

SJR

47

COMMITTEE REPORT

2/23/76

HOUSE

Mr. Speaker:

Date 2-23-76

The Committee on Resources has had SJR 117

under consideration. A Majority of the members of the Committee

recommends it DO PASS

recommends it DO NOT PASS

recommends it DO PASS WITH ATTACHED AMENDMENT(S)

recommends it BE REPLACED WITH CS FOR \_\_\_\_\_ AND THAT

CS FOR \_\_\_\_\_ DO PASS

"and" recommends it BE REFERRED TO THE \_\_\_\_\_

COMMITTEE

reports it back WITHOUT RECOMMENDATION

"other"

Members signing the Majority report:

Robert B. Anderson \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Members NOT concurring in the Majority report:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

\_\_\_\_\_ recommends:

Robert B. Anderson Chairman

JAY S. HAMMOND  
GOVERNOR



STATE OF ALASKA  
OFFICE OF THE GOVERNOR  
JUNEAU

February 19, 1976

The Honorable Jay S. Hammond  
Governor of Alaska  
State Capitol  
Juneau, Alaska 99811

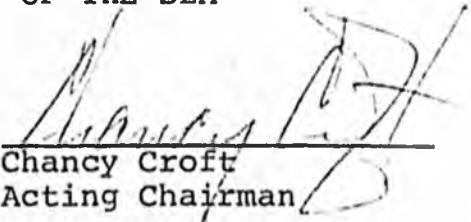
Dear Governor Hammond:

In accordance with AS 44.19.797, we have the honor to transmit to you the attached position on the House of Representatives and Senate versions of H.R. 200.

Since Congressional deliberations on this legislation are presently in progress and are expected to be concluded in the near future, the Commission has voted to request that Mr. Edgar Huizer of the Department of Fish and Game and Mr. Jeff Haynes of the Department of Law be sent to Washington, D.C., for the purpose of discussing this position with the Alaska delegation, the House and Senate conferees, and members of the appropriate committee staffs.

Sincerely,

THE ALASKA COMMISSION ON THE CONFERENCE OF THE LAW  
OF THE SEA

  
Chancy Croft  
Acting Chairman

## I. STATEMENT OF GENERAL PREFERENCE

The Senate version of H.R. 200 more closely coincides with the interests of Alaska than does the House version. Our reasons for favoring the Senate version are set out more completely below. As a generalization, we believe that the House version contains an excessive amount of detail and an unnecessary number of procedural mechanisms and safeguards which will tend to inhibit implementation of timely and efficient fisheries conservation and management measures.

However, this is a general preference only; there are many concepts and provisions in the House versions which should be included in the final product. In addition, several sections of the Senate version are in need of amendment for clarification purposes. In some instances, discussion of certain language in the Conference Report is important if misinterpretation is to be avoided.

General Recommendation: Except where otherwise stated in this paper, we request that the Conferees utilize in general the language and provisions of the Senate version.

## II. FINDINGS AND STATEMENTS OF POLICY

A. We have no strong feelings about these portions of the respective versions with the following exceptions:

Section 2(a)(8) of the Senate version [Com. Print, page 5], which mentions the importance to the United States of developing a United States fishery for bottomfish adjacent to Alaska. Since many United States fishermen are anticipating their eventual participation in this fishery, it is important that this statement be retained.

Recommendation: Regardless of which set of findings and policy statements is adopted by the Conferees, Section 2(a)(8) of the Senate version should be included.

B. We also are concerned with the broad implications of Section 2(a)(5) [Com. Print, page 5] of the Senate version, since it does not accurately reflect the situation of many fisheries in Alaska and other states where they have traditionally been well managed by the states.

Recommendation: Avoid usage of Section 2(a)(5) of the Senate version unless it is properly qualified to indicate that not all fisheries are depressed. This

NOTE: Page and line citations in this paper for the most part are for the Comparative Print (Com. Print) on H.R. 200. On occasion it was necessary for clarity to cite either the House approved bill dated October 20, 1975; or the Senate approved version of H.R. 200 dated February 3, 1976.

could be achieved either directly by amendment or indirectly by appropriate language in the Conference report.

C. Again, Section 2(a)(7) of the Senate version [Com. Print, page 4] is appropriate with respect to some, but certainly not all, United States fisheries stocks.

Recommendation: The first sentence of Section 2(a)(7) of the Senate version should read:

"A national program for management and conservation of some of the fishery resources . . .".

### III. DEFINITIONS

Many of the definitions in the respective versions are similar. Since we are recommending more close adherence to the Senate version, it would be preferable if the Senate definitions are used.

However, one exception is the definition of fishing. The House version is preferable because it contains the phrase "any action which can reasonably be expected to result in the catching", etc. This would facilitate enforcement and prosecution by allowing arrest of violators at the preparatory stage.

Recommendation: Utilize the Senate definitions. However, substitute Section 3(8) of the House version in place of Section 3(10) of the Senate version [Com. Print, page 12].

### VI. CONTROL AND AUTHORIZATION OF FOREIGN FISHING

A. We favor strongly the Senate language as contained in Sections 101 and 102 of the Senate version [Senate Bill, pages 82-86]. These provisions are relatively simple and clear, provide adequate protection, and state in straightforward fashion the harvesting preference granted to United States fishermen.

In contrast, the House version would institute a complex permit system, and vest substantial authority in the Secretary to follow his own preferences for allowing foreign fishing without any distinct standard of accountability. We are particularly disturbed that the House version incorporates Article 7 of the Geneva Convention with respect to the measures that would protect anadromous species seaward of the conservation zone, as this would invite delays and disputes and risk mandatory international arbitration procedures. Consequently, the Senate bill is especially preferable from the standpoint of salmon protection.

We also protest the concept embodied in the House version whereby

license fee receipts emanating from the Alaska bottomfish fishery would be utilized to subsidize the tuna fleet [House Bill, Sec. 306(d), pages 49-50].

Recommendation: The Conferees should utilize Sections 101 and 102 of the Senate version rather than similar sections (especially Section 201) of the House version. It is extremely important that the provisions of the Senate version regarding anadromous species and United States preferential harvest rights be retained.

B. The Senate version [Senate Bill, Sec. 203, pages 101-108] is much clearer than the House version, that the regional councils will be authorized to develop management programs for foreign as well as domestic fisheries.

Recommendation: Retain Sec. 203 of the Senate version with respect to council management program jurisdiction.

#### V. RENEGOTIATION OF NONCONFORMING TREATIES AND AGREEMENTS

The concept contained in Sec. 103(b) of the Senate version [Com. Print, pages 31-32] is important; without such a stimulus, renegotiation processes could drag on indefinitely. However, it appears unclear under the existing language whether the Secretary is expected to merely initiate negotiations by January 1, 1977, or to actually amend or terminate these agreements by that date. We also believe that an annual report to the Congress from the Secretary on the progress of renegotiations, as required in Sec. 202(c) of the House Bill [Com. Print, page 32] is desirable.

Recommendation: For clarity, include a statement in the Conference Report that it is the intention of the Congress that the Secretary initiate action on nonconforming agreements no later than January 1, 1977, and that he proceed on renegotiations as expeditiously as possible. In addition, the language contained in Sec. 202(c) of the House Bill should be added to Sec. 103(b) of the Senate version.

#### VI. CONGRESSIONAL REVIEW OF INTERNATIONAL FISHERY AGREEMENTS

International fisheries agreements are and will continue to be important factors regarding long term protection of fisheries resources adjacent to, emanating from, or depended upon by the United States. Inasmuch as many of these agreements are executive agreements rather than treaties and therefore not subject to ratification by the Senate, the receptiveness of the Executive Branch to the needs of United States citizens is by no means guaranteed. Therefore, we strongly favor the concept in Sec. 206 of the House version [Com. Print, pages 38-42].

Recommendation: Sec. 206 of the House version should be inserted as a new section after Sec. 103 of the Senate version. We question whether Sec. 206 must be as explicit and detailed as it now exists. However, since much of this section relates to the internal operations of the Congress, we believe that the Conferees are best qualified to make this determination.

#### VII. TERMINATION OF AUTHORITY

Both versions contemplate the possibility of the United States becoming a party to a Law of the Sea or similar treaty which could conflict with the provisions of this Act. However, while the Senate version would cancel the authority of Title I of the Act entirely, the House version merely provides that regulations affecting foreign nationals be amended by the Secretary to conform to the elements of such a treaty. We believe that terminating the authority of Title I without mitigation could seriously disrupt the workings of the Federal bureaucracy and lead to the potentiality for misunderstandings and confusion. Consequently, we prefer the approach taken by the House.

Undoubtedly, there may also be conflicts between a Law of the Sea Treaty and the provisions of the Act itself. However, it is unlikely that such a treaty would be self-executing. Therefore, implementing legislation by the Congress is a virtual certainty, and any necessary amendments to the Act could be taken care of at that time.

Recommendation: Insert the substance of Sec. 205 of the House version in place of Sec. 104 of the Senate version [Com. Print, pages 37-38]. Some editorial changes will be necessary. The language of the House version which references treaties emanating from the Law of the Sea Conference only (rather than other comprehensive treaties) should be retained so as to prevent the possibilities of a misunderstanding.

#### VIII. NATIONAL STANDARDS

A. The national standards set forth in the respective versions are substantially similar. One element which concerns us is the prohibition against discrimination [Com. Print, page 45]. We understand that the Councils are basically interstate organizations, and therefore may not be subject to Fourteenth Amendment nondiscrimination requirements, which is the reason for including this prohibition in the bill. However, this is not spelled out. Consequently, there is a danger that (1) individuals who are somewhat disenchanted with conservation measures may engage in frivolous lawsuits or appeals based on this phrase, and (2) courts may misunderstand the reason for its inclusion and decide that it was intended to impose a stricter nondiscrimination

standard than is provided by the Fourteenth or Fifth Amendments.

Recommendation: The Conference Report should state clearly that the nondiscrimination prohibition in the bill is intended to cover the novel concept represented by the Councils, and that the standard for review is the same as for claims brought under the Fourteenth or Fifth Amendments.

B. We have an additional concern with respect to Sec. 201(a)(4) of the Senate version [Com. Print, page 45] relating to national standards. The reference in this paragraph to "allocation" operates to encourage Federal limited entry, and the legislative history demonstrates that this was intended. We are adamantly opposed to Federal limited entry.

Recommendation: Delete all of Sec. 201(a)(4) of the Senate version after the first sentence.

C. We believe very strongly that implementation of the programs contained in this legislation should take into account existing management entities which are performing satisfactorily so as to avoid duplication of effort and changes which result in no benefit. Section 201(a)(7) of the Senate version [Com. Print, page 46] appears to recognize this. However, specific mention should be made of the desirability of this approach in the Conference Report.

Recommendation: In discussing Sec. 201(a)(7) of the Senate version, the Conference Report should indicate the intention of the Congress that existing fisheries management organizations (such as those of the states) should be utilized to the fullest possible extent so as to preclude duplication of effort and meaningless changes of jurisdiction.

#### IX. GUIDELINES FOR REGIONAL FISHERY MANAGEMENT COUNCILS

Section 201(b) of the Senate version [Com. Print, page 47] requires the Secretary of Commerce to establish guidelines for the Fishery Management Councils to follow in the development of management, laws and proposed regulations. It is our belief that this authorization provides an opportunity for the Secretary to abuse the intended relationship between the Councils and the Federal government by using the guidelines to affect the outcome of Council deliberations on plans and regulations as well as the mechanisms by which they are obtained. The presence of national standards and the opportunity for review by the Secretary are a more than sufficient safeguard to protect the interests of the Federal government. Concurrently, the Councils should be free to develop their recommendations without significant Federal interference if rational measures conforming to regional conditions are to be expected.

Recommendation: Section 201(b) of the Senate version should be deleted.

## X. COMPOSITION OF FISHERIES COUNCILS

First of all, we recognize that conditions in various United States fisheries differ substantially, and that the composition of the Councils and the means of determining that composition may necessarily have to vary.

However, we strongly object to the composition of the Council in our region as it is presently set forth in the House version [Com. Print, pages 50-52]. The failure of the House version to specify the origin of eight of the Council members guarantees continuous uncertainty, confusion, and hardship among fishermen within the region. It would insure that political consideration and the formation of political coalitions, replete with constant power struggles and political compromises divorced from rational fisheries management, would take place continuously. Long delays in the formulation of management programs and a preference for half-measures representing only the lowest common denominator would be commonplace. As the wild card members changed, so would the political coalitions, and in turn so would the management programs. The big loser would be the fishermen, regardless of which state he came from. In sum, utilization of the House version would result in the imposition of an additional and unmanageable layer of bureaucracy with no corresponding benefits. While we sympathize with the attempt of the House draftsmen to construct a council in the most democratic means possible, we would emphasize that democracy without a means of insuring final resolution of problems is virtually useless.

For those who feel that, under the Senate version, they would be in the minority, we would point out that the Secretary has powers of review of proposed management plans in accordance with the national standards, and that such standards prohibit discrimination.

Some may also believe that the House version would more accurately provide for representation of the total public interest on the Council. In response, we question whether the Federal government (in the form of the Secretary appointing eight members) is anywhere near as qualified as the Governors of the respective states to determine which persons from their state represent the public interest.

Recommendation: We reiterate that if representatives from other regions wish to utilize the House version or a combination of the House-Senate approaches, we have no objection; consistency is not as important as creation of a workable council reflecting the conditions in each region. With respect to Alaska's Fisheries, however, we urge in the strongest terms possible that the composition system embodied in the Senate version be retained.

## XI. STAFFING

Section 202(d) (2) of the Senate version [Com. Print, pages 56-57] permits regional councils to retain individuals for purposes of obtaining information necessary to formulate management programs. We believe it to be

important for this responsibility to lie with the Councils rather than the Secretary so that the Councils are free to develop their programs as they see fit, using such data as they consider relevant.

Recommendation: Retain Section 202(d)(2) of the Senate version.

#### XII. TIME CONSTRAINTS

It is important to retain the time constraints for appointments and development of management regulations and plans contained in the Senate version. Without this stimulus, delays running into years could result before the programs envisioned by the bill are implemented.

Recommendation: Retain provisions in Sec. 202 and Sec. 203 and other appropriate parts of the Senate version imposing deadlines on review of agreements, appointments and formulation of management programs.

#### XIII. PRE-EMPTION OF STATE FISHERIES MANAGEMENT RESPONSIBILITIES

The Senate version recognizes the traditional right of the states to manage fisheries at least within the territorial sea. Senate Bill, Sec. 202(g)(1) [Com. Print, pages 62-63] deprives the Councils of any authority to make recommendations regarding fisheries occurring principally within such waters. Federal authority is treated similarly in Senate version, Sec. 205 [Com. Print, page 87].

The House version, however, clearly authorizes Federal incursions into state domain in Sec. 309 [Com. Print, pages 87-89].

We strongly urge that the provisions of the Senate version be employed by the Conferees. There is no significant justification for Federal intervention into local coastal fisheries utilized only by United States fishermen.

Recommendation: Retain Sections 202(g)(1) and 205 of the Senate version; avoid Section 309 and related sections of the House version.

#### XIV. CONTINUATION OF ACCEPTABLE STATE REGULATIONS

Section 202 (g) (3) of the Senate version [Com. Print, page 69] encourages the use of existing state regulations where they are acceptable. Obviously, regulations which have proven their value should not be discarded merely because new legislation is enacted.

Recommendation: Retain Section 202(g)(3) of the Senate version.

XV. NONDISRUPTION OF FISHERIES

Similarly, Sec. 202(g) (4) of the Senate version [Senate Bill, page 101, lines 8-10] is intended to insure that the transition from existing management to the new arrangement involving regional councils be accomplished in a manner which does not needlessly inconvenience the fisherman, who is the beneficiary of the legislation.

Recommendation: Retain Section 202(g) (4) of the Senate version.

XVI. NATURE OF COUNCIL REGULATIONS

A. Section 203(b) (1) of the Senate version [Senate Bill, page 102, lines 22-25] is in need of a minor clarification to distinguish between limited entry and other types of regulations governing fishing vessels.

Recommendation: Section 203(b) (1) to read:

"designate zones where, and designate periods when, fishing shall be limited to, or shall not be permitted, or shall be permitted only as to specified types or sizes of vessels or gear;"

D. Section 203(c) (2) of the Senate version [Senate Bill, page 105, lines 3-7] contains an incorrect citation to another part of the bill. Section 203(b) (2) rather than (b) (1) relates to limited entry.

Recommendation: Change the reference in Section 203(c) (2) from "(b) (1)" to "(b) (2)".

XVII. CONFIDENTIALITY OF STATISTICS

For reasons of consistency and clarity, we favor the Senate version regarding the general operations of the Councils except as otherwise stated in this paper. However, while we encourage the collection of statistics, we believe the requirement of the House version that statistics relating to the financial and other records of individuals be kept confidential is an important safeguard to individual privacy. Moreover, our experience with a similar Alaska state law has demonstrated that this protection encourages fishermen and processors and others to submit accurate statistics.

Recommendation: Retain Sec. 202(f) (1) of the Senate version [Com. Print, page 59], but incorporate appropriate language from Sec. 304(b) (d) of the House version [Com. Print, page 67].

## XVIII. FOREIGN STATISTICS

Statistics on foreign fishing effort and related data will be necessary if the regional Councils are able to efficiently perform their function of developing management programs regarding foreign fishing. However, it is necessary that this information be accurate, detailed, and meaningful. The Conference Report should indicate clearly that the United States must require detailed data and economic information from foreign governments, including production costs and figures on the value of fisheries products. In turn, the Federal government must deliver this information to the regional Councils so they will be able to set the value of fishing privileges from the standpoint of foreign vessel license fees.

Recommendation: In discussing Sec. 102(b)(2) of the Senate version [Senate Bill, page 84] in the Conference Report, appropriate mention should be made of the type of foreign statistics which will be required by the United States.

## XIX. SECRETARIAL REVIEW

The review standard contained in the Senate version is more clear and provides for greater accountability than does the House version.

Recommendation: Emphasize Section 203(c) of the Senate version [Senate Bill, pages 104-105].

## XX. NATURE OF SECRETARIAL REGULATIONS

A. It is the general consensus that existing state regulatory and administrative organizations will be relied upon in many cases by the Secretary to continue to carry out management responsibilities and to participate in decisionmaking in the field. It is important that the Act specifically authorize the Secretary to take advantage of such organizations.

While this type of regulation should be authorized, we object to the power of the Secretary to adopt regulations governing the operation of Councils. Internal workings of Councils should be established by them according to their needs and objectives.

Recommendation: The second sentence of Sec. 203(c) of the Senate version should be amended to read [Senate Bill, page 106, lines 7-11]:

"In addition, such regulations shall pertain to, but need not be limited to, [THE OPERATION OF COUNCILS] the setting of fees, procedures for obtaining data and statistics relating to fishing,

implementation of conservation and management programs in the field, and other matters relating to the purposes of this Act."

So that it is clear that the Councils are empowered to establish their own procedures, Sec. 303(e)(4) of the House version [Com. Print, page 58] should be added to the appropriate part of Sec. 202(d) of the Senate version [Com. Print, page 56].

B. Alaska is opposed to any Federally-initiated limited entry or limited access program. Sec. 203(c)(2) of the Senate version [Senate Bill, page 105] reflects this point of view by prohibiting such action unless it is specifically approved by the appropriate Council. We cannot overemphasize the importance of maintaining this prohibition in the final product adopted by the Conferees.

Recommendation: Retain the prohibition against a limited entry program independently initiated by the Federal government contained in Sec. 203(c)(2) of the Senate version.

#### XXI. EMERGENCY ACTION

Where genuine emergencies exist, regulatory action may be required within a matter of hours. Immediate action may be impossible if it is necessary for the Secretary to approve an emergency measure. Rather, the responsibility in this area should be vested in the Secretary's regional representative, who will be familiar with local conditions.

Recommendation: Section 203(f) of the Senate version [Senate Bill, page 106] should begin as follows:

"If the Secretary or his delegate determines. . ."

#### XXII. INTERIM PLANS

A. While the language of the Senate version regarding emergency action is satisfactory, the situation of management of stocks pending development of management programs is not specifically covered. Therefore, the essence of Sec. 308 of the House version [Com. Print, pages 80-81] should be incorporated into the Senate version after Sec. 203(f) [Senate Bill, page 106].

Recommendation: Include Section 308 of the House version, with appropriate editorial changes, after Sec. 203(f) of the Senate version.

In addition, include in the Conference Report a statement that it is expected that the Secretary will subdelegate his responsibility regarding emergency action and interim plans to the Regional Director of the National Marine Fisheries Service or other field personnel.

For purposes of consistency with this recommendation, the definition of "depleted" in Sec. 3(4) of the House version [Com. Print, page 11] should be included in the Senate version.

B. Emergency regulations promulgated under Sec. 308 of the House version are clearly temporary in nature since they will remain in effect no longer than 180 days. However, it is not spelled out that management plans prepared under Sec. 308(a)(3)(A) of the House version [Com. Print, page 80] are also interim in nature until the appropriate Council has had the opportunity to develop a permanent plan. Finally, we see no rationale for limiting temporary emergency plans and regulations to the present nine-mile contiguous fishery zone rather than for the enlarged zone.

Recommendation: Amend Sec. 308(a)(3)(A) of the House version [Com. Print, page 80] to read:

"prepare, after consultation with appropriate States and fishing industry representatives, (A) an interim management plan which will remain in effect until the appropriate council develops a permanent plan, which shall apply within the conservation and management zone established by this Act [THOSE WATERS WHICH COMPOSE THE CONTIGUOUS FISHERIES ZONE ESTABLISHED BY THE FIRST SECTION OF THE ACT OF OCTOBER 14, 1966, FOR THE FISHERY; AND]."

#### XXIII. FISHERY MANAGEMENT REVIEW BOARD

We have considered carefully the advantages and disadvantages of the review board concept, which is included in the Senate version but not the House version. For the following reasons, we believe that the review board is not desirable:

1. There being only one board, it will have a national rather than regional orientation (the opposite of the Council arrangement). The board may feel constrained to make decisions which are consistent and symmetrical nationally but which do not properly consider inherent regional differences.
2. We are not convinced that administrative review procedures will result in expedited settlement of disputes. Our

experience, in fact, would tend to lead us to the opposite conclusion. Often, such disputes will be carried to the courts anyway, and the presence of an appeal board may do nothing but insert an extra step.

3. We believe that the courts are more likely to uphold a Fisheries Management Council than would an appeals board. We foresee that a number of individuals may undertake what amount to obstructionist appeals, and be encouraged to do so simply by the presence of a board. Since the board is established to hear appeals, it may feel more constrained to be receptive to frivolous or unjustifiable appeals. A district court, however, should be inclined to recognize that the Councils are governmental entities and were established by the Congress to represent the public interest; consequently, their determinations should be given great deference.

4. Under the Senate version, foreign nationals (as well as resident aliens) would be given virtually automatic standing to obtain an appeal. Thus, for example, Soviet or Japanese fishermen could conceivably tie up management plans or proposed regulations developed by a Council through the appeals board. While it might be possible to do so as well through the courts, standing to sue would have to be demonstrated; the review board, on the other hand, virtually invites them to take action.

Recommendation: Section 204 of the Senate version [Senate Bill, pages 103-113] should be deleted. For consistency, Section 3(2), defining "Board", [Senate Bill, page 75] should also be removed.

#### XXIV. PENALTIES

Section 301(c) of the Senate version [Com. Print, pages 94-95] fails to provide for vessel forfeitures. This is a highly important legal weapon where expensive vessels and large catches are involved in violations, as has been demonstrated in prosecutions and settlements under the Bartlett Act with respect to illegal fishing by foreign nationals. Since the House version does provide for vessel forfeiture, appropriate language should be inserted authorizing this procedure.

Recommendation: The words "any fishing vessel" from Sec. 313(a) of the House version [Com. Print, page 94] should be included in the first sentence of Sec. 301(c) of the Senate version.

#### XXV. ENFORCEMENT AND REPEAL OF BARTLETT ACT

Section 303(b) of the Senate version [Com. Print, page 101] provides for

repeal of the Bartlett Act, under which foreign fishing violations are presently prosecuted, at the effective date of the Act. However, enforcement of the Act is itself delayed until July 1, 1977 by virtue of Sec. 302(d). This would result in an interim of more than a year during which there would be no statute under which to prosecute violations by foreign nationals in the existing nine-mile Contiguous Fisheries Zone.

Recommendation: Redraft Sec. 303 to provide for a continued nine-mile Contiguous Fisheries Zone for enforcement purposes until July 1, 1977, as well as continued application of the existing Bartlett Act during that period.

#### XXVI. MARINE MAMMALS

The Senate version includes all marine mammals in the definition of "fish" [Com. Print, page 12] and thus would extend full United States jurisdiction over all marine mammals within the 200 mile zone. The House version, on the other hand, does not extend United States jurisdiction over marine mammals in the 200 mile zone but would amend the Marine Mammal Protection Act of 1972 so that its provisions would apply to United States nationals throughout the 200 mile zone.

Alaska continues to support the Senate version. However, in order to minimize problems in administering provisions of the 200 mile law with regard to marine mammals and the Marine Mammal Protection Act of 1972, we recommend that the Senate version be further amended so that United States jurisdiction in the 197 mile zone outside territorial waters would apply only to foreign nationals.

Recommendation: Amend Sec. 3(7) of the Senate version [Com. Print, page 12] as follows:

"'fish' means all living marine organisms, including, but not limited to, finfish, mollusks, crustaceans, [MARINE REPTILES, AND] all other forms of marine animal and plant life (but not including birds); and marine mammals only with respect to foreign nationals not legally admitted to the United States;"

SUMMARY  
RECOMMENDATIONS  
OF THE  
ALASKA LAW OF THE SEA COMMISSION

Prepared by:  
Office of Senator Chancy Croft

February 20, 1976

IN A WORLD WITH RAPIDLY SHRINKING FOOD SUPPLIES AND POPULATION GROWTH RISING JUST AS RAPIDLY, THE OCEANS OFFER AN ABUNDANT SOURCE OF PROTEIN. BUT IN RECENT YEARS, WASTEFUL HARVESTING PRACTICES AND THE INABILITY OF THE UNITED STATES TO EFFICIENTLY PROTECT ITS FISHERIES HAVE THREATENED THAT FOOD SOURCE. SCIENTISTS HAVE IDENTIFIED 25 STOCKS OF FISH WHICH ARE EITHER CONSIDERED TO BE DEPLETED OR THREATENED WITH DEPLETION.

IN ALASKA, THE ONCE GREAT FISHERIES HAVE BEEN REDUCED MERCILESSLY DUE IN LARGE PART TO UNCONTROLLED HARVESTING BY FOREIGN FLEETS OUTSIDE THE JURISDICTION OF U. S. AUTHORITIES. EACH YEAR THOUSANDS OF SALMON ARE TAKEN BY FOREIGN VESSELS, OFTEN USING EQUIPMENT DECLARED ILLEGAL FOR ALASKAN FISHERMEN. ALSO TAKEN INCIDENTALLY TO BOTTOM FISH HARVESTING ARE HALIBUT AND CRAB. ANNUAL LOSSES OF SUCH MAGNITUDE CAN BE ILL AFFORDED IN A STATE WHERE, IN 1972, 16 OF THE 19 FISHERIES WERE CLASSIFIED BELOW THE POVERTY LEVEL.

ON JANUARY 28, 1976, THE UNITED STATES SENATE PASSED THE 200 MILE ZONE BILL, FOLLOWING ACTION TAKEN LAST YEAR BY THE U. S. HOUSE OF REPRESENTATIVES. THE TWO BILLS HAVE BEEN SENT TO A CONFERENCE COMMITTEE TO WORK OUT THEIR DIFFERENCES.

THE ALASKA LAW OF THE SEA COMMISSION HAS REVIEWED BOTH VERSIONS OF THE BILL AND, WHILE ENDORSING THE CONCEPT, HAS MADE SEVERAL RECOMMENDATIONS. THE MAJOR RECOMMENDATIONS TO THE CONFERENCE COMMITTEE ARE DEFINED IN THE FOLLOWING TWELVE POINTS.

#### REGIONAL COUNCILS

THE ALASKA LAW OF THE SEA COMMISSION ENDORSES THE ESTABLISHMENT OF REGIONAL

COUNCILS AS PROVIDED IN THE SENATE VERSION OF THE 200 MILE LIMIT BILL. THE SENATE VERSION PROVIDES NINE SEATS ON THE ALASKA REGIONAL COUNCIL WITH FIVE ASSIGNED TO ALASKANS.

FISHERY MANAGEMENT

THE COMMISSION RECOMMENDS RETENTION OF LANGUAGE IN THE SENATE BILL WHICH RECOGNIZES THE TRADITIONAL RIGHTS OF THE STATES TO MANAGE THEIR FISHERIES.

DISPUTES

IF DISPUTES DEVELOP BETWEEN UNITED STATES FISHERMEN AND FOREIGN NATIONALS WITH U. S. JURISDICTION, THE SENATE VERSION GRANTS A HARVEST PREFERENCE TO THE UNITED STATES FISHERMAN. IT ALSO LEAVES THE AUTHORITY TO DECIDE SUCH DISPUTES WITH THE REGIONAL COUNCIL. THE COMMISSION ENDORSES THIS CONCEPT.

INTERNATIONAL AGREEMENTS

CURRENTLY MANY INTERNATIONAL FISHERY AGREEMENTS ARE IN FORCE THROUGH EXECUTIVE ORDER. THE HOUSE VERSION OF THE 200 MILE LIMIT BILL WOULD PROVIDE FOR CONGRESSIONAL CONCURRENCE ON INTERNATIONAL FISHING AGREEMENTS. THE COMMISSION SUPPORTS THIS PROPOSAL.

LIMITED ENTRY

THE COMMISSION CAN FIND NO JUSTIFICATION FOR A FEDERAL LIMITED ENTRY PROGRAM. BOTH THE SENATE AND HOUSE VERSIONS ALLOW FOR THE ESTABLISHMENT OF A FEDERAL PROGRAM WITH THE SENATE VERSION ALLOWING IT ONLY ON INITIATION BY THE REGIONAL COUNCILS. THE COMMISSION RECOMMENDS THE EXCLUSION OF ANY AUTHORITY FOR THE ESTABLISHMENT OF A FEDERAL LIMITED ENTRY PROGRAM.

GUIDELINES FOR REGIONAL COUNCILS

THE SENATE VERSION OF THE BILL AUTHORIZES THE SECRETARY OF COMMERCE TO ESTABLISH GUIDELINES FOR THE OPERATION OF THE REGIONAL COUNCILS. THE COMMISSION RECOMMENDS THAT THE GUIDELINES BE ESTABLISHED BY THE REGIONAL COUNCILS THEMSELVES.

FOREIGN STATISTICS

UNITED STATES FISHERMEN HAVE OFTEN BEEN HAMPERED IN THEIR EFFORTS TO PROTECT THE NATION'S RESOURCES BY A LACK OF ACCURATE STATISTICS ON FISHING ACTIVITIES BY FOREIGN FLEETS. THE COMMISSION RECOMMENDS THAT THE REPORT OF THE CONFERENCE COMMITTEE CLEARLY DEFINE THE TYPE OF STATISTICS REQUIRED FROM FOREIGN GOVERNMENTS.

EMERGENCY ACTION

IN TIMES OF GENUINE EMERGENCY, THERE MAY NOT BE TIME FOR REACTION BY THE SECRETARY OF COMMERCE. FOR THIS REASON, THE COMMISSION RECOMMENDS THAT RESPONSIBILITY TO APPROVE EMERGENCY MEASURES SHOULD BE GRANTED TO THE SECRETARY'S REGIONAL REPRESENTATIVE WHO IS MORE FAMILAR WITH LOCAL CONDITIONS. THIS EMBODIES THE CONCEPT OF MANAGEMENT BY EMERGENCY ORDER WHICH IS A CORNERSTONE OF ALASKA'S FISHERIES MANAGEMENT.

FISHERIES MANAGEMENT REVIEW BOARD

THE SENATE BILL ESTABLISHES A NATIONAL FISHERIES MANAGEMENT REVIEW BOARD. THE COMMISSION FEELS THE NATIONAL CHARACTER OF THE BOARD DILUTES THE LOCAL COUNCIL APPROACH AND COULD LEAD TO FRUSTRATION AND UNNECESSARY DELAY IN IMPLEMENTING COUNCIL DECISIONS. THE COMMISSION BELIEVES COURT REVIEW ALONE WILL ADEQUATELY PROTECT THE RIGHTS OF ALL CONCERNED.

VESSEL FORFEITURE

THE HOUSE VERSION PROVIDES FOR THE FORFEITURE OF VESSELS FOUND IN VIOLATION OF THE LAW. THE COMMISSION FEELS VESSEL FORFEITURE IS AN EFFECTIVE AND NECESSARY DETERRENT TO VIOLATORS.

EXTENT OF JURISDICTION

THE COMMISSION RECOMMENDS THE SENATE VERSION WHICH RECOGNIZES THE UNITED STATES POTENTIAL HARVEST RIGHTS WITHIN THE 200 MILE LIMIT AND EXTENDS U. S. CONTROL OF ANADROMOUS SPECIES THROUGHOUT THE MIGRATORY RANGE.

FINDINGS AND STATEMENT OF POLICY

GENERALLY EITHER VERSION IS ACCEPTABLE. BUT THE SENATE VERSION PROVISION EMPHASIZING THE IMPORTANCE OF DEVELOPING A U. S. FISHERY FOR BOTTOM FISH IN ALASKAN WATERS SHOULD BE INCLUDED.