED] worked on at the Council is a matter of general policy, not a particular matter involving specific parties. [REDACTED] stated that he believed this memorandum applied to him as well.

#### Conclusion

[REDACTED] worked on the I/O issue at the Council and subsequently accepted employment with LGL, where it appears he did not work on the I/O issue. Even if he worked on the I/O issue for LGL, that would not constitute a violation of 18 U.S.C. § 207 for the reasons cited in the OGC opinion.

While [REDACTED] may not have run afoul of 18 U.S.C. § 207 he may be culpable under other statutes and regulations. Though we are not certain about the nature of [REDACTED] work at LGL, we know that after he accepted employment with that firm, he worked on the I/O issue at the Council.

[REDACTED] At a minimum, [REDACTED] actions clearly conflicted with the fair and impartial conduct of his Council duties, thus violating 50 C.F.R. § 601.35(b)(4).

LAWRENCE P. COTTERAllegations

In the course of gathering information in Alaska, we uncovered information that raised suspicions about certain activities of LAWRENCE P. COTTER. We investigated whether and when COTTER, a voting Council member, had financial interests in companies that stood to benefit from the Council's decision on the I/O issue. We also sought to determine how expenses for a lobbying trip to Washington by COTTER were paid for.

Findings

COTTER is a voting member of the Council and is the sole owner of Pacific Associates, a fisheries consulting business. Documents we reviewed show that Pacific Associates entered into a consulting contract with a consortium of five inshore seafood processors that would be affected by the Council's decisions on the I/O issue. The five processors represent well over a majority of the inshore processing capacity in Alaska: Trident Seafoods, UNISEA, Inc., Dutch Harbor Seafoods, Ltd., Alyeska Seafoods, and Westward Seafoods. COTTER told us that he did not discuss his contract with the consortium until September, 1991. The documents we reviewed showed that one member of the consortium paid COTTER \$10,000 in mid-September and the others paid him in October. COTTER said the September payment was probably made in anticipation of reaching an agreement, and that he did not deposit the check until October. The total contract price was \$40,000 plus travel and associated expenses.

COTTER and most of the members of the consortium signed the contract in October, 1991; COTTER's work on the contract continued into 1992. The contract called for an analysis of the different uses of crab waste. COTTER produced a report, dated January 1992. At the present time, we are unable to estimate the report's value or the time expended in producing it.

COTTER told the reporting agent that he traveled to Washington, D.C. in the end of October, 1991 to discuss the I/O issue with Alaska's U.S. senators. He said he paid for the trip with his own money and did not charge the NPFMC for expenses. The members of the seafood processing consortium made individual payments to Pacific Associates just before the trip to Washington. However, we did not find payments to COTTER or Pacific Associates from the consortium that specifically matched the amounts of the trip, i.e., we did not substantiate that any payments to Pacific Associates were for the lobbying trip. The consortium did pay COTTER separately for expenses for a trip to New Jersey he made in connection with the crab waste contract. NPFMC documents do not reflect payment to COTTER for the trip.

The Council regulations require Council members to update their financial disclosure forms "at any time a reportable financial interest is acquired or the financial interests are otherwise substantially changed." COTTER disclosed his contract with the consortium in a Statement of Financial Interests on November 5, 1991. He told us that he thought he was allowed a 30 day grace period to report new financial interests and said that at the time he made his disclosure he thought he was in compliance with the regulations.

#### Conclusion

COTTER participated in the I/O issue as a member of the Council and entered into a contract with a consortium of companies that would benefit from the implementation of the Council's recommendations. We did not develop information that COTTER performed any work for the Council on the I/O issue during the period after entering into contract negotiations with the seafood processing consortium and before disclosing his financial interest in November, 1991. Thus, we did not establish any violation of 18 U.S.C. § 208 or 50 C.F.R. § 601.35(b)(8)(ii). The mid-September payment by a member of the consortium is troubling. The contract was not entered into until approximately three weeks later, and precontractual payments are unusual. However, we do not have information that the payment was made for a purpose other than COTTER's consulting work, as indicated by the company. Therefore, we have no basis for alleging any violation of 18 U.S.C. §§ 201 or 209.

COTTER traveled to Washington to discuss his views on the I/O issue with U.S. senators. We determined that the NPFMC did not authorize or pay for the trip. Further, we did not substantiate that the consortium paid him for lobbying services. The law does not prohibit any appearance of a conflict of interest that might arise from COTTER's lobbying senators at a time when he has a financial interest in a group of companies that would benefit from his efforts.

#### REFERRAL TO U.S. ATTORNEY'S OFFICE

The results of this investigation were referred to the Criminal Division of the U.S. Attorney's Office, Anchorage, Alaska. Prosecution was declined on HEGGE, DYSON, [REDACTED] and COTTER. 7/90



## **SOUTHEASTERN FISHERIES ASSOCIATION, INC.**

ALABAMA • FLORIDA • GEORGIA • LOUISIANA • MISSISSIPPI • NORTH CAROLINA • SOUTH CAROLINA • TEXAS

312 EAST GEORGIA STREET • TALLAHASSEE, FLORIDA 32301-1781 • PH. (904) 224-0812 • FAX (904) 222-FOOD (3663)

ROBERT P. JONES, EXECUTIVE DIRECTOR

March 15, 1993

The Honorable Thomas J. Manton, Chairman  
 Subcommittee on Fisheries Management  
 Room 203 Cannon House Office Bldg.  
 Washington, D.C.

Dear Mr. Chairman:

We notice that you will be conducting a Hearing concerning "Allegations of conflict of interest involving members of the Regional Fishery Management Councils" on March 23 and would like to offer comments for consideration.

In 1976, when MFCMA was being discussed and during passage and implementation, it was always understood by the commercial fishing industry that part of the membership of the Regional Fishery Management Councils would be composed of persons engaged in commercial fishing and therefore knowledgeable of the myriad fisheries in the newly created federal fishery zone.

It was further understood representatives from recreational, scientific and ecological groups would also be members of the Councils and would operate within the parameters established by the Act itself.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

We viewed the system as putting Council members in a "big box" in order for them to dynamically discuss and debate fisheries issues. The Council would then make RECOMMENDATIONS to the Secretary of Commerce for his final decision.

The one constant control of this system was the Council members couldn't get out of the box. They had to recognize the confines of the law and then their recommendations were to be reviewed by the Secretary of Commerce who would, among other things, make sure the seven National Standards were adhered to and all other applicable laws complied with.

Under original concept, it didn't matter if a boat captain or processor or marina operator or pleasure boat manufacturer served on the Council because the product of the collective work was to be an FMP RECOMMENDATION to the Secretary of Commerce who has legal responsibility to determine if the RECOMMENDED FMP was legal. After such a determination the Secretary would write and publish the regulations. This is the kind of check and balance which makes government work.

What is killing the MFCMA is that former Secretaries of Commerce have abrogated their responsibilities to the Director of the National Marine Fisheries Service.

27

28

29

30 With this abolition of checks and balances within the fisheries  
31 management system what we have now in NOAA amounts to a  
32 dictatorship or at least a fiefdom where sportfishing friends are  
33 rewarded and commercial fishing enemies punished. This is not a  
34 good way to run our government.

35

36 What we hope you look at during your Hearing is the difference  
37 between Councils. There is no way anybody can compare the Alaska  
38 Council with any other Council. There is no way you can compare  
39 the Pacific Council with the South Atlantic Council. Two  
40 different worlds.

41

42 As an aside, on the South Atlantic Council for instance, the  
43 State of South Carolina has still never had a fulltime commercial  
44 fishing representative as a member of that elite group during the  
45 entire 18 years of its existence.

46

47 As a matter of fact, the Vice-Chairman of the South Atlantic  
48 Council is also a leader of a petition drive to ban all gillnets  
49 in Florida waters and prohibit all nets greater than 500 square  
50 feet inside three miles of shore on the Gulf of Mexico side of  
51 Florida.

52

53 Hardly a fair person to commercial fishing but we can live with  
54 him if we only had equal representation of commercial fishing  
55 representatives who could debate the issues at Council meetings  
56 and have a vote on the FMP the Council submits to the Secretary  
57 of Commerce for final approval and regulations.

58

59

60 There are two commercial fishing representatives on the 13 member  
61 South Atlantic Fishery Management Council. Because of this  
62 flagrant imbalance, the commercial harvesters are being squeezed  
63 out of federal waters. As a result of this power play, non-  
64 boaters and inland states consumers ability to purchase and eat  
65 fresh fish from federal waters in the South Atlantic Ocean is  
66 being denied?

67

68 What needs to happen, in our opinion, is for Congress to put the  
69 Secretary of Commerce back in the fish business.

70

71 Rollie Schmitten, the new head of NMFS, is a very competent and  
72 honest person who would like to make needed changes within the  
73 agency. Unfortunately, his predecessor, Dr. William W. Fox Jr.,  
74 resigned as AA for Fisheries at NMFS and burrowed into the bowels  
75 of the agency and now he can't be touched because of his  
76 political clout. There are other Fox students being brought into  
77 the agency and are being groomed, without Schmitten's approval I  
78 assume, for future policy making roles. A tragedy in the offing.

79 If Congress removes commercial fishing representatives within the  
80 Fishery Management Council process under the guise of "conflict  
81 of interest", it will be validating the hypothesis that sport  
82 fishing money can control anything. We pray such a validation  
83 does not occur on your watch.

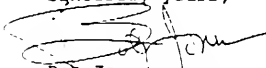
84

85 When Congress passed PL 94-265, it established a federal fishing  
86 zone that was to provide food, jobs and recreational opportun-  
87 ities for following generations of citizens. MPCMA is not  
88 working. Removing commercial fishing industry expertise will only  
89 make things worse.

90

91 I would be glad to meet with you anytime or to answer any  
92 questions you or members of your Committee or staff might have. I  
93 have been fighting in the trenches of the "fish wars" since 1964.  
94 I served two terms on the Gulf of Mexico Fishery Management  
95 Council and am a past chairman of that group. I was active in the  
96 Oceans Affairs Advisory Committee in the 1960's and 70's. I have  
97 a 30 year corporate memory in fisheries issues and records to  
98 match. They are both available to you for the asking.

Sincerely yours,



Bob Jones  
Executive Director

mu

cc: Southeastern Congressional Committee Members  
Officers, Directors & Past Presidents, et al.



STATE OF WASHINGTON

## OFFICE OF THE GOVERNOR

P.O. Box 40002 • Olympia, Washington 98504-0002 • (206) 733-6780

March 10, 1994

The Honorable Ron Brown  
 Secretary  
 U.S. Department of Commerce  
 14th Street and Constitution Avenue N.W.  
 Washington, D.C. 20230

Dear Secretary Brown:

As is customary under the Magnuson Fishery Conservation and Management Act (MFCMA), you have asked me for nominations to positions on both the North Pacific and Pacific Fishery Management Councils. I am prepared to comply with your request but want to do so only with a better understanding of how we can coordinate our actions to increase public trust in the operation of the management councils.

I request an extension of time to submit nominations so that we first can discuss the Administration's positions on the real or perceived conflicts of interest present on management councils.

As you are aware, my familiarity with the importance of the councils dates to my membership on the Merchant Marine and Fisheries Committee of the House of Representatives and is deepened by Washington State's extensive stake in fisheries issues. It is my belief that the industry, dependent upon and represented by the councils, concurs in the need to rebuild public confidence and trust in their management.

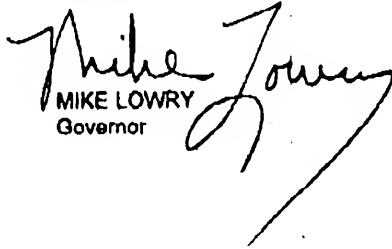
In part, the public is looking to the character of individuals appointed to the councils to ensure that actual, potential or perceived conflicts of interest are removed. I want to respond to these public values by nominating persons who will be viewed as objective managers. Yet I recognize that, without similar actions by my fellow governors, such action would only serve to increase the influence of the vested interests remaining on the councils and disadvantage those in my state who depend on council actions for their livelihoods.

The Honorable Ron Brown  
March 10, 1994  
Page 2

The dilemma makes clear the need for coordinated, federal leadership to transition the councils from their existing stature to one of public trust. While Congressional initiatives in the reauthorization of the Act may help, I believe the Administration should be striving to restore public trust in the fishery management councils. This is a problem that you inherited and I believe is essentially every participants, including the states, fault.

I look forward to discussing with you and Department of Commerce officials opportunities to improve the council process. Please be assured that I am prepared to support and contribute to a transition of the councils I believe is necessary to restore public trust and confidence.

Sincerely,

  
MIKE LOWRY  
Governor



The  
Marine  
Fish  
Conservation  
Network

" To Protect, Restore, and Conserve Marine Fisheries "

March 11, 1994

The Honorable Thomas Manton, Chair  
Subcommittee on Fisheries Management  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Manton:

With a Subcommittee on Fisheries Management hearing scheduled for March 23 on allegations of conflict of interest involving members of Regional Fishery Management Councils, I would like to submit to you the Marine Fish Conservation Network's suggestions regarding this fundamental problem facing management of U.S. fisheries.

I've also enclosed a copy of an article you may have seen that appeared on the front page of the New York Times a few days ago. The Network plans to secure more media and public attention on these important public resource issues over the next several months.

The status quo that has predominated in management of our nation's fisheries must change if our country is to have economically viable fisheries and ecologically sound marine ecosystems. The Network, now comprised of more than 65 fishing and conservation organizations around the country, looks forward to working with you to ensure that we have fish for the future: to catch, to eat, and to help maintain the integrity of the ocean ecosystems.

Thank you.

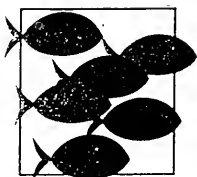
Sincerely,

Bill Mott  
Campaign Director

*Steering Committee*

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

1725 DeSales Street, N.W., Suite 500 • Washington, DC 20036 • Tel. (202) 857-3274 • Fax (202) 872-0619



## The Marine Fish Conservation Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

The following organizations have formally endorsed the Network's Agenda as of March 11, 1994:

Alaska Longline Fishermen's Association  
Alaska Marine Conservation Council  
Alliance of Rhode Island Saltwater Fishing Clubs  
American Oceans Campaign  
Atlantic Coast Conservation Association of Georgia  
Atlantic Coast Conservation Association of Virginia  
Atlantic Salmon Federation  
Bass Anglers Sportsman's Society  
The Billfish Foundation  
Caribbean Conservation Corporation  
Carrying Capacity Network  
Center for Marine Conservation  
Chesapeake Bay Foundation  
City of St. Paul/Bering Sea Coalition  
Coastal Waters Project  
Columbus (OH) Zoological Gardens  
Conservation Law Foundation  
Deep Pacific Fishing Company  
Environmental Defense Fund  
Fish First  
Fish Unlimited  
Fisheries Defense Fund  
Florida League of Anglers  
Ga. Dept. Natural Resources, Coastal Resources Div.  
Greenpeace  
Hawaii Fishermen's Foundation  
Hawaiian International Billfish Association  
International Game Fish Association  
Jersey Coast Anglers Association  
Maine Lobsterman's Association  
Maryland Saltwater Sportfishermen's Association  
Massachusetts Audubon Society  
Massachusetts Wildlife Federation  
Mystic River-Whitford Brook Watershed Association  
The National Aquarium (DC)  
National Association of Underwater Instructors  
National Audubon Society

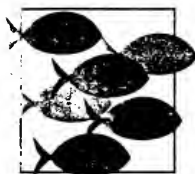
National Coalition for Marine Conservation  
National Fishing Association  
Natural Resource Consultants (Idaho)  
Natural Resources Defense Council  
New England Aquarium  
New England Coast Conservation Association  
New York Sportfishing Federation  
North Pacific Fisheries Protection Association  
North Pacific Longline Association  
NYZS/The Wildlife Conservation Society  
Oregon Natural Resources Council  
Oregon Trout  
Oregon Wildlife Federation  
Pacific Center for International Studies  
People for Puget Sound  
Project ReefKeeper  
Salt Water Sportsman Magazine  
Save Our Shores  
Sierra Club  
Society for Conservation Biology  
The Sounds Conservancy  
Sport Fishing Institute  
Trustees for Alaska  
United Anglers of California  
World Wildlife Fund

*Steering Committee:*

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

1775 DuPont Street, NW, Suite 500 • Washington, DC 20036 • Tel: (202) 837-3274 • Fax: (202) 872-0619





The  
Marine  
Fish  
Conservation  
Network

*"...To Protect, Restore, and Conserve Marine Fisheries."*

*Proposed Amendments to the  
Magnuson Fishery Conservation and Management Act of 1976*

**Objective - REFORM THE REGIONAL  
FISHERY MANAGEMENT COUNCILS**

The Marine Fish Conservation Network believes that reform of the Regional Fishery Management Councils is a fundamental issue for reauthorization of the Magnuson Act. We recommend amending the Act to ensure a fairer representation of the broad public interest among Council membership, and to prohibit Council members from voting on issues in which they have an economic interest.

Summary of the Problem

The Regional Fishery Management Council system, whereby management decisions are made at the regional level, as close to the fishers and other interested members of the public as possible, is a cornerstone of the Magnuson Act. However, by including active fishing industry representatives as voting members of the Councils, Congress also paved the way for potential conflicts of interest in fishery management decisions. Individuals cannot be expected to vote objectively when their financial interests are at stake and, in fact, there have been numerous cases of conflict of interest throughout the Council system.

As adopted by Congress, the Act originally established mechanisms for reducing conflicts of interest. The National Standards, Secretarial and judicial review, and the requirements of the Federal Advisory Committee Act (FACA) and Title 18 of the U.S. Code, §208 (the rules prohibiting government employees from engaging in conflicts of interest), all could be used to address the problem. However, over time these safeguards were eroded to such a degree that there are now few constraints on Council members.

As a result of various re-authorizations of the Act, Councils are no longer subject to FACA or 18 U.S.C. §208. While the Act requires voting members to disclose information concerning economic interests in fisheries, the requirement does not prohibit them from voting on matters affecting those interests. Furthermore, the courts have been reluctant to challenge the expertise of the Councils and advisory committees, leaving only procedural matters and cases of "arbitrary and capricious" actions for judicial review.

Meanwhile, fishing interests dominate the Councils. Language added in 1986 directed the Secretary of Commerce to give priority for Council membership to active participants in fisheries or their representatives over those simply knowledgeable individuals. Non-fishers

*Steering Committee:*

Center for Marine Conservation • Greenpeace • National Audubon Society • National Coalition for Marine Conservation • World Wildlife Fund

1725 DeSales Street, NW, Suite 500 • Washington, DC 20036 • Tel. (202) 857-3274 • Fax (202) 872-0619

experienced in fisheries conservation and management, therefore, frequently would not meet the qualifications for membership on the Councils. While that requirement has since been modified so that knowledge of conservation and management may be considered sufficient experience to be a voting Council member, there is still inadequate non-user representation on the Councils.

Finally, many observers of the Council system have noted that another source of conflict of interest is the designated state official. These individuals, by virtue of their positions as state employees, are often beholden to the dominant political/constituent interests in their home states, and therefore may be constrained from voting in an objective manner. This additional potential for conflict among designated Council members only serves to underscore the need to reduce the potential for conflict of interest among Council appointees.

#### Needed Action

The Marine Fish Conservation Network views reform of the Council system as necessary to the attainment of the conservation objectives of the Act. The Network's proposals are designed to improve the existing system of fisheries management. We offer these as a preferred alternative to proposals being advocated by some which would completely overturn and re-structure the Council system. In order to make the present system work, we recommend the following:

- prohibit members from voting on matters relating to a fishery in which they have a financial interest;
- authorize the Secretary to remove any Council member for violating disclosure and conflict of interest provisions, and provide the Secretary with the authority to reject a plan or amendment whose passage was contingent on a conflict of interest vote;
- provide the Secretary with adequate tools for determining conflicts of interest;
- increase participation of knowledgeable individuals who are not actively involved in the fisheries; and
- enhance the role of advisory panels as a means to provide information to the councils and to encourage participation by knowledgeable individuals early in the council discussion process.

Objective - REFORM THE  
REGIONAL FISHERY MANAGEMENT COUNCILS

Amendments Suggested by the Marine Fish Conservation Network:

• §302(b). VOTING MEMBERS

Amend (2)(B) as follows --

The Secretary, in making appointments under this section, shall, to the extent practicable, ensure a fair and balanced apportionment, on a rotating or other basis, of the active participants (or their representatives) in the commercial and recreational fisheries under the jurisdiction of the Council. In addition, the Secretary, in making appointments under this section, shall ensure that no fewer than 25% of the appointed members of each Council are persons selected for their fisheries expertise, as demonstrated by university, environmental organization, or other non-user group affiliation and by past actions and accomplishments.

Add to paragraph (5) at the end of the first sentence -- or if the Secretary makes a written determination, including a statement of the reasons for such determination, that the member has violated conflict of interest provisions of subsection (k) of this section as amended.

• §302(e). TRANSACTIONS OF BUSINESS (new - renumber)

(2) Each decision of the Council shall be recorded through a roll call vote such that the vote of individual members is registered and forwarded with the decision to the Secretary for review under §304.

• §302(k). DISCLOSURE OF FINANCIAL INTEREST

Add AND RECUSAL at end of section heading.

Rewrite paragraph (2)(B) as --

the spouse, [minor] children, grandchildren, parents, or partner of that individual;

Add a new subsection (5)(C) --

be kept on file with the Secretary for use in reviewing Council actions as required under §304 and made available for public inspection at reasonable hours.

Amend paragraph (6) as --

The participation by an affected individual referred to in paragraph (1)(B) or (C) in an action by a Council during any time in which that individual is not in compliance with the regulations prescribed under [paragraph (5) may not this subsection (§302(k)) may be treated as cause for the invalidation of that action if the vote of that individual was necessary for approval of that action under subsection (e).

Strike paragraph (7). {Exemption from 18 U.S.C. §208}

Add new paragraph (7) -- A Council member holding a financial interest requiring disclosure under provisions of this subsection shall recuse him or herself from voting

on or participating in all Council actions that would affect such financial interest. Council members and the public may submit, in writing, a challenge to the vote of any Council member for violation of this provision to the Secretary for review under §304.

· **§304. ACTION BY THE SECRETARY**

Add paragraph (2)(D) under subsection (a) --  
evaluate the action for violation of §302(k).

Under subsection (b), add new paragraph (3) and renumber --  
If the Secretary determines that a Council member voted in violation of §302(k) in any Council action, the Secretary shall disapprove the action if that vote was necessary for approval of the action and may remove the member or members in question under the provisions of §302(b)(5).

# The New York Times

NEW YORK, MONDAY, MARCH 7, 1994

## U.S. Fishing Fleet Trawling Coastal Water Without Fish

By TIMOTHY EGAN  
Special to The New York Times

SEATTLE, March 6 — For the volunteers who count fish returning from the sea to fresh water, this has been the loneliest year ever. The surging Pacific salmon and steelhead are gone; what the fish counters at the Puget Sound ship locks see when they stare at the glass wall separating them from the water is nothing but a reflection of their own faces.

Across the country, in Gloucester and New Bedford, Mass., the story is the same. After 350 years, the oldest American fishing area is largely barren of the great swarms of haddock, cod and flounder that sustained more than 10 generations of New Englanders and became millions of fish sticks.

The Atlantic fishermen have asked that the Government treat them like earthquake disaster victims. Last week, they honked their boat horns in Boston Harbor to draw attention to their plight. To some, it was a funeral dirge.

### Echoes of a Sad Song

From Chesapeake Bay, where oystermen are fading like fog in the afternoon sun, to the Gulf of Mexico, where grouper and red snapper are mostly a memory, people who pull fish from the sea for a living are singing the same sad song.

Government officials say most of the major commercial fishing areas in this country outside Alas-

ka are in trouble, and worldwide, 13 of the 17 principal fishing zones are depleted or in steep decline.

As for salmon in the Pacific Northwest, and three main commercial species in New England, the decline is catastrophic — threatening to wipe out not only whole industries but also cultures and communities that are fused to the cycles of tide and sea currents.

### A Year Without Salmon

For the first time, there may be no ocean salmon fishing on the West Coast this year, a situation roughly akin to Georgia not producing any peaches.

Fishing communities in Massachusetts are in such bad shape that Gov. William F. Weld last week requested emergency financial aid from the Federal Government. Thousands of fishermen are in "immediate danger" of losing their homes and boats this spring, Mr. Weld said.

But aside from devotees of wild fish, consumers may not notice a shortage of fish at the supermarket. In recent years, farm fish raised in pens in Norway or South America have flooded the market, driving down the price of fish.

In some cases, the lowered prices have led fishermen to harvest more ocean fish in compensation. About 40 percent of the

Continued on Page B7, Column 1

Front Page

Continued From Page A1

nation's important saltwater species have been overfished, meaning more fish have been taken than there are young fish to replace them, according to a recent report by the National Marine Fisheries Service.

Who exactly is at fault in the decline is much debated. Old-time fishermen blame factory trawlers, boats the size of football fields that using sonar and satellite communications to track huge schools of fish in remote areas. The trawler owners blame small-boat operators who do not follow the rules, fishing out of season or using illegal nets. Environmentalists blame industries that have drained wetlands and dumped toxic materials into shallow bays.

Experts seem to agree on a few points. Pollution has indeed played a role: Pacific salmon have disappeared because the freshwater streams where they spawn have been soiled or are blocked by dams. Restoring the streams in the Northwest may cost more than \$2 billion.

But, the experts say, fishermen themselves are also to blame for taking more than the sea could give back in New England, the mid-Atlantic and the Gulf of Mexico. "You can boil it all down to the fact that there are far too many fishermen and not enough fish," said Dick Schaefer, the conservation director of the national fisheries service.

Technology has made fishing so sophisticated that major marine areas can be cleaned out in a short time.

And the system set up to regulate these public resources is awash with conflicts of interest. Fishing in United States waters is regulated by eight

regional councils, which themselves are dominated by the fishing industry. In most cases, the councils have been unable or unwilling to set fishing limits for themselves.

Critics say it is as if the national forests were handed over to the timber industry to decide how many trees to cut every year. The fishermen who defend the present system say the councils are weighted toward their industry because they are the most knowledgeable and have a self-interest in preserving fishermen's livelihood.

As a result, most fishing areas are free-for-alls, as fishermen try to catch as many fish as possible before a rival does. Congressional leaders say the councils will probably be remade this year as legislators consider reauthorizing the nation's fundamental fishing law, the Magnuson Act.

"If I had my druthers, these councils would be run by professional managers rather than political appointees," said Wally Pereyra, a member of one of the panels, the North Pacific Fishery Management Council, which covers Alaskan waters. "But as it is, if you removed people who have a stake in the industry, you'd probably have to excuse everyone on the council."

Like many members of these councils, Mr. Pereyra has a financial stake in what he is regulating. A marine biologist, he owns a share in a factory trawler that takes pollock from the Bering Sea.

#### More Demand for Fish

Worldwide, fish provide more than half of all the animal protein consumed by people. As the global population has exploded, fishing has tried to keep up with the demand, growing by more than 50 percent in one generation's time.

But the oceans, which cover 70 percent of the earth's surface, may have

reached the limit of what they can produce. Nine out of the world's 17 major fisheries are in serious decline, and four others are classified as commercially depleted, according to a report last summer by the United Nations' Food and Agriculture Office.

United States officials thought they could avoid becoming part of a global trend of overfishing when they passed the Magnuson Act in 1976. It expanded the coastal economic zone claimed by the United States from 3 miles offshore

## Pollution and overfishing produce a year of tiny catches.

to 200 miles, effectively chasing away large foreign fishing fleets.

But with foreign fishermen gone, Americans began to build up their fleet, buying huge vessels and equipment with low-interest loans backed by the Government.

#### Too Many Boats

For several years, times were good. In the North Pacific, fishermen took in \$1.5 billion a year for their Alaskan pollock. In the gulf, the number of shrimpers increased significantly, although this led to a large decline in the species of fish, like groupers and red snappers, that are accidentally caught in the small-mesh shrimp nets.

And in New England, many fishermen had record years as they went after the bounty that had been claimed by boats from Russia, Germany and Spain.

But now there are too many boats and not enough fish. Representative Gerry E. Studds, the Massachusetts Democrat who heads the House Merchant Marine and Fisheries Committee, has proposed that the Government pay fishermen to get out of the business. Here in Seattle, home port for most of the North Pacific trawlers, fishermen spend as much time in bankruptcy court as they do mending nets.

"The problem of foreign overfishing has been replaced by even more serious overfishing by the American fishing industry," said Valerie Christy, a spokeswoman for the Marine Conservation Network, a coalition of major environmental groups.

With boat mortgages and equipment costs to meet, some fishermen are loath to limit their take as a way of providing for future years, although some fishermen criticize that as shortsighted.

"The ocean is a farm," said Harold Lashley, a 78-year-old retired Gloucester fisherman. "If you take away all the feed and the females, when it comes time to plant, you haven't got any seed. Leave it alone. Seed the ocean and allow the fish to grow."

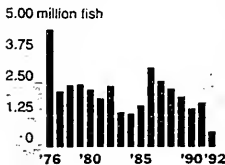
To protect the fish that are left, the Government has closed a large part of Georges Bank, the continental shelf east of Cape Cod whose stocks of cod, haddock and flounder have been exhausted, and has approved a plan that by restricting fishing days will reduce the catch off New England by 50 percent over the next five to seven years.

The measures were put in place only after the council that is supposed to regulate New England fishing was sued in Federal court. Similarly, on the West Coast, several groups are threatening lawsuits to force the regional council to protect fish species. The council considered a total salmon-fishing ban two years ago but did not

## Declining Fish Catches

The Magnuson Act, passed in 1976, regulates fishing in United States waters. Commercial catches since the act:

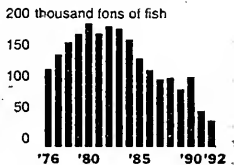
Chinook salmon on the West Coast, not including Alaska.



Source: National Marine Fisheries Service



The primary commercial species, or "groundfish" — mostly cod, haddock and flounder:



The New York Times

## A way of life on the verge of disappearing.

proceed, and the region is now seeing the lowest number of fish returning to spawn in memory.

There are several bright spots in American fishing waters, primarily in areas with heavy regulation. New England lobster fishing has remained steady. Striped bass and mackerel have made strong comebacks on the East Coast after conservation measures were put in place. In Alaska, the nation's most productive fishing waters, the salmon catch last year was a record 200 million fish.

Some experts point to Alaska salmon

as an example of how to manage fish. In Alaska, fishermen are allowed to go after the catch only after state officials determine that enough fish to sustain future generations have returned to spawning grounds. And there is a limit on the number of fishermen. Most other American fisheries are wide open, with no restrictions on either fish or who catches them.

If present trends hold, not only will major American fishing areas continue to decline, but the culture lives that revolve around them may also disappear. The Magnuson Act requires fishing managers to consider preserving "a way of life" as they try to conserve fish. But putting that into policy has been difficult.

Mr. Lashley, the Gloucester fisherman, says his family has been in fishing for hundreds of years, but that will change. Mr. Lashley said his grandson, Michael Lashley, 28, "will definitely be the last fisherman in the family."

National Audubon Society



Scully Science Center  
306 South Bay Avenue  
Islip, NY 11751  
(516) 277-4289  
(516) ~~244-4740~~ fax  
581-5268

April 20, 1994

The Honorable Thomas J. Manton  
c/o Gregory Lee Lambert, Counsel  
U.S. House of Representatives  
504 Ford Building  
Washington, DC 20515

Honorable Manton:

Please enter the attached document "Ending Overfishing (Before it Ends Itself)" into the hearing record for the Magnuson Fisheries Conservation and Management Act.

Thank you.

Sincerely,

A handwritten signature in cursive script, appearing to read "Carl Safina".

Carl Safina, Ph.D.  
Director, Living Oceans Program



## Ending Overfishing (Before it Ends Itself)

Carl Safina

---

Simple changes to existing federal law could save billions of dollars  
and thousands of jobs.

---

In the late 1960s and 1970s, fishing vessels from distant nations began arriving in force near the coast of North America. They came primarily from eastern Europe, the U.S.S.R., and east Asia. And they came with fishing power beyond anything Americans had ever used. Equipped to fish for months at a time and with the finest electronic fish-finding gear available, cooperating fleets of catcher boats systematically scoured coastal waters, working with floating factories (affectionately referred to as "mother ships") capable of processing phenomenal quantities of wild fish into seafood products at the scene of capture. Not all of this occurred somewhere over the horizon. I once ran my own boat past a Polish vessel processing squid so close to shore that crew members could watch the Americans in their colorful swimsuits playing in the surf. Neither the fish populations, nor the relatively small-scale coastal American fishers of the day, could last long under the onslaught.

Reacting on behalf of American fishers to the rapid devastation of many fish populations on the continental shelves of North America, Congress in 1976 passed the Magnuson Fisheries Management and Conservation Act. The Magnuson Act, as it is often called, created federal authority to manage fisheries, and claimed the area between 3 and 200 miles from shore-- two million square miles of ocean-- as the Fishery Conservation Zone (later changed to the Exclusive Economic Zone, or EEZ) of the United States.

Congress' major purpose in enacting the Magnuson Fisheries Act was twofold: 1) re-Americanize the fisheries by controlling or eliminating foreign fishing along our coasts, and 2) conserve and restore the fish. The first goal was accomplished with Yankee efficiency. But with a few exceptions, effective work toward the second goal has never really kicked in. This is largely because deficiencies in the Act remain significant. The Act is up for reauthorization this year, and the time is ripe for some changes in order to end overfishing in U.S. federal waters. Foremost, the Act must be amended to a) compel fishery managers to end overfishing and restore depleted living resources, b) empower fishery managers to conserve and restore habitat, c) erect a national policy for the minimization of incidentally killed bycatch.

The Magnuson Act's two major purposes have in practice proven incompatible. To aid re-Americanization and domestic fishery development, the federal government extended to American fishermen a protective umbrella of loan guarantees and investment incentives that allowed them to rapidly expand their fishing capability, which soon matched that of the recently-eliminated foreigners. In retrospect, these well-meaning incentive programs were disastrous to both fish and fishers, especially independent fishers, because they encouraged investment in fishing by people with no prior history or stake in fisheries. This increased investment resulted in tremendous overcapitalization; far more fishing power than needed to capture the available fish in sustainable quantities, too much fishing power to allow all the players to remain reasonably profitable, and too many boats chasing too few fish. Overfishing and fish habitat loss have continued to be chronic and widespread, and attempts to grapple with them have been too little or too late in many instances.

### **Economic, Social, and Ecological Failure Under the Magnuson Fisheries Act**

A spectacular array of fishery management failures in U.S. federal waters provide many examples from which to illustrate the issue of overfishing within the context of the Magnuson Act. Overfishing can be very roughly defined as taking more fish than the fish population can naturally replace (this working definition is very narrow, because sustainably catching the entire "surplus" production of one species may have the effect of starving another important species that relies on the first for food, or other ecological effects, and it assumes the population has not been previously depleted to a low but stable level). Fishes whose populations are at their historic lows because of overfishing include some very familiar table fare: swordfish, several species of tunas, red snapper, cod, several types of flounders and groupers, and others. Summer flounder, yellowtail flounder, red snapper, and swordfish populations are now capable of producing only 30 percent, 15 percent, 12 percent, and 40 percent, respectively, of their long-term potential yield. Combined landings of reef fishes like groupers and snappers fell more than 80 percent during the 1980s. While these species are still available in markets and restaurants, few consumers understand the shifting market or can see that their renewable resources are being mined. For example, the swordfish's Atlantic breeding population has been halved since the 1970s, and the average size of swordfish caught is now only about half the size at sexual maturity. In other words swordfish are now typically caught before they can breed. Few consumers have been brought such information, but it has implications for pricing, quality, consumer ethics, and future options in their marketplace.

The Magnuson Act's failure to conserve the fish for the fishers is perhaps most symbolically tragic in New England, where much of the impetus for enacting the Magnuson Act originally occurred. The cost of overfishing to New England was estimated by a Massachusetts task force in 1991 at \$350 million annually from lost potential catches, and 14,000 lost jobs. The worst fishery management debacle in New England has involved a group of fish known collectively as groundfish, which include such species as cod, pollock, haddock, redfish, and flounders. They are called groundfish because they are found deep, hugging the ground. Their name might equally apply to the manner in which they have been ground down by overfishing. These fish were once so prolific that their abundance helped spur European exploration and settlement of northeastern North America. Explorer John Cabot described the Grand Banks around the year 1500 as so "swarming with fish [that they] could be taken not only with a net but in baskets let down with a stone." About a hundred years later, a colonist who had come to partake wrote reverentially of the "Cod, which alone draweth many nations thither and is become the most famous fishing of the world." This swarming bonanza of riches has been reverse-siphoned into a welfare drain by managerial negligence.

The Magnuson Act's inability to provide an effective framework for preventing the problems it was ostensibly created to prevent is highlighted by comparing New England's groundfish situation with that of neighboring Newfoundland. Canada lacks a law similar to the Magnuson Act, yet Canadian and New England fisheries suffered a remarkably similar pattern of ills brought first by the foreign fleets and then by domestic mismanagement derived from denial, over-optimism, and failure to apply a margin for error. In Newfoundland, the Atlantic cod is now commercially extinct. Canadian federal fishery officials who for years were in a state of denial, finally closed the failing fishery in 1993-- an action unimaginable only a few years ago. The situation is costing Canada an estimated 42,000 jobs and an estimated 1.8 billion dollars in

unemployment payments. Payments or not, a way of life and the seafaring knowledge that went with it-- a culture-- is being destroyed. One fisherman was quoted lamenting "The cod to us was like the buffalo to the plains Indians."

In adjacent U.S. waters, the Magnuson Act failed to prevent a parallel groundfish catastrophe. New England cod are at their lowest levels ever, and drastic economic dislocation is well underway. Atlantic halibut are commercially extinct. Though fishing for them is allowed, no one tries. There are so few Atlantic halibut left that they do not even appear in the table of landings in the National Marine Fisheries Service' (NMFS) report on the Status of Fishery Resources of the Northeastern United States. Haddock are now also commercially extinct in New England. They are too rare in the Gulf of Maine to support directed fishing. On Georges Bank, NMFS suspended haddock fishing by emergency action in January 1994 after New England landings of the long-beleaguered fish plunged 66 percent in one year. The Northeast regional director for the National Marine Fisheries Service told the mid-Atlantic Fishery Management Council (one of eight regional councils that develop fishing policies and regulations) that in his opinion the Gulf of Maine should also be closed to haddock catches. In the Gulf of Maine, no haddock appear in the net in 60 percent of the fishing trips. An allowance of five hundred pounds of haddock per trip has been imposed, not so much to protect haddock as to prevent any protection of the few remaining haddock from interfering with fishing activities aimed at other depleted species like cod and flounder (the New England Council wanted the haddock trip limit to be 5,000 pounds, but the Secretary of Commerce disapproved this measure. NMFS requested the council to consider "a meaningful trip limit for haddock" and to consider whether any haddock at all should be landed). NMFS' regional director believes that the five hundred pound haddock allowance may help to suppress recovery of the species in the Gulf of Maine. The Georges Bank haddock population is now one tenth that which is required to produce the "maximum sustainable yield."

Similarly, the situation with yellowtail flounder, which was once the backbone of fishing ports in southern New England, has been termed "a disaster" in that region by Dr. Vaughan Anthony, chief scientist in the National Marine Fisheries Service's Northeast center. In a January 1994 advisory report on the status of New England fish populations, the Service stated that for southern New England yellowtail flounder, "The fishing mortality rate has been extremely high... currently for every 100 fish alive at the beginning of the year, only 8 survive to the beginning of the next year. Spawning stock biomass [the aggregate weight of the live breeding population] in 1992 was at a record low level." Unsurprisingly, breeding success is "the poorest on record." With the highly unusual use of an exclamation point in a parched scientific report, the Service states "The stock has collapsed! Fishing mortality on this stock should be reduced to levels approaching zero. This includes discard mortality." Discards of flounders caught too small is at a record high. The last big year class of juvenile yellowtail flounders was in 1987, and 60% of the catch of fish from this year class was discarded dead, because they were too small to sell when they were caught. The report also notes that "Spawning stock biomass declined 94% between 1989-1992." In January of 1994, Dr. Anthony told the Mid-Atlantic Fishery Management Council that the allowable catch should now be zero. Yet the professionals and scientists in the Fisheries Service must defer to the political appointees on the fishery management councils who actually set fishing policy.

Despite all this bad news and trouble, the New England Fishery Management Council's recently adopted New England groundfish plan merely aims to halt-- but not to reverse-- these declines by reducing fishing mortality of some species over the next five to ten years (depending on species) by fifty percent. If it

works, the fishes will no longer be overfished, but neither will they be rebuilding to more productive levels of abundance. In addition to fish, shellfish have also been hammered. Lobsters in the Gulf of Maine are officially deemed "overexploited," and NMFS says New England sea scallops are "at or near all-time lows." The scallop management plan also will take years to end overfishing and does not address rebuilding. As it stands, we can look forward to intentional maintenance of the lowest-ever levels of these "renewable" resources. The Commerce Department has recently proposed \$2.5 million in assistance to Northeastern communities hard hit by fishing industry problems. This first drop in the fish relief bucket-- unprecedented in the U. S.-- signals the beginning of an ominous siphon-like reversal in the economic contribution that fishing can and should be-- but is not-- making to the economy of the northeast states.

The problems are by no means confined to the northeast. The North Pacific fleet of factory trawlers (sea-going factories that both catch the fish and process them on board) is another severe example of fishery management failure under the Magnuson Act. Encouraged and invited by the North Pacific Fisheries Management Council's open-to-all-at-no-fee policy, the number of factory trawlers mining the waters off Alaska grew from 12 in 1986 to 65 in 1992. These ships often catch 350,000 pounds of fish in a single haul (one of the trawlers reportedly can catch over a million pounds of fish in one tow of its net). The target fish is walleye pollock, and landings of 3 billion pounds (valued at \$324 million in 1992) make this the largest single-species fishery in the world. This "American" fleet has been largely funded by Japanese and Norwegian investments. Free and wide open access into this fishery is still allowed by the regional fisheries management council. The pollock are already showing signs of exhaustion, and concurrent with the development of the fishery has been a decline in animals that rely on pollock for food. Sea lions, and several seabirds have undergone population declines of 50 to 90 percent in the last twenty years. The ultimate predator is now starving itself as well. Two of the trawlers and their parent company went bankrupt in 1993. One Seattle-based trawler company owner recently stated "I fear that more than half of the boats might teeter on the edge of bankruptcy... taking with them 4,000 jobs. These boats were mortgaged on the assumption that they would fish 10 months a year. They now fish barely five." Some observers speculate that a third of the fleet would have to leave the fishery before it can become economically productive again. The Council's laissez-fair policy now appears to have been a "losers take all" proposition; destroy the resource and put yourself out of business simultaneously. The Council's open-access mentality has also resulted in a vastly overcapitalized fishery for halibut. This time, in order to protect the fish as the fleet swelled without control to 5,500 boats, the season was reduced to just two days per year; one in spring and one in fall. During these 24-hour marathons, the quickest, most hazardous, and most wasteful methods are employed to catch the fish. The result: every 24-hour opening sees fatalities, sinkings, and enormous amounts of spoiled fish, and consumers virtually never see fresh halibut. Now that the problem has gotten out of hand, the Council plans to institute quotas, beginning next year, that would allow boats to fish any time they want until they fill their individual limit for the year. But in order to reach the point at which all halibut boats could fish throughout the year for a profitable amount of fish, some observers estimate that roughly 95 percent of the boats may have to leave the fishery.

The ongoing inability of the Magnuson Fisheries Act to provide a reliable framework for preventing systematic depletion is also illustrated by Atlantic sharks. Between 1976 (when Magnuson was enacted) and 1990, the authorized regional fisheries management council never got around to producing a shark

management plan. It was not compelled by the law or by custom to do so. Nor was any federal data collection program on shark landings or shark population sizes or trends begun until the late 1980s, when overfishing for sharks was already in full swing. By then, unsustainably large numbers of fins and tails were being exported to China for soup, and the live animals (minus their fins and tails) dumped overboard to sink to the bottom and die. In 1989 the National Marine Fisheries Service scrambled to tack together a draft "emergency" management plan to deal with the problem. But the paucity of baseline data exposed the draft emergency plan to a feeding frenzy of attack from all directions. It was delayed for two years, then shelved. When a management plan was finally implemented in 1993, the first six-month catch quota (which conservation groups argue is much higher than existing scientific information could justify) was caught in under a month, suggesting that the fishing power of the fleet is more than six times that necessary to take the quota. The plan was too little and too late to prevent severe depletion. A twenty year monitoring study by the Virginia Institute of Marine Sciences indicates several important shark species have declined 85 to 90 percent since the early 1980s, as fishing continues under the new quota. It is significant that shark overfishing began after the Magnuson Act was in place for nearly a decade and that the Act failed to prevent the problems that subsequently occurred. (No management plan currently exists for Pacific sharks, eighteen years after the Magnuson Fishery Conservation and Management Act first became law.) When a group of animals that has dominated the seas for sixty million years begins to falter and disappear within a decade, despite the existence of a law that contains both the words "conservation" and "management" in its title, something is horribly wrong.

Ironically, some species are overfished by people who are not even trying to catch them. The capture of unwanted sea life is called bycatch, incidental take, or bykill. Bycatch comes in many forms: unwanted or prohibited species (including seabirds, seaturtles, marine mammals, etc.), unmarketable or undersized fish, and creatures killed in lost nets or abandoned traps. For some animals, such as sea turtles and albatrosses, bykill has been the main source of adult mortality. The problems of bykill are twofold: it can overfish non-target species and it can produce extraordinary waste. Estimates of discarded bycatch in Alaskan fisheries in 1990 range to well over half a million metric tons annually. Currently, incidental kill of unwanted animals, especially fish, is a legal and nearly universal aspect of fishing. Yet bycatch has been almost entirely overlooked by the Magnuson Act. In some fisheries, bykill vastly exceeds catch. For example, ten pounds of unwanted fish are killed for every pound of shrimp caught in the southern U.S. The Gulf of Mexico shrimp fishery kills and wastes enough juvenile snappers and groupers to ruin those fisheries through severe depletion and economic dislocation. Total discard in our shrimp fishery is estimated at 175,000 tons of juvenile fish a year; fish that would otherwise grow to support other important fisheries. This bycatch, according to the President's Council on Environmental Quality, has contributed to an 85 percent decline in the Gulf population of bottom fish like snappers and groupers over the last 20 years, making the real cost of a shrimp dinner expensive indeed.

The Gulf of Mexico Fishery Management Council warned in 1990 that "Red snapper are severely overfished in the Gulf of Mexico and the spawning stock is so reduced that the population may either be in a state of collapse or dangerously close to collapse," and that "Rebuilding the red snapper population cannot be effected without protecting juvenile snapper from harvest as bycatch in the [shrimp] trawl fishery. An estimated 12 million small red snapper are killed annually by trawls." NMFS predicted that reducing shrimp boat bycatch could almost double the red snapper fishery's productivity. Congress, which has grown

adept at interfering destructively in fisheries issues and circumventing due process in fisheries management, reacted with absurd irresponsibility. Language inserted by Louisiana Senator John Breaux in the last reauthorization prohibited "any measures... to reduce incidental mortality of nontarget fishery resources in the course of shrimp trawl fishing" for three years. Unfairly favoring shrimpers at the expense of other fishermen (which, ironically, appears to violate the Magnuson Act's National Standards), this temporary exemption was recently extended. This is the Act's only policy on bycatch. Meanwhile, billions of juvenile fish-- the potential future paychecks of snapper and grouper fishers-- are shoveled overboard dead annually.

Though severe and systematic overfishing is emptying our oceans and destroying fishing communities, unless we stem the ongoing loss and degradation of habitats we can abandon hope for the future restoration of our fisheries. Rivers, wetlands, estuaries, reefs, seagrass meadows and mangroves are not external to the nation's economy. They provide (free of charge) the breeding, feeding, and nursery grounds for the resources that fisheries rely on. For example, roughly seventy percent of the U.S. fish catch is made up of species that are dependent on estuaries for at least part of their life cycle. In parts of the Gulf of Mexico, 98 percent of the fish caught are estuary-dependent. The effect of the loss of coastal wetlands can be immediate and permanent. There is a direct relationship between the pounds of shrimp landed and the area of estuary vegetation in locales along our Gulf coast; Where wetland area is large, shrimp landings are high. Where wetland area is small, shrimp landings are low. Over the last 15 years, landings of fish that depend on estuaries have fallen nearly 30 percent on the Gulf coast as habitat has declined, though fishing effort increased. In addition to problems of outright destruction are the more subtle (to us, though perhaps not to marine life) problems of degraded water quality from sediment and excessive nutrient runoff, and from pesticides and other toxics that affect marine life.

Particularly for those species that ascend rivers to spawn, such as salmon, striped bass, sturgeon, shad, and many others, loss and degradation of habitat-- not overfishing-- is the leading cause of depletion. For example, the inspiring salmon that once found their way by their millions from mid ocean to the rivers of their birth are now finding their way onto the endangered species list. Irresponsible logging practices and dams are among the salmon's main habitat problems. Several Pacific salmon have already been listed, and other endangered species petitions are in the works for both Pacific and Atlantic salmons. The days when salmon were so abundant that farmers caught them with pitchforks for use as fertilizer, are long gone. Over a hundred major runs of salmon and steelhead on the West Coast south of Canada have already been lost, primarily due to habitat problems. Thousands of salmon fishermen in both oceans have been idled. Efforts to conserve and restore fish will ultimately fail unless the habitats that produce them are conserved or, in many cases, restored.

#### **Fish as Renewable Resources**

America's ultimate source of economic power is our natural resources. Marine fishes, in addition to their enormous biological value, represent a significant part of the resource endowment of the United States, and the world. One fifth of the world's catch comes from our State and Federal waters. The National Marine Fisheries Service calculated the 1991 value of the commercial catch at roughly \$4 billion and the total economic impact of commercial fisheries at \$50 billion. An additional \$69 billion in total economic impact from recreational fisheries was calculated by the Sport Fishing Institute in a report released in 1994, based on statistics from the U. S. Census Bureau and Fish and Wildlife Service. By depleting fishes and allowing ruination of their habitats, we

have significantly undermined the social and economic power of American fisheries and other water-dependent industries. The National Marine Fisheries Service estimates that U.S. fisheries are now producing only 60% of the value they could, if the breeding populations of so many species had not been mined down and so many of the fish had not been taken while they were very small. Continued declines are predicted for many fish populations. And while the public treasury receives no compensation for the use and abuse of America's fishery resources, taxpayers pay for fishing in the form of vessel loan guarantees, fuel tax exemptions, gear loss compensation, and other subsidies. Often, this goes into already-overcapitalized fisheries.

A 1989 statement by more than forty "concerned scientists" (mostly university professors) on the subject of the Magnuson Act stated "Virtually all of the important finfish stocks managed under the MFCMA [Magnuson Fisheries Conservation and Management Act]... are either overfished or on their way to that condition... [F]ishing effort and capital investments in vessels and gear are just too high." They also said "the exploitation ethic, where decisions favor the short term, virtually guarantees... severe economic and social dislocations." (The lead author of this statement was appointed head of the National Marine Fisheries Service a year later, but lost the post in two years, largely because he was viewed as anathema by the fishing industry, particularly by New England fishers-- and their congressional representatives.) The National Marine Fisheries Service noted in its 1991 strategic plan: "In the face of uncertainty and pressure from the fishing industry, fishery managers have often tended to base their decisions on an optimistic view of the condition of fishery resources. These 'risk-prone' decisions eventually result in overfishing." Improved data collection and scientific programs are critically needed to enhance the credibility, accuracy, and forecasting power of fisheries information. But a measure of uncertainty will always exist. Managers must learn to react conservatively and with a margin of error, in contrast to their customary optimism of acting on the best-case scenario and the upper bound of the calculated error range. Their optimism has often proven tragically unfounded. The problem is a global one. The United Nations Food and Agriculture Organization has recently determined that all the world's major fisheries are either fully exploited, over exploited, or depleted; there are no untapped riches left. The myth of limitless marine resources is now recognized to be just that-- a myth.

The oceans are the last theater in which industrialized peoples still hunt wild animals on a large scale. It is always smarter to live off the interest rather than the capital, but in a system where we can freely reap that which we have neither sown nor nurtured, mining the capital-- and that is exactly what we are doing to the coastal systems and the oceans-- is inexcusably short sighted. We are becoming as children born to wealthy circumstances who, failing to perceive their privilege, have squandered their advantage, lost their station, and bankrupted themselves and their sons and daughters.

Overfishing and habitat degradation can lead to a four-step process of extinction, where we suffer the major effects long before the last animals vanish. From an economic standpoint, extinction can most pragmatically be viewed (and most effectively and inexpensively dealt with) as a process rather than an event. Indeed, whether the last animals vanish or not is almost academic from a fishing perspective, because fishing economies go extinct long before the last fish dies. The first stage of the extinction process is depletion. At this stage, the fish population is reduced below the level at which it would be most productive; fish are smaller and fewer than they could be, and chances for obtaining a strong year class of newly-spawned fish are reduced. Consequently, the population's ability to support fishing is reduced, profit margins decline, and some businesses become

inviable. Other members of the ecosystem may experience food shortages or an unnatural relaxation of predation pressure. The next stage is ecological extinction, where the animal's population density is depressed to such low levels that the species no longer fulfills its role as prey, predator, or competitor in the ecosystem. As a result entire marine communities may undergo a profound shift in numerical and functional relationships. Ironically, less valuable (to fishers) species often increase when this happens, and their proliferation may suppress recovery of more valuable species. Another stage, commercial extinction, occurs when the animal is so rare that it is no longer profitable for anyone to fish for. Compensatory price increases may delay commercial extinction. For example, in the bluefin tuna fishery, American fishers may spend weeks trying to catch a single bluefin. But demand by Japanese sushi connoisseurs makes each individual fish worth between six and thirty thousand dollars to the fisher; enough to compensate the time that must now be invested in each capture. If commercial and ecological extinction are not reversed, total extinction may become a possibility. But by the time total extinction becomes an issue, all the other practical effects of the animal's disappearance from commerce and from the ecosystem have already been suffered by the fishing industry. To date, total extinctions are rare in the oceans, but this may not always remain so. Several fish species have been listed as endangered or threatened under the Endangered Species Act. The western Atlantic bluefin tuna population, whose breeding population is estimated to have declined over 90% since 1975, from a quarter million to 20,000 animals, has been proposed for listing under the Convention on International Trade in Endangered Species (CITES). Several conservation groups around the world are now seeking CITES listing for other bluefin tuna populations. Additionally, the Fish and Wildlife Service is considering whether to propose CITES listing of several shark species that have been seriously depleted (their fins are in demand for soup in China, which imports them from many countries). We may unfortunately see more fish on endangered species lists in the future. If we do, it may not be too late to save them. But it will likely be too late to save the fishing jobs and coastal communities that once depended on them.

Could we farm our seafood the way we farm other animals? Some of it, yes. But overall, fish farming will not produce more seafood than can catching wild fish in well-managed fisheries, because we could bring under control only a very small fraction of the oceans' naturally productive regions. Fish farming or mariculture can be economically profitable, though it often entails real costs which are currently external to the market. These include additions of hormones and pharmaceuticals into aquatic environments, introduction of diseases, introduction of non-native animals, inbreeding and release of genetically inferior animals, and destruction of naturally productive habitats or natural coastal barrier systems to make ponds. There is as well the issue of privatizing public waterways. Also, we would lose the rich array of seafoods now available, in favor of a few easily raised varieties. Further, we would be laboring through farming to replace some of the wild fish that could-- if we managed fishing responsibly-- be free for the taking in abundance. It might be as though we were expelled from the Ocean of Eden.

With catches plunging and more operations becoming marginalized, the value of fishing boats has plummeted, trapping many who would like to leave the business but who are stuck with mortgage payments on unsellable boats. These people are effectively forced to continue fishing. They have no apparent options, no prospects, and a future that is at best uncertain. For those who want to stay in fishing for the way of life it offers, the menacing specter of declining profits is a constant strain. For young people who want to get into fishing, the outlook is



even bleaker. So the crews and boats age in a once-proud and independent free-enterprise venture that now offers little sense of future in many areas. This was not the expectation of men and women who have invested their time, money, and lives. On the other hand, fishers themselves have often worked to prevent the management councils from enacting the ounces of prevention that would have been to their own longer-term advantage. Fishery management councils have allowed much damage to occur because the Magnuson Act is vague or lax on key directives. The law should provide fishery managers with both the framework and the legal imperative to accomplish Congress' original intent. And right now, the law provides neither effectively.

### **What Went Wrong**

When Congress adopted the Magnuson Act it created a unique form of participatory government by establishing eight regional Fishery Management Councils. The Act directs that the councils be composed of "individuals who, by reason of their occupational or other experience, scientific expertise, or training, are knowledgeable regarding the conservation and management of the commercial or recreational harvest" of marine organisms. This is both a major strength and a major weakness, because, while the voting body of a Council possesses broad practical knowledge about catching and marketing fish, the Councils are largely comprised of individuals with little knowledge or training in resource stewardship or the biological characteristics of marine animal populations. Council composition has also been heavily tilted toward individuals representing fishing groups, resulting in biases so pronounced as to largely account for the failure of the Councils to conserve the fish. (By comparison, we do not allow electric companies to sit on utility commissions.) But the biases of council members are not necessarily self serving or malevolent. Council members are often well-meaning, seeking to shelter fishers in the community they represent from short term economic pain. Unfortunately, an ounce of pain deferred one year, and an ounce deferred the next, have added up to a pound of trouble. The irony is that the cumulative result of many attempts to assure that fishers stay in business is that in many fisheries the financial returns are now the lowest they have ever been, more fishers are going out of business than ever, and fishing holds little promise as a way of life for the children of many fishing families. Overfishing hurts economic and social interests in the long term. And now, eighteen years after the Act came into force, is the long term. The piper is demanding payment, and the fishing communities (not the managers who made or avoided the decisions) are paying.

Among all these problems weaves the National Marine Fisheries Service. Ostensibly, NMFS is "responsible" for managing the living marine resources of the United States' Exclusive Economic Zone, under the authority of over 100 federal statutes. In reality, NMFS has been shoved into the back seat and taken for a ride like a kidnapping victim. "The National Marine Fisheries Service is an agency with severe problems and challenges that require immediate attention," says the National Fish and Wildlife Foundation, an unusual non-profit organization established by an act of Congress in 1984, which disburses federal monies in support of the programs of the U. S. Fish and Wildlife Service and the National Marine Fisheries Service. Foremost among NMFS' severe problems is that it is buried in the Department of Commerce. Other agencies that deal with our nations living renewable resources (the Forest Service, Fish and Wildlife Service, etc.) and are housed in the Department of Interior, among peer groups that understand sustainable resource stewardship and its role in the economy. NMFS exists in solitary confinement in a department that deals with manufactured factory commodities. It is virtually inconceivable that any Secretary of Commerce would have a background attuned to natural resource

stewardship. Consequently, it is virtually inconceivable that NMFS will ever rise above unwanted-stepchild status in the Commerce Department.

For years NMFS suffered from very poor leadership. It continues to suffer from chronic underfunding. Compounding its budgetary inadequacy is that much of its budget is a series of line items for Congress members' pet projects. This has made it exceedingly difficult for NMFS to implement a vision, during the relatively brief part of its history when it has had one.

NMFS' current role is primarily: 1) monitoring, 2) enforcement, and 3) consultation on habitat. Though monitoring is critical to management, inadequate information is collected to determine the status of a third of our commercially important marine fish. Regarding law enforcement, NMFS has never had the monies necessary to ensure compliance. This gap will likely widen as more and more regulations-- such as the area closures, mesh size restrictions, and turtle excluder requirements, are implemented in troubled fisheries. Habitat should be treasured as the no-overhead, free lunch factory for America's multi-billion dollar fishing industries and coastal culture, as well as the stage for much of our recreation and tourism. Yet the Fisheries Service has only a consultative role in determining whether federal permits will be granted for activities that destroy or degrade habitat; NMFS should have full authority, including veto power, to determine the fate of permit applications that would hurt habitat. Regarding actual fishery management, NMFS must generally defer to the judgement and schedule of appointees of the fishery management councils. This has had disastrous results. But where NMFS does have direct authority to write management plans-- for the Atlantic tunas, sharks, and billfishes-- their budget is terribly inadequate. This is a key reason, for instance, why there are no management plans for any Atlantic tunas. The National Marine Fisheries Service, ostensibly the nation's marine steward, has been marginalized, by inadequate funding, inadequate legal authority, and a fishery management council system that puts more authority in the hands of political appointees-- many of whom have no training in natural resource management-- than in the Service' resource management professionals, economists, and social scientists.

#### **Fixing The Magnuson Fishery Conservation and Management Act**

A basic flaw of the Magnuson Act is its failure to define and prohibit overfishing. The Act says that "Conservation and management measures shall prevent overfishing while achieving the optimum yield from each fishery on a continuing basis." Surprisingly, there are serious problems with this. Whereas overfishing is undefined, "optimum yield," is defined as maximum sustainable yield "modified by any relevant economic, social or ecological factor." Though this sounds eminently reasonable, this definition can be used to justify virtually any catch level, including one that exceeds the reproductive abilities of the fish (constitutes overfishing). In practice, fishery managers have often subordinated biological considerations to short term economic considerations. Thus the Act's current wording allows, rather than prevents, the overfishing that is bankrupting much of the fishing industry.

The regional Fisheries Management Councils exert their effect primarily through the development of so-called Fishery Management Plans. Nothing in the law compels a council to do a management plan for any species, ever. During the development of each fishery management plan, the councils are directed by the Act's guidelines to quantitatively identify a level of fishing mortality that constitutes overfishing, and to prepare a recovery plan when a condition of overfishing exists. This sounds good. The problem here is that the guidelines, which were added to the Act in the late 1980s, explicitly do not have the "force and effect of law." Many fisheries remain without adequate recovery schemes or even management plans. Neither the law nor the guidelines expressly bind the

Councils or the National Marine Fisheries Service to halt overfishing. Other critical omissions in the Act regarding the development of fishery management plans are that: 1) the guidelines fail to specify a time in which a council must address overfishing once identified; 2) the Act contains no provision for action if a Council does not respond to overfishing; 3) managers are not required to consider predator-prey or other important ecological relationships among fishery resources when determining allowable catches for any single species; 4) the guidelines fail to direct the councils to establish a specific rebuilding goal or rebuilding timetable for depleted but stable populations. The Act should require the Secretary to intervene when a council fails to develop an adequate recovery plan within a specified period for an overfished species. Some observers have suggested creation of an independent scientific review panel to assure that overall catch quotas are sustainable. This would be a good way to ensure that management measures recognize the boundaries of natural capacity. And some believe that management plans for overfished species should include a moratorium on new entrants into the fishery until the fish populations are rebuilt to target levels, a modest but important proposal. The Act should clearly require that Fishery Management Plans favor long-term benefits to the nation over short term profit-making. This is the best way to help fishers and coastal communities.

A peculiar series of additional problems and inconsistencies in the Act arise in the case of Atlantic tunas and billfishes (swordfish and marlins). Off our Atlantic coast the international Atlantic tuna commission (ICCAT) is involved in management of tunas and billfishes, some of which cross international and high seas boundaries during their annual migrations. The commission can recommend management measures for implementation by its member countries. But its recommendations are very few, and characteristically lax (often contrary to its scientists' recommendations), resulting in documented population declines of 50 to 90 percent for bluefin tuna, swordfish, and marlins (according to the commission's own data). Amendments added to the Magnuson Act in 1990 at the behest of tuna and swordfishing interests forbid U.S. catch quotas from being more restrictive than those quotas agreed to by the commission. In effect this allows a country, such as Japan, to participate in setting catch quotas in U.S. waters for fish that are imported to that country from the U.S. Through these amendments, American fishermen protecting short term personal gain have succeeded in handcuffing the National Marine Fisheries Service to the commission's mismanagement. Such deformity of U.S. management authority is wholly inconsistent with other U.S. law, is unique among the twenty nations that are party to the tuna commission, and undermines U.S. authority to properly and conscientiously manage our own fish in our own waters. This language must be struck from the Magnuson Act, allowing the U.S. full power and discretion in managing our fisheries in our Exclusive Economic Zone. More importantly, if the U.S. was empowered to enact conscientious and effective management measures for these fisheries, the U.S. fishing industry would suddenly have incentive to stop using the commission as a refuge for inaction, and seek through the international commission effective conservation by other countries sharing these highly migratory fish populations.

The Magnuson Act should state that it is national policy to reduce and work toward the elimination of excessive bycatch. The Act also needs to be amended to provide broader authority and clear directives to manage bycatch problems through fishery management plans. It should provide mechanisms for improved data collection on bycatch and create incentives for bycatch-reduction practices and engineering. We also need penalties to discourage excessive bycatch and provide incentive for cleaner and less destructive fishing.

Currently, the Magnuson Act is set up to try to manage fish in isolation from

their habitats. The Act only authorizes fishery managers to comment on activities potentially damaging to habitat, and any recommendations are merely advisory. The National Marine Fisheries Service, in particular, has no direct authority over decisions on proposed federal projects, policies, or programs that would damage habitat and thus reduce fish population size. The Act should be amended to increase the consultative role of the regional Fishery Management Councils and to provide the Secretary of Commerce (through the NMFS Office of Habitat Protection) with the authority to restrict, modify, or prohibit actions that would damage essential fish habitats. Finally, Congress should recapture some of the costs spent for managing public marine resources, perhaps by creation of a trust fund for marine taxes similar to the Highway Trust Fund, and then use these fees to help protect habitat and regulate fisheries.

Congress has the opportunity address our fishery problems this year. If it does not, fewer fishers will be arguing over fewer fish during the next reauthorization. Congress (House Merchant Marine and Fisheries Committee and the Senate Commerce Committee) is currently holding hearings on possible changes to the Act. The Marine Fish Conservation Network, a new coalition of conservation groups with over 50 endorsing fishing, environmental, and scientific organizations, has developed a draft bill to take the loopholes and vagaries out of the Magnuson Act, and is currently seeking Congressional sponsors. The Network's draft bill offers a comprehensive 24-page set of amendments addressing overfishing, recovery of depleted fish, bycatch policy and bycatch reduction engineering, habitat safeguarding, management councils, and user fees. Among other things, these amendments would define and prohibit overfishing and, for overfished populations, require recovery plans with defined goals and a timetable. Importantly, the prohibition on overfishing would not penalize people who fish. Rather, it would merely authorize and require the Fisheries Service to intervene when councils failed to develop adequate management and recovery plans for overfished populations. It would also allow councils to impose interim conservation steps, such as setting a minimum size that corresponds with size a breeding maturity, without having to construct an entire fishery management plan. The other amendments are similarly designed to compel implementation of the Act in a way that is more reflective of the Act's original intent of restoring the nation's fish and fishing activities.

### **In Conclusion**

The point of the foregoing discourse is not that the Magnuson Act does not provide the legal potential to conserve and restore living marine resources. It does. But it does not provide the legal imperative to do so. It could. In order for that to happen, it must be amended to bring to fruition Congress' intended purpose of restoring and sustaining the economic and biological power of living marine resources so they can support a productive ocean, a robust American fishing fleet, and healthy food for our tables.

---

Carl Safina earned his Ph.D. in ecology at Rutgers University and studied natural dynamics among seabirds, prey fishes, and predatory fishes during the 1980s. He is founder and director of the National Audubon Society's Living Oceans Program, a founding member of the Marine Fish Conservation Network, and currently serves as an appointed voting member of the Mid-Atlantic Fisheries Management Council. He is a recipient of the Pew Charitable Trusts' Scholars Award in Conservation and the Environment.







BOSTON PUBLIC LIBRARY



**3 9999 05982 680 8**





ISBN 0-16-044285-0



9 780160 442858