ALASKA LEGISLATURE COMMITTEE FILES 1987-1988 8672
4996 HRES HJR 64 - HJR 68

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HJR 64
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: 3/15/88
Title: Ak fishing in exclusive economi zone.
Sponsor: Herrmann
Requestor: _____

Agency Affected: _____
OMB/RU: _____
Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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
REVENUE	0	0	0	0	0	0

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY	0	0	0	0	0	0

ANALYSIS: (Attach a separate page if necessary)

Prepared by: _____ Phone: 465-3892
Division: H.L&C Chairman - Rep. Dave Donley Date: 3/15/88

Approved by Commissioner: _____ Date: _____
Agency: _____

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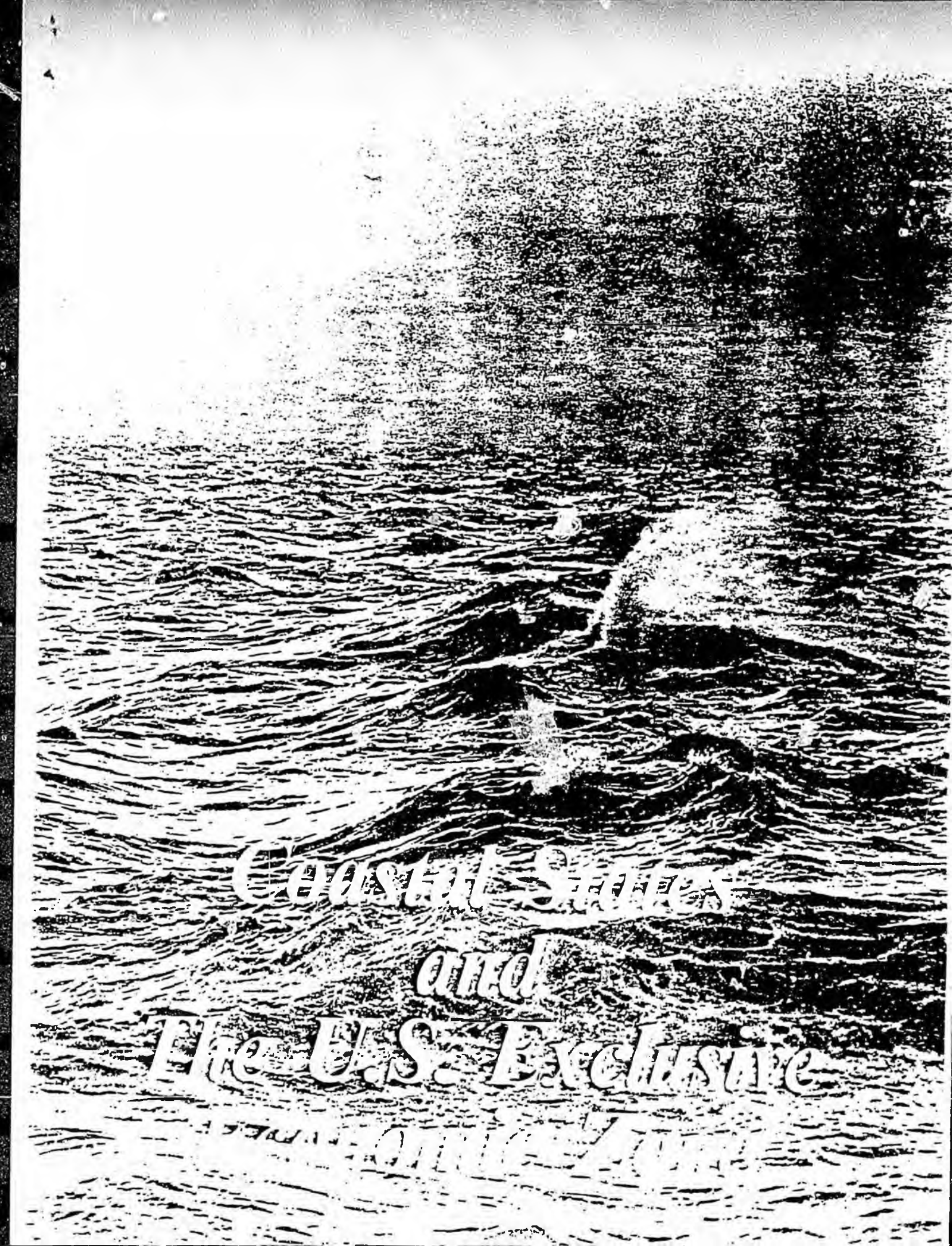

Coastal
and
The U.S. Exclusive

COASTAL STATES
AND
THE U.S. EXCLUSIVE ECONOMIC ZONE

Coastal States Organization
Washington, D.C.

APRIL 1987

This project was funded in part by a grant from the
William H. Donner Foundation

The Coastal States Organization, a nonprofit, nonpartisan association, represents the collective views and interests of 35 coastal State and Territorial governors in U.S. ocean and coastal affairs. Established in 1970, CSO encourages cooperation among its member States in the resolution of national ocean and coastal issues which affect the Gulf, oceans and Great Lakes of the U.S. and also serves as a forum for debate, review and assessment of ocean and coastal management practices, problems and progress.

ACKNOWLEDGEMENTS

The Coastal States Organization is indebted to Robert W. Knecht, consultant to CSO for this study, whose experience and vision contributed greatly toward our understanding of the complexity and components of this vast ocean area. Special thanks is extended to Admiral Bruce A. Harlow, USN (Ret.), for sharing his expertise in the evolving legal relationships of U.S. Exclusive Economic Zone resources. Special thanks also to the symposium participants whose constructive commentary contributed significantly to the study's purpose and findings. Finally, this report would not have been possible without the continued guidance of the CSO EEZ Steering Committee or the contributions made by the delegates of the CSO's member States, Commonwealths, and Territories.

PREFACE

Over the last several decades, events have recast the status of ocean resources within 200 miles of the world's coastline. International law now clearly acknowledges the authority of coastal nations to manage ocean resources, living and nonliving, within two hundred nautic. miles of their shorelines. These 200-mile exclusive economic zones encompass roughly 90% of the world's fisheries resources most of the offshore hydrocarbon deposits, and many potentially valuable hard mineral resources.

On March 10, 1983, President Reagan established by proclamation an Exclusive Economic Zone (EEZ) for the United States and thereby joined 58 other coastal nations declaring jurisdiction over the ocean resources adjacent to their land masses. The coastal States have a strong interest in the protection, conservation and development of the coastal and ocean resources bordering their shorelines since they are closest to both the problems and the opportunities inherent in their use. Hence, in January 1985 the Coastal States Organization (CSO), a non-profit representative organization of the 35 coastal States, Territories and Possessions of the United States, undertook a study of the implications of the new U.S. EEZ and the role that the States should play in its development.

The U.S. EEZ is the largest, and probably most valuable, in the world. The protection, conservation and development of the resources of this new zone are of great importance to both the Nation and the coastal States. Coastal States are already actively involved in managing the 90,000-mile U.S. shoreline and coastal zone which together constitute an essential part of the ocean resources development equation. Without efficient access to and interconnections with ports and harbors, shoreside logistical support, land-based processing and storage facilities, markets, and the countless other needs that accompany offshore development, the exploitation of ocean resources would be impossible.

The rational management of ocean resources is a difficult matter for two fundamental reasons: our present complex system of ocean governmental jurisdictions, and the nature of the ocean itself. The challenge, therefore, is to design and implement an equitable and efficient ocean resource management system in the face of the nation's jurisdictional complexities and the ocean's complex nature.

This report, made possible through a grant from the William H. Donner Foundation, presents the Coastal States Organization's findings and conclusions regarding the role of the coastal States in partnership with the federal government in managing the resources of America's Exclusive Economic Zone. CSO has embodied its conclusion in a proclamation and policy statement, developed during the course of the study and based on the considerations and findings discussed in this report. The proclamation is a clear assertion of the rights and responsibilities that the coastal States have in the protection, conservation and development of the U.S. EEZ resources. The policy statement is intended to guide CSO and its individual member governments in formulating an equitable and efficient management system for America's Exclusive Economic Zone.

PROCLAMATION OF THE COASTAL STATES

AN ASSERTION OF RIGHTS AND RESPONSIBILITIES PERTAINING TO THE PROTECTION, CONSERVATION AND DEVELOPMENT OF RESOURCES OF THE UNITED STATES EXCLUSIVE ECONOMIC ZONE

WHEREAS the Presidential Proclamation of March 10, 1983 established sovereign rights over living and nonliving resources within a 200-mile U.S. Exclusive Economic Zone; and

WHEREAS these marine resources, both known and yet to be discovered, are of vital importance to the United States; and

WHEREAS full realization of the benefits of the Exclusive Economic Zone for present and future generations of Americans depends upon an enhanced capability to protect, conserve and develop these marine resources; and

WHEREAS the impacts of the development of the Exclusive Economic Zone fall disproportionately on the coastal States, affecting the general welfare of their citizens; and

WHEREAS the marine, coastal and terrestrial environments are an interdependent system that must be managed in a manner that transcends existing Federal-State boundaries; and

WHEREAS recognized principles of international law distinguish this Nation's defense and foreign policy interests from its domestic resource management regime within the U.S. Exclusive Economic Zone; and

WHEREAS the Coastal States have substantial expertise and experience in protecting, conserving and developing ocean and coastal resources;

THEREFORE, THE COASTAL STATES do hereby assert and proclaim, on behalf of their citizens, direct and inherent rights and responsibilities pertaining to the protection, conservation and development of the living and nonliving resources now under domestic jurisdiction within the U.S. Exclusive Economic Zone. In recognition of these rights and responsibilities, the coastal States do hereby resolve that they must be full partners in the management of U.S. Exclusive Economic Zone resources and share in an equitable division of benefits derived from their development.

"As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole."

POLICY STATEMENT OF THE COASTAL STATES

The U.S. Exclusive Economic Zone was established in 1983. With this action the United States acquired internationally recognized "sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and nonliving, of the seabed and subsoil and the superjacent waters." The Exclusive Economic Zone (EEZ) extends 200 nautical miles seaward of the Nation's coasts, bringing an area more than one and a half times larger than the land mass of the United States under exclusive U.S. resource management authority.

Vast reserves of known resources, and the promise of tremendous reserves yet to be discovered, exist within the EEZ. All Americans stand to benefit from the proper management of these marine resources. Early national attention should be given to the creation of an appropriate management regime for this important new ocean area. There are existing regulatory regimes that manage oil, gas, and fishery resources. However, full economic and social benefits of other EEZ resources will be realized only if an orderly and stable regulatory framework is in place — one in which all affected parties are effectively represented in the decision-making process.

International law recognizes a 200-mile zone (the EEZ) within which coastal nations have sovereign and exclusive rights over living and nonliving resources. Exploration and exploitation of these resources are thus separate and distinct from other ocean uses, such as navigation and overflight, within international jurisdiction. Resource management in the U.S. EEZ is now a domestic issue. As such, it is the joint concern of the coastal State and federal governments. Therefore, the legitimate roles of the federal and State governments in the management of these resources must now be re-examined.

Given their proximity to, and reliance on, the sea, and the extent that development of these marine resources will affect their economy and environment, the coastal States have direct and inherent interests pertaining to the protection, conservation and development of the living and nonliving resources of the EEZ. It is neither feasible nor desirable for the national government to attempt to represent all of the public interests in ocean activities beyond the territorial sea. As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole. The present statutorily created dividing line between State and federal jurisdiction in the ocean — the seaward limit of the territorial sea — measures only the current division in the management authority over the ocean resources. The coastal States' interests, rights and responsibilities extend well beyond this statutorily created, yet arbitrary, limit.

Because the marine, coastal and terrestrial environments are one interdependent ecological system, the EEZ resource management regime must be an integrated one. Ocean management is a logical extension of coastal management, forming a unified whole. The management regime must have the capacity to account for the use and development of various resources. The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ.

The diversity of the resources of the EEZ and their vital importance to present and future generations of Americans requires that careful attention be paid to maintaining a proper balance between protection, conservation and development in the EEZ. A primary goal of EEZ resource management should be to maintain the health and viability of the ocean ecosystems in order to ensure sustained long-term benefits to the people of the Nation.

The extension of sovereign rights over the resources of the EEZ carries with it a public trust duty to conserve and ensure the availability of these resources for present and future generations. Since the citizens of the coastal States will be directly affected by the discharge of this duty (or a failure to do so), coastal State governments have a special responsibility to ensure that this duty is fully incorporated into EEZ management decisions.

Because of this responsibility, there must be shared decision-making with the federal government on all ocean activities affecting the interests of citizens of coastal States. Long-term commitments of fixed ocean and shoreside space and potential long-term impacts to coastal and ocean resources often require the mutual consent of the federal government and the affected coastal State governments.

Coastal States also have a responsibility to assure that State and local participants in any ocean activity receive an equitable share of responsibility, better advance information on value and distribution of ocean resources must be in the State government's hands before decisions are made. This will ensure that the public receives a fair return for the use or sale of their resources.

The establishment of the U.S. EEZ brings great new opportunities and challenges to the coastal States. The coastal States have a legitimate right in the management of the resources of the EEZ in concert with the federal government. Certain fundamental principles have guided the coastal States in arriving at their Proclamation of rights and responsibilities pertaining to the management of the resources within the EEZ. These principles include: shared decision-making on all ocean activities affecting the interests of the citizens of the coastal States; an equitable division of the costs and benefits of the development of these ocean resources; full recognition of the duty to future generations to protect their interests; and an appreciation that effective ocean management must be based upon solid research and environmental protection.

The coastal States are committed to shaping national policy for the protection, conservation and development of U.S. EEZ resources in accordance with this Proclamation and Policy Statement.

"The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ."

"The adversarial relationship that has developed between the federal government and coastal States in certain ocean matters is seen as unfortunate, unnecessary, and not in the public interest."

SECTION I
INTRODUCTION

The coastal States have a great interest in the ocean resources lying beyond State waters, an interest that started long before the President's 1983 proclamation establishing a U.S. Exclusive Economic Zone (EEZ). Since the late 1960s several States have been involved with the development of offshore oil and gas. For the past ten years the coastal States have acted with the federal government and the private sector in managing the fisheries resources of the 200-mile fishery conservation zone created by the Magnuson Fishery Conservation and Management Act. Several federal ocean resource laws permit coastal States to participate to varying, but often limited, degrees in certain types of ocean decision-making beyond the territorial sea.[1]

Although limited opportunities exist for State participation in ocean resource management, certain recent developments have strained Federal-State relations. Department of the Interior plans to lease large areas of the outer continental shelf (OCS) for oil and gas exploration beginning in 1981 was of significant interest to a number of States. Failure of the Department of Commerce (NOAA) to promulgate federal consistency regulations clearly defining coastal State interests in federal decisions beyond State waters also concerned coastal States. Aggressive moves by the Federal government to begin leasing the potentially rich ocean mineral deposits off California, Oregon, and Hawaii also called attention to the weak role of the coastal States.

When the President issued the EEZ proclamation in March, 1983, and called for increased development of EEZ resources, the coastal States were quick to initiate a reexamination of the roles of the federal and State governments in ocean resource management.[2] From the onset of this study, the orientation of the coastal States has been positive and forward-looking. The adversarial relationship that has developed between the federal government and coastal States in certain ocean matters is seen as unfortunate, unnecessary, and not in the public interest. In embarking on this study, the coastal States sought new and more effective ways of preserving, conserving and developing America's newest and largest resource zone — the EEZ.

SECTION II
THE IMPORTANCE OF THE U.S. EEZ

America's Exclusive Economic Zone covers a vast area of ocean.

Generally speaking, it extends 200 nautical miles from the coastline, having a breadth of 197 nautical miles beyond the three-mile U.S. territorial sea (see Figure 1). The U.S. EEZ is nearly 4 billion acres, or about 1.7 times the land area of the United States. Except for highly migratory species of tuna, the United States now possesses exclusive authority over all resources, living and nonliving, within this very large area.[3]

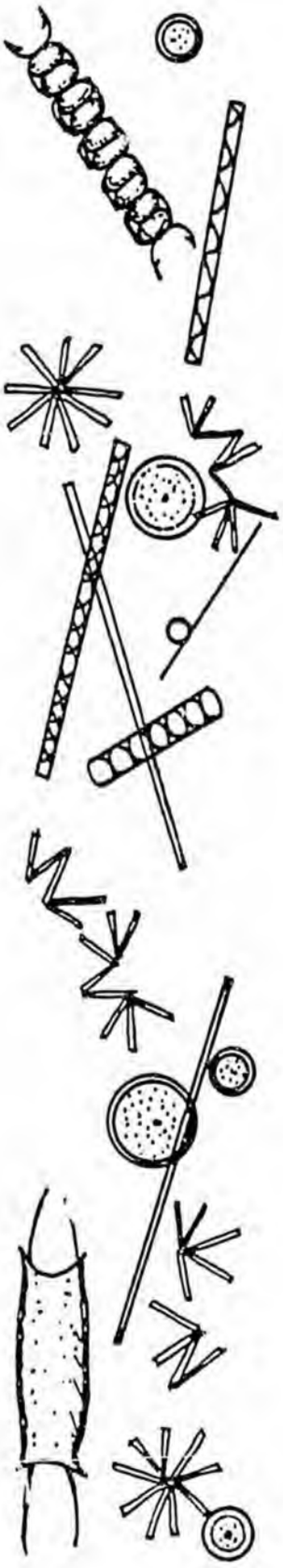
America's EEZ is the largest, and probably most valuable, in the world. The fisheries in the Gulf of Mexico, off New England, the West Coast and Alaska are among the richest in the world. Oil and gas deposits of considerable magnitude exist in the Gulf of Mexico, off California and northern Alaska. New discoveries are likely elsewhere along the U.S. coastline. Promising areas for ocean minerals are present offshore North Carolina, Georgia, Florida, California, Oregon, Alaska and Hawaii, and in the vicinity of some of our Pacific Island territories. Economically important marine sand and gravel deposits exist off much of the Eastern seaboard, and the Gulf and Alaska. Recently, cobalt-rich crusts have been discovered near the Hawaiian archipelago and in the vicinity of Johnston Island in the Pacific. These resources, and others, are of great national interest. A closer look shows why.

• **FISHERIES** — The United States leads all other nations both in abundance and diversity of fish and shellfish off its coasts. It is estimated that 15 to 20% of the world's living resources are within the U.S. EEZ. Nonetheless, the United States ranks only fourth (after Japan, the U.S.S.R., and China) among the fishing nations of the world. In fact, less than half the potential yield from U.S. fisheries is harvested and processed in this country. The remainder is either caught by U.S. fishermen but sold to foreign processors, or caught by fishing fleets of more than a dozen other countries, or left unused.[4]

Clearly, the potential exists for further growth of our domestic fishing industry. To the extent that the United States moves toward the goal of self sufficiency in fishery products, an important component in the present trade imbalance will be reduced or eliminated.

Fish and shellfish are an important source of nutrition and recreation, contributing to the economy and health of the coastal States and the Nation. In gross terms, U.S. fishermen produce 10 billion pounds of food annually, or nearly 50 pounds for each person in the United States. Another 750 million pounds are caught each year by recreational fishermen. Counting all subsidiary effects, U.S. coastal fisheries contribute over $23 billion to the economy each year, providing employment for over a million people.[5]

• **OFFSHORE OIL & GAS RESOURCES** — Petroleum products are the single most economically significant resource in the U.S. EEZ, and most likely will continue to be for the foreseeable future. The product value alone of oil and gas from both State and federal waters is nearly $26 billion annually. In addition, the federal government receives over $7 billion per year in revenue from federal leases on the outer continental shelf (OCS).[6] In 1984, offshore wells produced 12% of the Nation's total oil and 25% of the total natural gas. The United States Geological Survey estimates that up to 41% of the oil and 30% of the natural gas yet to be discovered in the United States lies in the EEZ.[7] These offshore supplies of oil and gas will be of vital national importance as the present onshore sources become depleted.



• **HARD MINERALS** — Although commercial recovery of hard minerals is still in its infancy, the U.S. EEZ is likely to hold bright prospects for a number of hard mineral resources. Six types of potentially economic hard mineral resources have been identified: 1) sand and gravel, 2) heavy-mineral placer deposits (containing tin, titanium, gold, platinum), 3) phosphorites, 4) manganese nodules, 5) cobalt-rich manganese crusts, and 6) polymetallic sulfides. Several of these resources contain critical and strategic minerals as referred to in the Strategic and Critical Materials Stock Piling Act.[8] The U.S. presently imports over 60 strategic and critical minerals (see Figure 2). This is an important consideration in the development of these marine minerals.

Ocean mining of cobalt crusts is only in the preliminary planning stages. Cobalt-rich manganese crusts occur on the flank areas of numerous U.S. Pacific Islands and on the tops of many central Pacific seamounts within the U.S. EEZ. An environmental impact statement (EIS) for ocean mining off Hawaii and Johnston Island is in preparation by a joint Minerals Management Service (MMS) — State of Hawaii task force. Commercial mining operations, however, are not likely to begin until the mid-to-late 1990's. The strategic importance of the cobalt component in these crusts and the fact that a single seamount could provide the United States with a three-year supply, could make mining of these crusts a national priority.

Polymetallic sulfides, another important potential EEZ resource, have been discovered in many parts of the Eastern Pacific Ocean. Polymetallic sulfides exist at several seafloor spreading centers, some with active hydrothermal vents, including the Gorda Ridge 125 miles off northern California and southern Oregon. Other promising areas for hydrothermal activity within the EEZ include the Aleutian arc in Alaska and the Marianas Islands in the Central Pacific.[9]

• **OCEAN ENERGY** — Although not yet tested on a commercial scale, the feasibility of producing electrical energy from the temperature differences between warm surface water and much colder deep water has been demonstrated. Ocean thermal energy conversion (OTEC) technology is ideally suited to islands or coastal areas with thermal gradients of 20 degrees centigrade or more between the surface waters and depths of 1000 meters. Numerous potentially attractive locations for OTEC facilities exist in the coastal zones and EEZ of Puerto Rico, Virgin Islands, Hawaii, Guam, and the other U.S. territories in the tropical Pacific.[10] Should oil prices again rise, the work remaining to be done to prove the commercial viability of OTEC should be completed to open the way for the application of this promising technology in the U.S. EEZ.

• **WASTE DISPOSAL IN THE OCEAN** — The use of the ocean for waste disposal is likely to continue, and perhaps increase. Although the ocean does have some assimilative capacity for some wastes, ocean waste disposal should not be a first choice option. In the case of non-toxic substances, ocean disposal may be judged less dangerous to the environment than alternative land disposal options. On the other hand, the tendency of some organisms to concentrate toxic substances (bio-accumulation), potential loss of habitat, and the possibility of toxics making their way back through the food chain to humans must be taken into account in such decision making. Before ocean disposal is utilized, all other feasible options must be evaluated. Site specific information must also be collected to ensure that adverse impacts to water quality and aquatic habitat are minimized.

At present, two issues — at-sea incineration of toxic wastes and ocean disposal of radioactive wastes — seem to be increasingly prominent. The safe disposal of highly toxic liquid wastes such as polychlorinated biphenyls (PCBs) and high and low level nuclear wastes are vexing national problems. Satisfactory solutions must be found since significant quantities of these dangerous materials continue to accumulate. Without doubt, emergency contingency plans, storage and transshipment within coastal areas, and the possible use of the EEZ (and perhaps the more remote deep seabed [11]) for waste disposal will be studied and debated in the coming years.[12]

• **QUALITY OF THE MARINE ENVIRONMENT** — The rich life and relatively pristine marine environment within the EEZ is perhaps its most valuable resource. The affects of pollution in the near-shore waters due to runoff from land are less pronounced in the EEZ, although ocean disposal of municipal sewage and industrial wastes places added strains on marine environmental quality. Only by maintaining and improving the environmental quality of the EEZ is it possible to maximize the value of its other resources, such as fisheries, marine wildlife, oxygen production, pharmaceuticals, recreation, and the basic security of a healthy, rich community of marine life.

The U.S. EEZ is home to a rich variety of marine life, inhabiting a range of arctic to tropical marine ecosystems. Abundant fisheries, marine mammals, reptiles, sea birds, coral reefs, chemosynthetic communities of hydrothermal vents and cold water seeps, kelp forests, and other plant and animal life are among the great diversity of life within the U.S. EEZ. There is an obvious strong coastal State interest in maintaining this resource.

• **ADDITIONAL USES OF THE EEZ** — The U.S. EEZ has many other uses beyond the major ones listed above. Sport fishing, diving, and boating make the offshore areas attractive to growing numbers of recreationists. Ocean-borne commerce is a regular use of the U.S. EEZ, including the specialized traffic lanes that extend into the EEZ that increasingly guide passage to and from U.S. coastal ports. Finally, military "exclusion zones" represent yet another use of ocean space that is of national importance and which sometimes competes with resource-related activities.

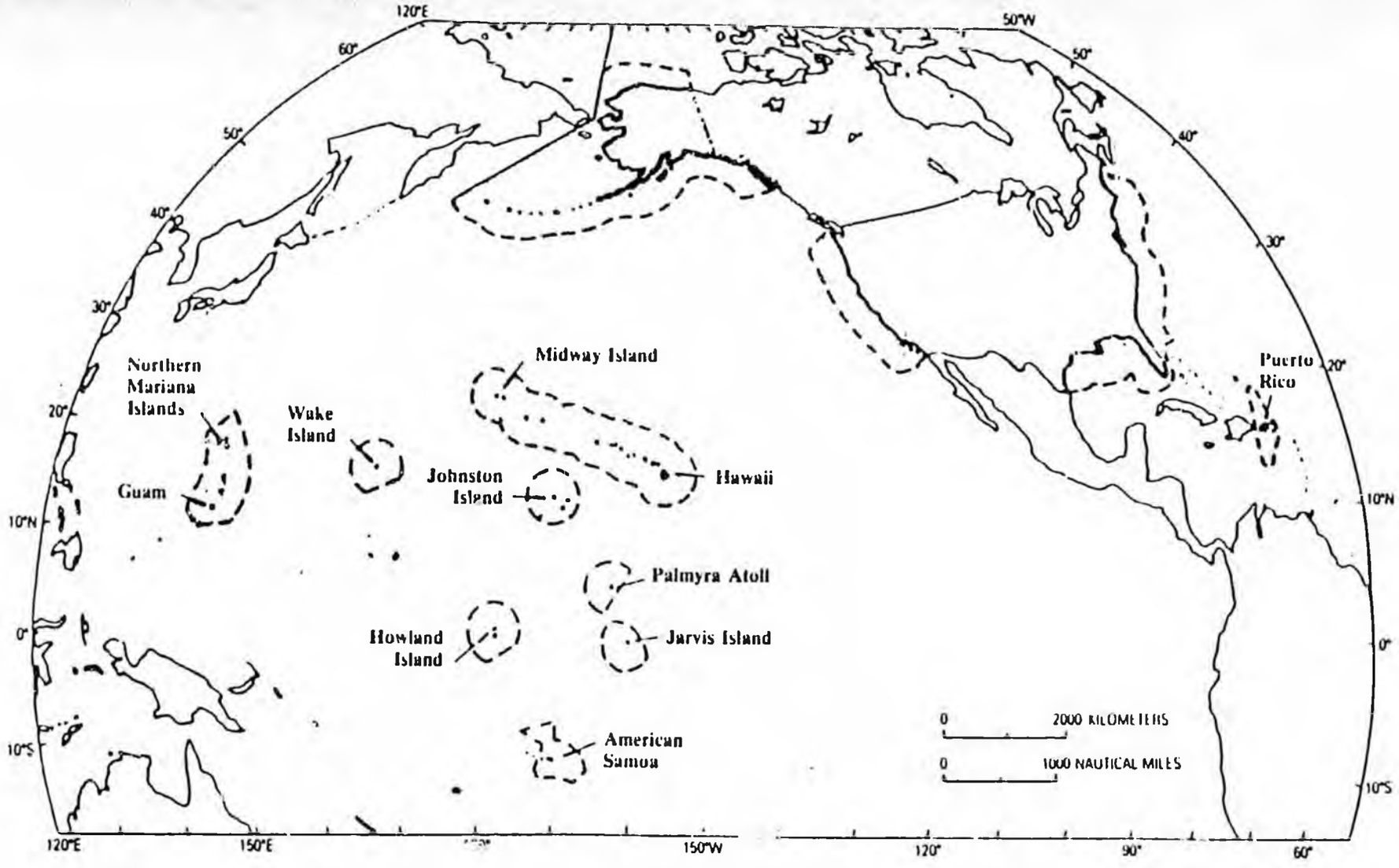


Figure 1.— Exclusive Economic Zone (EEZ) of the United States, Commonwealth of Puerto Rico, Commonwealth of the Northern Mariana Islands, and United States overseas territories and possessions (outlines of map are approximate). Acreage now deemed within the U.S. EEZ includes: United States proper, 2.787 billion acres; Commonwealth of Northern Mariana Islands, 0.299 billion acres; territories and possessions, 0.839 billion acres.

Source: Rowland, R.W., M.R. Gould and B.A. McGregor, *The U.S. Exclusive Economic Zone - A Summary of its Geology, Exploration and Resource Potential* (U.S. Department of the Interior, Geological Survey Circular 912, 1983).

Table 2-6.—Sources of U.S. Chromium Imports

Country	1979-82 (percent)	1982 (percent)
Chromite:[a]		
South Africa	48	59
Soviet Union	17	6
Philippines	13	11
Turkey	7	6
Albania	6	1
Finland	5	7
Madagascar	4	9
Ferrochromium:		
South Africa	61	35
Zimbabwe	12	25
Yugoslavia	12	12
Brazil	4	11
Sweden	4	4
Turkey	2	4
West Germany	2	3
Japan	1	—
China	1	4
Other	1	2

[a]Chromite = chromium ores

NOTE: Major world producers of chromite and their contribution to world supplies in 1982 were Soviet Union (34 percent), South Africa (22 percent), Albania (12 percent), Brazil (10 percent), Zimbabwe, Philippines, Turkey, and Finland (4 percent each), India (3 percent). See table 5-4 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-8.—Sources of U.S. Cobalt Imports

Country	1979-82 (percent)	1982 (percent)
Zaire	37	39
Zambia	13	9
Canada	8	12
Belgium-Luxembourg[a]	8	5
Finland	7	6
Japan[a]	7	3
Norway[a]	7	7
Botswana	3	3
France[a]	3	3
Other	7	8

[a]Processes cobalt ore originating from other countries.

NOTE: Major world producers of primary cobalt and their contribution to world supplies in 1982 were Zaire (45 percent), Zambia (13 percent), Australia (9 percent), Soviet Union (9 percent), and Canada (6 percent). See table 5-16 of ch. 5 for more detail, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-10.—Sources of U.S. Manganese Imports

Country	1979-82 (percent)	1982 (percent)
Manganese ore:		
South Africa	30	52
Gabon	27	21
Australia	22	17
Brazil	13	3
Mexico	4	1
Morocco	4	4
Other	—	2
Ferromanganese:		
South Africa	43	49
France[a]	26	21
Mexico	6	7
Brazil	3	6
Australia	2	1
Other[a]	20	16

[a]Processes manganese ore originating from other countries.

NOTE: Major world producers of primary manganese ores and their contribution to world supplies in 1982 were Soviet Union (41 percent), South Africa (23 percent), Gabon (7 percent), China (7 percent), Brazil (6 percent), Australia (5 percent), Mexico (2 percent). See table 5-22 of ch. 5 for further details, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Yearbook*, 1980, 1981, 1982, and 1983.

Table 2-12.—Sources of U.S. Platinum Group Metal Imports

Country	1979-82 (percent)	1982 (percent)
South Africa	56	48
U.S.S.R.	16	16
United Kingdom	11[a]	13
Other	17	23

[a]PGM production from the United Kingdom is from ores originating in South Africa and Canada and from secondary materials.

NOTE: Major world producers of PGM and their contribution to world supplies in 1982 were Soviet Union (54 percent), South Africa (40 percent), and Canada (4 percent). See table 5-33 of ch. 5 for further details, and for information on reserves.

SOURCE: U.S. Department of the Interior, Bureau of Mines, *Minerals Commodity Summaries*, 1983 and 1984.

Figure 2.— Sources of Strategic Metals for the United States

Source: *Strategic Materials: Technologies to Reduce U.S. Import Vulnerability* (Washington, D.C.: U.S. Congress, Office of Technology Assessment, OTA-ITE-248, May 1985).

"Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ."

SECTION III

FEDERAL & STATE INTERESTS IN THE EEZ

Federal and coastal State interests in the EEZ rest in part on the legitimate and necessary functions of government in the offshore area. The manner of administration of these functions affects national and coastal State interests. Table 1 lists six broad purposes which government serves in the ocean. The top two are clearly "national" in nature and must be carried out by the federal government. However, to assure citizens that the duties and responsibilities of State governments are carried out, the remaining roles require coastal State involvement.

Important sectors of coastal State economies depend directly on the EEZ and its resources. In Louisiana, for example, the oil and gas, and commercial fishing, industries depend heavily on the EEZ. Coastal States and their local governments — the planners and managers of the Nation's coastal zones — oversee the ports, harbors, and shore space that are essential to ocean development. Physical linkage inextricably couples the shoreland to the sea. Through the bonds of common air basins, the actions of waves and currents on the shoreline, and the effects of rivers and run-off on ocean water quality, the land and the sea are joined together in an inseparable relationship. Thus, an equitable governance scheme for the EEZ must acknowledge the quality of interests — national and State — that exist in the U.S. EEZ.

Because major segments of their coastal populations can be affected, coastal State governments have strong interests in how these governmental roles are performed in the EEZ. Coastal States are "home" to most users of the EEZ. Their citizens have major economic interests in the conservation and rational development of the EEZ. Coastal States have important public trust responsibilities within their jurisdictions. They are concerned with "spillovers" and other adverse environmental effects emanating from poorly regulated uses in the adjacent EEZ that could damage State resources. New EEZ-related activities compete with other ocean ac-

TABLE 1
GOVERNMENTAL ROLES IN THE EXCLUSIVE ECONOMIC ZONE

Role	Function
1. INTERNATIONAL RELATIONS	—Insure consistency with foreign policy goals
2. NATIONAL SECURITY	—Maintain the national defense
3. INTERSTATE & FOREIGN COMMERCE	—Regulate commerce between the States and other countries
4. PROPRIETARY	—Secure maximum earnings for the public
5. PUBLIC TRUST	—Conserve resources for present and future generations
6. REGULATORY	—Protect the public welfare, prevent and solve conflicts

tivities of economic interest to the coastal States. For example, access to valuable and limited coastal space for necessary shoreside facilities (ports, processing plants, etc.), is often at the expense of the traditional users. Coastal States are proprietors of the ocean resources in their State waters, and are concerned with possible reductions in the value of State resources, such as the drainage of State oil and gas fields or overfishing in the EEZ of fish stocks that also exist in State waters.

Given these interests, the coastal States are naturally concerned with the actions of federal agencies taken in connection with the governmental purposes set out in Table 1. The degree of coastal State interest depends upon the nature of the demands placed upon State and local resources as well as on EEZ resources. Some of the possible effects (positive and negative) of the development of EEZ resources are listed in Table 2 below.

"Without effective local participation in the decision-making process, no amount of 'national interest' justification is likely to overcome local opposition."

TABLE 2
POSSIBLE EFFECTS OF OFFSHORE (EEZ) DEVELOPMENT

National Benefits
—improved domestic supply of strategic and critical resources
—reduced trade deficit
—improved food supply
—increased national security
—enhanced economic growth
—increased federal revenues

Regional/Local Benefits
(some public, some private)
—increased jobs
—increased investment earnings
—increased tax revenue

Offshore Environmental Impacts
—deterioration of marine water quality
—deterioration of air quality
—addition of toxins to the environment, and possibly the food chain
—visual disturbance
—potential accidents

Onshore Environmental Impacts
—increased risk of accidents
—degradation of coastal esthetics
—reduction in quality of coastal recreation experience
—reduction in tourism

Offshore Displacement Impacts
—prevention or disruption of usual fishing patterns
—interference with commercial and recreational navigation

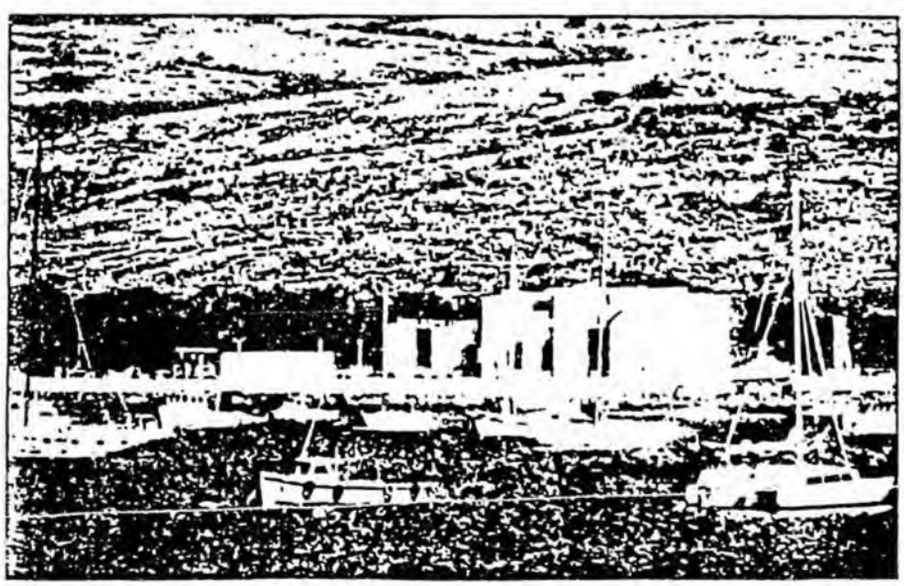
Onshore Displacement Impacts
—competition for limited commercial and recreational port and harbor space
—competition for sites for processing, storage and transportation facilities
—competition for limited recreational beach space

Onshore Socio-economic Impacts
—increased population
—public facilities and infrastructure
—public services
—housing, water supplies
—additional requirements on local government planning processes

For any particular activity in the EEZ, one would have to evaluate each of the possible effects listed in Table 2 to obtain the cumulative impact. Generally, the impact will be greater from EEZ activities closer to the coastal zone, when activities of greater importance to the State are displaced, and when significant, yet uncompensated, demands are placed on local public infrastructure due to increases in population. Perhaps, in the long run, the economic benefits associated with a new EEZ activity could partially or even totally offset these social, i.e. non-economic, costs. But this fails to address the importance of the non-economic aspects of local decision-making, i.e., the need for "self-determination."

A community, or State, will be the recipient of the costs and benefits, both economic and non-economic, of development in the EEZ off of its shores. Without effective local participation in the decision-making process, no amount of "national interest" justification is likely to overcome local opposition. Nor would the best interest of the community, State or nation be served by the resulting delay in the orderly development of these resources due to the foreseeable political obstacles or, worse, protracted litigation. Thus, a true Federal/State partnership in the decision-making process is clearly necessary for the management of the living and nonliving resources in America's EEZ.

The establishment of a true Federal/State partnership, founded on cooperation and mutual benefit, requires an equitable sharing of both the benefits and costs derived from the development of EEZ resources. The sharing of benefits, including revenues, from EEZ resource development is a natural extension of shared decision-making. It is both realistic and just to recognize the interests of the federal government and the States in the EEZ while bearing in mind the possible effects of EEZ development.



SECTION IV

RECENT DEVELOPMENTS IN INTERNATIONAL LAW AFFECTING THE ROLE OF STATES IN EEZ RESOURCE MANAGEMENT

Prior to World War II:

International ocean law has undergone significant change in the past four decades. Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as "high seas." Within these waters any nation was free to do whatever it chose, including navigate, fish, conduct research, drill for oil, perform military maneuvers or any of the other high seas freedoms, unless it agreed otherwise by international agreement or treaty. But in waters that were once pure high seas that are now EEZs, there has been a fundamental change.

1945-1983:

In 1945 President Truman proclaimed U.S. jurisdiction and control over the resources of the continental shelf adjoining the United States.[13] Other nations quickly followed suit, asserting various forms of national control over ocean resources off their coasts. Mexico, also in 1945, asserted similar jurisdiction over its continental shelf. Argentina in 1946, and Peru and Chile in 1947 asserted jurisdiction over not only the sea bottom of the continental shelf, but also the water above it. Honduras, in 1951, established a 200-mile "resource protection zone," the first such zone that would later be referred to as an exclusive economic zone. In the next 30 years over 50 nations claimed varying degrees of jurisdictional authority over ocean resources out to 200 miles from their shores. As a result, the international recognition of the "high-seas" character in these 200-mile zones became less and less pronounced.

Overlapping the last decade of this period the nations of the world negotiated the United Nations Law of the Sea Convention (LOS Convention), culminating in 130 nations signing the treaty in 1982. The LOS Convention is the sole internationally recognized text defining the legal parameters of exclusive economic zones. Although the United States announced that it would not sign the LOS Convention, the President's EEZ Proclamation conforms closely to the LOS articles on exclusive economic zones.[14] In addition, the President announced that the United States would act in accordance with the provisions of the LOS Convention relating to " traditional uses of the oceans — such as navigation and overflight."[15]

After the 1983 U.S. EEZ Proclamation:

The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States. Prior to the Proclamation, the body of U.S. law pertaining to this zone, while asserting U.S. jurisdiction in piecemeal fashion over select resources, nonetheless continued to apply in the internationally recognized regime of "high seas." . . .

"Prior to World War II the ocean waters beyond a nation's territorial sea were nearly universally regarded as 'high seas.' But in waters that are now EEZs, there has been a fundamental change."

"The EEZ Proclamation fundamentally altered the legal character of the 200 mile zone around the United States."

"Unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources."

Although the pure concept of the "high seas" was eroding within 200 miles of this country and others, the status of ocean resources in this zone did not unequivocably change from high seas resources to U.S. domestic resources until the U.S. EEZ Proclamation. At the same time, in accordance with international law, the high seas rights of non-resource related activities, such as navigation and overflight, among others, are expressly recognized and preserved in the President's Proclamation.

The United States now has sovereign rights over the living and nonliving resources within its EEZ. How to exercise these rights is an internationally recognized sovereign, i.e. domestic, question. That is, unless another country's recognized rights are impinged upon, no other nation can question the management decisions of the United States concerning its EEZ resources. In terms of U.S. federal law, this is a fundamental change with potentially profound domestic consequences.

"For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. However, the legal basis upon which these cases rest no longer applies."

Supreme Court Rulings, International Law and EEZ Resource Management

For decades the U.S. Supreme Court has consistently ruled that only the federal government possessed full and paramount authority to manage the natural resources outside the territorial sea. In fact, until Congress passed the Submerged Lands Act in 1953, the Court ruled that even within the three mile "marginal sea" the federal government had full and paramount natural resource management authority. However, the legal basis upon which these cases rest no longer applies.

In the landmark case *United States v. California*[16], the court ruled against California's assertion of "dominion" over the submerged lands within its three nautical mile zone of State ocean waters. The court based its decision on the rationale that:

> "But whatever any nation does in the open sea, which detracts from its common usefulness to the nations, or which another nation may charge detracts from it, is a question for consideration among nations as such, and not their separate governmental units."[17]

As a result, the Court ruled that because marine resource management could affect international relations, the "Federal Government rather than the state has paramount rights in and power over that belt, an incident to which is full dominion over the resources of the soil under that water area."[18]

This rationale is the basis for a series of Supreme Court rulings that followed. In 1950, in *United States v. Louisiana*,[19] the Court rejected Louisiana's claim of rights over the resources in, and beyond, the three mile zone, holding that "The ocean seaward of the [three mile zone] is perhaps even more directly related to the national defense, the conduct of foreign affairs, and world commerce than is the marginal sea. Certainly it is not less so."[20] The same year, in *United States v. Texas*,[21] the Court also rejected Texas' claim to the resources in its three mile zone of ocean waters. Texas argued that because it was an independent Republic prior to admission to the Union it thus held full authority over these resources. The Court, however, ruled that upon entering the Union Texas was placed on an "equal footing" with all other States.

and that "The United States then took her place as respects foreign commerce, the waging of war, the making of treaties, defense of the shores, and the like. In external affairs the United States became the sole and exclusive spokesman for the Nation."[22]

Congress reacted to these Supreme Court cases by passing the Submerged Lands Act of 1953,[23] signed into law by President Eisenhower, that vested in the States title to the seabed of their ocean waters. Later the same year Congress passed a companion act, the Outer Continental Shelf Lands Act (OCSLA).[24] The OCSLA provided that the waters above the continental shelf are recognized as high seas[25], while establishing exclusive federal jurisdiction over the continental shelf seaward of the territorial limit of the States.

Nonetheless, in 1969, in *United States v. Maine*,[26] 13 Atlantic States challenged the federal government's paramount rights over the submerged lands beyond State waters, claiming that as successors to the Crown of England (or Holland in the case of New York) they possessed full authority over the seabed beyond the three mile State waters. The Supreme Court, rejecting this argument, reaffirmed the rulings *California, Lousiana* and *Texas*, and ruled that the international character of these waters required the federal government to retain full dominion over the seabed of the continental shelf beyond the three mile line.

These rulings, both before and after the Submerged Lands Act or the OCSLA were implemented, were based on the Supreme Court's determination that the ocean area beyond State territory was international in character, and thus the management of these resources could affect relations with foreign nations. Because the U.S. Constitution expressly grants to the federal government all powers to conduct foreign affairs, the States had no role to play in marine resource management beyond their ocean borders.[27] This has changed.

A Sea Change with the EEZ Proclamation

With the EEZ Proclamation, resource management within the EEZ is no longer international in character, but rather is a purely domestic matter. The basis upon which the above Supreme Court cases rest no longer applies. The EEZ is no longer an "open sea." No other nation can charge that a resource management decision by the United States detracts from the "common usefulness" of this zone. The resources of the U.S. EEZ are not to be managed for their international "common usefulness," but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the "separate governmental units," i.e. the federal government and the coastal States. This does not mean that the coastal States automatically acquired resource management authority in the EEZ with the issuance of the presidential EEZ Proclamation. It simply means that no constitutional barrier now exists to deny States their proper role in sharing the responsibilities and benefits of resource management authority with the federal government.

Thus, to the extent that management of the resources of the U.S. EEZ does not directly affect the rights of other nations, this management is now purely a domestic question, a question that can be answered only with full participation by both the coastal States and the federal government.

"With the EEZ Proclamation, the EEZ is no longer an 'open sea.' The resources of the U.S. EEZ are not to be managed for their international 'common usefulness,' but rather for the usefulness of the United States. Thus, domestic management of U.S. EEZ resources has become a question for consideration by the 'separate governmental units,' i.e. the federal government and the coastal States."

"The orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development."

SECTION V
THE OCEAN GOVERNANCE CHALLENGE

JURISDICTIONAL COMPLEXITIES

The human side of the equation governing America's ocean resources can be stated in five parts: local authorities, State governments, the federal government, the private (commercial) sector, and the general public. Local authorities control the location and operations of facilities, such as ports and harbors. State governments control environmental aspects, such as air and water quality, as well as protection, conservation and development of resources in State ocean waters. The federal government has authority over the international aspects of the EEZ, such as law enforcement and national security, as well as, currently, dominant authority in the management of the living and nonliving resources. The private sector is often the prime mover in offshore development. What does, or does not, happen offshore, and at what pace, usually depends on market conditions and the judgment of corporate officials. And finally, the general public has an important role in the decision-making process. Public hearing are a legal requirement in many resource-use decisions, at both the federal and State levels.

Because the orderly development of EEZ resources would be impossible without efficient access to, and interconnections with, ports, harbors, shoreside support, processing and storage facilities, markets, transportation routes and the countless other needs that accompany offshore development, it is clear that all five parts of the ocean governance equation must participate in the decision-making process.

The jurisdictional division between levels of government — Three separate kinds of jurisdiction divide the coastal and ocean area — local and State governments generally control shoreline use; in most cases State government has jurisdiction in the belt of ocean from the tidemark out to the three-mile limit; and the federal government has general jurisdiction from three out to two hundred miles.[28] The problems thus created for the planning and management of these activities are:

—most important ocean activities involve all three jurisdictions, a major complexity; and
—the benefits and costs of ocean resource exploitation frequently fall on different, or multiple, jurisdictions.

The jurisdictional division in the management of different ocean resources/uses — Within the two offshore jurisdictions (federal and State), each resource/use is typically under the jurisdiction of a different agency operating under a different legislative framework. For example, a specific federal agency manages offshore oil development, while another agency handles water quality and related matters. The problems created by this single purpose approach include:

—difficulty in advance planning for heavily used ocean areas;
—lack of early identification and resolution of conflicts among users;
—few opportunities for accommodating alternative or competing uses; and
—difficulty for general purpose local governments to relate to single purpose offshore agencies.

Ocean Complexity

In addition to these human factors, the nature of the ocean itself must be considered. The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline. Further, the complex relationship of ocean and coastal ecosystems — between interdependent organisms and their habitats and the larger dynamic environment upon which they depend — together with our incomplete knowledge of these systems, virtually guarantees that any ocean development activity will produce unexpected effects well removed from the project itself. As a result, predicting the impacts of an ocean use is exceptionally difficult. The management problems that arise include:

—unintended, unforeseeable consequences of ocean exploitation;
—uncertainty over the fate and effects of discharges; and
—uncertainty about the geographic extent and duration of impacts.

Congress has wrestled with the jurisdictional and natural complexities of ocean and coastal resource governance. In October of 1972, recognizing the fundamental importance of the coastal zone of the United States, the Congress enacted the Coastal Zone Management Act of 1972 (CZMA). This legislation authorized the coastal States to develop and implement coastal zone management programs for the shorelines of the United States, including the State ocean waters. Building on significant coastal management efforts already underway in California, Oregon, Delaware, Washington, Rhode Island, North Carolina, Michigan, Wisconsin, and Minnesota, most coastal States took the federal legislative challenge seriously, completing and obtaining federal government approval of their coastal zone management programs. At present, 29 States and territories have federally approved programs, covering more than 90% of the U.S. shoreline.

A major objective of these State coastal zone management programs is to provide a coordinated decision-making mechanism to reconcile conflicting uses of the coastal zone. Congress intended that through this mechanism, coastal areas and resources requiring protection would receive that protection while water-dependent activities that must exist in the coastal zone would receive priority consideration. At the same time, the mechanism fosters public participation and streamlines the decision process.

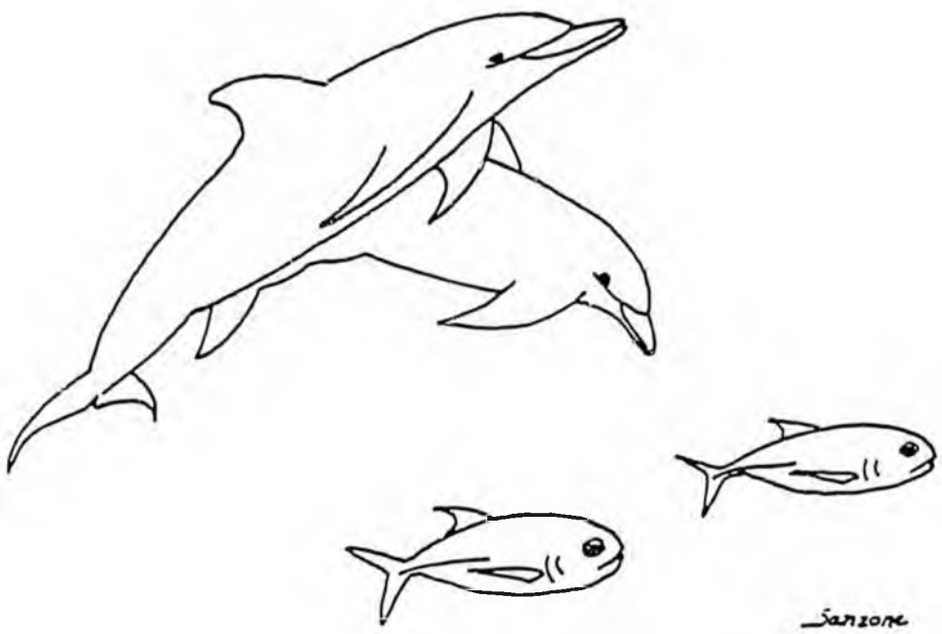
Central to the entire process is the requirement of "consistency" with a federally approved State coastal zone management program. Generally, any federal agency, or any person operating under a federal permit or license, that conducts an activity that affects a State's coastal zone must do so in a manner

"The ocean's fluid and dynamic properties mean that effects from activities at one offshore location can spread quickly to other locations, including the shoreline."

consistent with a State's approved management plan. While the CZMA has only been in effect for 15 years, it is generally accepted that State coastal zone management programs are performing rather well and program improvements are occurring on a regular basis.[29]

The coastal zone management process has been very effective in reconciling the multiple interests associated with most coastal uses. Yet from the coastal State perspective, even beyond recent efforts to reduce or terminate federal coastal zone management funding assistance, there are some serious shortcomings with the present system, especially when viewed against the new challenges posed by America's new Exclusive Economic Zone.

Up to 1982, tensions between the coastal States and the federal government had largely focused on offshore oil. The prospect of ocean incineration of toxic wastes, seabed disposal of decommissioned nuclear submarines, and plans for ocean mining have also provoked additional coastal State concern. In each of these instances, the concern is fueled by two factors: 1) uncertainty as to the effects of the proposed activity on the marine and coastal environments, and 2) the feeling of coastal States and communities that they lacked the legal authority needed to participate in the formal decision-making processes. In light of increasing pressure to develop and use the resources of the EEZ, the coastal States view these concerns as harbingers of potential conflict unless some important changes are made in present ocean governance arrangements.



SECTION VI
FORGING THE PARTNERSHIP

The geographic range of State and national interests in the oceans bears relatively little resemblance to the extent of formal State and federal jurisdiction. Strong national interests (e.g., security and interstate commerce) exist throughout the entire ocean area. Similarly, as discussed in the previous section, strong State-local interests exist well beyond the limit of State waters. In State ocean waters, the State government has jurisdiction and ownership of resources; hence State agencies have been delegated management authority over those resources. This authority, however must be carried out in manner that acknowledges and protects co-existing national interests in these same waters. Similarly, federal agencies that are delegated authority to manage resources in the EEZ, must, we believe, take account of State and local interests that, in many cases, co-exist with national interests beyond the three-mile limit. There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid "outside" interests that also exist in the management of those resources.

It is implicit, therefore, that a set of duties and responsibilities accompanies the benefits of ownership and exploitation of publicly held ocean resources. One important element of the governmental presence in the oceans, therefore, is made up of both the management of the benefits that flow from sovereign rights and the discharge of the duties and responsibilities associated with the exercise of those rights.

In the Exclusive Economic Zone, three different duties fall to federal resource managers:

Duties to the Nation: includes maximizing the financial benefits that flow from control of the resources, while minimizing the impacts from such exploitation to other ocean users, resources and the environment.

Duties to the international community: maintaining navigational and other high seas freedoms for the world community in compliance with international law. Also, a duty exists to prevent pollution in the U.S. EEZ from spilling over to the high seas or into the EEZs of adjacent nations.

Duties to adjacent coastal States: to prevent, reduce or compensate for pollution and other effects shown in Table 2 that affect resources under State ownership or control.

A similar set of duties falls on the coastal State ocean resource manager, including:

Duties on behalf of the State's citizens: to maximize earnings while minimizing environmental impacts.

Duties to the Nation: Prevention of pollution entering the EEZ; protection of endangered species and marine mammals; facilitation of interstate commerce and safe navigation, acting consistent with national security interests.

"There is nothing in the concept of legal jurisdiction over resources in a given area that leads to the non-recognition of valid 'outside' interests that also exist in the management of those resources."

"In the past, the interests of the States and local communities have usually been projected from the shoreland seaward. A more appropriate approach is to start from the location of the activities in the EEZ and project the effects and impacts shoreward."

Duties to the coastal local governments: Prevention of air and water pollution that would affect them, assistance in dealing with planning and socio-economic impacts.

Of course, federal and State resource management agencies operate under the terms of ocean resources management law. However, two additional norms generally guide public decision-makers: agency policy and public duties. But, only a portion of these are ever formally written into law.

The law: a framework of procedures and processes duly adopted by a legislative body guiding decision-making in a given area, not necessarily predetermining every outcome, usually not exhaustive, usually not eliminating all discretion in decision-making.

Agency policy: the objectives that a particular governmental agency wishes to achieve during its tenure, working within the broad limits established by the law. Usually not so comprehensive or all inclusive as to eliminate discretion in dealing with matters not directly in conflict with agency objectives.

Public duties: an inherent part of the execution of public tasks, related to norms of fairness and justice, that flow from considerations of equity. On a par with the law, sometimes spelled out in the law, sometimes not.

Much of the difficulty associated with the operation of the present OCS oil and gas leasing program, for example, centers around the different weights that various interests tend to give to these three norms.

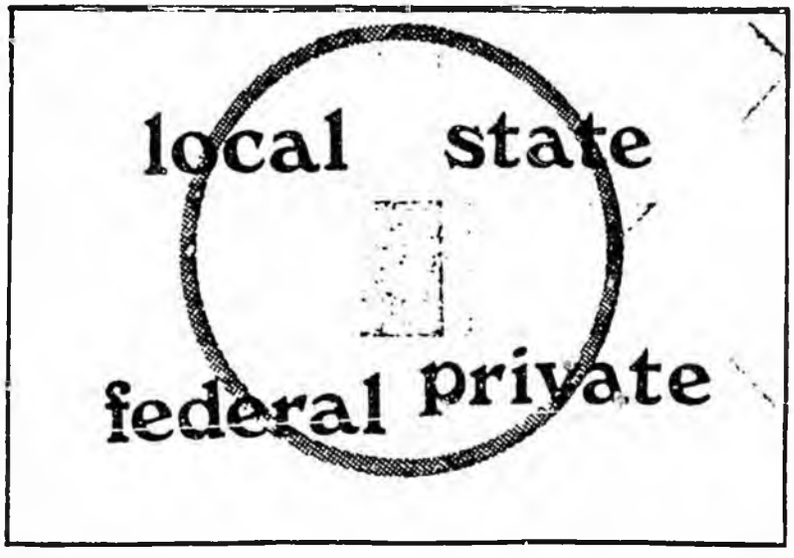
In the past, the interests of the States and local communities have usually been projected from the shoreland seaward, and terminated arbitrarily at the boundary of State ocean waters. A more appropriate approach, however, is to start from the location of the activities in the EEZ and project the effects and impacts shoreward to the State coastal zone and shorelands. This lends a more accurate view of the range and extent of the State interests that need to be protected in State-Federal arrangements governing the EEZ.

Furthermore, the concept of "shore-linked" impacts of ocean development is useful in gauging the roles of the State and federal governments in ocean development. Long-term commitments for the exclusive use of ocean space, and the resultant long-term commitment of the shoreside support facilities, require the concurrent approval of both the federal government and the involved coastal States. The Deepwater Ports Act and the Ocean Thermal Energy Act set a precedent for shared decision-making in the case of ocean developments of this type.

An efficient EEZ management process will also have to address the uncertainty due to the complexity of ocean processes. Given our incomplete understanding of ocean dynamics, accurate predictions of effects of a given ocean activity are usually not possible. Nonetheless, new ocean developments will not be held back until all of the necessary knowledge about ocean processes is known. Improved ways are clearly needed to deal with these uncertainties.

To minimize uncertainty, operationally-linked monitoring programs should be used. Prior to the start-up of a new ocean activity, baseline studies should be performed. Then, agreement should be reached among the potentially affected interests, on levels (thresholds) of key parameters that, if reached, would trigger pre-agreed changes in the operation of the activity (or full shut-down, in the worst case situation). Too often there is no mandated connection between monitoring and the operation of the program. Operational rules and procedures are established at the onset of a new ocean program, based on the best information available at that time. The tendency is for these procedures to remain fixed throughout the operation despite the fact that a properly designed monitoring effort could be providing highly relevant and useful information to the ongoing program.

In some ocean situations, we know too little to design an operationally-linked monitoring program. If the gaps in our understanding are of that magnitude, an even more conservative approach should be adopted (e.g., a scaled-down project) until the needed basic research has been completed and a proper monitoring program can be designed. Too little effort has been put into this aspect of the ocean management problem. The result has been unprofitable debates over the likely consequences of a proposed ocean development activity and final decisions that are often largely political rather than technical in nature. Even our current understanding of ocean science should permit us to do better than that.



"Whether the words are 'consultation,' 'joint participation,' or 'concurrent authority,' the message is the same — the process of managing America's EEZ resources must involve all who are affected."

"Our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation."

SECTION VII
CONCLUSION

Whether the words are "consultation," "joint participation," or "concurrent authority," the message is the same — the process of managing America's EEZ resources must involve all who are affected.

The coastal zone will continue to be "home" for land-based facilities — ports, piers, warehouses, docks, and processing plants — so integral to EEZ activities. As these activities expand and intensify in the future, the need for coastal support facilities will also increase and with it, the growth of associated and necessary local "infrastructure" — roads and related municipal and county services. The construction and operation of these facilities and urban infrastructure will place financial, social and environmental demands on coastal governments and their citizens. Likewise, the environmental impacts offshore from ocean resource development are of direct interest and concern to the citizens of the coastal States. These citizens therefore must be part of the EEZ resource management process.

There is some statutory precedence for involving coastal States in ocean resource management. For example, consultation authority is available to coastal State governors and local governments under the Outer Continental Shelf Lands Act. A joint participation mechanism is available under the Fisheries Conservation and Management Act, where the federal government, coastal States, commercial and recreational fishing interests are all involved. Coastal State concurrent authority is available under the Deepwater Ports Act. But all too often the degree of involvement of coastal State governments in the EEZ resource decision-making process does not match the impacts of the EEZ resource activity on the coastal States.

Our proclamation, asserting the rights and responsibilities pertaining to the protection, conservation and development of resources of the United States Exclusive Economic Zone, and the accompanying policy statement speak to this process and partnership. The coastal States' Proclamation does not, however, call for an extension of State boundaries, or more water or submerged land "ownership." An extension of the State waters boundary to 12 miles, while it may have specific benefits, would not address the larger issue of effectively managing this vast interdependent ecological system.

Rather, our goal is to establish an effective, joint participatory process with the federal government that recognizes the legitimate interests of the coastal States and their citizens, and best serves the interests of the Nation. The elements of this joint participatory process include: an equitable division of EEZ resource development costs and benefits, full recognition of the duty to future generations, the need for ocean research

and environmental protection, and shared decision-making for all ocean activities affecting the interests of the citizens of coastal States. These elements will be our guide as we actively seek to improve the existing piecemeal, and all too often confrontational, approach to EEZ resource management. An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources.

The coastal States have already been active in pursuing this EEZ partnership with the federal government through proposed EEZ hard mineral mining legislation and national oil spill liability and compensation legislation. Other proposals being considered include: completion of comprehensive State Coastal Zone Management programs for the territorial sea, coordination of State ocean management agencies and policies, greater ocean awareness through Coastweeks and other public education programs, examination of an equitable EEZ revenue sharing formula, development of legal agreements between the coastal States and the federal government regarding the exchange of ocean research data and information, strengthening of State concurrence authority over federal ocean activities having direct effects on coastal States, and enactment of legislation establishing a national ocean policy commission.

The coastal States are committed to taking their rightful place as full partners with the federal government in managing the resources of the U.S. EEZ. Together, our nation will move forward to meet the challenges and develop the potential of its ocean heritage.

"An effective intergovernmental process must, and can be achieved if this nation is to reap the full benefit of its EEZ resources."

Footnotes

1. For example, the Coastal Zone Management Act grants States the authority to require federal activities [illegible] in a State's coastal zone, and activities that are federally licensed or permitted that directly affect a State's coastal zone, to be "consistent" to "the maximum extent practicable" with that State's coastal management program. 16 U.S.C.§1456 (c).

   The Outer Continental Shelf Lands Act provides for limited input by a State Governor regarding the size, timing or location of a proposed lease sale. A Governor "may submit recommendations to the Secretary" of the Interior Department, and the Secretary must "communicate to the Governor, in writing, the reasons for his determination to accept or reject" the Governor's recommendations. 43 U.S.C.§1345.

   The Deepwater Ports Act requires the approval of a Governor of an "adjacent coastal State" before the Secretary of Transportation can issue a license for a Deepwater Port. Further, the Secretary is required to condition a Deepwater Port license, upon such notification by the Governor, "so as to make [the license] consistent with" State programs "relating to environmental protection, land and water use, and coastal zone management." 33 U.S.C.§1508.
2. On behalf of the coastal States, Michael Fischer, then Executive Director of the California Coastal Commission, drafted a proposal outlining the parameters of such a study and approached the William H. Donner Foundation of New York City regarding funding. After a period of negotiation, the Donner Foundation provided a grant to the CSO to undertake the EEZ study.
3. The Magnuson Fishery Conservation and Management Act provides that the exclusive management authority of the U.S. "shall not include, nor shall it be construed to extend to" species of tuna. 16 U.S.C.§1813. The Proclamation likewise expressly provides that "highly migratory species of tuna ... are not subject to United States jurisdiction and require international agreements for effective management."
4. Gordon, W.G., and R.E. Gutting, Jr., Winter 1984/85. "The Coastal Fishing Industry and the EEZ," *Oceanus*, Vol. 27, No. 4.
5. Id.
6. Watkins, Joel S., 1984. "Petroleum Exploration and Production in the EEZ," Chapter 4 of *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone.* Sponsored by the Department of the Interior.
7. Curlin, J.W., 1984. "Technology and Oil and Gas Development in the Exclusive Economic Zone," in *Exclusive Economic Zone Papers*, reprinted from *Proceedings of Oceans '84*, Washington, D.C., Sept. 1984.
8. 50 U.S.C. Sec.§98-98h.
9. *See* Ballard, R.D., and J.S. Bischoff, 1984, "Assessment and Scientific Understanding of Hard Mineral Resources in the EEZ," in *Symposium Proceedings, A National Program for the Assessment and Development of the Mineral Resources of the United States Exclusive Economic Zone.* Sponsored by the Department of the Interior.
10. Champ, M.S., and N.A. Ostenso, Winter 1984/85. "Future Uses and Research Needs in the EEZ," *Oceanus*, Vol. 27, No. 4.
11. *See* Sandia National Laboratories, 1984. The Subseabed Disposal Program: 1983 Status Report. Report No. SAND 83-1387, Albuquerque, New Mexico.
12. *See* Booz-Allen, 1980. "Hazardous Waste Generation and Commercial Hazardous Waste Management Capacity: An Assessment." U.S. GPO No. SW894.
13. Presidential Proclamation 2667 of September 8, 1945.
14. Compare Part V, United Nations Convention on the Law of the Sea, with the March 10, 1983 U.S. EEZ Proclamation.
15. Statement by the President on the Executive Economic Zone of the United States (March 10, 1983).
16. 332 U.S. 19 (1947).
17. Id. at 35.
18. Id. at 38-39.
19. 339 U.S. 699.
20. Id. at 705.
21. 339 U.S. 707.
22. Id. at 718.
23. 43 U.S.C.§1301 *et seq.*
24. 43 U.S.C.§1331 *et seq.*
25. 43 U.S.C.§1332 (2)
26. 420 U.S. 515.

FOOTNOTES. continued

27. Note that Florida and Texas have federally recognized boundaries in their Gulf of Mexico waters out to 3 marine leagues, or rougnly 10 miles.
28. Id.
29. "A review conducted by NOAA's Office of Ocean and Coastal Resource Management (OCRM) of Federal consistency actions during 1982 indicated that the states reviewed approximately 300 direct Federal activities under Section 307(c) (1) with non-concurrences in about 3 percent of the cases. Approximately 7500 Federally licensed and permitted activities were reviewed under Section 307(c)(3)(A) and the states objected in about 2 percent of the cases. Approximately 500 Federally licensed activities described in detail in OCS plans under Section 307(c)(3)(B) were reviewed by the states with nonconcurrences in about 0.5 percent of the cases. Finally, the states reviewed approximately 600 Federal assistance proposals to state and local governments under Section 307(d) and objected in about 0.5 percent of the cases. These numbers are approximate since precise data was unavailable in a few cases: but they also reflect a tremendous level of success under existing mechanisms.

"the litigation history of the consistency provisions provides further evidence that the Federal consistency system works. NOAA's research indicates that in the twelve years since the passage of the CZMA 23 lawsuits have been brought against Federal agencies on consistency grounds. Of these, 9 of the cases involved OCS leasing, 2 involved fishery management plans, 5 involved activities on Federal enclaves within the coastal zone, and 7 involved activities, including permits located within the coastal zone." CZM Federal Consistency, H.R. Rep. No. 98-52, 98th Cong. 2d Sess., 59, March 27 and June 26, 1984.

APPENDIX A

History of the Coastal States Organization's Exclusive Economic Zone Project

The two year course of the work, commencing in January 1985, can be divided into six segments:

1. **January to May 1985 — Preparation of a draft report for use at the EEZ Symposium**

   The 300-page report included a description of current and projected EEZ activities, a discussion of [illegible] State interests in the EEZ, an analysis of the fundamental problems of ocean resources management, and an assessment of the presently available legal tools for protecting coastal State interests.

2. **June 24 to 26, 1985 — The CSO-Sponsored EEZ Symposium, Orcas Island, Washington.**

   The Symposium involved about 60 participants representing a range of ocean users, levels of government, and academic specialties. The meeting focused on the significance of the EEZ proclamation, resources and uses of the EEZ, current and emerging problems in the management of ocean resources, present tensions between State and federal levels of government, and options for improved management.

3. **July to August 1985 — Formulation of a Set of EEZ Policy Options for the Coastal States**

   Five sets of options were formulated: strengthening the fundamentals of the existing CZM system; strengthening the financial base of State coastal programs; improving the effectiveness of Federal-State working relations; changing the basic ground rules through legislative amendment; and developing an enhanced ocean education, awareness, and planning effort. These were complied in a report prepared for a CSO meeting in Bar Harbor, Maine, in August 1985.

4. **September to December 1985 — Consideration of a Tentative CSO Plan of Action Based on the Policy Options Discussed at the Bar Harbor Meeting.**

   The tentative plan included general recommendations in four areas: strengthening of the existing CZM program; developing an ocean awareness program; legislative action to better define the coastal State role in major EEZ development activities; and seeking support for a legislatively-created national ocean policy commission.

5. **March to August 1986 — Development of a Modified Approach: Emphasis to be on a Proclamation of States' Rights and Responsibilities in the EEZ and an Accompanying Policy Statement.**

   Based on discussions at CSO meetings in Corpus Cristi, Texas (December 1985), Washington, D.C. (January 1986), and Seattle, Washington, (March 1986), a coastal State proclamation and a supporting policy statement were prepared as the more appropriate way of expressing the present policy positions of the coastal States with regard to the EEZ.

6. **September to December 1986 — Completion of a Final Report, Including Final Versions of the Proposed Coastal State Proclamation and the Accompanying EEZ Policy Statement.**

   Preparation of the present report and submission to the annual meeting of the CSO membership in Florida in December 1986.

   Much of the work of the study was accomplished in a series of meetings between the Consultant, the EEZ Steering Committee, and the Executive Committee of CSO. These meetings were held every two to three months during the course of 1985 and 1986.

   The Consultant's final report was submitted to CSO in late October 1986. After consideration by the Steering and Executive Committees, the report was presented to the CSO Governing Board during its annual meeting in December.

7. **December 1986 — April 1987 — Adoption of Final Report.**

   The Proclamation and Policy Statement, as revised, were adopted by the CSO Governing Board at the 10th Annual CSO meeting, with the understanding that the Executive Committee give final approval on the balance of the report at its March 1987 meeting. The CSO Executive Committee approved the full final report, giving direction for its publication by early April 1987.

APPENDIX B

CSO EEZ STEERING COMMITTEE

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Catherine B. Nash
Assistant to the Director

"As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole."

POLICY STATEMENT OF THE COASTAL STATES

The U.S. Exclusive Economic Zone was established in 1983. With this action the United States acquired internationally recognized "sovereign rights for the purpose of exploring, exploiting, conserving and managing natural resources, both living and nonliving, of the seabed and subsoil and the superjacent waters." The Exclusive Economic Zone (EEZ) extends 200 nautical miles seaward of the Nation's coasts, bringing an area more than one and a half times larger than the land mass of the United States under exclusive U.S. resource management authority.

Vast reserves of known resources, and the promise of tremendous reserves yet to be discovered, exist within the EEZ. All Americans stand to benefit from the proper management of these marine resources. Early national attention should be given to the creation of an appropriate management regime for this important new ocean area. There are existing regulatory regimes that manage oil, gas, and fishery resources. However, full economic and social benefits of other EEZ resources will be realized only if an orderly and stable regulatory framework is in place — one in which all affected parties are effectively represented in the decision-making process.

International law recognizes a 200-mile zone (the EEZ) within which coastal nations have sovereign and exclusive rights over living and nonliving resources. Exploration and exploitation of these resources are thus separate and distinct from other ocean uses, such as navigation and overflight, within international jurisdiction. Resource management in the U.S. EEZ is now a domestic issue. As such, it is the joint concern of the coastal State and federal governments. Therefore, the legitimate roles of the federal and State governments in the management of these resources must now be re-examined.

Given their proximity to, and reliance on, the sea, and the extent that development of these marine resources will affect their economy and environment, the coastal States have direct and inherent interests pertaining to the protection, conservation and development of the living and nonliving resources of the EEZ. It is neither feasible nor desirable for the national government to attempt to represent all of the public interests in ocean activities beyond the territorial sea. As general purpose governments with existing resource management competence, the coastal States are directly responsible for acting on behalf of the ocean interests of their citizens, and the citizens of the country as a whole. The present statutorily created dividing line between State and federal jurisdiction in the ocean — the seaward limit of the territorial sea — measures only the current division in the management authority over the ocean resources. The coastal States' interests, rights and responsibilities extend well beyond this statutorily created, yet arbitrary, limit.

Because the marine, coastal and terrestrial environments are one interdependent ecological system, the EEZ resource management regime must be an integrated one. Ocean management is a logical extension of coastal management, forming a unified whole. The management regime must have the capacity to account for the use and development of various resources. The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ.

The diversity of the resources of the EEZ and their vital importance to present and future generations of Americans requires that careful attention be paid to maintaining a proper balance between protection, conservation and development in the EEZ. A primary goal of EEZ resource management should be to maintain the health and viability of the ocean ecosystems in order to ensure sustained long-term benefits to the people of the Nation.

The extension of sovereign rights over the resources of the EEZ carries with it a public trust duty to conserve and ensure the availability of these resources for present and future generations. Since the citizens of the coastal States will be directly affected by the discharge of this duty (or a failure to do so), coastal State governments have a special responsibility to ensure that this duty is fully incorporated into EEZ management decisions.

Because of this responsibility, there must be shared decision-making with the federal government on all ocean activities affecting the interests of citizens of coastal States. Long-term commitments of fixed ocean and shoreside space and potential long-term impacts to coastal and ocean resources often require the mutual consent of the federal government and the affected coastal State governments.

Coastal States also have a responsibility to assure that State and local participants in any ocean activity receive an equitable share of responsibility, better advance information on value and distribution of ocean resources must be in the State government's hands before decisions are made. This will ensure that the public receives a fair return for the use or sale of their resources.

The establishment of the U.S. EEZ brings great new opportunities and challenges to the coastal States. The coastal States have a legitimate right in the management of the resources of the EEZ in concert with the federal government. Certain fundamental principles have guided the coastal States in arriving at their Proclamation of rights and responsibilities pertaining to the management of the resources within the EEZ. These principles include: shared decision-making on all ocean activities affecting the interests of the citizens of the coastal States; an equitable division of the costs and benefits of the development of these ocean resources; full recognition of the duty to future generations to protect their interests; and an appreciation that effective ocean management must be based upon solid research and environmental protection.

The coastal States are committed to shaping national policy for the protection, conservation and development of U.S. EEZ resources in accordance with this Proclamation and Policy Statement.

"The single-purpose approach to ocean management now in use has generated conflicts rather than resolving them, and will become increasingly ineffective in handling multiple uses in the EEZ."

The Coastal Fishing Industry and the EEZ

by William G. Gordon
and Richard E. Gutting, Jr.

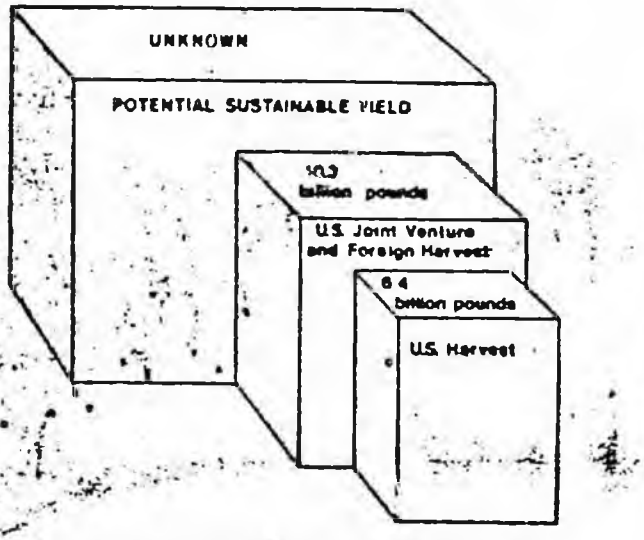
On 10 March, 1983, President Reagan proclaimed the establishment of a 200-mile Exclusive Economic Zone (EEZ) for the United States. The Proclamation and accompanying statement contain two points of importance to coastal fisheries. First, the United States will exercise "sovereign rights" over the living resources within 200 nautical miles of our coasts. Second, one purpose of the Proclamation is to "reinforce the government's policy of promoting the United States fishing industry."

By itself, the Proclamation does not appear to materially change U.S. jurisdiction over its coastal fisheries as set forth in the Magnuson Fishery Conservation and Management Act (MFCMA) of 1976. This act had declared that the United States has "exclusive fishery management authority" over all fish (except tuna) within the Fishery Conservation Zone, a zone essentially identical to the EEZ. The President's action does provide, however, an opportunity for Congress to reexamine our approach to developing these fisheries.

Leaders of the U.S. fishing industry consistently express the industry's desire to fully use the fishery resources within our new 200-mile zone; how the United States chooses to implement the President's Proclamation could provide the key to this development. The basic issue is whether our industry will be given the opportunity to grow in a manner that promotes efficiency and brings long-term prosperity, or whether we will allow this opportunity to be traded off to satisfy other political interests.

A Healthy Harvest

Our nation's coastal fisheries are an important source of nutrition and recreation, and contribute significantly to our economy, health, and quality of life. They are enormous, yielding about 10 billion pounds of food each year, or nearly 50 pounds for each person in the United States. Added to this amount is another 750 million pounds caught each year by recreational fishermen. Counting all subsidiary effects, our coastal fisheries contribute more than $23 billion to the economy each year and provide employment for more than a million people.



Fifteen percent of the world's fish and shellfish are found within the U.S. EEZ. Although American fishermen take the majority of the catch, there is significant room for expansion.

No other country has such abundance and diversity of fish and shellfish off its coasts; fully 15 percent of the world's living resources are contained within the U.S. EEZ. But the United States ranks only fourth* among the fishing nations of the world. Indeed, less than half the potential yield from U.S. fisheries is harvested and processed by U.S. fishermen and processors. The remainder is harvested by U.S. fishermen but sold to foreign processors, harvested by the fishing fleets of more than a dozen countries, or is left unused.

In 1976, through the MFCMA, the United States declared "exclusive fishery management authority" over its coastal fisheries and established "optimum yield"** as the primary goal of fishery management and development. Only that portion

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* The first 12 fishing nations (in order) are Japan, the Soviet Union, China, the United States, Chile, Peru, Norway, India, South Korea, Indonesia, Denmark and Thailand.

** Under the MFCMA, optimum yield is defined as the amount of fish "which will provide the greatest overall benefit to the Nation," and as the "maximum sustainable yield ... as modified by any relevant economic, social, or ecological factor." (emphasis added)

Haddock

of the optimum yield not needed by the American industry was to be made available to foreign fishing fleets. This preference to American fishermen for access to the resources, along with other provisions regarding the regulation of foreign fleets, was intended to spur rapid expansion of the U.S. fishing industry, provide jobs, and reduce the U.S. balance of trade deficit in fishery products. The act also emphasized that a national program was necessary to develop fisheries that were not being used by our industry.

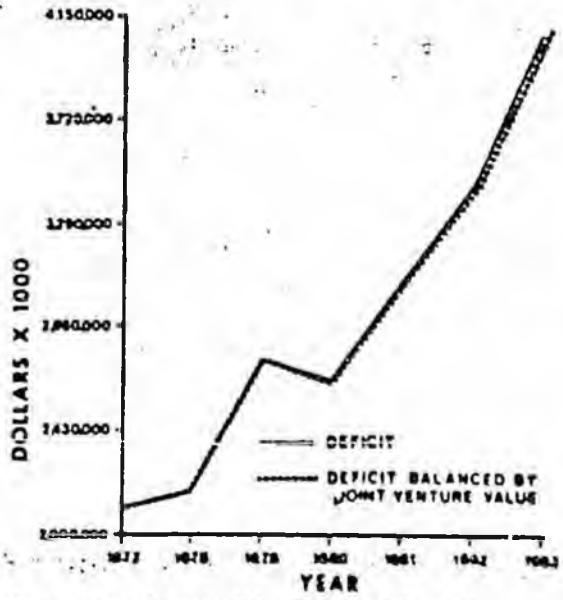
U.S. fishermen began to benefit almost immediately. Foreign fishing was reduced to help several stocks of fish* recover and American vessels began fishing for species that had been of interest only to the foreign fleets. This diversification was prompted in part from the existence of more fishing vessels in some fisheries than the resource and the economic situation could support, and from drastic reductions in traditional stocks. It would not have occurred, however, unless new markets had opened up for American fishermen. These markets were found offshore in new fishing arrangements known as "over-the-side" sales or "joint venture fishing." Under these arrangements, American fishermen catch the fish and deliver them to foreign processing vessels while still on the fishing grounds. Although these at-sea arrangements were new to the United States at the time the MFCMA was enacted, they had been common off the coasts of other countries for many years.

Joint fishing operations involving U.S. fishermen began in the Pacific in the summer of 1978, when the Soviet Union purchased about 2 million pounds of Pacific hake. Growth came rapidly, in 1983, over-the-side deliveries reached 959 million pounds, worth $51 million. Vessels from eight nations** conducted at-sea operations with American fishermen in both the Atlantic and Pacific fisheries. These arrangements have proved, on an interim basis, to be a major boon to building and maintaining the U.S. fishing fleets needed to replace the foreign fleets.

The willingness of foreign vessels to buy from American fishermen has not been matched by a similar willingness to buy new U.S.-processed products. Instead, the home countries of the foreign fleets continued to guard their domestic markets against American products. In Japan, for example, the U.S. industry continued to face protective tariffs and quotas as well as informal discrimination—such as intimations of poor quality in U.S. products—that provided substantial advantages to Japanese producers. In another instance, Spain discouraged market access by withholding import licenses or making them difficult to obtain. Similarly, the European Economic Community (EEC) used reference prices and high product tariffs to keep imports into member countries at a minimum. The development of overseas markets also has been impeded by the relatively high cost of U.S. production and the extraordinary strength of the U.S. dollar. As a result, the processing sector of the American fishing industry lagged behind the expansion of our fishing fleet. This trend is apparent from U.S. fishery statistics, which show a growing trade deficit despite increasing sales to foreign processing vessels in the same period.

These trends have prompted Congress to amend the MFCMA several times. The initial growth of "joint venture" fishing in 1978, for example, led to an amendment which made it clear that preference in access to fishery resources was to be given to both American harvesters and processors over the foreign fleets—resulting in the reduction of foreign processing offshore.

In 1980, Congress recognized that as long as foreign nations were permitted to continue a high level of fishing in the U.S. zone while U.S. fish exporters were denied access to important foreign markets, the United States would be unable to achieve full development. In response, the Act was



Joint ventures between U.S. fishermen and foreign processing ships have barely dented the growing U.S. fisheries trade deficit.

* Haddock and cod off New England, mackerel along the Atlantic seaboard, and ocean perch and Pacific hake off the Pacific Northwest.

** Japan, South Korea, the Soviet Union, Italy, Spain, Portugal, Taiwan, and East Germany.

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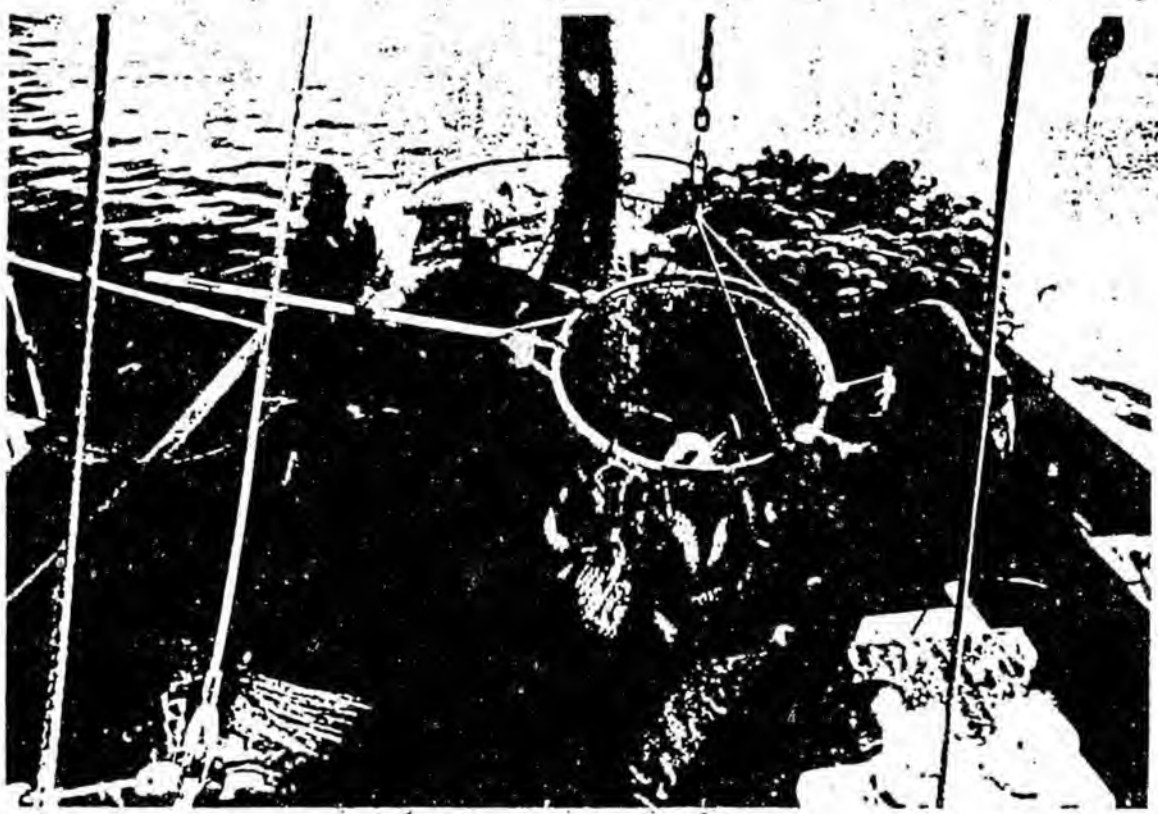

Hauling salmon off the coast of Washington (Photo by Stephen Linsley, PR)

amended again. This time a "reduction formula" was devised which provided that as U.S. fishing increased, the level of foreign fishing would be reduced by an even greater increment. This formula was a compromise between those interests that sought to impose strict exclusion of foreign fishing and those interests that viewed mandatory reductions as contrary to the principle of full utilization endorsed at the Law of the Sea Conference. The formula, however, was so complicated that it essentially was never implemented.

Far more important was the 1980 codification of the so-called "fish and chips" policy, which linked the right of foreign fleets to fish in U.S. fisheries to the purchase of U.S. fish products. The fish and chips policy prescribes eight criteria for making allocation decisions, including such factors as whether the nation has tariff or non-tariff barriers to restrict importation of U.S. fish or fish products, the level of cooperation with the United States, and so on. Clearly, under this policy, market access was to be the touchstone of the federal government's decisions to allocate surplus fish to the foreign fleets. Nevertheless, while foreign companies often will buy fish from American fishermen in their effort to secure allocations, they continue to resist importing U.S.-processed products.

Foreign Relationships

The President's EEZ Proclamation raises the issue of whether the relationship between the United States and the foreign fishing fleets should be altered.

At the present time, the federal government allocates "surplus" fish to several different countries on a year-to-year basis. The process is exceedingly complex and time consuming. Last year, for example, allocations were made to 11 nations,* of which six fished,** and — as noted earlier — eight different countries were permitted to buy fish directly from American fishermen. Some 19 different allocation decisions were reviewed or made by numerous officials in the Departments of Commerce and State.

At the heart of all this activity is the fish and chips policy, but the future effectiveness of this approach to opening overseas markets is uncertain. In recent years, the number of foreign countries involved has increased, threatening to make the process even more complex.

The system also is becoming more and more political as growing numbers of lobbyists and applicants argue over fewer and fewer fish. Major disruptions of the allocation process have been prompted by such unrelated issues as the public's concern over whales and the Soviet Union's

* Bulgaria, West Germany, Italy, the Netherlands, Faroe Islands, East Germany, Japan, Portugal, South Korea, Spain, and Taiwan.

** West Germany, Italy, East Germany, Japan, South Korea, and Spain.

invasion of Afghanistan. These factors are weakening the industry's ability to plan for future growth and the federal government's ability to insist that foreign nations extend economic benefits to the U.S. fishing industry in exchange for the right to operate in U.S. coastal fisheries.

The President's EEZ Proclamation may help to counter these forces. Prior to the Proclamation some nations had disputed the right of the United States to impose economic conditions, arguing that we only had the right to scientifically manage and conserve fishery resources. The Proclamation makes it clear that the federal government views the access of foreign nations to our fisheries to be a privilege that is to be earned, and not a right. Since the Proclamation, agreements with several foreign nations have incorporated this principle. Along similar lines, Senators Robert Packwood (R.-Ore.) and Slade Gorton (R.-Wash.) sponsored an amendment to the Magnuson Act that would deny allocations to foreign nations as a matter of right. Similar proposals were made last year by Senator Ted Stevens (R.-Alaska) and Congressman John Breaux (D.-La.).

Congress is also working on ways to improve the government's implementation of the fish and chips policy. The changes in the MFCMA proposed by Senators Packwood and Gorton link allocations to the purchase of U.S. processed fishery products on a species-specific basis.* In other words, if a foreign nation wants an allocation of pollock, it must buy U.S.-processed pollock products. Representative Don Young (R.-Alaska) also has proposed to eliminate the government's authority to take factors unrelated to the fishing industry into account when allocations of fish are made to foreign fleets.

Not everyone is convinced that the fish and chips approach to opening foreign markets will work in the future. Senator Stevens, for example, advocates a scheduled phaseout of foreign fishing. In his view, the very existence of allocations inhibits the ability of our fishermen and processors to replace the foreign fleets. He points out that there is a possibility that U.S. fishermen will be denied increases in allocations for Pacific ocean perch in the Gulf of Alaska this year, while foreign fleets are permitted to continue their harvest.

This inequity stems from a large foreign allocation and an underestimation of the needs of U.S. fishermen delivering fish to foreign processing vessels. With the elimination of allocations, problems such as this would become nonexistent. Senator Steven's basic argument for a phaseout, however, is that an elimination of the foreign fleets would provide the incentive needed to overseas buyers to purchase U.S. products in order to fulfill the demands of their existing markets.

Senator Stevens argues that we need to send foreign nations a clear signal of our commitment to full domestic utilization of these resources. Foreign nations must be made aware that their fishing in our waters will soon be a thing of the past. A phaseout over a specified number of years, he argues, would send this signal, and would encourage foreign companies to invest in cooperative ventures with U.S. harvesters and processors. These cooperative arrangements would guarantee foreign companies access to the fisheries resources and all of the resulting privileges of U.S. harvesters and processors mandated under the MFCMA.

Private Versus Public Property

The President's EEZ Proclamation also raises another issue. Under the legal framework established by the Magnuson Act, the federal government has more of a public trust rather than an ownership relationship over coastal fishery resources. Under this philosophy, fish are viewed as common property available on a first-come, first-served basis to all Americans.

This open access to fisheries has led to rapid fleet expansion in those fisheries with products in high demand. Regulations necessary to conserve those fisheries have curbed the opportunities of individual vessels to maintain production levels. As a result, vessel productivity has dropped sharply in some fisheries and output costs have escalated.

The New England otter trawl fleet, for

A fishing vessel tied up to a Soviet factory ship. (Photo courtesy of the National Marine Fisheries Service)

* **Editor's Note:** On 10 October 1984, the Congress passed an amendment to the MFCMA clarifying that the United States is not required by law to allocate the total allowable level of foreign fishing, and requiring an evaluation of what a particular nation is doing to improve U.S. access to its markets for the particular species for which an allocation is sought. On 8 November 1984, President Reagan signed the bill.

example, grew from about 600 vessels in 1977 to nearly 1,000 vessels in 1982. Fleet landings increased, but not enough to warrant the increased number of vessels. Productivity declined and costs shot up. Between 1977 and 1982, the catch per unit of effort for the fleet dropped 15 percent. The effects of the decline, combined with rising input costs, resulted in a doubling of the cost to the fishermen per pound of fish caught. Prices received by fishermen barely rose enough to cover the increased costs, and there was no real improvement in the fleet's profitability.

One implication of the reference to sovereign rights in the President's Proclamation is ownership. This implication raises the issue of whether or not the federal government should vest itself with property rights over fisheries and rent or sell opportunities to fish to private industry. Legislation would be needed before such a change were made. Such a change, however, would mark a radical departure from the way fisheries are presently managed and developed.

Indeed, the legislation that has been proposed to implement the Proclamation goes out of its way to say that "Nothing in this Act is, nor shall be deemed to be, a basis for any royalty, fee, tax or other assessment of revenue, for fishing by United States flag vessels." But is this the best policy? Some argue that actions such as this should be taken to increase the economic return from our coastal fisheries.

A few state fishery agencies and regional fishery management councils have attempted to make fisheries more efficient by limiting the number of vessels. For a number of reasons, these "limited entry" programs have not been universally accepted. The licensing procedures used often appear very mechanistic and unresponsive to the interests of the resource users.

Some argue that a more acceptable way of controlling entry into our fisheries would be to allocate resource shares directly among the participants, perhaps via an auction. In this way, the resource shareholders, individually or collectively, could decide on the best harvesting system to take their share of the resource. As opposed to the first-come, first-served chaos of today, under a resource share approach it would be in the interests of the shareholders to apply fishing effort judiciously so as to insure perpetuation of the resource and the greatest long-term net economic gain. Proponents also point out that along with establishing a system to allocate resource shares, it is equally important that the shareholders be able to follow fishing strategies and marketing plans with a minimum of outside interference.

Proponents of this approach say that there is an urgent need to put some type of resource sharing plan into place to protect the gains made by domestic fishermen since the Magnuson Act was enacted. If this is not done, they argue, we will

A West German fishing boat with a load of cod on Georges Bank. (Photo courtesy of the National Marine Fisheries Service.)

see one fishery after another become overcapitalized with resulting adverse social and economic consequences.

What can happen without a share system is illustrated by the halibut fishery, which is managed on a first-come, first-served basis. To conserve the resource, fishery managers have had to drastically reduce the fishing season. What exists today is a mad scramble of intensive effort over a short period of time. This results in a massive infusion of fresh halibut into the market in a very short period of time. Under a share system, halibut fishermen would be able to exercise their personal judgment, based on resource, weather, and market conditions, to determine when to fish. The season could be spread over time with substantial reduction in conflict. Added to this would be reduced government involvement and regulations. Similar examples could be drawn from the Atlantic coast clam, scallop, and haddock fisheries.

Those opposed to resource sharing programs argue that they would be counterproductive, unfair, and too complicated to operate. The American commercial fishing industry, they argue, has economic problems that would be aggravated by share systems requiring payments or assessments for the opportunity to fish. Fishermen, they argue, make their contributions to society through the taxes they pay. They produce food products of high quality and domestic importance, generate substantial employment, and contribute to the international economic strength of the United States. They should not be required to pay

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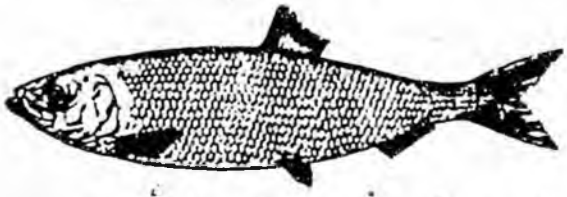
* A method of fishing that involves towing a net along the ocean bottom.



Herring

for the fish which are the common property of all Americans.

Clear Policy Needed

The American fishing industry has made substantial progress. Significant investments have been made, and new markets have opened up. The additional investment needed to develop these fisheries to their full potential, however, is massive and the direction of future market growth is unclear. Foreign governments are becoming increasingly resistant to further trade concessions and the political struggle over access to our fisheries has intensified. Several of our more traditional fisheries are overcrowded. Many people in government and industry believe we have come to a crossroads and need a clear and consistent policy to guide and foster future development.

The President's EEZ Proclamation said that our coastal fisheries belong exclusively to the citizens of the United States. It did not say what the United States intended to do with them. It does, however, give us an opportunity to fashion the national policies needed to insure that the American people obtain the maximum benefits from these resources. We believe that an enormous economic opportunity is waiting offshore for our domestic fishing industry and our nation. Whether or not we fully realize this potential depends on our courage to grasp it.

William C. Gordon is Assistant Administrator for Fisheries of the National Oceanic and Atmospheric Administration, Washington, D.C. Richard E. Cutting, Jr., is Vice-President for Government Relations of the National Fisheries Institute Washington, D.C.

The views presented in this article are those of the authors and not necessarily of their respective organizations.

STATE OF ALASKA
THE LEGISLATURE

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JUNEAU, ALASKA 99811
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May, 1988

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Mary Van Nimwegen

House L+C 3-15-88 2:30p.m.

HJR

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Stuckey's
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STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Box V, Juneau, Alaska 99811
(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON District 27 Box 746, Kodiak, Alaska 99615

MEMORANDUM

TO: Members of the Resources Committee

FROM: Representative Davidson

DATE: March 1, 1988

SUBJECT: Committee legislation

I ask your support in passing a resolution by the Resources Committee.

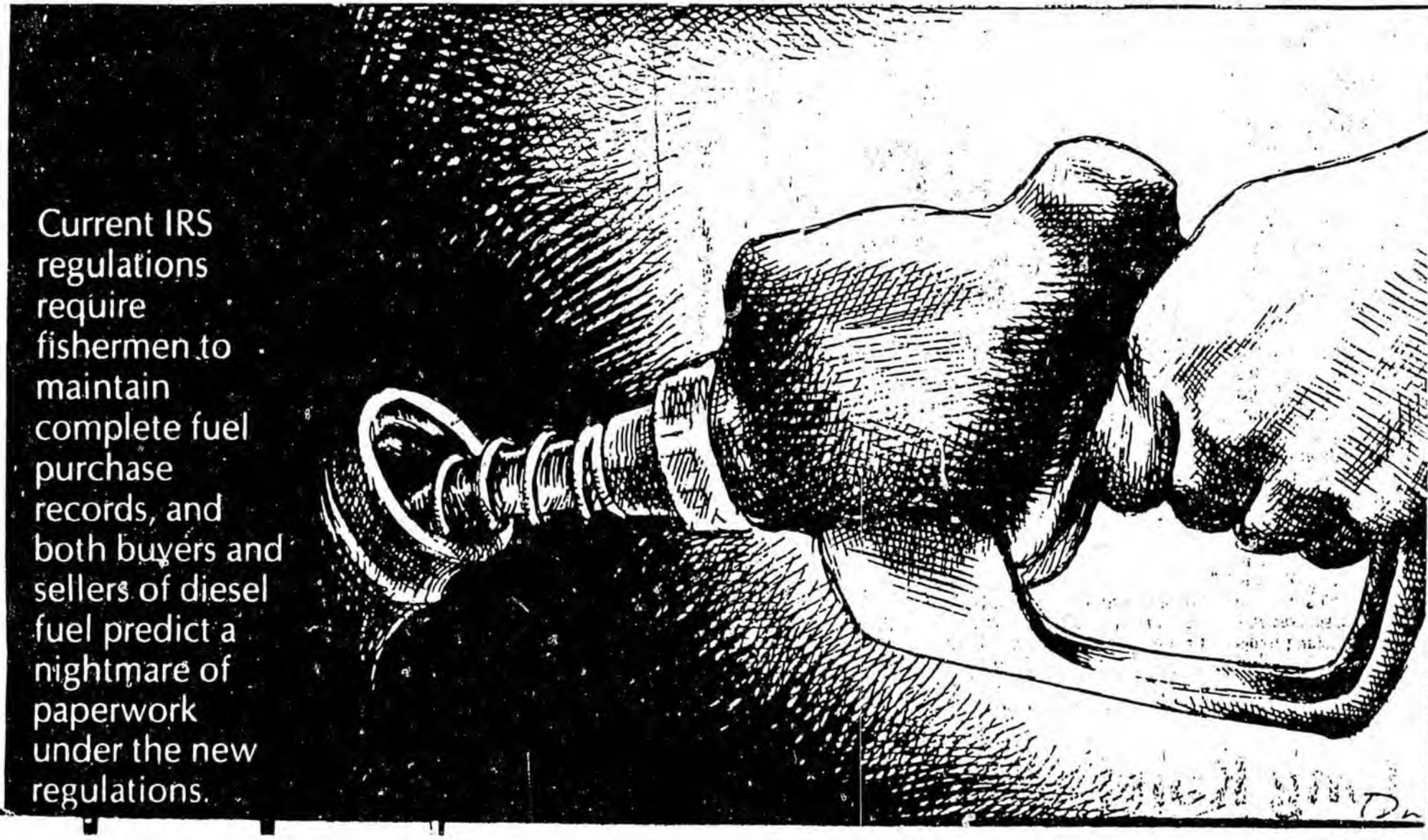
This resolution requests Congress to preserve the way they collect the fifteen cent per gallon federal excise tax on diesel fuel.

Under legislation passed last December, tax exempt categories must first pay the tax, and apply for a refund later. Under current practice, these tax exempt categories do not pay the tax at all.

While still technically exempt, the way the federal government will collect this tax unnecessarily raises the cost of doing business for many Alaskans. It will restrict their cash flow, increase paperwork and is essentially an interest free loan to the government.

This resolution asks Congress to reinstate the current practice and repeal the proposed changes, which take effect April 1, 1988.

Business


Current IRS regulations require fishermen to maintain complete fuel purchase records, and both buyers and sellers of diesel fuel predict a nightmare of paperwork under the new regulations.

Diesel fuel users sputter over tax changes

By David R. Sadoler
Times Business Writer

Changes in 1988 federal tax law will force users of tax-exempt diesel fuel to wait up to a year for refunds of federal excise taxes, a delay some fishermen say will eat into already-thin operating margins.

Under the change, brought on by the Budget Reconciliation Act of 1987, fishermen, farmers, state and local governments and other tax-exempt users will no longer be able to buy their diesel fuel tax-free at the pump as of April 1.

Instead, they must pay a 15.1 cents-per-gallon excise tax on diesel fuel, then apply for tax credits or refunds. Tax-exempt users of gasoline already began paying a 9.1-cents-per-gallon tax at the pump Jan. 1.

"Coastal Alaska, not to mention the whole state, runs on diesel fuel, and much of it is tax-free," said Jim Ramaglia, vice president of Kodiak Oil Sales.

"It doesn't take a lot of imagination to see what this expense is going to do to farmers, fishermen, loggers, miners, and ranchers," Ramaglia said.

Under current tax law, these users do not currently pay the 15.1-cent federal excise tax, which raises the cost of a gallon of diesel to about $1 per gallon. They can either register to buy tax-free fuel at a dealer registered to sell it, or must display an exemption certificate at other dealers.

If fishermen do buy tax-paid fuel, they may claim credit on their tax returns for the tax paid, or file for refunds, according to IRS Publication 378, "Fuel Tax Credits."

The refund or credit process is similar for off-road users of fuels, such as farmers, loggers, state and local governments and schools. Those paying less than $1,000 in tax per quarter may file for annual refunds, while those who paid more can seek quarterly refunds.

The need to tie up an extra 15 percent of annual fuel bills could force the commercial fishermen who are his customers to cut back on maintenance, pay, or safety equipment, said Ramaglia.

"Long-lining for cod is a high-volume, low-margin operation, and a lot of these guys are operating on trip-to-trip basis," Ramaglia said.

"Every fisherman goes through a point either in his career or annually, when every penny counts, and the government adding this expense is going to put a real hardship on them," he said.

IRS officials in Anchorage and Washington said shifting the burden of tax payment from wholesalers to retailers will make it easier to track payment of fuel taxes.

"Before, we had hundreds of thousands, maybe millions of taxpayers," said Don Fidlow, an IRS attorney in Washington, D.C. "But by moving the tax to wholesalers we are limiting it to a handful of taxpayers. In effect it's saving a lot of paperwork and headaches for both taxpayers and the service."

But fishermen say the changes will add paperwork and headaches, and quietly speculate the tax office hopes paperwork will discourage fishermen from filing for refunds.

Sonja Corazza, president of the North Pacific Fisheries Association, operates a 40-foot fishing boat in the Bering Sea with her husband six months a year.

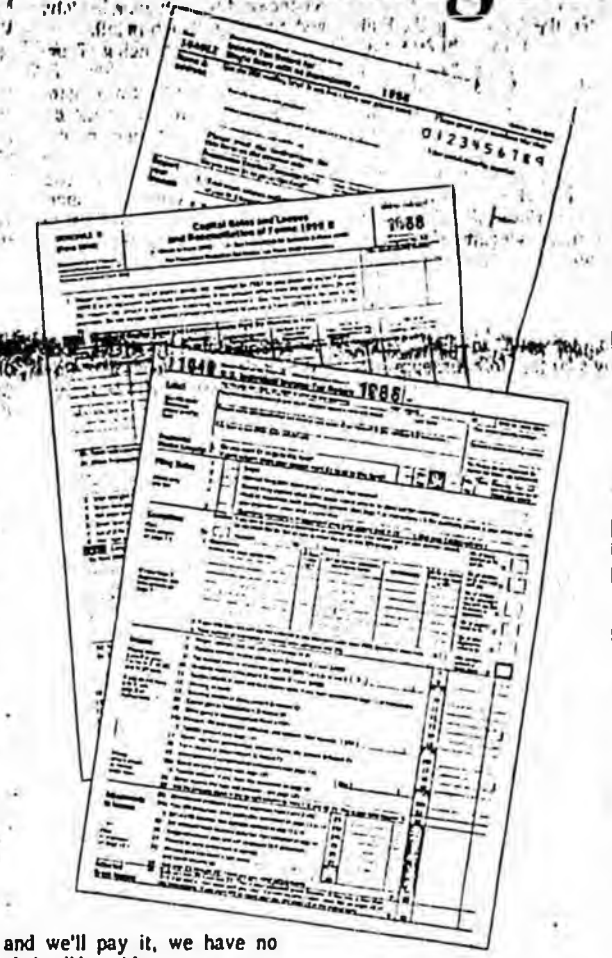
"We try to plan ahead in our year, and usually we know how much a trip will cost us," she said. "And if we have to add that extra cost for fuel, it may have an impact on other equipment.

"A dollar is a dollar, you can only stretch it so far," she said.

Al Burch, director of the Alaska Draggers Association and owner of two Bering Sea draggers, agrees.

"Fishing is a real marginal business, and a fisherman in slow times needs every penny he can get," he said. "There may be only a very short time when he may be making money, but he has to stretch the short good times over bad months."

"The price of fuel will go up and we'll pay it, we have no choice," he said.



Ramaglia said he expects the tax law change will force him to charge an extra cent or two per gallon of fuel to cover his paperwork and interest costs. He also anticipates being forced, along with other dealers, into giving the government free use of his money while waiting to collect the taxes from customers.

"The fuel companies are required to pay that 15.1 cents (per gallon) to the feds within two weeks of the sale, whether they have collected the tax or not," he said. "But we usually only collect bills every 30 or 60 days, so we'll be serving as banker for the government."

Current IRS regulations require fishermen to maintain complete fuel purchase records in case of IRS inquiry or audit, and both buyers and sellers of diesel fuel predict a nightmare of paperwork under the new regulations.

"It is going to work a real hardship on small businesses of

See Fuel, page D-5

Tips for property owners

Once you've stopped worrying about the 1987 tax return due April 15, you can start worrying about how to get through 1988 so you won't have so much to worry about at this time next year.

Changes in the law are bringing twists to some familiar features of your federal income tax return.

• Home mortgages. Just when you thought this year's home mortgage rules were complicated enough, Congress came along just before Christmas and changed the rules, retroactive to Oct. 13, 1987. It could affect your deductions on your 1988 return.

Under the new law, you can still get a tax break when you borrow up to $1 million to buy and/or improve a first and second home. And you can still take out a home equity loan and still get a mortgage deduction.

But under the 1988 regulations, the interest on any equity borrowings over $100,000 will be treated as consumer interest unless it is clearly earmarked for the home.

• Property sales. If you plan to sell property this year, weigh the benefits of taking the total payment in cash up front, versus an installment sale, in which you are paid over a period of years.

Alan Weiner, of Holtz Rubenstein, notes that if you sell a piece of property at $1 million, a good chunk of the price, maybe $200,000, will go to the IRS, but you will still have $800,000 to invest. Using the installment plan may cut your taxes, but your return on the investment may be less.

• Individual Retirement Account. If you're no longer eligible to make a tax-reducing contribution to an IRA, don't make one, suggests Michael Borsuk, of accounting firm Coopers & Lybrand. Although some investment experts might disagree, he figures making the extra contributions will complicate your life when it comes to making withdrawals and filing tax returns at that time.

• Capital gains. Since there is no longer a separate tax on capital gains, you might want to wait until October or November to sell a stock or other security that has risen in price. By then, you'll be able to make a projection of your income and tax situation for the rest of the year.

• Rental income. If you rent your vacation home for less then 15 days a year, you don't have to report it as income, according to the H&R Block Tax Guide. There is a catch, however: You can't claim any upkeep expenses or depreciation. Mortgage interest and property taxes remain deductible.

Fuel: Frustrations

Continued from page D-4

all types, all around the nation, like farmers and fishermen," said Al Cobb, director of legal and political affairs for the Petroleum Marketers Association of America."The IRS is likely to be overwnelmed by paperwork for these refunds."

"Since we're eligible for the rebates, we don't think it's wise to put the tax on the first place. We've always been exempt in the past," Corazza said.

At least one fishing industry expert, however, said the tax credit change is a bit of a red herring.

"It isn't going to make that much difference," said Craig Wiese, business management specialist at the Marine Advisory Program at University of Alaska Anchorage.

Wiese estimated that an average 42-or 48-foot seining ship operating in Prince William Sound would spend about $5,000 on fuel a year, only five percent of annual revenue of $100,000

Wiese acknowledged that paying the fuel tax up front could make a significant difference in the finances of a family trying to live off a seiner's earnings.

The fuel tax law changes began as an IRS effort to get a better handle on the fuel taxes, said local and national IRS officials.

"The government is trying to force users to leave a paper trail so when we do future audits we can follow where the fuel got sold," the tax attorney Fidlow said.

Marilyn Steen, spokeswoman for the IRS office in Anchorage, said some fuel dealers in U.S. cities were taking advantage of lax IRS auditing and enforcement to dodge fuel taxes.

But the pressure on Congress to raise revenues without raising taxes during the Budget Reconciliation Act may result in placing an extra burden on fishermen, especially smaller operators, Burch said.

"One thing that will happen is a lot of excellent fishermen will not file for a refund," he said.

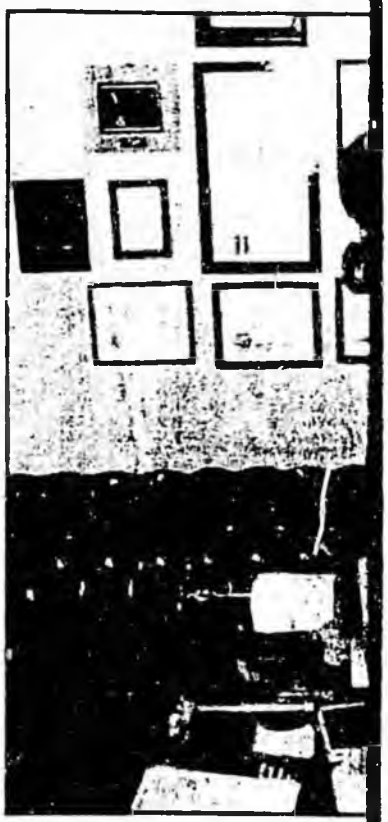
Burch, who spends $100,000 per year on diesel fuel for his two boats, said accountants will make sure he and other large operators file for tax refunds. "Fishermen, like a lot of businessmen, are undercapitalized, and they'll be caught by having to pay for it up front," Ramaglia said. "They'll have to decide whether to put off maintenance on the engine, or put new cable on the winch, or to maintain their EPIRBs (emergency locator transmitters)."

The new tax laws give the IRS the discretion to allow state and local governments, airplanes, diesel trains, and industrial users of fuel to continue to buy diesel fuel tax-free, Cobb said.

Steen said the tax service would probably preserve the exemptions for diesel fuel, as they do for gasoline.

But until the actual announcement of the regulations, which Steen expects in three weeks, there is no way of knowing for sure which users other than fishermen and farmers will have to pay their taxes up front.

In Alaska, Burch is encouraging members of his draggers' association to write protest letters to the state's congressmen, and Ramaglia said he is encouraging his customers to do the same.



Security measures

Philip W. Little, president of infrared spotting scope. The tries to do for private compa Service does for the president

UAW sues

KENOSHA, Wis. (AP) — U workers Union Local 72 filed a la against Chrysler Corp., alleging t is breaking federal laws by pulli duction from Kenosha and puttin ple out of work.

In reponse, Chrysler said a review of the suit indicated it w merit."

The suit, which also names as the city of Detroit and the U.S. D of Housing and Urban Develop Chrysler obtained about $50 millio grants to modernize its Jeffers plant in Detroit, said James Eggle torney for the union.

NATIONAL FISHERIES INSTITUTE, IN

2010 M STREET, N.W., STE. 580 ■ WASHINGTON, D.C. 20038 ■ (202) 296-5

February 12, 1988

TAX ALERT

ACTION REQUESTED

NFI VESSEL OPERATORS

Vessel operators should be aware that as of April 1, 1988:

- The up-front exemption from federal excise taxes will be repealed for diesel fuel purchased by fishery vessels.
- Diesel fuel used for vessels will continue to be nontaxable, but operators will be required to pay a 15.1 cents per gallon tax when purchasing fuel, then apply to the Treasury Department on a quarterly basis for a refund.

NFI is asking Congress to restore the up-front exemption for our industry. You are urged to contact your Senators and Representatives and urge them to sponsor legislation to permit tax-free sales of diesel fuel for fishery vessels.

BACKGROUND

A provision in the 1987 Budget Reconciliation Act passed in December requires federal excise taxes on diesel fuel to be collected at the wholesale level and repeals exempt sales beyond the wholesale level, except in four circumstances:

- diesel fuel sold for use as a fuel in a diesel-powered train;
- commercial aviation fuel;
- taxable fuel sold for industrial use other than as a motor fuel; and
- taxable fuel sold for use by a state or a political subdivision of a state.

These exemptions are not across-the-board; rather, they will have to be obtained on a case-by-case basis by each company.

(3)

All other current exemptions from the diesel fuels tax, including those for farmers, fishermen and other off-highway business use, have been eliminated. Instead, non-taxable uses will be taxed at time of purchase and refunds made pursuant to applications filed to document the non-taxable use. Although the regulations implementing this change have not been finalized, the Treasury Department indicates that they expect to use a quarterly refund process for amounts in excess of $1,000 which is similar to the existing refund process for non-taxable gasoline and diesel fuel uses. All refunds less than $1,000 per quarter will be handled annually.

The changes that were enacted had the objective of deterring tax-evasion schemes which are estimated to cost the Highway Trust Fund several hundred million dollars in lost revenues annually. However, the repeal of the exemption will place a heavy cash-flow burden on the seafood industry, which has legitimate tax exempt uses.

IMPACT

This law becomes effective April 1. The impact on fishery companies includes:

- added cost for fuel;
- additional recordkeeping and paperwork to enable recovery of funds through a yet-to-be established refund procedure; and
- loss of the time value of the funds paid for fuel tax (which may be substantial as federal officials are swamped in an avalanche of refund requests).

LEGISLATIVE ACTIVITY

Several bills have been introduced. Four would restore the exemption for farmers only. These are:

- H.R. 3850 sponsored by Congressman Jontz (D-IN)
- H.R. 3844 sponsored by Congressman Daub (R-NE)
- H.R. 3881 sponsored by Congresswoman Smith (R-NE)
- S. 2003 sponsored by Senator Gramm (R-TX)

Two bills would restore exemptions for all off-highway uses including vessel operations. These are:

- H.R. 3865 sponsored by Congressman Combest (R-TX)
- H.R. 3866 sponsored by Congressman De la Garza (D-TX)

The key committees which will consider this matter are:

SENATE FINANCE COMMITTEE

Lloyd Bentsen, Tex.,
Chairman
Spark M. Matsunaga, HI
Daniel P. Moynihan, N.Y.
Max Baucus, Mont.
David L. Boren, Okla.
Bill Bradley, N.J.
George J. Mitchell, ME
David Pryor, Ark.
Donald W. Riegle, Jr., Mich.
John D. Rockefeller IV, W.Va.
Thomas A. Daschle, S.D.

Bob Packwood, Ore.,
Ranking Minority Member
Robert Dole, Kan.
William V. Roth, Jr. Del.
John C. Danforth, Mo.
John H. Chafee, R.I.
John Heinz, Pa.
Malcolm Wallop, Wyo.
David Durenberger, Minn.
William L. Armstrong, Colo.

HOUSE WAYS AND MEANS COMMITTEE

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Thomas J. Downey, N.Y.
Frank J. Guarini, N.J.

Marty Russo, Ill.
Donald J. Pease, Ohio
Robert T. Matsui, CA.
Beryl F. Anthony, Jr. Ark.
Ronnie G. Flippo, Ala.
Byron L. Dorgan, N.D.
Barbara B. Kennelly, CT.
Brian Donnelly, Mass.
William J. Coyne, Pa.
Michael A. Andrews, TX.
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Jim Moody, Wis.

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Ranking Minority Member

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William M. Thomas, Calif.
Raymond J. McGrath, N.Y.
Hal Daub, Neb.
Judd Gregg, N.H.
Hank Brown, Colo.
Rod Chandler, Wash.

PETRO MARINE SERVICES

A HARBOR ENTERPRISES COMPANY

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Anchorage (907) 278-7588

Nikiski (907) 776-8000

Kodiak (907) 486-3421

Dutch Harbor (907) 581-1350

February 04, 1988

Senator Frank H. Murkowski
United States Senate
709 Hart Building
Washington, D.C.

Dear Senator Frank:

It has come to my attention that Congress passed a Mid-Distillates Fuel Tax Bill in the chaotic and waning hours of December 22, 1987 as a part of the overall U.S. Tax Reduction Act. A close examination of the provisions of the Act have raised serious concerns and accordingly I wish to bring them to your attention.

The Act states that a diesel fuel tax of $.151 per gallon is to be levied on "any liquid suitable for use as a fuel in a diesel highway vehicle or a diesel powered train (does not apply to fuel for home heating use)". The key word here is "suitable"--whether the product is used as such or not. The collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory on all sales. All tax free sales for certain exempt sales purposes are repealed. Wholesalers can buy diesel fuel for resale provided they are registered and have posted bonds as required by the Treasury.

Petro Marine Services is a marine-oriented fuel distributorship with a majority of our customers being fishing industry related. A recent review of our sales volumes reflect that less than one-percent of our total diesel fuel gallons are taxable highway and off-highway use fuel. Fronting this tax to the Treasury will significantly increase the cost of doing business for our customers by adversely affecting their cash flow and, of consequence, we dealers will be affected likewise. End-use consumers will not be able to apply for a refund of these taxes unless the amount of the tax withheld is over $1,000 in a quarter. Furthermore, consumers must wait until year end and apply the overpayment to their income tax return as stipulated in the Bill. The Treasury is not obligated to pay interest on the refunds; thus, the collected amounts are, in essence, interest-free loans to the government from marine fuel consumers, many of whom are struggling to derive a living from an uncertain and undercapitalized fishing industry.

In addition this tax will have a negative impact on domestic marine fuel suppliers as opposed to foreign bunkerers and processors many of whom import their fuel and sell to U.S. flag vessels on the high-seas and within our Exclusive Economic Zone (EEZ). With the $.151 per gallon Federal Excise Tax plus the $.05 per gallon State of Alaska Marine Fuel Tax, it will be economically impossible to compete against foreign flag operators. I am certain this was not the intent of Congress.

One of the provisions in the law states that "the Treasury has been given discretionary authority to exempt certain sales from tax where the purchaser satisfactorily demonstrates to the Treasury that the fuel will be consumed for use deemed non-taxable in nature, that these parties must also register and post bonds as required by the Treasury". Let me assure you bonding requirements will only impose a further financial hardship on fuel distributorships some of whom are already faced with problems securing basic insurance needs. If indeed, the end-user is included in this Clause, we alone have several hundred customers who would be required to register and post bond with the Treasury in order to be deemed tax-exempt. This stipulation will be very cumbersome and difficult for all affected to comply with. The law further reads that the Treasury is expected to exercise their authority on a "case by case" basis. Inasmuch as our taxable highway use diesel fuel customer base is miniscule as compared to our predominate marine base, it seems reasonable to assume that an overwhelming amount of time and effort will be consumed by the Treasury in rendering these assessments. Under the aforementioned circumstances it would seem that a blanket waiver would be a viable alternative for marine oriented fuel distributors such as ourselves.

Without question the Mid-Distillate Fuel Tax Bill in its present form represents ill-conceived legislation. As a company, Petro Marine Services has consistently supported reasonable regulation at all levels of government; however, this particular Bill serves only to finance and broaden Federal bureaucracy at the expense of fuel dealers and end-use consumers. In view of this fact I respectfully urge that immediate consideration be given to amending those provisions in the Bill which are not applicable to highway diesel fuel use.

Sincerely,

Dale R. Lindsey, President
HARBOR ENTERPRISES, INC.

DRL:tc

ALASKA FACTORY TRAWLER ASSOCIATION
4039 21ST AVE. WEST, SUITE 400
SEATTLE, WASHINGTON 98199
(206) 285-5139
TELEFAX 206-285-1841
TELEX 5106012568, ALASKA TRAWL SEA

The Honorable John Warner
United States Senator
421 Senate Russell Office Building
Washington, D.C. 20510

February 22, 1988

Dear Senator Warner:

The Alaska Factory Trawler Association (AFTA), the trade association which represents the factory trawler fleet operating in the North Pacific groundfish fishery, seeks your assistance in a matter of significant economic importance to us and to other segments of the fishing industry - establishing an up-front exemption for fishing vessels from the 15.1 cent per gallon federal highway excise tax on diesel fuels.

This federal excise tax, passed December 22, 1987, was designed to tax highway users. However, current exemptions from diesel fuel taxes for off-highway users, including fishing vessels, has been eliminated. Loss of this up-front exemption means that fishermen will be required to pay the tax up front, then apply for a refund on a quarterly basis. This needlessly increases the recordkeeping and paperwork for both the fishermen and the government, and costs the fishermen significantly due to the loss of the time value of the money deposited with the government.

While this is a problem for all fishermen, the problem becomes particularly acute for the factory trawler operators. These large American owned and operated vessels participate in high volume, low margin fisheries and must compete in the world market against foreign producers who enjoy lower operating costs. As illustrated in the attached fact sheet, factory trawler operators can expect to have between $22,500 and $67,950 awaiting rebate at any time. This amount increases if rebates aren't made in a prompt manner.

At a time when prices for our products have declined and other operating costs have increased, many operators cannot afford this additional drain to their cash flow.

One of the objectives of doing away with the exemption was to deter tax-evasion schemes, in which fuel which is ostensibly purchased for off-highway use is diverted to use in a highway vehicle. Such a scheme is only a remote possibility for an operator of a vessel fishing in the Gulf of Alaska or the Bering Sea, and a burden of the magnitude imposed by this law is unjustified. If deterring such schemes is the goal of Congress, a provision applying the exemption only to fuel pumped directly into the fishing vessel would be appropriate.

You can help with this issue by supporting a bill, such as the one enclosed, which amends the Internal Revenue Code by providing fishing vessels, fish processing vessels, and tender vessels an up-front exemption from this highway tax.

The members of AFTA would like to thank you for the assistance you have given us in the past, and hope that you will work with us to resolve the problem we are facing today.

Sincerely,

William R. Orr

William R. Orr
Director, Government Affairs

ALASKA FACTORY TRAWLER ASSOCIATION
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(206) 285-5130
TELEFAX 206-285-1841
TELEX 5105012558, ALASKA TRAWL SEA

2/88

FACTORY TRAWLER FUEL CONSUMPTION

An informal survey was conducted among factory trawler operators to determine fuel consumption patterns. The results, which are rough averages, are categorized into three categories: vessels less than 200 feet, vessels 200 - 250 feet, and vessels greater than 250 feet. The number of vessels include vessels which will enter the fishery this year.

Factory Trawlers less than 200 feet

Number of vessels:	16
Fuel carrying capacity:	75,000 - 100,000 gallons
Daily fuel consumption:	2000 gallons/day
Quarterly fuel consumption:	150,000 gallons
Quarterly tax @ $.151/gal :	$22,500

Factory Trawlers between 200 and 250 feet

Number of vessels:	14
Fuel carrying capacity:	150,000 gallons
Daily fuel consumption:	2600 gallons/day
Quarterly fuel consumption:	200,000 gallons
Quarterly tax @ $.151/gal :	$30,200

Factory Trawlers larger than 250 feet

Number of vessels:	10
Fuel carrying capacity:	200,000 to 325,000 gallons
Daily fuel consumption:	6000 gallons/day
Quarterly fuel consumption:	450,000 gallons
Quarterly tax @ $.151/gal :	$67,950

Nearly all of the fuel is taken at Alaskan ports. The average price of fuel (#2 diesel) purchased in Alaska is $.75/gallon. (A quarter is figured as 75 days of operation.)

MOEN

100TH CONGRESS
1st Session | HOUSE OF REPRESENTATIVES | REPORT
100-495

Fuel Tax Report Language.

OMNIBUS BUDGET RECONCILIATION ACT OF 1987

CONFERENCE REPORT

TO ACCOMPANY

H.R. 3545

DECEMBER 21, 1987.—Ordered to be printed

maximum reduction in estate taxes to $750,000, (5) imposes holding period requirements for the decedent and the ESOP, (6) prohibits the deduction in the case of securities acquired with assets transferred from another plan of the employer, and (7) imposes certain excise taxes on an ESOP or worker-owned cooperative for a failure to satisfy the allocation and holding period requirements.

The confirmation of the IRS Notice is effective as if included in the Tax Reform Act of 1986. The other provisions are effective with respect to sales of securities to ESOPs after February 26, 1987, except that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 26, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Senate amendment

The Senate amendment is the same as the House bill, except that the provisions (other than the confirmation of the IRS Notice) are effective with respect to sales of securities to ESOPs after February 27, 1987, and that the ESOP holding period requirement generally applies to dispositions of securities by the ESOP after February 27, 1987. Securities subject to the ESOP holding period requirement are qualified employer securities, which for this purpose includes employer securities sold before February 27, 1987, for which a deduction was allowed.

Conference agreement

The conference agreement follows the House bill.

V. Excise Taxes; User Fees

A. EXCISE TAXES

1. Telephone excise tax: 3-year extension

Present law

A 3-percent excise tax is imposed on amounts paid for local telephone service, toll (long-distance) telephone service, and teletypewriter exchange service. This tax is scheduled to expire after December 31, 1987.

House bill

The House bill extends the present 3-percent telephone excise tax for 3 years, through December 31, 1990.

Senate amendment

The Senate amendment is the same as the House bill.

Conference agreement

The conference agreement follows the House bill and the Senate amendment.

2. Collection of diesel fuel and c sales tc

Present law

The excise taxes on diesel fue line aviation fuel generally are fuel by a retail dealer to the u 4041). Under an exception, reta sale distributors collect and pay sold to the retailer.

House bill

The excise tax on taxable fue taxable special fuels, and nong posed on sale of the fuels to any

Taxable special fuels include oline or diesel fuel) that are sol cle or motorboat. Nongasoline which tax would be imposed if commercial aviation.

Collection of the excise tax wholesale dealers is made man of present law permitting tax poses are repealed.

Any taxable fuel that is held sale is subject to a floor stocks section to that fuel.

The provision is effective on

Senate amendment

The Senate amendment gene with the following differences.

The Treasury Department is for purposes of making refunds line fuels excise taxes. In add quire information reporting an the distribution chain of these vent evasion of the tax.

The Senate amendment also revenues raised by the floor Highway Trust Fund or the (LUST) Trust Fund.

The provision is effective on

Conference agreement

The conference agreement the Senate amendment, but the tax on special motor fuels level. In the case of the taxes tion fuels, tax technically is in a taxable fuel by the produce fined, however, to include wh mediate persons in the chain o persons who are producers of

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TAXES; USER FEES

CISE TAXES

se tax: 3-year extension

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2. Collection of diesel fuel and certain other motor fuels taxes on sales to retailers

Present law

The excise taxes on diesel fuel, special motor fuels, and nongasoline aviation fuel generally are imposed on the sale of the taxable fuel by a retail dealer to the ultimate consumer of the fuel (sec. 4041). Under an exception, retail dealers may elect to have wholesale distributors collect and pay the diesel fuel tax when the fuel is sold to the retailer.

House bill

The excise tax on taxable fuels, which are defined as diesel fuel, taxable special fuels, and nongasoline aviation fuels, is to be imposed on sale of the fuels to any taxable fuel retailer.

Taxable special fuels include special motor fuels (other than gasoline or diesel fuel) that are sold for use as a fuel in a motor vehicle or motorboat. Nongasoline aviation fuels means any liquid on which tax would be imposed if sold for use in an aircraft in noncommercial aviation.

Collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory for all sales. The provisions of present law permitting tax-free sales for certain exempt purposes are repealed.

Any taxable fuel that is held on January 1, 1988, by a dealer for sale is subject to a floor stocks tax at the rate applicable under this section to that fuel.

The provision is effective on January 1, 1988.

Senate amendment

The Senate amendment generally is the same as the House bill, with the following differences.

The Treasury Department is authorized to prescribe regulations for purposes of making refunds or allowing credits of the non-gasoline fuels excise taxes. In addition, Treasury is authorized to require information reporting and registration from such persons in the distribution chain of these fuels as is deemed necessary to prevent evasion of the tax.

The Senate amendment also requires that amounts equivalent to revenues raised by the floor stocks taxes be transferred to the Highway Trust Fund or the Leaking Underground Storage Tank (LUST) Trust Fund.

The provision is effective on January 1, 1988.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, but includes several modifications. First, the tax on special motor fuels continues to be imposed at the retail level. In the case of the taxes on diesel fuel and nongasoline aviation fuels, tax technically is imposed on the sale (or earlier use) of a taxable fuel by the producer thereof. The term producer is defined, however, to include wholesale distributors and other intermediate persons in the chain of distribution of the taxable fuel. All persons who are producers of a taxable fuel must register with the

Treasury Department and satisfy such bonding requirements as Treasury may prescribe. Therefore, a wholesale distributor may buy fuels without payment of tax only upon satisfaction of these requirements.

In general, like the House bill and Senate amendment, all provisions permitting exempt sales beyond the wholesale level are repealed. Treasury is, however, given discretionary authority to exempt from tax certain sales where the purchaser demonstrates to the satisfaction of Treasury that the fuel will be used in a nontaxable use and also registers and posts such bond as Treasury may require. This authority is to be exercised on a case-by-case basis. Sales that may be exempted include (1) diesel fuel sold for use as a fuel in a diesel-powered train, (2) aviation fuel sold for use as a fuel in an aircraft in commercial aviation, (3) taxable fuels sold for industrial use other than as a motor fuel, and (4) taxable fuel sold for exclusive use of any State, a political subdivision of a State, or the District of Columbia.[2] As under the House bill and the Senate amendment, sales of fuel that Treasury determines is destined for use as heating oil may be made without payment of tax. All other exemptions from these taxes must be realized through refund procedures following purchase of the fuels tax-paid.

The conference agreement grants Treasury broad authority to ensure compliance generally with the provisions of the agreement. Specifically, Treasury may, in its discretion, require information reporting by and registration of any person in the distribution chain of any taxable fuel (including, e.g., any distributor of fuel destined for use as heating oil).

These provisions of the conference agreement are effective on and after April 1, 1988, with a floor stocks tax being imposed as was provided under the House bill and the Senate amendment on all persons holding non-tax-paid fuels on April 1, 1988.

3. Extension of termination date for coal excise tax rate

Present law

A manufacturer's excise tax is imposed on the sale or use of domestically mined coal by the producer (sec. 4121). Effective April 1, 1986, the tax rate was increased (by 10 percent) to $1.10 per ton of coal from underground mines, and 55 cents per ton of coal from surface mines, but not to exceed 4.4 percent of the sales price.

Under present law, the tax rate is scheduled to revert to the pre-1982 rate of 50 cents per ton on underground coal and 25 cents per ton on surface coal (but not to exceed two percent of price) on the earlier of January 1, 1996 or the first January 1 as of which there is (1) no balance of repayable advances from the general fund to

[2] States and local governmental units eligible to apply to the Treasury for approval to buy fuels without payment of tax generally include those governmental units that are permitted to buy tax-free under present law (sec. 4221(a)(4)). The conferees are aware that repeal of automatic tax-free sales of these fuels to States and local governments may, in certain cases, result in a temporary additional cost on certain of these entities, but determined that general concerns about compliance with these taxes outweigh that possibility. The discretionary exemption included in the agreement reconciles these compliance concerns with any potential burden on States and local governments. The conferees intend that in determining which governmental units may purchase taxable fuels without payment of tax under the agreement, the Treasury Department is to attempt to minimize any such costs to the extent consistent with the increased compliance objectives of the conference agreement.

the Black Lung Disability Trust I
on such advances.

Amounts equal to the revenues
are appropriated automatically to
authorizes repayable advances fro
Fund. The Trust Fund pays certa
cases where no coal mine operato
for the individual miner's disease.

House bill

No provision.

Senate amendment

The Senate amendment extend
present-law coal excise tax rate fr
of (1) January 1, 2014 or (2) the d
vency (as defined under the pre
The extension of the terminatio
excise tax rate is effective from Ja
subject to earlier termination a
scribed above.

Conference agreement

The conference agreement follo

4. Highway excise tax exe

Present law

Receipts from excise taxes on m
in the Highway Trust Fund. Recei
finance expenditures which are
Trust Fund. Exemptions from th
several purchasers of fuels, inclu
buses and certain private school
501(cX3) organizations.

Private bus operators are exem
Intercity common carrier buses
exempt from the 9-cents-per-gallo
special motor fuels. Qualified loca
15-cents-per gallon diesel fuel ta
buses receive a 12-cents-per-gallon
per-gallon highway diesel fuel ta
buses engaged in transportation
along regular routes, unless the
least 20 adults (not including the d

House bill

The House bill repeals the mot
emptions for buses, including bus
tions. This repeal does not affect t
owned and operated mass transit

This provision is effective on Ja

used to acquire employer securities from transferred assets (within the meaning of section 2057(e)(2)(B)).

"(d) ORDERING RULES.—For purposes of this section and section 4978, any disposition of employer securities shall be treated as having been made in the following order:

"(1) First, from qualified employer securities acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(2) Second, from qualified employer securities acquired before such 3-year period unless such securities (or the proceeds from such disposition) have been allocated to accounts of participants or their beneficiaries.

"(3) Third, from qualified securities (within the meaning of section 4978(e)(2)) to which section 1042 applied acquired during the 3-year period ending on the date of such disposition, beginning with the securities first so acquired.

"(4) Finally, from any other employer securities. In the case of a disposition to which section 4978(d) or subsection (e) applies, the disposition of employer securities shall be treated as having been made in the opposite order of the preceding sentence.[1]

"(e) SECTION NOT TO APPLY TO CERTAIN DISPOSITIONS.—

"(1) IN GENERAL.—This section shall not apply to any disposition described in paragraph (1) or (3) of section 4978(d).

"(2) CERTAIN REORGANIZATIONS.—For purposes of this section, any exchange of qualified employer securities for employer securities of another corporation in any reorganization described in section 368(a)(1) shall not be treated as a disposition, but the employer securities which were received shall be treated—

"(A) as qualified employer securities of the plan or cooperative, and

"(B) as having been held by the plan or cooperative during the period the qualified employer securities were held.

"(3) DISPOSITION TO MEET DIVERSIFICATION REQUIREMENTS.—Any disposition which is made to meet the requirements of section 401(a)(28) shall not be treated as a disposition.

"(f) DEFINITIONS AND SPECIAL RULES.—For purposes of this section—

"(1) TERMS USED IN SECTION 2057.—Any term used in this section which is used in section 2057 shall have the meaning given such term by section 2057.

"(2) QUALIFIED EMPLOYER SECURITIES.—The term 'qualified employer securities' has the meaning given such term by section 2057, except that such term shall include employer securities sold before February 27, 1987, for which a deduction was allowed under section 2057.

"(3) DISPOSITION.—The term 'disposition' includes any distribution.

"(4) LIABILITY FOR PAYMENT OF TAXES.—The tax imposed by this section shall be paid by—

"(A) the employer, or

"(B) the eligible worker-owned cooperative,

which made the written statement described in section 2057(e)."

(b) CONFORMING AMENDMENTS.—

(1) Section 4978(b)(2) is amended by striking out the parenthetical and inserting in lieu thereof "(determined as if such securities were disposed of in the order described in section 4978A(e))".

(2) The table of sections for chapter 43 is amended by inserting after the item relating to section 4978 the following new item:

"Sec. 4978A. Tax on certain dispositions of employer securities to which section 2057 applied."

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable events (within the meaning of section 4978A(c) of the Internal Revenue Code of 1986) occurring after February 26, 1987.

Subtitle E—Provisions Relating to Excise Taxes and User Fees

PART 1—EXCISE TAXES

SEC. 1051. EXTENSION OF TELEPHONE EXCISE TAX.

Paragraph (2) of section 4251(b) (relating to applicable percentage) is amended to read as follows:

"(2) APPLICABLE PERCENTAGE.—The term 'applicable percentage' means 3 percent; except that, with respect to amounts paid pursuant to bills first rendered after 1990, the applicable percentage shall be zero."

SEC. 1052. DIESEL FUEL AND AVIATION FUEL TAXES IMPOSED AT WHOLESALE LEVEL.

(a) IN GENERAL.—Part III of subchapter A of chapter 32 is amended by inserting after subpart A the following new subpart:

"Subpart B—Diesel Fuel and Aviation Fuel

"Sec. 4091. Imposition of tax.
"Sec. 4092. Definitions.
"Sec. 4093. Exemptions; special rule.

"SEC. 4091. IMPOSITION OF TAX.

"(a) IN GENERAL.—There is hereby imposed a tax on the sale of any taxable fuel by the producer or the importer thereof or by any producer of a taxable fuel.

"(b) RATE OF TAX.—

"(1) IN GENERAL.—The rate of the tax imposed by subsection (a) shall be the sum of—

"(A)(i) the Highway Trust Fund financing rate in the case of diesel fuel, and

"(ii) the Airport and Airway Trust Fund financing rate in the case of aviation fuel, and

"(B) the Leaking Underground Storage Tank Trust Fund financing rate in the case of any taxable fuel.

"(2) HIGHWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), except as provided in subsection (c), the Highway Trust Fund financing rate is 15 cents per gallon.

"(3) AIRPORT AND AIRWAY TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Airport and Airway Trust Fund financing rate is 14 cents per gallon.

"(4) LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING RATE.—For purposes of paragraph (1), the Leaking Underground Storage Tank Trust Fund financing rate is 0.1 cent per gallon.

"(5) TERMINATION OF RATES.—

"(A) The Highway Trust Fund financing rate shall not apply on and after October 1, 1993.

"(B) The Airport and Airway Trust Fund financing rate shall not apply on and after January 1, 1988.

"(C) The Leaking Underground Storage Tank Trust Fund financing rate shall not apply during any period during which the Leaking Underground Storage Tank Trust Fund financing rate under section 4081 does not apply.

"(c) REDUCED RATE OF TAX FOR DIESEL FUEL IN ALCOHOL MIXTURE, ETC.—Under regulations prescribed by the Secretary—

"(1) IN GENERAL.—The Highway Trust Fund financing rate shall be—

"(A) 9 cents per gallon in the case of the sale of any mixture of diesel fuel if—

"(i) at least 10 percent of such mixture consists of alcohol (as defined in section 4081(c)(3)), and

"(ii) the diesel fuel in such mixture was not taxed under subparagraph (B), and

"(B) 10 cents per gallon in the case of the sale of diesel fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the diesel fuel from a mixture of the diesel fuel and alcohol on which tax was imposed under subsection (a) at a Highway Trust Fund financing rate equivalent to 9 cents a gallon by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(1)), such person shall be treated as the producer of such diesel fuel. The amount of tax imposed on any sale of such diesel fuel by such person shall be 5 cents per gallon.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"(d) EXEMPTION FROM TAX FOR AVIATION FUEL IN ALCOHOL MIXTURE, ETC.—

"(1) IN GENERAL.—The Airport and Airway Trust Fund financing rate shall not apply to the sale of—

"(A) any mixture of aviation fuel at least 10 percent of which consists of alcohol (as defined in section 4081(c)(3)), or

"(B) any aviation fuel for use (at the time of such sale) in producing a mixture described in subparagraph (A).

"(2) LATER SEPARATION.—If any person separates the aviation fuel from a mixture of the aviation fuel and alcohol on which the Airport and Airway Trust Fund financing rate did not apply by reason of this subsection (or with respect to which a credit or payment was allowed or made by reason of section 6427(f)(2)), such person shall be treated as the producer of such aviation fuel.

"(3) TERMINATION.—Paragraph (1) shall not apply to any sale after September 30, 1993.

"SEC. 4092. DEFINITIONS.

"(a) TAXABLE FUEL.—For purposes of this subpart—

"(1) IN GENERAL.—The term 'taxable fuel' means—

"(A) diesel fuel, and

"(B) aviation fuel.

"(2) DIESEL FUEL.—The term 'diesel fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train.

"(3) AVIATION FUEL.—The term 'aviation fuel' means any liquid (other than any product taxable under section 4081) which is suitable for use as a fuel in an aircraft.

"(b) PRODUCER.—For purposes of this subpart—

"(1) CERTAIN PERSONS TREATED AS PRODUCERS.—

"(A) IN GENERAL.—The term 'producer' includes any person described in subparagraph (B) who elects to register under section 4101 with respect to the tax imposed by section 4091.

"(B) PERSONS DESCRIBED.—A person is described in this subparagraph if such person is—

"(i) a refiner, compounder, blender, or wholesale distributor of a taxable fuel, or

"(ii) a dealer selling any taxable fuel exclusively to producers of such taxable fuel.

"(C) TAX-FREE PURCHASERS TREATED AS PRODUCERS.—Any person to whom any taxable fuel is sold tax-free under this subpart shall be treated as the producer of such fuel.

"(2) WHOLESALE DISTRIBUTOR.—For purposes of paragraph (1), the term 'wholesale distributor' includes any person who sells a taxable fuel to producers, retailers, or to users who purchase in bulk quantities and deliver into bulk storage tanks. Such term does not include any person who (excluding

[1] Indention wrong in copy on this sentence.

the term 'wholesale distributor' from paragraph (1)) is a producer or importer.

"SEC. 4092. EXEMPTIONS; SPECIAL RULE.

"(a) HEATING OIL.—The tax imposed by section 4091 shall not apply in the case of sales of any taxable fuel which the Secretary determines is destined for use as heating oil.

"(b) SALES TO PRODUCER.—Under regulations prescribed by the Secretary, the tax imposed by section 4091 shall not apply in the case of sales of a taxable fuel to a producer of such fuel.

"(c) AUTHORITY TO EXEMPT CERTAIN OTHER USES.—Subject to such terms and conditions as the Secretary may provide (including the application of section 4101), the Secretary may by regulation provide that—

"(1) the Highway Trust Fund financing rate under section 4091 shall not apply to diesel fuel sold for use by any purchaser as a fuel in a diesel-powered train,

"(2) the Airport and Airway Trust Fund financing rate under section 4091 shall not apply to aviation fuel sold for use by any purchaser as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4)),

"(3) the tax imposed by section 4091 shall not apply to taxable fuel sold for use by any purchaser other than as a motor fuel, and

"(4) the tax imposed by section 4091 shall not apply to taxable fuel sold for the exclusive use of any State, any political subdivision of a State, or the District of Columbia.

"(d) SPECIAL ADMINISTRATIVE RULES.—The Secretary may require—

"(1) information reporting by each remitter of the tax imposed by section 4091, and

"(2) information reporting by, and registration of, such other persons as the Secretary deems necessary to carry out this subpart.

"(e) CROSS REFERENCES.—

"(1) For imposition of tax where certain uses of diesel fuel or aviation fuel occur before imposition of tax by section 4091, see subsections (a)(1) and (c)(1) of section 4041.

"(2) For provisions allowing a credit or refund for fuel not used for certain taxable purposes, see section 6427."

(b) RETAIL DIESEL FUEL AND AVIATION FUEL TAXES TO BE RESIDUAL TAXES.—

(1) Paragraph (1) of section 4041(a) is amended—

(A) by striking out "DIESEL FUEL" in the heading and inserting in lieu thereof "TAX ON DIESEL FUEL WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(2) Paragraph (1) of section 4041(c) is amended—

(A) by striking out "IN GENERAL" in the heading and inserting in lieu thereof "TAX ON NONGASOLINE FUELS WHERE NO TAX IMPOSED ON FUEL UNDER SECTION 4091", and

(B) by adding at the end thereof the following new sentence:

"No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(3) Subsection (d) of section 4041 is amended by redesignating paragraph (3) as paragraph (4) and by striking out paragraphs (1) and (2) and inserting in lieu thereof the following:

"(1) TAX ON SALES AND USES SUBJECT TO TAX UNDER SUBSECTION (a).—In addition to the taxes imposed by subsection (a), there is hereby imposed a tax of 0.1 cent a gallon on the sale or use of any liquid (other than liquefied petroleum gas) if tax is imposed by subsection (a) on such sale or use.

"(2) TAX ON DIESEL FUEL USED IN TRAINS.—There is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than a product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of a diesel-powered train for use as a fuel in such train, or

"(B) used by any person as a fuel in a diesel-powered train unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091.

"(3) LIQUIDS USED IN AVIATION.—In addition to the taxes imposed by subsection (c), there is hereby imposed a tax of 0.1 cent a gallon on any liquid (other than any product taxable under section 4081)—

"(A) sold by any person to an owner, lessee, or other operator of an aircraft for use as a fuel in such aircraft, or

"(B) used by any person as a fuel in an aircraft unless there was a taxable sale of such liquid under subparagraph (A).

No tax shall be imposed by this paragraph on the sale or use of any liquid if there was a taxable sale of such liquid under section 4091."

(4) Subsection (n) of section 4041 is hereby repealed.

(c) AMENDMENTS RELATING TO CREDITS AND REFUNDS.—

(1) Section 6427 is amended by redesignating subsections (l) through (p) as subsections (m) through (q), respectively, and by inserting after subsection (k) the following new subsection:

"(l) NONTAXABLE USES OF DIESEL FUEL AND AVIATION FUEL TAXED UNDER SECTION 4091.—

"(1) IN GENERAL.—Except as provided in subsection (k) and in paragraph (3) of this subsection, if any fuel on which tax has been imposed by section 4091 is used by any person in a nontaxable use, the Secretary shall pay (without interest) to the ultimate purchaser of such fuel an amount equal to the aggregate amount of tax imposed on such fuel under section 4091.

"(2) NONTAXABLE USE.—For purposes of this subsection, the term 'nontaxable use' means, with respect to any fuel, any use of such fuel if such use is exempt from the taxes imp[illegible]d by subsections (a)(1) and (c)(1) [illegible]tion 4041 (other than by reason of [illegible] imposition of tax on any sale thereof).

"(3) NO REFUND OF LEAKING UNDERGROUND STORAGE TANK TRUST FUND FINANCING TAX.—Paragraph (1) shall not apply to so much of the tax imposed by section 4091 as is attributable to the Leaking Underground Storage Tank Trust Fund financing rate imposed by such section in the case of—

"(A) fuel used in a diesel-powered train, and

"(B) fuel used in any aircraft."

(2) Para[illegible]raph (1) of section 6427(b) is amended—

(A) by striking out "subsection (a) of section 4041" the first place it appears and inserting in lieu thereof "section 4041(a) or 4091", and

(B) by striking out "subsection (a) of section 4041" th[illegible]econd place it appears and inserting in l[illegible]reof "section 4041(a) or 4091, as th[illegible] be".

(3) Subp[illegible]B) of section 6427(e)(1) is amend[illegible]erting "or 4091" after "section 40[illegible]

(4) Subsection (f) of section 6427 is amended to read as follows:

"(f) GASOLINE, DIESEL FUEL, AND AVIATION FUEL USED TO [14] PRODUCE CERTAIN ALCOHOL FUELS.—Except as provided in subsection (k)—

"(1) GASOLINE AND DIESEL FUELS.—

"(A) IN GENERAL.—If any gasoline or diesel fuel on which tax was imposed by section 4081 or 4091 at the regular Highway Trust Fund financing rate is used by any person in producing a mixture described in section 4081(c) or in section 4091(c)(1)(A) (as the case may be) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the excess of the regular Highway Trust Fund financing rate over the incentive Highway Trust Fund financing rate with respect to such fuel.

"(B) DEFINITIONS.—For purposes of subparagraph (A)—

"(i) REGULAR HIGHWAY TRUST FUND FINANCING RATE.—The term 'regular Highway Trust Fund financing rate' means—

"(I) 9 cents per gallon in the case of gasoline, and

"(II) 15 cents per gallon in the case of diesel fuel.

"(ii) INCENTIVE HIGHWAY TRUST FUND FINANCING RATE.—The term 'incentive Highway Trust Fund Financing rate' means—

"(I) 3⅓ cents per gallon in the case of gasoline, and

"(II) 10 cents per gallon in the case of diesel fuel.

"(C) COORDINATION WITH OTHER REPAYMENT PROVISIONS.—No amount shall be payable under subparagraph (A) with respect to any gasoline or diesel fuel with respect to which an amount is payable under subsection (d), (e), or (l) of this section or under section 6420 or 6421.

"(2) AVIATION FUEL.—If any aviation fuel on which tax was imposed by section 4091 is used by any person in producing a mixture at least 10 percent of which is alcohol (as defined in section 4081(c)(3)) which is sold or used in such person's trade or business, the Secretary shall pay (without interest) to such person an amount equal to the aggregate amount of tax (attributable to the Airport and Airway Trust Fund financing rate) imposed on such fuel under section 4091.

"(3) TERMINATION.—Paragraphs (1) and (2) shall not apply with respect to any mixture sold or used after September 30, 1993."

(5)(A) Paragraph (1) of section 6427(i) is amended by striking out "or (h)" and inserting in lieu thereof "(h), or (l)".

(B) Clause (i) of section 6427(i)(2)(A) is amended by striking out "and (h)" and inserting in lieu thereof "(h), and (l)".

(6) Subsection (o) of section 6427 (as redesignated by paragraph (1)) is amended to read as follows:

"(o) TERMINATION OF CERTAIN PROVISIONS.—Except with respect to taxes imposed by section 4041(d) and sections 4081 and 4091 at the Leaking Underground Storage Tank Trust Fund financing rate, subsections (a), (b), (c), (d), (g), (h), and (l) shall only apply with respect to fuels purchased before October 1, 1993."

(d) OTHER CONFORMING AMENDMENTS.—

(1) Subsection (c) of section 40 is amended by striking out "or section 4081(c)" and inserting in lieu thereof ", section 4081(c), or section 4091(c)".

(2) Subparagraph (B) of section 4081(e)(2), as amended by section 1703 of the Tax Reform Act of 1986, is amended by striking out "net revenues" and all that follows and inserting in lieu thereof the following: "net revenues are at least $500,000,000 from taxes imposed by section 4041(d) and

[14] Copy read "To".

taxes attributable to Leaking Underground Storage Tank Trust Fund financing rate imposed under this section and sections 4042 and 4091."

(3) Subsection (a) of section 4101, as amended by section 1703 of the Tax Reform Act of 1986, is amended by inserting "or 4091" after "section 4081".

(4) Subsection (a) of section 4221 is amended by striking out "(other than" and all that follows through "sale by the manufacturer" and inserting in lieu thereof "(other than under section 4121, 4081, or 4091) on the sale by the manufacturer".

(5) Section 6206 is amended by striking out "or 4041" and inserting in lieu thereof "or 4041 or 4091".

(6) Paragraph (2) of section 6416(b) is amended—

(A) by striking out "(other than coal taxable under section 4121)", and

(B) by adding at the end thereof the following new sentence: "This paragraph shall not apply in the case of any tax paid under section 4091 or 4121."

(7) Subparagraph (A) of section 6416(b)(3) is amended by inserting "and other than any fuel taxable under section 4091" after "section 4081".

(8) Subparagraph (B) of section 6416(b)(3) is amended by striking out ", such gasoline" and inserting in lieu thereof "or any fuel taxable under section 4091, such gasoline or fuel".

(9) Subparagraph (C) of section 6421(e)(2) is hereby repealed.

(10) The subsection (j) of section 6421 relating to cross references is amended by striking out paragraph (1) and by redesignating paragraphs (2), (3), and (4), as paragraphs (1), (2), and (3), respectively.

(11) Section 6652 is amended by striking out the subsection (j) added by section 1702(b) of the Tax Reform Act of 1986 and by redesignating subsections (l) and (m) as subsections (k) and (l), respectively.

(12) Subsection (b) of section 9502 is amended by striking out "and" at the end of paragraph (2), by redesignating paragraph (3) as paragraph (4), and by inserting after paragraph (2) the following new paragraph:

"(3) amounts determined by the Secretary to be equivalent to the taxes received in the Treasury before January 1, 1988, under section 4091 (to the extent attributable to the Airport and Airway Trust Fund financing rate), and",

(13) Paragraph (1) of section 9503(b) is amended by striking out subparagraph (F) and inserting in lieu thereof the following:

"(F) section 4091 (relating to tax on diesel fuel), and".

(14) Paragraph (4) of section 9503(b) is amended to read as follows:

"(4) CERTAIN ADDITIONAL TAXES NOT TRANSFERRED TO HIGHWAY TRUST FUND.—For purposes of paragraphs (1) and (2)—

"(A) there shall not be taken into account the taxes imposed by sections 4041(d), and

"(B) there shall be taken into account the taxes imposed by sections 4081 and 4091 only to the extent attributable to the Highway Trust Fund financing rates under such sections."

(15) Paragraph (2) of section 9503(e) is amended—

(A) by striking out "sections 4041 and 4081" and inserting in lieu thereof "sections 4041, 4081, and 4091", and

(B) by striking out "section 4041 or 4081" and inserting in lieu thereof "section 4041, 4081, or 4091".

(16) Subsection (b) of section 9508 is amended by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) taxes received in the Treasury under section 4091 (relating to tax on diesel fuel and aviation fuel) to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such section,".

(17) Subparagraph (A) of section 9508(c)(2) is amended by striking out clause (ii) and all that follows and inserting in lieu thereof the following:

"(ii) credits allowed under section 34,

with respect to the taxes imposed by section 4041(d) or by sections 4081 and 4091 (to the extent attributable to the Leaking Underground Storage Trust Fund financing rate under such sections)."

(18) The table of subparts for part III of subchapter A of chapter 32 is amended by inserting after the item relating to subpart A the following new item:

"Subpart B. Diesel fuel and aviation fuel."

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to sales after March 31, 1988.

(f) FLOOR STOCKS TAX.—

(1) IMPOSITION OF TAX.—On any taxable fuel which on April 1, 1988, is held by a taxable person, there is hereby imposed a floor stocks tax at the rate of tax which would be imposed if such fuel were sold on such date in a sale subject to tax under section 4091 of the Internal Revenue Code of 1986 (as added by this section).

(2) OVERPAYMENT OF FLOOR STOCKS TAXES, ETC.—Sections 6416 and 6427 of such Code shall apply in respect of the floor stocks taxes imposed by this subsection so as to entitle, subject to all provisions of such sections, any person paying such floor stocks taxes to a credit or refund thereof for any reason specified in such sections. All provisions of law, including penalties, applicable with respect to the taxes imposed by section 4091 of such Code (as so added) shall apply to the floor stocks taxes imposed by this subsection.

(3) DUE DATE OF TAX.—The taxes imposed by this subsection shall be paid before June 16, 1988.

(4) DEFINITIONS.—For purposes of this subsection—

(A) TAXABLE FUEL.—

(i) IN GENERAL.—The term "taxable fuel" means any taxable fuel (as defined in section 4092 of such Code, as added by this section) on which no tax has been imposed under section 4041 of such Code.

(ii) EXCEPTION FOR FUEL HELD FOR NONTAXABLE USES.—The term "taxable fuel" [138] shall not include fuel held exclusively for any use which is a nontaxable use (as defined in section 6427(l) of such Code, as added by this section).

(B) TAXABLE PERSON.—The term "taxable person" means any person other than a producer (as defined in section 4092 of such Code, as so added) or importer of taxable fuel.

(C) HELD BY A TAXABLE PERSON.—An article shall be treated as held by a person if title thereto has passed to such person (whether or not delivery to such person has been made).

(5) SPECIAL RULE FOR FUEL HELD FOR USE IN TRAINS AND COMMERCIAL AIRCRAFT.—Only the Leaking Underground Storage Tank Trust Fund financing rate under section 4091 of such Code shall apply for purposes of this subsection with respect to—

(A) diesel fuel held exclusively for use as a fuel in a diesel-powered train, and

(B) aviation fuel held exclusively for use as a fuel in an aircraft not in noncommercial aviation (as defined in section 4041(c)(4) of such Code).

(6) TRANSFER OF FLOOR STOCK REVENUES TO TRUST FUNDS.—For purposes of determining the amount transferred to any trust fund, the tax imposed by this subsection shall be treated as imposed by section 4091 of such Code (as so added).

(g) COORDINATION WITH AIRPORT AND AIRWAY SAFETY AND CAPACITY EXPANSION ACT OF 1987.—If the Airport and Airway Safety and Capacity Expansion Act of 1987 is enacted, effective on December 31, 1987, sections 4091(b)(5)(B) and 9502(b)(3) of such Code (as added by this section) are each amended by striking out "January 1, 1988" and inserting in lieu thereof "January 1, 1991".[139]

SEC. 10511. EXTENSION OF TEMPORARY INCREASE IN AMOUNT OF TAX IMPOSED ON COAL PRODUCERS.

Subparagraph (A) of section 4121(e)(2) (relating to temporary increase termination date) is amended by striking out "January 1, 1996" and inserting in lieu thereof "January 1, 2014".

PART II—TAX-RELATED USER FEES

SEC. 10511. FEES FOR REQUESTS FOR RULING, DETERMINATION, AND SIMILAR LETTERS.

(a) GENERAL RULE.—The Secretary of the Treasury or his delegate (hereinafter in this section referred to as the "Secretary") shall establish a program requiring the payment of user fees for requests to the Internal Revenue Service for ruling letters, opinion letters, and determination letters and for similar requests.

(b) PROGRAM CRITERIA.—

(1) IN GENERAL.—The fees charged under the program required by subsection (a)—

(A) shall vary according to categories (or subcategories) established by the Secretary,

(B) shall be determined after taking into account the average time for (and difficulty of) complying with requests in each category (and subcategory), and

(C) shall be payable in advance.

(2) EXEMPTIONS, ETC.—The Secretary shall provide for such exemptions (and reduced fees) under such program as he determines to be appropriate.

(3) AVERAGE FEE REQUIREMENT.—The average fee charged under the program required by subsection (a) shall not be less than the amount determined under the following table:

Category	Average Fee
Employee plan ruling and opinion	$250
Exempt organization ruling	$350
Employee plan determination	$300
Exempt organization determination	$275
Chief counsel ruling	$200.

(c) APPLICATION OF SECTION.—Subsection (a) shall apply with respect to requests made on or after the 1st day of the second calendar month beginning after the date of the enactment of this Act and before September 30, 1990.

SEC. 10512. OCCUPATIONAL TAXES RELATING TO ALCOHOL, TOBACCO, AND FIREARMS.

(a) OCCUPATIONAL TAXES ON DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, BREWERIES, ETC.—

(1) DISTILLED SPIRITS PLANTS, BONDED WINE CELLARS, ETC.—

(A) IN GENERAL.—Part II of subchapter A of chapter 51 (relating to distilled spirits, wines, and beer) is amended by inserting before subpart B the following new subpart:

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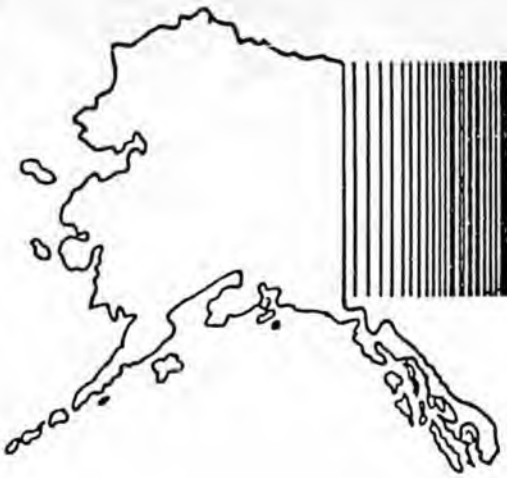
[138] Copy read "'taxable fuel'".

[139] Copy read "1991', and.".



NEWS

DON YOUNG CONGRESSMAN FOR ALL ALASKA

March 3, 1988
FOR IMMEDIATE RELEASE
CONTACT: Steve Hansen (202) 225-5765

CONGRESSMAN YOUNG CO-SPONSORS BILL TO STOP UP-FRONT DIESEL FUEL EXCISE TAX PAYMENTS

WASHINGTON, D.C. - Alaska Congressman Don Young is supporting legislation to put a stop to "the needless up-front diesel tax payments now required by the federal government."

Young is a co-sponsor of H.R. 3865, which will reverse the up-front payments required under last year's budget reconciliation act.

"The current law requires that wholesalers rather than retailers collect the excise tax on off-highway diesel users," Young said. "Because of this, the off-road diesel users have to pay the excise tax up-front and then apply for a refund at the end of the year. This is wrong and adds an unnecessary financial burden on Alaska's diesel users.

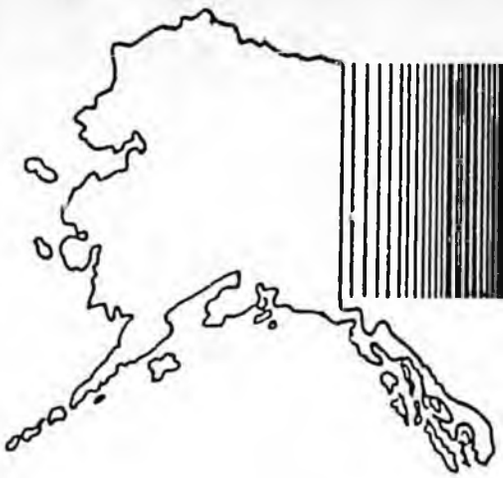
"By rescinding this law, we'll get rid of the needless bureaucratic red tape and paperwork now required of Alaska's industries and small businessmen."

Young added that the new bill would restore the exemption that off-highway users presently have without any ultimate reduction in the amount of diesel fuel excise tax collected by the government.

"This new legislation will help solve the problem for Alaska's agricultural, timber, maritime and fishing industries and all other users of diesel fuel. In addition, oil field refineries and their suppliers will benefit," Young added.

"This is good legislation for Alaska and I'm confident that we'll be successful in getting this passed by Congress and signed by the President."

# # # #



NEWS

DON YOUNG CONGRESSMAN FOR ALL ALASKA

March 3, 1988
FOR IMMEDIATE RELEASE
CONTACT: Steve Hansen (202) 225-5765

CONGRESSMAN YOUNG INTRODUCES SPORT FISHING, BOAT SAFETY BILL

WASHINGTON, D.C. - Alaska Congressman Don Young and four other members of the Merchant Marine and Fisheries Committee have introduced legislation to provide funds for recreational boat safety programs and sport fishing restoration.

Young also serves as Vice Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment, which will consider the reauthorization bill.

"For the past several years, our nation's boaters and anglers have contributed to programs through excise taxes imposed on motorboat fuel and sport fishing equipment," Young said. "This bill will ensure that those funds continue to be used for the purposes intended by Congress - to provide for the enhancement of sport fishing programs and boating safety programs.

"Alaska has been a major beneficiary of the sport fish restoration funds, having received over $7 million in Fiscal Year 1987 - the most of all 50 states," Young added. "Alaska would receive additional funding if the state were to participate in the boating safety program, as is now being considered by the state legislature."

The other sponsors of H.R. 3918 are Congressmen Walter Jones (D-N.C.), Robert Davis (R-Mich.), Earl Hutto (D-Fla.), and Mario Biaggi (D-N.Y.).

# # # #

Dis. put in Stocky's HJR 68 file Thx

DIESEL FUEL TAX

Jim Ramaglia called. The feds passed December 22nd a 15 cent tax on every gallon of diesel fuel sold... under Omnibus Budget Reconciliation. Means fishermen will have to pay 15 cents on every gallon (S of Ak, C of Kodiak, etc. included also) of fuel they purchase. Case by case exemptions apply.

Ramaglia is going to send what hard copy he has. [redacted], make phone calls, whatever we can do to help get rid of it or delay it for 6 months.

S

Carol Lindsay —
224-3190

RECEIVED FEB 16 1988

2-16-88
DATE

TO: Rep CLIFF Davidson 465-2487 Attn. Stephanie Love

FROM: Jim Ramaglia

NUMBER OF PAGES (INCLUDING COVER SHEET): 9

THIS IS BEING SENT BY THE
LEGISLATIVE INFORMATION OFFICE,
KODIAK, ALASKA

Please note that we have a Rapicom 200 Auto-Telecopier. This machine transmits pages up to 8½ X 14 inches. Our telecopier direct line is (907) 486-5264.

PLEASE TELEPHONE (907) 486-8116 IF ANY PAGES
ARE MISSING OR ILLEGIBLE.

BILLING
NUMBER:

As of April 1, 1988 the Federal Goverment is changing the way they collect the .15 per gallon Federal Excise Tax on diesel fuel. In the past uses of diesel fuel for Fishing, Marine Transportation, Farming, State Govt. and Local Govt. were considered exempt from Federal Tax so you did not have to pay the tax.

But the U.S. Congress has changed the rules of the game. The new rules are real simple. EVERYBODY PAYS THE TAX at the time of purchase. Then if you are a tax exempt user you can apply for a refund.

THE REFUND PROCESS:
Fishing, Marine Transportation etc. will be considered tax exempt users so they will be elligable for a refund. Simpy stated, the rules for a refund are as follows:
1) If you pay more than $1,000 tax in one calender quarter you can apply for a refund at the end of the quarter. (This is the tax on aprox 6700 gallons)
2) If you pay less than $1,000 in a quarter you must wait till the end of the year to apply.
3) You can't include 2 quarters together to come up with the $1,000 and appy before the end of the year.

Some of the still unresolved questions are; How in fact you prove you are tax exempt and how long do you have to wait to recieve your refund. Remember you are "standing in line with 52 state governments, 80,000 City Governments, and who can guess how many other Farmers, Fishermen and other tax exempt users around the United States.

All this adds up to increased costs and maybe the ability to stay in business in lean times or developing fisheries.

SO WHAT CAN YOU DO ABOUT IT?
The IRS says the law has been laid down by Congress and all they do is enforce it. To change things Congress has to change the law. You need to let our represenatives in Washington D.C. know how you feel. The more people that contact them the better.

WHAT DO YOU WRITE YOUR REPRESENTITIVES?
Fishing Organizations, Goverments, Farming Groups etc. will cover in detail what the problems caused by the tax are. So a few simple hand written words from you will carry a lot of weight, you don't need to write a big long letter.

In general a Senator or Congressman equates 1 handwritten letter

to 400 person concerned with an issue. This rule may not carry that much weight in Alaska, but your personal comments are more important than just signing a petition or having your fishing Association do all the work. When you write these people they will answer your letters.

WHERE DO YOU WRITE?
Here are the mailing address.

SENATOR TED STEVENS
522 HART BUILDING
WASHINGTON D.C. 20510

CONGRESSMAN DON YOUNG
2331 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON D.C. 20515

SENATOR FRANK MURKOWSKI
709 HART BUILDING
WASHINGTON D.C. 20510

PMAA

Legislative ALERT

PETROLEUM MARKETERS ASSOCIATION OF AMERICA
1120 Vermont Ave., NW • Washington, DC 20005
(202) 331-1198

FEDERAL GASOLINE & DIESEL FUEL EXCISE TAX INFO. JG.

*IMMEDIATE ACTION REQUIRED

February 2, 1988

Dear Fellow Marketer:

One of PMAA's top priorities over the last two years has been to clean up some of the mess created by Congress and the IRS when they changed the excise tax collection procedure on gasoline. We thought we had made major progress in this regard last October when the House of Representatives adopted the so-called "Pickle Amendment" which would have allowed marketers to continue to remit the federal gasoline excise tax directly to the IRS based on the marketer's purchases at the wholesale rack.

Unfortunately, the Pickle Amendment and numerous other provisions included in the House bill were victims of the White House-Congressional budget negotiations which included an agreement that only provisions which increase revenue to the federal government would be contained in the final package.

Since that time the situation has gotten worse, not better. IRS has issued proposed regulations which confuse considerably the gasoline excise tax collection process, particularly as it regards payment of the tax on gasohol. In addition, a provision which Congress overlooked in enacting the gasoline collection change has now been discovered which will allow state and local governments, at the marketer's option, to purchase gasoline tax exempt. This provision, of course, gives our refiner-suppliers a considerable competitive advantage in serving those accounts. Finally, [redacted] Under this provision, farmers and other traditional off-road users will now be required to pay the tax and apply for a refund or tax credit.

At PMAA's recently completed Winter Board of Directors Meeting and Washington Legislative Rally, there was an extremely high level of Congressional concern. What started 18 months ago as a marketer problem, has now become a major issue for farmers, highway contractors, state and local governments, gasohol blenders and ethanol manufacturers.

This increased interest in the issue provides PMAA with an opportunity to obtain substantive changes in the collection process, but we need your help. You need to write your Congressman and Senators to alert them to the problems you face with the new collection process for gasoline and diesel fuel and urge immediate Congressional action on these problems. Secondly, you should write each of your affected customers a letter explaining the changes in the law and urging that they also write their federal legislators seeking changes.

SAMPLE LETTER TO FARMERS AND
OTHER OFF-ROAD DIESEL PURCHASERS

Dear (Farmer, Contractor etc.):

As a valued customer, I must advise you of a change in the diesel fuel excise tax collection procedure included as part of the Omnibus Budget Reconciliation Act (P.L. 100 - 203). In the past you have been able to purchase diesel fuel from me for off road use without paying the 15.1 cent per gallon tax. However, under the provision of this new law, effective April 1, 1988, you will be required to pay me the full amount of the tax and either apply later to the IRS for a refund or take a credit on your income tax return. Home heating oil is exempt from the tax.

The precise mechanism for obtaining your refund is unclear at this point. The IRS has said they will issue proposed regulations in late February which, among other things, will clarify the refund procedure. One procedure IRS may follow is to create a refund mechanism similar to that which some farmers now use who buy gasoline tax paid. This mechanism allows farmers to take a refund or credit for those gallons used for off-highway use. Once this refund mechanism is announced, I will advise you how to take advantage of it.

I recognize this dosen't make much sense, but when has Washington ever done anything that did? I would recommend, in response to this, you do two things: First, let our Congressmen and Senators in Washington know how outraged you are by this action. Tell him or her how many dollars this means to you in a year (15.1 cents x the number of gallons of diesel fuel used for off-road use) and ask why the IRS should be allowed to hold your tax dollars for their use. Remember, this provision is effective April 1 so it is necessary you let both U.S. Senators and Congressman_____ know your views. My trade association in Washington, the Petroleum Marketers Association of America (PMAA), is working to change this law but they will only be able to do so if federal legislators hear from people directly affected by this change.

Secondly, in anticipation of the change, you may wish to stock up on diesel fuel prior to April 1. The law authorizes IRS to collect a floor stocks tax on all taxable gallons in inventory as of April 1, but it also allows IRS to exempt from that tax any gallons in inventory which will be for off-road use and thus not subject to the tax.

Again, thank you for allowing us to serve you and, hopefully, by working together we will get this situation changed.

Sincerely,

_____
Marketers Name

FEB 16 '88 17:10 LEG. AFFAIRS - KODIAK

224-3140 pm

IRS

Frank Boland 202-566-3410 / Bill Jackson 202-566-3287

over $1,000 Apply that quarter
under $1000 Apply end of year
on a quarter By Quata Basis

IRS
Lauren Shaw
Room 4116
111 Constitution Ave
Wash DC. 20224

Letter on concerns as a
MTr Fuel Dealer that requirements
No.T include Bonding Etc

Don Youngs
Steve Boldorjack 202-225-576
Stevens 224-3004
Young 225-5765
Murkowski 224-6665
Chuck Konigsba

MON., FEBRUARY 1, 1988

TO: LEGISLATIVE INFORMATION CENTER, KODIAK, ALASKA
FROM: LAUREN BROWN, OFFICE OF SENATOR TED STEVENS, WASHINGTON, D.C. 202/224-1046

SEVEN PAGES FOLLOW. THEY'RE FOR MR. JIM RAMAGLIA (907/486-3245). HE'S BEEN NOTIFIED AND SHOULD BE IN TO PICK UP THIS INFORMATION SOMETIME TODAY.

THANK YOU.

2. Collection of diesel fuel and certain other motor fuels taxes on sales to retailers

Present law

The excise taxes on diesel fuel, special motor fuels, and nongasoline aviation fuel generally are imposed on the sale of the taxable fuel by a retail dealer to the ultimate consumer of the fuel (sec. 4041). Under an exception, retail dealers may elect to have wholesale distributors collect and pay the diesel fuel tax when the fuel is sold to the retailer.

House bill

The excise tax on taxable fuels, which are defined as diesel fuel, taxable special fuels, and nongasoline aviation fuels, is to be imposed on sale of the fuels to any taxable fuel retailer.

Taxable special fuels include special motor fuels (other than gasoline or diesel fuel) that are sold for use as a fuel in a motor vehicle or motorboat. Nongasoline aviation fuels means any liquid on which tax would be imposed if sold for use in an aircraft in noncommercial aviation.

Collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory for all sales. The provisions of present law permitting tax-free sales for certain exempt purposes are repealed.

Any taxable fuel that is held on January 1, 1988, by a dealer for sale is subject to a floor stocks tax at the rate applicable under this section to that fuel.

The provision is effective on January 1, 1988.

Senate amendment

The Senate amendment generally is the same as the House bill, with the following differences.

The Treasury Department is authorized to prescribe regulations for purposes of making refunds or allowing credits of the non-gasoline fuels excise taxes. In addition, Treasury is authorized to require information reporting and registration from such persons in the distribution chain of these fuels as is deemed necessary to prevent evasion of the tax.

The Senate amendment also requires that amounts equivalent to revenues raised by the floor stocks taxes be transferred to the Highway Trust Fund or the Leaking Underground Storage Tank (LUST) Trust Fund.

The provision is effective on January 1, 1988.

Conference agreement

The conference agreement generally follows the House bill and the Senate amendment, but includes several modifications. First, the tax on special motor fuels continues to be imposed at the retail level. In the case of the taxes on diesel fuel and nongasoline aviation fuels, tax technically is imposed on the sale (or earlier use) of a taxable fuel by the producer thereof. The term producer is defined, however, to include wholesale distributors and other intermediate persons in the chain of distribution of the taxable fuel. All persons who are producers of a taxable fuel must register with the

Treasury Department and satisfy such bonding requirements as Treasury may prescribe. Therefore, a wholesale distributor may buy fuels without payment of tax only upon satisfaction of these requirements.

In general, like the House bill and Senate amendment, all provisions permitting exempt sales beyond the wholesale level are repealed. Treasury is, however, given discretionary authority to exempt from tax certain sales where the purchaser demonstrates to the satisfaction of Treasury that the fuel will be used in a nontaxable use and also registers and posts such bond as Treasury may require. This authority is to be exercised on a case-by-case basis. Sales that may be exempted include (1) diesel fuel sold for use as a fuel in a diesel-powered train, (2) aviation fuel sold for use as a fuel in an aircraft in commercial aviation, (3) taxable fuels sold for industrial use other than as a motor fuel, and (4) taxable fuel sold for exclusive use of any State, a political subdivision of a State, or the District of Columbia.[1] As under the House bill and the Senate amendment, sales of fuel that Treasury determines is destined for use as heating oil may be made without payment of tax. All other exemptions from these taxes must be realized through refund procedures following purchase of the fuels tax-paid.

The conference agreement grants Treasury broad authority to ensure compliance generally with the provisions of the agreement. Specifically, Treasury may, in its discretion, require information reporting by and registration of any person in the distribution chain of any taxable fuel (including, e.g., any distributor of fuel destined for use as heating oil).

These provisions of the conference agreement are effective on and after April 1, 1988, with a floor stocks tax being imposed, as was provided under the House bill and the Senate amendment on all persons holding non-tax-paid fuels on April 1, 1988.

8. Extension of termination date for coal excise tax rate

Present law

A manufacturer's excise tax is imposed on the sale or use of domestically mined coal by the producer (sec. 4121). Effective April 1, 1986, the tax rate was increased (by 10 percent) to $1.10 per ton of coal from underground mines, and 55 cents per ton of coal from surface mines, but not to exceed 4.4 percent of the sales price.

Under present law, the tax rate is scheduled to revert to the pre-1982 rate of 50 cents per ton on underground coal and 25 cents per ton on surface coal (but not to exceed two percent of price) on the earlier of January 1, 1996 or the first January 1 as of which there is (1) no balance of repayable advances from the general fund to

---

[1] States and local governmental units eligible to apply to the Treasury for approval to buy fuels without payment of tax generally include those governmental units that are permitted to buy tax-free under present law (sec. 4221(a)(4)). The conferees are aware that repeal of nonexcise tax-free sales of these fuels to States and local governments may, in certain cases, result in a temporary additional cost on certain of these entities, but determined that general concern about compliance with these taxes outweigh that possibility. The discretionary exemption included in the agreement reconciles these compliance concerns with any potential burden on States and local governments. The conferees intend that in determining which governmental units may purchase taxable fuels without payment of tax under the agreement, the Treasury Department is to attempt to minimize any such costs to the extent consistent with the increased compliance objectives of the conference agreement.

PETRO MARINE SERVICES

A HARBOR ENTERPRISES COMPANY

P.O. Box 389 • Seward, Alaska 99664 • (907) 224-3190

Anchorage (907) 278-7586

Nikiski (907) 776-8000

Kodiak (907) 486-3421

Dutch Harbor (907) 581-1350

February 04, 1988

Senator Frank H. Murkowski
United States Senate
709 Hart Building
Washington, D.C.

Dear Senator Frank:

It has come to my attention that Congress passed a Mid-Distillates Fuel Tax Bill in the chaotic and waning hours of December 22, 1987 as a part of the overall U.S. Tax Reduction Act. A close examination of the provisions of the Act have raised serious concerns and accordingly I wish to bring them to your attention.

The Act states that a diesel fuel tax of $.151 per gallon is to be levied on "any liquid suitable for use as a fuel in a diesel highway vehicle or a diesel powered train (does not apply to fuel for home heating use)". The key word here is "suitable"--whether the product is used as such or not. The collection of the excise tax on the sale of any taxable fuel by wholesale dealers is made mandatory on all sales. All tax free sales for certain exempt sales purposes are repealed. Wholesalers can buy diesel fuel for resale provided they are registered and have posted bonds as required by the Treasury.

Petro Marine Services is a marine-oriented fuel distributorship with a majority of our customers being fishing industry related. A recent review of our sales volumes reflect that less than one-percent of our total diesel fuel gallons are taxable highway and off-highway use fuel. Fronting this tax to the Treasury will significantly increase the cost of doing business for our customers by adversely affecting their cash flow and, of consequence, we dealers will be affected likewise. End-use consumers will not be able to apply for a refund of these taxes unless the amount of the tax withheld is over $1,000 in a quarter. Furthermore, consumers must wait until year end and apply the overpayment to their income tax return as stipulated in the Bill. The Treasury is not obligated to pay interest on the refunds; thus, the collected amounts are, in essence, interest-free loans to the government from marine fuel consumers, many of whom are struggling to derive a living from an uncertain and undercapitalized fishing industry.

In addition this tax will have a negative impact on domestic marine fuel suppliers as opposed to foreign bunkerers and processors many of whom import their fuel and sell to U.S. flag vessels on the high-seas and within our Exclusive Economic Zone (EEZ). With the $.151 per gallon Federal Excise Tax plus the $.05 per gallon State of Alaska Marine Fuel Tax, it will be economically impossible to compete against foreign flag operators. I am certain this was not the intent of Congress.

One of the provisions in the law states that "the Treasury has been given discretionary authority to exempt certain sales from tax where the purchaser satisfactorily demonstrates to the Treasury that the fuel will be consumed for use deemed non-taxable in nature, that these parties must also register and post bonds as required by the Treasury". Let me assure you bonding requirements will only impose a further financial hardship on fuel distributorships some of whom are already faced with problems securing basic insurance needs. If indeed, the end-user is included in this Clause, we alone have several hundred customers who would be required to register and post bond with the Treasury in order to be deemed tax-exempt. This stipulation will be very cumbersome and difficult for all affected to comply with. The law further reads that the Treasury is expected to exercise their authority on a "case by case" basis. Inasmuch as our taxable highway use diesel fuel customer base is miniscule as compared to our predominate marine base, it seems reasonable to assume that an overwhelming amount of time and effort will be consumed by the Treasury in rendering these assessments. Under the aforementioned circumstances it would seem that a blanket waiver would be a viable alternative for marine oriented fuel distributors such as ourselves.

Without question the Mid-Distillate Fuel Tax Bill in its present form represents ill-conceived legislation. As a company, Petro Marine Services has consistently supported reasonable regulation at all levels of government; however, this particular Bill serves only to finance and broaden Federal bureaucracy at the expense of fuel dealers and end-use consumers. In view of this fact I respectfully urge that immediate consideration be given to amending those provisions in the Bill which are not applicable to highway diesel fuel use.

Sincerely,

Dale R. Lindsey, President
HARBOR ENTERPRISES, INC.

DRL:tc

2/18/88
DATE

TO: Rep. Cliff Davidson

FROM: Jim Ramaglia

NUMBER OF PAGES (INCLUDING COVER SHEET): 5

THIS IS BEING SENT BY THE
LEGISLATIVE INFORMATION OFFICE,
KODIAK, ALASKA

Please note that we have a Rapicom 200 Auto-Telecopier. This machine transmits pages up to 8½ X 14 inches. Our telecopier direct line is (907) 486-5264.

PLEASE TELEPHONE (907) 486-8116 IF ANY PAGES
ARE MISSING OR ILLEGIBLE.

BILLING
NUMBER:

2-18-88

Cliff:
Here are some ideas for a resolution, please excuse the spelling and grammer. I appreciate you getting this done it's very important to the economy of Kodiak aand Coastal Alaska, the whole state for that matter.
Jim Ramaglia
486-3245 (work)
486-4247 (home)

RESOLUTION OF THE ALASKA STATE LEGISLATURE REGUARDING THE IMPOSITION OF THE FEDERAL EXCISE TAX ON DIESEL FUEL FOR TAX EXEMPT USERS

POSSIBLE WHEREAS'S

*Diesel fuel is vital to industry in Alaska.

*Much if not all of the Diesel Fuel Used for; Commerical Fishing, Marine Transportation, Timber, Minning, farming, ranching, Rural Electrical Generation, State Govt. and Local govt.. Is used for "off road" uses and therefore is tax exempt.

*All the diesel used for Commerical Fishing and Marine Transportation is Tax Exempt.

*Much of the employment in Alaska depends on these industrys.

*The added expense of this tax will stiefel new growth in Fisheries such as groundfish, and make fishing in poor years unprofitable.

*Many of the Commerical Fishing, Minning, Timber, Farming, and ranching operations in the State are small underfiananced ventures operating on very slim profit margins the added expense of this tax will cause business failures.

*The cost of living and doing business in Alaska are much higher than the rest of the United States. The added expense of this tax will be extremely burdensome.

*Many necessary business expences will have to be delayed so the governemt can collect its tax. These include maintenance of equipment, replacement of worn out equipment.

* Maintence and replacement survival equipment on fishing vessels, may have to be delayed so the vessel operator can pay the excise tax on a fuel use which is "tax exempt". (there may be a better way to state this.

Possible now therfore be it resolved:
The Alaska State Legislature asks that the U.S. Congress and Senate restore the "UP FRONT" exemption from Diesel Fuel Tax for tax exempt uses such as: Commerical Fishing, Marine Transportation, Farming, Ranching, Mining, Timber industry, and other Tax exempt uses.

(2)

NATIONAL FISHERIES INSTITUTE, INC.

2000 M STREET, N.W., STE. 580 ■ WASHINGTON, D.C. 20036 ■ (202) 296-5090

February 12, 1988

TAX ALERT

ACTION REQUESTED

NFI VESSEL OPERATORS

Vessel operators should be aware that as of April 1, 1988:

- The up-front exemption from federal excise taxes will be repealed for diesel fuel purchased by fishery vessels.
- Diesel fuel used for vessels will continue to be nontaxable, but operators will be required to pay a 15.1 cents per gallon tax when purchasing fuel, then apply to the Treasury Department on a quarterly basis for a refund.

NFI is asking Congress to restore the up-front exemption for our industry. You are urged to contact your Senators and Representatives and urge them to sponsor legislation to permit tax-free sales of diesel fuel for fishery vessels.

BACKGROUND

A provision in the 1987 Budget Reconciliation Act passed in December requires federal excise taxes on diesel fuel to be collected at the wholesale level and repeals exempt sales beyond the wholesale level, except in four circumstances:

- diesel fuel sold for use as a fuel in a diesel-powered train;
- commercial aviation fuel;
- taxable fuel sold for industrial use other than as a motor fuel; and
- taxable fuel sold for use by a state or a political subdivision of a state.

These exemptions are not across-the-board; rather, they will have to be obtained on a case-by-case basis by each company.

(3)

All other current exemptions from the diesel fuels tax, including those for farmers, fishermen and other off-highway business use, have been eliminated. Instead, non-taxable uses will be taxed at time of purchase and refunds made pursuant to applications filed to document the non-taxable use. Although the regulations implementing this change have not been finalized, the Treasury Department indicates that they expect to use a quarterly refund process for amounts in excess of $1,000 which is similar to the existing refund process for non-taxable gasoline and diesel fuel uses. All refunds less than $1,000 per quarter will be handled annually.

The changes that were enacted had the objective of deterring tax-evasion schemes which are estimated to cost the Highway Trust Fund several hundred million dollars in lost revenues annually. However, the repeal of the exemption will place a heavy cash-flow burden on the seafood industry, which has legitimate tax exempt uses.

IMPACT

This law becomes effective April 1. The impact on fishery companies includes:

- added cost for fuel;
- additional recordkeeping and paperwork to enable recovery of funds through a yet-to-be established refund procedure; and
- loss of the time value of the funds paid for fuel tax (which may be substantial as federal officials are swamped in an avalanche of refund requests).

LEGISLATIVE ACTIVITY

Several bills have been introduced. Four would restore the exemption for farmers only. These are:

- H.R. 3850 sponsored by Congressman Jontz (D-IN)
- H.R. 3844 sponsored by Congressman Daub (R-NE)
- H.R. 3881 sponsored by Congresswoman Smith (R-NE)
- S. 2003 sponsored by Senator Gramm (R-TX)

Two bills would restore exemptions for all off-highway uses including vessel operations. These are:

- H.R. 3865 sponsored by Congressman Combest (R-TX)
- H.R. 3866 sponsored by Congressman De la Garza (D-TX)

The key committees which will consider this matter are:

SENATE FINANCE COMMITTEE

Lloyd Bentsen, Tex.,
Chairman
Spark M. Matsunaga, HI
Daniel P. Moynihan, N.Y.
Max Baucus, Mont.
David L. Boren, Okla.
Bill Bradley, N.J.
George J. Mitchell, ME
David Pryor, Ark.
Donald W. Riegle, Jr., Mich.
John D. Rockefeller IV, W.Va.
Thomas A. Daschle, S.D.

Bob Packwood, Ore.,
Ranking Minority Member
Robert Dole, Kan.
William V. Roth, Jr. Del.
John C. Danforth, Mo.
John H. Chafee, R.I.
John Heinz, Pa.
Malcolm Wallop, Wyo.
David Durenberger, Minn.
William L. Armstrong, Colo.

HOUSE WAYS AND MEANS COMMITTEE

MAJORITY MEMBERS

Dan Rostenkowski, Ill.
Chairman
Sam M. Gibbons, Fla.
J.J. Pickle, TX
Charles B. Rangel, NY
Fortney H. (Pete) Stark, CA
Andrew Jacobs, Jr., Ind.
Harold E. Ford, Tenn.
Ed Jenkins, Ga.
Richard A. Gephardt, Mo.
Thomas J. Downey, N.Y.
Frank J. Guarini, N.J.

Marty Russo, Ill.
Donald J. Pease, Ohio
Robert T. Matsui, CA.
Beryl F. Anthony, Jr. Ark.
Ronnie G. Flippo, Ala.
Byron L. Dorgan, N.D.
Barbara B. Kennelly, CT.
Brian Donnelly, Mass.
William J. Coyne, Pa.
Michael A. Andrews, TX.
Sander M. Levin, Mich.
Jim Moody, Wis.

MINORITY MEMBERS

John J. Duncan, Tenn,
Ranking Minority Member

Bill Archer, Tex.
Guy Vander Jagt, Mich
Philip M. Crane, Il.
Bill Frenzel, Minn.
Richard T. Schulze, Pa.
Willis D. Gradison, Jr. Ohio
William M. Thomas, Calif.
Raymond J. McGrath, N.Y.
Hal Daub, Neb.
Judd Gregg, N.H.
Hank Brown, Colo.
Rod Chandler, Wash.

STATE OF ALASKA
1988 LEGISLATIVE SESSION

BILL VERSION: HJR 68
PUBLISH DATE: _____

FISCAL NOTE

REQUEST:

Revision Date: _____
Agency Affected: Commerce & Econ. Dev.
Title: Urging Congress to restore the exemption from federal excise tax/certain diesel fuel users
BRU: Division of Business Development
Sponsor: House Resource Committee
Components: _____
Requester: House Resource Committee

EXPENDITURES / REVENUES : (Thousands of Dollars)

OPERATING	FY 88	FY 89	FY 90	FY 91	FY 92	FY 93
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-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS: (Attach a separate page if necessary.)

Prepared by: Larry Merculieff, Director
Phone: 465-2017
Division: Business Development
Date: March 8, 1988

Approved by Commissioner: J. Anthony Smith
Date: March 8, 1988
Agency: Department of Commerce and Economic Development

Distribution (by preparer):
- Legislative Finance
- Legislative Sponsor
- Requestor
- Office of Management and Budget
- Impacted Agency(ies)

0985D-4/030888a

MEMORANDUM

TO: Representative Adelheid Herrmann
Co-Chair, House Resources Committee

FROM: Deborah L. Greenberg
Professional Assistant

DATE: March 8, 1988

SUBJECT: Purpose of HJR 68/Diesel Fuel Tax

As I understand it, "HJR 68 Urging Congress to restore the exemption from the federal excise tax on taxable fuels for certain diesel fuel users" does the following:

1) There used to be a federal tax-exemption for off-road users when they purchased diesel fuel. (This applied to commercial fishermen, timber, mining, and other operators).

2) When the operators bought diesel they didn't pay the tax.

3) Effective April 1, 1988 the federal government is requiring that these operators pay the tax, and then file paperwork to get a refund.

4) Many fishermen and others are upset because they say it will increase their costs of doing business to have to go through record keeping an paperwork of filing an exemption.

5) So the resolution is asking that it goes back to the way it was where they don't pay the tax at the pump.

DATE: 3/9/88

The. Resources Committee has considered HJR 68
Urging Congress to restore the exemption from the federal excise tax on taxable fuels for certain diesel fuel users.

RECOMMENDS:

[✓] replace with CS Res ______ [✓] the same title
[ ] attached amendment(s) [ ] a new title

[X] do pass
[ ] do not pass
[ ] no recommendation
[ ] individual recommendations
[ ] additional referral to the ______ Committee

ADOPTS: [ ] ______ letter of intent

ATTACHES NEW FISCAL NOTE(s):

[ ] fiscal impact
[ ] zero fiscal note
[ ] zero with analysis
[ ] same as previous fiscal note published ______
[ ] same as previous zero fiscal note published ______

SIGNING DO PASS:

Adelheid Herrmann
[illegible signature]
Dick Shultz
Cliff Davidson
[illegible signature]
[illegible signature]

SIGNING OTHER RECOMMENDATIONS:

Adelheid Herrmann
Chairman's signature

0985D-4/030888a

fuel destined for use as heating oil, all sales involving diesel fuel

STATE OF ALASKA
HOUSE OF REPRESENTATIVES
Box V, Juneau, Alaska 99811
(907) 465-2487 • 465-2498

REPRESENTATIVE CLIFF DAVIDSON District 27 Box 746, Kodiak, Alaska 99615

MEMORANDUM

TO: Members of the Resources Committee

FROM: Representative Davidson

DATE: March 1, 1988

SUBJECT: Committee legislation

I ask your support in passing a resolution by the Resources Committee.

This resolution requests Congress to preserve the way they collect the fifteen cent per gallon federal excise tax on diesel fuel.

Under legislation passed last December, tax exempt categories must first pay the tax, and apply for a refund later. Under current practice, these tax exempt categories do not pay the tax at all.

While still technically exempt, the way the federal government will collect this tax unnecessarily raises the cost of doing business for many Alaskans. It will restrict their cash flow, increase paperwork and is essentially an interest free loan to the government.

This resolution asks Congress to reinstate the current practice and repeal the proposed changes, which take effect April 1, 1988.