

ALASKA LEGISLATURE SPECIAL COMMITTEE / SUBJECT FILE 8672
1762 SCOMM 70: SEN. SPEC. COMM. ON HIGH SEAS SALMON INTERCEPT. 1989-90



RECORDS CERTIFICATION



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Date

SCOMM 70: SENATE SPECIAL COMMITTEE ON HIGH SEAS SALMON
INTERCEPTION, 1989-1990

MEMBERSHIP:

SENATOR BETTYE FAHRENKAMP, CHAIR
SENATOR JAY KERTTULA, VICE-CHAIR
SENATOR DICK ELIASON
SENATOR STEVE FRANK
SENATOR RICK HALFORD
SENATOR ARLISS STURGULEWSKI
SENATOR FRED ZHAROFF

Established by SR 1, 1989.

Contents: 6 files. 5 cassette tapes are also available of
meetings held 2/13/89 - 3/1/90.

LIST OF FILES (PAGE 1)

MICROFICHE #

1. BACKGROUND ON H.S.S.I. COMMITTEE
2. COMMITTEE MINUTES 1989
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4. COMMITTEE HANDOUTS 1990
5. INTERNATIONAL HSI ISSUES/AGREEMENTS
6. SJR 6
7. SJR 9

SCOMM

70:1

President

1 IN THE SENATE

BY THE RULES COMMITTEE

2 SENATE RESOLUTION NO. /

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - FIRST SESSION

5 Establishing a Senate Special Committee
6 on High Seas Salmon Interception.

7 BE IT RESOLVED BY THE SENATE:

8 WHEREAS the salmon fishing industry is among Alaska's largest indus-
9 tries and generates hundreds of millions of dollars and thousands of jobs
10 each year; and11 WHEREAS Alaskan salmon are vitally important to commercial fishermen,
12 subsistence fishermen, and sport fishermen in the state; and13 WHEREAS millions of Alaskan salmon are being caught and injured by the
14 high seas driftnet fisheries of Japan, Korea, and Taiwan; and15 WHEREAS high seas interception and harvest of Alaskan salmon defeat
16 the state's careful management program for salmon and undermine the state's
17 responsibility for conservation of wild salmon stocks and deprive the state
18 of an economic return on its investment in the fishing industry;19 BE IT RESOLVED by the Senate that a Senate Special Committee on High
20 Seas Salmon Interception is established to study issues related to high
21 seas interception of Alaskan salmon stocks; and be it22 FURTHER RESOLVED that the president of the Senate shall determine the
23 number of senators to be members of the Senate Special Committee on High
24 Seas Salmon Interception and appoint the chair and members of the special
25 committee; and be it26 FURTHER RESOLVED that the Senate Special Committee on High Seas Salmon
27 Interception may meet during and between sessions of the Sixteenth Alaska
28 State Legislature; and be it

29 FURTHER RESOLVED that the Senate Special Committee on High Seas Salmon

1 Interception is terminated on the convening of the First Session of the
2 Seventeenth Alaska State Legislature.
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DON YOUNG
CONGRESSMAN FOR ALL ALASKA

WASHINGTON OFFICE
2331 RAYBURN BUILDING
TELEPHONE 202/225-5765

COMMITTEES:
INTERIOR AND INSULAR
AFFAIRS
MERCHANT MARINE AND
FISHERIES
POST OFFICE AND
CIVIL SERVICE



Congress of the United States
House of Representatives
Washington, D.C. 20515

October 6, 1988

DISTRICT OFFICES

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P.O. BOX 1860
NOME, ALASKA 99762

The Honorable Lloyd Jones
Alaska State Senate
P.O. Box V
Juneau, Alaska 99811

Dear Lloyd:

Thank you for expressing your concern regarding the high seas interception of Alaska salmon. I appreciated hearing from you.

The issue of high seas salmon interception is one of the most difficult I have had to deal with during my 16 years in Congress. The enclosed fact sheet, which was prepared by my staff, demonstrates some of the complexities involved.

In an effort to reduce further the interceptions that are occurring, the Congress last year passed the Driftnet Monitoring, Assessment, and Control Act which was jointly introduced by me and Senator Stevens. This Act requires the U.S. Government to enter into monitoring and enforcement agreements with nations fishing with driftnets on the high seas. Failure of a nation to enter into an acceptable agreement will subject its fish products to a Presidential embargo under the Pelly Amendment.

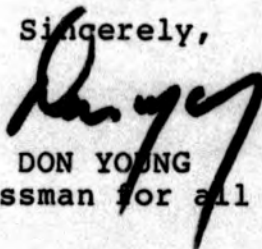
This year, we are also considering legislation that will expand the effect of the Pelly Amendment so that the President can embargo any product from a certified nation. I believe this will give the President more incentive to use his embargo authority.

In addition, I have consistently recommended higher funding for both the U.S. Coast Guard and the Office of Law Enforcement of the National Marine Fisheries Service (NMFS). Although I have been successful in getting increased funds, much of the Coast Guard money continues to be used for drug enforcement, rather than fisheries enforcement. In addition, NMFS estimates that funding will have to increase fourfold in order to begin an adequate job of monitoring and enforcing the driftnet fisheries.

Because these fisheries occur in international waters, there is a limit to how much U.S. enforcement can be conducted. Therefore, I believe that international negotiations which result in comprehensive enforcement plans are an important goal. In this regard, I have been working with the Federal Government in their negotiations with Japan, Korea, and Taiwan, as well as their negotiations with the Soviet Union. I hope that this combination of efforts: legislation, funding, and negotiations, will result in a further reduction in salmon interception.

I can assure you that I share your concerns about salmon interception and I will continue to do all I can to see that it is stopped. If I can be of any other assistance in the meantime, please do not hesitate to let me know.

Sincerely,



DON YOUNG
Congressman for all Alaska

DY:rmc

Enclosure



COOPERATIVE EXTENSION SERVICE, UNIVERSITY OF ALASKA, USDA & SEA GRANT COOPERATING

Marine Advisory Program
P.O. Box 1329
Petersburg, Alaska 99833
(907) 772-3381
FAX (907) 772-4431

February 9, 1989

RE: Support for "Joint
N.A.S.A./S.E.A.C.O.P.S.
Remote Sensing Project

Southeast Alaska Seiners
Box 9579
Ketchikan, AK. 99901

FEB 22 1989

Dear John Peckham,

An interesting and potentially valuable research opportunity has presented itself. Your speedy action is requested.

The Marine Advisory Program (University of Alaska), in association with the membership of S.E.A.C.O.P.S., is preparing a N.A.S.A. funding proposal as part of the National Commercial Uses of Space Program that can benefit your organization in several ways. Recall that S.E.A.C.O.P.S. is the Ketchikan-based group dedicated to the elimination of the interception of North American salmon by Asian squid gillnet fleets in the central and western North Pacific Ocean. Many millions of Pacific salmon of North American origin are being taken in this interception fishery. Economic losses are mounting.

We are proposing that the northwestern Pacific fisheries establishment participate with us in a two-phased project:

Phase I: To use satellite remote sensing and other technological means to detect commercial concentrations of fisheries resources (including Pacific salmon) in this vast region.

Phase II: To scan selected portions of the central and western North Pacific, particularly those areas adjacent to and within the U.S. Exclusive Economic Zone for the presence of foreign interception vessels (primarily Japanese, Korean and Taiwanese squid gillnet vessels). Oceanographic conditions favored by Pacific salmon will be used to determine the areas to be scanned. S.E.A.C.O.P.S. has requested this phase of the project not only

for the detection of pirate vessels, but also to direct U.S. enforcement vessels and aircraft to the precise location of offending vessels.

This is an aggressive and sensitive project! Your quiet attention is appreciated. The press has not been notified of our intentions.

The project will make use of the organizational services of Boeing Aerospace Operations, Inc. (Seattle, Washington, and Washington, D.C.). The U.S. Navy has been contacted and is a probable participant.

Your association members will directly and/or indirectly benefit from this project. The economic benefits derived from the prevention of fish piracy are obvious (Phase II of the proposed project). Phase I also promises important benefits. It has long been known that aerial (aircraft) and satellite remote sensing can be used to direct fishing vessels to commercial fisheries resources. The U.S., Japan and Soviet Union are leaders in this field. However, the U.S. has been slow in seeking practical commercial applications for this technology. Phase I will explore the various ways in which remote sensing can directly benefit your membership in locating valuable marine resources.

Returning to the matter of your support. We are requesting that you write a short letter of support for both phases of this proposal.

Phase I - Pilot project to use remote sensing to locate fisheries concentrations in the North Pacific Ocean, including Pacific salmon. This project phase would include inshore as well as high seas applications.

Phase II - Pilot project to identify high seas areas where salmon of North American origin are most likely to be concentrated and to scan these areas for the presence of gillnet vessels involved in interception fisheries.

Your letter of support will imply the following:

If the first phase of this project leads to the development of commercial fisheries location products (for example daily charts, private reporting and fish finding services, etc.), then your members may become long-term users of these products.

This matter is fairly elementary...If a valuable product is developed that is cost-effective and is not destabilizing in terms of management implications, I think that we can

conclude that the product will be used by competitive U.S. fishermen and processors.

Please feel free to contact me concerning any remaining questions or concerns. Your letter concerning the "Joint N.A.S.A./S.E.A.C.O.P.S. Remote Sensing Project" should be sent to the following individual:

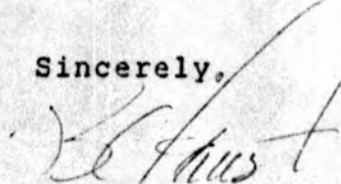
Dr. Allen M. Feder
Boeing Aerospace Operations, Inc.
600 Maryland Avenue S.W.
Washington, D.C. 20024-2520
(202) 479-4240
FAX (202) 479-4257

Additional information concerning the S.E.A.C.O.P.S. organization is available from:

Mr. Lonnie Haughton
S.E.A.C.O.P.S.
700 Water Street (Upper)
Ketchikan, Alaska 99901
(907) 225-8004

We welcome your participation.

Sincerely,



Brian C. Paust

SENATE SPECIAL COMMITTEE ON NATURAL RESOURCE DEVELOPMENT
November 18, 1988

MEMBERS PRESENT

Senator Lloyd Jones, Chairman
Senator Dick Eliason
Senator Rick Halford

COMMITTEE CALENDAR

SEACOPS

WITNESS REGISTER

Mr. Ron Leighton, SEACOPS
Mr. Lonnie Haughton, SEACOPS Board member
Mr. Cliff Phillips, Phillips Cold Storage
Mr. Mike Kusac

ACTION NARRATIVE

TAPE 1, SIDE 1
Number 001

Senator Jones called the Senate Special Committee On Natural Resource Development to order. The subject of the meeting is high seas interception of salmon on the high seas. Senator Jones introduced Ron Leighton and Lonnie Haughton as board members of SEACOPS. They say that SEACOPS represents fishermen in Alaska, Washington, and Oregon as well as Canada.

Number 044

Mr. Haughton relates that 100 to 300 ft. boats drag 20 - 60 miles of net and take salmon, steelhead, sea mammals, birds, and turtles. The Taiwanese are the major offenders as they are dumping large amounts of immature salmon on the European markets about 44 million lbs. of immature fish. 400,000 cases of salmon were found in Bangkok. That is a lot more than all the canneries in Southeast Alaska canned of mature salmon this year.

Number 07.0

Mr. Leighton testifies that the information has to be deseminated. He says that all user groups are impacted. He states that the short term goal is to deseminate the evidence and pass it on to other people.

Number 09.1

Cliff Phillips of Phillips Cold Storage says that according to his agent in Europe it is still going on and that the price for his fish was low, because it could be brought cheaper from Thailand. He related that Rick Lauber had just been in Russia and said that there is no easy solution because of the fish being caught in international waters. Senator Murkowski is in Singapore investigating the canning of salmon there and says that the salmon are being "laundered" and it is hard to trace their origins.

Number 13.9

Mr. Phillips relates that the Japanese government will not allow the squid gill nets to fish within their 200 mile limit - that the domestic fishermen have to use jigs like they all did before 1978, because of the damage it would cause to their domestic fishery and yet they send the nets out to the high seas to wipe the fish out there.

Number 15.3

Mr. Phillips says that according to his Asian agent, the Taiwanese are building 12 more ships to add to their squid gill net fleet and that means they will wipe out the salmon real soon.

Number 18

Mr. Haughton relates how a piece of net was found in Craig that was still fishing.

Earth Trust, a group in Honolulu, filmed an operating squid gill net boat and got pictures of mammals, birds, and turtles dying in the net.

Not only is the environment being destroyed, but the local economy is being undermined as well.

Number 24.3

Senator Halford questioned Mr. Leighton about who has jurisdiction over methods and means in any of the areas talked about. Under the Magnuson Act the U.S. has jurisdiction over their indigenous species and over its migratory range until it enters into a 200 mile limit of another foreign country. Taiwan and Korea don't recognize this. Japan allows us to board their boats, under treaty, which has been done in the past.

Number 28.4

Mr. Haughton continues that satellites can update sea surface temperature barriers on a daily basis and squid

inhabit much warmer water than salmon. This would be one way of setting boundaries where the squid fleet could fish. The U.S. claims jurisdiction, but other countries don't necessarily agree that we have the right to enforce it.

Number 30

The President could certify countries under the Pelly Amendment and put sanctions against their aquatic products - pearls, coral, fish - anything they can get from the sea.

The Legislature should get some sort of unanimous action and send it to the President and Congress to ask them to include other products in the sanctions allowed by the Pelly Amendment. We need the State to help lead the battle - a position paper from the State Department of Fish and Game on their best scientific numbers. We need a position paper on their ability to determine where a fish comes from.

Number 45

Mr. Haughton suggests that there be a California, Oregon, Washington, Hawaii, and Alaska conference and try to get national coverage of it to make people aware of the problem.

Number 49

There is evidence that the Taiwanese are setting their nets inside our 200 mile limit at night with the use of transponders. They should be treated like pirates since they remove their flags and identification to plunder our oceans.

TAPE 1 SIDE 2

Number 03

There is general discussion concerning evidence - flyovers by the Coast Guard June 28 - September 3 93 vessels were observed fishing out of area. Out of those vessels 43 could not be identified by name or flag states.

Mr. Haughton elaborated on how much net was being found floating in the water.

Number 10

There is general discussion on various groups meeting to discuss this problem.

The participants believe that a solution must be found within the next 2 or 3 year or it will be too late.

Number 21

The remaining healthy fisheries are discussed and how to find out the migratory routes of those fish. Why do some runs come back larger than expected?

Number 23

Mr. Leighton talks about the hatchery salmon being released and one half of one percent came back where 13% would have been great and 6% very bad. This particular run completely disappeared.

Number 26

Mr. Phillips believes that the fact that returns are so spotty means that the ships are fishing closer to shore than anyone currently thinks.

Number 28

The discussion turns toward how to identify the stream a fish came from by using scale samples and other scientific means.

Number 32.9

Mr. Haughton suggests that there should be some official place to bring evidence such as gill nets that fishermen actually find. And send a message to Admiral Yost of the Coast Guard to pick up the nets which they haven't done in the past.

Number 38

Senator Jones adjourned the meeting.

HIGH SEAS SALMON INTERCEPTION
Background Summary

ISSUE

Interception of Alaskan salmon stocks by high seas foreign fishing fleets is having major political and economic impacts on the Alaskan fishing industry. The state can play an important role in resolving this ongoing problem.

BACKGROUND-HISTORY

General

- A. Alaskan salmon migrations-general life history
 - 1. 0-3 years freshwater
 - 2. 1-5 years ocean
 - a. Far ranging ocean migrations
 - b. Susceptible to high seas harvest within and outside U.S. and USSR 200 mile zones
 - c. Order of susceptibility generally: chinook, sockeye, coho, steelhead, chum, pink
- B. Earliest record of interceptions: 1930s Japanese incursions into entrance of Bristol Bay
- C. Development of Japanese high seas salmon fisheries
 - 1. Early Fisheries onshore in Siberia, Kurile Islands
 - 2. Forced offshore in 1920s
 - 3. Cessation of fishing in WWII
 - 4. 1950s strong offshore movement/development
 - a. Total catches as high as 100 million salmon in early 1950s
 - b. Mothership fishery - Northern North Pacific and Bering Seas. 16 motherships, 400 catcher boats peak effort in 1959
 - c. Landbased fishery - North Pacific. 371 independent offshore vessels at peak in 1975
 - d. Vessels fish about ten miles of net per boat

INPFC

- A. International North Pacific Fisheries Convention signed in 1952 - US/Canada/Japan
 - 1. Abstention line (eastern boundary) at 175°W to protect North American salmon (Map A)
 - 2. Consensus required for change

B. 1952 to 1978 minimal change without Japanese concurrence

1. Scientific studies established North American stocks to west of 175°W
2. High seas gillnets dropout rate of 50 percent not reported as catch
3. Harvest of many immature salmon and even matures well short of growth potential
4. Impacts on Alaskan runs may have been as high as 10,000,000 fish per year
5. Primary known impacts on western Alaska coho and chinook, Bristol Bay sockeye and central Alaska chinook
6. In the case of western Alaska coho high seas catch may have exceeded inshore catch in some years

C. 1978 renegotiation

1. Moved Japanese fleets west over 400 miles (Map B)
2. 200 mile limit impetus
3. May have reduced interceptions as much as 70-80 percent. Some inshore runs showed dramatic increases even beyond what would be explained by better survival picture experienced throughout Alaska
4. Continuing impacts - maybe 2,000,000 fish per year
 - a. Western and central Alaska chinook
 - b. Central and western Alaska coho - reduced from prior years
 - c. Bristol Bay sockeye - although greatly reduced from prior years
 - d. Steelhead
 - e. Illegal fishing - landbased, mothership

D. 1986 renegotiation (Map B)

1. Bering Seas (donut) phaseout by 1994
2. Freeze on effort in U.S. EEZ
3. Landbased 1° line movement and enforcement
4. Research and monitoring provisions - mothership observers
5. Provisions for renegotiation
6. Would have reduced remaining interceptions by about 20 percent by 1994 if enforced, but chinook interceptions would be cut by one-half. Actually Soviet quota reductions and current ban on fishing in U.S. EEZ if INPFC guidelines are retained will have reduced remaining interceptions by 80 percent or to about 5 percent of what was occurring pre-1978.

E. Current and future status

1. Marine mammal suit - ban on EEZ fishery
 - a. Japanese threats - INPFC withdrawal (?)
 - b. Alternate fishing areas request
2. MMPA reauthorization
 - a. Request for foreign exemption
 - b. Quid pro quos
 - c. Environmentalist interests - cooperative opportunities
3. Mothership - landbased economic/political situation. Mothership; fishery may be economically defunct but landbased still viable and a strong political force on Japan.

USSR - GOJ Salmon

A. Treaty since 1956, annual negotiations

1. Initially regulated areas, times, gear
2. Evolved to quotas by species by fishery in mid-1970s
3. Banned fishing in USSR 200 mile zone in 1977
4. Bans fishing in some areas outside USSR 200 mile
5. Total quota reduced to only 14.5 million salmon in 1988 compared to longer term historical catches in the 40-to-65-million range
6. Charged Japan for fishing privileges (\$26.8 million in 1988)

B. Current Impacts

1. Quotas are for all salmon - North American and Asian not differentiated
2. Quotas dramatically reduced 1985-1988 to about 20 percent in mothership, 70 percent in landbased
3. Mothership fleet reduced from a high of 16 motherships and 400 catcherboats in 1959 to one mothership and 43 catcherboats in 1988
4. Landbased fleet reduced from 371 offshore vessels in 1975 to 157 in 1988
5. New Joint venture strategies
 - a. Processing for USSR catcherboats
 - b. Hatchery joint construction and harvesting

US/USSR GIFA

- A. Negotiated spring 1988, will be ratified in November

- B. Provides for consultative committee member and alternate each side. Meet at least annually
- C. Article VII deals with salmon
 - 1. Cooperation in management of high seas fisheries
 - 2. Agree on undesirability of high seas fisheries
- D. Reciprocal fishing agreements
 - 1. Paves the way for industry ventures in each others zones
 - 2. Crab ventures in USSR EEZ being planned
- E. Provides for management cooperation in other high seas fisheries management
 - 1. Donut
 - 2. Squid fisheries

Donut Fisheries

- A. Trawl harvests have expanded from nothing to nearly 1,300,000 mt (reported) in last four years
- B. Observed illegal fishing in U.S. EEZ from vessels supposedly operating in international waters of donut. Total catch may be underestimated - little or no monitoring
- C. Observer data on donut trawl very fragmentary
 - 1. No herring observed
 - 2. Salmon bycatch rates quite variable. Mainly chinook
 - a. Number of observations minimal
 - b. Expansion of samples to total chinook catch results in 2,000- 10,000/year total in five of six years and 200,000 in 1988 (small sample)
 - c. Impacts could be significant
- D. Sitka multilateral pollock science conference
 - 1. Inconclusive on donut stock composition as far as any consensus between nations
 - 2. In our view, data sufficient for management conclusions
 - a. Most probably major stock interactions between U.S. EEZ and donut

- b. Present level of harvests will probably have a negative effect on U.S. fisheries and EEZ pollock stocks
- c. There is a need for more research to better define pollock biomass and stock migrations

Squid Fisheries

- A. Japanese jig fisheries in western North Pacific are longstanding with little interaction with U.S. EEZ resources. Jig fisheries moved offshore in 1974
- B. Japanese gillnet vessels proliferated to around 500 in last ten years largely based on transfers from mothership and landbased fleets as Soviet quotas decreased
 - 1. Korea and Taiwan later entries - 1980 and 1982 respectively
 - 2. Over 700 vessels total with over 10,000 miles of gillnet of a size which will capture salmon
 - 3. Know fishing area larger than the continental U.S. (Map C)
 - 4. Squid catches with drift gillnets average 180,000-260,000 metric tons per year
- C. Japanese management - domestic regulation
 - 1. Area fishing restrictions with western boundary at 145°W and northern boundary movable by month to keep vessels out of colder salmon waters. 46°N is upper boundary
 - 2. Ban on retention or sale of salmon
 - 3. No evidence of significant salmon bycatch or retention
 - a. Little observer data. Plans for expanded coverage cancelled when Japan denied mothership MMPA permit for 1988
 - b. Only fragmentary observations of landings in Japan. No salmon observed
 - c. Many observations of illegal fishing north of boundary even with minimal U.S. observation capability
 - d. Domestic enforcement minimal
- D. Taiwanese management - domestic regulation
 - 1. Under U.S. pressure adopted generally same regulations as Japan
 - 2. No enforcement we are aware of
 - 3. Many indications of illegal salmon catch and sale

- a. Same fleet mounted a directed salmon fishery in Asian waters three and four years ago. Three to four million catch per year. Japanese banned Taiwanese salmon imports
- b. Major Hong Kong/Singapore illegal transshipment through Tacoma to Japan of salmon probably caught by Taiwanese fleets uncovered three years ago, about 4,000,000 pounds were involved, mostly chums
- c. Unspecified origin coho on European market
- d. Very few observations of Taiwanese fishing - fleet operation an unknown

E. Korean management

1. No known regulations
2. Are cooperating to some degree on observers
3. One observer trip recently - no salmon, but significant catches of albacore and billfish

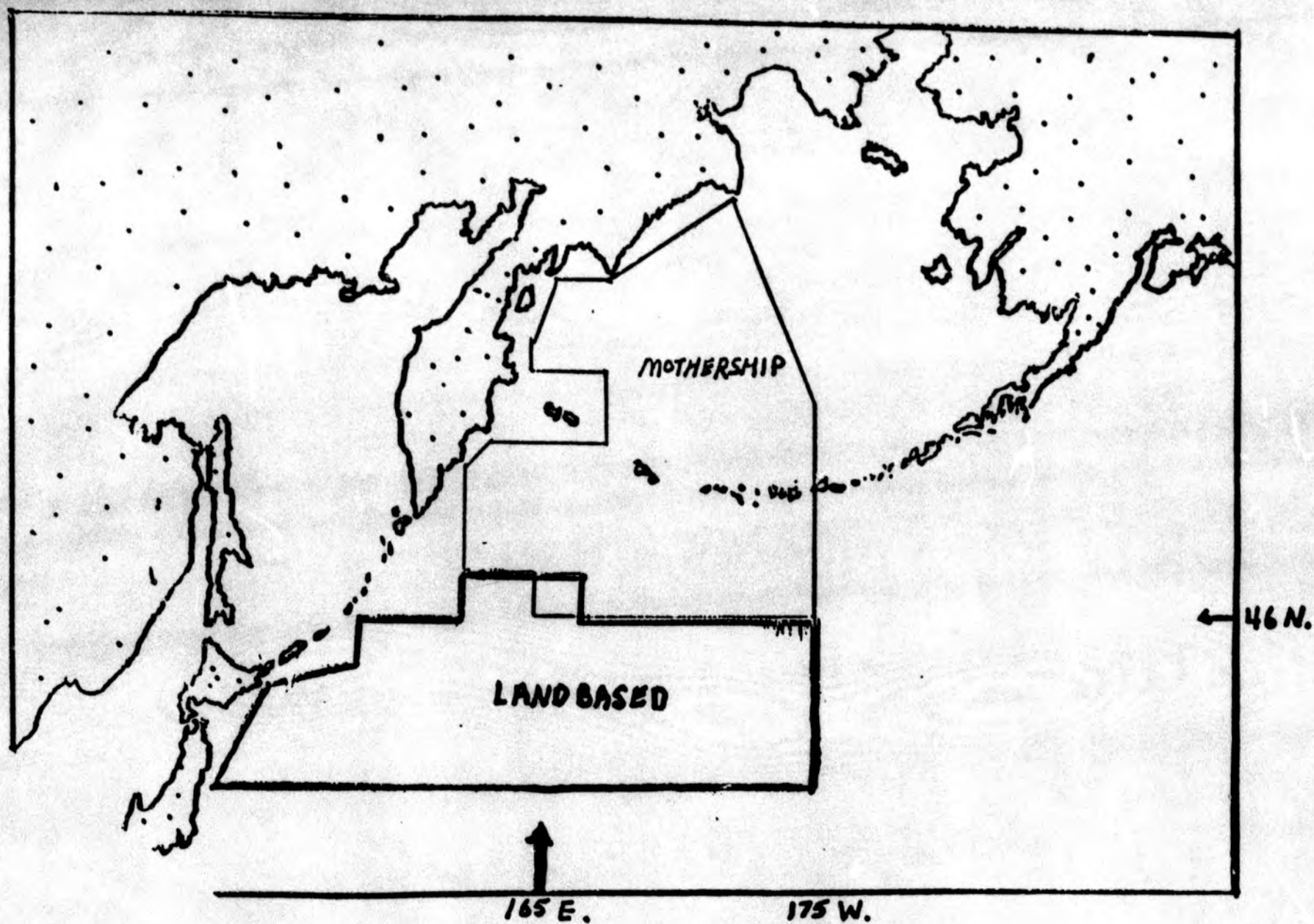
F. Squid - salmon overlaps

1. Definitely area of overlap on northern boundary
2. Generally Japanese regulations would be acceptable if enforced
3. 1988 salmon run problems in some areas of Alaska have heightened interest in interceptions
 - a. Reports of net marked fish in Bristol Bay
 - b. Southeast coho run shortfall
 - c. USCG budget cuts, minimal patrol - feeling that squid fleets could be fishing anywhere

G. Driftnet legislation

1. Passed by Congress last spring. Stevens a prime sponsor
2. Requires Secretary of Commerce to negotiate observers, monitoring and research programs by 1989 or foreign nations can be sanctioned under Pelly Amendment
3. Talks with Korean and Taiwan scheduled for this fall
4. Japanese not indicating interest

Map A Japanese High Seas Salmon Fisheries 1952-1977



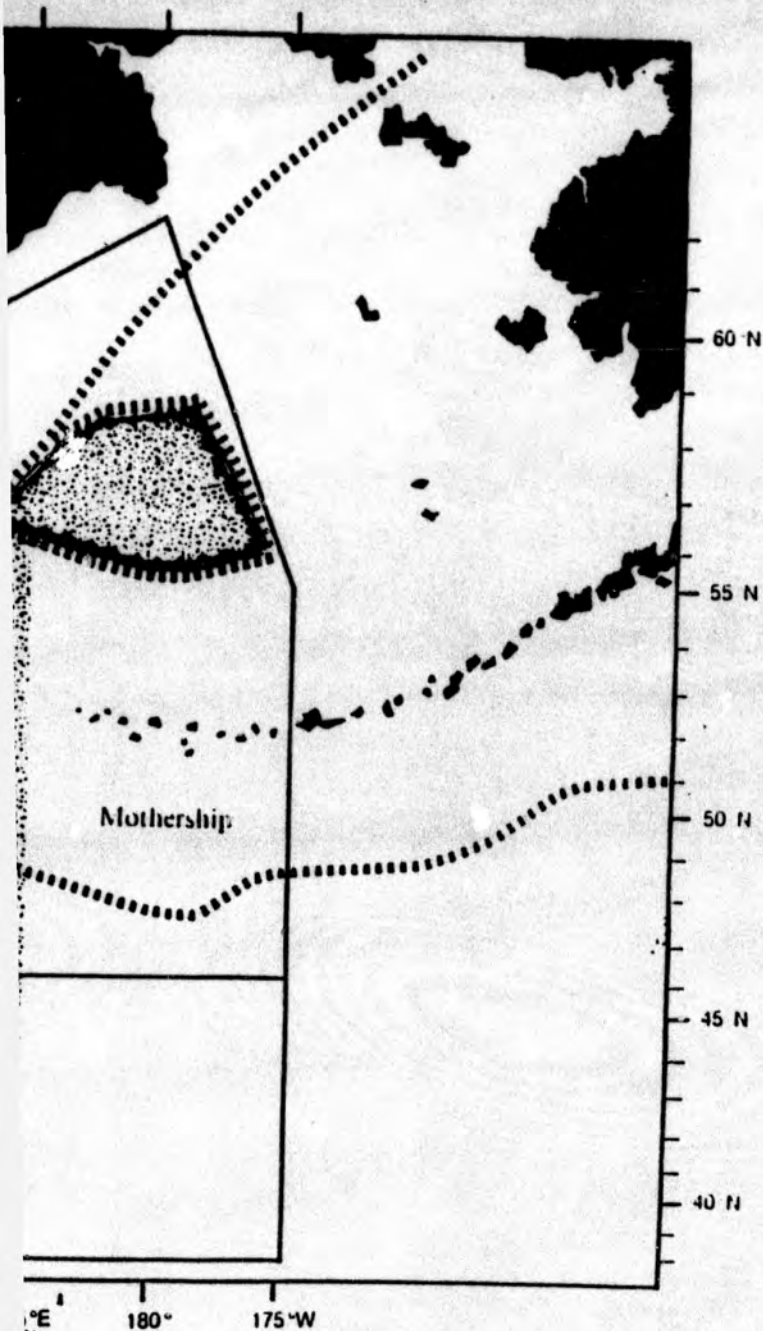


Salmon Fisheries

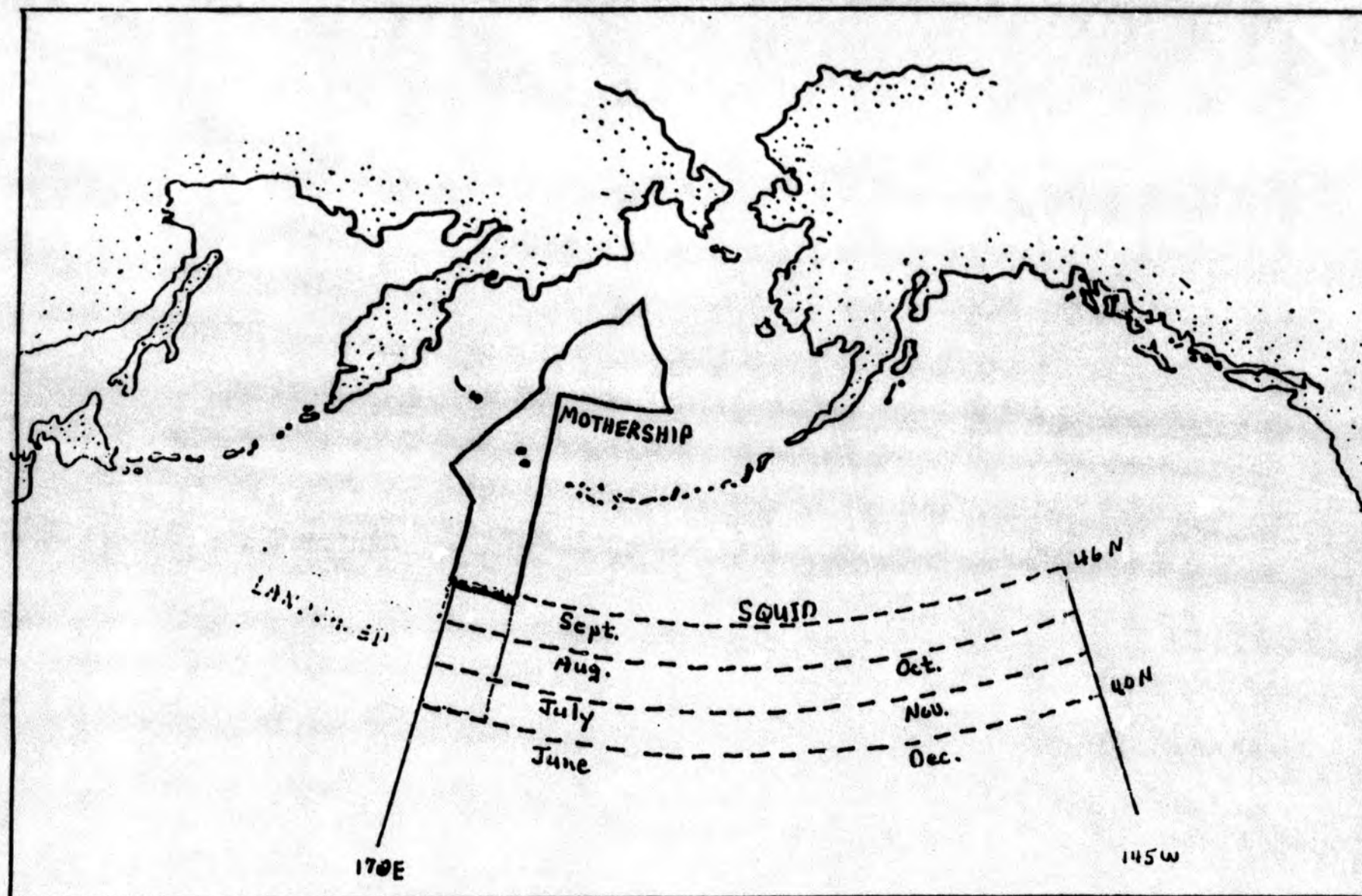
0000000 300 mile zone

1959-1976 Japanese high seas salmon fisheries

1978-85 Japanese high seas salmon fisheries



Map C
High Squid Fisheries
Northern, Eastern, and Western
Regulatory Boundary for Japan and Taiwan



FILE COPY

S.E.A.C.O.P.S.
700 WATER STREET-UPPER
KETCHIKAN, ALASKA 99801
(907) 225-8004

The dangers of gill netting to seabirds

Natasha Atkins and Burr Heneman



Seabird mortality in
gill nets has had
significant biological
and legal consequences

PUBLIC OUTCRY OVER THE MANY thousands of porpoises drowned annually in tuna purse seines during the 1960s and early 1970s spurred the passage of the Marine Mammal Protection Act in 1972. During this same period, the public was less aware of similar "incidental takes" of seabirds in nets set for other fish species. In fact, because so many different bird species are taken in a variety of gear types, the number of birds drowned far surpasses the mortality of marine mammals. Despite various migratory bird treaties, which are designed to provide legal protection for both landbirds and seabirds, the treaties and their implementing laws have not generally been applied.



Fishermen in the north Atlantic remove drowned shearwaters caught in their gill nets, June 1983. Photo/Tony DeGange.

This paper provides an overview of fishery/seabird conflicts in North American waters, and reviews the biological and legal aspects of two specific cases. The case studies are of two very different fisheries in which the taking of seabirds has been well-documented—the Japanese salmon mothership fishery in the North Pacific and the gill and trammel set net fisheries of central and northern California. The first is a large, offshore fishery conducted by a foreign country; the second, a coastal fishery consisting of numerous independent United States fishermen using small vessels.

SEABIRD/FISHERY CONFLICTS IN GREENLAND, CANADA, AND THE UNITED STATES

Alcids, shearwaters, albatrosses, waterfowl, cormorants, loons, and even Osprey have all reportedly been drowned in fishing operations. Birds are caught in nets, traps, and fishing line, but the gear that most frequently entangles them is gill nets which are used to target a variety of commercial fish species on the east and west coasts of North America (Croxall *et al.* 1984).

Research on various fisheries has demonstrated that bird entanglement in

gill nets is correlated with seabird densities and feeding methods (Ainley *et al.* 1981). For this reason, alcids, which dive for prey and often feed in large concentrations near breeding colonies, are commonly caught in gill nets. In western Greenland, salmon gill nets are estimated to have taken 200,000 or more Thick-billed Murres (*Uria lomvia*) annually in the early 1970s. Piatt and Reddin (1984) estimated that this rate was reduced by 80–90% in 1976–1980 when fishing efforts diminished and shifted. However, recent changes in the fishery may have resulted in significant mortality increases.

In Canada, seabird mortality in the Newfoundland salmon drift net and cod bottom-set fisheries is the best studied (Piatt *et al.* 1984; Piatt and Nettleship 1985, 1987). Species most affected were generally those that were abundant, formed large aggregations at breeding colonies and nearby feeding areas, fed heavily on capelin, and were capable of deep diving. Piatt and Nettleship estimated that from 1981–1984, 2% of Newfoundland's 800,000 Common Murres (*Uria aalge*) were drowned in nets each year. Local populations, however, suffered a mortality rate as high as 16.3% annually. The small Razorbill (*Alca torda*) population suffered an alarming 12.4% annual mortality, Northern Gannets (*Sula bassanus*) 2.1% (but over 9% at one of three breeding

sites in 1982), and Atlantic Puffins (*Fratercula arctica*) only 0.2%. Piatt and Nettleship suggest that a substantial reduction of these numbers, without closing the fisheries, is possible based on current knowledge of the fisheries and seabird behavior.

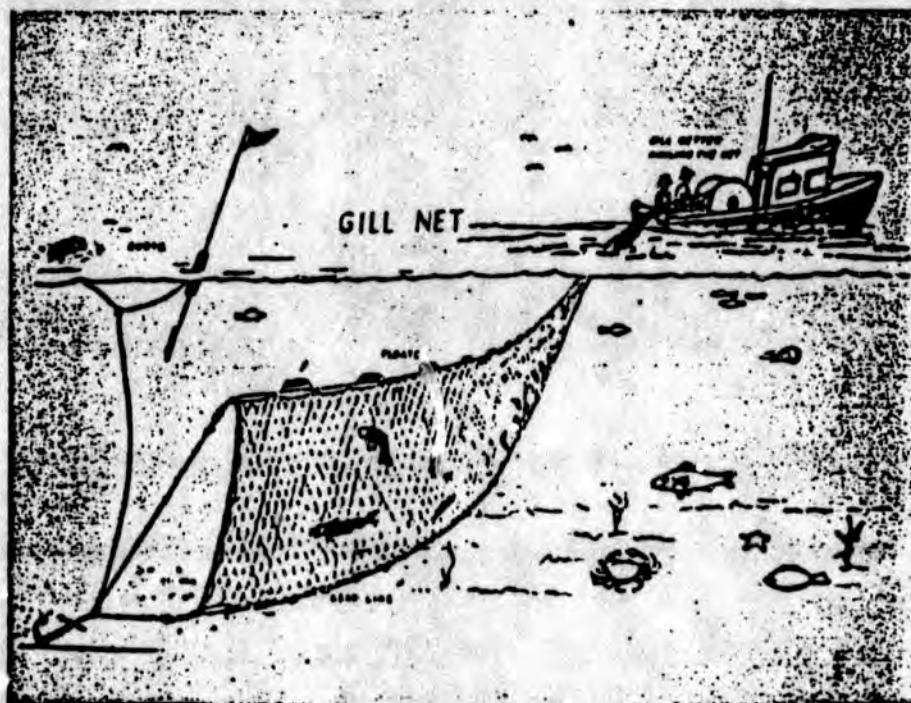
The recent discovery that bottom-set nets in deep water can still take significant numbers of seabirds is a result of the Newfoundland studies. Common Murres have routinely been observed in nets retrieved from depths as great as 180 meters and Atlantic Puffins are commonly seen in nets set in water 60 meters deep.

A salmon drift net fishery in Barkley Sound, British Columbia, was estimated to have killed more than 6% of the breeding population of Marbled Murrelets (*Brachyramphus marmoratus*) in 1980 (Carter and Sealy 1984).

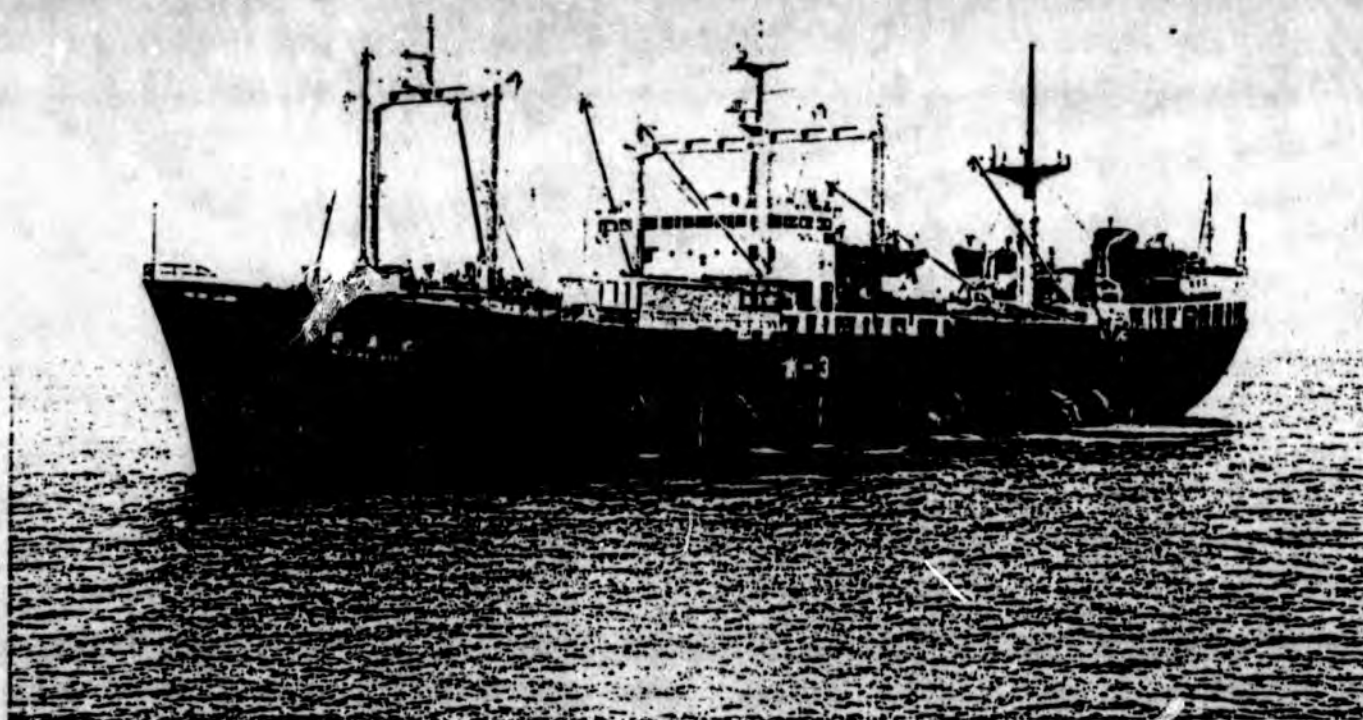
With the exception of Japanese salmon drift net fisheries and California set net fisheries, information on seabird mortality in gill and trammel-set net operations in United States waters is largely anecdotal. Salmon fishermen in Puget Sound, Washington, report catching birds in their nets, and Common Murre carcasses have washed up on beaches, but there are no data on the magnitude of the bycatch. In southeastern Alaska, Marbled Murrelet mortality in nets has been reported (Sealy and Carter 1984), and other species are likely taken as well.

The potential for seabird entanglement in gill nets along the Pacific coast is considerable. Uchida (1985) reports more than 7000 salmon gill net boats in United States waters and another 3800 boats that fish at least once each season off British Columbia.

Several fisheries on the east coast reportedly take several different bird species. Anecdotal information exists on the incidental catch of Northern Gannets, Northern Fulmars (*Fulmarus glacialis*), and Sooty Shearwaters (*Puffinus griseus*) in New England bottom fish fisheries (O'Hara, Atkins, and Iudicello 1986), and in Chesapeake Bay, gill nets have been observed entangling Ruddy Ducks (*Oxyura jamaicensis*), Canvasbacks (*Aythya valisineria*), and scaup (*Aythya sp.*) (O'Hara, Atkins, and Iudicello 1986). In South Carolina, waterfowl and loons are the primary bird species caught in 900–1200-foot-long gill nets used to catch shad. Loons are reportedly caught in Great Lakes gill nets as well.



This drawing of a gill net illustrates how the net is "set"—the net is anchored in place while floats keep the nets vertical in the water. Illustration/Paul Wild, Fish & Wildlife Service.



Japanese salmon mother ship. Photo/David Ainley.

NORTH PACIFIC DRIFT NET FISHERIES

Japanese salmon mothership fishery

The most controversial and perhaps best studied fishery, with respect to incidental bird take, is the very large Japanese salmon fishery off Alaska, the only foreign drift net fishing operation in United States waters. Originally, public attention focused on the bycatch of marine mammals, particularly Dall's Porpoises (*Phocoenoides dalli*), but the fishery's massive bird kills have recently become a key issue in the federal government's permit review and in legislation introduced in the United States Congress.

In 1983, the mothership fishery consisted of four processing vessels, or motherships, and 172 catcher boats. The fishery operates primarily in the United States Fishery Conservation Zone, off the western Aleutian Islands, during June and July. Drifting gill nets averaging 16.5 kilometers in length are fished at night. Fishing effort for 1983 was estimated to be 127,710 kilometers of net set (Shima 1985). Most nets have a stretched mesh size of 130 millimeters (Uchida 1985).

The first estimates of seabird mortality in the mothership fishery were

made from research nets with variable mesh size (Sano 1978; King *et al.* 1979). King *et al.* estimated an annual mortality of 75,000 to 250,000 birds. Ainley *et al.* (1981) determined that these estimates were conservative because they did not account for geographic variations in catch rates or the variability of catch rates depending upon mesh size, and because estimates did not include drowned birds that fell free of the nets during retrieval. They observed that catch rates varied logarithmically with distance from the Aleutians (where the birds nest) and were particularly high within 50–75 nautical miles of the islands. Bird mortality rates were also highest in the mesh sizes used in commercial nets. These observations led them to conclude that previous mortality rates should be at least doubled.

In 1981, the Japanese applied for a permit under the Marine Mammal Protection Act to take marine mammals in the course of fishing in the United States Federal Coastal Zone. Negotiations prior to the permit approval included a provision for direct observations to be made by United States personnel aboard the catcher boats. Earlier observations had been limited to Japanese research vessels whose net sets were designed to mimic those of the commercial fishing ships.

Data were collected by United States observers from 1981–1984 (DeGange *et al.* 1985). During this period, 21 species of seabirds were caught (Table 1). Shearwaters, particularly Short-tailed Shearwaters (*Puffinus tenuirostris*) and Tufted Puffins (*Fratercula cirrhata*) made up the bulk of the bycatch. Other species taken in appreciable numbers were Horned Puffins (*Fratercula corniculata*), Thick-billed Murres, and Crested Auklets (*Aethia cristatella*). DeGange *et al.* (1985) estimated that an average of 38,000 Tufted Puffins, 8249 Horned Puffins, and 101,500 Short-tailed Shearwaters were killed annually in the mothership fishery. Annual overall mortality ranged from 96,000 to 251,400, 80% of which occurred in United States waters.

DeGange *et al.* concluded that the removal of tens of thousands of birds annually would not have a significant impact on the overall population of a species, but that the impact on local breeding populations could be significant. In 1986, the United States Fish and Wildlife Service asserted that "local populations of a few nesting species in the western Aleutian Islands, particularly Tufted Puffins, have probably been negatively affected by the salmon fisheries" (Department of the Interior 1986).

Table 1. Number and percent composition of seabirds killed in gill nets of the Japanese salmon mothership fishery within the U.S. Fishery Conservation Zone, 1981-1984.

Species	Number	Percent
Laysan Albatross	14	0.1
Northern Fulmar	331	1.4
Sooty Shearwater	62	0.3
Short-tailed Shearwater	12,086	51.6
Unidentified shearwater	2,227	9.5
Fork-tailed Storm-Petrel	145	0.6
Leach's Storm-Petrel	12	0.1
Pomarine Jaeger	2	0.1
Black-legged Kittiwake	11	0.1
Dovekie	1	0.1
Common Murre	216	0.9
Thick-billed Murre	541	2.3
Unidentified murre	212	0.9
Pigeon Guillemot	2	0.1
Ancient Murrelet	211	0.9
Cassin's Auklet	39	0.2
Parakeet Auklet	95	0.4
Least Auklet	26	0.1
Crested Auklet	751	3.2
Unidentified small alcid	74	0.3
Rhinoceros Auklet	3	0.1
Tufted Puffin	5,124	21.9
Horned Puffin	1,107	4.7
Unidentified puffin	95	0.4
Unidentified bird	35	0.1

Source: DeGange, A. R., D. J. Forsell, and L. L. Jones 1985.

The Japanese renew their permit

In 1986, when the Japanese applied for a permit renewal allowing them to take marine mammals in United States waters, it appeared that the Marine Mammal Protection Act might also afford some protection to seabirds. The Marine Mammal Protection Act requires that full consideration be given to the effect of such a permit on the marine ecosystem and on existing international treaty obligations. "The health of marine bird populations affects, and is affected by, the health of fish stocks and marine mammal populations. . . Part of the reason seabirds are entangled is that they share some of the same food sources as marine mammals and fish" (Center for Environmental Education 1986).

During the permit hearing, although most of the testimony focussed on marine mammals, environmentalists also argued that the permit should be denied owing to the extent of incidental seabird mortality. Testimony emphasized that a bilateral agreement between the United States and Japan, The Convention for the Protection of Migratory Birds and Birds in Danger of Extinction

and Their Environment, prohibits the incidental taking of seabirds. Eighteen of the 21 species caught in the mothership fishery operation are protected by the Convention.

The Convention also recognizes the delicate ecological balance of island environments and provides that each party "shall endeavor to establish sanctuaries" and shall "seek means to prevent damage to such birds and their environment, including especially, damage resulting from pollution of the seas." The high catch rates of birds off the Aleutian Islands and the large quantity of discarded or lost drift net generated by the fishery appears to violate this clause.

One of the final arguments made by environmental groups at the hearing involved the Migratory Bird Treaty Act. Environmentalists argued that the taking of seabirds violated the Act, which implements the Convention with Japan. While the Department of the Interior acknowledged that the "incidental take of migratory birds by Japanese fishermen, as well as United States citizens, is a violation of the Migratory Bird Treaty Act," they contended that the Act's jurisdiction extends only as far

as the United States three-mile limit (Department of the Interior 1981). This opinion is disputed by environmental organizations (Center for Environmental Education 1986).

The Department of Commerce issued a permit to the Japanese in May 1987, allowing them to take marine mammals during their salmon fishing operations (Calio 1987). The permit contained no provisions dealing with seabirds. This decision was largely based on the recommendations of the agency's administrative law judge, who presided over the hearings.

The judge asserted that while the taking of seabirds in such numbers is "unacceptable," the Department of Commerce has no jurisdiction to enforce regulations concerning seabirds under the Marine Mammal Protection Act. The judge also chose not to include seabirds in the ecosystem argument, claiming that the relationship between seabirds and marine mammals is too indirect and that seabirds are "more than one trophic link removed" from marine mammals (Dolan 1987).

If the Department of Commerce had accepted the responsibility for enforcing certain provisions of the Marine Mammal Protection Act, it could have included restrictive clauses protecting seabirds in the Japanese permit. For example, DeGange *et al.* (1985) estimated that modifying the nets by removing the lower portions could reduce alcid mortality 16% with only an 8% reduction in fishing efficiency.

The most effective way of reducing the impact of the fishery on seabirds would be to place geographical restrictions on it (Ainley *et al.* 1981). Reid (1986) calculated that banning the fishery from a 60-nautical-mile zone around the Aleutian Islands would significantly reduce its impact on breeding alcids without having a detrimental effect on the fishery. During the permit review, the Marine Mammal Commission had recommended the creation of a 60-mile net-free zone around the Aleutians. The administrative law judge, however, argued that since the zone would primarily benefit seabirds, it was not a "sufficient or appropriate" reason for him to support the recommendation (Dolan 1987).

In his final decision, the administrative law judge sought to establish who had jurisdiction under the Migratory Bird Act over the area in question. According to the judge, the United States

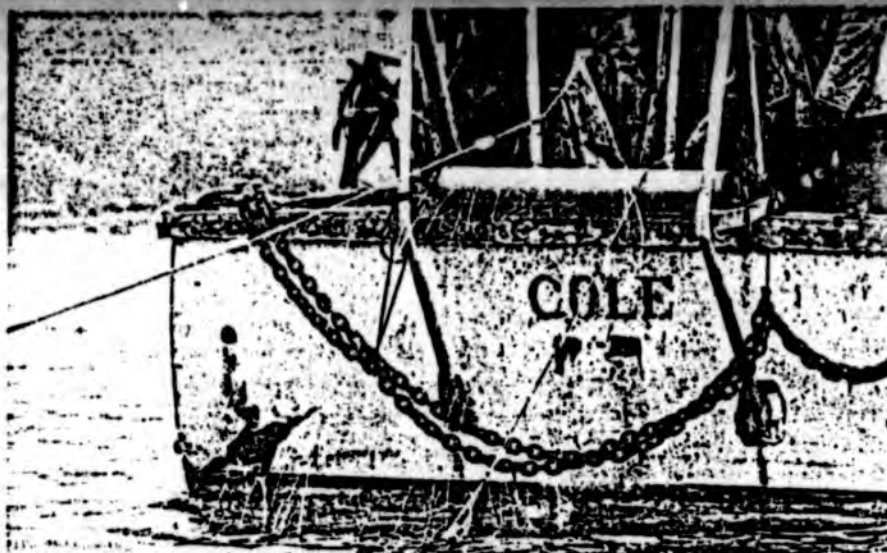
claims "sovereign rights for the purposes of exploring, exploiting, conserving, and managing natural resources, both living and non-living, within the Exclusive Economic Zone (EEZ)," which extends 200 miles. Therefore, the judge concluded that it would be "within the United States' internationally recognized authority" for the Department of the Interior, which has statutory responsibility for seabirds, to exercise its jurisdiction beyond the three mile limit. The Department of Commerce, however, rejected the administrative law judge's conclusion that the Department of the Interior has regulatory authority to limit the Japanese salmon fishery under the Migratory Bird Act (Calio 1987).

Other North Pacific fisheries

The impact of all types of drift net fisheries is significantly greater, although more speculative, than just the mothership fishery operation. Japan also operates a land-based salmon fishery that deployed about 125,000 kilometers of net in 1983 (Shima). In offshore waters, fishing methods, fishing efforts, and the composition of the seabird bycatch are similar to those of the mothership fishery. Annual mortality in the offshore portion of the fishery has been estimated at 171,000 seabirds (Sano 1978) and 134,000 seabirds (DeGange *et al.* 1985). These estimates are probably low because they are derived from catches in research nets with variable mesh sizes (Ainley *et al.* 1981; DeGange *et al.* 1985).

The Japanese, Korean, and Taiwanese squid drift net fisheries in the North Pacific comprise the largest gill net fishery in the world. Compared to the combined mothership and land-based salmon fisheries, the squid fisheries have a season that lasts three times longer, uses twice the number of vessels, and deploy nets that are twice as long (approximately 30 kilometers average). In 1983, Japanese squid vessels alone set almost one million kilometers of net, almost four times that of the mothership and land-based fisheries combined (Shima 1985).

Unfortunately, information on seabird mortality in the squid fishery is very limited (DeGange *et al.* 1985; Ignell *et al.* 1986; L. L. Jones *pers. comm.*). In 1983, research vessels collected data from a few research nets set in the Jap-



Halibut gill net boat with Common Murre drowned in net. June 1982, Stinson Beach, California. Photo/Burr Heneman.



This Laysan Albatross and immature Tufted Puffins eloquently illustrate the problems with ghost nets in the North Pacific. Photo/Tony DeGange.

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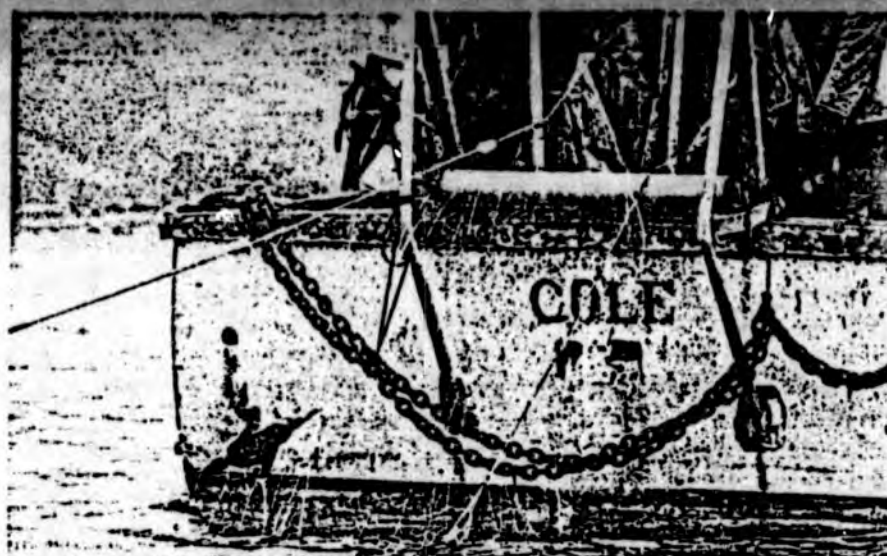
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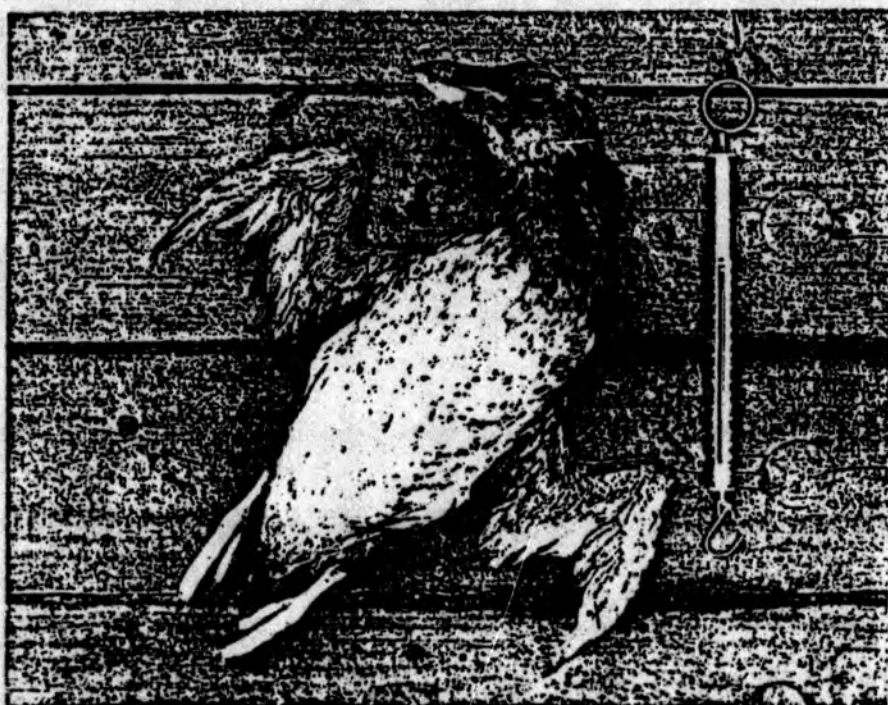


This Laysan Albatross and immature Tufted Puffins eloquently illustrate the problems with ghost nets in the North Pacific. Photo/Tony DeGange.

anese squid fishing area and in 1985-1986, United States observers monitored a few commercial squid net sets, where seabird bycatch was almost exclusively shearwaters.

Consistent with the lower seabird densities observed in the squid fishing areas, mortality rates were much lower than in the salmon fisheries. It is unclear, however, whether these lower catch rates might be offset by the much greater level of effort in the squid fishery. If one extrapolates from the limited data—a highly speculative calculation, to be sure—anywhere from 30,000 to 400,000 seabirds may have been killed in each of the years in which net observations were made. This range illustrates the hazard of drawing conclusions from minuscule samples, in this case data collected in a few days or weeks of a several-month-long season, from a small area of the vast North Pacific squid fishery, and from, at most, 30 net sets in a fishery with over 30,000 sets each season. The data do suggest the need for a much more serious monitoring program.

"Ghost fishing" by lost or discarded nets is another cause of seabird mortality. Based on observations of birds retrieved in ghost nets and on loose estimates of lost net, roughly in the neighborhood of 68,000 seabirds might be killed during the first month of ghost fishing by unrecovered nets.



Immature Tufted Puffin taken in a salmon drift net. Photo/David G. Ainley.

UNITED STATES DEPARTMENT OF COMMERCE NEWS

WESTERN REGIONAL CENTER
SEATTLE, WA 98115



SEA-89-03

Contact: Wayne C. Lewis
Office: (206) 526-6133

Two Arrested in High Seas
Salmon Laundering Scheme

FOR IMMEDIATE RELEASE

Special Agents from the NOAA, National Marine Fisheries Service (NMFS), on the afternoon of January 29, 1989, arrested Mr. Michel May, a Seattle, Washington, seafood broker and Mr. Yasu Igari, a seafood broker from Tokyo, Japan.

The arrests stemmed from international investigations of complicated laundering and relabeling schemes involving the illegal interception of salmon taken by vessels from Taiwan in the North Pacific Ocean, and directed at circumventing Taiwanese and Japanese export/import prohibitions. As a result of past investigative effort, it appeared that the flow of these fish into the United States had been curtailed, however reports from extremely reliable sources and other probative evidence indicated that the illegal high seas harvest was continuing and that profiteers from within and without the United States were selling and shipping the fish directly from the Far East to Europe.

In June 1988, an informant from within the fishing industry, reported that he had been contacted by a Seattle fish broker, doing business as AMPAC Seafoods, to assist in a scheme to import Taiwanese caught high seas salmon into Japan by way of the United States and Canada. Based on that information a covert NMFS investigation was initiated which included the involvement of Canadian Department of Fisheries and Oceans enforcement officers. As the investigation progressed information was developed, through monitored meetings, that resulted in the arrest Sunday, January 29, 1989, of Mr. Michel May, President of AMPAC Seafoods, Seattle, and Mr. Yasu Igari, President of Igari & Co., Ltd, Tokyo, Japan.

Both suspects were arrested at SeaTac Airport as Mr. Igari was boarding a flight to Japan, after he and Mr. May had negotiated an agreement to provide 24 million pounds of high seas Taiwanese caught salmon to undercover operatives over the next two years. The arrests for violation of U.S. law were based on past illegal trafficking in Taiwanese caught salmon which was uncovered during the joint covert investigation.

XXX

January 31, 1989

FEB 08 1989

High Seas Pirates Steal Alaskan Salmon

Juneau SEACOPS Organize to Fight Problem

Predictions for the 1988 Southeast salmon runs were great. But the fish never returned from the ocean. In fact, 75 percent of the anticipated salmon failed to appear. There is no apparent biological cause to explain what happened. The problem seems to lie elsewhere.

During the past 10 years an unregulated squid gillnet fishery has developed in the international waters of the high seas. The fleet is composed of ships from Japan, Korea and Taiwan. This growing fleet currently numbers 1,000 to 1,500 ships. Each ship uses 25 to 40 miles of gillnet per day. Every night more than 30,000 miles of gillnet is deployed. National Marine Fisheries Service scientists estimate that in 1986 alone, 1,000,000 miles of net was fished by the high seas fleets.

Straining the top 25 to 40 feet of ocean, these nets catch much more than squid. These nearly invisible nets also catch salmon, tuna, whales, porpoises, seals, sea birds and whatever else gets tangled. Nets are torn apart and lost during storms and discarded when worn. Out on the ocean, right now, miles of these ghost nets continue to fish... day after day, year after year. One net had been ghost fishing long enough to grow a six inch goose barnacle and held live pink salmon as well as the carcasses of other salmon and a seal. These high seas drift nets are an environmental nightmare.

The Japanese fleet is subject to regulations developed by the International North Pacific Fishery Commission. The fleet is restricted to specific areas and times to avoid catching salmon. Yet, there are continuous Coast

Guard reports of Japanese ships fishing outside of the boundaries in areas of known high salmon concentrations. The vessels nearly always have canvas covering their identification numbers.

Neither the Korean nor the Taiwanese fleets abide by any treaty. These fleets simply participate in a totally unregulated and environmentally irresponsible fishery. In response to concerns expressed by the government of the United States, both countries claim that their fleets don't take any salmon. This assertion is ludicrous.

These fleets are directly responsible for the failure of our salmon runs this year. The evidence is overwhelming and continues to grow. Despite denials from each of the concerned governments, millions of pounds of immature salmon are being laundered in world markets from outfits based in Thailand and Singapore. They tell us the salmon is coming from the

Taiwanese and the Koreans. But there are no salmon in Taiwanese or Korean waters. In fact, those are our salmon which are being stolen from us by high seas pirates.

The failure of this year's run cost Southeast commercial fishermen \$35.8 million, Southeast seafood processors \$34.9 to \$76.2 million, and Southeast processing employees \$11 million. The total direct loss to the commercial fishing industry in Southeast alone was \$81.7 to \$123 million.

The economic loss is also felt by sport fishermen and charter operators, marine businesses and ultimately all businesses and communities throughout our region. Besides the immediate and direct economic loss there is also long term damage. Conservation efforts to rebuild salmon stocks here in Southeast Alaska are sabotaged by this piracy. Fish that die in high seas drift nets cannot return home to spawn.

It's time to stop high seas piracy. That's why SEACOPS exists.

SEACOPS is a non-profit organization formed in September, 1988, to combat this problem. SEACOPS is a broad based organization consisting of commercial and recreational fishermen,

Continued on back panel

These nearly invisible nets also catch salmon, tuna, whales, porpoises, seals, sea birds and whatever else gets tangled.

YES!

I want to join SEACOPS and stop high seas piracy.

I'm concerned about the effects on:
(choose one or more)

Fishing:

- ☐ Sport
- ☐ Charter
- ☐ Commercial
 - ☐ Troll
 - ☐ Gillnet
 - ☐ Seine

- ☐ Marine Business
- ☐ The Environment
- ☐ Other _____

Membership Categories:

Basic	\$25
Silver	\$100
Gold	\$500
Diamond	\$1000

Clip and mail to: SEACOPS • 700 Water St.—Upper • Ketchikan, AK 99901

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High Seas Interception Facts

Five species of North American salmon, and steelhead trout, feed over a broad expanse of the North Pacific Ocean, well beyond the established limits of national jurisdictions.

The commercial value of Alaska's salmon catch in 1988 alone was over \$740 million. Landings in British Columbia and the Pacific Northwest States totaled many hundreds of millions more. While difficult to quantify, the recreational value of North American salmon and steelhead fisheries is immense.

Driftnet vessels from Japan, Taiwan and South Korea fish for squid in the central North Pacific. The known distribution of North American salmon and steelhead overlaps the authorized area of squid fishing. In addition, squid vessels have been observed fishing hundreds of miles outside the established boundaries.

Squid driftnets are highly effective at catching immature salmon. Each vessel fishes 15 to 35 miles of net per day, and there are between 800 to 1000 boats in the three fleets. National Marine Fisheries Service (NMFS) scientists report that 1,000,000 miles of high seas driftnet was fished in the North Pacific in 1986. High seas driftnet fishing has increased dramatically since 1986.

Based on documented sales and reports from overseas agents, an estimated 30,000 metric tons (22,000,000 fish) of Pacific salmon and steelhead were sold by the squid fleets in 1988. These poor-quality fish were distributed to markets throughout the world, depressing prices for legally-caught North American salmon.

A 14-year high seas driftnet study by NMFS scientists showed that the relative abundance of steelhead trout in relation to salmon averaged 1:105. Thus approximately 200,000 high seas steelhead are estimated to have been caught in 1988.

Scientific studies of the effects of high seas driftnet fishing of immature salmon conclude that the drop-out ratio is 1:1. For every immature salmon and steelhead harvested, another one drops out to die - doubling the losses to North American fisheries.

Greenpeace estimates that 800,000 seabirds and tens of thousands of marine mammals are killed yearly by the high seas driftnets. Over 600 miles of driftnet is lost or discarded each year. These "ghost nets" continue to drift and kill for months and years.

Japan has established squid fishing boundaries for its fleet and has banned the importation of illegally-caught salmon, but there has been limited enforcement of these regulations. Taiwan and Korea have done almost nothing to protect North American salmon.

Under existing legislation the U.S. government has the authority, and responsibility, to take action to halt the high seas take of American salmon and steelhead. Little action has occurred.

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Taiwanese and the Koreans. But there are no salmon in Taiwanese or Korean waters. In fact, those are our salmon which are being stolen from us by high seas pirates.

The failure of this year's run cost Southeast commercial fishermen \$35.8 million, Southeast seafood processors \$34.9 to \$76.2 million, and Southeast processing employees \$11 million. The total direct loss to the commercial fishing industry in Southeast alone was \$81.7 to \$123 million.

The economic loss is also felt by sport fishermen and charter operators, marine businesses and ultimately all businesses and communities throughout our region. Besides the immediate and direct economic loss there is also long term damage. Conservation efforts to rebuild salmon stocks here in Southeast Alaska are sabotaged by this piracy. Fish that die in high seas drift nets cannot return home to spawn.

It's time to stop high seas piracy. That's why SEACOPS exists.

SEACOPS is a non-profit organization formed in September, 1988, to combat this problem. SEACOPS is a broad based organization consisting of commercial and recreational fishermen,

Continued on back panel

These nearly invisible nets also catch salmon, tuna, whales, porpoises, seals, sea birds and whatever else gets tangled.

YES!

I want to join SEACOPS and stop high seas piracy.

I'm concerned about the effects on:
(choose one or more)

Fishing:

- ☐ Sport
- ☐ Charter
- ☐ Commercial
- ☐ Troll
- ☐ Gillnet
- ☐ Seine

- ☐ Marine Business
- ☐ The Environment
- ☐ Other _____

Name _____
Address _____
Phone No.(s) _____
Organization _____

Membership Categories:

Basic	\$25
Silver	\$100
Gold	\$500
Diamond	\$1000

Clip and mail to: SEACOPS • 700 Water St.—Upper • Ketchikan, AK 99901

Bulk Rate
U.S. Postage
PAID
Permit # 66
Juneau, Alaska

Juneau SEACOPS
119 Seward, Suite 9
Juneau, Alaska 99801

SEACOPS

- Southeast Alaska Coalition Opposed to the Piracy Of Salmon
- Founded in Ketchikan, September, 1988
- Dedicated solely to stopping high seas salmon interception
- Currently supported by more than 500 members
- Gathers and distributes information on the problem
- Works with other organizations that share the same goal
- Needs your ideas and help

Native groups, environmentalists, aquaculture associations, hatchery groups, fish and non-fish related businesses, and government. The purpose of SEACOPS is to eliminate these high seas fisheries by:

- Focusing attention on this issue and developing increased public awareness.
 - Putting pressure on Congress and the U.S. Departments of State and Commerce. They must be persuaded to take action to halt the decimation of our salmon.
 - Working with other groups and organizations that share our goals.
- SEACOPS needs your help and

your support. Our marine resources are too valuable for us to stand idly by while they are destroyed. SEACOPS will hold a meeting, Tuesday, February 21, at 7:00 P.M. in Centennial Hall, to explain the high seas fishery and how it threatens our resources. We will also show unique underwater film footage of a fishing Taiwanese squid gillnet.

Please join us. Bring your friends and neighbors. We also need your ideas and support.

Please send in the membership form. SEACOPS membership dues start at only \$25. We need your help to save our salmon.

Public Meeting Notice

SEACOPS SYMPOSIUM

Tuesday, February 21st

7:00 p.m.

Centennial Hall

- Learn about the problem
- Be part of the solution

Call 586-3107 or 364-3360 for more information

Juneau SEACOPS Steering Committee

Brad Weinlaeder
Commercial Fisherman
Rupe Andrews
Recreational Fisherman
Larry Cotter
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Geron Bruce
Commercial Fisherman
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WHAT TO DO ABOUT HIGH SEAS SALMON
INTERCEPTIONS IN THE NORTH PACIFIC OCEAN

Buck Lindekugel
Summer/Fall Externship 1987

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I. INTRODUCTION

For centuries ocean law was dominated by the principle of freedom of the seas and the perception that ocean resources were inexhaustible. Therefore, uses of the ocean were considered to be free and unrestricted except for a general requirement that nations exercise reasonable regard for the interests of other nations.¹ This attitude guaranteed free and open access to marine resources. Dramatic population growth and rapid technological innovations, however, escalated fishing effort and ended the myth of inexhaustibility.² As demand and competition for marine resources grew, the traditional allocation of a common property resource among users on a "first-come-first-served" basis threatened the destruction of fishery resources and the industries dependent on it.³

Beginning in 1973, the Third United Nations Conference on the Law of the Sea (LOS III) attempted to overcome this "tragedy of the commons" by developing a more rational basis for fishery management.⁴ The need to provide some control over international fishing efforts resulted in acceptance of the "functional jurisdiction" approach, first proposed by Canada and the United States.⁵ The Law of the Sea Convention (LOS Convention) negotiated at LOS III created an exclusive economic zone (EEZ), in which coastal nations can exercise specified sovereign rights for purposes of "exploring and exploiting, conserving and managing the natural resources", including fisheries.⁶ Although

the LOS Convention was not finalized until 1982. the growing consensus in negotiations for the functional jurisdiction approach motivated several nations to unilaterally expand jurisdiction.⁷

Congressional impatience with the lack of progress at LOS III resulted in Congress enacting the Fishery Conservation and Management Act of 1976 (FCMA).⁸ The purposes of FCMA are to conserve, enhance, and protect fishery resources off the coasts of the United States by developing a comprehensive domestic management program and controlling foreign access to those fisheries. To achieve this FCMA created a fishery conservation zone of "exclusive management authority" extending 200-miles seaward from the American coastline.⁹ FCMA also asserted a claim of exclusive management authority over all anadromous species (essentially salmon) originating in fresh or estuarine waters of the United States. This management authority extends "throughout the migratory range of each such species beyond the fishery conservation zone," except when found in foreign waters.¹⁰

This latter claim is similar to Article 66 of the LOS Convention which recognizes that the primary authority to regulate the management and harvest of salmon rests with the coastal states where such stocks originate.¹¹ However, several other provisions of the LOS Convention dilute the effectiveness of the "state-of-origin" principle.¹² In fact, these provisions appear to impose greater burdens on the state-of-origin for salmon conservation than other states.¹³ They may even force a

state-of-origin to reduce domestic salmon harvest in order to compensate for an increase in foreign fishing outside that nation's EEZ; a constructive subsidy of foreign fishing.¹⁴

For decades, the United States has attempted to eliminate high seas salmon fishing, using both unilateral and international approaches.¹⁵ In an effort to block the expanding Japanese high seas salmon fishing during the 1950's, the United States, Canada, and Japan signed the International Convention for the High Seas Fisheries of the North Pacific Ocean (North Pacific Convention).¹⁶ The Convention, in effect, expressed a management principle sponsored by the United States, the "abstention" principle. Under this principle, fishery stocks that are fully exploited under scientific management by nations that have developed the fishery should not be exposed to effort by other nations.¹⁷ The Convention also established the International North Pacific Fisheries Commission (INPFC) to implement its provisions. Under this framework, the parties have undertaken cooperative scientific research and management projects to "ensure the maximum sustained productivity of [North Pacific fisheries]."¹⁸ Despite this agreement, the North Pacific Convention's unanimity requirement and the scientific uncertainties concerning the state-of-origin of salmon stocks continue to hamper management efforts.¹⁹

More recently, the development of high seas squid driftnet fisheries by Japan and non-party nations, such as South Korea and Taiwan, have increased efforts by the Administration, Congress,

and the fish industry to restrict high seas fisheries.²⁰ It is feared that the squid fisheries intercept salmon of North American origin, cause significant mortality to marine mammals and sea birds, and increase problems associated with marine debris. Unfortunately, the limited knowledge of the distribution of salmon stocks on the high seas makes accurate estimates of interceptions by the high seas fisheries extremely difficult.²¹

This paper examines several problems that inhibit effective response by the United States to the development of these fisheries. The paper first describes the scope of the problem. It then analyzes the ability of the United States to exercise some degree of management authority over high seas salmon and squid fisheries under FCMA and the North Pacific Convention. Finally, the paper suggests that a regional approach to fishery management offers the United States, and other affected nations, a rational and equitable approach to managing this important food resource.

II. DELIMITATION OF PROBLEM

A. Fishery Management

The efforts of the United States to protect salmon stocks originating in North America illustrate some of the difficulties inherent in fishery management. First, the mobility of the resource prevents confining the fish or management efforts to a single area.²² The wide-ranging life cycle of salmon, for example, takes this species across areas of national control and the high seas.²³ Second, the fishery resource is both finite and

renewable. This necessitates management policies that maximize and sustain fish production, such as determining the maximum sustainable yield for a species, so that it is not depleted beyond its capacity to replenish itself.²⁴ However, determining this level presents extraordinary technical difficulties.²⁵

Efforts to sustain and maximize salmon production also require the protection and enhancement of the freshwater habitat necessary for the species survival. Managing the use of a stream or river for salmon production, however, imposes a variety of costs on the state-of-origin. Salmon production competes with other valuable uses like hydropower, flood control, irrigation, timber harvesting and mining. Habitat improvement and stock enhancement efforts also require substantial government expenditures. Choosing salmon production and enhancement over other competing uses is an economically rational choice only if the benefits of those efforts accrue to the state of origin.²⁶ Understandably, the United States resists efforts by intercepting fishermen to share in those benefits without contributing to the costs of salmon management.

A significant problem in assessing the impact of high seas driftnet fisheries on North American-origin salmon and determining the level of contribution by those foreign nations to inshore management activities is the availability and credibility of data gathered. Scientists use various types of information and models to estimate the relative contributions of individual stocks of salmon to a mixed-stock fishery.²⁷ However,

significant differences in methods and study periods prevent direct comparison of scientific results. In addition, making a thorough and unequivocal assessment of the impacts of an intercepting fishery on a particular stock requires gathering a sufficiently large data sample from the high seas fisheries to support the analysis.²⁸

The observer data and fisheries statistics shared with the United States and Canada by Japan under the provisions of the North American Convention supplement the interception data provided by these models.²⁹ Unfortunately, few avenues exist for monitoring salmon interception by Taiwanese and Korean high seas fisheries.³⁰ Consequently, these nations resist attempts to restrict their fisheries absent conclusive data showing adverse impacts on North American-origin salmon.³¹

Despite the lack of concrete interception data, the probable impacts on North American salmon from driftnet fishing efforts call for increased cooperative research efforts. It is known that North American salmon migrate through the North Pacific; without observer data and verification, however, the extent of actual interceptions will remain speculative.

B. North Pacific Driftnet Fisheries

The major fisheries operating in the North Pacific Ocean are the Japanese high seas salmon fisheries, and more recently the Japanese, South Korean, and Taiwan squid driftnet fisheries. The Japanese began harvesting salmon on the high seas in the early part of the twentieth century. Except for a period

surrounding World War II, Japan has continued to depend heavily on its high seas salmon harvest.³² The high seas squid fisheries began in 1978 and extend across much of the Pacific.³³

Since 1952, Japanese fishing interests have operated two types of high seas salmon fisheries in the North Pacific Ocean and Bering Sea. The mothership fishery consists of several large factory vessels in combination with a large number of small catcher boats. The larger vessels, or motherships, serve both as floating salmon-processors and support vessels for the small catcher vessels. The mothership fishery operates in international and United States waters. The size of this fleet decreased from an average of ten motherships and 332 catcher boats before 1977 to four motherships and 172 catcher boats in 1987.³⁴ The other fishery consists of landbased driftnet vessels that deliver catches to landbased processors in Japan rather than to motherships. The landbased fishery, consisting of approximately 210 vessels, operates only in international and Japanese waters. The catcher boats in both fleets fish with drift gill nets.³⁵

Salmon managers generally condemn high seas net fisheries. High seas salmon fishing is considered to be economically inefficient because of the considerable expense in locating and harvesting a resource that migrates through such an extremely large area. In contrast, an inshore fishery can harvest salmon as they approach the spawning streams in concentrated groups.³⁶ High seas gillnet fisheries are also extremely wasteful because

of the high noncatch mortality (dropout loss) that occurs when salmon drop from the nets before they can be retrieved onboard. Estimates reckon that dropout losses amount to more than 50 percent of the total amount of fish harvested.³⁷ Second, all Pacific salmon grow rapidly during the last stage of the lifecycle before reaching the spawning ground; high seas fisheries take relatively immature salmon prior to this weight gain. Finally, harvesting salmon on the high seas impacts a mixture of salmon stocks simultaneously, preventing the management of individual stocks selectively. This frustrates efforts to protect depleted stocks and to ensure that each stock is harvested at an optimum yield.³⁸

Currently, there are approximately 700 vessels conducting squid fisheries in the North Pacific. Japan operates the biggest fleet, with approximately 500 vessels.³⁹ For many years, Japan used small-scale jigging vessels for conducting squid harvesting activities in coastal waters.⁴⁰ The development of larger, more efficient squid jigging vessels in the 1970s resulted in increased harvesting capacity and the movement of the fleet further offshore. By 1978, however, displaced driftnet vessels from the high seas salmon fishery began operating alongside the squid jigging vessels. This displacement occurred because the Soviet Union significantly reduced Japan's annual quota of Asian origin salmon that year.⁴¹

The gear conflict that ensued in the Japanese squid fishery ended in 1981 when Japan's Central Fisheries Adjustment Committee

established a limited entry management system for the fishery.⁴² This system allowed the jiggers to operate closest to Japan's shores because their vessels tended to be smaller than the driftnet vessels, and their operations were in existence before the driftnetters. In addition, the system regulated driftnet operations on the high seas by establishing time-area closures and a "moving" northern border. The Committee devised these closures in order to avoid interceptions of migrating North American salmon, as well as chum and other migrating species returning to Japanese rivers.⁴³

In comparison, South Korea and Taiwan have relatively small squid driftnet fisheries operating in the North Pacific. The Korean squid fishing fleet consists of approximately 100 vessels. The Korean fleet operates primarily within 200 to 250 miles from Japan; far below the isothermal level to which scientists estimate North American salmon migrate.⁴⁴ Taiwan's fleet also consists of about 100 vessels, although the vessels are larger than those making up the Korean fleet.

All the squid vessels utilize driftnets that are similar to those used by Japanese high seas salmon fleets. The United States' major concern is the lack of sufficient data to assess the impact of these particular driftnet fisheries on North American salmon. Although the extent of their incidental salmon catch is unknown, some evidence suggests that Taiwanese vessels are targeting salmon stocks.⁴⁵ In response to diplomatic pressure from the United States and Japan, Taiwan adopted time

and area regulations. Like Japan's regulations, Taiwan established a northern limit for squid fishing. However, aerial surveys by the United States have shown repeated excursions by Taiwanese and Japanese vessels north of the fishing boundaries.⁴⁶ The Korean fishery remains unrestricted, although the United States successfully arranged for cooperative driftnet research during 1987 with Korea's National Fisheries Research and Development Agency.⁴⁷

III. FISHERY MANAGEMENT UNDER FCMA

A. Management Objectives

FCMA's primary purpose is development of a management program that conserves and revitalizes fisheries found within the Exclusive Economic Zone (EEZ) of the United States. An essential starting point for fishery management is establishing a clearly defined management objective, or objectives.⁴⁸ Although various provisions describe the domestic management objectives of FCMA,⁴⁹ several commentators criticize Congress for failing to choose objectives that provide adequate guidelines for decisionmaking.⁵⁰ For purposes of this discussion, the emphasis placed by Congress on conservation and controlling foreign access, in order to give American fishermen a preference in the allocation of fishery resources within the EEZ, indicates congressional intent regarding the key management objectives of FCMA.⁵¹

To achieve these objectives, FCMA created eight Regional Fishery Management Councils (Councils).⁵² It directed the Councils to develop fishery management plans (FMP) for each of

the significant fishery resources within the zone.⁵³ The FMPs identify the optimum yield for each fishery, determine the total allowable level for foreign fishing (TALFF), and develop management rules governing harvest by both foreign and domestic vessels, among other things.⁵⁴

Fulfilling the conservation objective requires the Councils to determine the optimum yield that can be harvested annually from each fishery. Unlike prior management practices, FCMA does not require maintenance of target fishery stocks at the maximum sustainable yield (MSY) for that specie.⁵⁵ Instead of specifying MSY as a management objective, FCMA directs the Councils to use this concept as a benchmark for expressing the optimum yield.⁵⁶

The MSY is tabulated by determining the total amount of fish that can be harvested from a particular stock during a given time period without depleting the stock below its capacity to replenish itself.⁵⁷ The various environmental conditions and other factors affecting a fishery make it extremely difficult to accurately determine this level.⁵⁸ The insufficiency of the data base also creates management problems in systems that limit total catch on the basis of MSY. Limiting the catch in physical terms stimulates the use of excessive labor and capital by fishermen in order to maximize their catch before the fishery is closed.⁵⁹ In addition, the biological data used to determine MSY can be interpreted by different interests in different ways. This makes practical application of a quantitative figure by fishery

managers difficult. Therefore, FCMA directs the Councils to determine optimum yield by modifying the MSY by relevant economical, ecological, and social factors.⁶⁰ Although this general standard provides the Councils with more flexibility in determining harvest levels, the dominance of industry representation on the Councils suggests that "optimum" will be defined as what is best for the fishing industry.⁶¹

The concept of optimum yield also plays a significant part in achieving FCMA's allocation objective. This concept influences allocation decisions because it is defined in part as the amount of fish "which will provide the greatest overall benefit to the Nation".⁶² By using this concept in determining fishery allocations, the Councils can establish a harvest level that partially or totally excludes foreign fishermen. This domestic preference policy is consistent with stated Congressional intent to encourage the development of the United States fishing industry.⁶³

B. Amendments to FCMA

Following passage of FCMA, the U.S. fishing industry generally increased in importance in both international and domestic fishery markets. Despite this increase, the preferential access provided to U.S. fishermen by FCMA did not produce a "substantial economic growth or a net increase in harvest over foreign fishermen."⁶⁴ While domestic harvesting increased, so did the level of fish products imported to the United States. The disappointing performance of the U.S. fishing

industry and an expanding fisheries trade deficit resulted in Congress amending FCMA.⁶⁵ Convinced that expansion of the U.S. fishing industry was frustrated without a relatively predictable reduction of foreign fishing within the EEZ, Congress passed the American Fisheries Promotion Act of 1980 (the 1980 Act).⁶⁶

The 1980 Act promotes the development of the U.S. fishing industry by providing it with a greater share of the harvest within the EEZ and demanding greater access to foreign markets.⁶⁷ It does not achieve this, however, by refining existing FCMA provisions. Instead, the 1980 Act creates a new mechanism for determining foreign allocations, the "fish and chips" policy. This policy relies primarily upon political and economic factors in determining optimum yield rather than biological factors. The "fish and chips" policy directs the Secretaries of State and Commerce to consider whether a foreign state imposes tariffs or otherwise restricts the market access of U.S. fish products when allocating fishing rights within the EEZ to that state.⁶⁸ Under this policy, foreign states willing to lower trade barriers and increase imports of United States fish products receive sympathetic treatment in the allocation of access to fisheries. Conversely, a recalcitrant foreign state risks the reduction or termination of its allocation.⁶⁹

In addition, the 1980 Act supplements the "fish and chips" policy with a mandatory phase-out of foreign fishing. It requires that foreign allocations be the lesser of (1) the allowable level of foreign fishing permitted under the new optimum yield system,

or (2) the fishing level determined under a more complex method of calculation established by the 1980 Act.⁷⁰ Under the new mechanism, foreign fishing can be totally phased out of a particular fishery, even though a surplus of fish exists.⁷¹ The provision arguably conflicts with the principles of optimum yield and full utilization underlying the conservation objective of FCMA, because it encourages the more traditional and wasteful approach to fisheries management, free and open access to fisheries.⁷²

While application of the "fish and chip" policy produced the anticipated domestic buildup, it sacrificed the long-term stability of fishery resources for the short-term economic benefits resulting from producer protection and subsidized development.⁷³ By mandating the exclusion of foreign fishing vessels, Congress encouraged a system that promotes physical and economic waste; a system permitting free and open access to fisheries by the domestic fishing industry. The policy controls foreign fishing effort but encourages the rapid, unchecked expansion of the domestic fishing industry. The result is over-capitalization of the industry and increased pressure on the resource base, leading to reductions in total yields and lower catches per unit of effort.⁷⁴

C. Dealing with Salmon Interception under FCMA

Under FCMA, the United States asserts management authority over salmon stocks originating in the United States throughout their entire range, including the high seas.⁷⁵ Absent

international agreement, however, the exercise of this authority depends entirely on bilateral agreements with a foreign state because of the absence of any specific statutory mechanism for exercising high seas management authority. Presumably, the authority to condition foreign access under FCMA provided the United States with a mechanism for limiting high seas interception of salmon by foreign fisheries.⁷⁶ However, this approach is now unavailable because the rapid Americanization of fisheries within the EEZ has reduced the surplus available for allocations to foreign fleets.⁷⁷ Unsurprisingly, actions to restrict foreign fishing efforts within the EEZ have forced foreign nations to shift that effort to the high seas, where foreign vessels are free from any quotas or limitations. While the exclusion mechanism reduced the interception of salmon by foreign fleets within the EEZ, it has also displaced that fishing effort to areas outside the jurisdiction of the United States.

Attempts by the United States to lessen interceptions of North American origin salmon by Japan's high seas salmon and squid fisheries illustrate the adverse impact of the "fish and chip" policy on United States fishery interests. The policy frustrates efforts to negotiate restrictions of these fisheries because Japan knows it faces exclusion from important groundfish fisheries in the Gulf of Alaska and Bering Sea by 1988 or 1989.⁷⁸ Japan is reluctant to make long-term sacrifices in its viable high seas salmon and squid fisheries in order to prolong the certain extinction of their groundfish fishery in the EEZ for a

year or two. Those fishery interests resist conceding portions of viable fisheries in order to preserve a relatively obsolete groundfish fishery. The fact that those fisheries are free of the strictures of current FCMA provisions strengthens the position of those in Japan's fishing industry who advocate for a hard line approach to the salmon interception issue.⁷⁹

The bargaining position of the United States is further weakened by our fledgling fishing industry's heavy dependence on Japan for markets, capital, and technical expertise.⁸⁰ The mandatory exclusion of foreign fishing undermines efforts to restrict those fisheries because the United States has no chips left to bargain with. The United States can expect severe retaliation if it attempts to impose limitations on foreign high seas fisheries. The United States fishing industry would be severely impacted if Japan retaliates by boycotting domestic fishery products or terminating participation in domestic fishery development programs.⁸¹

The United States has also attempted to use foreign allocations and negotiation of Governing International Fisheries Agreements (GIFA) to pressure South Korea and Taiwan into implementing time and area restrictions on squid fishery activities. The GIFA with South Korea entered into force on October 27, 1987. Although the Korean GIFA imposes poundage and permit fees on Korean vessels operating within the EEZ, the GIFA does not affect operation of the Korean squid fishery.⁸² No

scheduling of further discussions on the squid fishery occurred, but scientists from both countries have agreed to meet in 1988. The United States can not rely on the GIFA approach in dealing with Taiwan's high seas squid fishery because Taiwan receives no fishery allocations from the United States.⁸³

In sum, existing FCMA provisions limit the ability of the United States to exercise management authority on the high seas. The United State's negotiating position is severely compromised by the 1980 Act because its mandatory exclusion provision frustrates any attempt to use the allocation of fishery rights as a bargaining tool. Another mechanism available to the United States for limiting high seas interceptions of North American salmon is the North Pacific Convention. Several problems, however, diminish the effectiveness of this tri-national agreement.

IV. NORTH PACIFIC CONVENTION

A. Background

Since 1952, the United States has addressed most Pacific salmon interception issues through two international organizations. Issues over high seas interception in the North Pacific between the United States, Canada, and Japan are handled by the INPFC.⁸⁴ Issues concerning coastal salmon fishery interceptions between the United States and Canada are addressed in the Pacific Salmon Commission, established under the terms of the Pacific Salmon Treaty of 1985.⁸⁵ The following discussion

only addresses INPFC efforts because the issues concerning coastal salmon interception fall beyond the scope of this paper.

In the 1952 Annex to the North Pacific Convention, Japan agreed to abstain from salmon fishing east of 175 degrees west longitude in the North Pacific Ocean and the Bering Sea.⁸⁶ In exchange, Japan was allowed to operate within the American EEZ and continue its traditional harvest for salmon of Asian origin. Since 1956, however, studies by United States scientists showed that western Alaskan salmon migrated west of 175 degrees west longitude, and were caught by the Japanese.⁸⁷ Efforts by the United States to implement the Convention's provisions regarding redesignation of the abstention line failed because of Japan's reluctance to give up additional fishing rights on the high seas.⁸⁸

Following the passage of FCMA, the United States, Canada, and Japan renegotiated the Convention and signed a Protocol amending the Convention in April 1978.⁸⁹ The 1978 Amendments provided greater protection for North American salmon by resolving the long-standing dispute over the abstention line and imposing time/area restrictions on Japanese salmon fishing operations within the EEZ.⁹⁰ In exchange for permission to fish within the American EEZ, the Japanese also agreed to time and area restrictions in the "doughnut hole", an area of the Bering Sea outside both the American and Soviet EEZs, where North American salmon predominate.⁹¹ The time/area fishing restrictions increased protection of sockeye and chum stocks of

North American origin by significantly reducing the average annual interception of mature salmon by the Japanese mothership fishery.⁹² From 1956 through 1977, interceptions of North American salmon by the mothership fishery averaged 76 percent maturing fish. Since 1978, however, that ratio has been reversed, with interceptions averaging over 78 percent immature salmon. Although immature salmon are present and vulnerable to interception by the mothership fishery during the entire year, a significant number of maturing salmon are present in the area only before June 10. The 1978 Amendments reduced the total loss faced by domestic fisheries because they delayed the start of mothership operations until after maturing salmon had migrated through the area.⁹³ Although the stricter guidelines incorporated into the Convention reduced Japanese interceptions, it did not eliminate Japanese harvest of North American salmon.

The United States renewed efforts to limit Japanese high seas fishing efforts following a dramatic increase in the interception of chinook salmon by the mothership fleet in 1980.⁹⁴ At the Annual Meeting of the INPFC in November 1984, the United States presented several scientific studies that supported claims of a significant impact on Alaskan salmon fisheries because of the Japanese high seas fleets.⁹⁵ Despite the increase in scientific evidence regarding the magnitude of this impact, Japan continued to resist efforts by the United States, through the INPHC, to phase down or eliminate high seas salmon fisheries.

The United States and Japan began bilateral discussions in June 1985 concerning the interception issue. The United States threatened to withhold the 1986 Japanese groundfish allocation, but Japan retaliated by linking any reductions in allocations to future fish purchases, including joint ventures.⁹⁶ In discussions held in Tokyo from March 6 to 8, 1986, both nations agreed on measures addressing conservation, scientific research and enforcement efforts. After obtaining Canadian support, the INPFC recommended that the three governments amend the annex to the Convention.⁹⁷

Although the United States agrees to allow the mothership fleet to continue fishing in the EEZ, the amended Annex includes time/area restrictions for salmon fishing and incidental catches of other species. It allows the United States to place observers on the Japanese motherships and catcher boats operating in the EEZ. In exchange for permission to fish in the EEZ, Japan agreed to phase out its mothership fishery from the Bering Sea "doughnut hole" by 1994.⁹⁸ In addition, the eastern boundary for the landbased fisheries was shifted one degree to the west, to 174 degrees east longitude. Based on scientific continent-of-origin studies to be concluded by 1991, further movement of the eastern boundary will be renegotiated.⁹⁹ Japan also agreed to provide catch and fishing effort statistics for the landbased fleet and to establish a method of validation for this data. Finally, Japan agreed to increase enforcement efforts in the landbased

fishery and to accept a U.S. observer on one of the patrol vessels.¹⁰⁰

United States scientists predict that the conservation measures developed in the INPFC amended Annex will significantly decrease the Japanese interception of North American salmon.¹⁰¹ The revised research and enforcement provisions will contribute helpful data on the landbased fishery and provide a basis for future negotiations. Despite these achievements, legislative and industry representatives objected to the fact that it failed to reduce the level of Japanese salmon fishing within the EEZ, and that it will take eight years to phase out the Bering Sea fishery.¹⁰² These objections demonstrate a common misconception that negotiations between the United States and foreign nations are unsuccessful when the United States fails to achieve all its goals.

It should be remembered, however, that the Bering Sea fishery is conducted outside the United States' jurisdiction. By permitting a continued, and more regulated fishery for salmon of Asian origin within the EEZ, the United States can reduce interceptions of North American salmon in the Bering Sea. Japanese fishing within the EEZ is still subject to the June 10 season opening restriction, so interceptions of mature North American salmon migrating through this area remain minimal.¹⁰³ The probable 20-30 percent reduction in interceptions attainable through implementation of the amended Annex can not be directly compared to the 75 percent reduction achieved by the 1978

amendments because such a comparison ignores several important factors. First, the 20-30 percent rate does not relate to the entire amount of Japanese interceptions, but only to the 25 percent not encompassed by earlier agreements. Additionally, the United States could not rely on the leverage provided by foreign groundfish allocations as it did in 1978.¹⁰⁴ The only negotiating leverage that remained was permitting Japanese salmon fishing within the EEZ. Although the amended Annex cannot totally eliminate Japanese interceptions of North American salmon, this agreement and the framework provided by the INPFC gives the United States the ability to regulate and monitor high seas fisheries. However, several problems affect implementation of the amended Annex and limit its ability to solve problems involving interceptions by squid fisheries.

B. Minimizing Interceptions Under the Amended Annex

The primary threat to the amended Annex is the litigation initiated by certain environmental and Alaskan native fishing groups challenging the issuance of a Marine Mammal Protection Act (MMPA) general permit to the Federation of Japan Salmon Fisheries Cooperative Association (Federation).¹⁰⁵ In this case, the National Oceanic and Atmospheric Administration (NOAA) issued the Federation a general permit for the taking of Dall's porpoise, but denied its request for a permit to incidentally take Northern fur seals. Currently, the Pribilof Islands stock of Northern fur seals has been declared depleted.¹⁰⁶ The Federation challenged the reduction from the requested quota for Dall's porpoise and

the denial of a permit to incidentally take Northern fur seals. The environmental and Alaska native groups argued that the MMPA precluded the issuance of any permit when NOAA knows that marine mammals not covered by the permit will also be taken.¹⁰⁷ On June 12, 1987, the United States District Court in Washington, D.C., issued a preliminary injunction prohibiting NOAA from issuing the permit.¹⁰⁸ The court concluded that the MMPA prevented NOAA from issuing any permit unless it could determine whether the population of all species or stocks of mammals that could conceivably be taken in the fishery were at an optimum sustainable level. Under this interpretation, NOAA is prevented from issuing permits for a single stock, such as Dall's porpoise.¹⁰⁹

Although the injunction did not affect the Japanese mothership fishery this year,¹¹⁰ the Japanese can not operate within the EEZ next year without a general permit. Oral arguments on the Government's appeal were heard on November 3, with a decision expected by January. Although the panel expressed displeasure at the district court permitting an appeal of a preliminary injunction, they may still uphold the district court ruling. Such a decision would probably lead to Japan's withdrawal from the Convention, the discontinuation of the INPFC amended Annex, and the displacement of the mothership fishery to the high seas.¹¹¹ In addition, Japan would terminate its research, observer, and enforcement agreements with the United States. Even if the United States gets a ruling in its favor,

such a decision by the Court of Appeals will not end this litigation because there are several live issues not yet addressed by the district court.¹¹²

Japan argues that the failure of the United States to allow operation of its mothership fishery within the EEZ is an abrogation of its treaty responsibilities, rendering the Convention's provisions ineffective.¹¹³ Japan may be reluctant to resume unregulated high seas salmon fishing, however, because such an action may be interpreted as inconsistent with international law. The LOS Convention recognized the primary authority of the state-of-origin over the regulation of salmon.¹¹⁴ In bilateral negotiations with the Soviets and through the North Pacific Convention, Japan has accepted the exercise of that regulatory authority by the Soviet Union, United States, and Canada. Although the relevant agreements differ formally, Japan's recognition of a state-of-origin's interest in regulating high seas salmon fishing may justify the view that a unilateral resumption of high seas fishing by Japan is contrary to existing international law, as stated in the LOS Convention.¹¹⁵

The structure of the INPFC also contributes to problems in relying on the North Pacific Convention to halt interceptions. The INPFC consists of three national sections, each of which possesses one vote. The difficulty arises because a unanimous vote is required for all INPFC resolutions, recommendations, and other decisions.¹¹⁶ Unsurprisingly, this arrangement slows the

development and acceptance of new management measures for protecting North American origin salmon.¹¹⁷ In addition, the Convention only binds those nations that are parties to it. The development of fisheries in Convention waters by non-party nations therefore remains outside the control of the INPFC. Neither South Korea or Taiwan is a party to the Convention. Although Convention provisions provide a mechanism for the parties to take unified action against non-parties like South Korea and Taiwan, the effectiveness of these actions remains to be seen.¹¹⁸ More significantly, no international body like the INPFC exists to promote and coordinate cooperative research efforts and dialogue on high seas issues involving South Korea or Taiwan.

While providing the United States with vital management and research capacities, the North Pacific Convention can not currently address the entire range of issues regarding salmon interception on the high seas. The inability of the Convention to adequately address all the issues affecting North American salmon, such as the activities of the squid fisheries, requires the development of an approach that includes all nations having interests in the fishery resources of the North Pacific.

V. POLICY ALTERNATIVES AND RECOMMENDATIONS

Although the establishment of 200-mile EEZs has been accepted world-wide, many believe the management of fishery resources under the zone approach is as economically and biologically inefficient as the previous open access system. The

key incentive for the establishment of these zones has been the preferential right of the coastal nation to exploit fishery stocks within its EEZ.¹¹⁹ In return, the LOS Convention grants coastal nations the simultaneous right and duty to enact and enforce conservation measures within their respective zones.¹²⁰ The benefits from the zone approach come from providing conservation management in areas of previously unchecked exploitation. The primary disadvantage of this regime is that it does little to promote the equitable participation by all nations in the exploitation and management of fishery resources, theoretically shared by the entire world community.¹²¹ In addition, foreign nations reacted to the attempt by coastal nations to exclude or reduce foreign fishing effort within traditional foreign fishing grounds by developing and expanding high seas fisheries. To some extent, this has shifted the problems associated with open access to fisheries in the traditional fishing areas to the high seas.

Enacting FCMA enabled the United States to establish a program for the management and protection of valuable and depleted fisheries within a zone extending 200-miles from the United States coastline.¹²² Although it gave the United States a territorial claim to fishery resources, the spatial concept underlying FCMA fails to account for the distribution and structure of the fisheries resource. The more recent emphasis on Americanizing fisheries within the zone conflicts with the interests of other nations, which have historically shared common

fishery resources within the zone. By excluding foreign nations from the zone, the United States forfeited the leverage necessary to exercise some control over fishing activities outside the zone that adversely affect North American salmon.¹²³ Current enforcement efforts within the EEZ are impeded by the large geographical area involved. Attempting to unilaterally expand enforcement efforts on the high seas is impracticable because of the significant increase in geographical area and the limited enforcement resources of the United States.¹²⁴

For the past 30 years, the North Pacific Convention has provided the United States with invaluable management and research capabilities. The Convention's ability to deal with current salmon interception issues, however, is limited to the species it covers and the nations to which it extends.¹²⁵ In addition, recent litigation might impel Japan to withdraw from the Convention. This would result in increased Japanese salmon fishing activities in the "doughnut hole" and the termination of its research, observer, and enforcement agreements with the United States.

Given the current state of affairs, protection of North American salmon stocks requires the development of an alternative management approach. Due to the importance of providing for the continued existence of fishery stocks,¹²⁶ the alternative must promote the orderly and efficient exploitation of all fishery resources. Therefore, the new approach must take the nature and character of the resource into account. To be politically

acceptable, the new approach must also recognize the vested interests of coastal nations. A possible alternative that presents a reasonable compromise between the concepts of exclusive and shared exploitation of fishery resources is through regional agreements and controls.¹²⁷

The regional approach involves the implementation of the "common heritage" principle to fishery resources. The U.N. General Assembly articulated this principle in 1970 by stating that the seabed beyond the limits of national jurisdiction, together with its resources, constituted the common heritage of mankind.¹²⁸ This principle was an integral part of negotiations at LOS III regarding mineral resources of the deep sea bed.¹²⁹ Although the EEZ approach adopted for management of fishery resources does not follow this innovative management model, it does recognize some aspects of that regime.¹³⁰ It limits the exercise of a coastal nation's authority over anadromous species beyond the boundaries of the EEZ by incorporating several "escape clauses". For example, it permits high seas fishing for salmon by "non-states of origin" if they will suffer "economic dislocation".¹³¹ Because the LOS Convention does not ban the harvesting of salmon on the high seas, the management of salmon outside a state-of-origin's EEZ depends upon bilateral negotiations. Therefore, salmon management rests on voluntary compliance; nonparties are not bound by such agreements.¹³² Without an agreement binding all nations operating within a region, such as the North Pacific Ocean, the United States can

not hope to halt the depletion of salmon caused by driftnet fisheries.

The regional approach will promote the rational management and efficient industrialization of the salmon resource and other fish stocks because a larger percentage of a given fishery stock will be encompassed within a single large zone.¹³³ By expanding jurisdiction over a larger area, the regional approach would manage the resource itself rather than an area in which a fish stock may be found. The most obvious drawback to this approach is the lack of incentive for coastal states to surrender control over their respective EEZs to a regional body.¹³⁴ However, the adoption of this approach does not mean that the interests of coastal nations would be ignored or lessened; the basis of fishery management under the common heritage principle is the promotion of equitable participation in fishery resources. An equitable management system would recognize existing the economic interests developed by coastal nations in their EEZs.¹³⁵ In fact, the regional approach may provide better and longer term protection of those interests. By surrendering total control over an area where it already enjoys beneficial control, the United States could capitalize on the interregional political and economic cooperation that a regional approach would foster.¹³⁶

The primary benefits of a regional approach to fishery management are the reduction or minimization of the management and enforcement costs, as well as the coordination of research and conservation efforts. For example, negotiations concerning

allocations and access to areas previously under the jurisdiction of individual states would be simplified by placing all of the EEZs of the parties under the regional "umbrella".¹³⁷ Negotiations would be necessary only between the representatives of the member nations involved. Because the regional umbrella covers all negotiations concerning fishing within the zone, member nations would no longer need to negotiate to fish within the EEZs of any of its regional neighbors. Participating nations would negotiate for a number of transferable exploitation rights within the zone.¹³⁸ These rights could then be sold, traded or transferred. By requiring member and outside nations to purchase exploitation rights within the zone, this management system may inhibit overfishing and waste of resources. The traditional rights of coastal nations could be protected by providing them with a preemptive right to purchase the transferable rights of member nations.¹³⁹

The cost and effort associated with obtaining fishery data could be streamlined by coordinating the research efforts of all regional members. This would be particularly helpful with regard to determining a salmon stocks' continent of origin and the impacts from high seas driftnet fisheries on those stocks.¹⁴⁰ Coordinating efforts for gathering information about fish stocks, including migratory patterns and breeding habits, will expand the data base used to determine the MSY for a particular fishery stock. Instead of each coastal nation operating a distinct system, this approach allows a determination of the harvest

capacity for the whole region. Combining these systems makes it easier to predict allowable fishing effort over the long-term and stabilizes the expectations of member nations.¹⁴¹ The coordination of conservation efforts among the member states avoids the enactment of conservation measures that are piecemeal vis-a-vis the entire resource. By expanding jurisdiction to include a greater portion of the fishery resource, the regional approach increases the effectiveness of conservation efforts undertaken individually by member nations.¹⁴²

The most important and difficult step in implementing a regional pact is determining a single regional fishery objective.¹⁴³ Despite the differing cultural, political, economical, and legal systems among the participating nations, they all share a common goal and interest: to maximize and maintain the harvest potential of the resource. This common goal provides a background for identifying and fulfilling the goals of individual member nations.

The major impediment to achieving this goal is the injection of notions of sovereignty, national prestige, and ideology, inherent in the EEZ approach, into the process of resolving fishing disputes among nations.¹⁴⁴ Experience suggests it will not be easy to overcome institutional and ideological resistance to developing a regional plan. But given knowledge of the stakes and the long-term promise of such an arrangement, the requisite political support may be achieved. A regional approach

will not alleviate disputes, but it can provide a single medium for the quick and effective resolution of those disputes.

At the 34th annual meeting of the INPFC, Japan proposed that a multilateral meeting be held in Tokyo in February 1988 concerning the establishment of an international organization dealing primarily with the North Pacific pollock resource.¹⁴⁵ Canada immediately responded, with support from the United States, that any discussions include the high seas squid resource as well. Furthermore, the United States announced its intention of discussing the Japanese proposal with the Soviet Union before responding to the Japanese invitation.¹⁴⁶ Such a meeting would initiate the process of regionalizing fishery management in the North Pacific, and should be supported by all parties to the North Pacific Convention.

VI. CONCLUSION

Although the zone approach halted, to some extent, the economic and physical waste associated with the practice of open exploitation of fishery resources, it has not provided a rational, equitable, and efficient management system. Its usefulness in protecting the economic investment of the United States required to preserve its salmon stocks at harvestable levels has been limited.¹⁴⁷ As we move into the twenty-first century, traditional national management regimes must be replaced by a system that takes the nature and character of the fishery resource into account. The zone approach is not an end in itself, but a step in the development of a rational and equitable

fishery management system. A movement towards regional fishery management takes into account the increased economic integration of world markets and overcomes the discrete political barriers currently inhibiting rational management of the fishery resource. It is in the best interest of the United States to urge the development of a comprehensive regional management program.

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Bud KEARN'SAFFIDAVIT

1
2
3 United States of America)
4 State of Washington) ss
5 County of King)
6

7 WAYNE LEWIS, being first duly sworn on oath, deposes and
8 says: I am the Special Agent in Charge of the National Marine
9 Fisheries Service, Pacific Area, and have personally supervised
10 the special agents and officers assigned to this investigation
11 who were working in overt and undercover capacities. The
12 information set out below is based on personal observations and
13 discussions with the subjects of the investigation, discussions
14 with the officers and informant, and my review of their reports
15 and records.

SUMMARY STATEMENT

16
17 The United States, Canada, and Japan, signators to the
18 International Convention For The High Seas Fisheries of the North
19 Pacific Ocean, and members of the International North Pacific
20 Fisheries Commission that regulates the high seas harvest of
21 salmon, have been concerned that Taiwanese fishing vessels were
22 intercepting salmon on the high seas (which were destined to
23 INPFC member rivers) in direct contravention of the stated,
24 agreed conservation purposes of the Convention, and in violation
25 of Taiwanese law and further that these salmon were being
26 introduced into the world market in unfair competition with the
27 legal salmon harvested by INPFC countries. Salmon taken on the
28 high seas by anyone in violation of the convention (including

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1 Taiwanese fishermen) cannot be legally shipped into the United
2 States, Canada or Japan.

3
4 The U.S. Department of Commerce, NOAA, National Marine
5 Fisheries Service is responsible for the enforcement of federal
6 laws pertaining to the conservation and management of U.S.
7 fishery resources. In that capacity, the Law Enforcement
8 Division, over the past two years, has been actively engaged in
9 an international investigation involving the interception of
10 salmon taken by vessels from Taiwan, in the North Pacific Ocean
11 and complicated laundering and relabeling schemes involving those
12 fish which were directed at circumventing Taiwanese and Japanese
13 export/import prohibitions, including the shipment of such salmon
14 into Japan where the market price is higher than that of the
15 United States or Canada. As a result of that investigative
16 effort, it appears that the flow of these fish into the United
17 States has been curtailed, however reports from extremely
18 reliable sources and other probative evidence indicates that the
19 illegal high seas harvest is continuing and that profiteers from
20 within and without the United States are selling and shipping the
21 fish directly from the Far East to Europe.

22
23 In June 1988, Dean Micken reported that he had recently been
24 contacted by Mr. Michael May (dba: ANPAC Seafoods) to assist in a
25 scheme to import Taiwanese caught high seas salmon into Japan.
26 It was our understanding that the salmon were to be shipped from
27 Hong Kong, Singapore and/or Taiwan to the United States or Canada
28 and then to Japan - similar to past cases that

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1 are currently pending before the Courts. Dean Hickam allowed us
2 to monitor his conversations with Mr. May, and we overheard Mr.
3 May bragging that there were about thirty million pounds of high
4 seas salmon available. According to Mr. May, he wanted to deal
5 in these high seas caught salmon, and intended to enter false
6 declarations as to the countries of origin and final destination
7 in order to ship the product to Japan. In fact, he bragged to
8 Hickam that he had already caused such shipments to occur by
9 switching bills of lading at sea so the shipments went directly
10 to Japan and not to Korea. As to the past shipments, we know
11 that Mr. May did buy two large lots of seized Taiwanese caught
12 salmon in California and these are the fish he claims to have
13 shipped to Japan.

14
15 ~~As this investigation progressed, we involved Canadian law~~
16 ~~enforcement officials when we learned that the intent of Mr. May~~
17 ~~and his associates was to ship the fish to a seafood plant in~~
18 ~~Nova Scotia, Canada, mislabeled as a product of Japan, repackage~~
19 ~~and relabel them in Canada, declare to Canadian customs that the~~
20 ~~product was going to Korea, and complete offshore change~~
21 ~~paperwork so that the salmon went directly to Japan (Mr. May:~~
22 ~~"and that's how it worked just like a clock.")~~ The planning for
23 this enterprise occurred in the Seattle area and appears to
24 involve companies and/or individuals in Taiwan and Japan. As
25 part of this scheme Mr. May planned to commit customs violations
26 in Canada, and import violations in Japan.

27
28 In December 1988, an alternative plan was proposed. Michel

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1 May reported that his Japanese associates said the risk of having
2 the operation discovered and the salmon confiscated was too
3 great. As an alternative, Mr. May instructed Hickam to develop a
4 market outlet in Europe. Hickam did so, ultimately arranging a
5 meeting on January 26, 1989, in Seattle, Washington, between the
6 purported European buyer (an undercover Canadian Fisheries and
7 Oceans Law Enforcement Officer), Mr. Dean Hickam, Mr. Michael
8 May, and his Japanese associate, Mr. Yasu Igari, President of
9 IGARI & Co. Ltd., Tokyo, Japan.

10

11 During the meeting on January 26, 1989, Mr. IGARI made the
12 following statements and admissions.

- 13 1. That the Taiwanese are prohibited from catching salmon
14 on the high seas.
- 15 2. That the Taiwanese high seas caught salmon he was
16 offering for sale were contracted for by him last year.
- 17 3. That the salmon were currently stored in Singapore,
18 Europe and other places.
- 19 4. That he agreed to sell undercover operatives twenty-
20 four million pounds of high seas Taiwanese caught
21 salmon over a two year period.
- 22 5. That Mr. May and Mr. Igari produced a purchase
23 agreement for the high seas salmon that Mr. May claimed
24 to have written.
- 25 6. That they would contract in advance with the Taiwanese
26 boats to catch salmon and upon the return of these
27 boats to Singapore pay cash for the salmon.

28

1 The meeting was monitored by NMFS Special Agents Richard
2 Severtson and David Johnson, and Canadian Fisheries and Oceans
3 officers Kenneth Conrad and Gary Kirkpatrick. The meeting was
4 recorded on video and audio tapes.

5
6 Later, on January 26, 1989, at approximately 10:00 p.m., Mr.
7 Dean Hickam had a telephone conversation with Mr. May. During
8 that conversation, Mr. May again admitted that he had
9 participated in the importation of a shipment of high seas
10 Taiwanese caught salmon to Japan. Mr. May agreed to arrange for
11 Mr. Igari to meet in Seattle with Mr. Hickam on Saturday, January
12 28, 1989, to engage in further discussions about the proposed
13 sale of 24 million pounds of high seas caught salmon.

14
15 During previous undercover contacts Mr. Michel May bragged
16 to Hickam that he was able to buy two loads of seized high seas
17 Taiwanese salmon from the NMFS, and ship those two loads of fish
18 to Japan. He explained several times, on tape, that he shipped
19 the salmon with documentation that made it appear the fish were
20 going to Korea but then he switched the paperwork at sea and
21 diverted the product straight to Japan. Mr. May said he shipped
22 under the name of AMPAC Seafoods and later switched the bills of
23 lading to his other company known as Food Sales International.
24 On the other load of salmon that he claims to have diverted
25 straight to Japan he said,

26 "Well, basically we done, we've done two programs with the,
27 about 1/2 million pounds each of product. Now what these
28 are, these are the Taiwanese fish that were confiscated in

1 this country by national fisheries and, of course, we bought
2 the... The information was, of course, none of this product
3 which was falsely labeled "Product of the U.S.A." it could
4 be shipped out, ah,... in fact, they had warned the Japanese
5 that something was going to be repacked, to watch out for
6 it. But Japan is strongly against Taiwan... Nevertheless,
7 just between you and I, we got it out there, to Japan. What
8 we did we, ah, set up the bill of lading from Japan Line to
9 Korea and, while it was still afloat, it suddenly made
10 itself right, and it ended up in Japan -- ha, ha, ha. Well,
11 well I do, essentially I do two sets of bills of lading, one
12 which stated, one went, one they used in Japan to receive
13 the goods, and one was, the phoney. The part of it in
14 between I don't know, that's something I haven't figured
15 out, how they do the switch... They do very well."

16 In both cases, according to Mr. May, the shipments went to Japan
17 in violation of Japanese law, possibly in violation of U.S.
18 Customs export laws, and clearly in violation of the Lacey Act.

19
20 In truth, On May 1, 1988 Mr. May had purchased by bid, two
21 separate loads of NMFS seized high seas Taiwanese caught salmon
22 that had been seized by NMFS in California. (The fish were
23 frozen whole, sexually immature, four to six pound chum and
24 sockeye salmon with gillnet marks, consistent only with the
25 harvest practices and storage methods used by the high seas
26 Taiwanese gillnet fleet.)

27 1. Based on information provided to the United States by
28 the government of Japan, Foreign Exchange and Foreign

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1 Trade Control Law, Chapter VI, Article 82, Import Trade
2 Control Order (Cabinet Order No. 414, December 1949, as
3 amended), Article 3 Para. 1, 4 Para. 1 (2), Ministry
4 of International Trade and Industry Notification No.
5 170 of 1966, as amended, prohibits the importation of
6 Taiwanese harvested salmon without a permit. United
7 States officials have been informed by Japanese
8 authorities that the Japanese government has issued no
9 permits to import Taiwanese caught salmon.

- 10 2. The Lacey Act (16 U.S.C. 3372 (a)(2)(A)) prohibits the
11 import, export, transport, sale, receipt, acquisition
12 or purchase in interstate or foreign commerce of fish
13 or wildlife taken, possessed, transported or sold in
14 violation of any foreign law.

15 Mr. May bought a total of 296,000 pounds of frozen salmon for
16 \$391,376.00, from NMFS, subsequently acknowledging on several
17 occasions, their Taiwanese origin. Mr. May explained to Hickam
18 that Mr. Igari (his Japanese backer) was present in California
19 during the bidding process. Mr. May explained, on tape, that
20 when it was time to submit the bid, Mr. Igari chose not to enter
21 the NMFS office in California because he did not want to create
22 any suspicion. According to Mr. May, the fish were paid for by
23 Mr. Igari, and Mr. May received a commission of \$0.03 per pound.
24

25 Under the conditions of the sale, Mr. May submitted a bid
26 for the product and was required to pay 10% down and the balance
27 within ten days. He accomplished the payments with certified
28 checks in the following amounts: \$39,137.60, \$179,228.40, and

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1 \$179,010.00. As well, Mr. May was required under conditions of
2 the sale to pay for all storage costs after May 1, 1988 - the
3 date of the sale.

4 The two loads were stored at the following sites:

- 5 1. United States Cold Storage, P.O. Box 500, Riverside
6 California.
- 7 2. United Cold Storage, 293 E. Grand Ave. South, San
8 Francisco, California.

9
10 We checked with both storage companies and were able to
11 determine that AMPAC Seafoods had paid for the extra storage
12 costs, and had removed the high seas caught salmon from the
13 storage companies. As to each storage company the following
14 releases were made:

15 UNITED STATES COLD STORAGE

16	May 12, 1988	658 cases	JLLU50553490
17	May 12, 1988	672 cases	ITLU720613 8
18	May 13, 1988	674 cases	JLLU503326 Possibly involving a
19			Norden Trucking Co.
20	May 13, 1988	518 cases	Western Pacific Freight Co.
21	May 18, 1988	145 cases	Provisioners Trucking

22
23 UNITED COLD STORAGE

24	May 17, 1988	538 cases	Midwest Transport
25	May 18, 1988	564 cases	Midwest Transport
26	May 18, 1988	528 cases	R.D.V. Trucking
27	May 19, 1988	521 cases	Unknown

28

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1 As well, during the course of this investigation Michel May
2 called the NMFS at Seattle several times to inquire about a
3 possible public sale of some 121,900 pounds of high seas caught
4 salmon that had been seized by NMFS in Seattle and subsequently
5 forfeited to the United States government. On those occasions he
6 was specifically told that it was illegal to import those
7 particular salmon into Japan, as it was against Japanese law to
8 do so. Mr. May said that he clearly understood those laws, as he
9 had purchased similar salmon in 1988, and had shipped that salmon
10 to Korea.

11
12 As part of the investigative scheme we offered the salmon
13 for public sale as a ruse, expecting that Mr. May's Japanese
14 backer (later identified as Mr. Yasu Igari) would come to
15 Seattle, Washington to inspect the salmon. In doing so, we
16 planned that he would also meet with Mr. Hickam's London buyer,
17 portrayed by a Canadian Fisheries and Oceans undercover officer.

18
19 On January 11, 1989, a Notice of Sale and Bid Submission
20 form was mailed to Michel May at his AMPAC Seafoods office in
21 Seattle, Washington. On January 19, 1989, Mr. May did inspect
22 the salmon and said that he did intend to submit a bid for the
23 salmon. He said that he intended to salt the product, and that
24 it was most desirable to the oriental market.

25
26 During the undercover meeting of January 26, 1989, Mr. Igari
27 also said that Japan was the best market outlet for salted
28 salmon. Also during the meeting Mr. May, representing Mr. Igari

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1 produced a sales contract, offering for sale 12 million pounds of
2 salmon during the coming 1989 fishing season to the London buyer
3 and Mr. Hickam. Additional meetings were scheduled for further
4 detailed discussions concerning this sale of Taiwanese caught
5 high seas salmon.

6
7 Within the last thirty days Michael May has talked with Mr.
8 Hickam from within the AMPAC office in Seattle, Washington. On
9 several occasions, Mr. May has produced records, bills of lading
10 and other related documents from places within the AMPAC office.
11 Mr. May discussed some specific details concerning his
12 negotiations to market the high seas salmon, while referring to
13 documents that he produced in his office to refresh his memory,
14 and said he got the documents from "the file".

15
16 The AMPAC office is a small business site and appears to be
17 a one or two room second story office, in what appears to be a
18 storage and office complex. The door to the AMPAC office has a
19 small sign that identifies the office as that of AMPAC Seafoods,
20 and Food Sales International. The downstairs reader board, at
21 2450 6th Avenue South, in Seattle, Washington, identifies room
22 #205, as an office operated under the name of "Kimura and Co.".

23
24 I have reason to believe that all three companies, AMPAC,
25 Food Sales International, and Kimura and Co., are all companies
26 that have been involved in the marketing or shipping of high seas
27 salmon. All three companies share a common roof, and all three
28 companies appear to be operated solely by Mr. Michael May. In

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1 fact, the Seattle telephone directory lists the AMPAC telephone
2 number (343-7233), used by Mr. May, as being registered to Kimura
3 and Co.

4
5 AMPAC is the company name Mr. Michael May has used most
6 commonly throughout this investigation. When he met our
7 undercover operatives on the 26th of January he presented them
8 with an AMPAC business card.

9
10 Food Sales International was identified by Mr. May as a
11 company he allegedly used to conceal the true place of origin of
12 a shipment of high seas salmon he sent to Japan. According to
13 Mr. May he shipped the fish with AMPAC bills of lading to Korea
14 but then switched the bills of lading to Food Sales International
15 and diverted the fish to Japan.

16
17 Kimura and Co. participated in a bid program for seized high
18 seas salmon within the last several years, and was the subject of
19 an investigation by NMFS for Lacey Act Violations involving these
20 same fish.

21
22 In my twenty-nine years of law enforcement experience,
23 primarily involved with fish and wildlife enforcement, I know
24 that it is common for a fish business to retain records of their
25 transactions. As well, it is common for those business records
26 to be retained at the business office, and I have ample reason to
27 believe that the documents as described in this affidavit can now
28 be found in room #205 at 2450 6th Avenue South in Seattle,

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1 Washington, which is the office of AMPAC Seafoods.

2

3

WAYNE C. LEWIS
Special Agent in Charge
National Marine Fisheries Service

4

5

SWORN TO BEFORE ME, and subscribed in my presence the _____

6

7

_____, 1989.

8

9

United States Magistrate

10

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