

SCOMM

95:42



Alaska State Legislature

House of Representatives Special Committee on Fisheries

SPONSOR STATEMENT

HJR 38 - "Reauthorization of the Magnuson Act"

April 10, 1995

House Joint Resolution 38 speaks to the upcoming Magnuson Fishery Conservation and Management Act reauthorization which was last re-authorized in Congress for a period of three years and is set to expire at the end of this year. The Act serves two purposes: 1) to make a national claim on the fisheries resources of the continental shelf in the band of marine waters from 3 to 200 miles offshore -- the exclusive economic zone (EEZ); and 2) to set up a system for managing and conserving the fisheries resources within the zone. To meet this management and conservation aim, Congress created the Regional Fishery Management Council system. Alaska is represented on the North Pacific Fishery Management Council.

In creating the Council system, Congress recognized the strong interest coastal states had in the fisheries resources of the EEZ off their shores. Congress charges the Councils with the primary responsibilities for determining management policy, within the EEZ, and mandates that the voting members of each of the eight regional Councils be drawn from the relevant coastal states. There is only one voting member representing the federal government on each



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Council.

The North Pacific Fishery Management Council is unique among the eight regional Councils created by Congress. This Council is the only one assigned the EEZ lying directly and entirely off the coast of a single state -- Alaska. All of the other Councils' regions of authority span multiple state coastlines. Congress recognized this uniqueness, as well as the historic participation in the fisheries off Alaska by residents of Washington and Oregon, when prescribing the voting membership of the North Pacific Fishery Management Council. There are 6 votes from Alaska, 3 from Washington, 1 from the National Marine Fisheries Service.

Maintaining that Alaska majority on the NPFMC is one of the principal issues during this and former Magnuson Act reauthorizations and is addressed in this resolution. This resolution also suggests several provisions for the state's best interest be included within the reauthorization.

Thank you for your consideration of this resolution.

FISCAL NOTE

REQUEST:

Revision Date: _____ Affected Agency: Fisheries Committee
Title: "Relating to reauthorization of the Magnuson Fishery Conservation and Management Act."
Sponsor: Austerman BRU: _____
Requestor: Fisheries Committee Components: _____

EXPENDITURES/REVENUES: (THOUSANDS OF DOLLARS)

OPERATING	FY 96	FY 97	FY 98	FY 99	FY 2000	FY 2001
Personal Services						
Travel						
Contractual						
Supplies						
Equipment						
Land & Structures						
Grants, Claims						
Miscellaneous						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL	0	0	0	0	0	0
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REVENUE	0	0	0	0	0	0
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FUNDING: (THOUSANDS OF DOLLARS)

General Fund						
Federal Fund						
Other						
TOTAL	0	0	0	0	0	0

POSITIONS:

Full-Time						
Part-Time						
Temporary						

Estimated FY 95 Impact: 0

ANALYSIS: (ATTACH A SEPARATE PAGE IF NECESSARY)

Prepared By: House Special Committee on Fisheries Date: 4/10/95
Division: Alaska State Legislature Phone: 465-4230
Approved By:  Alan Austerman, Chairman
Agency: _____ Date: 4/10/95

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REQUESTOR
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AGENCY (IES)

STATE OF ALASKA MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT REAUTHORIZATION ISSUES AND CONCERNS

March 15, 1995

The following represents the position of the State of Alaska on key issues related to the reauthorization of the Magnuson Fishery Conservation and Management Act. This paper was developed in concert with the State of Alaska's Citizens Advisory Committee on federal legislation. Specific reference is made to HR 39 and S. 39 as introduced.

1. Council Membership

The State supports maintaining the current makeup of the North Pacific Fishery Management Council.

2. Conflict of Interest and Recusal

The State supports a recusal process for Council members to address perceived conflicts of interest. The standard should be such that recusal is required only if the decision before the council could provide a direct and significant personal financial benefit to that Council member, their family, company, etc. All Council members should be able to participate in deliberations, and recusal should be required only for the final vote.

The State can support the recusal provisions in either S. 39 or HR 39 as explained below:

The State supports the recusal process outlined in S. 39. The standard for recusal is acceptable so long as the "designated official" is chosen by the Secretary with the concurrence of the Council. This provides for a proper balance between the Secretary and the councils, and will prevent the Secretary from abusing this process. In addition, the State recommends the deletion of provisions requiring the Secretary to establish rules governing the recusal process.

The State can also support the recusal process outlined in HR 39. The definition of "an interest that would be significantly affected" as presented at page 18 should be retained. NOAA General Council ultimately represents the Secretary at the council, so this definition must be retained if NOAA General Council is going to make these determinations.

3. Conservation, Bycatch and Full Utilization

The State supports provisions to control, reduce, and minimize bycatch and discard waste in our nation's fisheries. Legislation should require that fishery management plans include measures to give priority to, or provide other incentives for the use of fishing practices within a gear group which result in the lowest bycatch and discards for the given harvest of a particular target species. Both HR 39 and S. 39 provide useful

Post-It Fax Note	7671	Date	4-10	Pages	4
To: Amy Daugherty		From:	Jay Nelson		
Co-Op. Rep. Arthur		Co:	can		ADFC
Phone #		Phone #			
Fax #	4956	Fax #	2232		

direction to the councils by establishing new definitions, new national standards and new requirements that Fishery Management Plans include incentives and allocation preferences to address the problem.

The State supports both the Senate and House definitions of "bycatch" and "economic discards." The State supports the national standard on conservation in HR 39. In addition, the State recommends S. 39 national standard on overfishing be added to HR 39. The State recommends replacing the proposed FMP language in HR 39 for Sec. 303 (a)(7)(E)(12), with the following: "conservation and management measures shall, to the maximum extent practicable, minimize economic discards, minimize bycatch and the mortality of living marine resources cause by bycatch;" and the State supports the general requirement for bycatch reduction measures to be adopted in FMPs as presented in HR 39 and S. 39.

The State supports language in S. 39 relating to the North Pacific Fisheries Conservation at page 19, and recommends that similar language be added to HR 39.

4. Optimum Yield

The State supports the Senate definition of optimum yield and recommends this language be added to HR 39.

5. Fishery Dependent Communities

The State supports the national standard on fishery dependent communities in S. 39 and recommends that it be added to HR 39.

6. Community Development Quotas

The State strongly supports statutory authorization which protects the Bering Sea Community Development Quota program.

7. Habitat

The State supports provisions in both HR 39 and S. 39 to strengthen the habitat conservation provisions in the Act. The State supports the definition of essential fishery habitat in S. 39 and recommends this language be added to HR 39.

While the State is supportive of the need to conserve fisheries habitats, we are also concerned about the ability of the Councils to effectively address habitat issues, given their present workload addressing fisheries conservation and management. The primary habitat protection role should be vested in the Secretary, with an enhanced opportunity for the councils to identify, review, and make recommendations on habitat issues.

8. Nationwide Data Collection and Vessel Registration

The State is strongly opposed to any centralized nationwide vessel registration system which would disrupt the comprehensive systems that already exist on the West Coast and in Alaska. Legislation should specifically include the states and councils as full partners and provide for regional data management systems.

A centralized national fisheries data collection system is also redundant for the West Coast/Alaska, and could disrupt data collection systems currently operated by federal, state, and tribal entities. The State supports the language in S. 39 only if the new Sec. 402.(a) data collection provisions include language similar to that in the new Sec. 401.(a) (2), (3), and (4). Data management systems must include the states, councils, and tribal entities as full partners, and provide for regional systems.

9. Fishery Rationalization Programs

Overcapitalization of the nation's fisheries has become a major problem on both coasts. The State believes that the goal of achieving economic efficiency in the harvest of our fishery resources is important, but should be balanced along with the need to achieve full utilization, reduce bycatch, maintain diversity in the fisheries and parity among the various segments of industry, as well as the necessity of meeting the economic and social needs of coastal fishing communities.

Both the House and Senate are struggling with the criteria for implementing limited access programs, including IFQ programs. The State recommends that the following be considered:

(i) requirements for full retention and utilization of target species, provisions establishing individual incentives to reduce bycatch, and specific measures to prevent high-grading;

(ii) criteria for transfer of limited access rights requiring 75 percent U.S. ownership (Sec. 802 (a)-(c) of Title 46 U.S.C.) of companies and corporations receiving such rights to reduce the extent of foreign ownership and control of private fishing rights in U.S. waters;

(iii) notwithstanding the MFCMA's confidentiality standards, provisions should be added to ensure that data such as cumulative catch histories by vessel are available to the Councils and the public when designating quota systems. This information is vital to determine "who gets how much" under different management options. Such information is necessary in order to meet the requirements of National Standard 4 to ensure that no individual or corporation receive an excessive share or quota allocation;

(iv) requirements to minimize negative economic impacts on coastal communities and provide increased economic opportunities for coastal communities which are dependent on fisheries;

(v) clear authority to provide for processing quotas if appropriate and necessary to maintain parity between segments of the processing sector, as well as between harvesters and processors;

(vi) strict requirements for effective monitoring and enforcement programs, including provision for catch inspection before leaving fishery management areas or waters under U.S. jurisdiction; and

(vii) include stiff penalties for violations of quota share systems such as provisions for revocation of fishing rights or quota shares for serious infractions.

10. Fees

The State supports provisions to assess reasonable fees on IFQ fisheries to cover the costs of fishery management. The IFQ transfer fee proposed by the Senate should be on the value of the quota, not the ex-vessel value of the fish. The State would also support an alternative fee system tied to vessel licenses or registration. Any fee system should provide a credit for federal, state, and local fishing assessments and fees.

Fees collected should go to management and enforcement in the region collected. An industry oversight advisory committee system should be created to assure that funds received from fees are appropriately spent.

11. State Jurisdiction

Amend section 306 accordingly:

(a)(3) Except as otherwise provided by paragraph (2), a State may not directly or indirectly regulate any fishing vessel outside its boundaries unless:

(A) the vessel is registered under the laws of that State;

(B) there are no federal fishing regulations established for the fishery pursuant to an approved fishery management plan; or

(C) pursuant to an approved fishery management plan.

12. Emergency Actions

The State supports provisions in both the Senate and House bills granting emergency regulation authority for 180 days with provision for an additional period of not more than 180 days. The State supports a provision excluding the NMFS regional director or his designee from voting on emergency actions for which a unanimous vote is required.

PROPOSED AMENDMENT OF SECTION 306 OF THE MFCMA

At the end of Section 306(a), add the following paragraph:

(4)(A) For any fishery for which there is no fishery management plan approved and implemented pursuant to this Title, a state may enforce its laws or regulations pertaining to the taking of fish in the EEZ off that state or the landing of fish caught in the EEZ providing there is a legitimate state interest in the conservation and management of that fishery.

(B)(1) For any fishery for which there is a fishery management plan approved and implemented pursuant to this Title, a state may enforce its laws or regulations pertaining to the taking or landing of fish caught in the EEZ, so long as such law or regulation is not inconsistent with any relevant fishery management plan approved and implemented under this Title. Any state may request that the Secretary of Commerce, in consultation with the relevant Regional Fishery Management Council, issue a determination of consistency with respect to any specific state law or regulation.

(2) Any state seeking a determination of consistency pursuant to this paragraph shall submit such a request to the Secretary and the relevant Regional Fishery Management Council. The Secretary shall immediately publish a notice in the Federal Register setting forth the request and inviting written data, views, or comments of interested parties. The state's laws or regulations subject to the request shall be deemed consistent with the Federal fishery management plan if the Secretary has not notified the state in writing of his denial of the consistency determination within 90 days of the receipt of the request by both the Secretary and the Council.

AMENDMENT # 2

OFFERED IN THE HOUSE

BY REPRESENTATIVE AUSTERMAN

TO: HJR 38

1 Page 3, line 7:

2 Delete "Public Lands and"

3 Page 3, line 8:

4 Delete "member of the Alaska delegation in Congress."

5 Insert "Chair, United States Senate Subcommittee on Oceans and Fisheries of the
6 Committee on Commerce, Science, and Transportation."

AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE AUSTERMAN

TO: HJR 38

1 Page 2, line 16:

2 Delete "and"

3 Page 2, after line 16:

4 Insert new paragraphs to read:

5 "(5) provide a portion of the annual harvest in a fishery subject to individual
6 transferrable quotas for entry level fishermen or small vessel owners who do not hold
7 individual transferrable quotas;

8 (6) require a portion of fees or rents collected from federally managed
9 fisheries be distributed to the adjacent coastal states for fishery conservation and management
10 purposes;

11 (7) require that the federal fee system for federally managed fisheries allow
12 a deduction for other local, state, and federal fishing fees and taxes that are paid by
13 fishermen;

14 (8) amend 16 U.S.C. 1856 to authorize the extension of state jurisdiction into
15 the exclusive economic zone when a North Pacific Fishery Management Council fishery
16 management plan does not exist; and"

17 Renumber the following paragraph accordingly.