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INTERNATIONAL FISHERY AGREEMENTS

GOVERNMENT

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DOCUMENTS

HEARINGS

BEFORE THE

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SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT

OF THE

COMMITTEE ON

MERCHANT MARINE AND FISHERIES
HOUSE OF REPRESENTATIVES

NINETY-FIFTH CONGRESS

FIRST SESSION

ON

H.J. Res. 240

TO GIVE CONGRESSIONAL APPROVAL TO CERTAIN GOVERNING
INTERNATIONAL FISHERY AGREEMENTS NEGOTIATED IN ACCORD-
ANCE WITH THE FISHERY CONSERVATION AND MANAGEMENT ACT
OF 1976, AND FOR OTHER PURPOSES

H.R. 2081

TO AMEND THE FISHERY CONSERVATION AND MANAGEMENT ACT
OF 1976 FOR THE PURPOSE OF WAIVING CERTAIN REQUIREMENTS
OF THAT ACT IN ORDER TO PROVIDE FOR THE ORDERLY IMPE-
LEMENTATION OF FOREIGN FISHING IN THE FISHERY CONSERVATION
ZONE ON MARCH 1, 1977

FEBRUARY 7, 22, 1977

H.R. 3753

TO BRING CERTAIN GOVERNING INTERNATIONAL FISHERY AGREE-
MENTS WITHIN THE PURVIEW OF THE FISHERY CONSERVATION
ZONE TRANSITION ACT

FEBRUARY 23, 28, 1977

H.R. 4954

TO AMEND THE FISHERY CONSERVATION ZONE TRANSITION ACT
IN ORDER TO GIVE EFFECT DURING 1977 TO THE RECIPROCAL
FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND
CANADA

MARCH 17, 1977

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INTERNATIONAL FISHERY AGREEMENTS

MONDAY, FEBRUARY 7, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:12 a.m. in room 1334, Longworth House Office Building, Hon. Robert L. Leggett, Chairman of the subcommittee, presiding.

Mr. LEGGETT. The Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order.

As I am sure all of you are aware, this subcommittee reported legislation in the last Congress that resulted in the enactment of Public Law 94-265, the Fishery Conservation and Management Act of 1976, better known as the 200-mile fisheries zone act.

That act provides that no foreign fishing vessel shall be allowed to fish after March 1, 1977, within our 200-mile fisheries zone unless the foreign nation concerned has signed a Governing International Fishery Agreement (GIFA) with the United States and has secured a permit for each of its fishing vessels planning to fish within the zone. Because of the delay in obtaining GIFA's with foreign nations wishing to fish off our shores and because of the delay in transmitting the signed GIFA's with foreign nations wishing to fish off our shores and because of the delay in transmitting the signed GIFA's to the Congress and applications pursuant thereto to the appropriate Regional Fishery Management Councils, it now becomes necessary to pass legislation that would waive the 60-day congressional GIFA review period and the 45-day council review period required by the act in order to allow foreign fishing to continue after March 1 by those nations that have signed GIFA's.

To address this problem and to assure that the March 1 implementation date could be met, Congressman Forsythe and I, on January 19, introduced legislation in the form of H.R. 2081, which is designed to accomplish these purposes. Briefly explained, H.R. 2081 would waive the 60-day congressional review period for GIFA's signed before February 15, 1977, and the comment period for the Regional Councils and the public with respect to applications submitted pursuant to such signed GIFA's and it would postpone from March 1 to May 1, the requirement that every foreign fishing vessel

must have a permit on board before it can engage in fishing within the U.S. fisheries zone.

Since the introduction of the bill, and at the direction of Congressman Forsythe and myself, the subcommittee staff has been working closely with the staffs of the Senate Committee on Foreign Relations and Commerce and representatives of the Departments of State and Commerce with a view toward perfecting language that could be included in legislation to be reported on both the House and Senate sides that would meet the emergency with which we are faced.

This task was accomplished late Friday afternoon, and our plans now are as follows: at noon today, Congressman Forsythe and I, along with any other members of the subcommittee or full committee desiring to join us as cosponsors, will introduce a joint resolution—as a substitute for H.R. 2081—which will contain the agreed-to language.

The subcommittee will go into executive session at the conclusion of the hearings this afternoon, at which time the joint resolutions hopefully will be ordered reported to the full committee.

In contemplation of this action being taken today, Chairman Murphy has already scheduled a full committee markup for tomorrow morning at 10:00 a.m. Plans are for the full committee to order the joint resolution reported to the House and, shortly after 12 noon tomorrow, have the bill brought up on the floor of the House for a vote under Suspension of the Rules.

Both the Senate Foreign Relations Committee and the Commerce Committee have already held hearings on this matter, and the Senate Foreign Relations Committee has plans to consider its part of the joint resolution in markup tomorrow afternoon, and the Senate Commerce Committee hopefully will act on the remaining portion of the resolution Tuesday or Wednesday, or as soon thereafter as possible.

If all goes well, it is possible to have the resolution adopted by both Houses of the Congress before the House adjourns for a district work period for a week, beginning at the close of business this Wednesday.

Nevertheless, I want to assure everyone here assembled that both the House and the Senate committees concerned are well aware of the emergency facing us and that everything possible will be done to see that this legislation is passed by the Congress and sent to the President for signature at the earliest possible moment.

Now, with respect to the joint resolution that will be introduced at noon today, it is in essence H.R. 2081, with amendments. Briefly explained, section 1 of the resolution would cite the resolution as the Fishery Conservation Zone Transition Act, and it would set forth in whereas clauses the reasons for passage of the resolution.

Section 2 would waive the 60-day congressional review period of GIFA's, authorized by section 203 of the Act, and would specifically approve by name those countries that have signed GIFA's, copies of which have been transmitted to the Congress. The six countries named are: Poland, Russia, East Germany, Taiwan, Romania and Bulgaria.

I might point out at this time that with respect to South Korea—a country that has already signed a GIFA which has not yet been transmitted to the Congress—and with respect to Spain—which I understand just signed a GIFA last week—these countries could be included in this joint resolution by appropriate amendatory language as the resolution goes through the legislative process, provided however that copies of such agreements are transmitted to the Congress prior to final action on the resolution.

If the transmittals are not received prior to final congressional action on the resolution, then these agreements would have to be approved by separate acts of Congress to prevent such countries from having to abide by the 60-day review period and the 45-day comment period required by the act.

Any GIFA not specifically approved by an act of Congress would result in that foreign nation having to comply in full with all the procedural requirements of the act.

Section 3 of the resolution would amend the act by adding transitional provisions which, in essence, is the language of H.R. 2081. In this regard, only those GIFA's approved by the Congress pursuant to section 2 of the resolution, or pursuant to any amendment to such section 2, would be entitled to take advantage of this expedited action.

Instead of a 45-day comment period, such appropriate council would be authorized to have up to 7 days in which to comment on any application submitted for permits by such approved country. In addition, approved countries would have until May 1 to get their permits on board approved vessels.

The resolution would contain one provision not included in H.R. 2081; it would authorize the Secretary of Commerce to allow approved foreign countries to have until May 1 in which to pay for applicable fees. If payment is not made by May 1, the permits issued to any delinquent foreign country would become null and void.

The reason for inclusion of this last provision in the resolution is that several foreign countries have indicated to the State Department that they will be unable to have their funds delivered to the department in payment of such fees by March 1.

The bill, along with the joint resolution to be introduced, and departmental reports will appear in the record at this point without objection.

[The following was received for the record:]

95TH CONGRESS
1ST SESSION

H. R. 2081

IN THE HOUSE OF REPRESENTATIVES

JANUARY 19, 1977

Mr. LEGGETT (for himself and Mr. FORSYTHE) introduced the following bill;
which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Fishery Conservation and Management Act of 1976 for the purpose of waiving certain requirements of that Act in order to provide for the orderly implementation of foreign fishing in the fishery conservation zone on March 1, 1977.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That the Fishery Conservation and Management Act of 1976
- 4 (16 U.S.C. 1801 et seq.) is amended by adding immediately
- 5 after section 205 the following new section:

I

1 "SEC. 206. SPECIAL PROVISIONS APPLICABLE TO INITIAL
2 FOREIGN FISHING IN FISHERY CONSERVA-
3 TION ZONE.

4 " (a) WAIVER OF CONGRESSIONAL OVERSIGHT OF CER-
5 TAIN GOVERNING INTERNATIONAL FISHERY AGREE-
6 MENTS.—Section 203 shall not apply to any governing inter-
7 national fishery agreement entered into on or before February
8 15, 1977, and any such agreement shall be treated, for the
9 purposes of this Act, as having become effective with respect
10 to the United States on the day on which so entered into.

11 " (b) WAIVER OF CERTAIN SECTION 204 REQUIRE-
12 MENTS.—(1) Paragraph (5) of section 204 (b) (providing
13 appropriate Fishery Management Councils a 45-day com-
14 ment period on applications for foreign fishing permits)
15 shall not apply with respect to any application submitted
16 by a foreign nation, pursuant to a governing international
17 fishery agreement exempted from section 203 under sub-
18 section (a), for permits authorizing fishing by vessels of
19 that nation in the fishery conservation zone during 1977.

20 " (2) Until May 1, 1977, the requirement in section
21 204 (a) that foreign fishing vessels have on board a valid per-
22 mit issued under section 204 shall not apply in the case of
23 any foreign fishing vessel for which a permit is issued under

1 an application to which paragraph (1) applies. The failure
2 of any such vessel to comply with such requirement before
3 such date shall not be deemed to be a violation of section
4 307 (1) (A).".

[The draft became the following House joint resolution:]

95TH CONGRESS
1ST SESSION

H. J. RES. 240

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 7, 1977

Mr. LEGGETT (for himself, Mr. FORSYTHE, Mr. MCCLOSKEY, Mr. OBERSTAR, Mr. AKAKA, Mr. BONKER, Mr. HUGHES, and Mr. EVANS of Delaware) introduced the following joint resolution; which was referred to the Committee on Merchant Marine and Fisheries

JOINT RESOLUTION

To give congressional approval to certain governing international fishery agreements negotiated in accordance with the Fishery Conservation and Management Act of 1976, and for other purposes.

Whereas, the Government of the United States of America and the Governments of the People's Republic of Bulgaria, the Socialist Republic of Romania, the Republic of China, the German Democratic Republic, the Union of Soviet Socialist Republics, and the Polish People's Republic have signed governing international fishery agreements for the conservation, optimum utilization, and rational management of fisheries subject to the exclusive fishery management jurisdiction of the United States under the Fishery Conservation and Management Act of 1976 (Public Law 94-265) (hereinafter referred to as the "Act"); and

I

Whereas the Act provides that after February 28, 1977, no foreign fishing is authorized within the fishery conservation zone, or for anadromous species or Continental Shelf fishery resources beyond the fishery conservation zone, unless (among other exceptions and requirements) such foreign fishing is authorized and conducted pursuant to a governing international fishery agreement; and

Whereas the Act also provides that no governing international fishery agreement shall become effective with respect to the United States before the close of the first 60 calendar days of continuous session of the Congress after the date on which the President transmits to the House of Representatives and to the Senate a document setting forth the text of such governing international agreement; and

Whereas the Act further provides that Congress may prohibit the entering into force and effect of any governing international fishery agreement by enactment of a joint resolution originating in either House of Congress during such 60-day period; and

Whereas the 60-day period will not elapse with respect to any governing international fishery agreement, referred to in the first clause of this preamble, before March 1, 1977, the date on which the fishery conservation zone of the United States takes effect; and

Whereas early congressional action on these governing international fishery agreements is necessary in order that fishing vessels of the foreign nations concerned may be permitted to fish in the fishery conservation zone as of such State; and

Whereas these governing international fishery agreements comply with the requirements relating to such agreements contained in section 201 (c) of the Act: Now, therefore, be it

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*
3 That this joint resolution may be cited as the "Fishery Con-
4 servation Zone Transition Act".

5 **SEC. 2. CONGRESSIONAL APPROVAL OF CERTAIN GOVERN-**
6 **ING INTERNATIONAL FISHERY AGREEMENTS.**

7 Notwithstanding section 203 of the Fishery Conserva-
8 tion and Management Act of 1976, the governing interna-
9 tional fishery agreement between the Government of the
10 United States of America and—

11 (1) the Government of the People's Republic of
12 Bulgaria Concerning Fisheries Off the Coasts of the
13 United States, as contained in the Message to Congress
14 from the President of the United States dated Janu-
15 ary 14, 1974;

16 (2) the Government of the Socialist Republic of
17 Romania Concerning Fisheries Off the Coasts of the
18 United States, as contained in the Message to Congress
19 from the President of the United States dated Jan-
20 uary 10, 1977;

21 (3) The Government of the Republic of China Con-
22 cerning Fisheries Off the Coasts of the United States,
23 as contained in the Message to Congress from the Presi-
24 dent of the United States dated January 10, 1977;

25 (4) the Government of the German Democratic

1 Republic Concerning Fisheries Off the Coasts of the
2 United States, as contained in the Message to Congress
3 from the President of the United States dated January
4 10, 1977;

5 (5) the Government of the Union of Soviet Socialist
6 Republics Concerning Fisheries Off the Coasts of the
7 United States, as contained in the Message to Congress
8 from the President of the United States dated Janu-
9 ary 10, 1977; and

10 (6) the Government of the Polish People's Republic
11 Concerning Fisheries Off the Coasts of the United States,
12 as contained in the Message to Congress from the Presi-
13 dent of the United States dated September 16, 1976,
14 is hereby approved by the Congress as a governing inter-
15 national fishery agreement for purposes of the Fishery
16 Conservation and Management Act of 1976. Each such
17 agreement shall enter into force and effect with respect to
18 the United States on the date of the enactment of this
19 joint resolution.

20 **SEC. 3. AMENDMENTS TO FISHERY CONSERVATION AND**
21 **MANAGEMENT ACT OF 1976.**

22 The Fishery Conservation and Management Act of 1976
23 (16 U.S.C. 1801 et seq.) is amended—

24 (1) by adding immediately after section 205 the
25 following new section:

1 "SEC. 206. TRANSITIONAL PROVISIONS.

2 "(a) DEFINITION.—For purposes of this section, the
3 term 'governing international fishery agreement' does not
4 include any governing international fishery agreement other
5 than a governing international fishery agreement approved
6 by the Congress pursuant to section 2 of the Fishery Con-
7 servation Zone Transition Act, or pursuant to any amend-
8 ment to such section 2 if the effective date of such amend-
9 ment is not after February 28, 1977.

10 "(b) ACTION BY COUNCILS.—Section 204 (b) (5) shall
11 not apply to any application submitted by a foreign nation
12 pursuant to a governing international fishery agreement for
13 permits authorizing fishing during 1977 by vessels of that
14 nation within the fishery conservation zone or for anadromous
15 species or Continental Shelf fishery resources beyond such
16 zone, but each appropriate Council may prepare and sub-
17 mit comments on such application within 7 days after
18 requested to do so by the Secretary. The provisions of the
19 Federal Advisory Committee Act shall not apply to the
20 actions of any Council in preparing such comments.

21 "(c) PERMITS.—Until May 1, 1977, the requirement in
22 section 204 (a) that foreign fishing vessels have on board a
23 valid permit issued under section 204 shall not apply in the
24 case of any foreign fishing vessel for which a permit is issued
25 under an application to which subsection (b) applies. The

1 failure of any such vessel to comply with such requirement
2 before such date shall not be deemed to be a violation of
3 section 307 (1) (A).

4 “(d) PERMIT FEES.—Until May 1, 1977, the require-
5 ment in section 204 (b) (11), regarding the payment of
6 applicable fees before foreign fishing permits are issued, may
7 be waived by the Secretary with respect to permits to be
8 issued under any application to which subsection (b) applies
9 if the Secretary is satisfied that the foreign nation which
10 made the application will pay the applicable fees before such
11 date. Any permit issued under the waiver provided by this
12 subsection shall expire on May 1, 1977, if the Secretary
13 does not receive on or before such date the applicable fees
14 for the permit.”; and

15 (2) by amending the table of contents by inserting
16 immediately after

“Sec. 205. Import prohibitions.”

17 the following:

“Sec. 206. Transitional provisions.”

Mr. LEGGETT. Before calling our first witness, I would like to make several things completely clear.

The passing of legislation to waive the procedural requirements of the act, in order to allow all countries that have negotiated in good faith and have concluded agreements with us to continue fishing within our 200-mile fisheries zone, pursuant—that is—to all of the conditions and stipulations attached to the vessel permits issued to such countries—in no way lessens the overall intent of the members of this subcommittee to see that American fishermen are given preferential rights to the fisheries resources within the zone.

Furthermore, the authority contained in the act which permits the Secretary of State, in consultation with the Secretary of Commerce, to allocate that portion of the optimum yield of each fishery within the zone which will not be harvested by American fishermen to foreign countries with whom we have entered into agreements, will be closely overseen to see that this provision is strictly adhered to.

Mr. YOUNG. Will you read that section again?

Mr. LEGGETT. It is not a section, it is a statement.

Furthermore, the authority contained in the act which permits the Secretary of State, in consultation with the Secretary of Commerce, to allocate that portion of the optimum yield of each fishery within the zone which will not be harvested by American fishermen to foreign countries with whom we have entered into agreements, will be closely overseen to see that this provision is strictly adhered to.

Every effort will be made to see that foreign vessels violating any conditions of the permits issued to them and the vessels of any countries which do not have an agreement with us and who violate the act will be apprehended and violators prosecuted.

Finally, I would like to make it clear that we will continue to support and encourage the development of the fisheries in our zone which are currently underutilized or not utilized by our domestic fishermen in order to increase their production so that our citizens will benefit from the increased employment opportunities, food supply, and revenues which could be generated by this greater productivity.

I am hopeful that one of these days, within the next decade, the United States will regain its former place of eminence among the fishing nations of the world, and that we can increase our capability to the extent that the catch of fisheries resources within our 200-mile fisheries zone will be taken substantially, if not entirely, by American fishermen.

I might state that I would hope that we could arrive at that millennium much shorter than the expiration of the next decade.

Mr. Forsythe.

Mr. FORSYTHE. I would like to comment briefly—principally to commend the staff's work on this problem.

I would also like to commend all of our executive department who have been involved in it, because I think they have done an excellent job in implementing this act.

Mr. LEGGETT. Very good, Ed.

I guess we should comment that we are operating under the rules today that were in force and effect in the last Congress.

Our full committee is not meeting until tomorrow.

We want to finish the hearings on this legislation this afternoon and report the legislation to the full committee. We will have our full right of examination of each witness and the 5-minute rule will prevail.

The first witness today will be Ambassador Rozanne L. Ridgway, Deputy Assistant Secretary for Oceans and Fisheries Affairs.

Ms. Ridgway, it is very nice to have you with us. If you have a prepared statement, that will appear in the record at this point. [The following was received for the record:]

STATEMENT OF ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS

You have asked me to comment today on H.R. 2081, presented by Mr. Leggett and Mr. Forsythe, which would amend the Fishery Conservation and Management Act.

The Bill would amend the Fishery Conservation and Management Act in order to resolve some complications associated with this first year, and is, I believe, an important piece of legislation. As I read the Bill, it would first waive the 60-day Congressional oversight in Section 203 of the Act, thereby allowing agreements to come into force immediately. I believe this is of great practical importance and fully support it. In this regard, I should make a comment concerning the February 15 date in the Bill. There are those who believe that we should set deadlines for the signature of the remaining agreements, and suggest that any country which has not signed by that date be subject to the full administrative processing described in the Act. This procedure could take several months after the agreements were signed. I can sympathize with the feeling which lies behind such reasoning, but I do believe that this could create serious and unnecessary problems. Those countries with whom we are still negotiating have, in every instance, unique problems. I believe we will conclude these negotiations prior to March 1. If that is the case, I would hope, Mr. Chairman, that whatever legislative relief is provided under H.R. 2081 would apply to these countries. This does not necessarily mean that an agreement signed on February 28 would permit fishing on March 1, since certain administrative requirements still need to be fulfilled. It does mean that any country which signs by the March 1 deadline would be granted the same waivers, and that fishing could begin in an expeditious manner.

H.R. 2081 would also waive certain other administrative requirements in this transition year. These waivers are designed to shorten the time required to complete other administrative processes, and I fully support them.

Mr. Chairman, I believe we have a record of accomplishment in our efforts to implement the Act internationally, and I am hopeful that our negotiations will be completed prior to the implementation date. For our part, the Department of State is committed to carry out its role in the Act and to pursue policies and practices which advance our total fisheries interests. We support the efforts of Congress to ensure that the law is implemented smoothly and believe H.R. 2081, with the modifications I have outlined, will substantially assist us in this effort.

STATEMENT OF HON. AMBASSADOR ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY MRS. MARY ELIZABETH HOINKES, OFFICE OF LEGAL AFFAIRS AND ALBERT L. ZUCCA, DIRECTOR, OFFICE OF FISHERIES AFFAIRS, DEPARTMENT OF STATE

Ambassador RIDGWAY. That is right, we have a very brief statement which is directed to the original request to us, that is, to comment on H.R. 2081, and if you would permit—

Mr. LEGGETT. Could anyone turn that microphone up?

Ambassador RIDGWAY. If you would permit, Mr. Chairman, we would submit the original prepared statement for the record, only as it was addressed to the original version of H.R. 2081.

With me today are Mr. Albert Zucca, the Director of the Office of Fisheries Affairs, Department of State, and Mrs. Mary Elizabeth Hoinkes, representing the Office of the Legal Affairs.

Mr. LEGGETT. It is very nice to have you here.

Your statement will appear in the record as though completely delivered, and you can expand on it as you care to.

Ambassador RIDGWAY. Thank you, Mr. Chairman.

I would only underline that we have, as you pointed out in your opening remarks, been working with the committee and its staff over the last few days on the joint resolution, whose provisions you described in your opening statement.

I believe, in the course of your opening statement, you have answered for us the one question which we have in mind as we came here today, and that was the question of the interpretation of section 206(a). As we read the draft of the joint resolution which we received from the committee and the staff, subsequent to H.R. 2081, the question we had was how the provisions of section 206(a) would apply to governing international fishery agreements signed subsequent to the passage of the joint resolution, and before March 1.

Your opening statement indicated that by what will now be a separate amendment to the act, those agreements could come into force if signed by February 28, 1977—that they would then benefit from the remaining provisions in the—

Mr. LEGGETT. As I understand it, those will require a separate act of Congress, unless they are included in the bill as it goes forward.

Ambassador RIDGWAY. And following a separate act of the Congress, they would then qualify for the remaining reliefs that are in this act, as we understand them.

Mr. LEGGETT. In exactly the same place as the other signatories included in the act.

Ambassador RIDGWAY. Mr. Chairman, with that I can say that we fully support, and indeed appreciate having been a part of, this work. We fully support the product of this, and would have no other comment, except to say that we look forward to the early passage of the resolution, in the kind of time frame which you described.

We are disappointed that two of the agreements for which negotiations have been completed, that with the Republic of Korea, and that with Spain, for reasons of their own, are not here, but we feel that the joint resolution provides a basis for their subsequently being the subject of relief.

Thank you.

Mr. LEGGETT. Counsel advises me if we can get those agreements to the Congress by tomorrow, perhaps we could include them in the legislation.

Ambassador RIDGWAY. We could undertake to move the Korean agreement forward—we will see what we can do in the remainder of the day.

The problem with the Spanish agreement is not that it has not been signed or moved forward, it is that we cannot find the official Spanish translation.

Mr. LEGGETT. Will the House need the Spanish agreement translated?

Ambassador RIDGWAY. No, but we need to confirm with the contents of both before signature.

Mr. LEGGETT. All right.

Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

With respect to the Japanese agreement, my understanding is that you are at a point of reaching agreement, and the main problem is going to be to have it approved by the Japanese Diet.

Ambassador RIDGWAY. That is correct, Mr. Forsythe. Yes.

Mr. FORSYTHE. What is the timing on that?

Ambassador RIDGWAY. Mr. Forsythe, I am very pleased to say that the negotiations with Japan have been concluded, that we would hope on Thursday of this week to sign an agreement with Japan, and it will be in fact two agreements, because we had to address the problem you just raised. The 5-year GIFA, for Japan, cannot come into force for Japan until its Diet is able to complete its advice and consent role, pending the completion on that, since we think it is so important to have the agreement with Japan, we agreed to entertain a 1-year document, provided it were entirely consistent with the act.

We have also completed negotiations with that document, and we would hope to come forward in a very short time with two papers, one to serve as the GIFA for Japan for 1977, the other for the information of Congress so that it can see the interrelation of the agreements, and at such time as the Japanese Diet completes its advice and consent role, we will ask the Congress to receive the GIFA—the long term GIFA—formally.

Mr. FORSYTHE. As you understand what we are doing here, do you believe that the first document, the 1-year document, can be included in our legislation?

Ambassador RIDGWAY. It will not be signed until probably noon on Thursday, the 10th. I do not know the precise timing of the action on this.

It would seem from the chairman's description, that we would not make it.

Mr. FORSYTHE. The GIFA's really have nothing to do with the management plan, they merely are on agreement that the foreign government will abide by the act, and submit to whatever quotas and management regulations that the United States adopts.

Ambassador RIDGWAY. That is correct, Mr. Forsythe.

Mr. FORSYTHE. Generally, the GIFA requires foreign nations to abide by our conservation regulations.

Ambassador RIDGWAY. Yes.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. Thank you, Mr. Forsythe.

I think it might be helpful at this point if Mr. Everett were to ask some technical questions and that might give the members a better foundation for their questions.

Mr. Everett?

Mr. EVERETT. I will try to be brief, Mr. Chairman.

Ms. Ridgway, with respect to the GIFA's that have been entered into with the six countries, we had the Library of Congress analyze

these agreements and point out the major differences among them. I will not go into all of the differences, but one of them had to do with fishing with respect to operations at sea directly in support of operations at sea.

In most of the other ones you used the words "directly on," but in the Russian agreement, you left out the word "directly," and made this exception relate to medical and patrol type vessels.

I wonder if you could comment on the differences?

Ambassador RIDGWAY. The "directly" one, I am sure, is entirely a question of how much language is needed.

I recall at one time when we discussed these things, they had problems with the word "including" rather than "to." It was that kind of change.

Concerning medical vessels and patrol vessels, the act states it is not the intent to change the jurisdictional views of the United States with respect to anything except fishery conservation and management.

The Russians wanted clarity as to how this would affect medical and sanitation or patrol vessels, and we inserted it for the sake of clarity. Without it, the case would be the same for all the other countries as well.

We are not extending it to include authority over patrol vessels.

Mr. EVERETT. With respect to the Soviet Union agreement, there is a provision that all shipping gear on the working deck of such vessel shall not be rigged so as to be readily available for use.

Would you elaborate on the reason for the distinction in the Soviet Union agreement with respect to that particular issue?

Ambassador RIDGWAY. Yes. The reason for that is that one has to distinguish between vessels that are just in a navigational mode, and those which are actually fishing. The Soviets conduct wide-ranging activities, and we want to know if the gear is properly stowed. It is stated explicitly in the agreement, so that there would be no misunderstanding.

Mr. EVERETT. With respect to the Marine Mammal Protection Act, there is a provision in all of the agreements, except the Soviet Union agreement, that includes the definition of marine mammals as defined in the act.

With respect to the Soviet Union agreement, it says the agreement employs the term "mainly" rather than "primarily" mammals that inhabit the marine environment, and there is a reference to polar bears.

What was the reason for making those distinctions?

Ambassador RIDGWAY. To start with the last one, the polar bears was dropped. It was suggested that its inclusion could mean that it gave specificity to exactly what we were talking about, when in fact the protection being extended is general. The polar bears became a famous phrase for all the countries. Some countries asked that it be taken out, so that it did appear to be limiting, and others did not, because they did not understand the concept. It was dropped in the Soviet Union, not to give less importance to polar bears, but in their view to give clarity.

"Mainly" and "primarily" is, I think, probably more than anything else, a question of translation. It is easier to translate "mainly" than it is "primarily" into Russian.

Mr. EVERETT. With respect to the definition of optimum yield, the proposed agreements say that vessels will be allowed to harvest that portion of the allowable catch for a specific fishery that will not be harvested by U.S. fishing vessels.

I was wondering if you could explain the difference between "optimum yield" and "allowable catch" concepts as used in the bill, and why the Soviet Union's agreement again was different from the other?

Ambassador RIDGWAY. In the course of the negotiations, and, indeed, in the course of all of the executive branch departments working with their interested staffs, we have found that everyone is having problems with definitions of optimum yield, and optimum utilization, optimum use. What is meant, and what is quite clear is that after the United States determines the amount that may be taken, and after the United States determines the amount that must be reserved for the U.S. fishermen, only then will a foreign country have an opportunity to qualify for a surplus, if any.

The importance here is to see how the paragraphs work. That is, the United States which sets the numbers, and whatever formula we subsequently use is ours to devise, and it is the United States which goes through the remaining procedures in the act, to determine whether there is or is not a surplus.

Concerning the difference in the Soviet agreement, I believe—I am just having to draw on my memory on this, Mr. Chairman—in fact that entire article is structured differently, but the outcome is the same.

The United States determines how much will be taken from a resource, how much will be taken by Americans, and what, if anything, is left.

Mr. LEGGETT. Mr. Young?

Mr. YOUNG. Point of clarification.

You mentioned that the United States sets aside, are you as well including that with the recommendations of the council? Is it still going to be the State Department citing surplus, maximum sustained yield?

Ambassador RIDGWAY. No, the act makes it quite clear, and so do the agreements, that the procedures by which the United States makes the determination will be in accordance with the act.

We did not think it appropriate to describe in these agreements what U.S. procedures are. When I speak of a procedure, I am speaking of the procedure that begins with the regional council preparation of a management plan.

Mr. YOUNG. They refer to this act as U.S.—I have watched the council in Alaska I think slowly being swayed, subverted and rejected. Some of their supposed recommendations have never reached a level I think they should have as far as the yield, and what will be available—I am against this, Mr. Chairman.

I think the act is very clear that the council, maybe we are talking semantics here, has to be the lead agency as far as setting the yield of the fishermen. It cannot be the State Department.

Ambassador RIDGWAY. Mr. Young, I have no problems with that at all, but on a government-to-government basis, the countries with whom we entered agreements were entering them with the United

States. Behind that phrase "the U.S." is the machinery in the law, but on a government-to-government basis, the relationship is between governments.

Mr. BONKER. Will the gentleman yield?

Pursuing that line of questioning, the applications, once received by the Secretary of State, shall be transmitted to the regional councils, which have 45 days in which to review and comment on those applications. But what authority do they have for amending or objecting to features in the application?

Is that just a perfunctory exercise, or do they have substantive authority to alter or amend, or add to these applications?

Ambassador RIDGWAY. Mr. Bonker, I am probably not the best one to answer that, because it is a relationship that, once the Department of State distributes the documents, exists between the council and the Secretary of Commerce. The Secretary of Commerce gives the final stamp of approval.

But on that side of the act, State Department is essentially a mailbox and delivery service.

Mr. BONKER. It would be helpful if counsel could provide us with a brief description of the relationship of the councils to these agreements, because I can see questions arising, at least in the Northwest.

Mr. LEGGETT. Very good, we will make that material available. [The information was not received for the record.]

Mr. MANNINA. Mr. Chairman?

Mr. LEGGETT. Yes, Mr. Mannina?

Mr. MANNINA. Mr. Bonker, I have spoken with the regional council with respect to the GIFA's and while there are reservations regarding some of the terms, all of the councils have indicated that the GIFA's should be approved.

Mr. BONKER. I am still interested in knowing the relationship.

Mr. YOUNG. Mr. Chairman, along those lines, we will sign a 1-year agreement with Japan Thursday.

If possible, I would like to see that document upon signing, if not sooner.

Mr. Chairman, I am not hostile, but I have had some correspondence with our council, and they are not exactly happy right now with the Department of Commerce. It appears that the council is being told that the Commerce Department is not going to accept their recommendations—if we are going to have the 200-mile bill, I think we ought to expose this fact right now.

The intent of that legislation was to make sure that the councils maximize the use of the resource. From what I have been hearing from the council, Commerce is saying, "we cannot do that."

I think the councils, as designated by this committee, should decide who manages the resource and not the Department of Commerce.

Mr. LEGGETT. Very good. I think you make a good observation.

I would hope that we can get the Japanese agreement just as soon as it is negotiated, and have a chance to look at it.

Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

I have a number of questions for the Ambassador, and I will be as brief as I can.

I think, to set the record straight for all of us, the reason that we have this legislation is because of the unique situation created by the first year of the implementation of the act, and the special time problems that it puts all of us in.

Taking Mr. Bonker's concern further, the problem of getting the regional councils into the determination of the surplus that will be allocable to foreign nations in the first year is a real one, and an unavoidable one. We dealt with that in the act, giving the Department of Commerce the authority to develop preliminary management plans in the first year only, in those cases where the regional councils are not yet sufficiently organized to make their own determination. And while it is true that for this first year, that determination has been made—the determination of what if any surplus will be allocated, or allocable to foreign nations, and the allocations among nations under the act by the Department of State—that determination of the surplus by the Department of Commerce is for this first year, and this first year only.

As of next year the determination as to whether or not there is any surplus to be allocated and, if so, how much, is—under the act—solely the determination of the management council.

The allocation among nations of whatever surplus is determined is then up to the Department of State.

I want the record to reflect, very clearly, that this is a unique first year situation in which we are dealing with, and unfortunately, under the circumstances, they do not have the input that we intend them to have in the future in the determination of that surplus, am I correct?

Ambassador RIDGWAY. Mr. Studds, I believe on the question of surplus, relationship between the councils and the Department of Commerce is very much as it is in the area of applications. It is a very close and 2-way relationship, with final authority being that of the Secretary of Commerce.

Mr. STUDDS. Exactly, he has the authority to approve or disapprove, but in fact the intent of the Congress and, I think, clearly in the statute, is that with the exception for the special reasons that I mentioned of the preliminary plans in the first year—that exception alone—in the future, the determination of whether or not there shall be surplus of any stock, is a determination to be made by the management councils, with approval of the Secretary of Commerce.

Ambassador RIDGWAY. That is correct.

Mr. STUDDS. Now, a couple of questions, if I may.

Any GIFA's not submitted to the Congress in time to be included in this legislation, and among those might be Japan, Korea, Spain, and the EEC, will have to be dealt with in subsequent legislation, is that correct?

Ambassador RIDGWAY. I understand that that is so, but if dealt with positively, and if the agreements were signed before February 28, they would then be able to benefit from the other relief that is here.

Mr. STUDDS. Would that permit those nations' GIFA's to come to this Congress after the enactment of this act, before March 1?

Ambassador RIDGWAY. If the agreements come up here, and if there is positive action, then the system—

Mr. STUDDS. Depending on the Congress?

Ambassador RIDGWAY. Yes.

Mr. STUDDS. May I say, just for the record, to the Ambassador, that I see she has had as much difficulty as I in stopping smoking during her career.

I think you know this, but you have done a superb job on the whole in responsibilities given to you under the statute.

You are aware that I do not agree with the recommendation of your Department with respect to the foreign windows out in the northwest Atlantic, when they will overlap American fixed lobster gear. I understand that decision is imminent.

Ambassador RIDGWAY. It is a decision by the Secretary of Commerce, and if that decision goes contrary to American fishermen, I will have enormous difficulties.

It seems to me it is difficult enough—I think you are doing the right thing. We should reluctantly support essentially what we are doing—that is, bending over backwards to allow foreign fishing under the act again by March 1. That is likely thing to do, and you will have our support for that.

I do not think you should tolerate that at the expense of the American fishermen, and particularly with fixed gear fishermen.

My support is going to be determined by the outcome of Secretary Kreps' decision whether those windows will be overlapping, and therefore in danger of lobster fishermen.

Mr. STUDDS. Very quickly. I want to see your reaction to the brief amendments which I may propose to the joint resolution before us.

First of all, the Department of Commerce, as you know, has determined that the legislation implementing ICNAF is still in effect, even though the United States withdrew from that treaty as of December 31.

Would the Department of State have any objection to our amending this bill to repeal the ICNAF implementing legislation as of March 1?

Ambassador RIDGWAY. Mr. Studds, we would have no objection.

We would defer to the Commerce Department, but speaking alone, as if it were only of interest to the Department of State, we would have no objection.

Mr. STUDDS. Question number two. The legislation as it is now drafted gives the councils 7 days to comment on foreign permit applications.

Would the Department have any objections to increasing that to 15 days?

Ambassador RIDGWAY. Mr. Studds, if you would allow me just a moment, I am trying to do some mental arithmetic.

I think in most cases we would have had even the 15-day test.

Mr. STUDDS. I want to make sure that we can afford that time. I think it is a courtesy that we owe the councils.

Ambassador RIDGWAY. I think it would come out quite tight in some cases, but most of the applications are in before the councils.

Mr. STUDDS. Third possible amendment?

Ambassador RIDGWAY. The legislation before—

Mr. LEGGETT. What was your answer to the last one?

Ambassador RIDGWAY. I said I thought it would be quite tight, particularly with respect to the Japanese which is an important area for us, if it went from 7 to 15, but we would try to make it.

Mr. STUDDS. It might not be disastrous in our time if the Japanese had to delay their fishing.

Ambassador RIDGWAY. I have learned not to speak for the Department of State in predicting disasters for our time.

Mr. STUDDS. Question 3, the legislation before us defers for 2 months and up until May 1 the requirement that the licenses be physically onboard foreign vessels.

Would you see any—and I understand that there are reasons why that cannot be done by March 1 this year—would you see any reason why we could not shorten that, say, to April 1?

Ambassador RIDGWAY. I really think I must defer to Commerce on that. I think there is a question of how long it takes to move papers around.

In some cases, I do know, from my service overseas, that if we use the diplomatic pouch to get these agreements—

Mr. STUDDS. That is a serious error.

Ambassador RIDGWAY. It can take quite a bit of time.

Mr. STUDDS. Surely we have more rapid means of communication than diplomatic pouches. There are airplanes with people going on them to various countries.

Ambassador RIDGWAY. Well, it is still the same pouch but the ships may be at sea, and we would try to pick them up when they came in to port.

Mr. STUDDS. The other thing is the situation we will have—whether it is 1 or 2 months after March 1—in which those foreign vessels are licensed to fish, but without the licenses physically onboard.

I assume you will see that the Coast Guard has a complete thorough list of those vessels that are properly licensed?

Ambassador RIDGWAY. Yes, we will, Mr. Studds.

Mr. STUDDS. Thank you.

Mr. LEGGETT. Mr. Young.

Mr. YOUNG. I have one question concerning the compensation of U.S. fishermen for damages caused by foreign vessels and gear.

Three of the GIFA's establish joint claims boards of two foreigners, and two Americans. Unfortunately, I understand the decision of these claims boards must be unanimous and that three of the GIFA's contain only a statement that foreign nations will pay for damages caused by its vessels pursuant to U.S. procedures.

Are there compensation procedures that have been established?

Ambassador RIDGWAY. No procedures have been established, Mr. Young. The Department of Commerce is examining the whole area of what might be an appropriate procedure, and if appropriate, how helpful would it be under the circumstances.

Mr. YOUNG. Mr. Chairman, I have no further questions.

Mr. LEGGETT. All right.

Mr. Breaux.

Mr. BREAU. Thank you, Mr. Chairman.

Thank you, Ambassador.

The country is going to realize that their fishing rights are going to be affected by our actions. I think the same way as Mr. Studds has shown today. I feel a great concern for foreign fishermen in the world and their rights. There are those who criticize us and the national policies and feel that we ought not to be concerned about the rights of foreign fishermen.

If we do proceed in this manner, we are indeed showing a great deal of concern.

My only question is a question regarding Mexico. I understand that there is a separate bilateral agreement between the United States and Mexico.

Ambassador RIDGWAY. The existing agreement between Mexico affects American fishing in the Mexican zone. We have asked Mexico if it intends to ask us for an agreement which would permit its fishing in the zone after March 1.

The reply has been, to date, that they do not at present plan to ask us for such an agreement.

If that is the case, there would be no Mexican fishing in the zone after March 1.

Mr. BREAUX. When will there be no U.S. fishing in Mexico?

What is the status of that agreement?

Ambassador RIDGWAY. That agreement has been signed—I forget, Mr. Breaux, whether it is a 4-year agreement or 5-year agreement, but American fishing is continuing in the Mexican zone.

Mr. BREAUX. It is continuing. But it is going to be phased out?

Ambassador RIDGWAY. Only one aspect of it, the shrimp part of it.

Mr. BREAUX. That is the aspect that I am particularly concerned about.

Ambassador RIDGWAY. I understand. And it was in terms of principles of obligation of the catch and surplus. The agreements cover six other countries.

Mr. BREAUX. Is it subject to approval?

Ambassador RIDGWAY. It is not subject to approval, and it went into force on November 24.

Mr. BREAUX. Because it is an agreement rather than a treaty?

Ambassador RIDGWAY. It is an executive agreement, and it is for U.S. access to another zone, so it did not come up under any provisions of the act.

Mr. BREAUX. Thank you.

Mr. LEGGETT. Mr. Bonker.

Mr. BONKER. Would you enlighten us as to the terms of the agreement that is pending with Japan?

Ambassador RIDGWAY. Yes, I would be happy to—in general terms, if I may, because I must say it is sort of before both governments now for the final review. In general the agreement with Japan is that, as of March 1, the Japanese will conduct their fishing in accordance with U.S. law. The United States will consider its management plans prepared by the council, whether there is a surplus and, if so, how much is going to be made available to Japan and under what terms the Japanese fishing might go forward.

Mr. BONKER. So the specifics will await the development of management plans in terms of determining surplus species?

Ambassador RIDGWAY. That is correct.

As with all the other agreements, the document with Japan does not go into numbers. We are out of the numbers business.

Mr. BONKER. For species?

Ambassador RIDGWAY. For species, that is correct.

Mr. BONKER. There have been several articles in Northwest newspapers indicating that Japan was less than pleased with the enactment of this law. Some articles indicated that they do not intend to cooperate or comply with provisions of this law.

Did you meet a spirit of cooperation in your relationship with the Japanese?

Ambassador RIDGWAY. Yes, I did, and had an opportunity over the last few months, through committee staff, to keep people posted as to the pace of the negotiations. They were slow because of the terribly complicated and, in fact, large interests that Japan has in this. They were slow because we had to find a way to take account of our own parliamentary procedures and yet have something in effect on March 1. They were slow because the effect of the act in Japan would be quite significant for them, and they had to bring everyone along. But, throughout, there was no doubt that we were moving toward a negotiated acceptance of the terms of the act.

Mr. BONKER. What are you doing with respect to Canada?

Ambassador RIDGWAY. We have just concluded 2 weeks of negotiations. We are looking forward to an arrangement that would be in place on March 1. Although the Canadians have implemented their own 200-mile zone effective January 1, and American fishing in the Canadian zone is going forward. At the end of the negotiations—the last round which took place in Los Angeles—a report was prepared which has been submitted to the governments for their review to determine the next step.

Mr. BONKER. Thank you.

No further questions.

Mr. LEGGETT. Okay, Mr. Bonker. Thank you.

Mr. McCloskey.

Mr. McCLOSKEY. Mr. Chairman, I would like to address a couple of questions to the Chair on this procedure.

Ms. Ridgway's statement is on H.R. 2081; however, we are considering the joint resolution. Can the Chair state why we are considering the joint resolution rather than H.R. 2081?

Mr. LEGGETT. Well, I think a comment would be better of counsel.

Mr. EVERETT. Mr. McCloskey, when negotiating with the Senate staff, we understand it has been practice on the Senate side, the Foreign Relations Committee in particular, to utilize joint resolutions when approving of agreements in the past, and they indicated to us they would prefer the use of that vehicle in this situation.

So we agreed to use the joint resolution in lieu of a House resolution.

Mr. McCLOSKEY. May I ask Ambassador Ridgway—

Mr. FORSYTHE. Will you yield?

I think one of the principal points was working out with the Senate a bill that was going to get action in both Houses in a timely fashion. This was particularly important considering House district work period and the Senate legislative period which reduces the time we have to act. It was essential to have some kind of agreement. This was in writing, I believe, at the time.

Neither Ambassador Ridgway or the committee had an opportunity to see the resolution in print until today.

Mr. McCLOSKEY. May I ask, Ambassador Ridgway, the concern you had?

Mr. LEGGETT. As I understand it, to be more specific, the joint resolution form involved a lot of whereases, things like that and the Senate had determined that they wanted to proceed with the whereas *modus operandi*.

If they proceeded with whereases, and if we proceeded with the bill, then when we tried to mesh the two, we would have a difficult time putting the two together. So we determined that we would cooperate by using the whereas method.

Mr. McCLOSKEY. Mr. Chairman, I have no objection to a conference with the Senate. However, I want to make sure that Ambassador Ridgway's objection to 2081 will be resolved by the joint resolution. I think the Ambassador said legislative relief provided under H.R. 2081 would apply to these countries with which the United States is still negotiating.

Ambassador RIDGWAY. I believe the problem that we had with 2081 using a February 15 cutoff date has been resolved by a joint resolution which does give us opportunity up until February 28.

Mr. McCLOSKEY. Are there unique problems with each of the countries with whom you are negotiating that you expect will be resolved by February 28?

Ambassador RIDGWAY. I am pleased to report they have all been resolved, and the unique problems now are unique problems of administration—how will we get the papers in the right place at the right time.

Mr. McCLOSKEY. One other question.

Is South Korea one of those countries?

Ambassador RIDGWAY. Yes, it is.

Mr. McCLOSKEY. We have a dispute with them, do we not?

Are they not a nation that has joined international whaling?

Ambassador RIDGWAY. They are not a member of the convention but—they are not an active fishing nation in the world either.

Mr. McCLOSKEY. Are they not active in the taking of whales?

Ambassador RIDGWAY. Mr. Blondin, who is more expert in this than I, says you have to say yes.

Mr. McCLOSKEY. They are active in taking whales?

Ambassador RIDGWAY. Yes.

Mr. McCLOSKEY. The problem I have with the speed we approach this, Mr. Chairman, is, I hope we could put some teeth in the whale situation. This is one area where the two come together. We are prohibiting South Korea certain rights under the GIFA.

But, at the same time, we lose our leverage when dealing with whaling. This is one area in which I hope the subcommittee would look while reviewing these agreements.

Perhaps one of the witnesses is prepared to comment on the leverage or lack of it on the South Koreans taking whales.

Ambassador RIDGWAY. I would be happy, Mr. McCloskey, to comment on leverage in the context of negotiations that we just went through.

The major task was the one of seeing to it that we obtained the initial negotiated acknowledgment of our jurisdiction, and it is quite true that because of the very real interest that everyone has in the question of mammals that, in a number of occasions, suggestions were put forward that we use the opportunity as well to try to meet certain of the concerns that we have on the country's use of whaling or other aspects of the question.

It was my judgment at the time, and I think it would remain my judgment, that we were using all of the leverage that we had to obtain this very important international acknowledgment of our jurisdiction; that, inasmuch as we were not dealing with specific numbers of fish but were just talking about a big opportunity to qualify for future fishing if there were a surplus, there was not enough leverage to us on more than one issue. And so we used it on the issue of acknowledgment of our jurisdiction. We have in all of the—

Mr. McCLOSKEY. But the Koreans are not really in a position to challenge our jurisdiction?

Ambassador RIDGWAY. It was not a question of challenging—

Mr. McCLOSKEY. Mr. Chairman, I am not quite sure I want to approve of any agreement with the Koreans unless we are covered on it.

Mr. LEGGETT. I think what Ambassador Ridgway means, that at the outset of this legislation we were accused of moving unilaterally.

Now, here in the twilight, it appears that there are a number of nations that will meet this simultaneous direction.

The mere fact that we execute a GIFA does not mean that a particular country is home free. Each and every year, a country is going to have to come to the United States and request a certain share of a surplus of the so-called optimum sustainable yield, and that is going to give us a continuing handle on relationships with the countries. And we could take into consideration human rights, whales, and a massive of other things, including whatever comes to mind.

So rather than load up these agreements at the outset with things that might be on the members' minds and conscience, it might be well if we were to establish procedure and get everybody under the tent and then we can scrap with respect to where the knives and forks go as they relate to the plate.

Mr. FORSYTHE. Will the gentleman yield?

I would point out that this legislation is very limited. It covers only those GIFA's which have been transmitted to Congress. If a GIFA has not been transmitted by the time this bill is approved it would not be covered.

Mr. McCLOSKEY. Let me ask one further question, Mr. Chairman.

This is a one shot resolution. We are covering an interim period only for that purpose.

Mr. LEGGETT. That is true.

Mr. McCLOSKEY. With this legislation we are extending the February 28 date of implementation that was in the original legislation.

Mr. LEGGETT. Well, I set forth in my prepared statement all of the things that we had to do to allow the act to become effective March 1 in regards to the extended zone.

Mr. McCLOSKEY. I have nothing further.

Mr. LEGGETT. Mr. AuCoin.

Mr. AuCOIN. I have no questions, Mr. Chairman.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. I have no questions, Mr. Chairman.

Mr. LEGGETT. Mr. Evans.

Mr. EVANS. No questions.

Mr. LEGGETT. Mr. Akaka.

Mr. AKAKA. No.

Mr. LEGGETT. Mr. Oberstar?

Mr. OBERSTAR. No questions at this time, Mr. Chairman.

Mr. LEGGETT. We are trying to accelerate this legislation and our first witnesses have been taken care of now in about 50 minutes. We have five more witnesses to hear.

Ambassador Ridgway, I want to particularly thank you for your cooperation. And as Mr. Studds has stated, you are performing at a high standard of excellence.

Ambassador RIDGWAY. Thank you very much, Mr. Chairman.

Mr. LEGGETT. Our next witness will be Mr. Schoning, Director of the National Marine Fisheries Service, representing the Department of Commerce, and Mr. Blatt, your counsel.

I am pleased to have you here, and your statement will appear in the record as though completely delivered. You can expound on it or explain it in any way you care to. You also are performing at a high degree of excellence.

STATEMENT OF ROBERT W. SCHONING, DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE, ACCOMPANIED BY HERBERT BLATT, ASSISTANT GENERAL COUNSEL, NOAA, AND CARMEN BLONDIN, ASSISTANT DIRECTOR FOR INTERNATIONAL FISHERIES, NMFS

Mr. SCHONING. Thank you, Mr. Chairman.

On my immediate right is Mr. Blatt, legal counsel for NOAA, and soon to join me is Mr. Blondin, who is our Assistant Director for International Fisheries. He is seeking some information for Mr. McCloskey on whales.

Mr. Chairman, my statement is brief, and I would like to read it.

Mr. Chairman, it is a pleasure to appear before you today to discuss progress under the Fishery Conservation and Management Act of 1976 (FMCA).

Ambassador Ridgway has highlighted the situation on the considerable success her office has had in negotiating Governing International Fishery Agreements (GIFA's) with seven countries to date. The Department of State has the primary responsibility for completing these required agreements. We in the Department of Commerce have many operational responsibilities in implementing the act after GIFA's have been signed and other arrangements made with the foreign governments which desire to fish within our 200-mile zone after March 1, 1977. We still believe that we can meet the March 1 deadline and permit all interested and cooperative foreign nations to fish within the intent of the law if several important

things fall into place on a very tight time schedule. This will require the cooperation of several foreign and domestic entities.

In order to meet the deadline and yet still permit foreign fishing, legislative relief will be needed in four areas. First a modification of the statutory requirement that no GIFA shall become effective before the close of 60 calendar days of continuous session of the Congress after the President transmits such agreement to the Congress. No agreement can be effective on this schedule until well into March 1977 as needed. We urge that Congress immediately approve all existing GIFA's that have been submitted to it as is provided in H.R. 2081, and set up some mechanism to approve others that may be received between now and March 1. Negotiations are still pending with Japan, Canada, and the European Economic Community. All have an interest in fishing on March 1 inside our 200-mile limit, but must have some type of agreements approved by Congress. We favor amendment of H.R. 2081, or enactment of other appropriate legislation to provide a mechanism for approving any agreements signed in the near future.

Approval of the GIFA's by Congress would trigger and permit other required subsequent actions that must be completed prior to March 1. The key is that we must have "effective" GIFA's, "effective" meaning approved by Congress, before we can do these other things. At least for the seven nations which have signed GIFA's, and hopefully Congress will approve these right away, we could complete processing of the applications to fish, collect fees, issue permits, and supply to them regulations governing their fishing activities. There is a certain minimum amount of time required to take each of these actions in that we anticipate receiving some 1,000 to 1,200 applications.

Also time is required for my staff to determine the amount of money owed to the United States associated with the fee schedule and to have the foreign nations actually transmit the money.

There are three other matters which we also feel require legislative relief. First, relief is needed from the requirement that the permit be aboard a vessel prior to fishing. The provision of 206(b)(2), which H.R. 2081 would add to the FCMA, would accomplish this.

Second, waiver of the requirement for regional fishery management council comment in the period up to 45 days on foreign fishing applications will be necessary. Here, too, H.R. 2081 would provide relief.

Third, waiver of the requirement for foreign nations to pay the fees in advance of issuance of permits is necessary. H.R. 2081 does not contain such a provision. I understand the revised joint resolution does, however.

There are logistic problems for the foreign nations as well as our own government in fulfilling the many requirements and taking the necessary administrative or procedural actions sufficiently in advance of March 1 so all things will be "Go" at that time. This consequence of the U.S. Government's failure to do all it reasonably can to facilitate foreign fishing within the framework and intent of the act are potentially very serious. There could be confrontations between our Coast Guard and foreign fishing vessels of nations which have complied in every respect with the intent of the act, but

would be unable to fish because statutory administrative requirements remain unsatisfied. The delay or loss of the catch would hamper the supply of protein to the nations involved and could result in large financial losses being sustained by the fleets who would be in port or at sea and unable to fish, notwithstanding their compliance with the major requirements of the act.

This basically highlights our areas of concern. Again, we recommend the earliest possible approval by Congress of existing GIFA's and approval of a system to provide for prompt action on any others submitted within the next few weeks.

We do not want to sound like we are more concerned with permitting foreign fishing fleets to get in operation than we are with U.S. fleets. The law has other provisions that provide for adequate resource protection and preferential treatment for U.S. fishermen on the harvestable surplus. Once these two requirements are satisfied, allocations can be made to foreign governments. We are attempting to carry out our responsibilities within that framework and not at the expense or to the detriment of our U.S. fishermen.

I would like to make one additional comment. The eight regional fishery management councils which are developing management plans have passed resolutions or otherwise indicated their support for legislative relief to expedite congressional approval of GIFA's and to provide relief from the administrative requirements of the act so as to permit fishing on an interim basis by foreign vessels to which permits have been issued regardless of whether permits are actually onboard, as long as they have met all other requirements of the act.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you may have. Thank you.

Mr. LEGGETT. Thank you very much.

We have the bill before us that is going to be introduced this afternoon, and the members who were here had the bill briefly explained in my opening statement. It will be subject to amendment, as any bill.

Mr. Forsythe and I are the authors of the bill in its current form. Is there anyone else who would like to go on the bill? If so, raise your hand.

Mr. McCloskey, Mr. Oberstar, Mr. Studds, one of your amendments is bound to be accepted—

Mr. STUDDS. I am awaiting the decision of the Department of Commerce.

Mr. LEGGETT. Mr. Akaka, Mr. Hughes, Mr. Bonker.

Will the Clerk so note these names—and Mr. Evans. Very good. We will hold Mr. Studds' name in abeyance at this time.

Mr. Forsythe.

Mr. FORSYTHE. Thank you, Mr. Chairman.

One of the things that has come up, and I just wondered why we got out on this one, the question of the time for councils to review permits, we understand that they are asking for them on Thursday.

What is your reaction to the problem we have, and where do we stand?

Mr. SCHONING. In our opinion, for us to effectively implement the act by March 1, we could not permit that length of time for the applications.

As was pointed out earlier by Ambassador Ridgway, the Japanese GIFA is not yet signed, and has not yet been approved by either government, or of course, Congress. The sequence is that after the GIFA's are signed, only then can a nation submit applications. Then we and the State Department would evaluate them. We are talking somewhere in the general magnitude of 400 applications. To get those applications published in the Federal Register, sent out to the councils for comment, and wait another 30 days for public comment, before we take final action, would put us very late.

Mr. FORSYTHE. Well, we are not talking very late. I think 30 days was the maximum request from a council. But let us be specific.

There are a number of councils that I think want 20, and as high as 30 days. I recognize that a 30-day comment period could not work. However, I do not know where we are going to go on that.

Mr. SCHONING. Let me respond in two ways.

One, we understand that the way the act is presently worded, there is a provision that provides for public input within the time frame of the 45 days.

Our legal people tell us that this would require the councils to afford the public a reasonable time to comment, after some kind of notification to the public, that the application exists. So that part would have to be addressed somewhere in your actions.

The second point is that we have a tabulation of the dates each of the applications has gone to the councils, and the dates the State Department has submitted the applications from each of the nations—South Korea, Poland, East Germany, the Soviets and Taiwan—to the councils. We could do some plotting from those dates.

The earliest that any application went to the councils was January 21. Others went in early February. Some others will go later, so it will just be a matter of computing when that timeframe would be up.

We would be reluctant to support anything over 15 days and would prefer a shorter timeframe because we have a substantial administrative load to process before we can notify the nation that they are eligible to fish, particularly if the nation has any substantial number of applications for us to review.

Mr. FORSYTHE. I guess most of it comes back to Japan again, but when we were first talking about these amendments—we were discussing a 10-day council comment period.

Do you see any problem if we were to establish a 15-day comment period?

Mr. SCHONING. No, sir, I think it is a matter of liaison with the councils—how quickly we can get the application to them.

The resolution does not say that we have to do it in 15 days. It is a question of whether the councils must conduct a public hearing to take formal action, or create a subcommittee which has the authority to act.

The Advisory Committee Act is waived. So you are talking about council action.

Mr. McCLOSKEY. Will the gentleman yield?

Mr. FORSYTHE. Yes.

Mr. McCLOSKEY. Why could we not waive it for 60 days, so that the council has full power to go into effect?

Mr. LEGGETT. Do you want to comment on that?

Mr. SCHONING. Yes, sir, and I misspoke on it.

Our lawyers say for the councils to transact business formally they must announce the agenda in advance, or the certain timeframe, transact the business, and then indicate their action. We have been told that the councils can either appoint a subcommittee on this, or do it themselves. If the councils have not scheduled a meeting yet to act on applications, they must schedule it with an appropriate amount of advance notice, take action on that meeting, then get us the comments. We cannot do much about implementing it until we get the approval from the councils themselves.

Mr. LEGGETT. Could you comment on Mr. McCloskey's question, why could we not waive it for 60 days?

Of course, the reason for that is that you want the waiver to cover the validity of permits for the full year period rather than requiring renewal of the permits after a 60-day period, is that right?

Mr. BLATT. Mr. Chairman, the permits themselves are annual with regard to the preliminary management plans.

I think Mr. Studds very accurately portrayed what is occurring now. This is just one year. It is a transitional arrangement, so what we are trying to do is get the permits in place to take care of preliminary plans that the Secretary is going to adopt in the near future.

Mr. LEGGETT. Mr. McCloskey, you can follow up that question, if you care to.

Mr. McCLOSKEY. If we are going to have a vote on Mr. Studds' amendment in 15 days rather than 7, we are in effect taking away from these councils the power we gave them in the session. I can see why we might have to do that for the first 60 days of this transition period.

I do not see why after the 60 days has elapsed, we have to deny to the council this advisory power that we intended to give them.

Mr. LEGGETT. Mr. Blatt, can you respond to that?

Mr. BLATT. Mr. McCloskey, if the councils adopted a fishery management plan within this calendar year, that fishery management plan, when approved and implemented by the Secretary with regulations, would replace the preliminary management plan. Therefore that preliminary management plan would go out of force and effect.

Mr. LEGGETT. How would that affect the permits?

Mr. FORSYTHE. I think this is my time. Can I get back in here for just a minute?

In fact, these first permits, issued under the arrangement, which we are trying to hold together, will be effective for 1 year. That is a year only.

Mr. SCHONING. That is right, all applications are for a single year. The application form indicates that they expire at the end of the year.

Mr. FORSYTHE. Calendar year.

Mr. SCHONING. That is correct.

Mr. FORSYTHE. And so there would be no issue of relief just for 60 days if it really is not a question that is applicable. There would be a new permit issued each year.—

Mr. SCHONING. That is absolutely correct.

As we interpret it, Mr. Forsythe, these applications would be made effective in a shorter time period, but the period of effectiveness would be the entire year.

Mr. FORSYTHE. So a new permit would not be issued if a council plan were approved during the interim. For 1978 permits, permits will follow the regular course provided by the act. The special procedure will not cover permits for 1978.

Mr. LEGGETT. If the gentleman will yield, any international fisheries agreement negotiated after the 28th of February or presented to the Congress after that date, will have all of the protections that were included in H.R. 200 last year.

What I am concerned about are the preliminary programs that have been negotiated so far.

Your time has expired, Mr. Forsythe.

May I once again have the Commerce Department help in clarifying the record?

Make it quite clear what the intent of the Congress is, and what the understanding of it is of the Department, with respect to future years, beginning in 1978, the initial determination of whether or not for any given species there is to be a surplus allocated, however the State Department may determine among four nations, that information lies with the regional management councils, is that correct?

Mr. SCHONING. That is correct, in the form of fishery management plans. Until the council acts, these preliminary plans are in effect.

It is conceivable, depending on council action, that these preliminary plans could extend longer.

Mr. LEGGETT. Therefore, what we are doing here, unfortunately does have the effect pretty much of removing the council's participation in this year's determination of surplus stocks, and that is why I think it is critical that we give them this much say.

Mr. SCHONING. They were given substantial opportunity to comment on the plans themselves. In my judgment, the key is commenting on the plans, and the amount of available surplus, and not so much the applications themselves, that is, which name is on the vessel, or how many vessels.

Mr. LEGGETT. I understand. I just want the record to reflect what we are doing, and what circumstances we face this year. I think your response to Mr. Forsythe is that you could live with an extension of 15 days.

Mr. SCHONING. Yes, sir, I would point out that if Japan does not get permit applications here until the 28th, the permits will not be issued.

Mr. LEGGETT. Yes, and I suspect the world can live with that.

Mr. SCHONING. I am confident that it will.

Mr. FORSYTHE. Will the gentleman yield?

Have you seen Japan's permit applications.

Mr. SCHONING. Yes, we looked at some documents in their interest for fishing.

Mr. FORSYTHE. If there is something there, some preliminary work could be done.

Mr. STUDDS. Very quickly, if I may, on the other two amendments that I am going to suggest. Does the Department have any problems with repealing the implementing legislation for ICNAF as of March 1?

Mr. SCHONING. I would have to check with our policymakers, and also the New England council. I have not seen a pronouncement from the council as to their views.

Mr. STUDDS. Would you not agree with me, common sense would suggest that when the United States withdraws from a treaty, the legislation implementing that treaty should be repealed?

Mr. SCHONING. I suppose whatever benefits that legislation provides, if it provides needed—

Mr. STUDDS. Such other benefits include, as you know, enforcement against U.S. vessels, in U.S. zones, among other things. I think we'd better get that off the books.

Mr. SCHONING. I am aware of many arguments for removing it.

Mr. STUDDS. May I say, with respect to the 2-month delay in having the licenses physically on board foreign vessels, it was my understanding that the extension requested was for 30 days, and not 60 days.

Mr. SCHONING. I am not aware of that. We need at least 60 days to communicate with the foreign nations. We would experience great difficulty in getting the permits aboard every individual vessel, because of the number of vessels in the fleet, the areas in which they fish, and how quickly the permits are completed.

Mr. STUDDS. Let me ask you two other questions, very quickly.

First of all, I assume you do not yet have a decision from your Secretary with respect to altering the windows to protect fixed lobstering gear?

Mr. SCHONING. That is correct. I understand the decision will be made today.

Mr. STUDDS. Finally, as you know, there have been some press reports about foreign fishing in the 200-mile zone during this interim period. What evidence do you have of such foreign fishing?

Mr. SCHONING. I would like to have Mr. Blondin, our Assistant Director for International Affairs comment on this.

Mr. BLONDIN. Thank you, Mr. Schoning.

I think it is a well known fact that the National Marine Fisheries Service, in conjunction with the Coast Guard, has been carrying out surveillance activities of the foreign fleets off our coasts. Since January, and over the past 5 weeks, we have observed about 141 foreign vessels from 13 nations off our coasts.

Mr. LEGGETT. One hundred forty one?

Mr. BLONDIN. Roughly 141, yes, sir. Not all have been fishing vessels; some are support vessels. About 10 percent have been support vessels. We have had some boardings of some of these vessels, and at least in two fisheries we have been keeping a very close watch because the vessels engaged in those fisheries are, we believe, approaching the ICNAF quotas.

Up to this time we have no indication at all of any overfishing. In the Italian squid fishing, in which there are about 16 vessels that have been fishing since about the first of the year, we believe they are approaching the ICNAF quota of about 1,640 tons.

We have noticed over the last week that some vessels have ceased fishing, which indicates that perhaps they are trying to wind this down.

Mr. STUDDS. Let me ask you this, if I may.

In the event that prior to March 1 when we have our new rules for enforcement, you detect what seems to you to be foreign fishing, what action would you propose to take with respect to preliminary measurement plans regarding surplus to those nations that have been cheating in the interim?

Mr. BLONDIN. Mr. Studds, if they were vessels that surpassed the quotas that the Department of State allocated in accordance with ICNAF, I would hope that we would be quick to——

Mr. STUDDS. Revise those?

Mr. BLONDIN. Revise the plans, if indeed this occurred, and also to take some other actions.

Mr. STUDDS. I want the record to again reflect clearly, that the U.S. Government as a whole is not prepared to tolerate foreign vessels taking advantage of the interim 2-month period. That any nation seeking to do so stands to be penalized indefinitely in the future, with respect to their permission to take surplus stocks within our 200-mile zone.

Mr. SCHONING. Mr. Studds, it might be appropriate for Ambassador Ridgway to comment because the State Department will make the decisions on allocations. I do know that our people have been in consultation with State Department staff about getting the most accurate projections of the catch for the foreign nations for the January, February period.

Mr. STUDDS. May I ask if you have an estimate of the Russian mackerel catch for this year?

Mr. BLONDIN. Yes, again, this was the other fishery that I referred to, Mr. Studds, that we are keeping a close watch on. There are about 50 vessels involved. We believe they are now approaching their ICNAF quota.

We have observed, since about January 21, a shifting of emphasis from that mackerel fleet to the hake fishery, and we believe that the Soviets are trying to stay within the limits imposed by ICNAF.

Mr. STUDDS. Finally, have you observed any violation of ICNAF gear restrictions?

Mr. BLONDIN. To my knowledge, we have not observed any violations, Mr. Studds.

Mr. STUDDS. Thank you.

Mr. SCHONING. I would like to respond further on the Soviet mackerel situation because it was of deep concern to me when I heard about it from New England council members, and others. I spoke with Mr. Znamensky, the Fisheries Attache in the Soviet Embassy, and urged him to get a current report on the situation.

He called Deputy Commissioner Kamentsev, in Moscow, and talked to the fishing fleet commanders about this. They have three fleets fishing mackerel. The major ones have left the grounds,

because they have reached their quota, and when the other one reaches the catch quota, it will leave.

The Minister has instructed them to give a daily report to Mr. Znamensky here in town. He has assured me that they have not reached a mackerel catch quota yet.

Mr. LEGGETT. Thank you.

Mr. Oberstar?

Mr. OBERSTAR. No questions.

Mr. LEGGETT. Mr. McCloskey?

Mr. McCLOSKEY. Are you prepared to grant permits for incidental taking of marine mammals within the 200-mile zone?

I think you can just answer yes or no. Are you prepared to comply with the Marine Mammal Act?

Mr. SCHONING. We are prepared to comply with the Marine Mammal Protection Act. We will have to address every permit as they come in.

Mr. McCLOSKEY. How are you going to do it?

Mr. SCHONING. Well, the first course of action, which we will follow in every application, is to go for public comment.

Mr. McCLOSKEY. How are you going to give them a permit that allows them to take sea otters and whales?

Mr. SCHONING. It depends on the marine mammal and the condition of the stocks, as the law requires. This is the format, in which we will consider applications.

Mr. McCLOSKEY. Do you have the statistics and data to comply with the act?

Mr. SCHONING. It depends on the particular action, the mammal involved, the mammal stocks involved, and the geographical area.

Mr. McCLOSKEY. Do you know the optimum sustainable population within 200 miles of porpoise?

Mr. SCHONING. We do not anticipate applications for porpoise take, if that is what your question is.

Mr. McCLOSKEY. How then are you going to enforce the Marine Mammal Act?

Mr. SCHONING. In what respect?

Mr. McCLOSKEY. Suppose there is the incidental taking of mammals within the 200-mile zone?

Mr. SCHONING. The foreign nations have been made aware that the Marine Mammal Protection Act conditions apply, and they know that they are going to have to comply. They will have to apply for applications consistent with the act.

Mr. McCLOSKEY. Do you know the optimum sustainable population of the Dall porpoise?

Mr. SCHONING. The optimum sustainable population of the Dall porpoise has not yet been determined.

Mr. McCLOSKEY. What about sea lions?

Mr. SCHONING. Yes, we do have estimates on sea lions in the North Pacific.

Mr. McCLOSKEY. How did you establish your fees? Can you briefly outline what the amounts of permit fees are going to be?

Mr. SCHONING. Yes, sir. They are based on three general approaches. The first is for fishing vessels. Every vessel that fishes will pay \$1 a ton, with no limits. But essentially none are over a 5,000-ton carrying capacity.

Mr. McCLOSKEY. Is this based on the capacity of the vessel?

Mr. SCHONING. The registered tonnage of the vessel is \$1 a ton. The second is for processing vessels—50 cents a ton, with a limit of \$2,500, or 5,000 tons. The third is for vessels that neither fish nor process—support vessels—that will pay a straight \$200.

In addition, there will be a fee on the actual catch. It will initially be based on the allocation as determined by the State Department and then it will be finally settled on what the actual catch is. The rate will be three and one half percent. It will be applied to the published figures, which will be in the Federal Register. We will have the value per ton dockside to fishermen in the United States for the vast majority of the species; the few that we do not have figures on will be foreign landings. The last fee will be observer costs, and that will be computed after the fact—after the foreign nations have had observers aboard for the whole year. Then we will charge them the actual cost, the salary and transportation.

Mr. McCLOSKEY. How are you deciding which boats will have observers?

Mr. SCHONING. We are in the final stage of determining that now. There will be a number of observers out now, and it will be based on, in general, the past performance of the country by fleet, by recordkeeping, enforcement practices, and violations.

The things that have caused us the greatest concern are either the recordkeeping has not been detailed or accurate enough, or there have been enforcement problems.

We will put the people aboard those vessels in a greater percentage than ones that have kept good records historically, and we have not had problems with.

Mr. McCLOSKEY. What percent of the observer cost are you assessing to the ship, or the nation involved?

Mr. SCHONING. One hundred percent. Everything that is required for this action by Customs, the Coast Guard, and ourselves. We have not related the fees to the enforcement aspect costwise.

Mr. McCLOSKEY. On what basis did you reach your schedule?

Mr. SCHONING. The law requires us to determine reasonable fees. We made some assessment of what other nations were doing, and frankly, this was not particularly helpful. We also considered the economics of the fisheries, and we established a fee that appeared to us to be reasonable, that would not be prohibitive of fishing solely because of the level of the fee. It was not chosen as a management tool.

Mr. McCLOSKEY. Who determined the fees? Commerce or State, or—

Mr. SCHONING. Commerce proposed it in the Federal Register on December 23. We had comments from a variety of sources—States, many of the regional councils, our own regional offices, Department of State, and foreign governments. We have assessed all of these comments and ended up with a final decision, which will go to the Federal Register this week.

Mr. McCLOSKEY. The final fee schedule will be published?

Mr. SCHONING. Yes, in the Federal Register this week.

Mr. McCLOSKEY. You say you have no understanding of what percentage of the cost or what portion of the surveillance costs will be borne by the fees themselves?

Mr. SCHONING. We did not relate to them, no.

Mr. McCLOSKEY. After March 1, will foreign nations be permitted to take whales within the U.S. 200 miles?

Mr. SCHONING. After March 1—yes, sir. With all the requirements of the Marine Mammal Protection Act and the Fishery Conservation and Management Act complied with.

Mr. LEGGETT. Wait a minute.

I think we argued that point last year.

I think it was the position of the Chair that whales could not be taken within our 200-mile limit.

Mr. SCHONING. If it meets the requirements of the Marine Mammal Protection Act, and this act, the answer is yes.

For example, if there are endangered species involved and there are prohibitions against taking, those mammals are not permitted to be taken, that is correct.

Mr. McCLOSKEY. You are prepared then to take whales within the 200-mile zone?

Mr. LEGGETT. They are prohibited. You cannot issue permits to Americans to take whales, and also you cannot issue permits to foreigners.

The real question here, I guess, is whether extension of the Marine Mammal Act out to 200 miles carves a hole in the International Whaling Convention. It is our position that it does. I think the administration has not necessarily come out with a formal position on that yet. But if they do not, we are prepared to act, in this committee, to express that view.

Mr. SCHONING. There is a provision in the Marine Mammal Protection Act that permits a waiver of certain conditions if a number of conditions are met.

So we would have to entertain applications and go through the public hearing route, evaluate from all standpoints, and then make a decision.

Mr. LEGGETT. Well, as an example, I guess like the killer whales, pilot whales, I guess you give permits to take those outside of Puget Sound for various display and scientific purposes, and I guess that is an exception under the prohibition law, is that right?

All right.

Mr. Oberstar has waived.

Mr. AuCoin.

Mr. AuCoin. I would like to pose a question to the Chair.

On page 4 of the staff description of the legislation, it is stated that section 206(a) provides that any GIFA signed on or before February 1977 shall be deemed to be in effect.

Does that mean that Congress will sign off on that GIFA?

Mr. LEGGETT. My counsel here is answering that—Mr. Studds.

Mr. STUDDS. Under the procedure we have in the act, the Congress has 60 days. Instead of waiting the 60 days and failing to disapprove, we are positively granting approval of GIFA's.

Mr. AuCoin. Are those GIFA's that are to be negotiated?

Mr. STUDDS. The only six in this resolution are those that have been signed and submitted to Congress.

Mr. AuCoin. Which nations are covered in the six?

Mr. EVERETT. Poland, Bulgaria, Romania, East Germany, Taiwan and the Soviet Union.

Mr. LEGGETT. It is in my opening statement.

Mr. FORSYTHE. There are three more GIFA's that are being negotiated.

Mr. AUCOIN. They are not affected.

Mr. FORSYTHE. They are not affected unless they were to arrive during the next hours of this legislation.

Mr. AUCOIN. The next hours?

Mr. LEGGETT. Or before we reach a conference agreement, should we have to go to conference on the bill.

Mr. AUCOIN. Which are those three or four?

Mr. LEGGETT. South Korea, Japan, Spain and EEC—and Canada?

Mr. FORSYTHE. No, not Canada.

Mr. AUCOIN. Any of those that might arrive, plus those in this negotiation, would be deemed to be automatically approved by this Congress?

Mr. FORSYTHE. Only those that are listed.

Mr. AUCOIN. Plus the ones that may come in.

Mr. FORSYTHE. They would be covered by a separate amendment.

Mr. AUCOIN. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. I have no questions, Mr. Chairman.

Mr. LEGGETT. Mr. Bonker.

Mr. BONKER. No.

Mr. LEGGETT. Mr. Evans.

Mr. EVANS. I have a question, Mr. Chairman, of Mr. Schoning related to compensation for damages being occurred by our ships caused by foreign vessels, either our ships or our gear.

I understand that three of the GIFA's established a joint claim board on enforcement. But I understand further that in the three other GIFA's no claims boards were established. Apparently in these latter cases, we merely say that claims procedures will be consistent with U.S. procedures. I would like to know what those U.S. procedures are.

Mr. SCHONING. Yes, sir, I would like to have Mr. Blondin answer this. Mr. Blondin has been our representative on those boards and is familiar with their operations.

Mr. BLONDIN. Mr. Evans, first of all, it has to be clear that the claims boards are a secondary means of recovering damages. The primary means is through the courts. The FCMA addresses the fact that our courts will be the primary means of recovering damages and further requires that the government concerned designate an agent to receive service of process. This has been a problem in the past since it was generally impossible for a court to establish jurisdiction. Claims boards established under previous agreements did provide a means of bringing the parties together.

And so, in conclusion, I would say that the claims procedures that are set up in the three GIFA's are a secondary means and not the primary means for recovery of damages.

Mr. EVANS. Let me say that I think that the primary method usually takes a longer time than the secondary method. And per-

haps we ought to take a look at the primary method as the prime means rather than the secondary means.

Mr. BLONDIN. Well, Mr. Evans, from a personal standpoint, I think I would agree with you. My belief is that some American fishermen have felt that the claims procedures have not been all that successful, although I think from the government standpoint they had been successful. Over the past 3 years, we have recovered in excess of \$200,000 from claims. While this does not represent all of the claimed damages by American fishermen, it did, in the opinion of the board acting in a conciliation mode, provide what we thought was adequate compensation in these cases, and certainly it was provided in a very short period of time, relatively speaking, when compared to the normal period of time one would spend before courts.

Mr. LEGGETT. Thank you, Mr. Evans.

Mr. Akaka.

Mr. AKAKA. No.

Mr. LEGGETT. All right, George.

Mr. MANNINA. Bub, may I follow up Mr. Evans' question?

I was unclear as to what procedures had been established to provide for compensation to U.S. fishermen whose vessels or gear have been damaged by foreign fishermen.

What does a U.S. fisherman do if he has been damaged by a Bulgarian vessel for example?

Mr. BLONDIN. He would have to go through normal court procedures.

Mr. SCHONING. We plan to develop some procedures but they have not yet been developed.

Mr. MANNINA. How soon will these procedures be established.

Mr. SCHONING. As soon as we can get to them. It could be done very quickly.

Mr. EVANS. Mr. Chairman, certainly the time lag would be greatly reduced if you could develop those procedures rather than having to go through the legal process.

Mr. SCHONING. No question about it. And we are sympathetic.

Mr. LEGGETT. Thank you, Mr. Evans.

Mr. EVERETT. Just two short questions.

With respect to the catch that has been made by foreign vessels since the first of the year, you will try to determine the amount of catch that has been made by each country and that amount will be deducted from the allocations to the countries concerned, is that right?

Mr. SCHONING. That is correct, because the preliminary management plans provide for catches that can be taken during the entire year. So if they have taken some in January or February, that must be subtracted from the allocation.

We talked with the States about that, and they certainly were happy in the quotas assigned to the States and to the countries.

Mr. EVERETT. One other question.

With respect to the preliminary management plans, would one of the councils come forward with a management plan, which naturally supersedes a preliminary management plan in that particular fishery, what effect would this have on any permits issued to foreign nations to fish in that fishery?

Mr. SCHONING. I am told by counsel that they would have to apply for new permits, but remembering now that the plans that the councils would develop would relate to domestic as well as foreign fishermen. In our communications with the councils, with the exception of the New England council which is going forward with a fishery management plan for cod, haddock and yellowtail, we know of no other councils that expect to have plans to supersede preliminary plans during the calendar year 1977.

All the indications we have are that the preliminary plans will run their course through 1977.

Mr. EVERETT. With respect to that one, if it is inconsistent with the previous plan, then the permits could be modified accordingly?

Mr. SCHONING. Yes.

Mr. LEGGETT. Now, what you are saying is that the permits, once they are issued, are, in fact, revocable in part or in total, in order to comply with any revised plans?

Mr. SCHONING. Yes, they are.

Mr. LEGGETT. They give nobody a vested right then.

Mr. SCHONING. That is right.

Mr. LEGGETT. Will you present to the committee the proposal that you have, as soon as you have it available, for all allocations to foreign countries for the year, your estimate of what each country has already taken out of the various fisheries involved as of March 1, which is the beginning of the permit period?

Mr. SCHONING. We will work with the State Department in providing this. The State Department has the responsibility for making the allocations in cooperation with us.

[The following was received for the record:]

Foreign Fishery Allocations

The Atlantic Coast Allocation (Table 1) and the Pacific Coast Allocation (Table 2) reflect the total allowable level of foreign fishing for Calendar year 1977. Foreign catches taken during January and February shall be subtracted from the allocation and only the remaining balance will be available for foreign fishing during March 1 - December 31, 1977.

Table 1
Atlantic Coast Allocation

Country	Species	1977 Allocation (metric tons)
Bulgaria	Silver hake	1,570
	Atlantic mackerel	4,000
	Atlantic herring	100
	Short-finned squid	400
	Other finfish	2,000
Romania	Atlantic mackerel	1,100
	Atlantic herring	100
	Other finfish	200
Poland	Atlantic mackerel	20,200
	Atlantic herring	5,100
	Long-finned squid	850
	Short-finned squid	4,910
	Other finfish	6,200
Japan	Long-finned squid	7,820
	Short-finned squid	3,440
	Butterfish	3,300
	Other finfish	7,000
Spain	Long-finned squid	4,390
	Short-finned squid	4,910
	Butterfish	1,500
	Other finfish	3,600
Soviet Union	Red hake	30,080
	Silver hake	72,150
	Atlantic mackerel	22,800
	Atlantic herring	3,400
	Long-finned squid	1,000
	Short-finned squid	7,370
	Other finfish	31,100
German Democratic Republic	Atlantic mackerel	12,400
	Atlantic herring	4,825
	Other finfish	3,000

Atlantic (cont.)

Country	Species	1977 Allocation (metric tons)
European Economic Community:		
Federal Republic of Germany	Atlantic mackerel	1,100
	Atlantic herring	4,725
	Long-finned squid	500
	Other finfish	200
France	Atlantic herring	1,000
	Other finfish	200
Italy	Atlantic mackerel	300
	Long-finned squid	1,640
	Short-finned squid	980
	Butterfish	400
	Other finfish	900

Table 2
Pacific Coast Allocation
(Preliminary, Subject to Revision)

Country	Species	Area	1977 Allocation (metric tons)
Japan	Pollock	Bering Sea/Aleutians	792,300
	Pollock	Gulf of Alaska	44,100
	Sablefish	Bering Sea/Aleutians	5,600
	Sablefish	Gulf of Alaska	13,900
	Pacific cod	Bering Sea/Aleutians	38,100
	Pacific cod	Gulf of Alaska	1,600
	Yellowfin sole	Bering Sea/Aleutians	62,100
	Other Flounders	Bering Sea/Aleutians	61,500
	Flounders (except halibut)	Gulf of Alaska	18,700
	Herring	Bering Sea/Aleutians	5,800
	Pacific Ocean Perch	Bering Sea/Aleutians	9,300
	Pacific Ocean Perch	Gulf of Alaska	19,800
	Other Rockfishes	Gulf of Alaska	2,700
	Squid	Bering Sea/Aleutians	10,000
	Other Groundfish	Bering Sea/Aleutians	63,500
	Other Groundfish	Gulf of Alaska	4,200
	Seamount Groundfish	Western Pacific	1,000
	Snow (Tanner) Crab	Bering Sea/Aleutians	12,500
	Snails	Bering Sea/Aleutians	2,700
USSR	Pollock	Bering Sea/Aleutians	112,700
	Pollock	Gulf of Alaska	63,100
	Sablefish	Bering Sea/Aleutians	800
	Pacific cod	Bering Sea/Aleutians	17,200
	Pacific cod	Gulf of Alaska	600
	Yellowfin sole	Bering Sea/Aleutians	40,800
	Other Flounders	Bering Sea/Aleutians	40,400
	Flounders (except halibut)	Gulf of Alaska	1,800
	Herring	Bering Sea/Aleutians	13,600
	Pacific Ocean Perch	Bering Sea/Aleutians	11,600
	Pacific Ocean Perch	Gulf of Alaska	8,700
	Other Rockfishes	Gulf of Alaska	1,200
	Other Groundfish	Gulf of Alaska	11,800
	Other Groundfish	Bering Sea/Aleutians	27,300
	Hake	Northeast Pacific	105,200
	Atka Mackerel	Gulf of Alaska	21,000
	Seamount Groundfish	Western Pacific	1,000
	Jack Mackerel	Northeast Pacific	2,000

Table 2
(Continued)
Pacific Coast Allocation

Country	Species	Area	1977 Allocation (metric tons)
ROK	Pollock	Bering Sea/Aleutians	40,000
	Pollock	Gulf of Alaska	35,800
	Sablefish	Bering Sea/Aleutians	600
	Sablefish	Gulf of Alaska	1,600
	Pacific Ocean Perch	Gulf of Alaska	500
	Other Rockfishes	Gulf of Alaska	100
	Other Groundfish	Gulf of Alaska	100
Taiwan	Pollock	Bering Sea/Aleutians	5,000
	Sablefish	Bering Sea/Aleutians	200
Poland	Pollock	Gulf of Alaska	6,000
	Other Groundfish	Gulf of Alaska	100
	Atka Mackerel	Gulf of Alaska	1,000
	Pacific cod	Gulf of Alaska	100
	Hake	Northeast Pacific	18,000
	Jack Mackerel	Northeast Pacific	2,000

Mr. LEGGETT. All right. One more question.

Mr. STUDDS. Am I correct, Mr. Schoning, that there is no foreign request for fishing on cod, haddock or yellowtail?

Mr. SCHONING. It is my understanding that there are none. The instructions to the foreign nations are that you can only apply for a surplus, and our preliminary plans provide for no surplus.

Mr. STUDDS. With respect to those species, there will be no foreign fishing.

Thank you, Mr. Chairman.

Mr. LEGGETT. You have heard the suggested amendment of Mr. Studds to repeal ICNAF, that is the enabling legislation for that convention, and should you have any serious objections to that amendment, I would appreciate your advising the committee.

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. Also, I presume that since the Secretary of Commerce called me expressing her interest in seeing that this legislation is enacted forthwith that you do support the bill?

Mr. SCHONING. That sounds sensible, yes, sir.

Mr. LEGGETT. Thank you.

Thank you very much.

Our next witness is Captain Knapp of the Coast Guard. I think your testimony will be very valuable to the Committee, but your testimony can be disposed of rather quickly because, without objection, your statement will be included in the record at this point as though totally delivered.

I have read through your statement while some of my other colleagues have been cross examining the previous witnesses. You point out that you need \$64 million and 491 military positions.

Is that \$64 million included in the 1977 budget?

STATEMENT OF CAPTAIN RICHARD J. KNAPP, CHIEF, OCEAN OPERATIONS DIVISION, OFFICE OF OPERATIONS, UNITED STATES COAST GUARD, DEPARTMENT OF TRANSPORTATION

Captain KNAPP. That \$64 million was part of the \$90 million that was appropriated in the \$10 million 1976 supplemental, and the \$80 million amendment to the 1977 budget.

Mr. LEGGETT. Those funds are for 1 high endurance cutter, 4 long-range search aircraft, 4 medium-range search aircraft, 10 short-range shipboard helicopters and support equipment, is that correct?

Captain KNAPP. At the \$64 million level everything but the helicopters are included.

Mr. LEGGETT. And you indicate, on page 3 of your statement, that the high endurance cutter will be activated by August; that the first of the C-130s will arrive later this year; the choppers you expect in mid 1977, and the first C-131s you have already, is that right?

Captain KNAPP. That is correct, sir.

Mr. LEGGETT. So, equipment wise, your inventory has not been measurably enhanced to date, is that correct?

Captain KNAPP. Well, it has been enhanced to the extent that you just mentioned, Mr. Chairman, yes, sir.

Mr. LEGGETT. How about personnel?

Captain KNAPP. The personnel are coming in with the pipeline so that they will be onboard to man the facilities as they are received.

Mr. LEGGETT. You have also pointed out your views with respect to the implementation of the transponder locator program and the installation of the various black boxes. I am pleased to see your aggressiveness in this regard. We need more R. & D. on that program before it can be totally implemented.

What is your estimate of the time for initial operation capability of a transponder locator capability for foreign ships?

Captain KNAPP. Basically, Mr. Chairman, we are approaching it in two phases.

The first phase reflects a capability which would permit all weather identification from on scene facilities and would involve the placement on the foreign vessels of a device that the Navy is working with, and we will hopefully tie in with their contract, called a retro-directive array. This is a form of radar reflector, which, when triggered by an ordinary radar signal will transmit an identification signal.

Based on our R. & D. estimate, by tagging on to the Navy contract, at the Naval Air Development Center, it is possible that we will have something along that line in about 15 months.

The second phase, Mr. Chairman, involves a more sophisticated system which will complement the initial effort. That would involve another type of device, possibly a radio transmitter placed onboard foreign vessels and triggered either by facilities in the zone or possibly by satellite. The device would then relay that information both in terms of position and identification to command centers which we would hope to have established on the East Coast, West Coast and the Alaskan areas; basically, we think, in terms of three.

Mr. LEGGETT. Operating under your existing equipment, what kind of additional operating expenses do you intend to incur subsequent to March 1?

Captain KNAPP. Well, the operating cost, I believe, sir, for the new equipment will probably take about—this is for the six long-range search—

Mr. LEGGETT. I understand.

What I was really asking was do you plan an enhanced reconnaissance effort commencing March 1?

Captain KNAPP. Yes, we do, sir.

I might mention that—

Mr. LEGGETT. Could you present to the subcommittee prior to March 1 your enhancement program as you envision it within the framework of the budget allocated to you by Congress?

Captain KNAPP. I will present to the committee, Mr. Chairman, an outline of the management plans, regulations and our efforts to enforce.

[The information was not received for the record.]

Mr. LEGGETT. Any questions, Mr. Studds?

Mr. STUDDS. Thank you, Mr. Chairman.

Very quickly, Captain do you agree with Mr. Schoning with respect to no evidence to date of foreign fishing in the entire—

Captain KNAPP. Yes, I would say there is no evidence, Mr. Studds.

Mr. STUDDS. Secondly, would you agree with me that it would make sense, as of March 1, the effective date of the 200-mile zone, to repeal the ICNAF law?

You have got your own means of enforcement under the statute. Presumably, you do not want U.S. fishermen subject to third-flag enforcement, which could happen if we did not repeal that legislation.

Captain KNAPP. Mr. Studds, I would defer to Commerce on this officially, and state a personal view; presumably withdrawal from ICNAF automatically terminates any provisions which might make U.S. vessels subject to third-flag enforcement; but it does not, as I understand it, release them from the obligations of some of the conservation measures introduced.

Mr. STUDDS. Be careful, Captain, because either that statute is or is not valid.

We cannot say that part of it is and part of it is not.

That is the problem.

Captain KNAPP. Let me say then, sir, that from the standpoint of whether or not we repeal, I would defer to Commerce.

Mr. STUDDS. I assume, too, that you are going to see to it that, as we must waive the March 1 requirements for permits on vessels, that you have a full list of all the vessels for which permits have been issued and that you will enforce this act?

Captain KNAPP. That is correct, Mr. Studds.

Mr. STUDDS. The UNIMAK had a little problem in Boston. Is that going to delay at all the data which you have prepared?

Captain KNAPP. That delay is already reflected in the August date, Mr. Studds. We had intended for her to be ready for sea in May.

Mr. STUDDS. That will be in 3 months?

Captain KNAPP. Yes, sir.

My information is that she may be ready maybe a month sooner than the first of August.

Mr. STUDDS. How serious was the fire damage in monetary terms, do you know?

Captain KNAPP. To the best of my recollection, considering just the fire damage that is related to the electrical wiring, I think, we are looking at an estimate of about \$600,000, sir.

Mr. STUDDS. I thank you.

Mr. LEGGETT. We have to go to the floor of the House for a vote. I think some of the members have questions that they would like to propound to you in writing, Captain.

Are there any questions of the Coast Guard that cannot wait?

Mr. Bonker.

Mr. BONKER. Yes.

Admiral Wagner, who is Commander of the 12th Coast Guard District, in an interview with a Seattle paper, said he did not have the resources to patrol the 200-mile zone. That comes after Congress has appropriated first \$75 million and then an additional \$10 million, some of which was part of a rescission from the President, so the appropriation is about \$62 million. Now, that was after the Coast Guard presented an original budget of \$33 million.

My question to you is, does the Coast Guard now have adequate resources to effectively patrol and enforce the 200-mile zone?

Captain KNAPP. I think, sir, you would have to put it in the context of my original statement. Originally, we had planned a two-

pronged approach, where the main effort would look at the active fishing areas—that is those areas where the fishing has taken place in the past—supplementing that, we would make occasional additional patrols out to the limits of jurisdiction.

Now, together, those two aspects called for considerably more than the \$64 million that we are spending. And I think that Admiral Wagner's statement may be attributed to the total approach. We do not have the assets to take—

Mr. LEGGETT. I think we can stipulate that you do not have the capability today, but we hope that by this funding program of getting that material built and getting it out to the fleet, that you will. And we would hope that you would exercise every effort to use your existing capability and equipment to enforce this law to the maximum.

Mr. BONKER. My point is that you should not criticize us for not appropriating enough money when we appropriated \$85 million and you only asked for \$33 million.

Mr. LEGGETT. Maybe I can answer for the Captain on that.

They were restrained by OMB on a number of their numbers, and we have had more generous numbers than any of these numbers that we are talking about submitted by the Coast Guard.

Originally I think you asked for 1,500 personnel, if I am not correct—

Captain KNAPP. Basically, sir, it was 863, and the original estimate called for \$143 million. \$90 million was appropriated by Congress. There was a presidential deferral of approximately \$25 million. The \$64 million will allow us to enforce the active fishing areas.

Mr. LEGGETT. The meeting will stand adjourned now until 2 o'clock, and Captain, we will not call you back.

[The following was received for the record:]

Department of Transportation

U.S. Coast Guard

Statement by

Captain Richard J. Knapp, Chief, Ocean Operations Division

Before the

Subcommittee on Fisheries and Wildlife Conservation and the Environment

of the House Committee on Merchant Marine and Fisheries

Washington, D.C.

February 7, 1977

Mr. Chairman and Members of the Committee:

I am Captain Richard J. Knapp, Chief, Ocean Operations Division, United States Coast Guard. With the Fishery Conservation and Management Act of 1976 now a reality and with the 1 March implementation date advancing all too rapidly, I am pleased to have the opportunity to detail our efforts to date, as well as to outline our plans for the future.

In way of background, the Coast Guard has consistently taken the position that, from an enforcement standpoint, we would be more affected by the regulations actually imposed on foreign fishing vessels than by the mere fact of extension itself. In view of the uncertainties connected with regulations, and with full recognition that those regulations would probably change from time to time depending on such factors as the condition of fish stocks off our coasts, the availability of protein from other sources and the harvesting capacity of the U.S. fleet, our enforcement program had to be (1) realistic, (2) useable in terms of

available surveillance and enforcement methods under any form of extended jurisdiction and (3) compatible with any regulations which might actually be imposed on fishing vessels.

It became apparent quite early in the planning process that the main thrust of our initial approach should provide various levels of coverage in direct proportion to the experienced intensity of fishing activity. A mix of long and medium range aircraft will patrol the areas to monitor fishing activity and provide fishing vessel locations to cutters on fisheries patrol. A mix of high and medium endurance cutters, with helicopters embarked whenever possible, will be used to monitor fishing activity through examination from the helicopter and the cutter, itself, as well as through appropriate boardings.

Given the proposition that Coast Guard patrol data already shows where the preponderance of foreign fishing is likely to take place; and assuming that while new fishing grounds may evolve, there is no substantial evidence at this point that this will occur quickly or immediately; one issue emerged which is considered of paramount and immediate importance; i.e., establish the credibility of the U.S. intent to enforce the law through early and effective measures in the active fishing areas. The resources which would be required to carry this out are:

- One High Endurance Cutter
- Four Long Range Search Aircraft
- Four Medium Range Search Aircraft
- Ten Short Range Shipboard Helicopters
- Necessary support facilities and/or equipment at selected existing commands

This was estimated to cost \$64.3 million and to require 491 military positions.

Insofar as actions taken, the Committee should be aware that the high endurance cutter UNIMAK is now being reactivated and is scheduled to be ready for sea by August 1977. New C-130 aircraft procurement and reactivation of C-131 and HH52A aircraft have been initiated. Delivery of the first of the four new C-130s is scheduled for late calendar year 1977. Thereafter, we expect delivery of one aircraft per month. A total of seventeen C-131 aircraft are currently being reactivated to replace thirteen aging HU16s and provide four additional MRS aircraft for Fishery Conservation Zone enforcement. The first C-131 was delivered in November 1976 and the entire program will be completed near the end of 1978. The five HH52A helicopters will be operational by mid-1977.

With regard to the future, we are initiating efforts to develop techniques and technologies to improve our mission performance. A critical element of fisheries enforcement is the detection and identification of foreign fishing vessels. One technology which shows promise for assisting us in this task is to place some type of a transponder/locator device on vessels. In our opinion, the ideal system would be comprised of equipment capable of transmitting a position and identification when keyed from an external source. This system would be involuntary on the part of the fishing vessel and when keyed would transmit a signal containing the above information for display. Initially, such keying and display would take place on surveillance aircraft and surface patrol vessels. In future years, the addition of a real-time transmission system would permit instantaneous relay of such information to a designated command center. In any case, the primary objective of any

transponder/locator system would be to make the most effective use of resources both in terms of deployment and utilization. The response signal from a fishing vessel keying a "black box" will, at least initially, indicate authorized presence thereby permitting primary efforts to be directed at those contacts not transmitting a response. Given the situation where unauthorized presence within the zone of jurisdiction is minimal, a keyed transmission from the black box system will permit instant identification, even in periods of poor visibility, and in addition a check of the permit provisions under which the vessel should be operating. Transponders will be able to tell us which vessels are cooperating, direct us to their location, and perhaps allow us to concentrate on vessels which are not transponding, but they do not tell us anything about a vessel which has entered the Fishery Conservation Zone illegally or turned off his transponder.

Therefore, it is important that we develop an accurate, effective way of detecting and classifying all vessels within the Fishery Conservation Zone in order to identify the fishing and fisheries support vessels which are not transponding. These vessels are likely to be of greatest interest to the Coast Guard in terms of potential violations. The separation of vessels of interest from all other vessels within 200 miles of our coast is a key element of the enforcement problem and is a part that we do not have any real solution for beyond the aircraft and cutter surveillance presently planned. Transponder and future surveillance technology alternatives are now being pursued by our Office of Research and Development.

There is no doubt, Mr. Chairman, that we will have much to learn as the situation develops and we have every intention of exploring more productive ways to do the job. For the immediate future, however, we feel that our strategy is sound and will serve the enforcement objectives of the FCMA.

That completes my formal statement, Mr. Chairman. I would be happy to answer any questions you may have.

[Whereupon, at 12:12 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., the same day.]

AFTERNOON SESSION

Mr. LEGGETT. The subcommittee will please come to order.

We are continuing the subcommittee's hearings on H.J. Res. 240. We have three witnesses to be heard and I think we will hear them en bloc.

We have from the Atlantic Offshore Fish & Lobstermen's Association, Alan Guimond and Richard Allen; from the National Federation of Fishermen, Lucy Sloan and Mr. Dick Sharood; and from the New England Regional Fishery Management Council, Mr. Jacob Dykstra, accompanied by Mr. Thomas Norris.

Do you all want to come forward?

Mr. NORRIS. Mr. Chairman, Mr. Dykstra just stepped out. He will be right back.

Mr. LEGGETT. Very good.

First, you are Alan Guimond?

STATEMENT OF ALAN GUIMOND, ATLANTIC OFFSHORE FISH & LOBSTERMEN'S ASSOCIATION, ACCOMPANIED BY RICHARD ALLEN, COMMERCIAL FISHERMAN

Mr. GUIMOND. I am Alan Guimond.

Mr. LEGGETT. We have your statement, and that will appear in the record as though you read it in its entirety.

You can read every word if you want to or you can summarize it.

Mr. GUIMOND. Mr. Chairman, I would like to read it in its entirety because I do feel it is important and relates to—

Mr. LEGGETT. Okay; read it rapidly.

Mr. GUIMOND. I will try.

Members of the committee, I am Alan D. Guimond, representing the Atlantic Offshore Fish & Lobster Association, concerning the implementation of Public Law 94-265. We represent both fin fish, draggers and offshore lobster trap fishermen in New England and the mid-Atlantic area.

When Public Law 94-265 was enacted establishing the 200-mile fishery conversation zone, American fishermen and the general public felt that we had achieved the protection of our resources in our industry, the need for which was made so painfully clear in hearings in and around our country.

We now find ourselves having to re-argue the same points which we felt had been established by the Fishery Conservation and Management Act of 1976.

As a result of public hearings and subsequent meetings with the Director of the National Marine Fisheries Service during the past 4 weeks, we had jointly incorporated in both the PMP's and the regulations, certain restrictions that would afford some protection to the American fishermen, specifically the prohibition against any foreign fishing vessels from operating in a reported fixed-gear location. This restriction would not seriously impede the foreign fishing operation.

Originally, we requested a 2-mile buffer zone to be included with the prohibition. However, after lengthy discussion with National Marine Fisheries Service, we agreed to compromise and accept the prohibition of foreign fishing in a reported fixed-gear area.

In addition, we had also recommended that all foreign fishing vessels would be prohibited from fishing between 100 and 200 fathoms depths on the Continental Shelf in the Atlantic north of Cape Hatteras, within authorized fishing zones.

Both of these recommendations were agreed to and accepted by the director and staff of National Marine Fisheries Service. This agreement was to be consummated by their being published in the Federal Register on February 2, 1977, combined with other regulations implementing Public Law 94-265.

Upon arriving last Wednesday at the director of National Marine Fisheries Service office to pick up our copy, we were informed that our recommendations, although supported by NMFS, were unacceptable to the Department of State. Both NMFS personnel and ourselves were totally unprepared and shocked at such a position by our own Department of State.

If the Department of State prevails in this matter and there are no restrictions placed in the regulations covering a prohibition by foreign fishing vessels from fishing in the 100 to 200 fathoms band, the American offshore lobster industry would be in a position of having no protection afforded it.

We feel that the intent and spirit of the law was not to totally accommodate the foreign fishing industry at the expense of the American fishing industry.

The rationale that the Department of State uses with regard to this matter is both unacceptable and without any basis whatsoever. For the Department of State to claim that American lobster fishermen would indiscriminately place its fishing gear in such a manner as to literally blanket or close off the window to foreign fishing is ridiculous to say the least, for several reasons:

- (1) There is no conceivable way of having American fishermen place their gear in such locations solely for the purpose of prohibiting foreign fishing. The sheer amount of gear needed, Mr. Chairman, to do what the Department of State suggests is not within the industry's capacity.

- (2) Fishing gear is very expensive. If there is to be return on this investment, it must be used to catch lobsters, not to blockage other fishing interests.

One of the overriding considerations that the Department of State uses in its objections to these protections for the American fishermen is that these protections were not negotiated with ICNAF countries in December; therefore, they—the Department of State—cannot in good faith go back on agreements reached at that time to appease the New England lobstermen.

With regard to the State Department's fear that American lobstermen would be indiscriminate in placing fishing gear, the Coast Guard has reported that foreign fishing vessels are scooping up tons of fish in the Atlantic in apparent violation of internationally agreed-on rules, designed to protect certain endangered fish stocks.

The Coast Guard has reported the violations to the New England Regional Fisheries Management Council. The National Marine Fisheries Service reported a total of 141 foreign vessels fishing off the Atlantic Coast in January, 65 of them from the Soviet Union.

With this size fleet and the apparent disregard for conservation, it would seem that the State Department's concern for indiscriminate fishing should be directed at the foreign fishing fleet, not ours.

Discussions to date have focussed mainly on the implementation of the law from an economic viewpoint. Nowhere have I heard concern for the safety of the American fishermen.

The hazards of ocean fishing are well known and the sea has claimed the lives of many American fishermen. The risk will always be there but it is compounded when huge foreign vessels are fishing the same waters.

Implementation of Public Law 94-265 should reflect not only economic considerations but concern for the safety of the American citizen.

Mr. Chairman, it is very clear to us that the American fishermen in this instance are not being treated fairly, not in the context of the law, and for foreign fishing interests to get more favorable treatment by our own government in our words is both unacceptable and un-American.

Therefore, Mr. Chairman, we not only oppose the granting of the waivers, we also request this committee to insure that the needs of the American fishermen are met with at least equal consideration as the foreigners; and, Mr. Chairman, as a minimum, the regulations should include the fixed-gear prohibition clause and the prohibition of foreign fishing vessels from fishing between the 100 to 200 fathom band on the Continental Shelf in the Atlantic north of Cape Hatteras within authorized fishing zones.

Mr. Chairman, this basically concludes my testimony. If you have any questions, I would be happy to answer them.

[The following was received for the record:]

STATEMENT OF ALAN D. GUIMOND, ATLANTIC OFFSHORE FISH AND LOBSTER ASSOCIATION

Mr. Chairman

Members of the Committee, I am Alan D. Guimond representing the Atlantic Offshore Fish and Lobster Association concerning the implementation of Public Law 94-265. We represent both fin fish, druggers and off shore lobster trap fishermen in New England and the Mid Atlantic area.

When Public Law 94-265 was enacted establishing the 200-mile fishery conservation zone, American fishermen and the general public felt that we had achieved the protection of our resources in our industry, the need for which was made so painfully clear in hearings in and around our country.

We now find ourselves having to reargue the same points which we felt had been established by the Fishery Conservation and Management Act of 1976. As a result of public hearings and subsequent meetings with the director of the National Marine Fisheries Service during the past 4 weeks, we had jointly incorporated in both the PMPs and the regulations, certain restrictions that would afford some protection to the American fishermen, specifically the prohibition against any foreign fishing vessels from operating in a reported fixed gear location. This restriction would not seriously impede the foreign fishing operation. Originally we requested a two-mile buffer zone to be included with the prohibition. However, after lengthy discussion with National Marine Fisheries Service we agreed to compromise and accept the prohibition of foreign fishing in a reported fixed gear area. In addition, we had also recommended that all foreign fishing vessels would be prohibited from fishing between 100 and 200 fathoms depths on the Continental Shelf in the Atlantic north of Cape Hatteras within authorized fishing zones. Both of these recommendations were agreed to and accepted by the director and staff of National Marine Fisheries Service. This agreement was to be consummated by there being published in the Federal Register on February 2, 1977, combined with other regulations implementing

Public Law 94-265. Upon arriving last Wednesday at the Director of National Marine Fisheries Service office to pick up "our copy" we were informed that our recommendations, although supported by NMFS, were unacceptable to the Department of State. Both NMFS personnel and ourselves were totally unprepared and shocked at such a position by our own Department of State.

If the Department of State prevails in this matter and there are no restrictions placed in the regulations governing a prohibition by foreign fishing vessels from fishing in a reported fixed gear area or the prohibition of fishing in the 100-200 fathoms band, the American off shore lobster industry would be in a position of having no protection afforded it. We feel that the intent and spirit of the law was not to totally accommodate the foreign fishing industry at the expense of the American fishing industry. The rationale that the Department of State uses with regard to this matter is both unacceptable and without any basis whatsoever. For the Department of State to claim that American lobster fishermen would indiscriminately place its fishing gear in such a manner to literally blanket or close off the window to foreign fishing is ridiculous to say the least. For several reasons:

1. There is no conceivable way of having American fishermen place their gear in such locations solely for the purpose of prohibiting foreign fishing. The sheer amount of gear needed, Mr. Chairman, to do what the Department of State suggests is not within the industry's capacity.

2. Fishing gear is very expensive. If there is to be a return on this investment, it must be used to catch lobsters, not to blockade other fishing interests.

One of the overriding considerations that Department of State used in its objections to these protections for American fishermen is that these protections were not negotiated with ICNAF countries in December, therefore they (Department of State) cannot in good faith, go back on agreements reached at that time to appease the New England lobstermen.

With regard to the State Department's fear that American lobstermen would be indiscriminate in placing fishing gear, the Coast Guard has reported that foreign fishing vessels are scooping up tons of fish in the Atlantic in apparent violation of internationally agreed on rules designed to protect certain endangered fish stocks. The Coast Guard has reported the violations to the New England Regional Fisheries Management Council. The National Marine Fisheries Service reported a total of 141 foreign vessels fishing off the Atlantic coast in January, 65 of them from the Soviet Union. With this size fleet and the apparent disregard for conservation it would seem that the State Department's concern for indiscrimination should be directed at the foreign fishing fleet, not ours. Discussions to date have focused mainly on implementation of the law from an economic viewpoint. Nowhere have I heard concern for safety of the American fisherman. The hazards of ocean fishing are well known and the sea has claimed the lives of many American fishermen. The risk will always be there but it is compounded when huge foreign vessels are fishing the same waters. Implementation of Public Law 94-265 should reflect not only economic consideration but concern for the safety of the American citizen. Mr. Chairman, it is very clear to us that the American fishermen in this instance are not being treated fairly not in the context of the law, and for foreign fishing interests to get more favorable treatment by our own government in our words is both unacceptable and unAmerican. Therefore, Mr. Chairman, we not only oppose the granting of the waivers we also request this committee to insure that the needs of the American fishermen are met with at least equal consideration as the foreigners; and, Mr. Chairman, as a minimum, the regulations should include the fixed gear prohibition clause and the prohibition of foreign fishing vessels from fishing between the 100-200 fathom band on the Continental Shelf in the Atlantic north of Cape Hatteras within authorized fishing zone.

Mr. Chairman, this concludes my testimony. I will be happy to answer any questions you may have. Thank you.

Mr. LEGGETT. Mr. Forsythe, any questions?

Mr. FORSYTHE. Just one.

This 100 to 200 fathom prohibition, that is 600 to 1200 feet, approximately?

Mr. GUIMOND. Yes, approximately.

Mr. FORSYTHE. Are lobstermen working that depth?

Mr. GUIMOND. Yes, sir. That is basically one of the highest concentrations of the lobster population as far as—in their breeding

cycle, if you will, because; because that is one area where—one area of the season where American fishermen have the heaviest gear concentration in trying to catch lobsters.

Mr. FORSYTHE. How far off the coast?

Mr. GUIMOND. Just approximately 100 miles off the coast would be the average. If I may point out, this band in certain areas is as narrow as a quarter of a mile and probably at the widest point it may be 3 to 4 miles wide at the maximum. So we are not talking about an extremely large area that we are looking for this type of protection on.

Mr. FORSYTHE. And that is used for lobster fishermen?

Mr. GUIMOND. And that whole area; yes, sir.

Mr. LEGGETT. Mr. Studds?

Mr. STUDDS. Just to clarify for the record something that I think is important; namely, the reason for your concern for that band and the fact that it is narrow is because, as I understand it, it is both the principal breeding ground and the location of heavy concentrations of stock?

Mr. GUIMOND. That is correct.

Mr. STUDDS. And that is severely endangered by foreign fishery in that area?

Mr. GUIMOND. Yes, sir.

Mr. STUDDS. I take it we are also breathlessly awaiting the decision of the Secretary of Commerce.

Well, let me just say, Mr. Chairman, that I understand and am in agreement with the testimony on behalf of the deepsea lobstermen.

As I said earlier today, absent such a determination by the Secretary of Commerce, I would have some difficulty in supporting what otherwise, Mr. Chairman, I think is quite responsible legislation. And I am very, very hopeful that before our markup is finished that we will have word from Secretary Kreps. I think it would be tragic, particularly given the efforts you recall this subcommittee went through with the legislation designed to protect the American lobster, for us to open windows for foreign fishing precisely where we would undo what we hoped we had done.

Mr. LEGGETT. Is this an area that foreign fishermen have been foreclosed from entering?

Mr. GUIMOND. Well, certain portions of it have not been traditional fishing grounds and they do work off to the edge of it, that it is what we feel is an area where there is enough area that is provided to them, Mr. Chairman, in the remainder of the windows to make sure that—well, as far as their allocations go, we do not feel it is going to impede them at all.

Mr. LEGGETT. How big an area are you talking about? You said 100 to 200 fathoms, north of Cape Hatteras. How big an area is that?

Mr. GUIMOND. With respect to the total length of the band, if you will, you may be talking in the neighborhood of, I would say, about 500 to 600 miles or so. But remember, the bank is pencil thin, if you will; and we are talking about the width of it—the width of it is usually around a quarter of a mile wide and, at its widest portion, is approximately 3 to 4 miles. So we are not taking any significant portion of the window totally at all.

Mr. LEGGETT. And we are seeking a determination from Commerce that this area will be kept out of the permanent area; is that it?

Mr. STUDDS. Mr. Chairman, the PMPs, as pointed out in the testimony, now allow foreign windows in precisely these areas. And you will recall the concern of the gentleman from Delaware earlier about procedures to compensate for damaged gear.

That question might be largely moot if we can get this kind of agreement from the Secretary of Commerce to keep foreign vessels away from the fixed gear of our lobstermen, so we significantly reduce or eliminate the possibility of conflict with foreign vessels.

Mr. LEGGETT. If we precluded them from fishing this quarter of a mile strip, how far away would they have to stay away from the strip itself?

Mr. GUIMOND. Well, we are talking about—they could really be working right along the edge of this boundary, if you will; but what we are really mainly concerned with is they will be working right on it.

Traditionally, they do work off to the side of it. And we feel that that will afford them still a maximum effort of catching their quotas. And we do not feel like we are putting them out 20 miles from that band.

Quite contrarily, they will be working parallel to the band.

Mr. FORSYTHE. In addition to this band, are there other fixed gear areas?

Mr. GUIMOND. That is the other prohibition we are talking to; that those fixed gear locations that are recorded under the Coast Guard procedures, which are broadcast to the foreign fishing fleet, but also be a prohibited area.

Now, what we are talking about, again, is minimal disruption, because we did originally want the 2-mile buffer from these reported gears. However, in discussions with NMSF personnel, we did come up with the fact that we could, as a start, live with this prohibition and a cautionary zone is the word they use, Mr. Chairman; that it will notify the foreigners that when they are within the 2-mile location, they are to exercise caution.

Mr. FORSYTHE. Could you briefly describe what area is involved in this fixed gear area?

Mr. GUIMOND. You mean on a total basis of say the window, or something like that?

Mr. FORSYTHE. Yes; what are we talking about? You say "minimal."

Mr. GUIMOND. Well, it is tough to explain, but if you were to envision the window, if we were to concentrate all our gear together, you know you would be talking about maybe 10 percent or maybe 15 percent of the total window; however, remember that it is not concentrated. And by virtue of that—that it is spread out through the window—you are still talking about an overlapping of say 2 miles in either direction; we are only talking that the foreigners would be prohibited.

And one of the reasons we used in selling this idea to NMFS—and they agreed with us—is that if you did not have a prohibition against the foreigners from fishing in our gear location—and I used

the illustration on Monday—if the Coast Guard witnesses three Bulgarian ships going through our gear and they see the little flags still dangling, and on Tuesday, the Romanians come through and the flags are still dangling, and on Wednesday the Russians come through and the same situation, that on Thursday, we come to pick up our gear and haul up and find we only have one pot instead of 30 or 40; so who has done the damage? This is minimal protection, I may add. This is not what we originally asked for.

Mr. FORSYTHE. Is this other area a relatively shallow area.

Mr. GUIMOND. Well, it is spread out all over. It ranges from 5 fathoms on up to the 100 to 200—depending on the time of season and how the fishing is going, and so on.

Mr. LEGGETT. What distance off of Cape Hatteras does this line start?

Mr. GUIMOND. I would say it is fairly close, like within about 60—well, I would say maybe even as close as 30 to 40 miles from the Hatteras shore.

By the way, when we proposed this, it was the suggestion of NMSF that we were addressing our area down to as far as the fishermen from the New England area normally fish. And the extension down to Cape Hatteras was something that the National Marine Fisheries thought, you know, that should be the beginning point and then go to the north. So—

Mr. LEGGETT. How could this line be transmitted by ships?

Mr. GUIMOND. In which respect, sir?

Mr. LEGGETT. Well, obviously you cannot drag a line across it, I guess. You would not want them to do that.

Mr. GUIMOND. That is correct.

Mr. LEGGETT. But you can cross the gear up?

Mr. GUIMOND. Gear up.

It would be the same restriction that I heard this morning that is included in the GIFA's: that certain areas, such as when they are outside of the windows, they would; that is, the foreigners by the GIFA's would have to go through the area with their gear, not in the position where they can fish immediately.

Mr. LEGGETT. Where your gear is actually located in this area, would it be markers and buoys?

Mr. GUIMOND. Yes, sir, by those. Plus the whole concept is that it is on the American fishermen's shoulders if you will to make sure that they report their gear locations to the Coast Guard, who in turn will report them to the foreign fishing fleet, which has been a common past practice.

Mr. LEGGETT. Now, as I understand it, in the casual areas where you are fishing those locations would be normally marked. You would also radio in, is not that right?

Mr. GUIMOND. All areas of fixed gear, it is our intent to have all American fishermen hopefully report all of their gear locations, whether it be on the 100 or 200 fathom band or outside of that band. We are talking about total reporting.

Mr. LEGGETT. What you are saying is that this particular area is fished so much that while you would precisely locate your gear and broadcast its location, you would not want fishing in that area?

Mr. GUIMOND. Yes, sir. But it is not only a case of this is an area where we fish; but also—and NMFS will verify this—this is also a conservation precaution, because this is one of the areas where the lobster does most of its growing and everything. And we are talking more towards a conservation effort also.

Mr. STUDDS. The Chairman will recall this subcommittee established once and for all the lobster does do this kinds of things.

[Laughter.]

Mr. LEGGETT. Mr. Oberstar?

Mr. OBERSTAR. No questions.

Mr. LEGGETT. Mr. Emery?

Mr. EMERY. No questions, although I do agree with the gentleman from Massachusetts.

Mr. LEGGETT. Thank you very much.

Ms. Sloan, would you care to testify this morning?

You represent the National Federation of Fishermen?

Ms. SLOAN. Yes, sir.

Mr. LEGGETT. Nice to have you here.

Mr. Allen had a statement, too; did he not? Is Mr. Allen here?

Mr. ALLEN. Right here.

Mr. LEGGETT. You were up at the table and I apologize for not recognizing you for your statement.

Your statement is in the record also as if actually presented by you in its entirety.

[The following was received for the record:]

STATEMENT BY RICHARD B. ALLEN, COMMERCIAL FISHERMAN, BEFORE
THE HOUSE MERCHANT MARINE AND FISHERIES COMMITTEE, WASHINGTON,
D.C., FEBRUARY 7, 1977.

Mr. Chairman, members of the Committee, my name is Richard B. Allen. I am a commercial fisherman presently engaged in the offshore lobster fishery out of Westport, Massachusetts. I am speaking here today on behalf of the Atlantic Offshore Fish & Lobster Association and our position is also supported by the Pt. Judith, R.I. Fisherman's Cooperative and the Long Island, New York Fishermen's Association. We appreciate this opportunity to express our concerns about the implementation of Public Law 94-265.

My fellow fishermen and I have been disappointed to the point of outrage that the reasonable regulations governing foreign fishing which we thought would come automatically upon the implementation of P.L. 94-265 do not appear to be forthcoming. We have many serious objections to the Preliminary Management Plans (PMP's) developed by the National Marine Fisheries Service. I will list the major points numerically for ease of reference:

- 1.) The foreign fishing regulations originally did not include provisions for the protection of the northern lobster as a Creature of the Continental Shelf, which protection was apparently lost with the repeal of the Bartlett Act contained in P.L. 94-265. These provisions have since been incorporated into the regulations, I believe.
- 2.) The potential for damage to important stocks of fluke, scup, butterfly, and sea bass is increased under the PMP's because foreign fishing is now

concentrated during the winter months in areas where these stocks over-winter. The protection of these stocks appears to be less under the PMP's than it was before the passage of P.L. 94-265. This may seem unbelievable, but the fact is that many restrictions on foreign fishing which were achieved under ICNAP and through bilateral agreements have been removed under the PMP's. These include prohibitions on Russian and Bulgarian bottom trawling in the entire Mid-Atlantic area, a complete prohibition on fishing of any kind by Russians, Poles, and Romanians during the winter months in the area known as the bilateral banana, an ICNAP seasonal prohibition on hake fishing in the southern New England hake spawning grounds, and a prohibition on all foreign bottom trawling in certain areas off the southern New England and Mid-Atlantic coasts. Our recommendations concerning modification of the foreign fishing areas to restore the protection of these stocks have not been accepted.

- 3.) The quotas established for foreign harvest are too high in our opinion. We are especially concerned with the haddock quota which started out with an original scientific recommendation of a zero total allowable catch (TAC) in the PMP and worked its way up to 25,000 metric tons at the ICNAP meeting in December. We are concerned that international pressure has forced the U.S. to adopt a TAC beyond what the resource can stand. The hake quota is also disturbing to us. The PMP for hake states that red and silver hake stocks are present off our coasts in such abundance that the total allowable catch can be set at a figure higher than the maximum sustainable yield. Fishermen in southern New England who were forced out of an intensive fishery for red

hake by foreign overfishing of the stock say that the stocks are not available in anything like their former abundance. Furthermore, the hake quota was established for a stock which ranges over the entire Georges Bank, Gulf of Maine, and southern New England area, but the fishing is only to take place in southern New England. We feel this arrangement could lead to localized overfishing in an area that already appears to be less productive than it used to be.

Because our scientists now say they are in full accord with the recommendations approved at the December ICNAF meeting, our protestations concerning quotas have not met with any favorable response. Our major concern in this regard is that U.S. fishery expansion will be thwarted by continued depletion of stocks by foreign fishing, contrary to the intent of P.L. 94-265. A favorable climate for increased investment in boats and plants can not be created until our stocks are secure.

- 4.) The potential for damage to U.S. lobster pot and other fixed gear was increased under the IWP's because foreign fishing will be concentrated in an area of our coast that supports the major portion of the U.S. offshore lobster pot fishery. In fact, the areas established for foreign fishing by the IWP's are contained completely within the area designated by the Coast Guard as its Near Conflict Patrol Area. Our request for modifications in the foreign fishing areas to reduce the potential for conflict were met in only a small way. Our request for a prohibition on foreign trawling in the 100-200 fathom depth band because of the high density of lobsters and lobster traps has been accepted by the National Marine Fisheries Service but is opposed by the State Department.

In addition, the foreign fishing regulations did not originally contain any provisions regarding the protection of U.S. fixed gear. The National Marine Fisheries Service has recently agreed to support our request for a prohibition on foreign trawling in a reported fixed gear area and has recommended this position to the Secretary of Commerce. The State Department, however, apparently continues to oppose this request, which to me means that the State Department has no objection to foreign trawlers towing their nets through our gear and destroying it. I would find this position incredible if I had not had 5 years experience in trying to get the State Department's help in stopping foreign damage to our gear. There is no question in my mind that the State Department's reputation among fishermen as our biggest enemy in our own government is well-deserved.

In considering the response to our recommendations our Association has determined that the issue of protection of U.S. fixed gear is the one item which we can not allow the State Department to deprive us of. I would, therefore, like to address the concerns which the State Department has voiced concerning our gear protection recommendations.

First, Ambassador Riley has stated that the designation of foreign fishing areas, or windows, constitutes a total departure from the old regime of free fishing. The open house being fenced in is the analogy used. In fact, we have been operating with a multitude of area, gear, and seasonal restrictions for a number of years. The only difference between the past and present systems depends on whether you prefer to look at it as having certain areas closed or as having certain

areas open.

Ambassador Ridgway is also opposed to creating closed areas within open areas. Although her reasoning is not clear to me, her major apparent concern is that U.S. fixed gear fishermen will interfere with the foreign harvest of the so-called surplus stocks. If we carry her logic a step further, it would appear that Ambassador Ridgway would be in favor of prohibiting U.S. fixed gear fishermen from fishing on their traditional grounds. Even if she would not go so far as to suggest such a restriction, her approach certainly allows U.S. fishing only in peril of loss of gear and subsequent earnings.

Ambassador Ridgway further indicates that she would be more favorable to the concept of gear sanctuaries if we did away with the windows. This suggestion shows her apparent confusion over the conservation rationale for the windows as opposed to any gear protection value that they have. Her confusion is understandable since the IBC's state that the areas were chosen so as to minimize potential gear conflicts. We have shown, however, that the windows actually increase the potential for gear conflict and their value lies in forcing foreign fishing off certain stocks of value to U.S. fishermen.

Ambassador Ridgway shows a further lack of understanding of the gear conflict problem by suggesting that we should concentrate on the problem of gear conflicts between domestic vessels before attempting to deal with the problem of foreign damage to domestic gear. There is absolutely no comparison

either in severity or ease of solving between purely domestic gear conflicts and foreign caused conflicts. We need only cite a Coast Guard report of gear conflicts for 1974 and 1975 to see how ridiculous this suggestion is. Of 54 reports of vessels causing damage to fixed gear, only three indicate that U.S. vessels were at fault. Of these, I personally participated in meetings between the fixed and mobile gear fishermen involved in two of the incidents and an understanding was reached which settled the problem. Our success at reaching such understandings with foreign vessel operators has not been very high.

I am particularly disturbed that Ambassador Ridgway declined to meet with us to discuss our concerns, indicating that she felt secure in her knowledge of the situation and in her decision to oppose our recommendations. I feel quite sure that Ambassador Ridgway does not fully understand the situation and would benefit from discussing the problem with people who are actually involved with it.

In summary I believe that our Association has offered reasonable suggestions for changes in the proposed foreign fishing regulations which would more adequately protect our resources and our industry. The executive branch of the government has chosen to ignore most of our recommendations and to proceed instead with arrangements designed primarily to insure as little disruption as possible in foreign fishing effort.

We have conceded defeat for the time being on most of

our proposals. We will address them to the appropriate regional fisheries management councils for inclusion in their management plans. We will, however, continue to fight for the protection of our fishing gear which we felt would be established without question under P.L. 94-265. We are hopeful that a favorable decision on this issue has already been made by the Secretary of Commerce, if not, we must oppose the grading of any of the provisions of the act. We simply cannot have foreign fishing on our fishing grounds without protection against the crippling losses we have suffered in the past.

Mr. LEGGETT. Do you want to expand on your statement?

Mr. ALLEN. I do not think there is any need for it, really. I think the points are pretty well covered.

Mr. LEGGETT. Very good.

Your statement, dated February 7 will appear in the record, associated with the statement of Mr. Guimond.

Now, Ms. Sloan.

STATEMENT OF LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF FISHERMEN, ACCOMPANIED BY RICHARD SHAROOD, COUNSEL

Ms. SLOAN. Thank you, Mr. Chairman.

In the interest of time, I will cut down on my statement. I just want to note some of the things with which we are very much concerned at this point.

To begin with, although we understand from a diplomatic viewpoint the advantage of the relatively longer effective periods of these agreements, because we do have problems with several provisions in them, we would like to begin working with the executive branch to have ready at the earliest possible review dates alternatives to these provisions.

There are two provisions in the Polish Agreed Minutes that also concern us.

First, although we have withdrawn from the International Commission for the Northwest Atlantic Fisheries—thanks, in good measure, to members on this subcommittee—the ICNAF implementing legislation, the Northwest Atlantic Fisheries Act of 1950, has not yet been repealed.

We disagree with the assessments by the National Oceanic and Atmospheric Administration and the Department of Justice that the implementing legislation survives our withdrawal from ICNAF.

In addition to the specific problems that it brings in New England and the mid-Atlantic, there is a broader potential problem which concerns me on behalf of my West Coast members. I think we should set a precedent by repealing this implementing legislation because we have a situation where, if we do not, we will have to go through this thing every time we withdraw from one of the international agreements by which fisheries is now managed.

We have a number of them—I think over 20—and while many of them are bilateral and executive and do not require implementing legislation, there are a handful of them—a couple on the West Coast come to mind immediately—that do. And I think that by repealing the Northwest Fishery Act of 1950, we will be in a situation clearly to put the councils on notice that this is in fact their responsibility to manage.

It will not be a situation where you will have contradictory jurisdictions, where you will have to fight out until such time as the implementing legislation is repealed, Mr. Chairman, whose turn it is or who has jurisdiction in this area and whether this is in conflict in terms of conservation regulations.

In addition to the specific problems for the New England and mid-Atlantic fishery, I would urge that a precedent can be set by

repealing this implementing law now, by looking at it as a way making sure that the councils are ready to go when comes to the other conflicts between implementing laws and the councils' jurisdiction.

Another provision in the agreed minutes has to do with economic cooperation. The Poles apparently express quite a bit of concern about some kind of economic cooperation, and I believe the minutes suggest that it will be looked at through the usual channels—through trade delegations and that sort of thing.

This is a subject, as this subcommittee knows, that is of great concern to those of us in the industry. We would like to take this opportunity to register our concern that economic cooperation be monitored very closely by everybody involved in it so as not to preclude through short term arrangements, Mr. Chairman, the longer term opportunities for expansion in the U.S. industry's operations, from production to processed products in the marketplace.

On Section 204(b)(5), which deals with the council's opportunity to make recommendations on the applications for permits to fish in our zone, we disagree with Mr. Schoning that this is purely administrative.

The act states, in section 302(h)(2), "Each council shall, in accordance with the provisions of this act (2) prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B). . . ."

We think that even under this extraordinary circumstance, the councils must have the opportunity to review these applications.

You will hear from Jacob Dykstra and Tom Norris how strongly the councils feel about it. And here I would like to make a distinction that I have not heard made so far today:

There is a great deal of concern, and rightly so, about what the councils feel about this; but I would like to point out on behalf of the industry that in none of the councils does the industry have the dominant voice. For this reason, frequently you will find that a council feels one way and has gone on record as accepting a particular point of view, while the industry people on that council who may have had many reservations, may have abstained from that view, or may have opposed it strongly.

So when I am speaking, I do not directly reflect the councils, because on most of the councils, where the industry is represented, they have not anything like a dominant voice. We must, therefore, distinguish between what the council is saying and what the industry is saying and the industry thinks, for it frequently is not always the same thing.

But you will hear from Jacob Dykstra and Thomas Norris about this. And the industry people with whom I talked on the other councils, those who have been involved in advisory panels and who have participated as a public in the council meetings on the West Coast and in Alaska, have said that in principle they do not wish to see an abbreviation of the council's review periods unless there is no alternative.

If this should be the case, then we want to make sure that it is as long as technically feasible. You have seen the confusion that has

arisen in New England about the reliability of making any kinds of determinations at this point. And I think that although the fishing does not really begin on the West Coast until sometime later, these are considerations about which the industry there is also concerned.

Another point is that we do not think there is any reason to see why the foreign fishing vessels should be allowed to begin fishing until their respective nations have paid to the U.S. Treasury all of the required fees. None of the fees are high and some of them even appear to us to be ridiculously low.

On the question of fees and related problems of implementation, the National Marine Fisheries Service's choice of no punitive fees for bycatches is, I think, naive. Returning to the sea good, non-target species is a waste of food—if in practice that were going to be what would happen.

Proposing the return of non-surplus species to the sea, given the proposed and altogether inadequate 20 percent observer coverage on foreign fishing vessels, seems likely to encourage foreign nationals to bias their reported bycatch statistics, and thereby potentially skewing scientists' subsequent assessments for both the target and the non-target fisheries.

Area and season closures are management tools. And NMFS has indicated that in lieu of the punitive fees on bycatches, they intend to use area and season closures. These are management tools, but I think we are going to need all the tools we can use, and the punitive bycatch fee, especially when it is coupled with maximum observer coverage, gives us that much more to work with in the way of information for enforcement and for management decisions.

I can only reinforce what Alan said and what Dick has been talking about for the last 2 or 3 weeks with the National Marine Fisheries Service. With the repeal of the Bartlett Act by section 402, we did not expect that the National Oceanic and Atmospheric Administration might take a giant step backwards. We think that the CSFR regulations must become part of any regulations that are promulgated pursuant to this law.

Certainly that is another place where you see the problems of the minimal 20 percent observer coverage.

If we at least had coverage on foreign vessels that were going to be fishing around fixed-gear areas, we might be able to cut down on gear conflicts. And to talk about just 20 percent coverage of the observers, particularly when there is this difficulty with fixed gear, seems as though that in itself, as though that problem alone—independently of getting reliable scientific data and particularly in lieu of no punitive bycatch fee—if they insist upon doing that—all of these things reinforce the fact that we would like to see a great deal more enthusiasm on the part of the National Marine Fisheries Service than they have so far exhibited when implementing anything that would be a reasonable observer program.

We have received recently the job descriptions. They are offering \$9,000 a year salary and it is a low GS rating. The job description says it would be desirable, among other things, if the candidates had spent at least 3 years on a fishing vessel and spoke at least one foreign language. For this they are offering a low GS rating and \$9,000 a year? It is absurd.

Mr. STUDDS. The accommodations are better on a foreign vessel.

Ms. SLOAN. They are. I can attest to that. I spent 2 weeks on a Russian fishing vessel.

In conclusion, the U.S. coastal fishermen generally see no reason why the foreigners should be allowed to continue fishing once March 1, 1977 arrives unless they have satisfied all the requirement of the law. For this one time we are prepared to try to work out accommodations if they can be worked out reasonably to protect our interests.

We are concerned, in spite of all Mr. Schoning says that the law amply protects U.S. fishermen; we are not sure it does if it is not implemented in the way it was intended: that is, to protect U.S. fishing interests. We are concerned about the executives enthusiasm for safeguarding the foreigners' involvement. We would like to see that balance shifted.

Thank you.

[The following was received for the record:]

STATEMENT OF LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF FISHERMEN

Good morning, Mr. Chairman, gentlemen. I'm Lucy Sloan, Executive Secretary of the National Federation of Fishermen. With me is our counsel, Richard N. Sharood.

Our immediate principal concern is that nothing delay beginning effective enforcement as regards foreign vessels which may have been permitted to begin fishing in the United States 200-mile fishery zone after 1 March 1977. I do very much doubt that any fisherman who supported the 200-mile bill has much sympathy for making fishing easy for the foreigners, but because we are primarily concerned now that there be no reason at all to delay implementation of enforcement, we seek to cooperate in trying to work out technical waivers to certain sections of PL 94-265 for this extraordinary circumstance.

I was interested, and a bit disconcerted, when I came across a brief article in the British Fishing News of 7 January; it concluded, "For once Britain is ahead of the US as she may not have a 200-mile limit by March 1, the original planned date. Wrangles with Canada and legal problems could mean a delay until January 1978." I sincerely hope Editor Peter Hjul doesn't know something we don't!

Because the Polish governing international fishery agreement has been the GIFA most widely available, I have keyed my comments to the Article and paragraph numbers in that agreement. But most of these comments are also relevant to the other GIFAs as well. This morning I'm only going to discuss our major concerns, but I would like to submit for the record more detailed comments.

I detailed our major concerns as regards the Governing International Fishery Agreements in my formal statement. But we have as well certain other points we would like to see modified or deleted at the earliest possible opportunity. As is the case in my formal statement, unless I state otherwise, these comments are keyed to the Polish GIFA, but they do apply to other GIFAs where relevant.

Article II, para. 5(d): "...any operations at sea directly in support of..." Directly is not included in the definition in PL 94-265. Why is it included here?

Article III places greater emphasis on total allowable catch rather than on optimum yield, as the law does. Why?

Article III, para. 2(a): The GIFAs go beyond the law in detailing "best scientific information available" to include "internationally accepted criteria," and even "data from relevant international organizations" (German Democratic Republic) and "data provided by the People's Republic of Bulgaria." The potential disadvantages to the United States industry that this may include is precisely what I was addressing in my formal statement on Articles XI and XII.

Article III, para. 3(e): add "and participation by United States observers aboard foreign vessels."

Article IV seems, in all six of the available GIFAs (Poland, Taiwan, Soviet Union, Romania, GDR, and Bulgaria) to lean heavily on Sec. 201(e)(4) as regards allocations of allowable levels of foreign fishing: there is the preoccupation with minimizing economic dislocation; and, in fact, in the Chinese agreement, that concern goes so far

as to include economic dislocation arising from the loss of traditional fishing grounds elsewhere!

Article VII, para. 2, in the Soviet GIFA omits "as determined by the Government of the United States," as regards installation of appropriate position-fixing and identification equipment. Why?

Article VIII, para. 5 of the Polish GIFA and the relevant paragraphs of the other GIFAs as regards gear compensation vary enough in language for us to query whether the variations are substantive as well as semantic. This is one point we'd like to have a great deal more clearly delineated.

Article IX, para. 1, in the Polish GIFA: What means the phrase "and any other Polish fishing vessel that engages in fishing for living resources subject to the fishery management authority of the United States. . . .?"

Article XVI, para. 1: Re: written notice of termination—one year advance notice in the Polish, Soviet, GDR, and Bulgarian GIFAs; but six termination notice for all GIFAs. We'd prefer six months termination notice for all GIFAs. Why the difference?

Soviet GIFA, Annex I, para. 2(b) omits "and such other pertinent information with respect to the characteristics of each [fishing vessel] as the [United States] may require." Why?

Polish GIFA, Annex I, para. 5: Change shall to may in the phrase, "the Government of the United States may approve the application and issue a permit. . . ."

Re: Claims Boards—we would like to see these substantially modified or terminated.

Although Articles I and III do talk to the conditions under which Polish vessels can fish in our 200-mile zone, Article IV concludes, "the Government of the United States will promote the objective of optimum utilization, taking into account, inter alia, . . . the need to minimize economic dislocation in cases where vessels have habitually fished for living resources over which the United States now exercises fishery management authority." [My emphasis.]

Fishermen are angry at and confused by the attitude this statement seems to the industry to indicate on the Executive's part. One of the stated purposes of this legislation was to promote domestic fishing. And awareness of the desirability of providing a favourable climate for the United States fishing industry to grow and prosper was a primary impetus for this legislation. Why, then, this concern for minimizing economic dislocation to the foreigners? Surely the United States Government's commitment to full utilization is adequate.

The Claims Board mentioned in Article IX and detailed in Annex II is unacceptable to us. Especially now since this will be a US management zone after 1 March, we think there are alternatives to this bilateral board. I'd be glad to discuss them with you now, and I'd like to submit for the record an outline of a specific alternative. Given that provisions exist in the agreements for reviewing and amending, and even terminating, this arrangement, we think that it's desirable to begin working on alternatives as soon as possible.

One possible alternative to the existing gear conflict claims board would be as follows:

The Secretary of Commerce would have appropriated funds for compensating owners and operators whose fishing vessels or gear have been destroyed or damaged by foreign fishing vessels operating in the United States' 200-mile zone.

There would be established claims boards in each Regional Council's area of jurisdiction. These boards would each have one representative from the Department of Commerce, one representative from the relevant Coast Guard District, and three members to be chosen on a case-by-case basis: one by the relevant council, representing that council; and two more chosen by the council from industry pool of individuals who are directly familiar with the fishery for the case in question.

After the board and the Secretary of Commerce had received from a US fisherman a statement, with such documentation as he is able to provide, that a foreign vessel or vessels (including crew) may have destroyed or damaged that fisherman's property (vessel, gear, or fish), the board shall, as soon as practicable but not later than 30 days after the receipt of the application, determine whether there is reason to believe that such vessel or its gear or its catch was destroyed or damaged by the actions of a foreign vessel fishing in the US 200-mile zone.

If the board does determine, by majority vote, that there is reason to believe the US fisherman has suffered damage as the result of foreign fishing activities, that board shall request the Secretary to make a none-interest-bearing loan from the appropriated funds to the US fisherman. Any such loan, as determined by the Secretary, shall be in an amount equal to the replacement value of the damaged or

destroyed property and the market value of the fish, if any, on board such vessel and within such gear which are lost or spoiled as the result of such damage or destruction. Any such loans shall be conditional upon the owner or operator of such damaged or destroyed property assigning to the Secretary of Commerce any such rights of such owner or operator to recover for such damages.

The board shall, within 180 days or receipt of the fisherman's statement/application, investigate each incident which results in a loan and

(1) if the board determines, by majority vote, in any case, that the destruction or damage was caused solely by a foreign vessel, that board shall request the Secretary to cancel repayment of the fisherman's loan and to refund any principal the fisherman has paid prior to that cancellation and to seek recovery of the amount of the loan from the relevant foreign nation; or

(2) if the board determines, with majority vote, that the damage or destruction was not caused either solely by a foreign vessel or solely by the negligence of intentional actions of the fisherman, the Secretary shall require that fisherman or owner to repay the loan at a rate of interest which the Secretary determines; further, that rate shall be retroactive to the date of the loan; or

(3) if the board determines, with majority vote, that the damage or destruction was solely the result of the fisherman's negligence or intentional actions, the Secretary shall require immediate repayment of the loan at a rate of interest which he determines; further, that rate shall be retroactive to the date of the loan.

The Secretary of Commerce and the Secretary of State shall, with the assistance of the Attorney General, take steps to collect any claims assigned to them under this legislation from any foreign nation involved.

All monies collected on any claim shall be deposited in the fisheries loan fund.

Article X, paragraph 2 also seems to us to be inordinately concerned with minimizing inconvenience to the foreigners: "In cases of arrest of a Polish fishing vessel, the economic loss encountered by the vessel and crew because of lost fishing time shall be minimized through prompt release of the vessel and crew upon the posting of reasonable bond or other security." This seems absurd. Perhaps because of instances in the past few years where vessels have been arrested and then released without trial, we now think the fact of arrest seems reasonable ground for considering suspending without prejudice a vessel's permit to fish. This might even encourage more rapid consideration of that vessel's case.

We're all for the kinds of scientific cooperation addressed in Articles XI and XII—so long as there's a clear understanding all 'way around that it in no way commits United States scientists to recommend compromises of any kind of the United States' position of optimum yield defined, *inter alia*, as providing "the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities." Too many times, the industry has thought, political considerations did outweigh scientific recommendations.

Several in industry object to Article XIII which deals with port calls. I'd like to submit for the record a letter from Fishing Vessel Owners' Association, Seattle, which discusses briefly some of the problems many fishermen think would follow from the United States' continued allowance of foreign vessels' port calls, except, of course, when repairs are necessary for a vessel's continued safety. These include competition for fuel and facilities and further disadvantage to US product in the marketplace because of the much greater government financial support most nations fishing off our shores have.

While we understand from a diplomatic viewpoint the advantage of the relatively longer effective periods of these agreements, because we do have problems with several provisions in them, we would like to begin working with the Executive to have ready at the earliest possible review dates alternatives to these provisions.

There are two provisions in the Polish Agreed Minutes that also concern us. First, although we have withdrawn from the International Commission for the Northwest Atlantic Fisheries—thanks, in good measure, to Members on Fisheries Act of 1950, has not yet been repealed. We disagree with the assessments by the National Oceanic and Atmospheric Administration and the Department of Justice that the implementing legislation survives our withdrawal from ICNAF.

We think it is imperative that it be repealed. Doing so would set the precedent for repealing the implementing legislation for other international fisheries agreements as these come due, thus avoiding the questions of whose management responsibility is what under which different circumstances.

As well, repeal of this implementing legislation would put the New England and Mid-Atlantic Councils on notice that they in fact do have immediate responsibilities to manage the fisheries in their respective areas of jurisdiction. Although repealing

the ICNAF implementing legislation with a provision in the Joint Resolution might technically leave US fishermen unregulated for a short period, the New England Council is now considering fishery management plans for species of particular concern and expects to have these in place quite soon.

The other provision in the Agreed Minutes has to do with economic cooperation. As all of you know, the question of foreign investment in the United States fishing industry is one which has increasingly concerned us since PL 94-265 became law. We'd simply like to register here again our concern that economic cooperation be monitored closely so as not to preclude through short-term arrangements longer-term opportunities for expansion in the United States industry's operations from production to processed products in the marketplace.

As for the legislative relief for which the Executive is asking, we urge you to consider only those GIFAs which have been signed and sent to Congress before the passage of the Resolution. Further, we ask that in the Ctte Report you deal briefly with each GIFA. Any signed and sent after that would be dealt with pursuant to the provisions of PL 94-265.

If it is absolutely necessary, for bureaucratic reasons, to waive the requirement (Sec. 201(c)(2)(B)) that any vessel fishing in our 200-mile zone have its permit displayed prominently in the wheelhouse, we urge that this be for a minimum period—say, no more than 30 days.

On Sec. 204(b)(5), which deals with the councils' opportunity to make recommendations on the applications for permits to fish in our zone, we disagree with Mr. Schoning that this is purely administrative. The Act states, in Sec. 302(h)(2), "Each council shall, in accordance with the provisions of this—Act(2), prepare comments on any application for foreign fishing transmitted to it under section 204(b)(4)(B). . . ." We think that even under this extraordinary circumstance, the councils must have the opportunity to review these applications.

You will hear from Jake Dykstra and Tom Norris how strongly the New England Council feels about this, and industry people involved with other councils have said that in principle they do not wish to see an abbreviation of the Council's review periods unless there is no alternative. If this should be the case, then we urge that you in Congress specify the period and that it be as long as is technically feasible.

Nor do we think there is any reason why the foreign fishing vessels should be allowed to begin fishing until their respective nations have paid to the US Treasury all of the required fees. None of these fees is high; some even appear ridiculously low.

Further on fees and related problems of implementation: The National Marine Fisheries Service's consideration of no punitive fees for bycatches is naive. Returning dead, non-target species to the sea is a waste of food...if that were in practice what were to happen. Proposing the return of non-surplus species to the sea, given the proposed—and inadequate—20 percent observer coverage of foreign nationals to bias their reported bycatch statistics, thereby potentially skewing scientists subsequent assessments for both the target and non-target fisheries. Area and season closures are management tools. And so is a punitive bycatch fee—especially when it is coupled with the maximum observer coverage.

With the repeal of the Bartlett Act by Sec. 402, we did not expect that the National Oceanic and Atmospheric Administration might take a giant step backwards to consider permitting the taking of certain Continental Shelf Fishery Resources as incidental catches. We do hope that after industry representatives' discussion with NMFS on this during the last two weeks, the agency has included in the regulations requirements that foreigners fish in ways which minimize taking certain CSFR, and that if they do take them, they return these CSFR to the sea in viable condition. And certainly, 100 percent coverage by US observers on foreign vessels—at least, for starters, on foreign vessels fishing in fixed gear areas—would increase the probability that this would be abided by.

In conclusion, US coastal fishermen generally see no reason why the foreigners should be allowed to continue fishing once 1 March arrives unless they have satisfied all the requirements of PL 94-265. But for this one time, we are prepared to accept provisions to which we do object to assure that effective implementation of our 200-mile zone does begin on 1 March 1977. And we urge that you in Congress continue to monitor the implementation of this law to help ensure both promptness and thoroughness.

Thank you.

Mr. LEGGETT. Mr. Sharood, nice to have you back.

Mr. SHAROOD. Mr. Chairman, I just got a copy of the draft of the resolution at lunch time and have had a chance to look it over. I

have a couple of comments I would like to make on that draft in conjunction with your proposed markup this afternoon.

Several of the whereas clauses disturb us. On page three of the Resolution, the first whereas clause speaks in terms of Congress action being necessary so that foreign vessels may be permitted to fish in the zone as of March 1.

Mr. LEGGETT. How does that hurt you?

Mr. SHAROOD. We really do not believe there is anything in the act—

Mr. LEGGETT. We will stipulate they do not have to fish there.

Mr. SHAROOD [continuing.] that gives them any God-given right to fish there on March 1, but this notwithstanding, it seems to be the thrust of the National Marine Fisheries Services and the State Department's approaches that we have to move heaven and earth in order to permit them to fish on March 1.

I would prefer to see the last four words of that whereas clause "as of such date" changed to read "March 1, 1977 upon compliance with all relevant provisions of the Act"; I think this more accurately expresses the reality of the law.

The second whereas clause on that page states "Whereas, these Governing International Fishery Agreements comply with the requirements relating to such agreements contained in Section 201(c) of the Act"; I understand in the early drafting of this resolution the word "substantially" was in there, making it "substantially comply" and that "substantially" was deleted.

I would very much like to see it put back in. Technically I think one can see these GIFA's do comply, there are none the less some troublesome provisions in them.

For example, the Chinese agreement says that if a Chinese seaman is arrested for a criminal violation under the GIFA, or the act, or the regulations, the executive branch will use its good offices to insure, before the courts of the United States, that no corporal punishment is inflicted, no imprisonment. And of course, that would include hitting a boarding officer over the head, or throwing one of the observers overboard, perhaps.

We do not see the reason for putting this kind of language in an agreement of this sort. It seems like it is bending over backwards.

This is nitpicking to a degree, but we do not see the legitimacy of that.

More important, of course, is the gear loss problem.

Mr. Evans earlier raised this point, and the Fisheries Service responded: there are basically two alternatives here, you go to court, or you go to the Claims Board. But clearly the act contemplated something different, because the act directs the Secretary of Commerce to develop procedures for the handling of compensation claims, and states that the GIFA's shall contain a provision that the foreign nation will abide by whatever regulations the Secretary promulgates, including regulations to minimize gear conflicts.

Well, not a single one of these GIFA's makes any mention whatsoever of adherence to provisions to be promulgated by the Secretary of Commerce. All they do is either refer to a Claims Board, in two or three instances, or otherwise contain a bland

statement to the effect that the government will do whatever steps are necessary to see that claims are paid. That is a de minimus language.

Although it does concern us, in our opinion, it is not enough to block these GIFA's from going forward.

We do not want the enactment of this legislation to be taken by the State Department as sanctification of the wording of these GIFA's. We do not want them to feel that they are not under any further obligation to improve upon the language.

This is part of the reason we want to see "substantially" put back in the text.

In section 206 "transitional provisions," on page 5, there is a subsection (a) that defines what a GIFA is under this provision. And the last phrase says "were pursuant to any amendment to section 2 if the effective date of such amendment is not after February 28, 1977."

I am afraid in reading that I could not understand what it really meant to accomplish.

Mr. LEGGETT. What Mr. Everett tells me that intends to language would allow for additional legislation by Congress between now and March 1 to cover additional GIFA's.

Mr. SHAROOD. So that would cover those additional GIFA's with respect to the permit waiving, the fee waiving—without having to repeat all of that in a subsequent bill?

Mr. LEGGETT. Yes.

Mr. SHAROOD. I understand now.

On the bottom of that page, subsection (b), is the waiver of the authority, or the requirement, rather, to secure the advice of the councils in regard to the permit applications.

And at the top of page 6, we have the clause, "after request to do so by the Secretary."

This, of course, is a great big loophole, because if the Secretary simply does not request it, then presumably the whole process of securing the advice of the councils goes down the drain. It seems to be here keyed to a specific request by the Secretary for comments.

We would, therefore, recommend that that clause simply be stricken. And of course we would like to see the 7-day period lengthened somewhat.

Mr. STUDDS. How about if we just require the Secretary to send—

Mr. SHAROOD. Well, he is already required in another section here to submit the permit applications to the councils. That is not affected. What is, is receiving advice, going through this period of 7 or 14 days, or whatever it is, in order to allow the councils, sir.

Mr. STUDDS. Then how would it be? Within 7 days of what?

Mr. SHAROOD. Well, we would think it could easily be 7 days after enactment, or 7 days from a date certain.

Are we going to count the time they already had some of the GIFA's?

We are not clear as to what the starting point for this period should be. But some of the applications have been sent to the councils, and some are yet to be sent. So it requires a little study there, to determine what the starting point should be for that time—15 days, or whatever.

Mr. EVERETT. Mr. Chairman, I would like to comment on the intent of that provision?

It would not count the time in which the councils have already had to comment on applications already sent to them, but it would require the Secretary, within 7 days after the date of enactment of this act, to request, by telegram or some other means of communication, comments within 7 days. That was the purpose of that provision.

Mr. SHAROOD. The only problem there would be what about those applications that have not yet been sent to the councils?

Mr. EVERETT. With respect to those not previously sent, it would be 7 days from the time that they are sent to the council. A request for comments would go out the same time that they are sent, Mr. Sharood, indicating the councils have 7 days in which to make comments.

Mr. SHAROOD. And that time frame would run—whatever time allowed—would run, regardless of when the council gets the permit applications, correct?

My concern there is if they sent the permit applications out, let us say, on the 25th, then—even under a 7-day time frame—that would give the council until beyond March 1 to comment.

I think under those circumstances people will just have to be prepared to accept the fact that they are not going to fish on March 1.

Mr. STUDDS. Would this do it—"within X days after the date of enactment of this Act, or after subsequent receipt from the Secretary?"

Mr. SHAROOD. Yes. Yes, as long as both situations are covered, those that have been transmitted previously, and those that are to be transmitted.

Mr. LEGGETT. That is "within 7 days after"—

Mr. STUDDS. Leaving aside whether we change 7 days, Mr. Chairman, "within X days after the date of enactment of this act, or after a subsequent receipt from the Secretary."

I think that would—

Mr. LEGGETT. Does that make sense to you?

Mr. EVERETT. That last clause means "after subsequent receipt from the Secretary?"

Mr. STUDDS. Yes.

Mr. MANNINA. Receipt by the council?

Mr. STUDDS. Receipt by the council, or from the Secretary, yes.

Mr. LEGGETT. So that would read, "within 7 days after enactment of this act, or after subsequent receipt from the Secretary?"

Mr. MANNINA. By the Secretary from the council.

Mr. LEGGETT. "Or by the council from the Secretary?"

How does it read, George?

Mr. MANNINA. "Within X days after the date of enactment of this act, or within 7 days after subsequent receipt by the council."

Mr. LEGGETT. Is that all right?

Mr. EVERETT. Yes.

Mr. LEGGETT. All right.

Mr. STUDDS. Mr. Sharood just got an amendment adopted.

Mr. SHAROOD. Well, we just wanted to cover what we thought was a little hole there. We appreciate it.

Mr. LEGGETT. Thank you.

Mr. SHAROOD. Just one last comment, Mr. Chairman.

I think the fact we are holding this hearing here today demonstrates the wisdom of the the committee's action in the way it approached the whole problem of enacting this legislation. Because, we, representing the industry, do have an opportunity to comment and you on the committee have the opportunity to pass judgment on these agreements.

I know at the time the legislation was in conference last year, there was a great deal of controversy over whether we should go this approach of having the agreements submitted to Congress. And I think what has happened has demonstrated the wisdom of the approach that was adopted, Mr. Chairman, because it does lay it all on the table, where everybody can see it before it becomes effective, rather than as previously under those infamous international agreements, after the fact.

I think that is a good step forward in how we do business in this country. We think basically it is working.

Mr. LEGGETT. All right, any other questions?

Mr. AUCOIN. I want to compliment both witnesses for pointing to the problem I have with the bill.

As I am sure every other member who supported the 200-mile law did, when I went home to my district and talked to the representatives of my fishing industry, I bragged about the provision in the law which provides new authority for reimbursing fishermen for gear lost or damaged by foreign fishing vessels, which is a very significant issue off the coast of Oregon.

The problem I had this morning, Mr. Chairman, as we talked about this legislation which would give approval to the GIFA's—including one with the Soviet Union—was not knowing precisely what was in those GIFA's.

Inasmuch as this Member of Congress explained what subsequent good was going to come from the 200-mile legislation, I feel hard pressed to go back to my fishermen now and point out what I have subsequently learned since this morning's discussion, namely, that the American-Soviet Fishing Claims Board is still going to be the principal vehicle for satisfying claims of American fishermen with damaged goods.

The problem is one this committee very well understands. There has been legislation before this committee in the past that tries to get speedier action in satisfying these claims. When a small American fisherman has damaged equipment caused by a foreign vessel, that is "down time." And for that small businessman, "down time" can be disastrous.

I can bring forth actual names and addresses—and Social Security numbers—of fishermen in my district who are no longer in business because of this.

The real difficulty I have—and I understand all the pressures—is approving GIFA's that sanctify something that the 200-mile law, as Mr. Sharood clearly pointed out, contemplated correcting.

I think the administration of the act in that sense has been less than what the committee intended, and certainly less what this member of the committee intended.

Mr. LEGGETT. I would just make this comment on that.

Mr. AuCOIN. I will yield to the Chairman.

Mr. LEGGETT. We can spend a lot of time trying to get precise language for that provision in each GIFA to apply to every country fishing off our shores, but I suspect that inevitably things will occur that will take care of all of that situation.

On the other hand, it appears to me that the United States, the country setting the rules, could modify the rules as we go along, where these permits are irrevocable and so on. Consequently, the United States is the czar, so to speak, of the validity of those permits. In other words, any foreign country violating our gear in-place restrictions, do so at their own peril.

Mr. AuCOIN. Well, Mr. Chairman, will the Chair yield to me for a moment?

The problem is the long delay in getting any satisfaction from these claim boards.

I cannot think of any instances in Oregon where there has been a speedy resolution of such claims.

Mr. LEGGETT. What I am saying is I think the claims are going to be satisfied, hopefully before they get to the agency by negotiation. And if they are not, certainly the particular offenders are going to be subject to all kinds of pressures when they seek renewal of their permits the following year.

Mr. AuCOIN. If the Chair would yield further, it is my understanding the GIFA's have a life term of 5 years.

Mr. LEGGETT. When permits are issued for the boats next year, they will be issued on a little different basis.

This year, as I understand it, we are giving the allotment to the country and the country in turn, apportions allotments among the boats and that country advises us which boats get what.

After a little experience under this law and we figure out which boats are cooperating or not cooperating then I think those particular boats not cooperating are going to be very hard pressed to be listed as a permittee in the future. And if they are, certainly they will be subjected to restricted catches.

In spite of the fact that we have an international fisheries agreement with a particular country, we still have the ability to revoke existing permits if the rules of that country fail to comply with the law or the regulations issued pursuant thereto.

Anyway, I do believe that this is a situation where we can set down all kinds of rules. Possession is nine-tenths of the operative law and so far as I can see, the United States and the councils are going to be the possessors.

I hope that is the case. We tried to structure this act so that would be the situation.

Mr. AuCOIN. I do understand what the Chairman is saying. I think it is safe, however, to say that the claims boards have been a delaying factor.

I sincerely regret that time factors have forced this committee into the position of having to ratify GIFA's that sanctify something that I think is long overdue for correction.

Mr. LEGGETT. Let there be no mistake about it, the reason for our accelerating the approval of these GIFA's and the structuring of our

laws that will be in effect on March 1 for all countries is not necessarily to benefit the foreigners. The purpose of all of this is to get a uniform law in place and not have holes in it. Hopefully, in this way we will not have confusion. Otherwise, there might be a need to formally enforce the law by force rather than by negotiation.

It appears that we are accelerating things at this point with only 3 or 4 weeks to go before March 1, but this action is something we envisioned 2 months ago. In fact, this legislation was drafted over a month ago and it is only because the Congress has not been organized and operative that we could not proceed.

Mr. AuCOIN. I understand.

Mr. LEGGETT. For anybody who wants to read them, those agreements are available and, very frankly, I think it is worthwhile to read them.

Again, countries are not going to be able to take advantage of so-called "negotiation technicalities" in these laws. We are going to have a uniform law that is going to be applicable to all foreign fishermen generally. If there are violations or noncooperation then quotas will be modified accordingly.

Mr. AuCOIN. If you would yield for one further comment.

I would simply say that I recognize what you are saying, and while I do respect it, if it had been contemplated that we would fall back on our permit granting or revoking authority to accomplish the purpose you have described, the language in the bill as we passed it—specifying that there shall be responsibility assumed for the reimbursement of U.S. fishermen who have lost gear as a result of foreign vessels—would not have been necessary.

The fact that we have had to fall back on permit granting or revoking authority means that that language, for the most part, has been ignored in these GIFA's. I think that is a disappointment. I take the time of the committee to point it out and to point out the difficulty it gives me in supporting the resolution.

Mr. LEGGETT. Your observations are very good and they are appreciated. Before recognizing Mr. Studds, I would like for the record to reflect the role Mr. Sharood played in the long and arduous course of events that led to the development of this law and his contribution was probably as significant as any staff member or any member of this subcommittee in its enactment.

Mr. SHAROOD. Thank you very much.

Mr. STUDDS. Secondly, with respect to the concern—

Mr. LEGGETT. In fact, he is responsible for where we are.

Mr. SHAROOD. Well, I take my share of the blame.

Mr. STUDDS. I wish he was responsible for some of the other things we are responsible for.

[Laughter.]

Mr. STUDDS. In response to some of the concerns expressed by the gentleman from Oregon, I would agree that perhaps the least satisfactory element of these GIFA's is the provisions dealing with methods of compensation to the American fishermen who have lost gear.

I would assume the subcommittee will take a very careful look at that. And, if necessary, we must assess ourselves. And I am sure the

councils will be assessing themselves. And if we find ourselves in extremis, we can always ask for a renegotiation of that aspect of the GIFA's. Certainly we have that option.

Secondly, if the right decisions are made by the Secretary of Commerce, a good deal of these conflicts can be minimized if not eliminated.

Furthermore, it used to be illegal even to have a bycatch. That is no longer the case. It makes it even more important for the Secretary of Commerce to make the right decision in this respect.

Do we interpret the absence of discussion on the part of NMFS to mean we do not yet have a decision?

Mr. SCHONING. I have no word yet on the Secretary's decision. However, on the other point you just made, the PMPS require all objects to be returned to sea.

Mr. STUDDS. Thank you.

Mr. AUCOIN. Did I understand the witnesses to say that, despite their reservations, they will support the resolution?

Mr. AUCOIN. You can live with and support it?

Ms. SLOAN. We do not want to see anything delaying effective enforcement on foreign fishing. But remember, too, that the National Federation of Fishermen is a national organization. And so the gear problems the fishermen have in Oregon are the same kinds of problems there are in New England. And this is something with which we have some real reservations.

We have other problems, which I included in my formal testimony.

We support this bill because we are afraid, frankly, that if we get in a situation where we say, "No. Stop everything right now," then the executive will decide that we're letting them off the hook on enforcement. There was an article in a British publication, which I discovered with some horror yesterday, which said that the U.S. zone was not going to be implemented until January of 1978 because of legal wrangles and problems with Canada.

And since I know the editor of that publication, I half feel like calling him and saying, "Do you know something we do not?"

This is the kind of problem we are trying to avoid. We are afraid if we say, no, we are not happy with this or this, somebody downtown is likely to throw up his hands and say, "All right, we will just take our time about getting everything exactly the way you want it, and there will not be any 200-mile enforcement."

That is what we are afraid of. It is not that we are supportive so much as we are afraid that enforcement will slide by.

Mr. AUCOIN. I appreciate your answer.

Mr. SHAROOD. It is reluctance.

Mr. LEGGETT. Did you have a question?

Mr. EMERY. Yes.

I would like to join my colleague from Massachusetts in recognizing Mr. Sharood's competence and ability in helping us get where we are in spite of ourselves sometimes.

Also I would like to refer to some of the opening remarks today in which you singled out the "whereas" topics. I refer to page 3. I think I remember—and I would like to establish this for the record—that as we examine some of the opening language in our

sessions, we find there was quite a discussion about whether or not we would recognize the purported existence of traditional fishing grounds. We agreed—and I think wisely—that the word “traditional fishing” would be stricken so that we would not establish a legislative record or establish within the legislation a notion that any foreign nation had some inherent right to fish in this territory, despite the regulations that we might wish to impose.

In your opinion, is it your interpretation that this language might weaken that legislative history we have established?

Mr. SHAROOD. Well, it is a little difficult to state what legislative impact a whereas clause has except that it does have an impact on the minds of people who read it and who may sometimes later rely upon it as the basis for taking a position. That is why I wanted to change it because we did not want to create the impression that Congress was saying here that there is some inherent right of the foreigners to fish on March 1 versus March 10 or April 1 or June 1.

The only place where historic fishing rights is recognized in the law is in that section dealing with the allocation of fish by the Secretary of State in terms of which nations will get which share of the surplus. So there he can take into account this.

Up to that point where there has been a surplus found—and it is getting to the point of divvying it up among the foreigners—there is nothing in the act that gives anybody any historic right to fish at any time or by any date.

Mr. EMERY. There has been some concern among my fishermen of Maine about this divvying up of a surplus.

Do you feel that, generally speaking, the GIFA's have paid strict enough attention, first of all, to the rights of American fishermen to build up their ability to go into that surplus—referring to this divvying up of surplus—and, secondly, do you think that the GIFA's have paid enough attention to management or too much attention to the notion that we ought to catch everything?

Mr. SHAROOD. Well, my own personal feeling is in those respects the GIFA's are adequate. On paper they are adequate.

What troubles me and, I think, troubles Lucy and the other people here is not what is on the paper but the attitude of people that negotiate. There seems to be this feeling that come what may, we have got to bend over backwards to permit them to continue to fish at 12:01 on March 1. And that is really what concerns us. What concerns us is this unseemly haste to get all of this done in the next couple of weeks.

And you know Mr. Schoning referred to the problem of confrontation. Well, a year ago, they told us we were going to have a confrontation. You know, 2 years ago, they told us we were going to have a confrontation.

Mr. STUDDS. A nuclear Armageddon.

Mr. SHAROOD. When the CSFR legislation was passed, we were told we were going to have confrontation. That has been dragged out of the closet every time. And it has not happened yet. And they have gotten in line and they signed their GIFA's.

There seems to be this feeling that by having allowed them to sign an agreement to fish here, we have some reciprocal obligation to allow them to fish on March 1.

It is not what is written in the GIFA that troubles us. On paper, in those regards, they are adequate. But it is the attitude of the negotiations that really troubles the industry.

Mr. EMERY. Well, one thing—and I am sure all of us will agree on this—when we go back to our districts, we have told fishermen that, yes, there are going to be problems and possibly we might find in some treaty we negotiated or some agreement that it would not be totally adequate. But I always told them that this committee and many of us in Congress were concerned about these problems and that were going to have oversight responsibility and hearings and would be talking with people continuously.

We are in positions of responsibility—and the State Department is interested, and so on. Every time I said that, I more or less crossed my fingers because, although we have the responsibility—and theoretically we can find out anything we want—I have always feared that magically the information, which we needed, was going to disappear in a puff of smoke or we were not going to find out there was a serious problem until it was too late or that we may have magically tied our own hands somehow.

I feared that if a treaty needed to be negotiated, or if we needed to reach some other conclusion, we would not be able to do it—at least not in a hurry.

Now, I am sure we are going to have this recurring fear off and on. But are you reasonably sure we have built the necessary mechanism into the law and our procedures so that we can be reasonably responsive or as responsive as Congress can be to meet some of these challenges?

Mr. SHAROOD. I think the law is adequate for that purpose, and I think the GIFA's permit renegotiation. We do recognize that they are subject to our management regulations and whatever management regulations are promulgated, Congressman. These will be binding—even though when the foreign nations signed the GIFA's they had no knowledge what those regulations might be.

Again, however, it is the attitudes and perspectives and the intentions of the people that are engaged in this rather than what is on paper, sir, that really counts. The attitude seems to be predominantly "Do everything possible so that no single foreign vessel is held up for one single minute come March 1."

Ms. SLOAN. I think, Mr. Emery, we have been very grateful and we continue to be for the support we have gotten from this subcommittee and from the full committee. I think that this support is something that has been very beneficial in terms of helping fishermen see how it could work. I, too, have gone to fishermen in your State and elsewhere and said, "We've got a tool; we got everything in the legislation we need to work with; now let's make it work."

With any tool, you have to learn how to use it to take advantage of it. But as Dick has said, it is a problem of the attitude. And no matter how careful you are with a tool, if you are working with a resistant medium, your product is not going to be what you thought it was when you began working with the tool. And it is the resistant medium that seems to us to have caused much more of the difficulty than the tool itself.

The tool: as we work with it, we see small things that need adjusting; but for the most part we have been very pleased with how it works and how we have been able to work with Congress. The problem has been the medium.

Mr. EMERY. I have one final question, if I might, Mr. Chairman. I really do not know if this question is fairly posed to you or whether I should pose it to the gentleman on the other side of the room.

During the last couple of years, we drafted the bill and passed it with severe question marks hanging over our heads as to the attitude of the previous administration and those individuals of the State Department that were there as part of the administration. Now, we have a different situation. There is another administration and we are still faced with some of the same questions.

Now, what guarantees do we have? What do you know about the attitude of the new Commerce Department and the new State Department and the new administration, with some of the same problems, with heel dragging and enforcement and attitude that we have talked about during the last 8 years?

Do you have any views?

Ms. SLOAN. Well, I think probably the biggest clue is that most of the players are not new. I think that seems to be the clearest indication to date.

Mr. EMERY. Are we ready for the second team to come in?

Ms. SLOAN. Well, I think we are waiting to see whether new people in the positions where there are new people, Congressman, are going to make a difference. But basically the players with whom we have been dealing, as we have dealt in the development of this legislation, are essentially the same players.

The question is whether or not in the future there are changes.

Mr. STUDDS. Let the record show that John Norton Moore is no longer playing.

Ms. SLOAN. Yes.

[Laughter.]

Mr. LEGGETT. Now, wait a minute, please.

Let us not castigate anybody. We have dealt with really an awful lot of good people. And we have had foot dragging all the way from the Secretary of State on down for various reasons that we can all understand.

So anyway, if you are done——

Mr. EMERY. Unless something occurs that I need to ask.

Mr. LEGGETT. Mr. Evans?

Thank you very much.

Your words of wisdom are appreciated.

Jacob, you and Mr. Norris, do you want to express yourselves at this point?

STATEMENT OF JACOB J. DYKSTRA, MEMBER, NEW ENGLAND REGIONAL FISHERY MANAGEMENT COUNCIL, ACCOMPANIED BY THOMAS NORRIS, VICE CHAIRMAN

Mr. DYKSTRA. Thank you.

Mr. LEGGETT. Your statement will go into our record as if read in its entirety.

[The following was received for the record:]

STATEMENT OF JACOB J. DYKSTRA

Good morning, Mr. Chairman, gentlemen. I am Jacob J. Dykstra, president of the Point Judith Fishermen's Cooperative Association in Rhode Island, and member of the New England Regional Fishery Management Council. With me is Thomas A. Norris, Vice President of Old Colony Trawlers in Boston, and Vice Chairman of the New England Council. We have been authorized by the council's Chairman, Henry Lyman, to speak on behalf of the council here today.

The council's position on a waiver for consideration of the Governing International Fishery Agreements is already a matter of record. We are here principally to answer questions and, if that is your pleasure, to discuss with the Subcommittee the New England Council's concerns which prompted a letter to the Secretaries of Commerce and State on February 2, 1977. A copy of that letter has been sent to you, Mr. Chairman, and to Mr. Murphy.

Briefly, the letter states the Council's concern as regards foreign fishing off the United States' East Coast during the period from January 1 through 28, 1977, as this was brought to the council's attention. The nature and the extent of these fishing activities prompted the Council to recommend that issuance of permits for foreign fishing off the U.S. East Coast be delayed until reliable information on this fishing can be obtained. As it is our understanding that one of the purposes of this hearing is to determine the advisability of waiving statutory requirements in order to accelerate issuance of permits, which is diametrically opposed to the Council's recommendation, we felt it would be useful to place the Council's position clearly on the record and to be here to offer such further detail as we can, should the Subcommittee so desire.

We fully understand and agree with the requirement in PL 94-265 that foreign fishing be allowed for surplus stocks, but, for example, both the New England and the Mid-Atlantic Councils—as well as an overwhelming majority of agencies, organizations, and the public which have commented on the mackerel preliminary management plan—have disagreed with the Department of Commerce that there is a surplus for foreign fishing on mackerel. Yet this stock was the most heavily fished of any stock in our area during January 1977. We understand also that under PL 94-265 the council has a responsibility to the fish stocks, to the U.S. fishing industry, and to the public. The Executive seems to have opted instead to favour strongly allowing foreign fishing before all other considerations. We therefore wish to delay permits until we know the extent of foreign fishing off New England to date.

For this reason, we ask for a clear assessment of foreign fishing activities before we rush to issue permits for further fishing on mackerel or on other stocks. We think this is the primary responsibility of the councils and our government.

Mr. DYKSTRA. Thank you, Mr. Chairman. I will not read the statement, but just so that we understand—

Mr. LEGGETT. You say "The council's position on waivers for consideration of the governing international fishery agreements is already on record."

What is that position?

Mr. DYKSTRA. The position is reluctant acceptance.

Mr. LEGGETT. Reluctant acceptance?

Mr. DYKSTRA. The councils were all asked to pass a resolution endorsing the concept of the legislation which is before you and the New England Council did that, with some abstentions.

Mr. LEGGETT. Your reluctance is noted.

Mr. DYKSTRA. Thank you.

That was done at a meeting several weeks ago and at our meeting of the council, which was held on the 1st and 2nd of February. We had a report from the Coast Guard and from NMSF of activities offshore. And that, coupled with reports from fishermen and other sources, caused sufficient alarm so the council wrote a letter.

We have a letter that was not read to this committee. The council wrote it to the Secretary of Commerce and the Secretary of State, but a copy was ordered to be sent to this committee.

This letter did not address the immediate subject of this legislation but it did address the ultimate purpose of the legislation.

As I understand, the ultimate purpose is to speed things up and to keep the foreign vessels fishing.

The request in the council's letter was that neither permits nor permission to continue fishing in the area of the New England council's competence be issued until we had clarified some of the information we had received.

Mr. LEGGETT. I think we did find out that Polish squid and Soviet mackerel fishing were bumping up against the quota; so that information which you obtained was valuable and I think the input was helpful.

Of course when we talk about keeping the foreigners fishing, I think we all understand that the foreigners are going to be fishing, but at a reduced level. My general impression is that we are cutting them out entirely in some commodities, but generally across the board by about a third.

Let me ask you this. To what extent are members of your organization going to be able to take advantage of that one-third reduction in the foreign catch?

Mr. DYKSTRA. This, sir, is a very complicated subject as you know; I think it depends in great measure on how much of the U.S. market and how much of the foreign markets, Congressman, the U.S. fisherman is able to take advantage of. In other words, it is great to go out there and be able to catch more fish and to have the fish that you are catching and all of that. My fleet actually is coming in at perhaps 10 percent of historic capacity, as is Mr. Norris'. They are catching expensive species and therefore they are making money; but they are not nearly anywhere near historic capacity.

We have now the ability to catch a greater volume of fish; but the problem is to be able to make money catching that fish.

For various reasons, some of these species have not been profitable for the U.S. fishermen to fish. It is not just a case of having the resource available; it is also a question of profitability in the marketplace.

Mr. LEGGETT. I would hope that you would consult with the committee with respect to developing new markets for some of the fish that will be available. I would hope that you would document what you did for the past couple of years, by fishery, so that we can compare what you did then to what you will do this year under the law. It would be very nice to end up the year and show that we have substantially enhanced various American fisheries and tie that into dollars and cents rather than just tying it into the deficits, which obviously will be experienced by the foreigners fishing in our zones.

Did you want to comment any more on your statement?

Mr. DYKSTRA. No, thank you. I came down here so that if the subcommittee had any questions about why the council had taken this position when we'd already, more or less, approved of the general concept of the legislation before you—albeit reluctantly—I could try to answer those questions on behalf of the council.

Do you have any comments, Mr. Norris?

Mr. NORRIS. Just a few, Mr. Chairman. With regard to the overfishing that we indicated may be taking place in the area off our coast, the foreigners right now are even violating the ICNAF regulations under which they are supposed to be operating.

Our enforcement people have noted they are fishing outside of the so-called "windows" that were adopted in ICNAF and the excuse of the fishing captains on the foreign trawlers when they were boarded by our enforcement people has been that their governments had not as yet even told them anything about these windows.

There is a lack of communication both in this area and elsewhere. And we are trying desperately through our Coast Guard to get that information to them.

Also, it is our opinion that the foreign nations, especially the U.S.S.R., are taking a considerable amount of mackerel off our coast and right now they are on the borderline—in fact, they were on the borderline on January 28—of reaching their quota. So we have to really be in a position to assess that before we can get involved in permits and GIFA's and all of the rest of it.

Mr. LEGGETT. We already got that evidence and we are watching that very closely.

Mr. NORRIS. That is the only thing I want to emphasize. And I concur with everything that Mr. Dykstra has said.

Mr. LEGGETT. Thank you.

Mr. Forsythe?

Mr. FORSYTHE. No questions.

Mr. LEGGETT. Mr. Studds?

Mr. STUDDS. Just one question.

I understand there has been considerable disagreement and change with respect to whether or not there should be any surplus of mackerel in the last few months. I gather it has ranged from zero to 105 and back to 75 now and—

Mr. NORRIS. There was a massive difference, Mr. Studds. In ICNAF some of the foreigners wanted to go as far as 255,000 metric tons and our people, our scientists, had said in the neighborhood of 35,000 metric tons. Finally they arrived at 75, which was sort of a compromise. And we think that that was too high.

Mr. STUDDS. At least next year that determination will be yours and your council's and not somebody else's?

Mr. NORRIS. That is correct.

Mr. STUDDS. May I just add to what the Chairman said. I hope the subcommittee in the course of this Congress will get into the question of marketing of under-utilized species in this country. Maybe some day squid will be on every American's table.

Mr. NORRIS. We are working very religiously on that right now.

Mr. STUDDS. I appreciate your testimony. I share your reluctant enthusiasm, assuming the Secretary of Commerce acts correctly.

Mr. DYKSTRA. It is interesting, Mr. Studds, that the New England council recommended before the Canary Islands meeting, Mr. Studds, that there will be no surplus available for foreign fishing on mackerel. They reaffirmed it afterwards.

The Mid-Atlantic council also went on record this way.

I have here the final PMP on mackerel. And all of the State officials, all of the fishermen's organizations—the sports people and commercial fishing organizations—among all the people who spoke at public meetings, I can't find anyone who agreed with the U.S. Government's position.

Mr. STUDDS. I understand.

Mr. DYKSTRA. But we still have that position. They tell us they have not been overfishing, but there are a number of assumptions that go into that—assumptions about how many vessels there were there and what they were fishing on and what the catch rate was per day. If we change the assumptions just a little bit, we come up with quite a bit of overfishing.

Mr. STUDDS. I guess one of the side consequences of the enactment of this law is that your meetings are not going to be in the Canary Islands any more.

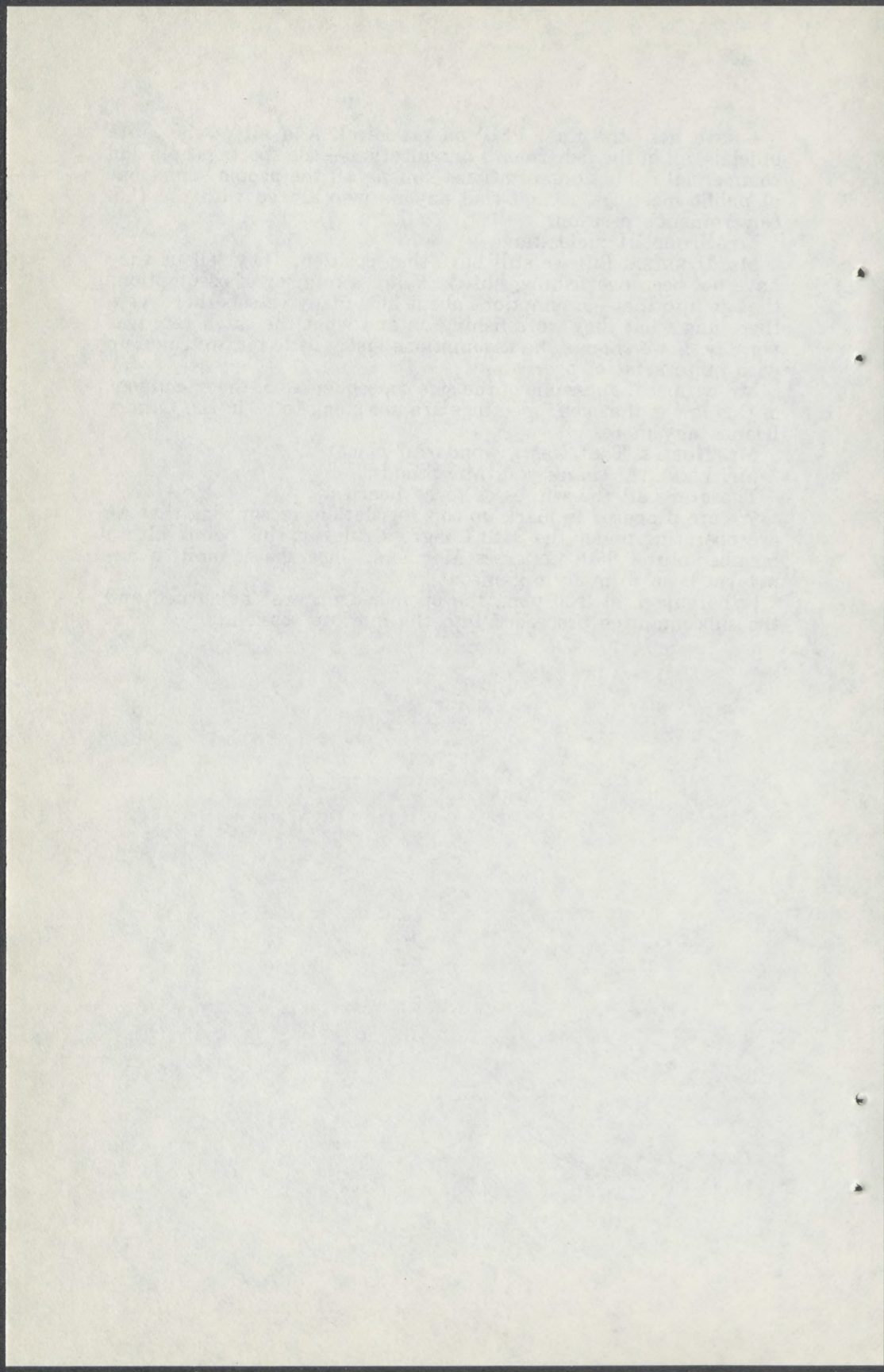
Mr. NORRIS. That was a wonderful place.

Mr. LEGGETT. Thank you, Mr. Studds.

Those are all the witnesses to be heard.

We are prepared to mark up this legislation, recognizing that we are operating under the 94th Congress rules at this point, with a membership of 95th Congress Members, since the committee has not yet been formally organized.

[Whereupon, at 3:30 p.m., the open hearing was adjourned and the subcommittee proceeded into the markup session.]



INTERNATIONAL FISHERY AGREEMENTS

TUESDAY, FEBRUARY 22, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 1:55 p.m., in room 1334, Longworth House Office Building, Hon. Robert L. Leggett, Chairman of the subcommittee, presiding.

Mr. LEGGETT. The subcommittee will please come to order. This afternoon the subcommittee will hold hearings on legislation that would waive the 60-day congressional review period and give congressional approval to certain Governing International Fishery Agreements, better known as GIFA's. The GIFA's involved are those with the countries of Spain, South Korea, Japan, and the European Economic Community, copies of which were officially transmitted by the President to the Congress yesterday.

Special legislation to accomplish this purpose was introduced about an hour ago, and joining me in cosponsoring this legislation were colleagues Forsythe, McCloskey, Oberstar, Akaka, Hughes, and Evans of Delaware, among others.

[The bill, H.R. 3753, as referred to above, follows herewith:]

95TH CONGRESS
1ST SESSION

H. R. 3753

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1977

Mr. LEGGETT (for himself, Mr. FORSYTHE, Mr. MCCLOSKEY, Mr. OBERSTAR, Mr. AKAKA, Mr. HUGHES, and Mr. EVANS of Delaware) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To bring certain governing international fishery agreements within the purview of the Fishery Conservation Zone Transition Act.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 That section 2 of the Fishery Conservation Zone Transition
4 Act (Public Law 95-6) is amended—

5 (1) by striking out “and” at the end of paragraph
6 (5);

7 (2) by striking out the comma at the end of para-
8 graph (6) and inserting in lieu thereof a semicolon;

9 (3) by inserting immediately after paragraph (6)
10 the following:

I

1 “(7) the European Economic Community Con-
2 cerning Fisheries Off the Coasts of the United States,
3 as contained in the message to Congress from the Presi-
4 dent of the United States dated February 21, 1977;

5 “(8) the Government of Japan Concerning Fish-
6 eries Off the Coasts of the United States, ¹⁹⁷⁷as contained in
7 the message to Congress from the President of the
8 United States dated February 21, 1977;

9 “(9) the Government of the Republic of Korea
10 Concerning Fisheries Off the Coasts of the United
11 States, as contained in the message to Congress from
12 the President of the United States dated February 21,
13 1977; and

14 “(10) the Government of Spain Concerning Fish-
15 eries Off the Coasts of the United States, as contained
16 in the message to Congress from the President of the
17 United States dated February 21, 1977;”; and

18 (4) by amending the last sentence thereof to read
19 as follows: “Each such agreement referred to in para-
20 graphs (1) through (6) shall enter into force and effect
21 with respect to the United States on the date of the
22 enactment of this joint resolution, and each such agree-
23 ment referred to in paragraphs (7) through (10) shall

1 enter into force and effect with respect to the United
2 States on February 27, 1977.”.

3 SEC. 2. The amendments made by the first section of
4 this Act shall take effect February 27, 1977.

Mr. LEGGETT. In addition, the legislation would reduce the council review period from 45 days to 7 days, which is much like the legislation that has already been passed by this Congress with respect to other countries.

In accomplishing these purposes, this legislation would amend H.J. Res. 240, the predecessor legislation which was reported out of this subcommittee on February 7, and passed the House on February 8, and was signed by the President just yesterday. In that legislation, congressional approval was given to the GIFA's with the countries of Poland, Russia, Bulgaria, Romania, Taiwan and East Germany.

The plans of the subcommittee call for receiving testimony this afternoon from representatives of the Department of State and Commerce, and any other interested parties desiring to be heard, followed by a markup session on the bill at the conclusion of the hearings this afternoon, after which, hopefully, the legislation will be ordered reported to the full committee.

The full committee is scheduled to meet tomorrow morning, and we hope to have the full committee order the bill reported to the House at that time. We further hope to have the bill brought to the floor of the House for a vote under Suspension of the Rules on Monday, February 28.

The staff of the subcommittee has been working closely with the Senate staffs of the Committees on Commerce and Foreign Relations and, hopefully, they will be able to agree to our bill on the Senate floor sometime during the afternoon of the 28th, the day before the extension of the fishery zone goes into effect, something we have been looking forward to now for about a year.

Our first witness will be a representative of the Department of State. What is your name, please, for our record?

Mr. ZUCCA. Albert L. Zucca.

Mr. LEGGETT. It is my understanding that you will read Ambassador Ridgway's statement. Representing the Department of Commerce will be Bob Schoning. Your respective statements will both appear in the record at this point. Maybe it would be helpful to the subcommittee if both the State and Commerce representatives came to the witness table together.

The members of the subcommittee have perhaps not had a chance to review the GIFA's that I referred to in my opening statement. However, they have been on deposit with the subcommittee for a few days now.

Now that the statements of the witnesses are in the record, just as if read by each of you, can either, or both of you tell us about any differences between these GIFA's as opposed to the GIFA's that were included or approved in the legislation that we heard on the 7th and 8th, recognizing, of course, that each of the GIFA's are different, depending on the country involved, et cetera.

What the subcommittee is concerned about is not the technical differences, but the differences in substance.

STATEMENT OF ALBERT L. ZUCCA, DIRECTOR, OFFICE OF FISHERIES AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY MS. MARY ELIZABETH HOINKES AND DAVID A. COLSON, ATTORNEY ADVISORS, DEPARTMENT OF STATE

Mr. ZUCCA. I want to thank you on behalf of Ambassador Ridgway, who unfortunately could not be here this afternoon.

Mr. STUDDS. I trust that is because she is briefing the President on Canada—

Mr. ZUCCA. Do you want me to read the statement?

Mr. LEGGETT. No, I want you to tell me, if you know, of your own knowledge, of any significant differences between these agreements, as opposed to the agreements that were entered into with the countries whose GIFA's have been approved by the Congress.

Mr. ZUCCA. Mr. Chairman, I do not think there are any significant differences in these agreements, compared with those of the previous. The ultimate, the aim, was to have recognition of the extended jurisdiction, which we did receive, sir.

Mr. LEGGETT. I will ask the same question of Mr. Schoning.

STATEMENT OF ROBERT W. SCHONING, DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY CARMEN JOSEPH BLONDIN, ASSISTANT DIRECTOR FOR INTERNATIONAL FISHERIES, NMFS AND HERBERT L. BLATT, ASSISTANT GENERAL COUNSEL, NOAA

Mr. SCHONING. I will defer to the Department of State, who actually negotiates the GIFA's.

Mr. LEGGETT. I am going to ask you, since you read the agreements, if you know of any significant differences that could relate to the subcommittee.

Mr. SCHONING. I have not read the Japanese GIFA and I have not seen it in final form. Therefore, I am not prepared to comment on the GIFA. I would rather have the State Department comment.

Mr. LEGGETT. I understand the Japanese agreement is in a little different form from the others.

Mr. AuCoin?

Mr. AuCOIN. I have a number of questions about the Japanese agreement.

Mr. LEGGETT. Maybe it would be best at this point if we were to answer the quorum roll, and then come back and proceed with examination of the witnesses.

The subcommittee will stand in recess for 15 minutes.

[Short recess.]

Mr. LEGGETT. Will the meeting please come to order?

When we adjourned, we were inquiring about the differences between the agreements included in H.J. Res. 240, now Public Law 95-6, as compared to the Japanese GIFA, and we really had not gotten to any substantive differences.

With respect to the witness from State, your full name is—

Mr. ZUCCA. Albert Zucca.

Mr. LEGGETT. How do you spell that?

Mr. ZUCCA. Z U C C A, Mr. Chairman.

Mr. LEGGETT. And your title is what?

Mr. ZUCCA. I am the Director of the Office of Fisheries Affairs, Mr. Chairman.

Mr. LEGGETT. Did you participate in the negotiation of the agreements referred to in H.J. Res. 240?

Mr. ZUCCA. Yes, sir.

Mr. LEGGETT. You and your staff are prepared to answer questions about those, is that correct?

Mr. ZUCCA. Yes, sir.

Mr. LEGGETT. Mr. Zucca requests that Ambassador Rozanne Ridgway's testimony be inserted for the record.

[The statement follows:]

STATEMENT OF ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY OF STATE FOR OCEANS AND FISHERIES AFFAIRS

Mr. Chairman:

When the history of the Fishery Conservation and Management Act of 1976 is written, one of the most interesting chapters may well be the implementation of its international features. And, within that chapter, one must note the continuing support and cooperation of this Subcommittee in ensuring the smooth transition from the old international regime to the new. Mr. Chairman, for myself, and for the Department, let me make a matter of record our appreciation for what you, the members of the Subcommittee, and the staff have done in these past weeks to provide the legislative means for accomplishing our international objectives. We haven't always agreed, and perhaps it would make all of us nervous if we did, but in this effort, the cooperation, the exchange of ideas, the opportunity to consult have been key to whatever success has been achieved. I simply want to say, "thank you."

At my last appearance before this Subcommittee on February 7, I reported on the status of our negotiations on governing international fishery agreements. I indicated then that there were several negotiations still in progress which I hoped would be concluded in time for the agreements to qualify under the terms of House Joint Resolution 240. I am pleased to say that we signed the agreement with Spain on February 16, with Japan on February 10, and with the European Community on February 15. These agreements, as well as the Korean agreement, signed on January 4, are now before the Congress in accordance with the Congressional oversight provisions of the Fishery Conservation and Management Act of 1976. It is our hope that Congress will move to amend House Joint Resolution 240 to enable these agreements to enter in force, and to bring them under the waiver provisions of H.J. Resolution 240.

Mr. Chairman, I would like to comment briefly on the agreements with the European Community and with Japan. First, the agreement with the European Community. On previous occasions, I have reported that the United States was prepared to enter into a governing international fishery agreement with the Community, three of whose members traditionally have fished off our coasts, provided the Community was able to undertake the obligations in the Act which have been incorporated in the agreements. I'm sure you have noted that, in form and content, including those with Spain and Korea. There are, of course, minor differences as to organization, placement, and explicitness among all the agreements. We have asked ourselves two questions with respect to each of the ten agreements negotiated. Does it acknowledge the exclusive fishery management authority of the United States in a zone out to 200 miles? And, does it provide for the enforcement and implementation by the United States of all the features of the Act? In every case, the answer is yes.

So, in content there is nothing unusual about the agreement with the Community. But a different question does arise. As between the Community and the United States, does the traditionality of fishing by three Community members—France, the Federal Republic of Germany, and Italy—now cover the Community as a whole so that the Community can allocate as it chooses among its members? And, if it does not, who determines, and by what process, which vessels of which member states of the Community actually receive permits to fish off the coast of the Community?

Throughout the negotiations with the Community, the United States made clear that it understood that the Community now has a common fisheries policy and that the objective of the negotiation was to accommodate the interests of the three

member states which traditionally have fished off our coasts. The United States retains the right, through the domestic process of approving applications and issuing permits, to determine who shall fish off our coasts. Until such time as the fish stocks off our coast rebuild, and even then, only when they are in excess to the harvesting capacity of the U.S. fleet, we do not expect to allocate, or to approve applications for, any country that has no record of a traditional fishery. For this year, clearly, permits will be available only to France, Italy, and the Federal Republic of Germany. For the life of the agreement, we retain the right to accept, or to reject, the application for a permit for any vessel.

The agreement with Japan for 1977 is different in form but not in substance, from other governing international fishery agreements which have recently been negotiated. It consists of an exchange of notes. Attached to that exchange of notes is an initialled long-term agreement covering the period 1978-1982, which is being transmitted to Congress at this time for its information. It will be resubmitted for formal oversight following its signature later this year.

The short-term agreement with Japan in all material respects is in accord with the Act. It sets out the principles that will govern fishing by Japan for fisheries over which the United States exercises management authority for the period ending December 31, 1977. It provides that Japan may apply for permits to fish an allocation of that portion of the allowable catch of a specific fishery that will not be harvested by United States fishing vessels. Although its terms are decidedly less explicit than all other agreements, they provide a basis for the full implementation by the United States of the terms of the Act. They effectively recognize exclusive management authority by the U.S. within the 200-mile zone. Beyond the zone, with respect to salmon, the terms of the International North Pacific Fishery Convention will still apply in 1977.

This short-term agreement of unusual form is the result of our efforts to accommodate the Constitutional procedures of Japan, which are so similar to ours, without foreclosing the option of fishing by Japanese vessels in conformity with our law during 1977. The short-term agreement does not require this lengthy process. We have submitted it so that it may join the agreements which remain to be brought into force for the United States by March 1, 1977.

Mr. LEGGETT. Now, let me ask this. Does any member of the subcommittee have any questions, except with respect to the Japanese agreement?

Mr. Forsythe?

Mr. FORSYTHE. Just one on the EEC agreement.

My understanding is that there is an exemption in there so far as bilaterals are concerned.

What is being referred by this exemption?

Mr. ZUCCA. I think that refers to the Danish agreement, which is bilateral, which we wished to keep in force and incorporate in terms of the GIFA, and this was done, sir, to protect our salmon and—which swim off into the Greenland area, and under the terms of this GIFA, incorporating that agreement, we will have that protection.

Mr. FORSYTHE. I see. So it is for the salmon fishery.

Mr. ZUCCA. That is correct.

Mr. FORSYTHE. That is all I have.

Mr. AUCOIN. Mr. Chairman, I would like to make an inquiry into the South Korean GIFA with regard to the compensation of U.S. citizens' equipment damaged by foreign vessels.

Could you explain how that might be similar to or different from the other GIFA's before the committee today?

Mr. ZUCCA. I think I will defer to counsel, if I may, sir.

Mr. LEGGETT. In the chart that we have before us, under Korea, it says the same as the Polish agreement, article II(1).

Apparently they say the same thing in the GIFA's of Bulgaria, Romania, and the Republic of China. Then the notes under the

Polish GIFA says that "living resources off the coasts of the United States means all fish within the fishery conservation zone, all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters." That is very interesting, but it does not help us any.

Mr. AuCoin, do you want to restate your question again?

Mr. AUcoin. I am trying to find out, Mr. Chairman, in what way, if any, the South Korean GIFA provision differs from the other GIFA provisions in compensation of U.S. citizens for goods damaged by foreign vessels.

And if there is a difference, what is the reason for the difference?

Mr. ZUCCA. Sir, there is no difference, no substantive difference. In fact, I think there is little difference in form.

In article 9 of—article 8, paragraph (5).

Mr. AuCoin. Could you read that language to me?

Mr. ZUCCA. That reads as follows:

"All necessary measures are taken to insure that prompt and adequate compensation of U.S. citizens for any loss or damage to their vessels, fishing gear or catch, that is determined by applicable U.S. procedures to have been caused by any fishing vessels of the Republic of Korea" and it is prefaced by the Government of Korea shall insure that agreement, article 5—

Mr. AuCoin. That is basically the same as all others?

Mr. ZUCCA. That is correct.

Mr. LEGGETT. If the members will refer to page 11 of the chart, you will note that it refers to the provision of 94 265, or H.R. 200.

Do you have a copy of the comparative analysis that you could give to Mr. AuCoin?

If you turn to page 11, you will note the numbers appear on the righthand upper corner.

The law says that any foreign nation which fishes pursuant to a GIFA must abide by the requirement that responsibility be assumed in accordance with requirements prescribed by the Secretary for the reimbursement of U.S. citizens for any loss or damage to their fishing vessels, fishing gear, or catch which is caused—underlined—by any fishing vessel of that nation.

Now, the Polish agreement, which is the first one cited there, contains a provision that says compensatory damage is based upon that proximity caused by any Polish fishing under article 8, section 5.

The parties agree to continuation of the U.S.-Polish Fisheries Board created by annex I of the U.S.-Poland agreement regarding fisheries in the western region of the Middle Atlantic Ocean—and they refer to citation there in annex II.

Since you have a provision here that says that the agreement with the German Democratic Republic and the Bulgarian Government, such as it might be, are the same as the Polish agreement, how can they be the same as the Polish agreement, when the Polish agreement apparently refers to a U.S.-Polish Fishing Fisheries Board?

Do we have U.S.-Korean Fisheries Board, or a U.S.-Bulgarian Fisheries Board, or does the Polish Board handle claims for all those other countries?

Mr. ZUCCA. I would like to consult with counsel, if I may.

Mr. LEGGETT. Very good.

[Short pause.]

Before you answer that, the Korean agreement is apparently the same as the Chinese agreement, and the Chinese agreement says that compensable damage is based upon that caused by any fishing vessel of the Republic of China.

That is under article 8, section 5. That is the same article that they refer to under the Polish agreement.

Mr. AUCOIN. Mr. Chairman, that answers my question.

Mr. LEGGETT. Yes, apparently there is no board that administers damage under the Republic of China agreement, and therefore there would be no board under the Korean agreement.

My question is, how many boards do you have that respond to damage claims?

Mr. ZUCCA. May I ask counsel to answer that?

Mr. LEGGETT. Sure, but before doing so, please identify yourself.

Mr. COLSON. David Colson of the Department of State.

As I recall, when the committee was reviewing the Polish agreement, there was the question regarding approximate cause.

Mr. LEGGETT. I think we stipulated that "proximate cause" and "cause" were, as a practical matter, the same thing.

Mr. COLSON. There was a concern that the Polish agreement, because of its reference to the U.S.-Poland Claims Board, in some manner—

Mr. LEGGETT. Degraded.

Mr. COLSON. Well, it kept us from establishing our own administrative sort of claims procedures.

Now, thereafter, in the negotiation of the GIFA's, the language which is in article 8, paragraph 5 of the Korean agreement, which refers to applicable U.S. procedures, would use the authority under the agreement to set up those sorts of administrative procedures for the reimbursement of claims by American fishermen.

As far as I know, there are only two claims boards in existence from old agreements. That is the Soviet Claims Board and the Polish Claims Board, and maybe there was one—and a Roumanian Claims Board has been established, but with respect to the Korean agreement, the only procedures which would be established here are procedures that would be under U.S. law, or under administrative procedures established by the United States.

Mr. LEGGETT. So our record may be complete, if you will provide us with the information that you get with respect to the Bulgarian agreement, and any others that appear to be like the Polish agreement, it would help us understand the claims procedure with respect to those countries.

Mr. ZUCCA. We will submit that, Mr. Chairman.

Mr. LEGGETT. Presumptively then, we are back to the Japanese agreement.

Mr. YOUNG. Mr. Chairman, I have one question.

Why will not Korea be able to supply scientific—

Mr. ZUCCA. Could you repeat it?

Mr. LEGGETT. Supply scientific—

Mr. YOUNG. Why will Korea not be able to supply scientific samples immediately of their catch?

Why do they have to establish scientific fishing fleets?

Mr. ZUCCA. Excuse me?

Mr. LEGGETT. Are you reading from a page now, or from the testimony?

Mr. YOUNG. Minute number 5.

Mr. LEGGETT. Minute number 5, is that the same as page number 5?

Mr. MANNINA. No.

Mr. LEGGETT. Is there anything else in these big tabulating sheets referring to that?

Mr. YOUNG. No, I have seen the "scientific" attempts by the Japanese Government.

I am just questioning whether there is a backdoor approach by the Korean fleet for other fishing privileges within the confines of the GIFA, and it is after the fact—

Mr. ZUCCA. I think the answer to the question is we are trying to be flexible with countries like Korea, and not demanding that they provide us with this.

Mr. YOUNG. With all due respect, that is one of my biggest problems.

I get the Japanese newspaper and the Korean newspaper, and I read where Korea goes to the State Department and asks them for additional catch off our coasts in Alaska, and it bothers me. If we are going to have flexibility, what is going to be the result of this flexibility?

Is it going to be a larger fishing effort by the Koreans under the guise of scientific research?

Mr. ZUCCA. Excuse me.

[Short pause.]

Mr. ZUCCA. I think that the answer to that is that this is essentially a scientific reporting requirement. It is considered a part of the allocation question.

Mr. YOUNG. In that case then, since they now have fishing boats, they can supply scientific samples as far as catch, size, quality, and damages to the bottom of the sea. All that is available today.

Mr. ZUCCA. Our requirements are more stringent apparently, and requires us to be more flexible.

Mr. YOUNG. Our requirements. Well, again, respectfully, I would like to have the requirements submitted to me personally.

Mr. LEGGETT. Well, the subcommittee—

Mr. YOUNG. The reason I said this, Mr. Chairman, on Thursday, the day we had hearings, or rather Wednesday, I asked for a copy of the Japanese GIFA, and I received it after—by the way, you personally were very helpful in this—after about a week and a half delay, and when I asked for this information, I hoped to have a little time. It is hard for this committee to read such a document and make a decision in a short time.

Mr. Chairman, that could be submitted to you, and ourselves.

Mr. LEGGETT. Okay.

[The following was received for the record.]

ANNEX II

The procedures described below are designed to contribute to continuing needs for assessment of the status of stocks and management of fishery resources. However, specific needs may develop from time to time which require a change in standard procedures, or additional data for special studies. Also, the pattern of fisheries will change. These aspects require that the procedures must be flexible enough to accommodate necessary changes.

All data described below shall be provided to the designated representative of the National Marine Fisheries Service of the Department of Commerce of the United States.

1. Catch and Effort Statistics

A. Atlantic Coast

Three months after the close of each quarter, catch and effort statistics for biweekly time periods for 30-minute square areas shall be reported by fishing vessel for the previous quarter. These will be reported using 30-minute square Statlant 21 B Forms, magnetic tape, computer cards or printouts for all species and gear types.

Fishing vessel logbook data is to be available for selected, specific joint assessment studies. The collection of samples, specified in 2 below, should also be annotated in the logbook.

B. Pacific Coast

By May 30 of the following year, annual catch and effort statistics shall be provided as follows: catch in

metric tons and effort in hours trawling, effort in number of longline (hachi) units, effort in number of pots, effort in number of hours of longline or pots soaking time, effort in number of Danish seine sets, and effort in number of days fishing by vessel class, by gear type, by month, by half degree Latitude x one degree Longitude statistical area, by the following species groups:

- Yellowfin sole
- Rock sole
- Arrowtooth flounder
- Flathead sole
- Dover sole
- Other flounders
- Pacific ocean perch
- Other rockfishes
- Pacific cod
- Sablefish
- Pollock
- Atka mackerel
- King crab
- Tanner crab
- Herring
- Other species taken in excess of 1,000 metric tons
- All other species combined

These annual catch and effort statistics shall be provided using magnetic tape, computer cards or printouts.

In addition to the annual statistical report above, provisional monthly fishery information shall be provided by the end of the following month as follows: catch in metric tons and effort in vessel-days on the grounds by gear type, by vessel class, by the species groups listed in (1) below, for each of the International North Pacific Fisheries Commission (INPFC) statistical areas listed in (2) below:

- (1) King crab
Tanner crab
Pollock
Pacific cod
Rockfishes
Flatfishes
Sablefish
Herring
Others
- (2) Bering Sea; Subareas 1, 2, 3 and 4
Aleutian Region
Shumagin Region
Chirikof Region
Kodiak Region
Yakutat Region
Southeast Region
Charlotte Region
Vancouver Region
Columbia Region
Eureka Region
Monterey Region
Conception Region
and other designated areas

2. Biological Statistics

A. Atlantic Coast

- (1) Length-age composition samples
 - a Samples should be taken separately for each gear type (e.g., bottom trawl, pelagic trawl, purse seine) and water layer (e.g., on the bottom, midwater level) combination every month for which fishing is pursued by 30-minute square areas throughout the Agreement area. One sample should be taken for every 1,000 metric tons or fraction thereof within the above categories.
 - b Data to be recorded for each sample:
 - Vessel classification, e.g., trawler, seiner
 - Method of fishing, e.g., pelagic
 - Specific type of trawl, including reference to its construction or actual scale drawing

Mesh sizes
 Tonnage of the species sampled in the
 trawl haul
 Total weight of the fish sampled
 Time of day of haul
 Date
 Latitude and longitude of haul

c Sampling procedures

- (i) Species for which the catch is sorted
 - (a) From a single net haul take 4 random samples of approximately 50 fish each. (For species with less than 200 fish in a single trawl haul accumulate samples over trawl hauls until approximately 200 fish are taken.)
 - (b) Measure fork length for each fish to nearest centimeter. Where other measurement systems are used, appropriate conversion information must be supplied.
 - (c) Take a subsample of one fish from each centimeter interval and remove scales and otoliths as appropriate. Record the sex of mature individuals.
- (ii) Species for which the catch is not sorted
 - (a) From a single net haul take 2 random samples of approximately 30 kilograms each.
 - (b) Measure fork length for each fish to nearest centimeter by species.

Where other measurement systems are used, appropriate conversion information must be supplied.

- (c) Take a subsample of one fish from each centimeter interval by species and remove scales and otoliths as appropriate. Record the sex of mature individuals.

(2) Length-weight samples

Individuals of one sample of each principal species of fish (e.g., expected yearly catch in the Agreement area of 500 or more metric tons), per International Commission for the Northwest Atlantic Fisheries (ICNAF) Division per month, should be weighed in grams and measured in millimeters. Each sample will contain 10 fish per centimeter interval. The length range of fish may be accumulated if necessary from small samples taken over several catches and days. With small fish, where weighing at sea of individuals is not accurate, appropriate numbers of fish of the same length class shall be weighed in aggregate. Sex shall be recorded for mature individuals.

B. Pacific Coast

Biological sampling by fishing vessels of Japan shall be conducted and measurements from sampling recorded as required according to procedures developed and coordinated through consultations between scientists of the United States and Japan so as to determine the

representative length, age and weight of individual fish in the catch.

When such samples are collected, the Government of Japan shall provide by May 30 of the following year the annual biological statistics which shall include:

- (1) Length frequency data by vessel class, by gear type, by month, by half degree Latitude x one degree Longitude statistical area, by sex, and by species previously identified in 1 B for annual catch and effort statistics;
- (2) Length-weight data of each principal species (e.g., expected yearly catch in the Agreement area of 500 or more metric tons) by INPFC statistical area (previously identified in 1 B). As scientific need arises, samples of scales or otoliths shall also be taken for age determination.

3. Other Statistical Requirements

As further statistics are required for analyses and should fisheries for other species and areas be conducted (other than those identified in 1 and 2), the procedures for such data collection and reporting shall be developed and coordinated through consultations between scientists of the United States and Japan.

Mr. LEGGETT. Now, this says that the Koreans cannot comply with requirements of annex II and annex II is in this document that is before us.

Representatives of the two governments consider that this data could be modified for a transitional period of 1 year from date of entry, and then annex II says:

"The procedures described below are designed to contribute to continuing needs for assessment of the status of stocks and management of fishery resources. However, specific needs may develop from time to time which require a change in standard practices, or additional data for special studies. Also the pattern of fisheries will change. These aspects require that the procedures must be flexible enough to accommodate necessary changes."

That is what counsel has said.

"All data described below shall be provided to the designated representative of the National Marine Fisheries Service of the Department of Commerce of the United States."

Catch and effort statistics—The Republic of Korea, by August 1 of the following year, shall provide annual catch and effort statistics as follows: Catch in metric tons and effort in hours trawling, effort in numbers of longline units, effort in number of pots, effort in number of hours of longline or pots soaking time, effort in number of Danish seine sets, and effort in number of days fishing by vessel class, by gear type, by month, by half degree latitude, one degree longitude statistical area, by the following species groups—and then we have a number of species.

Data collection reporting procedures for species taken in small quantities shall be developed through consultation between scientists of the United States and the Republic of Korea. Since this kind of information is not required for the current year's fishing effort until a year from August 1, why does Korea need another year in which to provide that information?

Admittedly, the information is detailed. Obviously it is the kind of information that those countries do not keep under their fingertips.

Mr. YOUNG. We are entering into an agreement. That information is vital and a 1-year lead time is ridiculous. They are catching fish this year.

Now, if they are catching them, as we know they are—we should have a report on the species, the quantity, et cetera, et cetera.

I do not understand it. I do not see any real hang-up.

If there is, I want to know it.

Mr. ZUCCA. The Koreans, when we asked for this requirement, to submit this data quickly, their answer was that they did not have it prepared in the form that we need it at the time we asked for it.

They asked us to defer this.

Mr. YOUNG. I commend you in your effort, but realistically we require the same reports of our fleets immediately.

Now, if they say they cannot meet it, that is ridiculous. We know that they can do it. The Koreans have one of the highest fish productions in the world. You can require a simple form and have that information available for future negotiations. I know what is going to happen. They are going to be into our waters, and they are

going to say we do not have the information available. We are checking it this year, and you are just putting us one year behind time.

Mr. LEGGETT. All right.

Mr. ZUCCA. Mr. Chairman, may I make one point of comment?

I think you are correct, but we think this will be only for that 1 year, beginning from the date that the GIFA takes effect.

Mr. YOUNG. August 1.

Mr. ZUCCA. August 1.

Mr. YOUNG. For fishing that has already started.

Mr. ZUCCA. It will not apply to subsequent years. There will not be a year's delay.

Mr. YOUNG. You will have the information interpreted this year and submitted to you August 1 following.

Mr. LEGGETT. As I read the plain meaning of appendix II, it requires that the information be provided by August 1 of the year following the catch.

Mr. YOUNG. If they can calculate that information August 1 following, then they can submit it to us as they are collecting the information. This is my point.

Mr. LEGGETT. During the transitional period, with respect to incidental species, reports of catches of vessels in Korea would refer to all species taken in each ICNAF area rather than by species groups. All others in annex II would remain applicable.

Next, it requires the scientists to consult with a view toward reporting data capabilities at the end of the transitional year, during which modified data may be provided.

The section noted by Mr. Young of Alaska does look forward to, perhaps, even further extension of accepting modified data. I guess there is a reason why modified data is only available.

Why is not more data available or why cannot more data be made available in due course?

Mr. SCHONING. Mr. Chairman, if I can comment as a partial explanation at least, the Korean fleet has depended very greatly in recent times—

Mr. LEGGETT. You do not have to tell Mr. Young that.

Mr. YOUNG. That is what I am worried about. We are learning how to speak Korean.

Mr. SCHONING. With the kind of breakdown that we are talking about here, and I am looking at annex II, the catch in metric tons and effort in hours traveling; effort in longline units; effort in number of pots; effort in number of hours of longline or pots soaking time; these are statistics that were not kept because they did not have the capability. They have not had the desire, the need, or the requirement from their own government to do so.

Their fleet simply does not do this. They do not keep that kind of precise refined statistics by effort, by time, by areas.

What they said was, and I was involved in some of these negotiations, we just simply do not have the physical capability going from our present system, in a single year, to give you that kind of detail in all our fisheries. We do not have the people, scientists, professionals, fleet commanders, skippers, or crewmen, aboard the vessel to keep this kind of record for you. We need to phase it in

because we simply do not do it now for our own purposes, and we are not capable of doing it in such a short transition period.

We want you to be aware that we cannot physically do it for you that quickly.

We said, all right, we will work with you to get that kind of precise data as quickly as possible.

Mr. YOUNG. In regard to submitting data now, how many logs have you seen of captains in the Korean fishing fleet?

Mr. SCHONING. I have seen none.

Mr. YOUNG. Would the captain in any fleet, Korean, Chinese, Japanese, Polish, keep a log?

Because it is his livelihood, where the fish are caught, what type of gear was used, what kind was in the water, the whole set is there in the log.

Now, you show me one Korean captain that does not keep that log, and I will show you a Korean that will be sent to North Korea.

He does it because that is his livelihood. To take them at their word and allow them to say we do not have the information is ridiculous. I am not asking for scientific reports on whether he has that information. I am asking for the type of gear, the longitude, the latitude, et cetera.

Now, he keeps all that. Right?

Mr. AU COIN. Right.

Mr. YOUNG. That is what I am asking for. I am asking for things required of any good seaman, that is all.

Mr. SCHONING. It is my understanding that they are willing to provide that.

I think it is more than just the rudiments of good seamen.

Mr. YOUNG. If they provide that this year, then I will not feel so bad because then when we go to negotiate again, we will know whether they followed the rule of the act as far as the catchings.

If that is clear in this agreement, then I will not have much objection. But it is not clear now.

Mr. SCHONING. They were concerned because they did not want to be in violation of any provisions of the agreement when they felt that, at this time, they could not provide that fine detail about fishing activities, more than just seamanship. They do not want to have us say, after the fact, you agreed to do this and did not, when they knew they could not be quite that precise at this time. That was in no way an indication that they would not try to do this, knowing that it was a legal requirement of ours.

Mr. YOUNG. If you went back and told them exactly what we wanted in the report for future benefit, would they comply to that extent as a scientific report?

Mr. SCHONING. It was my understanding that they were told this quite clearly, and they said we will do everything within our capability to provide it, but we want to tell you that there is some chance we might not be able to do it.

Mr. YOUNG. I want to get this clear.

We are being asked to agree to a GIFA by this committee, to delay and amend the bill that we just passed on to the President last year and I want to make it perfectly clear, to use a cliché of one of my past colleagues, that before we do so, that it is understood

that there will be a reporting system that does give us scientific information.

It is needed for the future.

Mr. LEGGETT. I think Mr. Young makes a very legitimate claim, and I would hope that the record could be supplemented, particularly in view of the statement of both the Chair and Mr. Young, which would explain exactly what information can be provided during the coming year, if the South Koreans accede to the economic zone law of the United States.

Now, I suspect that we are down to Japan.

Mr. AuCoin?

Mr. AuCOIN. Mr. Chairman, I have a number of questions that I would like to ask all of the witnesses with regard to the Japanese GIFA.

Mr. LEGGETT. Mr. Zucca, do you want to say something?

Mr. ZUCCA. I was going to say that we will submit such a statement that you request.

Mr. LEGGETT. We would like right away an analysis of exactly what they can provide and what they cannot.

[The information was not received for the record.]

Mr. LEGGETT. Before we go into the Japanese GIFA, which is going to be considerably sticky, I would like to ask the witnesses if they are prepared to proceed with consideration of the Japanese GIFA at this point? Do you have information on the reasons for the exceptions, if any, contained in the Japanese GIFA, or do we need Ambassador Ridgway here to respond to that GIFA?

Mr. ZUCCA. If I may, Mr. Chairman, I would like to make a brief statement about the differences between the Japanese agreement and the other agreements.

Mr. FORSYTHE. Mr. Chairman, before the gentleman does, I would like to comment.

As I understand it, we are really dealing with two different issues in the Japanese situation at this time.

We have a 2-page letter which could be the GIFA per se of the current year through December 31.

Mr. LEGGETT. Let me ask counsel.

Do these two pages constitute the GIFA?

Mr. AuCOIN. I think he is right.

Mr. FORSYTHE. If I might continue.

It is not the GIFA per se, but it is all we have so far as any permits to be issued during the year 1977. This is all the Japanese can agree to because of constitutional problems.

This memorandum is all that we will have available.

Mr. LEGGETT. Do I understand that they have, in fact, approved a GIFA, which this letter refers to, which is in the process of being approved by their Diet?

Mr. FORSYTHE. My question would be do we go into that at this particular point in time, because it does raise many, many questions which I think we need far more time than we have available to us.

If there is the desire, which I support, Mr. Chairman, to try to get as many of these GIFA's to move forward so that there can be face kept with the March 1 date.

Now, the question is, do we have to go into both at this time. In any event it would be helpful to have Ambassador Ridgway available.

Mr. LEGGETT. You want Ambassador Ridgway available?

Mr. FORSYTHE. Yes.

Mr. AuCOIN. I totally agree with the gentleman from New Jersey.

I would say to the Chair that there are substantial questions regarding the approval of a 2-page memorandum, which would, in effect, become the operational GIFA for this year. In addition to the major exclusions that I see in the agreement, that I see initialed but not approved by the Government of Japan, I have enough other questions about it that I would vote against the resolution.

I am happy to accede to the wishes of the Chair if he wants to postpone action on the Japanese portion of it. That is fine with me. But—

Mr. LEGGETT. Let me ask you this, Mr. Zucca.

Did you personally participate in negotiation of the Japanese agreement?

Mr. ZUCCA. No, sir. I came in late in the game, sir.

Mr. LEGGETT. Was that negotiated primarily by Ambassador Ridgway?

Mr. ZUCCA. That is correct, and Mr. Colson was also present throughout most of the negotiations.

Mr. LEGGETT. When can Ambassador Ridgway appear before this committee?

Mr. ZUCCA. I would think at the earliest, Mr. Chairman, tomorrow.

Mr. LEGGETT. I think the questions are going to have to be rather penetrating on this agreement, and rather than embarrassing you, because you were not present at the actual negotiations, it might be more appropriate to have the members study these agreements overnight, particularly this agreement, and then let us come back tomorrow at which time Ambassador Ridgway will be present. Then we can thoroughly review with her the current legal status of the documents and the reasons for the differences.

I might state that we generally agreed a month or 2 ago that the Japanese agreement would be a little bit different from the others and we understood that their Diet would have to approve the GIFA before it was binding on their part.

The other documents are binding on their countries but we have this caveat in the Japanese agreement. For that reason, it is different and will require separate treatment. Now I yield to Mr. AuCoin.

Mr. AuCOIN. I appreciate the Chairman yielding.

I would like to be specific as to what my concerns are with the agreement.

Now, it's my understanding that the long term agreement, as it is presented before us, would not be operative until 1 year hence, and meanwhile the memorandum is the operative vehicle. But even with the text of the agreement itself, I have some serious concerns, one of which is that the agreement apparently provides no compensation for placing U.S. observers on Japanese vessels fishing within our zone. It apparently contains no provision for compensation of

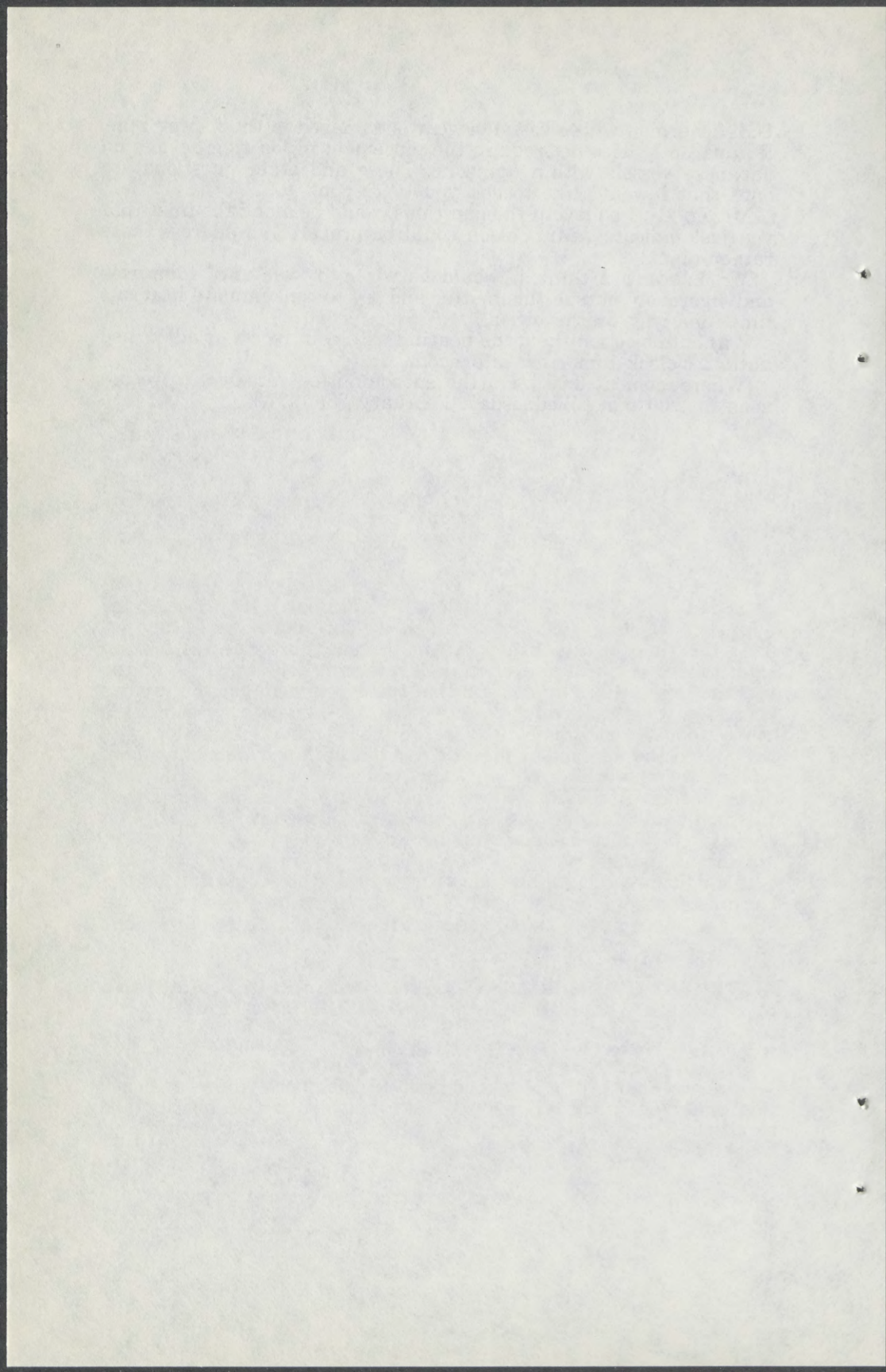
U.S. fishermen whose vessel or gear is damaged in the fishing zone. It apparently does not require the placement of locating devices on Japanese vessels within our zone. These and other questions are ones that I would like to ask you to respond to.

Mr. ZUCCA. I believe if the questions would be along the lines that you just indicated, Mr. Colson could be prepared to address those rather quickly.

Mr. LEGGETT. I think it would be wiser to wait until tomorrow and vigorously pursue this matter and try to consummate it at one time, one way or the other.

Without objection then, the hearing will be in recess or adjourned until 2 o'clock tomorrow afternoon.

[Whereupon, at 3:00 p.m., the subcommittee recessed, to reconvene at 2:00 p.m., Wednesday, February 23, 1977.]



INTERNATIONAL FISHERY AGREEMENTS

WEDNESDAY, FEBRUARY 23, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:20 p.m., in room 1334, Longworth House Office Building, Washington, D.C., the Hon. Robert L. Leggett, presiding.

Mr. LEGGETT. The meeting of the subcommittee will please come to order.

Yesterday, when we adjourned, we were reviewing the GIFA'S approved under House Resolution 240, compared to those to be approved by H.R. 3735, a bill which we introduced yesterday.

At the time we adjourned, we had examined witnesses for the Department of State and for the Department of Commerce, and it was the committee's impression that the agreements for the various countries were satisfactory, except for the Japanese agreement.

We thought it might be wise to have the Ambassador who negotiated the agreement present. We did not anticipate that if we waited, we would have not only the Ambassador, but also the very distinguished Assistant Secretary of State for Oceans and Other International Matters, our distinguished colleague, Patsy Mink.

Patsy, very nice to have you here.
Congratulations.

It might be well, Ambassador Ridgway, if you would tell us the circumstances under which the GIFA was negotiated and where we stand with respect to the Japanese GIFA and why that agreement is different from the other agreements.

STATEMENT OF MS. ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS

Ms. RIDGWAY. Thank you very much, Mr. Chairman.

First, I would like very much to apologize for yesterday.

I believe most of the subcommittee members knew at least informally the choice I had to make between appearing to talk about the agreements which were before you then and continuing with the negotiations with Canada.

I felt that you would accept the priority I assigned the agreement with Canada and appreciate very much the reception you gave the staff who appeared in my place.

I was particularly disappointed because if you have read my testimonial you know that I did want to make it a public occasion for saying thank you to you, Mr. Chairman, and to the members of the staff and to the members of the subcommittee, who not only over the last few months but particularly in the last few weeks, have been so helpful and whose very enormous efforts with respect to the House Resolution 240 have given us such an advance on bringing the system into force.

It just did not seem adequate to say that is now part of the record.

So if I could at least today say thanks very much, to have it show in the record, if it could.

Mr. Chairman, I would like to do, just as I said.

I do not have prepared remarks, but I would like to take the Japanese negotiations from the top and to review some of the things we have covered before formally or informally, to how we got to the Japanese negotiation, how we developed the documents and then what happened.

When the act was passed, we sat down as a Department, first, to analyze the scope of the required international effort, and in doing that, second, to try to develop an agreement which would come under this phrase that appears in the act, 'Governing International Fishery Agreement.'

A new document, a new concept, something set forward by the law.

In developing the GIFA model, we found it helped our own understanding to go through the act and put everything in the document that ever appeared in the act wherever it appeared.

We also knew, Mr. Chairman, of certain interests of members of the committee, and I know of you personally, and we thought it better part of prudence to make sure that right off such things as transponders and the like—so we spelled everything out.

When we finished that, it occurred to us that this, in fact, produced clarity and it made it possible to go to foreign governments and say these are the kind of things that are expected of you, obligations that you must undertake when you enter into this new thing called Governing International Fishery Agreement.

And, further, a third reason in support of this kind of development is that when you have understanding, and when you have clarity, you also have a perhaps prescription for the prevention of misunderstanding of an agreement after an agreement is entered into.

I think that we became accustomed to dealing with the GIFA as it appears in so many of the agreements which have come forward to this subcommittee.

In fact, there always was a very simple alternative agreement available to us in international agreements. That would have been an agreement of a single sentence.

The preamble of the usual how nice it is to cooperate mutually, and then the operative undertaking that the two countries agree that hereafter with respect to the fishing of X country off the coast

of the United States, that the fishing shall be conducted in accordance with U.S. law.

That was always an alternate agreement, but we did not use it, and when countries began to come to us to ask if they could undertake negotiations pursuant to the act, and we were responding positively, we presented those countries with a copy of the famous model GIFA.

We found that they were quite comfortable negotiating on the basis of that document, and it also eased the task of negotiating, because we were able to split the effort among the members of the staff of the bureau, and the technical team were able to go out to various Embassies and various capitals and drawing from the same document from which all of us were negotiating they were able to conduct negotiations under the aegis of the American Ambassador in that capital.

Now, we know that the legislative reference service at the subcommittee's request, Mr. Chairman, has analyzed each of the GIFA's and as they have gone through they have found certain differences from either the placement of the particular article or the use of a phrase.

Some things have been folded in and others have been put into agreed minutes.

In all of them I believe the conclusion has been that each constituted full recognition of U.S. jurisdiction pursuant to the Fishery Conservation and Management Act.

There are some differences that related, of course, to our experience here in dealing with the interests of the subcommittee.

I understand that yesterday, for example, it was pointed out that again as we have tried to explain on so many occasions, that there are some GIFA's with claims boards and some without.

Of course, as to Japanese GIFA, it is a GIFA which does not have a claims board and we have halted the direction of a policy which we had initiated at the outset of having claims boards on every GIFA, and it was clear in the hearing on the Polish GIFA that that policy was not at all widely supported.

We continued claims boards where there had been claims boards and we stopped any pursuant to where there had not been such, expecting that perhaps when we get past these initial months of the implementation of the act, that all of us can return to the question of whether or not claims boards do offer an interesting or useful choice for the American fisherman as he pursues compensation claims.

The Japanese negotiation began, then, as all others.

When Japan indicated that it was interested in instituting negotiations with the United States, we provided to Japan a model GIFA.

It looked the same as the document given all countries.

It was clear after the initial exchange of views with Japan that in June, 1976, in Washington, that the Japanese probably were going to be having constitutional problems.

In addition, there was the fact that the United States remains associated with Japan at least for 1977 in the International Pacific Fisheries Commission treaty, and that the problems which were likely to emerge from negotiations were going to be of very special

interest to the members of the industry, and in particular to the members of the North Pacific and Pacific councils.

Mr. Chairman, if I may, I would like to present for the record, I think, a listing which would be of interest to the members of the committee, which shows all of the State and industry representatives who were a part of the negotiations with Japan through the period through December, 1976, that is, the last key negotiation in Washington.

Mr. LEGGETT. That list will be accepted and incorporated in our record.

[The list referred to follows:]

U.S./JAPAN FISHERIES NEGOTIATIONS
JUNE 1976 THROUGH DECEMBER 1976

State and Industry Representatives

Mr. John Baxter
Chief, Marine Resource Branch
California Department of Fish and Game
Sacramento, California

Mr. Thomas Casey
Manager, Fishermen's Marketing Association
Kodiak, Alaska

Mr. Gene DiDonato
Washington State Department of Fisheries
Seattle, Washington

Mr. T. Emberg
Business Manager
Western Alaska Coop. Marketing Assn.
Dillingham, Alaska

Mr. Edgar J. Huizer
Deputy Commissioner
Alaska Department of Fish & Game
Juneau, Alaska

Mr. Sigfried Jaeger
Manager
North Pacific Fishing Vessel Owners' Assn.
Seattle, Washington

Mr. Richard B. Lauber
Alaska Manager
Association of Pacific Fisheries
Juneau, Alaska

Mr. Harold E. Lokken
Manager, Fishing Vessels Owners' Assn.
Seattle, Washington

Mr. Charles Meacham
Director, International Fisheries and External
Affairs
Office of the Governor
Juneau, Alaska

Mr. Earl D. Mollohan
Commercial Fisherman
Naknek, Alaska

Mr. S. Pennoyer
Chief Fisheries Scientist
Alaska Department of Fish and Game

Mr. Keith W. Specking
Office of the Governor
Hope, Alaska

Mr. Clement Tillion
State Representative
Alaska

U.S./JAPAN FISHERIES NEGOTIATIONS
JUNE 1976 THROUGH DECEMBER 1976

Government Participants

Mr. Jerry Bemis
Special Assistant to the Secretary of Commerce
Washington, D.C.

Lt. Cdr. Alex Blanton
U.S. Coast Guard, Office of Operations
Washington, D.C.

Mr. Carmen Blondin
Assistant Director for International Fisheries
National Marine Fisheries Service
Washington, D.C.

Mr. David Colson
Office of the Legal Advisor
Department of State
Washington, D.C.

Mr. William Craig
Special Assistant to the Regional Director
National Marine Fisheries Service
Terminal Island, California

Mr. Michael Benefiel
International Fisheries, Analysis Division
National Marine Fisheries Service
Washington, D.C.

Cdr. Theodore E. Deming
U.S. Coast Guard
Office of Operations
Washington, D.C.

Mr. Steve Ecton
Country Officer for Japan Affairs
Department of State
Washington, D.C.

Mr. William Fukuda
Language Services Division
Department of State
Washington, D.C.

Mr. James Johnson
Regional Fisheries Attache
American Embassy
Tokyo, Japan

Dr. L. L. Low
Northwest Fisheries Center
National Marine Fisheries Service
Washington, D.C.

Mr. William MacKenzie
Office of International Fisheries
National Marine Fisheries Service
Washington, D.C.

Mr. Robert McVey
Deputy Regional Director, Alaska Region
National Marine Fisheries Service
Juneau, Alaska

Mr. Herbert Blatt
Office of General Council
NOAA
Washington, D. C.

Mr. Tak Miyahara
Northwest Regional Office
National Marine Fisheries Service
Seattle, Washington

Mr. Ronald Naab
Office of Surveillance and Enforcement
National Marine Fisheries Service
Juneau, Alaska

Mr. Lorry M. Nakatsu
Director, Office of Fisheries Affairs
Department of State
Washington, D.C.

Mr. Carl Price
Office of Fisheries Affairs
Department of State
Washington, D.C.

Dr. W. T. Pereyra
Northwest Fisheries Center
National Marine Fisheries Service
Seattle, Washington

Mr. Robert Schoning
Director, National Marine Fisheries Service
Washington, D.C.

Dr. James Storer
Special Assistant, International Affairs
NOAA
Washington, D.C.

Mr. Jerry Weatherall, Southwest Fisheries Center
Honolulu Laboratory, Honolulu, Hawaii

Mr. LEGGETT. Do all of those fully subscribe to the GIFA that has been negotiated?

Ms. RIDGWAY. I have not asked each of them that question.

My answer would be, yes, I would be very surprised but certainly would not exclude the possibility that some may not.

My impression as head of the delegation was that they supported where we were going and the particular Japanese problem as it was addressed.

Also, for the record, I would like to submit the names of all of the government participants so that you can see the expertise and the list of the U.S. delegations of the last INPFC meeting in Tokyo.

[The following was submitted:]

[The following was submitted:]

U.S. DELEGATION
INTERNATIONAL NORTH PACIFIC FISHERIES COMMISSION
(INPFC)

Commissioners

Elmer E. Rasmuson, Chairman, Anchorage, Alaska
Robert W. Schoning, Director, National Marine
Fisheries Service, Washington, D.C.
Robert M. Thorstenson, Petersburg, Alaska
Dennis A. Grotting, Eureka, California

Experts and Advisors - Government

D. L. Alverson, Seattle, Washington
R. Bakkala, Seattle, Washington
F. M. Fukuhara, Seattle, Washington
L. L. Low, Seattle, Washington
W. H. MacKenzie, Washington, D.C.
R. W. McVey, Juneau, Alaska
T. Miyahara, Seattle, Washington
R. C. Naab, Juneau, Alaska
L. M. Nakatsu, Washington, D.C.
W. T. Pereyra, Seattle, Washington
J. C. Price, Washington, D. C.

Advisory Committee to United States Section

J. L. Bergy, Seattle, Washington
T. Emberg, Dillingham, Alaska
J. Gilbert, Seattle, Washington
S. Jaeger, Seattle, Washington
R. B. Lauber, Juneau, Alaska
H. E. Lokken, Seattle, Washington
C. H. Meacham, Juneau, Alaska
W. G. Saletic, Seattle, Washington
K. Specking, Hope, Alaska
C. V. Tillion, Halibut Cove, Alaska

Ms. RIDGWAY. By coincidence, that meeting was taking place at the same time we were negotiating a portion of the Japanese agreement.

We were able to have the advice and counsel of the members of this particular delegation, many of whom are, of course, members of the council.

We would like to point out also that the Japanese Government delegation was especially accommodating, recognizing the interests in the regional councils of this, and agreed, on appropriate occasions, to informal discussions in which it was possible to include advisors that they might hear directly from the representatives of Japan outside the area of formal negotiations of the Japanese problem.

The Japanese problem was one with which we were immediately sympathetic.

We negotiated with Japan the long term 1978 1982 Governing International Fishery Agreement, which at this time has been submitted to the Congress for information purposes.

The Japanese government believes that the Executive Branch did not have the authority to enter into such explicit undertakings, however, without the approval of the Japanese Diet.

In many respects, the situation the United States faced at the time of the first Brazil agreement is similar—there was a question as to whether we could enter into such commitments without going into treaty formula, and we ended up for our own part, having to submit the agreement to the Senate and it became a treaty in implementing legislation.

The question arose as to how we and Brazil would behave in the interim pending the coming into force of the treaty, and we had a provisional arrangement with Brazil.

I think this is an accurate comparison of what happened with the Japanese agreement.

First, with respect to the time I know that we have asked the subcommittee and the Members of the Congress to look at these documents in a very short time frame. But the Japanese have an election the first week of December, and it was necessary for the position that was going to be taken by the Japanese negotiators to be reviewed and confirmed by the incoming government.

Again, the procedure which I believe we could only be fully sympathetic with.

Then, we ran into the question of holidays and we came back to the negotiations with Japan, with their confirming their desire to enter into a long term agreement, confirming the problem of having to submit it to the Diet, and confirming their willingness to enter into a short term agreement which picked up on all of the essential elements of the U.S. law.

For our part, to say we were understanding about the Diet problem, Parliamentary procedures, we were concerned with respect to the short term agreement, that there be full understanding on the part of the Government of Japan as for United States, that on March 1, 1977, we intend the full force and effect of Fishery Conservation and Management Act to come into play with respect to all nations fishing off our coast.

The problem was to describe that in a way which did not get the Japanese involved in their need to bring a more explicit agreement to the Japanese Diet in an effort to accomplish something which makes sense, which worked the way it had to work.

I understand that the language is vague, but it must be seen as part of the package.

Mr. Chairman, I think the package would include the long term agreement which has been initialed and which will be submitted by the Japanese Government to the Diet for approval.

Mr. LEGGETT. When will that document become operative?

Ms. RIDGWAY. It would become operative as soon as we both sign it and have completed our internal procedures.

We would intend for our part to resubmit it to the Congress under the Congressional Oversight Procedures as soon as we have a sense of timing from Japan.

But, again, I think I have certainly learned a great deal about the procedures with the Japanese Diet.

They must consider first, on their annual calendar, the budget.

They are not able to put this document on the calendar until the budget consideration is completed.

I would not expect as a result that this agreement would be able to enter into force or have Diet approval until sometime in April or May, with respect to Japan.

As for us, we would look forward to consulting on some appropriate timing for Congress, so it can come up and complete the 60-day oversight or be brought into force by special resolution.

It must, however, be coming before us in time to govern Japanese fishing starting January 1, 1978, because the short term agreement which is an exchange of diplomatic notes covers only this fishing season.

In the exchange of notes there are key phrases which are perhaps troublesome, but which relate to the fact that again the Japanese Government, the Executive Branch of the Japanese Government, must seek the counsel and approval of the Diet on issues which are not yet a part of their national policy.

So there is an approach which allows both sides to use the document as they believe they must.

For the United States, the key phrases in the exchange of notes are the phrases that refer to the laws and regulations of both countries, and with respect to the permits that the United States has the authority to make necessary administrative arrangements to facilitate the operation of Japanese vessels.

Mr. LEGGETT. I do not think you need to explain the agreement.

I think the vagaries of the agreement speak for itself.

Obviously, what you were attempting to do was to negotiate an agreement and also to save rights, which is very much what we did when we negotiated the Brazilian agreement, at least up to this year. Is it your understanding that the conditions which we can attach to the permits for Japanese vessels are the same as the conditions that we can attach to fishing boats of other countries that are in the American economic zone waters?

Ms. RIDGWAY. Yes, it is.

That is my understanding.

Mr. LEGGETT. Mr. AuCoin has some special questions he wants to ask you.

Mr. AuCoin.

Mr. AuCoin. I wish I could have heard your last question.

Mr. LEGGETT. I guess the only thing I asked was, can we attach as conditions to the permit the same kind of conditions that we attached to all other similar permits to other countries.

You might want to pursue that with respect to compensation, gear, other types of things.

Mr. AuCoin. Thank you, Mr. Chairman.

My concerns are several, and perhaps in the exchange this afternoon, many of the answers can be found.

I am looking at it from the point of view of the American fisheries.

I am concerned about how adequate the permit system may be in meeting the terms that we contemplated in the 200-mile act.

I am not fully confident that going the permit system route enables this Congress to have the review, first of all, that it would have otherwise if this had been negotiated as a GIFA.

It seems to me that if we go the permit system route, then these terms are not subject to review.

The Commerce Department writes its terms into the permits.

We must take it on faith that they will abide by the letter and spirit of the law.

But should we take it on faith?

That clearly was not contemplated in the passage of the act itself.

I would be very interested in your response.

Ms. RIDGWAY. Mr. AuCoin, I would first say that I view a legal view—and indeed the lawyers are very careful to insure that I say this as the negotiations were proceeding—that this short term exchange of notes is a GIFA.

It is, if I might share that legal analysis, the belief upon review is that the first—well, is that the existence of the long term agreement which is awaiting Diet approval, which will be a public document, must be taken into account as we consider the nature of the undertakings of the Japanese Government.

Second, the reference in paragraph 1 of the exchange of notes, that is, the phrase that the Japanese fisheries off the coast of the United States will be conducted in accordance with the laws and regulations of both countries.

It gives us all that we need with respect to acceptance by Japan of the fact that their fisheries off our coast will be conducted in accordance with the laws and regulations of the United States.

The fact that the Government of Japan will initiate the vessel application procedure as acknowledged in paragraph 2(a) of the draft agreement makes clear that they understand how the process is initiated.

The United States has retained in paragraph 2(b) of the draft agreement the right as appropriate to take the necessary measures to facilitate the operation of vessels off the coast of the United States.

It is all entirely within the discretion of the United States and the fact that the Japanese vessels off the coast of the United States

will, pursuant to that paragraph, have permits on board, be subject to U.S. enforcement, all in a very strict legal view, in our view, and meet the test of the act.

That is, the agreement, I am still speaking of the short term agreement, is itself a GIFA in that it does acknowledge U.S. fishery management set forth in the act.

We have sent it up to be treated itself as a GIFA.

Mr. LEGGETT. Is that a legal report that you just read?

Ms. RIDGWAY. It was pieces of one.

Would you like to have it?

Mr. LEGGETT. We would include in our record the full legal report.

[The full legal report was not received for inclusion in the record:]

Mr. AuCOIN. May I pursue the question?

Where does that leave the U.S. Congress in terms of having review over the discretion that has been left to the Department of Commerce in putting the terms of the act—for example, compensation for damage to equipment—into force through the permits?

Am I not correct in saying that by following this procedure we are not in as strong a position or perhaps we have no position at all to review in a systematic way the compliance with the act in that sense?

Ms. RIDGWAY. If you are not satisfied, Mr. AuCoin, by the phrase that the fishery will be conducted in accordance with the laws of both countries, if you are not satisfied that that is explicit enough, then indeed there does arise a question, if you want to see it in writing, and it ends up in writing in the permits.

Where does the act say that Congress will review the permits?

Of course, the act provides for congressional review of the application. So I think that if you are not satisfied by this language, then, yes, a question arises, and I should think you would want to see the permits to satisfy yourself that the forms that are being used do all of the things that Congress thinks should be done.

Mr. AuCOIN. That is a permit by permit, vessel by vessel proposition?

Ms. RIDGWAY. Except using a standard form.

The question is: Does the standard form meet the test?

Mr. AuCOIN. On the first page of the letter from the Japanese Government, under item 1, reference is made to the laws and regulations of both countries. Is this not a contradiction?

It seems to me that any agreement which is in accordance with the laws and regulations of both countries suggests a basic conflict between the two governments—recognition of the 200-mile zone. The United States does recognize the 200-mile law; Japan does not.

How can that contradiction be dealt with?

Ms. RIDGWAY. The laws and regulations of Japan concerning fishing of their vessels off the coast of other countries do not impinge upon the operation of those vessels off the 200 miles from the United States.

Mr. AuCOIN. Does Japan recognize the U.S. 200-mile limit?

Ms. RIDGWAY. I think that quite truthfully, Mr. AuCoin, that is a question that I think the United States would have to say this agreement in our view constitutes acknowledgment of our jurisdiction.

The Japanese Government would say at this time pending approval of the long term agreement, is one that they would want to describe to their public.

Mr. LEGGETT. I have a form in my hands, Form 88 120, which purports to be a blank fishing vessel permit, issued by the Department of Commerce, and it provides for the reciting of the name of the vessel, the ownership, the nationality, the home port, radio call sign, and various other items concerning the ship, and it provides that the vessel is to engage in fishing activities over which the United States exercises exclusive fishery management authority in accordance with provisions of the act, the agreement between the Government of the United States of America and the government of

the country wishing to fish off the coast of the United States of America. It also sets forth the terms and conditions with which the vessel will have to comply, of which none of them relate to transponders or gear compensation.

But it does provide for boarding, inspection, signaling, displaying permit in the wheelhouse, maintenance of log book, and other things.

When the permit is issued, is this laid before the Congress?

Ms. RIDGWAY. I do not know.

Mr. LEGGETT. The application for the permit comes to the Congress, I understand.

But the permit itself does not come here.

Does the application incorporate a copy of the permit?

Ms. RIDGWAY. This is a separate application form, and then there is the issuance of a permit, to which is attached as far as I know, the governing regulations for the fishery year.

I do not know, and perhaps Mr. Schoning would be able to answer the question—

Mr. LEGGETT. Can you tell us, Mr. Schoning, exactly what the application for the permit consists of, if you know?

STATEMENT OF ROBERT W. SCHONING, DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE

Mr. SCHONING. Yes, sir.

We have a prescribed form for the application, which has been sent to all the countries that are interested in fishing.

They complete the form. We take that information and put it on an application. Each vessel, regardless of fishing, support or whatever, will end up with one of these that, by law, is required to be posted in the wheelhouse. Attached to it will be the regulations that deal with every provision of every fishery.

Mr. LEGGETT. The form you have is the same form I was reading from?

Mr. SCHONING. The permit form, yes.

The parts that you indicated which were not specifically addressed in the permit itself are addressed in the regulations at various points. If you are interested I could refer to them.

In addition, there is a section on the back, that says, "Other conditions and restrictions."

There is a provision in the regulation for us to include any conditions or provisions, whatever are necessary, for this particular vessel or all vessels.

Mr. LEGGETT. Mr. AuCoin, you can proceed.

Mr. AU COIN. Thank you, Mr. Chairman.

I would like to ask the representative of the Department of Commerce if the Department has contemplated the job it would have in putting all of these provisions in the permits?

Mr. SCHONING. We think all of these are taken care of now in the permit or in the regulations. If we wanted gear damage responsibility to be addressed very specifically, we could add a note as "other condition" restriction.

Mr. AU COIN. Let me ask this question of Ambassador Ridgway.

I understand that the provisional agreement, which is the exchange of notes, would end on January 31 of this year. But I see—and I am reading from item No. 1 on page 1 of that note—that it would remain in force until the Diet acted, which could be April or May, given its legislative agenda.

Which of those two impressions is correct?

Ms. RIDGWAY. Effectively, this agreement would remain in force throughout 1977.

The Diet is not expected to act until April or May.

Mr. AUCOIN. What happens in the interim?

Ms. RIDGWAY. By that time the Japanese have, in fact, already given us their applications, in anticipation between some kind of agreement between—in force between the United States and Japan.

If this agreement is approved, they would be issued permits in accordance with whatever allocation is available.

Mr. AUCOIN. We would have no provisional agreement and no GIFA?

Ms. RIDGWAY. If there is no provisional agreement in effect on March 1, that is, if this document which we consider international fishery agreement, is not in force on March 1, there is no Japanese fishing after March 1.

Mr. AUCOIN. That is, after March 1 of this year.

I am saying what happens in the period of time between December 31 of this year and the time when the Diet finally takes action on the final agreement?

Ms. RIDGWAY. No, I am sorry.

I expect the Diet to act in April or May of 1977.

Mr. AUCOIN. 1977, I see.

Ms. RIDGWAY. I misunderstood your question.

Mr. AUCOIN. Let me ask this question.

In the period of time that the provisional agreement will be in effect, what exclusions to the 200-mile act will also be in effect, if any?

Ms. RIDGWAY. The exclusion which relates to the fact that the United States, Japan and Canada remain parties to the International Pacific Fisheries convention.

We have given notice of intent to withdraw from that Convention on February 10 of this year, in fact, on the date of signing of this agreement.

There is a 1-year withdrawal period.

We have indicated to both of the governments that we would like to renegotiate that agreement in that period of 1 year, to determine whether in fact it is possible to bring it in conformity with the act.

Until the agreement or treaty is renegotiated, or until February 9, 1978, the Japanese salmon fisheries, west of extension line then in that convention, would then go forward pursuant to the terms of that convention, and bilateral undertakings with the Japanese Government.

That would be outside the act because the treaty remains in force.

Mr. AUCOIN. What other exclusions would be in effect?

Ms. RIDGWAY. No other exclusions.

Mr. AUCOIN. How about provisions for compensation to U.S. fishermen for equipment lost or damaged by foreign vessels?

Ms. RIDGWAY. There are two ways here, one I have been reminded by Mr. Colson, that in fact we believe that the phrase, "laws and regulations of both countries," does place upon the Japanese Government an obligation concerning compensation.

In addition, with respect to specific terms, it is a part of the regulations attached to the permit and become condition of permit on the vessel as well.

Mr. AuCOIN. Let me indicate major omissions which I see in this and you tell me if you think they are covered in that feature.

Beyond the compensation question, is the question of compensation to the United States of having U.S. observers on those foreign vessels, and a question of the placement and maintenance of locating devices—how would those be covered?

Ms. RIDGWAY. Again, we would expect that, with respect to the government, if the National Marine Fisheries Service identifies from the applications those Japanese vessels on which it was used to place observers, we would so notify the Japanese Government.

We would expect under the phrase "laws and regulations both countries," that that requirement would be accepted.

It is in addition a condition of permit and it is a part of the regulations.

In accepting the permit, agreeing to this under the regulation, they accepted the obligation to place on board at their expense the observers.

Mr. AuCOIN. Could the Ambassador tell me what the constitutional problem is in the Government of Japan that requires the Diet to take this final action before things are finally official?

Ms. RIDGWAY. It is with respect to a major foreign policy jurisdictional undertaking, that the document that is considered by them to require as we have an advise and consent procedure, to require the advise and consent, that is the constitutional approval of the Diet before it can enter into force.

Mr. AuCOIN. You are asking the Congress to take on faith that the equivalent to our Executive Branch of government in Japan will abide by all the provisions of our law and the provisional agreement, even though constitutionally in Japan it has not been ratified.

Can we legitimately expect the executive of Japan to go ahead on a permit basis or any basis, despite the standing of Japanese law?

Ms. RIDGWAY. I would answer very definitely yes on that, Mr. AuCoin.

I would like to make two points with respect to it.

First, the concept of provisional agreement. I am pleased you used that phrase, because it is one that we have used ourselves—it is a very common one.

We have done it ourselves with respect to treaties that have come before the Senate of the United States, and there is provisional application of the terms of those treaties pending the approval; obviously, if the treaty is not approved, then that provisional agreement goes, because the opinion is clear.

But these are, in effect, good faith undertakings.

The long term agreement, so submitted, reflects, in our view, the decision of the direction in which Japan wishes to go, but pending

its procedures there is a provisional agreement, and we think taken together it is, in fact, a more than good faith undertaking on the part of the Japanese, and that indeed there is in diplomatic practice an obligation for the two to be the same.

Beyond that, Mr. AuCoin, I would like to say that our experience, that is the experience of the United States and Japan, and particularly the United States as a nation which has had Japanese fishing taking place off our coast, had been a very positive one.

I know from our contacts——

Mr. AuCOIN. I did not understand the Ambassador.

Ms. RIDGWAY. I am sorry.

The relationship with Japan has been a positive one.

Mr. AuCOIN. Good for the State Department or for the U.S. fishermen?

Ms. RIDGWAY. I recognize there is a feeling that all foreign nations have overfished off our coast, and that there is a sense that all of the foreign fishing, in fact, has been negative with respect to U.S. interests.

At the time that fishing took place, the regime permitted it, and Japan did voluntarily provide us with sound science, and was not an enforcement problem—to be sure, individual vessels may have violated agreements.

There was never any question from the Government of Japan as to whether it intended to live up to agreements. When the vessels get way out there is sometimes——

Mr. LEGGETT. The gentleman's time has run out.

You have asked some very important questions.

Mr. Forsythe has some observations.

Mr. FORSYTHE. Thank you, Mr. Chairman.

I hope I can be brief.

I appreciate the points Mr. AuCoin has raised.

There is one area that I would like to have clear.

As I would understand it, under this interim agreement for the year 1977, we will be dealing solely with the boat captains in terms of enforcement, whereas under the formal GIFA, we will also have the government to deal with.

Would that be the significant difference between where we will be this year and in 1978, with the formal GIFA?

Ms. RIDGWAY. No, Mr. Forsythe.

I would say that given the combination of the long term agreement which I believe represents the direction in which the Japanese Government is prepared to go, following proper Parliamentary procedures, short term agreement, following regulation and rules of the United States, which look forward to certain aspects of the foreign country, that the United States would have an opportunity under the short term agreement as well as the long term agreement to deal with the Government of Japan and to call to its attention, as we would under the 5-year agreement that will come on later, those problems which may have arisen in all expectations with respect to how they will behave.

Enforcement under either agreement is, in the first instance, always with the vessel.

Mr. FORSYTHE. Back to one other thing that you discussed with Mr. AuCoin.

I may not have been able to quite hear the exchange.

This does have to do with fishing gear, which I think is a problem, because as I understand it, we have no regulations that actually apply in terms of the fishing gear damage situation.

Where there is a claims board, there is something formally established.

Other than that, we really have nothing, and our fishermen would have to go to court.

Do you foresee the possibility, as an addendum to the permit, to have something to state the responsibility of that fishing captain for such damage?

Ms. RIDGWAY. Mr. Forsythe, with respect to that question, and looking at paragraph 2 of the agreement, short term agreement, the United States will, as appropriate, make necessary administrative arrangements to facilitate the operation of those vessels, and again, the question of compensation, let us say, employing a procedure which the Secretary of Commerce shall determine.

There is in the act a statement that compensation arrangements will be made in accordance with the procedures as determined by the Secretary of Commerce, that those would become provisions of the permit.

Mr. FORSYTHE. Would apply even though they are not there now, if those things do happen, they will then apply?

Ms. RIDGWAY. That is correct, yes.

The Secretary of Commerce, I believe, through the National Fishery Service, NOAA, is examining what would be appropriate under that part of the act, and at such time as they are developed it would become part of the permit.

Mr. FORSYTHE. Thank you.

Mr. LEGGETT. I think you brought out that these permits are revocable.

You are saying they are also amendable.

As I read section 201(c) the foreign country is required to assume responsibility, as prescribed by regulations by the Secretary, for reimbursement to U.S. citizens for any loss or damage to their fishing vessels, fishing gear or catch, caused by the vessels of such country.

Which is it, the Secretary of Commerce or State that is required to promulgate these regulations?

Ms. RIDGWAY. Commerce.

Mr. LEGGETT. Has the Secretary of Commerce prescribed any regulations that have been referred to with respect to compensation of American citizens for damage to their vessels or fishing gear or catch?

Mr. Schoning.

Mr. SCHONING. We have not yet published it.

We have a final draft which we plan to introduce as regulations and later incorporate them as part of this [indicating].

We are developing draft instructions on what U.S. fishermen do through the entire sequence, and then relate it to requirements for foreign vessels and incorporate it as part of the regulations.

Mr. LEGGETT. Are you going to make them retroactive to the first of the year or to March 1?

Mr. SCHONING. We think that they will be applicable as of March 1.

Mr. LEGGETT. Mr. de la Garza.

Mr. DE LA GARZA. Thank you, Mr. Chairman.

Ambassador, we have been over this before, but I guess it might be well to have this little dialogue

Taking the agreement with Japan, would that cover shrimp?

Ms. RIDGWAY. There are no specific fisheries in the Japanese agreement.

To my knowledge, there is no shrimp surplus for which the Japanese have applied.

Mr. DE LA GARZA. That is nice to know.

The definition is here, on the definition fish crustacean—shrimp is classified under crustacean?

Ms. RIDGWAY. Only if the United States says there is a surplus.

Ms. RIDGWAY. That is my understanding.

I am not aware of any declaration of surplus at this time.

Mr. DE LA GARZA. I see in this copy of the agreement here that in the annex, annex 2, you mention the Atlantic Coast and the Pacific Coast, and then in the statistics also the Atlantic Coast and the Pacific Coast.

There is no mention made of the Gulf Coast.

Would that mean that it is excluded from the agreement?

Ms. RIDGWAY. No, sir, but we do not anticipate at this time any Japanese fishery covered by the act in the Gulf.

With this agreement as with all of the others, we developed the scientific annexes only with respect to the fisheries in areas in which we thought they might have reason to apply for application.

Should the Gulf council identify as a surplus a resource in the Gulf, the Japanese apply for it, there would have to be developed before that fishery could be initiated a scientific schemata for information and science in the area.

It is not anticipated that there would be a Japanese fishery covered by the GIFA or by the act in the Gulf.

Mr. DE LA GARZA. Have you any knowledge of your agency or the council as delineating the extent to which Texas has jurisdiction?

We have a different situation because of a treaty agreement when Texas joined the United States.

Do you know, to your knowledge, has that been delved into?

What are we looking at, should they apply with Texas—out to 10.5 miles or only 3 miles?

Ms. RIDGWAY. Mr. de la Garza, it has not been addressed, and in the act itself it is not addressed, and it would remain a question that would have to be taken up at that time.

I do not know the answer because I am quite certain no one has looked at it yet.

Mr. DE LA GARZA. Do you have any lawyer or anybody there that may have looked into this?

Ms. RIDGWAY. I am advised by Mr. Colson, who I believe you have met, Mr. Leggett, on previous occasions, that in fact this is at present before the Supreme Court.

I would be well advised to leave it at that point.

Mr. DE LA GARZA. The tidelands decision was settled by the Supreme Court a long time ago, giving Texas jurisdiction.

Ms. RIDGWAY. Would you like to have Mr. Colson answer that question for the record?

Mr. LEGGETT. Mr. Colson wants to address that.

Ms. RIDGWAY. I introduce Mr. David Colson, the Department's legal advisor.

STATEMENT OF DAVID COLSON, LEGAL ADVISOR, DEPARTMENT OF STATE

Mr. COLSON. Mr. Chairman, it is my understanding that presently in front of the Supreme Court there are cases involving *U.S. vs. Texas* and *U.S. vs. Florida*, which cases involve the issue of foreign fishing within the State waters beyond 3 miles, in the two instances where that occurs and where there is such fishing subject to Federal regulation in those cases or to State regulation.

Mr. LEGGETT. It is the dispute between the 3 miles and 10.5 miles—

Mr. COLSON. Yes.

When you get into issues of foreign fishing in those areas, whether that is something for the Federal Government to be concerned with or whether it is within the province of the State governments.

Mr. DE LA GARZA. May I ask counsel a question that may not be entirely fair?

Can we amend this?

Can I put in there "No fishing on the Gulf Coast"?

Mr. LEGGETT. Let me ask this question: Before any permit is given to any Japanese fishing boat to fish in the Gulf of Mexico for surplus of anything, would that application for a permit have to come to the Congress?

Ms. RIDGWAY. Yes, it would, as we have sent up all applications.

Mr. LEGGETT. This committee would get actual notice of any intent of the Japanese Government to fish in the Gulf?

Ms. RIDGWAY. At least the intent to apply, and the application would trigger—

Mr. LEGGETT. Has the Japanese Government filed any application for permits yet?

Ms. RIDGWAY. Yes, it has, with respect to fisheries in the Atlantic and in the North Pacific.

Mr. LEGGETT. Not with respect to the Gulf?

Ms. RIDGWAY. Not with respect to the Gulf.

Mr. LEGGETT. I will instruct the counsel to immediately advise Mr. de la Garza in the event that any application is received from Japan with respect to fishing the Gulf for anything.

Mr. DE LA GARZA. Or any other nation.

Mr. LEGGETT. Right. Or any other nation.

I think that is a fair request.

Mr. DE LA GARZA. Thank you very much, Mr. Chairman.

I do not have any further questions

I think this will take care of the record.

Mr. LEGGETT. Mr. McCloskey.

Mr. McCLOSKEY. I want to congratulate you on the progress made.

As I look at this agreement, known as a GIFA, it specifically limits Japanese fishing off the coast of the United States.

What about anadromous species?

Ms. RIDGWAY. Anadromous species fishing by Japan remains covered by the INPFC, they may conduct no fishing for salmon east of—175 west.

Mr. McCLOSKEY. How would we enforce conservation of anadromous species by an agreement such as this?

Ms. RIDGWAY. The problem is, Mr. McCloskey, as the law anticipated that the United States is party to the international treaties, and in those instances the law calls upon the Secretary of State where those treaties were considered inconsistent with the act to renegotiate those agreements and treaties.

The INPFC is itself a conservation agreement, but it is in our view not entirely consistent with the act.

In consulting with the members of the Pacific and North Pacific councils, as to what they wish to do, it is not clear at this time in their own minds, at least we had it last reported, whether they wanted to renegotiate INPFC or wished to dispense with it.

It has very real value to the State of Washington, Oregon, and to certain Alaskan salmon fisheries.

What we have done, as the act asked us to do, is give notice of intent to withdraw.

Until that notice of intent to withdraw becomes effective, we are bound by the existing treaty provisions.

Mr. McCLOSKEY. When we put this bill on the floor, I take it the Ambassador would have no objection to making this permit language part of the legislative history?

Ms. RIDGWAY. No objection.

Mr. McCLOSKEY. Paragraph 8 of these permits says the vessels or persons aboard the vessels may not engage in the capture of marine mammals unless specifically authorized by separate permit. Does that mean under Marine Mammal Protection Act the Japanese vessels will now require permits to take whales within 200 miles of the California coast?

Ms. RIDGWAY. Right.

Mr. McCLOSKEY. May I ask, Mr. Schoning, is there any intention to give them permits to take whales?

Mr. LEGGETT. I can answer.

The answer is no.

Mr. McCLOSKEY. There will be no permits to take whales within 200 miles, Mr. Schoning?

Mr. SCHONING. We have taken no position on it.

We clearly understand that the intent of the Marine Mammal Act and FCMA says that you must consider applications, look at them, and relate them to those existing laws.

It is not our plan to do so at this time.

Mr. McCLOSKEY. On a practical basis, how many applications do you anticipate getting from Japanese vessels that fish within 200 miles of the West Coast of the United States? How many vessels are involved and how many applications do you anticipate for taking mammals?

Mr. LEGGETT. You are just talking about mammals?

Mr. McCLOSKEY. No. I am asking about the number of Japanese vessels that are anticipated will ask for permits within 200 miles as well as the anticipated number of applications for the taking of mammals.

Ms. RIDGWAY. I can answer the first; since State receives the application under the act we have at present from Japanese for fisheries on both Atlantic and Pacific approximately 370 applications.

We have no applications at this time for taking of marine mammals.

Mr. McCLOSKEY. I have no further questions.

Mr. LEGGETT. Mr. Studds.

Mr. STUDDS. May I ask the Chairman what his intention is?

Mr. LEGGETT. We have a vote pending on the floor of the House.

The subcommittee will stand in recess for 15 minutes, after which we will return and resume the hearing. At that time Mr. Studds will be recognized.

[Recess.]

Mr. LEGGETT. The subcommittee will reconvene.

When we adjourned Mr. Studds was recognized.

Mr. STUDDS. Thank you, Mr. Chairman.

This is a painful process for me to ask these questions at this point.

I am going to have to ask you some, though.

Am I correct in my understanding that the 2-page letter would, if approved by the Congress, constitute the GIFA for the year 1977 and that the longer agreement referenced in that letter, if and when it is approved by the Japanese Diet, would be resubmitted to this Congress for approval as a GIFA for future years?

Ms. RIDGWAY. The agreement for this year if approved by Congress would be both letters, the letter from the Japanese Ambassador and the response from the Department of State, together constitute an agreement, if the internal procedures—

Mr. STUDDS. What about the longer agreement that is referenced in that exchange of letters?

Ms. RIDGWAY. That will be resubmitted after we know more from the Japanese as to the timing of their submission to the Diet, so it can be going forward on both sides.

Mr. STUDDS. Resubmit it for the years 1978 through 1982 for subsequent and separate congressional approval?

Ms. RIDGWAY. That is correct.

Mr. STUDDS. In the event Congress should approve this letter or exchange of letters, we are approving that and only that, and we are not approving the longer agreement referenced in these letters?

Ms. RIDGWAY. That is correct.

Mr. YOUNG. Will the gentleman yield?

Did you ask whether we are approving both the short and long term agreements?

Mr. STUDDS. Yes, and the answer was just the short one.

Mr. YOUNG. Is that what the resolution says?

Mr. STUDDS. Well, there may be some questions, as Mr. Young suggests, and he can take those up.

Mr. LEGGETT. If the gentleman will yield, under article 16 of the Japanese agreement, it states that this agreement shall be approved by each country in accordance with its internal procedures.

It shall enter into force—

Mr. STUDDS. We are not talking about article 16.

We are talking about the two letters.

Mr. LEGGETT. I understand.

I am anticipating your next question as to when, assuming the agreement is approved by the Diet, does it apply?

Does it apply for the balance of the current year or is it not in effect until next year?

Ms. RIDGWAY. It would into effect the next year, go into effect on January 1, 1978.

If it is approved in the middle of this year, that would be the document under which the Japanese would submit their applications for 1978, because it would be available for that purpose.

Mr. STUDDS. Let me state my understanding so we are all, God help us, perfectly clear.

In the event we approve the bill before us today, we would be approving the exchange of letters between the two governments as the GIFA for 1977?

Ms. RIDGWAY. That is correct.

Mr. STUDDS. Later this year, should the Japanese Parliamentary procedures get around to ratifying the subsequent agreement referenced in this exchange of letters, you will then resubmit to the Congress as a GIFA that longer subsequent agreement for our approval, we are not approving it now, is that correct?

Ms. RIDGWAY. That is correct.

Mr. STUDDS. If and when that longer substantive agreement is approved by both countries, it will become the GIFA for the years 1978 on?

Ms. RIDGWAY. That is correct.

Mr. YOUNG. If the gentleman will yield.

That means we have to amend this resolution.

Mr. STUDDS. That may be.

We will let you pursue that.

I have a question about paragraph 1.

I do not know if it is a translation problem or what the original language was—it is of the letter—the one concerning the Ambassador of Japan.

"Until the agreement enters into force and in no case after December 31, 1977," I assume that means that this will be the GIFA no longer than through December 31, and allows for the possibility of its being replaced by subsequent approval of the longer agreement by both countries?

Ms. RIDGWAY. That is correct.

Mr. STUDDS. I am puzzled as some other members are by the possible ambiguities or conflicts in the rest of the language in that paragraph:

"Until the agreement enters into force, Japanese fisheries off the coast of the United States will be conducted in accordance with international law and in accordance with the laws and regulations of both countries."

Now, as I understood you in response to an earlier question, do you interpret that to constitute an acknowledgment of U.S. fisheries jurisdiction to 200 miles?

Ms. RIDGWAY. I would, yes.

Mr. STUDDS. For example, are the Japanese still members of ICNAF?

Ms. RIDGWAY. Yes, they are.

Mr. STUDDS. If you were in the Japanese Government, which law would you think would pertain, international law in ICNAF, or U.S. law under this act?

Ms. RIDGWAY. As they seem to believe, Mr. Studds, this law inasmuch as they submitted applications for Atlantic fisheries.

Mr. STUDDS. On the other hand, they have just agreed to obey both international law and the laws of both countries, so they have got problems.

Ms. RIDGWAY. Only if they want to make it a problem.

They appear very willingly in this agreement to have concluded that their obligations under the two are not inconsistent and they have applied for the fisheries off the coast of the United States.

While they may still be members of ICNAF, we are not.

Mr. STUDDS. As signatories and members of ICNAF, are they not bound by ICNAF themselves?

Ms. RIDGWAY. They are, with respect to ICNAF, but concerning fisheries off the coast of the United States, we hold that they must fish in accordance with our law.

If that puts them in conflict with ICNAF, that is a problem they have with ICNAF.

Mr. STUDDS. I wanted to get on the record that since the United States is no longer a member of ICNAF, presumably U.S. waters are no longer subject to ICNAF jurisdiction.

Ms. RIDGWAY. That is our view.

Mr. STUDDS. I gather from your earlier description that you do not think the Japanese unnecessarily and unduly dragged their feet in the process of negotiating a GIFA.

I am a little puzzled as to why this one is coming here so late, particularly given the extraordinary importance to Japan from their point of view, of being permitted to continue to fish for surplus stocks off our coasts, given the recurring demarche, both to the State Department and to this Representative, by representatives of the Diet and Government of Japan, expressing urgency with which they reviewed the situation, why it took them so long to negotiate a GIFA.

Ms. RIDGWAY. Two or three things.

First, at the meeting of June, 1976, the U.S. Government had the first opportunity over a 2-day period to describe in detail to the Japanese delegation the act and to share with them our views as to the meaning of that for them.

Mr. STUDDS. I had the feeling they followed the legislative history of the act very closely.

Ms. RIDGWAY. Yes, as perhaps with all other governments, perhaps they wanted to hear it directly from the State Department, which had been directed by the act to renegotiate things.

Second, there was a period in which we had to address and to discuss with the Japanese Government the concept of this provi-

sional agreement because it was apparent when negotiations resumed in August and September of 1976, that they were going to be running into a constitutional problem.

The major problem throughout all of this, Mr. Studds, was when we finally say, all right, we understand the concept of provisional agreement as you need it, but you must understand what we need.

That is the full force and effect on March 1 of our Act.

Mr. STUDDS. I understand that.

Is the only rationale for this unusual procedure the unique Parliamentary situation in Japan?

Now, I recognize that most of the other nations with whom we have negotiated GIFA's are not democracies and do not have these bothersome complications that many of us have.

Surely you managed to get negotiations with the EEC, which is a whole handful of democracies.

Their Parliamentary situation seemed to be such that they could accommodate themselves to this.

Is really the only reason for this extraordinary procedure solely with respect to Japan, our sensitivity to their unique Parliamentary situation? Or are there overriding considerations of U.S.-Japanese relations which argue that we might want to consider such an exception?

Ms. RIDGWAY. No, there is one in between, Mr. Studds.

There is, first, the unique Parliamentary situation. Unique among nations that fish off our coast, certainly not necessarily unique in general.

The second is with respect to the substance of the arrangements.

The Japanese Government must have, because of the substance of the arrangement, not just a procedural blessing by the Diet, but an opportunity for the Diet to see what is happening with respect to the Japanese, acceptance of U.S. jurisdiction.

Mr. STUDDS. What about those European Parliaments in EEC?

Ms. RIDGWAY. EEC has 200-mile zone.

Japan does not.

Mr. STUDDS. We are here being asked to accelerate our own Parliamentary procedures for the convenience of Japan.

I am tempted to have a parochial reaction and let them take it under suspension. They may have some way to accelerate their own procedures.

Why are we always the ones that have to accelerate our procedures to accommodate somebody else when, after all, look what is at stake?

It is our resource.

Ms. RIDGWAY. The acceleration of the procedures with respect to this kind of timing, not the use of these procedures, but acceleration of procedures was a function of the fact that the Japanese did have an election in December and they needed to have the direction that they were taking in this negotiation blessed by the new government.

We did not meet again until after that election, it was December 8.

Then I, myself, went on to some other negotiations and did not return to them until January, and this was, in fact, on a schedule basis, the earliest we could get.

Mr. STUDDS. The Diet of Japan has my deepest sympathy when it finds itself unable to act at least as quickly as the Congress of the United States.

I would hope they are not in any worse situation than we are.

Let me just say that I am, quite frankly, uncertain in my own mind as to what you have brought us, and I know you have done the best you could, and probably under the circumstances the best anyone could, but I remain uncertain in my own mind as to whether it is consistent with the intention of Congress in enacting the 200-mile zone.

I have no idea what is going to happen in the subcommittee, but I hope the record will very clearly reflect that in the event that this subcommittee chose not to approve at this time the agreement with Japan, that that action would not indicate disapproval by this committee, but it might just simply indicate that under the normal procedures of our statute and given the extraordinary nature of this situation, we might wish to take some more of the time provided under the statute to look carefully at this agreement.

After all, this very motion before us, as you know, constitutes an acceleration of our normal statutory procedures under this act and ironically, in order to accommodate apparently the inability of another country to accelerate its own procedures.

So that, as I say, I do not know how the subcommittee will act, but I would hope that in the event it chooses to delete from this particular bill the Japanese agreement, that that act would not be viewed as a diplomatic catastrophe on the face of it.

Mr. LEGGETT. What?

Mr. STUDDS. Be viewed as an unfortunate thing, Mr. Chairman.

And would merely constitute a consideration that this subcommittee wanted to look more carefully under the normal provisions of our own law on what we are asked to do.

You can see what little is left of my own diplomatic training, which is not much, as the Chairman pointed out.

Ms. RIDGWAY. I would like to say that this record has shown over the last year that I have very carefully said I was not going to plead either diplomatic disaster or so on, and the world would not come to an end if request of the Executive Branch could not be taken into account, but I would make an exception in this case.

Mr. STUDDS. You are prepared to make an argument with respect to the end of the world in this instance?

Ms. RIDGWAY. I believe I am going to have to.

Mr. STUDDS. I thought you might.

Thank you.

Mr. LEGGETT. Mr. Young.

Mr. YOUNG. Madam Ambassador, I have read this 2-page document and I am not a lawyer, but it is so ambiguous that it is wide open both ways.

We are being told by Mr. Schoning that regulations will take care of inconsistencies via the permit.

These regulations were just published February 11.

At a later date, I am going to ask Mr. Schoning to give a complete breakdown on their regulations, and the amount of tonnage that will be caught compared to last year.

If we are just trading apples and oranges, if we are allowing the State Department and the Commerce Department to not look at the total management concept, and if the council's management plans are not being geared into it, I am not going to be part of a phony 200-mile limit.

Maybe at a later date—I am not prepared to state when—but I might indicate we may not act on this today or tomorrow, and if the world comes to an end, so be it.

I deeply resent being put in the position of having to act without really knowing what this thing says, and being told that permits are going to take care of it.

This permit form is just like the one that most seagoing ships use now. Take out this provision here [indicating], and it is just wide open.

Do you have any input on the Japanese discussions with Russia, on Russia's 200-mile limit, and if the Diet has the same feelings there?

Ms. RIDGWAY. No, sir.

The Japanese and the Soviet Union have existing agreements under which their discussions, as I understand it, take place.

Mr. YOUNG. Russia has just passed their 200-mile limit.

Theirs is basically the same as ours.

I am just curious, maybe we could find out from the Russian Ambassador downtown whether there is any reluctance on the Japanese Diet to act expediently on their part regarding the Soviet limit.

Ms. RIDGWAY. The Japanese and the Soviet Union have only initiated negotiations.

They are, if I can make a comparison here, only at the same stage we were last June.

Mr. YOUNG. Another question. As representative of State, let us say we do not act by March 1, is the State Department going to enforce the 200-mile limit?

Ms. RIDGWAY. Mr. Young, I believe we have said on every occasion, and I would repeat for the record that in those instances in which they are not agreed as between the United States and countries fishing off our coast, the full force and effect of the law will be in place on March 1.

Mr. YOUNG. If we do not reach a decision in this committee or in the Congress as a whole by March 1, if we take time to really study what we are talking about here—would the world come to an end if we might be able to act in, say, April?

Ms. RIDGWAY. Well, there are two questions here.

One, you would ask what would happen if you did not act with respect to enforcement.

Concerning my view as to whether this is a course of action which the United States could pursue without cost, I believe I answered Mr. Studds, that it would be at a very high cost.

I think negotiations were undertaken in good faith. We believe as we have assured the Japanese, that this procedure is one—this exchange of notes is one which nevertheless in content is consistent with the act, that it was submitted to the Congress along with all

the others, because we believe it is a GIFA and meets the test of the act.

We would hope that having approved agreements for Bulgaria, Rumania and the other countries, which one would not describe as major allies, that it would be possible with respect to Japan to bring this agreement also in force in time for March 1.

If we do not, I think we are saying something about the state of U.S.-Japanese relations, which may not be correct, but which would nevertheless be said in that action.

Mr. YOUNG. As far as the state of Japanese-U.S. relations, I have good relations with the Japanese in the timber industry in my State and in other industries, but I am a little reluctant to say the relations are not good as far as fishing—it has been abused by the Japanese in the last 25 years, ever since 1945.

We can argue that.

Just for the record again, do you think this GIFA recognizes the exclusive fishing management provision of the 200-mile limit bill?

Ms. RIDGWAY. I believe it does, Mr. Young.

Mr. YOUNG. Mr. Chairman, there are two different heads here and I would like to get Mr. Schoning up to the table.

The regulations, Mr. Schoning, you alluded to here, these were drawn up by the Commerce Department, National Marine Fishery Service, in consultation with whom?

Mr. SCHONING. These were prepared earlier, and published for comment. Drafts were sent out to the councils, to the public at large, to foreigners, and to other interested parties.

Then we very recently published the final one.

Mr. YOUNG. Is that February 11, 1977, part 4?

Mr. SCHONING. Yes, sir.

Mr. YOUNG. At first blush, I get kind of embarrassed because here is the entire Pacific Coast in the last six pages. There are some things that I have asked the Chairman, and if I could ask you to supply—the comparison between quotas that were allowed last year, catches that were allowed last year, and where we are differing from last year's total allowable catch and this year's total allowable catch, and in what areas.

Mr. SCHONING. We can provide that.

[The following was submitted:]

[The following was submitted:]

Japanese Catches off U.S. Atlantic and Pacific Coasts 1974-76 and 1977 allocations 1/

Year	Pacific	Atlantic	Total
	<u>Thousand metric tons ----</u>		
1974 catch	1,761.0	23.1	1,784.1
1975 catch	1,423.5	20.7	1,444.2
1976 catch	1,316.0	18.0	1,334.0
1977 allocation	1,169.4	21.56	1,190.96
	<u>Index 1974: 100</u>		
1974	100.0	100.0	100.0
1975	80.8	89.6	80.9
1976	74.7	77.9	74.8
1977	66.4	93.3	66.8

1/ Marine mammals, billfishes, tunas, sharks, and salmon not included.

Japanese catch and quotas off U.S. coasts by species, 1974-77

Species, area, & catch or quota		1974	1975	1976	1977-allocations
		-- Thousand metric tons --			
Pollock, Bering Sea/Aleutians,	Quota	1,300.0	1,100.0	1,100.0	792.3
	Catch	1,253.0	1,055.8	2/1,000.0	
Gulf of Alaska	Quota	Included in other groundfish			44.1
	Catch	30.0	7.0	2/	
Sablefish, Bering Sea/Aleutians,	Quota		9/1.2	9/1.2	5.6
	Catch	7.0	4.9	2/	
Gulf of Alaska	Quota		30.25	30.25	13.9
	Catch	73.0	30.0	2/28.0	
Pacific cod, Bering Sea/Aleutians,	Quota	Included in other groundfish			38.1
	Catch	48.0	36.5	2/32.0	
Gulf of Alaska	Quota	Included in other groundfish			1.6
	Catch	0.0	3.7	2/	
Yellowfinsole, Bering Sea/Aleutia,	Quota	Included in other groundfish			62.1
	Catch	7/	52.1	2/	
Other flounders, Bering Sea/Aleut,	Quota	Included in other groundfish			61.5
	Catch	7/178.0	87.3	2/115.0	
Flounders, 1/ Gulf of Alaska	Quota	Included in other groundfish			18.7
	Catch	8.0	3.0	2/	
Herring, Bering Sea/Aleutians	Quota		18.0	18.0	5.8
	Catch	6.0	10/22.7	7.0	
Pacific O. perch, Bering Sea/Aleu	Quota		9/9.6	9/9.6	9.3
	Catch	30.0	12.8	4/	
Gulf of Alaska	Quota		8/62.3		19.8
	Catch	8/38.0	8/38.0	8/4/69.0	
Other rockfishes, Gulf of Alaska	Quota		8/		2.7
	Catch	8/	8/	8/4/	
Squid, Bering Sea/Aleutians	Quota		No Quota		10.0
	Catch		5.0	5.0	
Other groundfish, Bering Sea/Aleu	Quota		11/203.5	11/203.5	63.5
	Catch	58.0	27.7	3/46.7	
Other groundfish, Gulf of Alaska	Quota		12/30.0	12/30.0	4.2
	Catch	8.0	1.0	3/	
Seamount groundfish, Wester Pac.	Quota		No. Quota		1.0
	Catch		2.0	3/	
Snow (Tanner) crabs, Bering Sea/Aleu	Quota		10.2	10.2	12.5
	Catch			10.0	
Snail meats, Bering Sea/Aleutians	Quota				2.7
	Catch			3.1	
Rockfish, Calif., Ore. Wash.	Quota				0.0
	Catch	10.0	10.0	4/	
Other groundfish, Calif., Ore, Wash	Quota				0.0
	Catch	14.0	14.0		
Long-finned squid, Atlantic (Loligo)	Quota				7.82
	Catch	13.5	10.7	5/11.0	
Short-finned squid, Atlantic	Quota				3.44
(Illex)	Catch	3.3	3.2	5/	
Butterfish, Atlantic	Quota				3.3
	Catch	6/	3.6	6/	
Other finfish, Atlantic	Quota				7.0
	Catch	6/6.3	3.2	6/7.0	
Total 15/	Quota				1,190.95
	Catch	1,784.1	1,444.2	1,334.0	

- 1/ Except halibut.
- 2/ Includes both Gulf of Alaska and Bering Sea/Aleutians.
- 3/ Includes Gulf of Alaska, Bering Sea/Aleutians, and seamounts.
- 4/ Includes Gulf of Alaska, Bering Sea/Aleutians, and Calif-Ore-Wash.
- 5/ Includes both long-finned and short-finned.
- 6/ Includes both butterfish and other finfish, Atlantic.
- 7/ Includes both yellowfin sole and other flounders.
- 8/ Includes both Pacific Ocean perch and other rockfishes.
- 9/ Aleutians only.
- 10/ July '74-June '75.
- 11/ Bering Sea: Mothership trawl - 160,000 (other than pollock).
Landbased dragnet - 35,000 (all species including pollock)
Aleutians: Landbased dragnet - 8,500 (all species).
- 12/ Other than rockfishes and sablefish.
- 13/ Catches of marine mammals, billfishes, tunas, sharks, and salmon not included.

Mr. YOUNG. There was in one instance, as well you know, almost a battle, between whether the Japanese would agree to relocation of their Kodiak Island fishing up to the 58th parallel.

They were moving out, I believe, from Northeast Kodiak Island, above it, over to an area off of the Pribiloff Islands and I wanted a comparison of catches.

Are we just moving them here, and allowing them to overfish this area, or is there real scientific information behind what was finalized in the regulations?

Mr. SCHONING. We can provide that to you in the detail you like. [The following was submitted:]

VESSELS BY NATION WITHOUT GIFA'S

The following represents by coast, the total number of vessels for each listed nation (without GIFA's approved by Congress) which are currently engaged in fishing.

	Ak.	Pacific Ca./Or./Wa.	Atlantic	Total
S. Korea	0	14	2	16
Japan	45 <u>1</u> /	7	15	67
France	0	0	0	0
Italy	0	0	7	7
Ireland	0	0	1	1
W. Germany	0	0	0	0
Spain	0	0	14	14

1) Includes 3 support vessels.

Mr. YOUNG. I believe that under this management plan you allowed 21,000 tons of herring to be caught, 19,000 will be by the Japanese and Russians with the remaining to I guess whoever else is around. I have had information from even your own groups that that is not a realistic scientific approach.

It is basically an overcatch.

Is there any reasoning for this?

Was there pressure from the Japanese or was there some reason for it?

Mr. SCHONING. The preliminary management plans for the various fisheries have now been published in the Federal Register.

They were developed over a period of time with input from the regional councils, scientists, foreign governments, and others.

The rationale for the quotas, the anticipated take by the United States, the historical records, the amount available for foreigners, and what is needed for spawning are all covered in the preliminary management plans.

If what is there is not adequate, we will be glad to provide you additional information from our scientists.

Mr. YOUNG. Did you not have testimony from marine scientists saying that these are too many tons of herring—

Mr. SCHONING. I am not prepared to discuss all comments that were made by scientists at these hearings. A number of hearings were held in Alaska under the auspices of our regional director.

There was considerable interest and each of these plans was discussed in detail. We have some records of the highlights of those meetings.

I am not intimately familiar with what each scientist said about the status of the stocks. That can be provided.

[The following was received:]

[The following was received:]

NORTH PACIFIC COUNCIL AREA

	MSY	QY	U.S. CAPACITY	SURPLUS (TALFE)
A. TANK FISHERIES & HERRING GILLNET				
Fisheries of the Eastern Bering Sea and Aleutian Islands				
Alaska Pollock				
DEIS	1,100-1,600,000	850,000	8,000	842,000
FEIS	1,100-1,600,000	950,000 1/	0 2/	950,000
PMP	1,100-1,600,000	950,000	0	950,000
Yellowfin Sole				
DEIS	70-117,000	106,000	1,000	105,000
FEIS	70-117,000 3/	106,000	0 2/	106,000
PMP	70-117,000	106,000	0	106,000
Other Flounders				
DEIS	100-150,000	105,000	5,000	100,000
FEIS	105,000 4/	105,000	0 2/	105,000
PMP	105,000	105,000	0	105,000
Pacific Ocean Perch				
DEIS	110,000	21,500	0	21,500
FEIS	110,000	21,500	0	21,500
PMP	110,000	21,500	0	21,500
Sablefish				
DEIS	10-20,000	7,500 5/	0	7,500
FEIS	10-20,000	7,400	0	7,400
PMP	10-20,000	7,400	0	7,400

NORTH PACIFIC COUNCIL AREA (continued)

				MY	OY	U.S. CAPACITY	SERVICES (VALUE)
A. TAAHL FISHERIES & HERRING GILLNET (cont.)							
Cod							
DEIS		35,000		58,000	1,000	57,000	
FEIS		85,000		58,000	0	58,000	
PMP		35,000		58,000	0	58,000	
Halibut							
DEIS		?		Trace	Trace 7/	0	
FEIS		2-3,000		Trace	Trace	0	
PMP		2-3,000		Trace	Trace	0	
Herring							
DEIS		50,000? 8/		21,000	1,000	20,000	
FEIS		50-100,000		21,000	1,000	20,000	
PMP		50-100,000		21,000	1,000	20,000	
Squid							
DEIS		--		--	--	--	
FEIS		>10,000		10,000	0	10,000	
PMP		>10,000		10,000	0	10,000	
Others							
DEIS		N/A		93,600	0	93,600	
FEIS		N/A		93,600	0	93,600	
PMP		N/A		93,600	0	93,600	
B. SNAIL FISHERY OF THE EASTERN BERING SEA							
Snails							
DEIS		Unknown		3,000	0	3,000	
FEIS		Unknown		3,000	0	3,000	
PMP		Unknown		3,000	0	3,000	

NORTH PACIFIC COUNCIL ALASKA (cont. Inland)

C. TRAWL FISHERY OF THE GULF OF ALASKA

	BY	OY	U.S. CAPACITY	FEELING (Tons)
Pollock				
DEIS	168-138,000	126,000	1,000	125,000
FEIS	168-138,000	150,000 <u>10/</u>	1,000	125,000 <u>10/</u>
PNP	168-138,000	126,000 <u>11/</u>	1,000	125,000 <u>11/</u>
Pacific Ocean Perch				
DEIS	125,000	50,000 <u>12/</u>	3,000	47,500 <u>12/</u>
FEIS	125,000	50,000 <u>13/</u>	1,000 <u>11/</u>	29,500 <u>13/</u>
PNP	125,000	50,000	1,000	29,500
Other Rockfish				
DEIS	<u>12/</u>			
FEIS	5-10,000	5,000	1,000	4,000
PNP	5-10,000	5,000	1,000	4,000
Flounders				
DEIS	50-70,000	37,500	7,000	30,500
FEIS	37,500 <u>15/</u>	23,500 <u>15/</u>	3,000 <u>14/</u>	20,500 <u>15/</u>
PNP	37,500	23,500	3,000	20,500
Sablefish				
DEIS	22-25,000	22,000	4,500	17,500
FEIS	22-25,000	22,000	2,500 <u>14/</u>	19,500 <u>16/</u>
PNP	22-25,000	22,000	2,500	19,500
Atka Mackerel				
DEIS	?	? <u>17/</u>	0	22,000
FEIS	OY	22,000	0	22,000
PNP	OY	22,000	0	22,000

NORTH PACIFIC COUNCIL AREA (continued)

	MSY	OY	U.S. CAPACITY	BOATS (CAP)
C. TRAWL FISHERY OF THE GULF OF ALASKA (cont.)				
Pacific Cod				
DEIS	?	17/	5,000	1,400
FEIS	20Y	6,300	4,000 15/	2,300 15/
PMP	20Y	6,300	4,000	2,300
H. Hout				
DEIS	20,000	10,000	10,000	0
FEIS	20,000	10,000	10,000	0
PMP	20,000	10,000	10,000	0
Others				
DEIS	--	16,200	1,200	14,800
FEIS	--	16,200	3 15/	16,200 15/
PMP	--	16,200	0	16,200
D. KING & TANNER CRAB FISHERIES OF THE EASTERN BERING SEA				
Red King Crab				
DEIS	24,000	24,000	34,000	0
FEIS	34,000	34,000	34,000	0
PMP	34,000	34,000	34,000	0
Blue King Crab				
DEIS	7,200	7,200	7,200 18/	0
FEIS	3,200 18/	3,200 18/	3,200 18/	0
PMP	3,200	3,200	3,200	0
Snow (Tanner) Crab				
DEIS	101,000	101,000 19/	90,800	10,200
FEIS	200,000 19/	37,400 19/	24,500 19/	12,500 19/
PMP	200,000	37,400	24,500	12,500

NORTH PACIFIC COMBELL AREA (Cont. Inland)

	QY	CAPACITY	BOULES (CAP.)
K. SHRIMP FISHERY OF THE EASTERN BERING SEA AND GULF OF ALASKA			
Shrimp (Bering Sea)			
DEIS	0	0	0
FEIS			
PNP			
Shrimp (Gulf of Alaska)			
DEIS	50,000	50,000	0
FEIS			
PNP			
CARBON FISHERY OF THE EASTERN BERING SEA AND NORTHEASTERN PACIFIC			
42,600-46,500 (NSF for stocks from Bering Sea to California)			
Bering Sea			
DEIS	5,000	0	5,000
FEIS			
PNP			
Aleutian Region			
DEIS	2,400	0	2,400
FEIS			
PNP			
Gulf of Alaska			
DEIS	22,000	4,500	17,500
FEIS			
PNP			
Washington-California			
DEIS	7,000	7,000	0
FEIS			
PNP			

PACIFIC COUNCIL AREA

A. TRAWL FISHERIES OF WASH.,
OREGON, AND CALIF.

	MEY	JUN	U.S. CAPACITY	SURPLUS (TALERS)
Pacific Hake				
DEIS	150-250,000	150,000	6,800	143,200
FEIS	150-250,000	150,000	6,800	143,200
PMP	150-250,000	150,000	6,800	143,200
Pacific Ocean Perch				
DEIS	5- 6,000	1,000	1,000	0
FEIS	5- 6,000	1,000	1,000	0
PMP	5- 6,000	1,000	1,000	0
Other Rockfish				
DEIS	18,000	18,000	18,000	0
FEIS	18,000	18,000	18,000	0
PMP	18,000	18,000	18,000	0
Flourfish				
DEIS	30- 35,000	31,000	31,000	0
FEIS	30- 35,000	31,000	31,000	0
PMP	30- 35,000	31,000	31,000	0
Schollefish				
DEIS	5- 7,000	7,000	7,000	0
FEIS	5- 7,000	7,000	7,000	0
PMP	5- 7,000	7,000	7,000	0
Jack Mackerel				
DEIS	210-450,000	55,000	20,000 ₂₁	35,000 ₂₁
FEIS	210-450,000	55,000	31,000 ₂₁	4,000 ₂₁
PMP	210-450,000	55,000	51,000	4,000

PACIFIC OCEAN AREA (continued)

QUART	DETS	FETS	PUP	SEX	WT	U.S. CAPSULE	REMARKS
QUART				Unknown	?	3,500	0
				Unknown	4,200 ²²	4,200 ²²	0
				Unknown	4,200	4,200	0

WESTERN PACIFIC COUNCIL AREA

	DEY	OV	U.S. CAPACITY	SURPLUS (TALPA)
A. SHALLOW GROUND FISH FISHERY OF THE PACIFIC				
American Islands and Line Islands				
Hawaii				
DEIS	2,000	2,000	0	2,000
FEIS	2,000	2,000	0	2,000
PNP	2,000	2,000	0	2,000
Line Islands (Midway & Guam)				
DEIS	---	---	---	---
FEIS	500	0	0	0
PNP	500	0	0	0
B. PRECIOUS CORAL FISHERY OF THE PACIFIC				
Nakuruu Bed (Hawaii)				
Pink, Gold, and Bamboo				
All in kg. . . .				
DEIS	2,110	1,910	2,295	0
FEIS	2,110	1,910	2,295	0
PNP	2,110	1,910	2,295	0
Midway, Wake, Yap, & Saipan				
DEIS	---	---	---	---
FEIS	<100	0	?	0
PNP	<100	0	?	0

FOOTNOTES

- 1/ Consultation with fishery scientists at November IMFC resulted in agreement that OY could be raised 100,000 mt.
- 2/ U.S. capacity for Bering Sea fisheries were revised downward after consultation with U.S. industry.
- 3/ DEIS and PMP have error in table 18 (MSY erroneously shown as 70-270,000 but text says 70-117,000).
- 4/ DEIS attempts to provide point estimates of MSY wherever possible rather than range. This was not always feasible because of the accuracy and precision of the data.
- 5/ 7500 is a typographical error in DEIS; correct OY is 7400.
- 6/ TALFF raised by 1000 to reflect lowered U.S. capacity.
- 7/ U.S. capacity far exceeds OY; however, OY very small because of stock status.
- 8/ DEIS herring MSY estimate very preliminary. Analyses done for the PMS produced larger confidence intervals about the estimate which resulted in the 50,000-100,000 PMS range.
- 9/ PMS and PMP prohibit foreign gillnet fishery for herring roe.
- 10/ DEIS and BOC requested increased TALFF; scientists indicated OY could be raised to lower limit of MSY without detrimental effect to stock. OY and TALFF increased correspondingly.
- 11/ The OY of 126,000 and TALFF of 125,000 in PMP are typographical errors. Should be OY of 130,000 TALFF of 149,000. Final regulations, which are binding, have correct OY and TALFF.
- 12/ DEIS combined Pacific ocean perch and rockfish; however, these were separated in PMP because of reassessment of POP data which indicated separate consideration was needed.

- 13/ Results of "12/" showed OY for 202 should be decreased because of stock status. Consequently both OY and TALFF were reduced for POP in FEIS and PMP.
- 14/ Consultation with industry during DEIS review resulted in reappraisal of U.S. capacity downward from original estimates.
- 15/ Estimates of flounder MSY in DEIS were very preliminary. Reassessment of data indicated attainable MSY would be 75% of lower end of range--37,500 mt. TALFF reduction reflects this reevaluation.
- 16/ Increased TALFF results from lowered U.S. capacity.
- 17/ MSY and/or OY were not completed in time for preparation of DEIS. Analysis of data during DEIS review process resulted in very rough, imprecise estimates for the FEIS and PMP.
- 18/ MSY and OY were reassessed during DEIS review and subsequently decreased as a result of analysis.
- 19/ The analysis of new data completed after publishing the DEIS, provided tanner crab MSY estimates approximately double those previously calculated. The large difference between OY and MSY shown for the FEIS is in response to U.S. industry who views a larger foreign harvest as adversely affecting the U.S. tanner crab market. The modest increase in the DEIS TALFF by EOC provides for consistency with the Act in utilizing a small part of the large, available biological surplus. The lowered U.S. capacity in the FEIS reflects the industry projected 1977 harvest of 55,000,000 lbs.
- 20/ U.S. capacity was reassessed and lowered by industry after publishing the DEIS. Resulting 2,000 mt was added to TALFF as shown.
- 21/ U.S. industry has indicated a much increased take of jack mackerel in 1977 and has several plants under construction capable of processing that species. U.S. capacity was increased and TALFF was decreased in the FEIS as a result of these discussions.
- 22/ U.S. industry indicated ability to take more than DEIS provided. Therefore U.S. capacity increased 700 tons in FEIS. OY set equal to U.S. capacity in FEIS though scientific data base for these species is extremely small. No TALFF is provided because of insufficient biological information.

VESSELS BY NATION WITHOUT GIFA'S

The following represents by coast, the total number of vessels for each listed nation (without GIFA's approved by Congress) which are currently engaged in fishing.

	Ak.	<u>Pacific</u> Ca./Or./Wa.	<u>Atlantic</u>	<u>Total</u>
S. Korea	0	14	2	16
Japan	45 <u>1</u> /	7	15	67
France	0	0	0	0
Italy	0	0	7	7
Ireland	0	0	1	1
W. Germany	0	0	0	0
Spain	0	0	14	14

1) Includes 3 support vessels.

Mr. YOUNG. I need that, Mr. Chairman.

I do not want to see the Commerce Department or the State Department, very frankly, taking any position that weakens us because of the Japanese.

They are in the business of making money like anybody else. I know the members of the council personally, every one of them, and I know they have informed me directly that there have been indications from the State Department and Commerce Department that neither you, nor she, would buy this program from the regional council.

Yet, scientific information is being provided to them for purposes of management.

I want to be sure there is real scientific understanding of what we are dealing with in the 200-mile limit. That is the management of the stocks, not the political realities, not the economic realities, but the management of the stocks with future yields—I think that when I see the results I may feel that we have not made such progress toward that.

It seems to have been based on political reality, international relations and economics. I hope that is not true.

Mr. SCHONING. I would like to respond in two respects, Mr. Young, if I may. First, there are many fisheries in the North Pacific area in which our scientists acknowledge we do not have as much information as they would like to have to be comfortable with a sound scientific data base for management.

Notwithstanding that, we are obliged to go forward with the best regulation we can, based on the best available scientific information.

This is what has been done.

The priority they have followed is the resource needs come first providing what is needed for spawning escapement to perpetuate runs or build them up, whatever the status is.

The second is what our U.S. fishery will take in 1977, and that is set aside.

Then, if there is anything remaining it is available for foreigners, and that is provided for in the plan. No surplus is provided for the foreigners if scientists feel the resource could not stand any additional harvest over and above what the United States could take.

The other point I wanted to make is, and I am sure you are well aware of this, the overall thrust of the management program is obtaining optimum yield.

The law requires us to consider biology, science, and economics. This is one of the reasons why in many cases in the plans there is a substantially larger allocation for the U.S. fishery than historically they have taken, simply because of that consideration.

It has been argued in some areas that if we permit the foreigners to take a given amount, and not permit our fishery to grow 2, 3, 4, 5, 6 times, whatever the unit of increase is, that it will adversely affect the economics of our fishery and deny our fisherman the opportunity to get in that market or expand it.

Therefore, we have been obliged to consider more than biology.

Mr. YOUNG. If we can have a list of the factors considered, especially in the North Pacific fishery—I do respect the fisheries in

Oregon and Washington, and it is vitally important to me that we understand that somehow along the line that we are not being took. If that means I am suspicious, I am.

That is an inherent trait of mine when it comes to dealing with bureaucracy.

I do not want to wake up tomorrow morning with a headache and find all my fish gone.

That is what I do not want.

Mr. LEGGETT. Thank you, Mr. Young.

Before we get to Mr. Bonker, it might be well if you could just give us, Mr. Schoning, a word picture of the general restrictions that have been placed on the Japanese fisheries vessels engaging in fishing off the coasts of California, Oregon, Washington, and Alaska, and also an estimate of the reduction in the number of boats that have been affected on March 1 as opposed to March 1 of last year.

Mr. SCHONING. Let me take the last point first, if I may.

The last figure, the most complete figures I have seen for total effort off the United States for 1975 was roughly 2,700 different foreign fishing vessels at one time or another participated in the fishing activity within our 200 miles. This includes the support vessels and others.

This year, to date, the U.S. Government received roughly 1,100 applications. This includes the nations for which a GIFA agreement has been approved or is up for approval, so you can see at least a reduction from 1975 from 2,700 to around 1,100.

We have a breakdown that is to be made available monthly on a limited distribution basis to include. The comparison of kinds of vessel by country, by area, by month. We will be keeping records beginning in March of 1977. Clearly, it will be a substantial reduction overall in numbers of vessels.

Mr. LEGGETT. If I understand it, with respect to salmon, in 1978, you are declaring that there is no surplus.

Apparently this understanding is contained in the Japanese agreement?

Mr. SCHONING. Presently there is a U.S. surplus. The reason there is a provision for 1977, as Ambassador Ridgway said, relates to INPFC. I cannot comment on what will happen in 1978; but it will be the position of the U.S. Government that there will be no surplus for foreigners of salmon of U.S. origin.

Mr. LEGGETT. From your review of the statistics by country, is it your impression that the Japanese numbers are going down on the order from 2,700 to 1,100 also?

Mr. SCHONING. I would prefer in order to be precise to provide that for record.

[The following was received:]

[The following was received:]

LEVEL OF JAPANESE FISHING EFFORT

	<u>STERN TRAWLERS</u>	<u>MEDIUM TRAWLERS</u>	<u>OTHER F/V's</u> ^{1/}	<u>TOTAL FISHING</u>	<u>SUPPORT VESSELS</u>	<u>TOTALS</u>
PACIFIC COAST						
Actual 1975	165	98	93 ^{2/}	356	81	437
Actual 1976	283	110	97 ^{2/}	490	95	585
Applied for 1977	214	97	34	345	8 ^{3/}	333
ATLANTIC COAST						
Actual 1975	15	0	20	35	5	40
Actual 1976	20	0	35	55	2	57
Applied for 1977	17	0	0	17	0	17

SUMMARY

	<u>PACIFIC COAST</u>		<u>ATLANTIC COAST</u>		<u>TOTAL FISHING VESSELS</u>	<u>TOTAL SUPPORT VESSELS</u>	<u>TOTAL VESSELS</u>
	<u>FISHING VESSELS</u>	<u>SUPPORT VESSELS</u>	<u>FISHING VESSELS</u>	<u>SUPPORT VESSELS</u>			
Actual 1975	356	81	35	5	391	86	477
Actual 1976	490	95	55	2	545	97	642
Applied for 1977	345	8	17	0	362 ^{4/}	8	370

^{1/} Other fishing vessels include salmon gillnetters, crabpot boats, longliners.

^{2/} Figure does not include 335 salmon gillnet vessels that fished in 1975 & 1976 and which will fish in 1977 under INPFC regulations.

^{3/} Figure is number of fleet factory ships only and does not include transports, tankers, etc. which will be applied for at a later date.

^{4/} Total metric tonnage applied for: 1,250,300
Total metric tonnage allocated: 1,190,960

NOTE: THE FIGURES USED FOR 1975 AND 1976 REPRESENT THE ACTUAL NUMBER OF INDIVIDUAL VESSELS SIGHTED.

Mr. LEGGETT. The allegation has been made by Mr. Young that perhaps maybe we have not done anything under the 200-mile limit law with respect to Japan; I am giving you the opportunity to generally respond to that allegation.

Mr. SCHONING. I am confident the number of vessels and the total catch will be substantially reduced.

Mr. LEGGETT. Let me ask counsel.

Do we have that information pertaining to the reduction with respect to Japan by catch and by vessels?

Mr. MANNINA. I don't have it.

Mr. SCHONING. I think you have to get that from us. We are the repository of that information and it comes from our enforcement and surveillance activities where our people fly over the areas several times a week and record the names and numbers of vessels and their activities.

Mr. LEGGETT. Mr. Bonker.

Mr. BONKER. Ambassador, you stated that the short term agreement with Japan for 1977 is different in form but not in substance. We are interested in trying to figure out exactly what that means before we take legislative action.

The short term agreement in your notes, item 1, says, "until December 31, 1977, Japanese fishing off the coast of the United States will be conducted in accordance with international law and the conditions and resources of past fishing practices."

Am I led to believe that Japanese fishermen will continue to fish as they presently are until the long term agreement goes into effect in 1978?

Ms. RIDGWAY. No, Mr. Bonker. The meaning of that phrase, beginning with the taking into account of the condition of the resources and past practices was that the United States would determine the condition of the resource. That is the procedure that Mr. Schoning, that the United States would, in accordance with the procedure Mr. Schoning just described, determine the conditions of the resources and that Japan, if the agreement were enforced, would have an expectation that its application, again if there were resource, would be approved if they undertook all the terms and conditions and that their relative position in the fishery would remain the same.

In some fisheries, Japan is the major fishery, and if there were a surplus and we allocated, they would expect to remain there. That is what happened as we looked to the question of surplus; we had to go to apportionality because it is so complex otherwise.

Mr. BONKER. You began your answer with the condition of the resource.

In this interim period, who determines the condition of the resource for allocation purposes?

Ms. RIDGWAY. The United States in accordance with the plans that Mr. Schoning has just described.

Mr. BONKER. Then you are saying the various management councils in the adoption of their plans, assuming they are approved by the Department of Commerce, will establish allocation formulas in those plans that will be binding on the Japanese even in the interim period?

Ms. RIDGWAY. Yes; if the agreement is enforced.

Mr. BONKER. I want to make that perfectly clear, because my vote is still undetermined on this legislation. I want to make sure that the regional management council in my area can determine the allocation of surplus species for purposes of foreign fishing practices within the 200 miles.

Ms. RIDGWAY. Absolutely; and it would apply to Japan.

Mr. BONKER. I will yield to Les for one question.

Mr. AUCOIN. Then what does the language mean on page 2 of the letter, item 8, which says that upon request of either government, governments shall hold consultations in respect to any matter concerning the implementation of this arrangement, including the determination of catch amounts for Japanese vessels?

Ms. RIDGWAY. In all the GIFA's that have come through, there is a statement saying that all the governments will consult periodically and all governments fishing off the coast have come to us as they look forward to the season that begins March 1 as to what it is they would like to apply for, to hear from us the progress on management plans, and also the surpluses that may be available. It is only as consultation. It is in all the GIFA's.

Mr. BONKER. Ambassador, looking beyond the preliminary agreement in putting together a long term agreement with Japan, I would like to ask you how you will approach the problem of anadromous species.

As you know, the salmon in our area are fairly undisciplined and will migrate well beyond the 200 miles. My concern is when we withdraw from existing treaties, are we going to lose jurisdiction and possibly experience a rather large reduction of salmon species in our area?

Have you approached this problem through negotiation with the Japanese?

Ms. RIDGWAY. Yes, I have, Mr. Bonker; and if I could take you through the long term agreement, beginning with the preamble in which there is an acknowledgment that the United States has established a fishery conservation zone and as it goes on, it says, "and that the United States also exercises such authority over the living resources of the Continental Shelf appertaining to the United States and over anadromous species of fish of United States origin throughout their migratory range."

Article 1 of the long term agreement then says that the purpose of the agreement is to establish the terms and conditions, principles and procedures under which fishing may be conducted by Japanese nationals for the living resources off the coasts of the United States over which the United States exercises fishery management authority.

Mr. BONKER. The Japanese have no problem accepting that?

Ms. RIDGWAY. They had initial agreement; that is correct. There is a specific problem with respect to salmon. First, we have been associated with the Japanese in the International Office of the Fisheries Commission since 1932, along with Canada.

Certain elements of that convention, the extension principle, have been very helpful to the salmon fisheries of Washington, Oregon, Idaho, and portions of Alaska.

The agreement has been found entirely satisfactory, particularly in Alaska, concerning Bristolback stocks. We have given notice of the attempt to withdraw from that convention, and we would expect to renegotiate it, to extend, to see to it that if we keep portions of it that it is consistent with this agreement and that fact.

If that renegotiation fails, then clearly the language of the bilateral applies; that is, the authority of the United States over anadromous species throughout the migratory range.

There are two special problems here which I think you are perhaps well aware of, since you do follow the salmon question.

The first is beyond 200 miles, it is very difficult to tell which salmon has an American flag on it and which salmon might have another flag on it; and we have agreed in the longterm agreement to the technique of an agreed minute that enforcement by the United States beyond 200 miles concerning anadromous species would be undertaken after consultation with Japan—we would know what we were about and we would know what was happening beyond—we won't give up our authority.

Before we enter a court contest, it would be up to the Coast Guard to prove it with blood and scale samples; before we undertake that, we would consult with the Japanese.

There is a problem of intermingling here. The Japanese have other salmon fisheries. They mix up with ours. We said we would engage in consultation with them.

In the first instance, it refers to the prospect of trying to renegotiate the INPFC, retaining what is good and changing what is bad.

In the event that is not possible, where the salmon gets mixed up and there might be some conflicting authorities, we would consult.

Mr. BONKER. You said you were about to reach an agreement with Canada.

We explored why it has taken so long to negotiate with Japan. Canada is even a more sensitive issue in our area.

What briefly are your problems in your negotiations with the Canadians?

Ms. RIDGWAY. The problems are in two directions.

First, the United States and Canada have unresolved maritime boundaries between them and we have since 1976 been attempting to negotiate with Canada, both a negotiated solution on the boundary question and at the same time a long term fisheries arrangement.

The boundary question is obviously quite complex, and the long term fishery negotiations, it turned out, always ended up bumping into boundary questions, so they were delayed.

When it became apparent we were to going to be able to have a long term comprehensive solution, we turned to the short term fishery arrangement. There we found there are substantial differences between the Canadian expression of jurisdiction and our own with respect to the administrative procedures that are involved.

We found that while Canada was in a position to accord to the U.S. vessels, the right to fish without license and without paid fees, we did not have that same flexibility because the act says "All foreign fishing." It makes no distinction for neighbors. All foreign fishing is conducted via GIFA and the payment of fees and the

issuance of permits. We tried to find a way. We ran short of term because we stayed with long term as long as we could.

Second, when we got to short term fishery, we had to find a way to respond reciprocally to Canada. What we have tried to develop is an agreement in which our fishermen get to fish free of licenses and free of costs and the way we could, in turn, reciprocate. We will bring that kind of agreement here soon, I hope.

Mr. BONKER. If we could teach our salmon to turn left instead of right, that would help.

Ms. RIDGWAY. Or some mutation which would produce flight.

Mr. LEGGETT. Mr. Studds?

Mr. STUDDS. There was some question of whether, given the wording of the resolution before us, we were approving merely the exchange of notes or the further proposed agreement. I think it is quite clear the way this resolution is written constitutes approval only of the exchange of notes.

I have here this letter of transmittal from the President of the United States. It says:

"In accordance with the Fishery Conservation and Management Act of 1976, I transmit herewith a governing international fishery agreement for 1977 between the United States and Japan, signed at Washington on February 10, 1977.

"This agreement is significant because it is one of a series to be negotiated in accordance with that legislation. I urge that the Congress give favorable consideration to this agreement at an early date. Since 60 calendar days of continuous session as required by the legislation are not available before March 1, 1977, I strongly recommend that the Congress consider amendment of the 'Fishery Conservation Zone Transition Act' in order to incorporate this agreement within its overall provisions.

"Also transmitted for the information of the Congress is a governing international fishery agreement between the United States and Japan for 1978-1982, initialed at Washington on February 10, 1977. This agreement will be resubmitted for favorable consideration following its signature by the United States and Japan later this year."

It is quite clear that this resolution applies only to the exchange of notes.

Mr. YOUNG. As a layman, what is the objection to specifying that in the language of the law? The message is not the law. The law is written in the statute.

Mr. FORSYTHE. We might add some language just to make it absolutely clear.

I hope that the Ambassador would also agree to that.

Ms. RIDGWAY. Yes.

Mr. FORSYTHE. I appreciate your appearance here this afternoon.

Ms. RIDGWAY. Thank you very much.

Mr. LEGGETT. I think we are now in that situation where we need more education.

Would that it would be possible that we could pass everything prior to March 1, and it is still possible; however, the Chairman has to leave the Capitol this afternoon and I am not going to be back until Monday. I think the members, if I get the tone of their

questions, are concerned about the Japanese agreement—I think they are needling considerably with respect its form, which they are certainly entitled to do, because there are obviously some vagaries in that agreement that the State Department has found necessary to include at this point.

The justification has been provided, such that it was. However, the members are really more concerned with the applications for surplus that are going to be made under this agreement. I know I would like to know, at least for one country, what we are doing in advance of March 1. Therefore, on behalf of the subcommittee, I am going to ask both State and NIMS, to the extent that you have the information available, to provide the subcommittee for the past several years a representative sampling of the catch of Japanese vessels for 1974, 1975 and 1976 and compare those catches to the applications for quotes that have been presented to you.

I would also appreciate an analysis of the major conflicts that you found in the testimony that was presented with respect to the various fisheries and the reasons why you reached the numbers that you did with respect to surplus.

We would like, in effect, in a nutshell, to get a firm handle on exactly what we will be doing with this new law, subsequent to March 1.

I really don't think there are sufficient votes here readily at hand to vote the current document through this subcommittee. I would hope then that we could have a meeting of the Full committee sometime on Monday, and I will let counsel arrange that meeting with the Chairman of the Full committee. At that time, we can go over again with the members of the subcommittee and the members of the Full Committee exactly what this document means in terms of the 1977 fishery with respect to the country of Japan.

We will not be going into this much detail with respect to all of the countries covered by the legislation. We will cover only the country of Japan, since it is one of the major fishing countries that will operate within our zone.

Mr. AUCOIN. May I make an inquiry of the Chair?

Is the bill assigned to the subcommittee as well as to the Full committee? Or does it require a vote of the subcommittee before a vote can be taken in the Full committee?

Mr. LEGGETT. I am not going to ask that the subcommittee be discharged from further consideration of this bill unless everybody is satisfied and, if we approach an impasse, it is my intent to protect the member. If any of you want to cause an international incident, we will face up to that problem at that time.

Mr. FORSYTHE. Mr. Chairman?

Mr. LEGGETT. Yes, Mr. Forsythe.

Mr. FORSYTHE. I certainly hope that since we cannot get to the floor, before Tuesday at the earliest, the whole committee can review this matter so that if any members have questions, they can be resolved at another hearing on Monday.

Mr. LEGGETT. I will supplement that. If we could get the information over the next several days, like Thursday and Friday, then the members might have an opportunity to review the overall effect of the permit procedure with respect to Japan with the various fishery

councils over the weekend. Hopefully we can get some local input from the councils and the local fishermen between now and then.

Mr. AUCOIN. Is the Chairman contemplating asking the Department of Commerce to describe the manner in which the surplus is identified by the regional councils, or will be allocated in the permits, in spite of the bureaucratic difficulties that may cause?

This member would like to have some input from the Department of Commerce in advance, rather than finding out afterward that we have a nightmare on our hands.

Mr. FORSYTHE. Because of the impossibility of the councils to get all the data, the preliminary plans which are operative for 1977 were prepared by NMFS, so that in effect councils have not prepared these quotas.

Mr. AUCOIN. I understand the status of the regional council's various plans. I am concerned about the Department of Commerce which is being asked to set up a permit structure and the difficulties it contemplates in doing that. We ought to know if there are some.

I would like to make one other suggestion; and that is to have at the time we meet again a statement, a forthright statement from the Department of State as to whether we have in our hands a problem, a constitutional problem or political problem within the Japanese Government.

If it is political, then I would like to know why it is that we are expecting them to ever approve the final agreement; if it is so politically explosive why do we think that they will accept the 200-mile limit.

If they cannot accept it now, what reason do we have to believe that they will accept it later? If it is a constitutional problem of waiting a few months to get the Diet to put it on its agenda, why do we want a full year of probational agreement?

Mr. LEGGETT. It is my understanding that the counsel for the State Department and counsel for this subcommittee have interpreted the exchange of letters as containing in essence an acknowledgment by the country of Japan that the 200-mile limit law of the United States is in effect and that they are applying for a permit under the terms and conditions specified in that act. Although admittedly the language is oblique, but if I understand it, the lawyers do not believe this is a problem; and I am prepared to generally make that determination.

I really don't see that as a problem. Our major problem concerns how they go about determining the surplus? Have they consulted with our local people, and do we have the protections that we ought to have?

Mr. AUCOIN. It is also a question of what the Japanese think this language means. We have heard what the State Department thinks.

Look at the language in item 1, international law. All that prefaces the reference to both countries' law. The real question is, how do the Japanese interpret this language?

Mr. LEGGETT. The thing is, this committee doesn't care how the Poles or Russians interpret the agreement. They are concerned, number one, how do we interpret it and, number two, how do we intend to enforce it within our zone

I think that is really the nuts and bolts of it and, thirdly, is there a surplus and is the apportionment made on some kind of a reasonable basis. To tie the Japanese and the Koreans or the Russians to the wall as to what they may have covertly hidden in this language in order to protect their face, or such as that, I really don't think is promotive of anything.

Look at the alternative. The alternative is to have perhaps 1,000 boats or 800 or 700 boats fishing on or about March 1 and they don't have a permit, and if they don't have a permit, this committee is going to have to fish or cut bait.

We are going to have to instruct the Coast Guard to go out and get them and they will be in exactly the same situation as our tuna fleet is, where they are fishing in sufferance except that we are the dominant force in both cases.

Mr. Studds?

MR. STUDDS. I gather it is the Chairman's intention to recess without a vote and, therefore, retain the bill before the subcommittee.

I would like the record to reflect that the subcommittee has not suddenly been seized by an attack of chauvinism and felt a compulsion to wave the flag. The concern is legitimate.

If we do not meet again until leap year—Monday is the 28th of February—inevitably, despite both the Diet and the Congress of the United States, Tuesday will be the first of March, and we may find ourselves in a situation which we might wish to avoid if there is any way to do so.

I don't know, given our own parliamentary situation, if there is any way we could get to the President, if we so chose, on Monday, a piece of legislation which he could sign into law on March 1. I seriously doubt it. The subcommittee should be aware of the fact that a result of our own legitimate indecisiveness will be that for at least several days, all of the nations referenced within this bill will not be able to fish at all within our 200-mile zone.

If it is the Chairman's desire, this member, at least, would be perfectly willing to withhold my own doubts and allow the measure to move to the full committee if that would expedite the procedure.

MR. LEGGETT. I would only want to do that by unanimous consent, and it doesn't look like we have it; so why don't we continue this hearing Monday afternoon and hopefully, in the meantime the members will review the material that we have asked for?

Mr. Young?

MR. YOUNG. We can move everything but the one provision we are interested in and that can get out of the way. With all due respect, I am very frankly elected to do the job of representing the people and until I am sure that this is going to take care of the problems we try to take care of, I am not about to jump into the fire for a Diet or anything else. We have had a whole year. This is an opportunity now to look at the provisions; and I think we should take that time.

If they do miss 3 or 4 days after March 1, they will have to miss 3 or 4 days.

I asked Mr. Schoning about pollock trawling and the foreign fleets; and he said that the allowable catch this year would be

150,000 tons. The surplus is declared as 149,000 tons and that has been distributed amongst Poland, Russia, Japan, and Korea. It leaves 1,000 metric tons for the U.S.fleet.

We have gone from 61,000 to 149,000 tons in 1 year's time as the catch for foreign fleets. We are not in that fishery yet, but there is a possibility. It will give us no leeway. That is the problem.

Mr. LEGGETT. Well, when we allow for additional catch by Americans, it is not the possibility that we provide for, but the probability; and we have a probability of being able to take all of the allowable catch.

Anyway, I think it would be wise were the subcommittee to adjourn. I am not inclined to separate the agreements at this time as I do not think it would be worthwhile. Let us attempt to get as much information as we can as soon as possible from the appropriate agencies, and then review it over the weekend and then we will plan to meet again. If we can be satisfied and all goes well, then perhaps we can bring it before the full committee on Tuesday.

If the Senate is in a hurry to pass a bill, then we would be delighted to have them send it over here.

Mr. Sharood, do you want a few minutes on this subject as *amicus curiae*?

Mr. SHAROOD. In view of the fact you are postponing until Monday, I will postpone it.

Mr. LEGGETT. Very well. We will be pleased to hear from you at that time.

The subcommittee will stand adjourned.

[Whereupon, at 4:34 p.m., the hearing in the above-entitled matter was recessed, to reconvene Monday, February 28, 1977.]

INTERNATIONAL FISHERY AGREEMENTS

MONDAY, FEBRUARY 28, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 2:12 p.m., in room 1334, Longworth House Office Building, Hon. Robert L. Leggett, Chairman of the subcommittee, presiding.

Mr. LEGGETT. The meeting of the Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order.

This afternoon the subcommittee will reconvene its hearings on H.R. 3753, to bring certain Governing International Fishery Agreements within the purview of the Fishery Conservation Zone Transition Act, which I might remind you, goes into effect at midnight tonight.

You will recall this act, which became Public Law 95-6, came into effect February 21 of this year.

The act, among other things, waived the 60-day congressional review period authorized by section 203 of the Fisheries Conservation Zone Act. The act in effect gave approval to GIFA's with six countries. H.R. 3753 would amend this act to give approval to four additional GIFA's those with Spain, South Korea, Japan, and the European Economic Community.

At the conclusion of the hearings on Wednesday of last week, the Administration witnesses were requested to provide certain information to a number of my colleagues and myself concerning the fish catch of Japan off our coastal shores for the last 3 years, and the number of vessels involved each year. Also, they were requested to supply the number of fish contemplated to be caught off our shores this year, together with allowable land catch, to be assigned to Japan for this year.

That information, plus other information requested on fisheries in general was delivered to the members this past Friday, and I trust the members took the opportunity to review this material over the weekend.

At this point it might be helpful if Ambassador Ridgway and Director Schoning would approach the witness table and we could

proceed perhaps to interrogate you with respect to information we seek.

Mr. Schoning, it might be helpful if you would go through the materials you have provided to us at this point and point out to us the answers to the questions we asked.

STATEMENTS OF PANEL CONSISTING OF MS. ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY FOR OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY DAVID COLSON, LEGAL ADVISOR; AND ROBERT W. SCHONING, DIRECTOR, NATIONAL MARINE FISHERIES SERVICE, DEPARTMENT OF COMMERCE, ACCOMPANIED BY CARMEN JOSEPH BLONDIN, ASSISTANT DIRECTOR FOR INTERNATIONAL FISHERIES, NMFS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

Mr. SCHONING. Yes, sir, Mr. Chairman. We can go through the items in the sequence in which I believe you have them.

The first is an example of a letter going to the State Department, transmitting the conditions, restrictions and the applications. This particular one is addressed to Mr. Zucca, and relates to the German Democratic Republic. It asks them to transmit the information to the government, and asks for a response from them as to their acceptance.

The first page is just a sheet which was signed by them when they applied for the permits.

The second is a page of conditions and restrictions. A third is a listing, in permit number order, of the vessels by name that they submitted for applications, and the fisheries in which they are to fish.

The next sheet is a preliminary calculation of the fees based on the landings, anticipated landings, and allocations as well as the vessels.

Mr. LEGGETT. This is all with respect to Germany?

Mr. SCHONING. Yes, sir, and there is a similar one to other nations. We only gave you one as an example. We have others for other nations.

Mr. LEGGETT. For Germany, it was total fees of \$102,300—

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. Now, how does this agreement, with a particular country within the EEC relate to the EEC GIFA? Is this governed by the EEC GIFA, or is this separate from the EEC GIFA?

Mr. SCHONING. This was in response to the applications that they submitted under their GIFA.

Mr. LEGGETT. We have one GIFA with Germany, and one with the EEC?

Mr. SCHONING. I will let Ambassador Ridgway respond.

Ambassador RIDGWAY. This is East Germany, Mr. Chairman.

Mr. LEGGETT. Oh, this is the Communist group. I understand that.

Mr. SCHONING. We and the State Department have not as yet processed information for any of the EEC countries to the point of going to register and beyond.

Mr. LEGGETT. I think we have solved the situation with respect to most of the countries that are covered by the bill, except with

respect to Japan. With respect to the Japanese fishermen, where do we find the information on what they have been doing, and what they will be doing?

Mr. SCHONING. We have tables, Mr. Chairman. One, a single sheet that looks like this.

Mr. LEGGETT. It says level of Japanese fishing efforts?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. And for 1975, stern trawlers, 165. For 1976, 283; for 1977, 214?

Mr. SCHONING. Yes, sir, the meaningful column is the third one from the right. Notice that the table is broken down into Pacific Coast and Atlantic Coast.

If you go to the summary at the bottom, it shows Japan—for Pacific and Atlantic Coast, total fishing vessels, all types—the breakdown is 391 for 1975; 545 for 1976 and applied for in 1977, 362.

The entry for all types of fishing vessels should not be confused with support vessels at the lower right part of the table.

Mr. LEGGETT. I see.

Mr. SCHONING. That is Pacific Coast and Atlantic Coast combined. The upper part of the table breaks them apart.

Mr. LEGGETT. It is 391, 545 and 362?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. What it shows is that they went from 356 to 490, and from 490 they will go down to 345 on the Pacific Coast, is that right?

Mr. SCHONING. Yes, sir, that is correct.

Mr. LEGGETT. So far as what they have applied for.

Is it your intention to give them what they have applied for?

Mr. SCHONING. At the present time, that is our intention, subject to what we hear from them further. Notice at the bottom, under footnote 4, the total metric tonnage applied for was 1,250,300 tons, and they were allocated 1,190,900. So the allocation is somewhat less than the amount they applied for. It is conceivable, when they make the final decision on the number of vessels, they may want to reduce that number somewhat, because they have less to catch than they applied for.

Mr. LEGGETT. Why is it that they only applied for 362, when they had 545 ships fishing last year? Why did they not apply for 545 again?

Mr. SCHONING. I cannot tell you that precisely. I suspect it relates to the economics of the fishery and the catches.

Mr. LEGGETT. So far as support vessels are concerned, last year they had 97, and this year they will have eight.

Now, that is support vessels within our 200-mile area, is that right?

Mr. SCHONING. Yes, sir, all types of support vessels.

Mr. LEGGETT. Might they well have support vessels outside the 200-mile area?

Mr. SCHONING. Footnote 3 expands on that a little bit. It says, "figure is number of fleet factory ships only, and does not include transports, tankers, et cetera, which will be applied for at a later date."

One of the problems is that they contract for some of their support vessels, and they are not sure of the names and other details. That will have to come later.

Mr. LEGGETT. Number 2 says it does not include 335 salmon gillnet vessels that fished in 1975 and 1976, and which will fish in 1977 under INPFC regulations?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. That is under the designation FV's, what is that—fishing vessels?

Mr. SCHONING. Footnote 1 is labeled "other fishing vessels," and it includes salmon gillnetters, crabpot boats, and longliners.

There were miscellaneous categories to differentiate them from stern trawlers and medium trawlers.

Mr. LEGGETT. But it does not include the gillnet vessels?

Mr. SCHONING. That is right. Those will be issued under another provision of the act, which relates to existing international conventions. The State Department handles that aspect.

Mr. LEGGETT. Now, as far as the catch that the Japanese have taken off our shore, supposing you go to the next page.

On the next page it shows in 1975 they got 1.7 million metric tons; in 1975, they got 1.44 million metric tons; and in 1976, they got 1.33 million metric tons. And you are giving them 1.2 million metric tons so it appears they have been allocated something less than 10 percent of what they were allotted last year, is that correct?

Mr. SCHONING. Yes, sir. I think it amounts to 11 percent.

Mr. LEGGETT. If we are only going to be reducing them by 10 percent or 11 percent, I can understand how a domestic fisherman might get the idea that perhaps the 200-mile law is not doing very much.

Do you want to address yourself to that question?

Mr. SCHONING. Yes, Mr. Chairman.

I think we have to look at the specific stocks involved. Many of these stocks are ones which the domestic fishermen do not fish on at all. Pollock is an example. We are reducing it because it has been overfished, but we are permitting a harvest that we think the resource can sustain. It represents utilization of the resource and is not a problem for our fishermen because they are not desirous of being in that fishery.

Of the total pollock allocation, some 950,000 tons in the Bering Sea and 150,000 tons in the Gulf of Alaska, only 1,000 tons have been requested by the U.S. fleet. There is a direction in recent years for the foreign take of pollock.

Now, further, I should remind the Chairman that the plans we are talking about relate only to the fisheries in which there is a foreign take. We are not addressing any of the stocks where the United States takes a substantial number of fish and the foreigners are excluded.

Mr. LEGGETT. I understand that, but we would hope to be doing what we were doing before, the same way we did after the enactment of the act.

Mr. SCHONING. The act dictates that we first consider the needs and resources and provide appropriate funding to maintain the stocks or build them up, depending on the particular stock and present condition.

The second consideration is to provide the opportunity for domestic fishermen and allocate what they will take in 1977 under these plans. We have gone to the domestic fishermen through public hearings and then set aside the amounts they said they would take from each of these fisheries. If there was any left, and a plan provided for surplus, we have gone to the foreigners and said this is available as an allocation but only after the resource needs and the domestic needs have been satisfied.

Mr. LEGGETT. Why do we not consider this on a species by species approach? I think that would be more helpful, and I notice on the next page that you have figures on what fish have been taken. I presume the Japanese are telling us what they have been taking during the past years and that we are taking their word that those numbers are correct. We are reducing those figures, is that right?

Mr. SCHONING. Yes, sir, in very limited numbers we have some indication of previous catch, as in the crab industry.

Mr. LEGGETT. If the Japanese estimates have the fragilities built into them that some of the American fishermen estimate have been built into them with respect to different kinds of taking, in things such as, mammals, it may well be, may it not, that 1,190 tons of fish to be caught by the Japanese could be no reduction, whatsoever, could it not?

Mr. SCHONING. Let me answer in this way.

Depending on the particular country, and the fleet and the area, we do have extensive surveillance over that fleet by cooperation with the Coast Guard, either by surface vessels or aircraft. We have a good account of the number and names of foreign vessels and the number of days they fish for various fisheries off our coast during the entire year; their catches, based on the knowledge of the capability of the different sizes of the vessels; and their numbers.

By projecting the number of fishing days, we end up with quite close estimates of what the fleets will catch.

Mr. LEGGETT. Is not your margin plus or minus 11 percent?

Mr. SCHONING. Yes, sir, I suspect it is.

Mr. LEGGETT. If it is plus or minus 11 percent, it well could be that we are not, in fact, cutting them down at all.

Mr. SCHONING. It is conceivable, yes, sir.

We do not have that good a measure on the catch.

Mr. LEGGETT. I am not saying at this point as yet that you have not done a good job. All I am saying is that could be the situation.

Now, let us start first with pollock. For years 1974, 1975, 1976, and 1977, the figures show 1.3, 1.1, 1.1, and 792.3, respectively. So it appears that there is a significant reduction in the take of pollock.

Mr. SCHONING. Mr. Chairman, that first line you were reading is the quota. The catch is just below.

Mr. LEGGETT. Did we get a quota?

Mr. SCHONING. Yes, sir, pursuant to a bilateral.

Mr. LEGGETT. All right.

Then in the Gulf of Alaska, the pollock is rather diminuous, is that right?

Mr. SCHONING. As the note indicated, it was included on the groundfish and they actually caught 30,000 in 1974 and 7,000 in 1975.

Mr. LEGGETT. And we are giving them 44,000 in 1977?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. So we would be giving them more groundfish in 1977 than they took in 1976?

Mr. SCHONING. This is total pollock. Those two figures are additive.

The 792 is the pollock allocation in the Bering Sea, and the 44 is pollock allocation for the Gulf of Alaska.

Those two give the total.

Mr. LEGGETT. That is 836,000 metric tons, is that right?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. So 836, as compared to 1,000 would be a 16.4 percent reduction?

Mr. SCHONING. Compared to 1.1 million plus a little bit that was included.

Mr. LEGGETT. Yes.

It would be 16.4 percent reduction in their take?

Mr. SCHONING. Yes. And that million is clearly an estimate.

Mr. LEGGETT. In sablefish, apparently the quota there was 1.2. They took two, and so you increase that to 5.6?

Mr. SCHONING. Those are footnotes. It is a little difficult.

Mr. LEGGETT. What was the take of sablefish in the Pacific in 1976?

Mr. SCHONING. Reading from the footnote, in 1976, it says, "includes both Gulf of Alaska and Bering Sea/Aleutians."

Mr. LEGGETT. Does that mean then that we had a take then of 28,000 tons in 1976, 30,000 in 1975, 73,000 in 1974, and the quota is 13.9?

Mr. SCHONING. I am getting the author to help me with the footnote, Mr. Chairman.

Mr. LEGGETT. If the author wants to come to the witness table and explain it, we would be pleased to have him do that.

Mr. SCHONING. He says he is very willing, and it is Mr. Carmen Blondin, our Assistant Director for International Fisheries.

Mr. LEGGETT. He is a very capable man and we are happy to have him here.

Mr. BLONDIN. Thank you, Mr. Chairman.

The figures, unfortunately, in the past were kept in a different manner and, for 1977, we set up allocations in specific areas, and this was the reason for that breakdown.

To answer your question, the catch of sablefish in 1974 would be the cumulative figures of 7,000 and plus 73,000.

Mr. LEGGETT. That is 80,000.

Mr. BLONDIN. Eighty thousand, that is correct.

And for 1975 it would be 34.9.

Mr. LEGGETT. And for 1976?

Mr. BLONDIN. For 1976 it is 29.2.

Mr. LEGGETT. And for 1977 it is projected as—

Mr. BLONDIN. Projected as the total for the year of 19.5.

Mr. LEGGETT. We do have a one third reduction there.

With respect to Pacific cod, the figures show 48, 36, 32, 38. It appears that we would be actually increasing the allocable catch of cod over last year, is that right?

Mr. BLONDIN. Yes, sir.

Mr. LEGGETT. And that would be almost 20 percent. The take on yellowfin sole was 52,000 tons in 1975.

Your figure includes both the Gulf and Bering Sea area; so, we would be increasing that by 20 percent, to 62,000 tons.

The figures for flounder show 178,000, 87,000, 115,000, and 61,000. That would be about a 45 percent reduction over last year's take.

I note, you have flounders in two places. I guess you would have to add the two columns, which would total about 80,000 tons of flounder as compared to 115,000, is that correct?

Mr. BLONDIN. That is correct, yes, sir.

Mr. LEGGETT. That would be about a 45 percent reduction. So far as herring is concerned, we would have a 6,000 and 22.7, 7, and 5.8 catch, so that would be a reduction of a little more than 15 percent over last year.

Then so far as perch goes, that would be 68,000 for 1974, adding the 60,000 for 1975, 69,000 for 1976, and 19.8 for 1977. That would be a minus two-thirds, is that right?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. For other rockfishes, you have 8, 8, and 4. They are the footnotes?

Mr. SCHONING. So is 8.

Mr. LEGGETT. It says it "includes both Pacific Ocean perch and other rockfishes."

Mr. SCHONING. One of the reasons, Mr. Chairman, this table is confusing is that we are trying to show the catch in greater species and area breakdown to give us a better fix on managing the stocks. In the past this has not been done to this extent.

Mr. LEGGETT. Now, you have had no quota on squid. You do not know what they have taken, and this year you said it is 10,000 tons. Did you ask them how much squid they were taking in the past?

Mr. SCHONING. There was no quota, but as you know, there was a catch of 5,000 in each of those years.

Mr. LEGGETT. So we increase it by 100 percent?

Mr. SCHONING. Yes, sir.

Mr. ROGERS. Mr. Chairman will the gentleman yield?

Mr. LEGGETT. Yes.

Mr. ROGERS. Are we trying to get some sense of the change?

Mr. LEGGETT. Yes, we are trying to find out whether the 200-mile limit law is doing anything.

Mr. ROGERS. I know this is totalled at the end.

Mr. LEGGETT. We have gone over the totals, and we can see there is a reduction there of about 11 percent.

Mr. ROGERS. Yes, which is not very much.

Mr. LEGGETT. Well, it is not very much.

With respect to other groundfish, in both the Bering Sea and Aleutians, and in the Gulf of Alaska, that figure in 1974 would be 66,000; the next year it would be about 29,000 tons, and the next year it would be 46,700 tons. The quota would go from 46.7 to 67.7, about a one-third increase.

With respect to seamount groundfish in the Western Pacific, they took 2,000 tons in 1975, and we are now giving them 1,000 tons here. That is a 50 percent reduction there.

So far as the snow crabs are concerned, they took 10,000 tons in 1976 and so we have a 25 percent increase, which we give under this regulation.

With respect to snail meats, the catch was 3,100 tons, and we cut them about ten percent, to 2,700 tons.

The rockfish catch was 10,000 tons, and you have no quota there. Apparently the rockfish is depleted in some way.

Mr. SCHONING. Our fleet has demonstrated a capability of total rockfish off Washington, Oregon and California. There are no ground fisheries permitted off the West Coast except for hake, which we do not fish in any amounts.

Mr. LEGGETT. We could apply a minus 100 percent there. On the next item, which is other groundfish, they apparently have been taking 14,000 tons consistently for 2 years, and again you would cut them 100 percent.

They took 11,000 tons of long-finned squid last year, and you cut them down about a third, to 7,820 tons.

Now, with respect to these figures, what are we doing for the American fishermen?

Mr. SCHONING. I think you have to look at each particular stock.

Mr. LEGGETT. I understand that. Some are going up, and some are going down.

Have you made any projections in the gross, as to what American fishermen will take out of the fish that normally were caught, by say just the Japanese? What tonnage will be caught by the American fishermen, or what will be available for American fishermen to take?

You have indicated that we will have more pollock, but on the other hand you do not really expect us to take more pollock.

Mr. SCHONING. That is right, we anticipate, based on consultation with the industry, that they will take 1,000 tons of pollock in the Gulf of Alaska this year, where heretofore they have taken none.

I think one of the biggest reductions from the foreign take, and in addition to the U.S. take, is off the coast of Washington, Oregon, California, where we have eliminated trawl fishing by all foreign fleets, except for hake.

Until now we were not able to.

Mr. LEGGETT. In a sense, what you are talking about there then is the 24,000 tons of rockfish, and other groundfish, is that right?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. Would you say that that is the nuts and bolts of it?

Mr. SCHONING. There are some others.

I think it would be most useful if we supplied a table, somewhat like this, breaking down the different species. Wherever our fleet has indicated they will increase their catch in a given species this year, and the resource can stand it, we have provided for that increase, as long as there was appropriate justification for it.

We can supply that in the record by species, by tonnage.

[The following information was received:]

[The following was received:]

FOREIGN AND U.S. CATCH OFF U.S. COASTS BY SELECTED SPECIES,
1974-76 AND 1977 PROJECTIONS

<u>Species</u>	<u>Year</u>	<u>Foreign</u>	<u>United States</u> (thousand metric tons)	<u>Total</u>
Hake, silver	1974	115,887	14,118	130,005
	1975	93,120	20,908	114,028
	1976			
	1977	85,500	29,500	115,000
Hake, red	1974	30,735	2,259	32,994
	1975	26,162	2,515	28,677
	1976			
	1977	34,900	9,100	44,000
Herring, Atlantic	1974	154,005	32,471	186,476
	1975	146,762	36,207	182,969
	1976			
	1977	22,000	18,000	40,000
Mackerel, Atlantic	1974	293,883	1,042	294,925
	1975	249,005	1,974	250,979
	1976		2,383	
	1977	69,000	19,000	88,000
Squid, short-finned (Illex)	1974	11,076		11,076
	1975	10,996		10,996
	1976			
	1977	23,500	11,500	35,000
Squid, long-finned (Loligo)	1974	26,148		26,148
	1975	20,897	19	20,916
	1976			
	1977	19,000	25,000	44,000
All other finfish, Atlantic ^{1/}	1974	80,561	61,858	142,419
	1975	50,341	61,458	111,799
	1976		60,226	
	1977	66,000	84,490	150,490
Total Atlantic	1974	712,295	111,748	824,043
	1975	597,283	123,081	720,364
	1976			
	1977	319,900	196,590	516,490

^{1/} Includes river herring and butterfish.

<u>Species</u>	<u>Year</u>	<u>Foreign</u>	<u>United States</u>	<u>Total</u>
Flounders (except halibut)	1974	164,000		164,000
	1975	111,000	22,400	133,400
	1976			
	1977	125,500	34,000	159,500
Hake, Pacific	1974	203,000		203,000
	1975	214,000		214,000
	1976			
	1977	123,200	6,800	130,000
Herring, Pacific	1974	26,000		26,000
	1975	20,000		20,000
	1976			
	1977	20,000	1,000	21,000
Mackerel, atka	1974	18,000		18,000
	1975	18,000		18,000
	1976			
	1977	22,000		22,000
Mackerel, jack	1974		12,000	12,000
	1975		17,000	17,000
	1976			
	1977	4,000	51,000	55,000
Pollock, Alaska	1974	1,661,000		1,661,000
	1975	1,600,000		1,600,000
	1976			
	1977	1,099,000	1,000	1,100,000
Rockfish	1974	117,000		117,000
	1975	129,500	10,200	139,700
	1976			
	1977	54,500	21,000	75,500
Sablefish	1974	37,299	6,982	44,281
	1975	600	6,444	7,044
	1976			
	1977	26,900	9,500	36,400
Seamount groundfish	1974			
	1975	3,046		3,046
	1976			
	1977	2,000		2,000
Other groundfish, Pacific	1974	126,000		126,000
	1975	134,000	3,300	137,300
	1976			
	1977	109,800	4,200	114,000

<u>Species</u>	<u>Year</u>	<u>Foreign</u>	<u>United States</u>	<u>Total</u>
Cod, Pacific	1974	64,000		64,000
	1975	69,000		69,000
	1976			
	1977	60,300	4,000	64,300
Squid, Pacific	1974			
	1975	5,000		5,000
	1976	5,000		5,000
	1977		7,000	7,000
Crabs, tanner (snow)	1974			
	1975			
	1976			
	1977	12,500	24,900	37,400
Snails (meats)	1974	3,574		3,574
	1975	3,000		3,000
	1976			
	1977	3,000		3,000
Total Pacific	1974	2,419,873	18,982	2,438,855
	1975	2,307,146	53,844	2,360,990
	1976			
	1977	1,662,700	164,400	1,827,100
Grand Total	1974	3,132,168	130,730	3,262,898
	1975	2,904,429	176,925	3,081,354
	1976			
	1977	1,982,600	360,990	2,343,590

Mr. LEGGETT. With respect to the Alaskan fisherman, who is rather nose to nose in a substantial way with the Japanese, what benefits can we expect from this allocation with respect to the Japanese Government? Obviously he is going to be subjected to a 25 percent increase in snow crab, which I do not know whether that makes a difference or not, since we have not been taking those, but we certainly should.

Mr. SCHONING. In the case of snow crabs, Mr. Chairman, the U.S. domestic catch last year—in the eastern Bering Sea, was about 10,000 tons of the largest of the two crabs, *paguridae*.

We have projected, based on information from the industry, that they will take 25,000 tons this year, and have set that aside as part of the optimum yield for that particular stock.

Mr. LEGGETT. How do we give the Japanese then two and a half additional tons?

Mr. SCHONING. The stock is comprised, basically of two subelements of snow crab or tanner crab. One, *paguridae*, the scientists estimate, has a maximum sustainable yield of 50,000 tons.

The scientists estimate an MSY of 150,000 tons for the smaller one, *ophelia*, which is not fished at all by our fishermen because they cannot do it economically. The Japanese take mostly the smaller ones, the *ophelia*, and they have had a quota of 210,000. However, they also take some *paguridae*.

We have increased their potential for harvest, the quota or allocation, by 2,500 tons, but we restricted it to an area where it is 95 percent *ophelia*, the little ones.

In addition to accommodating the method of our U.S. fisheries, we have reduced by some 30 miles, a fishing area that was most productive for the Japanese, so that they can no longer fish in that 30-mile-wide strip, 100 miles long, roughly. We have made that area exclusively available to the U.S. fleet.

In short, we have cut back the most productive area the Japanese have been fishing in, and given them an increased quota of the smaller crabs that our people do not take, and thus increased the opportunity for our people to take at least optimum yield, which is from 10,000 to 25,000 tons.

In making these changes, we think that we have minimized, if not totally eliminated, potential gear conflict problems between the Japanese fleet and our fleet.

We have also done what the council asked us to do, and that is to separate the two fleets, to concentrate the domestic fleet to *paguridae* species, and to concentrate the Japanese on the smaller ones, the *ophelia*.

Mr. LEGGETT. I notice you also give them more Pacific cod and yellowfin sole than they have been taking in the past.

Mr. SCHONING. In the case of yellowfin sole, we will have to break this down more precisely, but one of the problems with the groundfish species is that because we have had to rely on the foreign government statistics, they do not break them down to the species breakdown that we would like. They lump a number of species together, and call them other groundfish.

We are trying to break those out, more and more of the import data species, and this is an effort to do. I will have to get the refinements of that for the record.

[The information referred to was previously submitted and may be found on page 143.]

Mr. SCHONING. Basically, that is one part of it. Also, up in the Gulf of Alaska, there are some stocks that have not been harvested by trawlers to the extent the resource can stand.

Pollock is one, and for some reason that our scientists are not too clear on, our pollock stocks are increasing significantly in the Gulf of Alaska. Last year the take was 60,000 tons. We are talking about allowable catch for all foreign governments of 150,000.

We think the stock can stand it, and it has not been harvested in the past. It is the same thing with some of the other stocks, but in each case the scientists take what they consider to be a cautionary approach to be sure that they are not overfished.

We have not had a domestic trawl fishery at all in the Bering Sea, and only a limited one in the Gulf of Alaska. We are just starting to get into that business.

When we developed the plans, we went to the industry and asked, what are capable of taking? Whatever you take we will reserve for you.

Mr. LEGGETT. What fish in the Pacific that the foreigners have been taking are what we would call depleted? Are there any?

Mr. SCHONING. Pacific ocean perch is one, in Washington, Oregon and California.

Mr. LEGGETT. I guess there is a minus two-thirds we have there. They have been taking 69,000-plus tons?

Mr. SCHONING. I was for the moment, talking about Washington, Oregon and California.

Mr. LEGGETT. Mr. Young?

Mr. YOUNG. Thank you, Mr. Chairman.

Do you want me to go before Mr. Forsythe? I have a lot of time.

Mr. FORSYTHE. That is all right.

Mr. YOUNG. Once you have gone to American industry, and tell them they can only take so many tons at that time, they will be granted this, under the law.

I want to make sure, again for the record, that I will not see in the future, through the State Department, through your Department, through negotiations, that we do not allow foreign expansion.

Mr. SCHONING. The law requires us to do this. The allocation will be determined either by continuation of these preliminary management plans, which are in effect or until the Secretary changes them, based on new information, or the councils develop their own plan.

As the Congressman knows, the direction is that you only will permit a foreign surplus in the stocks if the domestics can take it.

If the council plans say that there is nothing for the foreigners, it is clear that there is not any; and they do not get any, if that is a final decision.

Mr. YOUNG. Mr. Chairman, may I proceed, or do you want to go on that subject?

Mr. LEGGETT. Maybe it might be better if we went through the next table on maximum sustainable yield for the Northern Pacific Council area. What is DEIS?

Mr. SCHONING. Draft environmental impact statement.

Mr. LEGGETT. And FEIS?

Mr. SCHONING. Final environmental impact statement.

What we have done is take the sequence of three events and showed what has occurred from the very beginning when we put out the draft environmental impact statement in September on each of these plans, and then what happened on the FEIS, which was after we held some 16 or 18 public hearings around the country on the DEIS. We incorporated the comments, modified the plans, and changed some of the numbers, and then we finally converted that final environmental impact statement to a final plan, which has been published and has the status of law.

Mr. LEGGETT. The bottom number would be 950,000 tons of optimum yield of Alaskan pollock, of which the U.S. can take none, and it is all allocated to foreign?

Mr. SCHONING. That is correct, for Alaskan pollock.

Mr. LEGGETT. And yellowfin, exactly the same, 106,000 tons. We cannot take any, so it all goes foreign, is that right?

Mr. ROGERS. Mr. Chairman, may I ask a question?

Mr. LEGGETT. Mr. Rogers.

Mr. ROGERS. I would like to know, is there objection from our fishing industry to any of these provisions?

Mr. SCHONING. To any of the provisions of these numbers?

Mr. ROGERS. Yes.

Mr. SCHONING. There are some. We have resolved them to the best of our ability.

Mr. ROGERS. Any particular wide disagreements?

Mr. SCHONING. There was one from some people in Alaska. They felt there should be no tanner crab harvest by the foreigners at all.

Mr. ROGERS. Is that the main disagreement? Were there others?

Mr. SCHONING. There were some others.

Mr. ROGERS. I wonder if we could have it in the record.

Mr. LEGGETT. If we have any disagreement in the numbers as we go through them, if you could note them for our record, it would be helpful.

[The following was received for the record:]

DISAGREEMENT IN NUMBERS

FISHERY	(PROBLEM) IND. WANTED	PMP
(1) Tanner Crab (TALFF)	0	12,500 mt
(2) Bering Sea Herring (OY)	12,000	31,000 (TALFF=20,000
(3) Atlantic Herring (TALFF)	0	22,000
(4) Atlantic Mackerel (TALFF)	0	69,000

Mr. LEGGETT. As far as the Alaskan pollock, I see in your draft statement, you included 8,000 tons for American take; in the final statement there was none included. Presumptively the hearings brought out that none was intended to be taken?

Mr. SCHONING. Yes, footnote 2 indicates that, "U.S. capacity for Bering Sea fisheries were revised downward, after consultation with U.S. industry."

In that particular case, when we developed it in September, the industry then thought they had the potential for developing a bottom fish processing plant in Alaska and getting the vessels to fish it.

Subsequently, they determined that they were unable to put together the plan and the fishing vessels to take that amount that year. So they abandoned it. But they did allow 1,000 tons for the Gulf.

Mr. EMERY. Mr. Chairman, to clarify a point, the figure zero, this gets down to the final impact statement, and so forth, is not what the the U.S. is permitted to catch, but what the U.S. intends to catch.

Mr. LEGGETT. That is on the information that is made available at the hearings on the draft statement.

Mr. EMERY. Indicating that the industry is not sufficiently developed in that fishery to catch fish. If they were, the law would allow them to bring up to portion what they need.

Mr. LEGGETT. That is right.

I assume all of these permits are revocable, and modifiable.

Mr. EMERY. I just thought I would get that in the record at this point, lest anyone feels that zero——

Mr. LEGGETT. If we could take more than zero, it is my understanding that we will, pursuant to council recommendation, consider modification of these permits, however difficult that might be.

Mr. Forsythe?

Mr. FORSYTHE. The permit will be annual and the quotas will be reviewed each year. It would not be altered——

Mr. LEGGETT. We would not plan on altering it. We brought out the fact, and this came up before in a number of different aspects, that these permits are clearly amendable during the year, and if we made a mistake and capabilities increase. Just so everybody understands it, what we do is not irrevocable.

I see the amount of flounder allocated to Japan is 79, or 80,000, out of a total of 105,000, is that correct?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. Sablefish, 7,400. Zero capacity, 7,000 goes foreign, is that correct?

Mr. SCHONING. Yes, sir.

Mr. LEGGETT. Do any of the local councils have any objections to any of these numbers?

Mr. SCHONING. No, sir, because again this is the trawl fishery in eastern Bering Sea, and we have no fishery for bottom species in that area.

Mr. LEGGETT. How many pages do we have, 2, 3, 4, 5, 6——

Mr. SCHONING. That just covers the Pacific, sir.

Mr. LEGGETT. I understand. That is all we are concerned with right now.

Halibut is negligible. Zero allocation herring, 21,000 optimum yield, 1,000 U.S. capacity, 20,000 foreign.

If any members have any questions of any of these allocations, please interrupt.

Mr. YOUNG. Mr. Chairman, I have already raised my questions on the herring.

Mr. LEGGETT. What is your view on that again, Mr. Young?

Mr. YOUNG. We think the numbers provided for the optimum yield are too high. The scientists say that, the herring being the base, they should be more closely scrutinized in the precatch.

Mr. EMERY. Just for the record, we have a similar disagreement with the herring, too.

Mr. LEGGETT. I understand, and that has been noted for the record, and I understand there is a lawsuit going on.

Squid, apparently 10,000 tons optimum yield, and that is all surplus.

Others, 93,600. I guess that includes the hake, and that is all surplus.

Snail fisheries of the eastern Bering Sea, are these escargots?

Mr. SCHONING. No.

Mr. LEGGETT. Pardon? What are these snail fisheries?

Mr. SCHONING. I cannot tell you scientifically.

Mr. LEGGETT. I do not want the scientific name. What is the name when you eat them?

Mr. SCHONING. Snails. I can provide the scientific name for the record.

[The following was received:]

[The following was received:]

Bering Sea Snails

Species

1. Neptunea pribiloffensis (Dall, 1919)
2. N. heros (Gray, 1850)
3. N. lyrata (Gmelin, 1791)
4. N. ventricosa (Gmelin, 1791)
5. Fusitriton oregonensis (Redfield, 1848)
6. Brccinum angulossum Gray, 1839
7. B. sealariforme Møller, 1842
8. B. plectrum Stimpson, 1865
9. Beringius beringii (Middendorff, 1849)
10. Volutopsius middendorffii (Dall, 1891)
11. Clinopegma magna (Dall, 1875)
12. Plicifusus kroeyeri (Møller, 1842)
13. Volutopsius fragilis (Dall, 1891)
14. B. polare Gray, 1839
15. Pyrulofusus deformis (Reeve, 1847)

Mr. LEGGETT. Are these the escargots you eat in the restaurants?

Mr. SCHONING. No, they are much smaller.

Mr. LEGGETT. Other snails.

Now, what is this Alaskan Pollock?

Mr. SCHONING. This is for the Gulf of Alaska. The first page covered the Bering Sea. Now we are south of the Aleutians in the Gulf of Alaska.

Mr. LEGGETT. So roughly you go through the same kind of litany on the Gulf of Alaska as you did in the Pacific, except that we have about 1 percent of the Pollock that we might be able to take locally, maybe 3 percent of the perch, maybe 20 percent of the rockfish, maybe 7 percent of the flounders, 10 percent of the sablefish and none of the mackerel. Does anybody have any different views on that?

We will now turn to the next page. Pacific Cod, optimum yield is 6.3. We thought we could take 5,000 tons and apparently the floor management plan only indicated 4,000 tons, for a difference of 2,300 foreign.

Halibut; that is all United States, 10,000 optimum yield.

As far as red king crab, they have no foreign taking of it. The same is true of the blue king crab.

Mr. EMERY. Mr. Chairman, why was there such a discrepancy between the draft and the final environmental impact statement on those two draft species.

Mr. LEGGETT. Footnote No. 19 perhaps relates to that. It says: "The analysis of new data completed after publishing the DEIS, provided tanner crab MSY estimates approximately double those previously calculated. The large difference between OY and MSY shown for the FEIS is in response to U.S. industry who views a larger foreign harvest as adversely affecting the U.S. tanner crab market. The modest increase in the FEIS by DOC provides for consistency with the act in utilizing a small part of the large, available biological surplus. The lowered U.S. capacity in the FEIS reflects the industry projected 1977 harvest of 55 million pounds."

Mr. EMERY. Tell me what that just said.

Mr. LEGGETT. The interesting thing is that the draft environmental impact statement said that we have the same, maximum sustainable yield, and that was also the optimum yield.

We found out in the study that we had twice as much as we thought we had. But industry, in spite of that, requested that the optimum yield be cut down; Commerce responded to that and apparently we have a limited capacity to take that ourselves.

Are we increasing our take of these tanner crabs?

Mr. SCHONING. Last year the take was about 10,000 tons and it is projected to go to about 25,000.

Mr. LEGGETT. We are making a very sustainable inroad in that?

Mr. SCHONING. Yes, sir; but it is controlled largely by market.

Mr. LEGGETT. You are never going to get the market once you take to—

Mr. SCHONING. We have the capability to catch substantially more than we are catching. We have the vessels, the gear, and the knowledge of the grounds.

Mr. LEGGETT. The Japanese though, however you cut it, they are still allowed more tanner crabs. It is a smaller crab that they will be taking?

Mr. SCHONING. That is right.

Mr. YOUNG. Mr. Chairman, are they going to be allowed to sell that crab in the export markets?

Mr. SCHONING. Both of them are the tanner crabs.

Mr. YOUNG. It is still in competition with the U.S. market?

Mr. SCHONING. Yes, sir.

Mr. YOUNG. You require State Department monitoring?

Mr. SCHONING. We do not have any plans.

Mr. LEGGETT. On the next page we are talking about shrimp. Apparently there are 50 million tons out there and it will all go United States.

What size shrimp are those?

Mr. SCHONING. The small shrimp [indicating].

Mr. LEGGETT. Let the record show that the Director has indicated a small shrimp as a small finger.

Mr. SCHONING. We believe that we have the capability to take the total harvestable surplus of shrimp in Alaska.

Mr. LEGGETT. Then we go down to the sable fishery of the eastern Bering Sea and northeastern Pacific; and there we have 5,000 tons in the Bering Sea, none for the United States, all foreign.

In the Washington-California area, apparently all those fish, 7,000, will be allocated domestically.

Pacific ocean perch—this is all of Oregon and California—apparently all that is allocated domestic. All the other rockfish, allocated domestic, all of the flounders, domestic, all of the sablefish in that area allocated domestic, all of the jack mackerel, 80 percent, is allocated domestic, 51,000 tons. And the others, all allocated domestic.

This last table of the page, you have seamount groundfish fishery of the Pacific. Seamount, the yield is 2,000 tons, all foreign, Midway and Guam. Precious coral fishery of the Pacific; apparently that is all allocated domestic.

Are there other questions about these tables or these numbers? Does anybody have any request from his local fishermen to fish within the 200-mile economic zone for fish allocated to Japan?

[No response.]

Mr. LEGGETT. All right.

Is there anybody who thinks that the fish that is proposed to be allocated to Japan, under this agreement, based on the law which we enacted, should not be allocated to Japan?

Mr. YOUNG. Mr. Chairman, if I may.

There is nothing in the allocation that prohibits the American fishermen from fishing now on those stocks. If they take from the stocks, then the allocation granted to the foreign fleets will be decreased as those domestic catches are increased; is that true?

Mr. SCHONING. Mr. Young, are you referring to subsequent years?

Mr. YOUNG. Even these years. If I had fishermen go out to the pollock area, 2,000 tons, they could take 6,000 tons or 10,000 tons. The allocation of optimum yield would come from the foreign fleet, but not from the domestic fleet?

Mr. SCHONING. Let me answer in this way.

Preliminary management plans apply only to foreigners; so if a foreigner is given an allocation of 90,000 tons, and they exceed that figure and we have records to substantiate it, this is a violation and we will take appropriate action.

Mr. LEGGETT. Mr. Young has reference to the situation where we have no anticipated catch by the American fleet and we have given the foreigners a permit to fish a number of tons. All of a sudden we develop a capability to fish for a species for which we need no license domestically or we determine that there is not as much surplus as we thought at that point in a particular fishery we can, as has been stated before, amend the foreign fishery permit for the current year.

Mr. SCHONING. Yes, sir, my point was and the point I was leading up to was—

Mr. LEGGETT. Just say yes and then you can explain.

Mr. SCHONING. Yes.

If we have an allocation of say 1,000 tons for pollock in the Gulf and if they were to go out and take 5,000 tons, there is no violation involved at all, except it totals a little more than the scientists think should be taken.

What we want to do is look at how much over that 1,000 tons they are going to take, recognizing our figures are preliminary and not that precise. If we are talking about a relatively small amount, I would think we would not want to change the allocation late in the year.

Mr. LEGGETT. I think you are right. This is an action which we should not—

Mr. YOUNG. If I could follow this, Mr. Chairman.

For the record, let me make it perfectly clear that there is no way that this allocation and the optimum yield will defer the taking from these fisheries because the foreign fleets are involved in the fisheries. I am not saying that you go out and change it but I want to state for the record again—and you can answer this—the American domestic fleet if they so desire and have the capability will be able to take the fish.

Mr. SCHONING. That is correct. We have the responsibility to accommodate them.

Mr. LEGGETT. Mr. Bonker?

Mr. BONKER. I did not think we were going to get into oversight work today; and I had not had a chance to see the allocations until they were presented to us at the committee.

I would like to have an opportunity to check with some of the interested parties in my district and get their assessment of the allocations. I would like to have assurance from you that you have worked closely with the various regional councils in the determination of the allocations that you have discussed today. Is that correct?

Mr. SCHONING. The allocation responsibility rests with the State Department. Maybe Ambassador Ridgway wants to respond to the details of the allocation to foreigners. Whether there is any for the foreign government was determined by the Commerce Department in preliminary plans, but once that was decided, the allocation among nations was made by the State Department.

Mr. LEGGETT. The answer to Mr. Bonker's question, did you not review the surplus with the local fisheries councils?

Mr. SCHONING. Yes, sir. That matter was discussed at 16 public hearings around the country. We got extensive comments from the councils and the public and that is the reason we changed some of the numbers in the DEIS to those in the final environmental impact statement.

Mr. BONKER. Would it be correct to assume that there is general agreement with the surplus that has been established and that has been presented?

Mr. SCHONING. That is fair to say in general, but there are some differences. We made a decision.

Mr. LEGGETT. The record should show that there has not been one single letter directed to this committee or to any of the individual members that I know of, opposing the proposed allocation, which has been a matter of considerable hearing and deliberations around the country.

Mr. BONKER. Thank you, Mr. Chairman.

My colleague from Oregon and I are both involved in the Pacific council and do you recall any objections in our council with the surpluses that you have established?

Mr. SCHONING. On of the reasons there are not many, if any, from there is that we have eliminated the foreign fisheries off the Pacific Council area—with the exception of hake, which we do not fish.

Mr. BONKER. Mr. Chairman, do I assume correctly that this is oversight work and is not going to require any action from us today, besides the GIFA?

Mr. LEGGETT. We intend to pass out the approval of the four GIFA's today and the GIFA on Japan relates to the utilization of the surplus. That is why we are going over it.

The fact that we have reviewed this matter as extensively as we have and have had no objection from the fishermen involved, I think, gives us some direction, perhaps, as to what we ought to do at this point.

Mr. YOUNG. Mr. Chairman, as long as we are talking about the GIFA's, the reason that we are here in this sort of oversight concept, is because the GIFA—it you would like to call it that—is constantly referring to the permits and the regulations that will be issued.

We are mixing apples and oranges; but the only way we can get to the GIFA's is through an apple-and-orange program.

Mr. LEGGETT. Very plainly, the reason for this hearing is to approve the GIFA's so that the permits can go into effect after the law goes into effect at midnight this evening. Thus, the Coast Guard will not have the obligation to pick up many hundreds of fishing boats that will be fishing without permits. Our Commerce Department is not authorized under the law to give the permits until we pass this legislation.

Mr. YOUNG. Along those lines, Mr. Chairman, I have some specific questions for the Ambassador and Mr. Schoning. The sooner they get them out of the way, the sooner I will withdraw my objection to passing it.

Mr. LEGGETT. First, yield to Mr. Forsythe.

Mr. FORSYTHE. I have no questions.

Mr. LEGGETT. Mr. Young?

Mr. YOUNG. Mr. Schoning, I have talked to you personally on this; I know it has already been agreed to; but I hope for the record that all permits that are issued for boats will be submitted to this committee and counsel.

Mr. SCHONING. Yes, sir.

As soon as they are issued, we will provide a copy to the committee.

Mr. YOUNG. And the permits will specify where and what location?

Mr. SCHONING. Yes, sir.

I have some copies here.

Mr. YOUNG. Secondly, I also asked you that in the regulations that you have proposed, if it would be possible to recommend that all high-sea fisheries gear be identified, and through the salmon agreement that the management council or National Marine Fisheries Service be notified when the loss of the gear takes place.

You and I know we have tremendous amounts of monofilament net lying around our beaches and it has a very damaging effect on the coastal zone fisheries.

Secondly, to your knowledge, is there any requirement now or proposed that, since the American fishermen have to use crab pots that disintegrate over a period of time, the Japanese be required also to use the same type of pot?

Mr. SCHONING. It is not a requirement in the present regulations for Japan to do this. It is my understanding that the State of Alaska presently requires an escapement panel for pots used in southeast Alaska, for tanner crab and bottomfish. A statewide requirement will be enforced on July 1, 1978 for tanner crab and king crab. It is not a requirement for foreign fishermen in 1977.

Mr. YOUNG. I would suggest that if that requirement applies to American fishermen that it apply to the foreign fishermen; because regardless of who owns the crab pot, it is damaging the stock.

Mr. SCHONING. As I recall, in Alaska, they phased it in.

Mr. YOUNG. Being two fisheries, even though they are separate, they are in competition with one another. It seems ridiculous to have one pot that disintegrates and one that does not. We have, Madam Ambassador, some communication from Alaska, primarily from the council. They are not happy with the GIFA. The comment is, it is better than no GIFA at all. I am being very frank now.

They would like agreements signed by the State Department, a guarantee that unequivocally states that the Japanese Government and not just certain Japanese captains, will comply with all provisions of Public Law 94-265, if in turn this GIFA is approved.

Their basic fear is that we may reach some agreement between the Department of Commerce and some captains but not with the Japanese Government.

Do you think this could be done, Roz?

Ambassador RIDGWAY. I am not certain. What is your requirement?

Mr. LEGGETT. We cannot ask the State Department to give us a guarantee. We can ask them for their legal opinion and we can ask

our lawyers for a legal opinion as to what the obligations are of the foreign government.

Mr. YOUNG. This brings up another point, Mr. Chairman.

The reason for this is, I have read this legal opinion from your attorneys and it again cites both international law and laws and regulations of both countries and, again I stress, and I am trying to be helpful, I would like to have some assurance, in all due respect for the Ambassador, that the Japanese Government is going to comply.

Ambassador RIDGWAY. Mr. Young, we believe that the exchange of notes is in fact the commitment of the Japanese Government in complying with the law.

Mr. YOUNG. You believe this?

Ambassador RIDGWAY. Yes; I believe it. And I believe in the memorandum—

Mr. YOUNG. Has there been any—will there be any objection from the State Department to put that in writing, verifying that you believe the letter? Now, there is legal interpretation on both sides; to give an example, I believe that regarding section 201(c), every nation other than Japan has agreed to this and I know you say they cannot do it because of their constitutional priorities, but let us say—and I am not trying to steal someone's thunder—but let us say we agree to this GIFA and there is a fisherman out somewhere and he in turn files suit against the GIFA and he has found that the State Department has not been living up to their responsibilities.

In turn, that GIFA is thrown out in our court under our law. Then we really have an international incident that is very, very much more damaging than this program right here.

Ambassador RIDGWAY. Mr. Young, I would agree that would be a very damaging incident. The Japanese Government has agreed to comply with the applicable laws of the United States and if there were gear conflicts and an American utilizing whatever procedures were developed, has a finding in his favor, we would expect that the Japanese Government would see to that in a prompt matter.

Mr. YOUNG. What you are saying is that the State Department in no way could write any form of a letter or a statement of fact that would in your mind assure the following and the recognition of the 200-mile limit.

Ambassador RIDGWAY. I do not think I am saying that at all. As a matter of fact, what I am saying is, I do not know what would be required beyond what we have already done. We have submitted the legal memorandum saying we believe this is a GIFA and, therefore, I do not know what more is needed. We believe it represents obligations between our two countries as to what will happen in our zone and we do not think, for example, that the failure to mention all of the things that are in 201(c) is a failure to obtain their accommodation. It is a failure to be explicit.

Mr. YOUNG. What happens if we find as a committee that they in our interpretation are not living up to what you expected them to do?

Are you willing to take the responsibility of that act at that time? Not you personally, but I am talking about the State Department.

Ambassador RIDGWAY. I think it would depend upon the degree of difference.

If we are looking at vessels, amounts, there would be a difference, if we are not relying on the same information. I would expect there would be no circumstance in which a violation was promptly cited and followed up on by our own enforcement authorities.

Mr. AUCOIN. Would the gentleman yield?

Mr. YOUNG. Just one question.

There are observers in the committee room and I am sure they are informing their governments of the fate of this GIFA. I hope they are aware that this committee will handle the future GIFA's. That should be the view of an Ambassador, should I say, a little more desire to go out truthfully, with vigor, and I am sure you have done so. Because you have been under a tremendous stress. This is the one area that has caused you tremendous problems.

We are going to assure that before the next GIFA we have some lead time.

Do you think that it is possible that we can get a diplomatic memo, expressing this to the Japanese Government on behalf of the State Department and this committee, and in turn, submitting this to the committee on behalf of this State Department? I am trying again to establish two things.

Number one, that this is a GIFA that is so broad and so frankly to me quite open that many things could be interpreted; and, number two, that the fishing stocks and our fishermen will be taken care of in future negotiations.

Ambassador RIDGWAY. Mr. Young, on many occasions I have been asked to consult with counsel first on these matters. I have not consulted with counsel, but I tell you that I can do this. I would be more than willing to call upon the representatives of the Government of Japan to make the points that have been raised by the members of this committee—I would hope at some point soon—to underline the willingness of the committee to approve the Japanese GIFA for the short term but to express the committee's desire that there be prompt and immediate action on the long term GIFA, that it be done in time to allow the oversight provisions to be given their full effect; that it be done with a recognition of the concern of this committee; and that Japanese fishing and the obligations undertaken by the Japanese Government under the GIFA be fully carried out.

I would be very pleased, having done that, to make a record available to the committee.

Mr. YOUNG. One last question, Mr. Chairman.

Just out of curiosity, there is still that question of what if we were not to move this GIFA? Have you taken any steps as far as you are free to divulge, to insure that there is no international incident and that ships be outside the 200-mile limit off the Gulf of Alaska and the Aleutians Islands—

Ambassador RIDGWAY. We anticipated that there was no way that the procedures could be approved by tonight, so we have called in the representatives of all of the governments whose fishing is involved in the GIFA's now before the subcommittee, to advise them that as of midnight tonight they must cease fishing.

I indicated the other day, in answer to a question, that this was going to be a very difficult step for us, but the law is there; it is on the books. We know that you anticipate its implementation and all of those countries, Spain, the Federal Republic of Germany, Japan, and the Republic of Korea, have all been called in as of last Friday and advised to cease fishing. We have not asked that they depart the zone. A vessel with its gear stowed is a vessel in transit. It has not been easy and it is clearly a difficult situation but we felt we could do no less.

Mr. YOUNG. I have no further questions.

Mr. LEGGETT. Mr. Studds?

Mr. STUDDS. Mr. Chairman, the loyal majority is grateful to you. Ambassador Ridgway, as you know from our phone conversation on Friday, I had asked whether or not countries concerned had been informed of the circumstances of the absolute certainty that, regardless of the action or inaction that this subcommittee takes, the President could not possibly have signed the bill approving these GIFA's by midnight tonight and, consequently, there could be no fishing whatsoever as of midnight.

I was delighted to find that you had already taken that initiative as you just relayed to Mr. Young.

May I say that whatever we do or do not do today and later this week, I think at least a symbolic event of consequence has occurred; that is, at least for a period of hours or days or weeks, whatever it may be, there will be no fishing by Japan and by the other countries, and I say with respect to the other countries, because I think they act in good faith. At least this country has established unequivocally that this law is law and it is going to be enforced, and that any vessel, as of 12:01 this morning, of these nations whose gear is not stowed will be subject to the full procedures under the law. I appreciate the Department taking the initiative to indicate that intent to those countries, and it is my understanding that that is indeed our intent, and that that is precisely what will happen.

In spite of the hour and 45 minutes that have preceded, it is my understanding that what really is in question here is whether or not the agreement with Japan—in this case, the 2-page letter, the exchange of notes between the two governments—constitutes a GIFA within the meaning of the statute.

It is further my understanding that that argument really boils down to whether or not that exchange of notes constitutes explicit recognition by Japan as required by the statute of the lawful authority of the United States to extend its jurisdiction to 200 miles.

That I believe is what this afternoon's proceedings really are all about.

I believe the gist of the position of the State Department is on page 2 of your Memorandum of Law, which says:

"While the shortterm agreement does not expressly acknowledge the exclusive fishery management authority of the United States in the same terms as other governing international fishery agreements, the Department of State is of the view that the agreement, interpreted in its context, effectively recognizes the fisheries jurisdiction of the United States and meets the essential criteria of the act for a Governing Inter-National Fishery Agreement."

That I think is the heart of the Department's position, the heart of the position of those who have questions to the point of whether or not it is sufficiently explicitly recognized in the exchange of notes.

I have to say to you now, as I also said on Friday, that I am personally still not sure whether or not this constitutes the statutorily mandated explicit acknowledgment. Let me ask you, and perhaps you also Dr. Schoning, attached to the application for the vessel permits, the sample that you have of the German Democratic Republic, immediately following the page labeled "Application for Vessel Permits to Fish Within the Zone of the U.S.," there is a page called "Conditions and Restrictions."

Do both of you have that page before you?

Mr. SCHONING. Yes.

Mr. STUDDS. My first question is, will copies of that page verbatim be attached to the applications of all countries.

Ambassador RIDGWAY. I would have to ask Mr. Schoning to reply to that.

Mr. SCHONING. The answer is yes.

Mr. STUDDS. Let me read this first paragraph, inserting "Japan" in lieu of the "German Democratic Republic," and ask you if this will appear:

"Japan will insure that fishing by its flag vessels is conducted in accordance with the requirements of any applicable fishery management plan or preliminary management plan and the regulations promulgated to implement any such plans."

Will that language appear with the Japanese permit application?

Mr. SCHONING. The answer is yes.

Mr. STUDDS. Will in any way any representative of the Government of Japan sign the application or any part of the package of documents of which that language is a part? In what way will the Japanese Government indicate their approval or acceptance of these?

Mr. SCHONING. The package indicates this is a letter from me to Ambassador Ridgway's office saying, "here is the package for transmittal to the foreign government and upon your notification to us, Ambassador Ridgway, that the appropriate foreign nation has accepted the condition, we would be pleased to issue permits as shown in the attached table."

In discussing details with the people of the Japanese Embassy, I was assured that there would not be a problem for the Japanese to approve those conditions and restrictions.

Mr. STUDDS. In what form will the Japanese acceptance appear? Will it be in writing?

Mr. SCHONING. My understanding is that this is something that has not been totally resolved, but we were told this would not give them difficulty.

Ambassador RIDGWAY. I might add, Mr. Studds, as I indicated in my conversation Friday night, the only reason it has not been resolved is because in these last few days, many of these are administrative issues which we have been working out. I have just been informed by some of the people here, that in fact, we had a

draft letter ready to go to these countries and would expect a letter back from the embassy stating our acceptance of this.

Mr. STUDDS. We will have a document signed by a representative of the Government of Japan, explicitly accepting these conditions and restrictions?

Ambassador RIDGWAY. Yes.

Mr. SCHONING. As recently as this morning a spokesman for the Japanese Embassy confirmed this.

Mr. STUDDS. It would seem to me that if the Government of Japan is prepared in writing explicitly to accept the paragraph I just read, the first paragraph under "Conditions and Restrictions," that whatever parliamentary problems they may face with respect to the GIFA itself, that this is pretty close to an explicit acceptance or does, in fact, constitute explicit acceptance of the management authority of the United States, and you can assure us that we will have that acceptance by the Government of Japan in writing.

Ambassador RIDGWAY. Mr. Studds, it is part of the procedure that is in the act.

We receive the permits or this package from Commerce, as Mr. Schoning has described; and we send it to embassies of other countries involved and the permits will not be issued until there is a response.

Mr. STUDDS. Let me put it another way, and you just answered my question, but I want it clearly in the record—in the event you do not have a written acknowledgment by a representative of the Government of Japan, that his nation—or her nation—accepts these conditions and restrictions, is it the subcommittee's understanding that the permits will not be granted?

Ambassador RIDGWAY. Yes; that is correct.

Mr. STUDDS. Okay.

One other thing.

With respect to the longerterm GIFA, which will be before us, presumably, some time later in the year—

Ambassador RIDGWAY. I would hope by the end of this month.

Mr. STUDDS. [continuing] it presumably will be subject at least to the full 60-day requirement of congressional review under the law? There is no rush in that case? We will have plenty of time?

What if the subcommittee indicated that there were a part or parts of that longerterm GIFA that we really were unhappy with; would there be a realistic opportunity for you to renegotiate at least some parts of that? Obviously, we have the option of simply rejecting it if we did not like it.

Ambassador RIDGWAY. That is right; but we are in a whole area here that I am going to have to start taking questions.

Mr. STUDDS. I will not press you now. I want the record to reflect that what is before us is the GIFA of 1977 and not the longterm GIFA, and when that does come before us later this year we will have the full 60-day review period for rejecting it out of hand if we think it is inadequate.

May I ask a question on another subject altogether, because I think it is important for the record. We do not have yet officially the agreement negotiated with Canada. Now, midnight comes with Canada as well as with the rest of the countries; I think that the

Canadian agreement could best be characterized as a sort of a GIFA. It is not a treaty but it is today, as I understand it, to be submitted to Congress for our approval and therefore it is sort of a GIFA. It is not really and truly just a GIFA. It will be, I take it, submitted to the Congress formally and officially.

Ambassador RIDGWAY. Yes, Mr. Studds; I believe it was submitted late this morning.

Mr. STUDDS. What I would like the record to reflect is, I assume that as of midnight tonight, the Government of the United States and the Government of Canada will act as if that agreement were provisionally in effect pending approval in both countries, is that correct?

Ambassador RIDGWAY. Yes, Mr. Studds; the Canadian agreement includes the accommodation of American fisheries in the Canadian zone, rather substantial American fisheries. We believe that in order to protect the interests of those fishermen who have told us that they wish to continue to be able to fish after midnight this evening under the terms that have been negotiated, that is, without fees and without licenses, that to meet those interests, provisional application of the terms of the agreement is the wisest course.

Mr. STUDDS. Is this the understanding under which both countries are operating?

Ambassador RIDGWAY. Yes, sir.

Mr. STUDDS. So the U.S. Coast Guard will not be seizing Canadian vessels at 12:01 tomorrow because the Congress has not approved that agreement?

Ambassador RIDGWAY. Yes.

Mr. STUDDS. And vice versa?

Ambassador RIDGWAY. Yes.

Mr. STUDDS. I assume that might help the departments involved to have that on the record.

If I may ask one more question, Mr. Chairman, and I think this is a question for Mr. Schoning.

Mr. LEGGETT. On that point, under what basis do we kind of wink at the law in that respect?

Ambassador RIDGWAY. We are not really winking at the law, Mr. Leggett. I must say I am reluctant to start a long conversation on what is or is not a GIFA. We believe that this document that has been negotiated with Canada is unique; it is an international agreement affecting fisheries; it is an international agreement which, because of its terms, must come to Congress to have approval and because there are portions of the agreement which are different from the procedures which are outlined in the act. Canada has exercised a policy of forbearance with respect to the implementation of its 200-mile zone and has permitted the continuation of American fishing without an agreement since January 1 of this year. They have bilateral agreement with all other countries.

Mr. LEGGETT. Under what authority do we take that action with Canada?

Ambassador RIDGWAY. I will describe it as provisional application pending action by the Congress.

Mr. STUDDS. Let the record reflect that my back is to the Chairman so he could not possibly have seen whether I winked or not in asking the question.

Dr. Schoning, can you give us a description of the gear damage regulations that you are now working on, and whether or not they will include binding arbitration and, if so, by whom?

Mr. SCHONING. Mr. Chairman, we have today and will submit to the committee—I have already discussed it with the committee staff—a rough draft, 24-page document that is designed to be available as a pamphlet from our department for fishermen purposes, outlining the course of action available to them from the time damage occurs when they are working a vessel until they get settlement. We plan to make the pamphlet available to the committee, the councils, and interested constituents, get comments back, and then finalize it.

Mr. STUDDS. Are there any procedures for arbitration there?

Mr. SCHONING. There are several. Right now our legal people are carefully examining the business of mandatory arbitration through triple A, the American Arbitration Association. At the moment it is in the draft.

Mr. STUDDS. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Bonker, do you have more questions?

Mr. BONKER. Ambassador, there has been considerable discussion on what constitutes a GIFA, particularly with Japan. I know that most members here are concerned that every GIFA gives exclusive fisheries in a zone in the United States. These questions were all raised last week when you appeared before this committee and I have gone back over the transcript and I am satisfied that you have performed admirably; that we are not compromising the bill. Most of these agreements are based in part on trust and I am fully confident that the provisions and the spirit of our law will be complied with in this interim agreement.

I have no questions.

Mr. LEGGETT. Mr. Emery, do you have more questions?

Mr. EMERY. Mr. Chairman, I do have a question which is more relative to Canada than Japan, and I would as soon defer that question.

Mr. BONKER. Mr. Chairman, will the gentleman yield for a moment?

You mentioned Canada; and I just quickly looked through that agreement, that portion which pertains to salmon is essentially the same as existed.

Ambassador RIDGWAY. That is true.

Mr. BONKER. You said extend any different allocations and pretty much stick with current fisheries.

Ambassador RIDGWAY. That is right.

Mr. BONKER. That makes your work a lot easier?

Ambassador RIDGWAY. It turned out to make it a lot more difficult.

Mr. BONKER. Thank you.

Mr. LEGGETT. Thank you.

Mr. AuCoin?

Mr. AuCOIN. I thank the Chair.

When do you contemplate receiving the letter from the Government of Japan which will indicate that it intends to adhere to the provisions in the permits?

Ambassador RIDGWAY. That would be received by us, Mr. AuCoin, as part of a procedure which would occur when the applications are processed, following the approval of a GIFA.

Mr. AuCOIN. Which would, in any case, be after the passage of the resolution?

Ambassador RIDGWAY. That is right.

Mr. AuCOIN. We would take that point in good faith in passing this resolution?

Ambassador RIDGWAY. That is right, Mr. AuCoin.

Mr. AuCOIN. Do you have the authority—and do you contemplate using the authority—to change the standard language of the permits from one country to another?

Mr. SCHONING. That depends on what you refer to as “standard language,” Mr. AuCoin.

Mr. AuCOIN. You indicated to the gentleman from Massachusetts that the language in which each nation indicates that it will abide by the terms of the permit, shall be standard language.

Is this correct and do you feel you have the authority to modify the language in any particular nation's case?

Mr. SCHONING. We—

Mr. AuCOIN. Do you have that authority?

Mr. SCHONING. Mr. AuCoin, we have the authority to change the language. The language is not prescribed by law. We intend to use identical wording and have all the nations sign the same wording.

Mr. AuCOIN. Is it your testimony that you will use in the permit issued to the Japanese vessels, language which is identical to the language used in the permits issued to every other nation?

Mr. SCHONING. To the nation accepting permits; yes, but some of the permits themselves are going to deviate with specific conditions.

Mr. AuCOIN. In terms of the willingness of that nation to abide by the terms of the permits?

Mr. SCHONING. That is correct.

Mr. AuCOIN. You are guaranteeing this to this committee?

Mr. SCHONING. Yes; it is this wording that will be submitted to the State Department.

Mr. AuCOIN. The only question remaining before us is whether or not we want to take in good faith the fact that a letter will be signed after Congress passes the resolution?

Mr. YOUNG. Will the gentleman yield?

Mr. AuCOIN. After I as a couple of questions.

I would like to make an inquiry of the Chair before I continue.

At our last meeting, Mr. Dick Sharood indicated he had an interest in testifying before the committee.

Is it the Chair's intention to permit his testimony today?

Mr. LEGGETT. Not only will we permit it, but we will solicit it.

Mr. AuCOIN. I appreciate that, Mr. Chairman. I do not want to steal from Mr. Sharood's testimony, carte blanche, but there are a couple of points, I think, that are worth mentioning.

One of them has to do with the fact that any court challenge of this GIFA probably would not come from a fisherman who had his gear damaged, but rather from a fisherman who does not want the Japanese on the West Coast to be fishing within the 200-mile zone at all. If this is true, as Mr. Sharood will contend it is before this

committee, then the absence of explicit language from section 201(c) of the act, and I quote, "Each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States, as set forth in this act, may cause a court to maintain that the GIFA is illegal, and the Japanese fleet could be thrown completely out of the 200-mile zone.

I am wondering how the Department of State responds to that? I must say that as I read this requirement, it is bending the English language considerably to interpret the language in the notes as being in conformity with that citation of the bill.

Ambassador RIDGWAY. Mr. AuCoin, I think that Wednesday I exhausted all of my legal background, most of which was a combination of experience and heavy borrowing.

If you will permit, Mr. Chairman, I would like to introduce Mr. David Colson, Office of Legal Adviser of the Department, who came along with the informal invitation of several members of the subcommittee today to try to be helpful in this area.

I think it would be more helpful to Mr. AuCoin if I asked Mr. Colson to respond than if I attempted to stretch my legal knowledge beyond its stretching point.

Is that permissible, Mr. Chairman?

Mr. LEGGETT. I might state that while the exchange of letter is vague, we have gotten a GIFA by the Japanese Government, which is in substantially the same form as other GIFA's as far as essential requirements go. I think we have there the expressed intent of the negotiators. Thereafter, we will receive express approval of the specific conditions included in the application by the country of Japan; and I question the wisdom of determining that no agreement is in effect and therefore no fishing can take place because no permits can be issued at this point, since nobody appears to be injured.

It appears to be very much like the Canadian situation as far as I can see. We have not only fishing regulations with the Japanese, but base agreements, and a huge number of interrelationships that we want to maintain. If the counsel wants to speak on this issue, certainly he can; but I think as I indicated in my very first opening remarks, you do not have to be a Philadelphia lawyer or a graduate of Georgetown night school.

I think it speaks for itself, considering the delicate nature of the negotiations, particularly in that country, Japan.

Mr. AuCOIN. Mr. Chairman, has my time expired?

Mr. LEGGETT. The Chair is being extremely liberal with the 5-minute rule, as you well know.

You are still recognized.

Mr. AuCOIN. I would like the Ambassador to have an opportunity to recognize her aide; and then I would like to ask a couple more questions.

Mr. COLSON. Mr. Chairman, I would only comment that since the passage of the law we have been very much aware of the possibilities that could ensue from various kinds of legal challenges. As noted earlier, we have the lawsuit in Maine right now for a temporary injunction, TRO, on the issuance of permits. That is certainly something I would suspect we might see quite a bit of.

Concerning the question of whether the short term agreement with Japan meets the basic requirements of the act, certainly the State Department is prepared to argue that it does. This would be something that would be very relevant for a court to take into account in making a determination. It would also be very relevant for a court to take into account the fact that Congress will have acted in some manner on this particular agreement.

Mr. AuCOIN. My concern is this: not only are the notes missing an expressed acknowledgment of United States jurisdiction, but they give the primary reference to international law and then to the laws of both countries. If you can tell me that recognizes exclusive U. S. jurisdiction, you can probably sell me 20 acres of swampland in Tennessee. I simply do not see where that acknowledges exclusive jurisdiction. If the United States Congress approves this resolution, and the agreement goes into effect; and if the Japanese Government in good faith then sends its fleet into our zone and somebody challenges the agreement and the court finds that it is not in conformity with the law, then it seems to me that we have not just the small international incident which might be caused by our actions here today, but a significant international incident that would be far more difficult to rectify. Which is worse? Perhaps the Ambassador ought to renegotiate the GIFA and avoid that latter prospect.

Ambassador RIDGWAY. Let me say as the negotiator that the language in section 201, which states that each governing international fishery agreement shall acknowledge the exclusive fishery management authority of the United States as set forth in this act, that I have never read it as requiring that each international fishery agreement shall say the following, word for word, and no other words. I have felt bound both on my oath and as a negotiator of the United States committed to implementation of this act to bring to this Congress only those agreements which effectively bring into force the terms of the act. I believe that this exchange of notes does that. I did not include the language; you are quite correct.

Mr. AuCOIN. This GIFA is the only GIFA in which this language, or something roughly equivalent to it, does not appear.

Ambassador RIDGWAY. As I said on Wednesday, I seem to be living with something that I thought was going to be helpful and has turned out not in the least to be helpful. That is a model GIFA which was developed so that we could all understand what was happening. The model GIFA included this language, but it did not have to.

Mr. AuCOIN. I am quoting from the act.

Ambassador RIDGWAY. I do not read the act, Mr. AuCoin, to say that each governing international fishing agreement shall state explicitly and in no other language that the United States exercises exclusive fishery management authority of the United States.

Mr. AuCOIN. Section 201(c) says each governing international fishery agreement shall acknowledge exclusive fishery management authority of the United States.

Ambassador RIDGWAY. I believe this GIFA does.

Mr. AuCOIN. Only after citing international law, which is a very, very murky concept; and the laws of both countries.

Ambassador RIDGWAY. I certainly have never said publicly that the act is not consistent with international law and would not say so if there were a challenge to the agreement.

Mr. AuCOIN. In paragraph 4 of the notes, it is stated that the exchanges of notes shall not prejudice the position of Japan on any question under negotiation of the Law of the Sea Conference.

Ambassador RIDGWAY. Of either government, I believe.

Mr. AuCOIN. Of either government.

Among the questions at the Law of the Sea Conference, is there any discussion of anadromous species?

Ambassador RIDGWAY. Yes; the United States and Japan have the same position on anadromous species in Law of the Sea Conference.

Mr. AuCOIN. What confuses me is that the bill says that the United States shall have authority to manage anadromous species throughout their range beyond the 200-mile zone and yet the notes are silent on that except on page 2, line 7, where it says the United States agrees to consult the Government of Japan. It seems to me to be inconsistent.

Ambassador RIDGWAY. There must be two agreements that we are working with here. During the term of the short term agreement in 1977, the United States, Japan, and Canada remain members of INPFC. Under the long term GIFA the salmon authority of the United States, as I reviewed for Mr. Bonker the other day, is acknowledged as required by the act and is quite clear.

While our law says one thing, we shall continue to pursue the objectives we have sought for so long at the Law of the Sea Conference.

Mr. AuCOIN. One final question.

In your exchange with the gentleman from Massachusetts, did you say that if any nation refuses to agree to the standard terms of the permit, then you will refuse to grant the permit?

Ambassador RIDGWAY. Mr. AuCOIN, I was going by the act, which states that the Secretary of State shall advise the foreign country of the terms and conditions under which the United States is prepared to issue permits and only upon acceptance of those terms and conditions will a permit be issued.

It goes on to state in the act that in the event the country has problems with accepting the terms and conditions, there is an opportunity for consultation; but the country must accept the terms and conditions before the permit is issued.

Mr. AuCOIN. It was also stated by the Department of Commerce that in no case do you intend to deviate—to make any special exception for any one given nation in the language of the terms contained in the permit for which that nation is applying.

Mr. SCHONING. Recognizing that Canada will be treated differently by as expressed by Ambassador Ridgway.

Mr. AuCOIN. I am, of course, concerned with the country of Japan.

Mr. SCHONING. That is correct.

Mr. AuCOIN. I have no other questions at this time. I do look forward to the testimony of the gentleman who helped draft the act, Mr. Sharood, and who takes a different view than the State Department.

I yield back the balance of my time.

Mr. LEGGETT. Thank you, Mr. AuCoin.

Mr. Hughes?

Mr. HUGHES. Thank you, Mr. Chairman.

Put the legal questions which have been raised aside. I wonder just what position it puts us in as we negotiate GIFA's with other countries if you approach it from the standpoint we have approached the Japanese GIFA. Second of all how the countries that have already entered into GIFA's with us might feel about the approach we have taken?

Ambassador RIDGWAY. Mr. Hughes, the full range of GIFA's for those countries who at least until this evening were fishing off our coast have been addressed and negotiations have been completed.

The problem of the constitutional relationship between the executive branch and legislative branch of the Japanese Government and the need to submit documents for constitutional approval arose only in the case of Japan. I am sure while other countries would not consider it appropriate to comment on what the United States and Japan chose to do, I am sure that privately they would be able to understand that the problem was unique and we found a unique answer.

Mr. HUGHES. It just seems to me that our technique is like a game we played as a youngster. I made a statement, but I had my fingers crossed when I indicated something I wanted to hedge on. I just wonder if that does not undermine really our efforts in trying to negotiate in good faith with other countries. Does it not undermine our efforts in some way by using this exchange of notes, this around the barn approach we are taking with this Japanese GIFA.

Ambassador RIDGWAY. I think not. We have managed to conclude our negotiations with the countries that were interested. I did not feel that the fact that the basis of the negotiation for Japan had to take into account, in my view, and I believe in the view of the executive branch, the fact that they had to send a long term GIFA to the Diet was intrusive in any other negotiation.

I think what one needs to review in sequence here is that the long term agreement was negotiated. The question was, having negotiated the long term agreement, how do you bring it into effect?

Having achieved the objectives of the act, having a long term agreement before one, there is still the problem of provisional application, if you will. What is the document that achieves provisional application? That is what we have attempted here, and I believe successfully. It is a unique situation, and it did not harm us in any other field of the negotiations.

Mr. AuCoin. Will the gentleman yield?

Mr. HUGHES. Yes.

Mr. AuCoin. I appreciate the gentleman yielding.

Did the Ambassador say long term agreement has been negotiated and the draft document we have is the final product?

No further discussions are contemplated?

Ambassador RIDGWAY. That is correct. That is not a draft document; that is a completed GIFA, ready to be signed as soon as we can get together and sign it.

Mr. HUGHES. I understand you expect a long range GIFA to be before the Congress within the month.

Ambassador RIDGWAY. It is here now for information. We have to agree with the Japanese on a date for signing. I initialled it, as did the officer of the Japanese Government who also signed the short term agreement. We expect to have it signed and resubmitted. It is the GIFA. The negotiations are concluded.

Mr. HUGHES. I have no further questions, Mr. Chairman.

Mr. LEGGETT. Thank you, Mr. Hughes.

Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

I would just like to make a short comment.

I think both the State Department and the Commerce Department have really done a fantastic job. I understand there may be just one more GIFA that will even need to be approached, and that is in the Caribbean. I do not see the deviousness that has been expressed here. I do not quarrel about the concerns of the members who had them, but I hope we can move forward with this this afternoon. I know we have one more witness.

Mr. AUCOIN. May I be recognized?

Mr. LEGGETT. Sure.

Mr. AUCOIN. I want the record to be absolutely clear that this member of the committee is not in any sense ascribing devious motives to either the State Department, the Department of Commerce, or any other party. More than that, I want to go on record and indicate my greatest esteem for the Ambassador, who I think has had an extraordinary task put before her. The negotiations which she has conducted have been awesome and she has done a remarkable job.

I do believe, however, that we are playing politics with the fish in the Japanese GIFA, and I think the record ought to show that. I understand the circumstances that Ambassador Ridgway feels she is in, that the State Department feels it is in, but I think we ought to call a spade a spade and that is the way I see it. That in no sense detracts from my esteem for the Ambassador. I think she is one of the most able witnesses I have seen before any committee I have served on in the Congress. It has been a pleasure to have this exchange with her.

I just see the GIFA or the agreement in a different light. I hope she understands that and I hope the committee does as well.

Mr. STUDDS. Will the gentleman yield?

Mr. AUCOIN. I would be happy to.

Mr. STUDDS. A variety of people in this town have been playing politics with fish in a variety of ways now for years. On balance, the fish have won for the first time.

Mr. AUCOIN. The U. S. fishermen seldom have.

Mr. STUDDS. On balance, the Japanese GIFA aside.

May I just say that it is my understanding for the umpteenth time—I want to put it on the record—testifying on behalf of the Department of State, Ambassador Ridgway has stated that no permits will be issued to Japan or to any other country for that matter unless and until that nation acknowledges in writing the conditions and restrictions contained with this sample application of the German Democratic Republic?

Ambassador RIDGWAY. That is correct.

Mr. STUDDS. I might also add it is my understanding that the Japanese Government has ordered its vessels to raise and stow their gear as of midnight tonight; is that your understanding also?

Ambassador RIDGWAY. We told them to stop fishing.

Mr. STUDDS. I believe there was a radio broadcast to that effect today.

Mr. Schoning?

Mr. SCHONING. I talked this morning with the fisheries attache of the Japanese Embassy. He indicated they have communicated now with all of their vessels, advising them to stop fishing beginning March 1 and until and if a GIFA is signed.

Mr. STUDDS. Surely that act reflects acknowledgment of the jurisdiction of the United States on their part.

I thank the gentleman for yielding.

Mr. LEGGETT. Mr. Emery?

Mr. EMERY. This is a little bit out of tune, but I was just thinking of a possible alternative that we might recommend. I appreciate your comments. I am certainly not one who is anxious to see the Japanese fishing at any cost at 12:01. That view has been expressed on many occasions.

It seems to me that if we are reasonably sure, if the State Department is reasonably sure, that the Japanese will decide to act in good faith, maybe one alternative would be for us to accept the language we have been discussing with a provision to negotiate through the proper channels with the Japanese Government in order to improve the language on the provisional agreement. The language loopholes and fuzzy wording would not be a problem until such a time as the real thing can be negotiated and agreed upon by the appropriate legislative body in Japan and approved by the Congress and the State Department.

The alternative, it seems to me, would be simply to turn down this agreement, with possibly some international pressure, and simply wait until the final agreement is achieved. It would seem to me that if we are willing to look at the Japanese position, they might be able to accept a few days, a week, or several days, just long enough to approve language, so that those of us who have questions will feel a little bit more comfortable with the law in the interim.

Ambassador RIDGWAY. You invited me to comment, Mr. Emery. I believe that the Japanese have negotiated a long term agreement which is before you and which in addition to being consistent in substance is consistent in form with all the other documents which have come over here. We would hope to submit to Congress very shortly that agreement for formal oversight. The problem was how does one bring about provisional application of the terms of that long term agreement? We are managing at the moment on an annual basis, and the initiation of the fishery, and the acceptance of the terms and conditions regarding that fishery, are what is in my view the most important.

We believe that the short term agreement accomplishes two things. First of all, as we have indicated in the memorandum of law, it accommodates a constitutional problem for Japan in that the Japanese Government feels that as the executive branch it could not

explicitly accept the specificity of the long term agreement. Nevertheless, in our view, the short term agreement does meet all the terms and conditions of the act.

As I have indicated, if the GIFA is approved and we move into the process of forwarding application of permits and the like, the Japanese would be asked as have all other countries, to accept the conditions and restrictions attached to the permit before the permit is issued.

Once that is done, whether that is done later this week or whether it is done at a later date because of delay, the terms and conditions regarding this year's fishery have very much been accepted. There would be in my view no need to go back and reopen the exchange of documents. Rather, the need would be, as I think Mr. AuCoin suggested the other day, to hasten the process by which the long term agreement comes into force.

The short term agreement has an outside date of December 31, 1977. It can also expire before then.

Mr. EMERY. The problem is not necessarily delay in negotiations or delay on our acceptance, but rather it is a question of the Japanese Government taking whatever complete actions its Constitution specifies; is that not correct?

Ambassador RIDGWAY. That is correct.

Mr. EMERY. What is the delay we are taking about? How long is it going to be before they have completed action?

Ambassador RIDGWAY. We have been in consultation with the Japanese on this. We expect that the document will be submitted formally to their Diet under their own procedures at the same time their other treaties that have been negotiated since the last Diet session are submitted. We expect that to happen this month. At that point they work with calendars, I believe, the way the Congress does; I do not know when their version of this will be on the Diet calendar. Certainly it is clear that sooner is better than later.

Mr. EMERY. If theirs works the same as ours, they probably will not get to it for a while. The point that I raise, though, it seems our hangup today is not the content of the pending agreement as much as it is validity of the letter of intent, if you will, that you supposedly will tie this over between tonight and the day that treaty is finally adopted; is that not correct?

Ambassador RIDGWAY. Mr. Emery, it is not a letter of intent. It is in our view a governing agreement.

Mr. EMERY. That is the crux of the problem. Although we respect the State Department's view, there seems to be some disagreement on that point. I guess the point I raised initially in my opening discussion was that if you are satisfied that we are not entirely satisfied, obviously there is a problem. Somewhere in the middle there has to be a meeting of the minds. If we are not satisfied with the effect of that document, maybe what we ought to do is accept that temporarily, so we can get the ball rolling, but see if we can engineer and improve language as soon as possible so that we will be more satisfied and you will not be necessarily satisfied.

Ambassador RIDGWAY. Mr. Emery, I believe we have gotten to that problem today on this question of conditions and restrictions on a permit.

If the agreement is passed and the question of the conditions and restrictions is handled as we have said it will be, then there will be a letter in which conditions and restrictions are accepted. Then the process for this year's fishery is effectively completed with the exception of the enforcement by the United States should a problem arise.

Mr. LEGGETT. I think they are all the questions we have at this point.

Mr. Young?

Mr. YOUNG. If we did nothing, by law, 60 days from now, this GIFA, unless we disapprove, would become a GIFA anyway.

Ambassador RIDGWAY. Yes.

Mr. YOUNG. You say hopefully this month the long term GIFA will be submitted to the Congress?

Ambassador RIDGWAY. Correct.

Mr. YOUNG. When that happens, we have to disapprove; it has to go to the committee and to the floor and to both Houses; is that correct?

Ambassador RIDGWAY. If you are talking about disapproval, yes.

Mr. YOUNG. Which you and I both know there is no possibility of unless it is so blatantly bad that it causes great furor. Consequently, the long term GIFA is approved, and the only handle we will have on any future negotiation and agreements with the foreign fishing fleet will be through the Department of Commerce because they will allocate the surpluses?

Ambassador RIDGWAY. They determine the surpluses.

Mr. YOUNG. And you allocate them?

Ambassador RIDGWAY. Yes.

Mr. YOUNG. If there is no surplus, then of course you have got problems. My question probably is to Dr. Schoning, and I am hopeful that in this decision—and I have yet to see this—your optimum yield is based upon scientific fact and not on State pressure.

I want to be assured that we see where you establish that surplus through scientific documents and not through the pressure of the State Department for international political ballgames, if that is the only key we are going to have for 5 years.

Mr. SCHONING. Mr. Young, the existing preliminary management plans will stay in effect until superseded. That will be only when the councils choose to develop a plan after considering optimum yield, economics, biology, sociology, and other factors. If the decision is made that there is no surplus available to foreigners, they are not going to get any.

Mr. LEGGETT. After this year, the palm is going to originate at the local fishery level.

Mr. YOUNG. With all due respect, the law is on the books, but I have witnessed where the State Department is well represented there, and the Commerce Department is well represented in the council room and sometimes the council has a way of being slowly convinced that theirs is the wrong way to go. I hope I do not witness that again. I am trying to emphasize that we must maintain a viable fishing stock. That is why we will want scientific information available to this committee. I do not plan on fooling around with

the council as long as they are acting as a council, independently from both of your departments. You understand.

That is all, Mr. Chairman.

Mr. LEGGETT. Mr. AuCoin.

Mr. AUCOIN. I am ready for the next witness.

Mr. LEGGETT. Thank you very much.

You folks might stay. It might be helpful.

Mr. Sharood, we have your statement before us. We have also a letter here from the Secretary of State, Mr. Cyrus Vance, to the chairman of our committee, which I will read at an appropriate time.

Your analysis will be incorporated in our record at this point. Perhaps you would like to summarize it for us. It is nice to have you before the subcommittee.

[The following was received for the record:]

STATEMENT OF THE NATIONAL FEDERATION OF FISHERMEN
BY RICHARD N. SHAROOD, COUNSEL

Mr. Chairman, Members of the Committee, I appreciate the opportunity to offer my comments and observations on behalf of the National Federation of Fishermen regarding the exchange of diplomatic notes between the United States and Japan dated February 10, 1977. This exchange of notes would be approved as a Governing International Fisheries Agreement if HR 3753 is enacted.

I have listened carefully to the testimony offered by Ambassador Ridgway and the very constructive exchange of views which followed her presentation last Wednesday.

At that time, she stated quite accurately that a GIFA might be written in one sentence. It would simply state that the nation seeking fishing rights in our 200 mile zone acknowledges the exclusive fisheries conservation and management authority of the United States as embodied in Public Law 94-265. I concur in her view. Unfortunately, the conclusion she drew from this legal promise with regard to the U.S.-Japanese exchange is incorrect.

The exchange of notes with Japan is not a GIFA and no amount of rhetoric, no matter how artfully presented, can make it so. The essential legal ingredient, acknowledgement of exclusive United States jurisdiction, is missing. The English language is reasonably precise. Paragraph one of the Notes does not, under any reasonable and legal interpretation, constitute such an acknowledgement. To the contrary, exclusive U.S. jurisdiction is clearly denied by the primary reference to international law which will be the

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governing legal basis for Japanese fishing in the zone. This is reenforced by paragraph four which states that the exchange of notes shall not prejudice the position of Japan on "any question under negotiation at the law of the Sea Conference." What questions are under negotiation? Inter alia: management of anadromous species and even more basic, the very nature and extent of the exclusive fisheries zone, or is it the economic zone?

The point is existing international law, either as embodied in treaty or through usage, has not yet reach the state of embracing the concepts embodied in Public Law 94-265. If it were so, we would not have had such difficulty enacting that law in the first place.

It may be argued that since the enactment of Public Law 94-265, so many other nations have adopted the 200 mile fisheries zone, that in the past year, a 200 mile zone has become customary international law. Assuming further that this is true, does such customary international law now also embrace the concept of management of anadromous species throughout their migratory range.

We know how the State Department intends to interpret this agreement based upon Ambassador Ridgway's testimony. Unfortunately, the English language does not support her position. It clearly favors the Japanese position. Frankly, I feel very uneasy about an agreement to which the parties agree to give diametrically opposed interpretations, supposedly to facilitate the constitutional processes of Japan.

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If you decide to put your stamp of approval upon this exchange of notes, you must do so for reasons which are completely beyond the question of fisheries management. Do not approve these notes under the guise of a valid GIFA. Approve them with open recognition of their non-adherence to the Act and in spite of such failure.

Last week in response to Congressman Studds, Ambassador Ridgway indicated that failure to approve the Japanese agreement, would be in effect the one action which will trigger a major international crisis. I am sure the Ambassador's statement is a sincere expression of her personal conviction. The possibility of such a disruption of our relations with Japan is the only basis upon which this agreement could be approved. If you approve the agreement for that reason, please tell the fishing industry that is your reason. If the agreement is thus allowed to come into force, the Congress must be especially vigilant to insure that Public Law 94-265 is fully implemented with respect to the Japanese and that enforcement in the case of the Japanese will be no less vigilant than in the case of any other nation authorized to fish in our zone.

Assuming the interim agreement with Japan does not, as a matter of law, constitute a valid Governing International Fishery Agreement, and assuming further that you do approve this agreement because of overriding foreign policy considerations, what is the legal effect of enacting HR 3753?

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Does such action somehow amend Public Law 94-265 so as to waive the requirement that a GIFA set forth recognition of exclusive U.S. management authority? The answer is clearly no. If you do not provide such a waiver, will the courts find the Japanese GIFA a nullity? I believe so. I also believe Ambassador Ridgway has received very bad legal advice.

Whoever suggested this exchange of notes, hoisted Ambassador Ridgway and the Congress on the horns of a very serious dilemma. Congressional approval of a GIFA, either by this accelerated procedure or by the terms of Public Law 94-265, merely triggers the entry in to force of the GIFA. It does not alter the legal requirements of a GIFA unless the Act of approval amends or waives those requirements. Mere approval of the GIFA does not constitute such an amendment or waiver.

Let us suppose you do amend or waive the legal requirements for a valid GIFA so that the Japanese are not required as a matter of law to acknowledge exclusive U.S. management authority. Such an action raises the question of enforcement. How can we enforce our law, if by law, we waive the requirement that the Japanese recognize U.S. jurisdiction. Are we not then thrown into the quagmire of "customary international law" - the primary legal basis of the exchange of notes under consideration?

I do not see how this exchange of notes, if used as a basis for allocations and fishing permits to the Japanese, can withstand scrutiny by the judiciary unless you adopt a waiver of Section 201(c) of the Act. I am not suggesting that the NFF

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will initiate such a challenge. Frankly, our resources are severely limited both in terms of manpower - person power - and money. But someone is likely to do so.

If you agree with my interpretation of this exchange of notes, mere approval cannot preclude the diplomatic crisis Ambassador Ridgway has assured us will come, unless you explicitly waive the GIFA requirements of Public Law 94-265 for the benefit of the Japanese. In effect, suspend the law.

The consequences of waiving Section 201(c) would be far reaching. Every other nation that has signed a Governing International Fishery Agreement has acknowledged exclusive U.S. authority. Unless a foreign nation submits to U.S. jurisdiction through such acknowledgement, enforcement against that nation becomes a unilateral act. Compliance, on the part of the foreign nation and its citizens, becomes a purely voluntary act. These are very large concessions to make to the Japanese. I hope that notwithstanding the threat of diplomatic crisis, you will not make these concessions.

I would like to summarize for a moment, where I think we are and then offer a solution. The exchange of notes with Japan does not conform to the most basic requirements of the Act. Section 201(c) of the Act may be waived. If it is waived, you will obviate any possibility of the agreement being challenged in court. If you do not waive Section 201(c), the agreement can be successfully challenged in court and all Japanese fishing in the zone would have to stop at that time. If you waive Section 201(c), you place the Japanese on a pedestal above the reach of the Act, except to the extent that they voluntarily submit. You can enforce the Act

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against the Japanese. This would be a major reversal of Congressional policy, which we hope you will not undertake.

Ambassador Ridgway has done her utmost, and with great skill, has accomplished a near miracle of international negotiations during the past year. The Japanese are, however, her Achilles heel. We feel that it would be better to tell Ambassador Ridgway to go back to the Japanese and renegotiate this interim agreement to cure its defects now before intensive Japanese fishing has begun in good faith, relying upon Congressional approval of the present agreement, which is likely to be reversed by the courts in the coming months. If the Japanese are fishing for their million plus ton allocation, when the GIFA is thrown out, the diplomatic incident will be far worse than any which could occur today over failure to approve the present agreement. We find it inconceivable that the Japanese cannot sign a valid agreement with the United State at this time or for that matter, that consideration by the Japanese DIET must await action on their budget. We urge you not to approve the Japanese agreement.

STATEMENT OF RICHARD N. SHAROOD, COUNSEL, NATIONAL FEDERATION OF FISHERMEN, ACCOMPANIED BY LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF FISHERMEN, AND JACOB J. DYKSTRA, EASTERN REGION PRESIDENT

Mr. SHAROOD. Thank you, Mr. Chairman, of course you know Lucy Sloan, Executive Secretary of the National Federation of Fishermen, and Jacob Dykstra, Eastern Region President.

I think, Mr. Chairman, in light of the testimony you have already heard today and the exchange that you and Mr. AuCoin, Mr. Studds, Mr. Young, and other members have had previous to our appearance here, it really is unnecessary to read my prepared statement.

I think the issues that I raised in my statement have been thoroughly discussed. Just in very brief summary, we feel the agreement between the United States and Japan is not a valid GIFA. We do not believe that the congressional approval of this agreement, in the form of the bill you have before you, will cure that defect. We do not agree with the position you heard a few minutes ago from a legal representative of the State Department that if this GIFA is challenged in court, the court would give great weight, if you will, to the fact that Congress has approved it.

The law still says what a GIFA must contain. We feel that it would be better to acknowledge this shortcoming now and attempt to correct it at this time rather than to wait until a court terminates Japanese fishing.

Personally, I hope that does not happen. I think it would be far better if the situation did proceed as the State Department hopes and as I know the Congress hopes, without any confrontation or any disruption of international relations.

We are not at all satisfied that this will work out quite the way the State Department hopes. However, I think the permit system and the acceptance of the conditions and restrictions that are attached to the granting of the permit may in practice cure this defective GIFA. In that regard I want to note for the record the fact that the section of the act which deals with the acceptance of the conditions and the restrictions—that in section 204(b)(11) of the act—refers back to paragraph 7 of that same section, which sets forth various conditions that must be agreed to by a foreign nation.

Among those conditions are the various provisions of section 201(c)(1), (2), and (3). These are the provisions of the act wherein Congress states the "sense of Congress" as to what a GIFA should contain.

Those sense of Congress provisions are extremely important because they are really the guts of the foreign nations' compliance with our legal regime. For example, section 201(b)(2) states that the foreign nation agrees that boarding officers may come aboard the vessel of that nation and make arrests and seizures whenever the officer has reasonable cause to believe that a violation of the act has occurred.

And, for example, also there is the requirement that the foreign nation assume responsibility for the reimbursement of the U.S. citizens for their gear loss and also the provision dealing with appointment of agents in the United States.

Since Ambassador Ridgway has stated that the Japanese, along with other nations, will acknowledge in writing the terms and conditions attached to the granting of the permit, we assume, that by doing so, the Japanese agree to abide by all the provisions set forth in section 201(b)(1), (2), and (3), that I have just previously summarized.

If that is, in fact, the case, is a very large step forward. I think perhaps this whole exercise that we have gone through today and last week and the delay that occurred in the enactment of the legislation has been very salutary, because it has gotten this on the record which we did not have so adequately on the record last Wednesday when the committee was considering this bill.

That does not, however, cure the fundamental defect in the agreement, which could, I think, well be challenged.

I hope it is not, but there is that possibility. If it does occur, the diplomatic crisis which the Ambassador alluded to last Wednesday will certainly be far worse than if it happens now.

A couple of points came up during the earlier discussion which I think we ought to elaborate upon. I do not want to misquote anybody, but I believe, in response to questions earlier, it was indicated that the various Regional Management Councils and the fishing industry had been consulted with regard to allocations to foreign nations.

If I have heard that correctly, I would like to correct the record because, as far as I know, nobody on the councils or in the fishing industry was consulted at all with respect to the allocations to foreign nations. The allocations were kept closely within the State Department until they were released in final form.

Also, in regard to their preliminary management plans, and the foreign fishing pursuant to those plans, there is considerable—perhaps Mr. Dykstra and Ms. Sloan would care to elaborate on this—there is considerable disagreement, contrary, I believe, to what Mr. Schoning has said. There is not disagreement over every single plan, but there is serious disagreement over the substance of many of the plans.

The State of Maine has felt so serious about it that it has decided to go to court over the herring plan for the Gulf of Maine.

I think the overriding reason why we are concerned about this Japanese agreement is the fact that I think the United States is telling the rest of the nations that have already signed the governing international fishery agreements that we are prepared to play politics over fish.

I have talked to a number of representatives of foreign nations who already have signed GIFA's that have been approved by the Congress under the previous resolution. They have gotten the message very clearly. They are not fooled by this agreement with Japan. I am afraid, frankly, that their attitudes and their view of the U.S. approach to the management of fish under this act has now taken on a new coloration.

I think that, as a result of this, we can expect some of these nations in the future not to be as readily approachable, and we are going to have a harder time dealing with them in terms of the type of information we are going to be seeking from them and their

willingness to cooperate with us in a full and open manner under the act.

We recognize that the committee is largely, I should say, prepared to go forward voting out a bill covering all four of these GIFA's. We do, however, notwithstanding the overwhelming testimony in support of it, want to be on record in opposition.

Mr. LEGGETT. Let me ask you this.

You indicated you do not think the exchange of letters is an agreement.

Why are you against whatever we have before the subcommittee? Is it just an obscure legal point that you raised?

Mr. SHAROOD. No, sir, I do not believe it is an obscure legal point at all. I think it is a very live and litigable legal issue.

Mr. LEGGETT. I understand it is litigable.

Mr. SHAROOD. From all I have heard before the committee in testimony from the State Department, the principal reason for going forward with this exchange of notes now, rather than waiting until the larger GIFA is approved by the Japanese Diet is to preclude a diplomatic incident.

In an exchange with Mr. Studds last Wednesday, Ambassador Ridgway indicated that this was the one agreement she really could not say it does not matter whether it is delayed—she has said this is the one you must approve to avoid such an international incident. We are saying by enactment of this bill, you are accomplishing what she is asking you to accomplish. You are not precluding that diplomatic incident.

If you wish to preclude that incident totally, then, as I have stated in my prepared remarks, you should waive the requirements that the Japanese abide by the provision of the act, acknowledging exclusive U.S. management authority.

Mr. LEGGETT. How do you suggest we do that?

Mr. SHAROOD. I am saying that is the one way you can guarantee what the State Department wants, to avoid an incident with the Japanese.

Mr. LEGGETT. That would cause much more problem, as you well know, than anything else—

Mr. SHAROOD. That would raise the question, can we enforce the law against the Japanese?

If we waive it in that sense, how can we possibly enforce it?

Mr. LEGGETT. If you have a contract between two parties that might seem to be a little bit vague and the parties act in a certain way with respect to that contract, say putting some flesh on it by executing subsequent enabling letters and things like that, then would it not be very difficult for a third party, not a party to the agreement, to come in and say, well, the parties' original agreement was vague.

The fact that they both come in and say they are of a common mind of what they did agree to, and the fact that they have committed the acts of mutuality in support of the vagaries, many times in contract law—

Mr. SHAROOD. I would say you are entirely correct if this were a commercial contract. It is not a commercial contract. I do not think

a court of law would interpret it as though it were a commercial contract.

The analogy is not valid. The concern that I am raising is from the judicial standpoint in determining whether or not this agreement will stand or fall under the law. I do not think the court is going to look at it from the standpoint of commercial undertaking.

Again our concern is that if the reason for approving this is to accommodate the apprehension of an incident with the Japanese, then the way to insure it would be to waive the requirement.

Your approval of it, as though it were a valid GIFA, will not make it a valid GIFA.

Mr. LEGGETT. I appreciate your view on that.

Ms. SLOAN. I simply wanted to reinforce what Dick has said earlier. I have not talked with as many representatives of governments which have already signed other GIFA's as he has, but I have talked with a couple of them.

They raised some concern, and one, whose GIFA is pending before you now, has also raised some concern about the phenomenal amount of effort that it takes to get this sort of thing organized on behalf of the foreign governments with whom we are dealing. They have managed to do it, and now they understand that there is some flexibility which they had not envisioned. They see the Japanese have pushed it with what they consider to be some success.

I wanted to reinforce Mr. Sharood's observation that that may cost us something in the longer term and that worries us.

Mr. LEGGETT. There is nobody here that believes that the Japanese can gain any advantage whatsoever by this delay. We have merely accommodated the democratic procedures of the Japanese Government by this exchange which was thoroughly briefed with the committee counsel here, that this would be the procedure it would take in approval of this segment.

I do not think the procedure is particularly sloppy, ill-considered, or short-timed. It merely results from the reciprocal constraints that we have.

I might indicate that we have the same kind of thing with respect to the United States when we were fishing shrimp off the coast of Brazil. They could well have taken the position, since we did not consummate the Brazilian agreement prior to the time we did last year, that we had fished an extra year ahead of time and necessarily our shrimp fishermen should not have been given permits since they did not have in writing exactly what we agreed to.

As a practical matter, they accommodated us in that respect, and I suspect immeasurably helped both countries. That could have been brought into question of a lawsuit by a Ralph Nader of the fisheries, but that did not occur.

Mr. YOUNG. Mr. Chairman.

Mr. LEGGETT. Mr. Young.

Mr. YOUNG. Concerning Japan's and Russia's negotiations. I am still curious, Mr. Chairman, if they have the same problem constitutionally in the Japanese Diet that we are having with the Japanese—I would like to find that out later.

Mr. LEGGETT. The Japanese?

You can understand that as well as I can.

Mr. YOUNG. It is strange to me they do not have any problem with the Japanese, but we have a problem on our side.

You refer to the permit system, the right to seize, is your interpretation. That should be in the permit with the other conditions—

Mr. SHAROOD. Mr. Young, the section 204(b)(11) says that the foreign nation must notify the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph 7. Paragraph 7 says the Secretary of Commerce shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved, and which must be complied with by the owner or operator of the fishing vessel, et cetera. Such conditions and restrictions shall include requirements described in section 201(c)(1), (2) and (3).

That is the sense of Congress' statement, which covers seizure, arrests, appointments of agents in the United States, various other requirements.

I do not think technically that cures the defect in the GIFA, but from the standpoint of, if you want to go along with the kind of argument that the State Department is making, then, assuming it is not challenged in court or if challenged, not successfully, conceivably, you do have a sort of GIFA through the side door.

This is assuming, of course, that the Secretary imposes these conditions and restrictions on the Japanese, and, secondly, that the Japanese do, in fact, accept them in some formal, written communication.

We have been assured that will be the case.

Mr. YOUNG. Dr. Schoning, is this your interpretation in the permit, all provisions under the law will be stated in this permit.

Mr. SCHONING. Yes, sir. It is our belief that all the requirements of section 201 of the act that relate to the GIFA's are included either in the permit or regulations, with the exception of transponders, which is not a problem this year. All the others are taken care of in either of the two documents.

Mr. YOUNG. If they sign off, which they will have to do before they get the permit—

Mr. SCHONING. In our judgment, the answer is yes, and it is simply a matter of enforcement.

Mr. LEGGETT. Mr. Studds.

Mr. STUDDS. Very briefly, I would like the distinguished people at the witness table, and most particularly the two New Englanders, to understand that in the event this subcommittee votes in the next 2 minutes while I am still here, that I intend to vote to allow full committee consideration of this resolution and also to watch very carefully what happens at 12:01 tomorrow morning.

I, for one, will take as a symbol of whether or not the Japanese Government recognizes the authority of this nation to extend its jurisdiction, whether or not their gear is fully, promptly, thoroughly and totally stowed at 12:01 this morning.

Thank you.

Mr. LEGGETT. Do you intend to be out there with a flashlight?

Mr. YOUNG. Believe it or not, he does.

Mr. STUDDS. We have authorized a number of flashlights for the Coast Guard.

Mr. LEGGETT. Mr. Bonker.

Mr. BONKER. I missed your testimony. I read it. I think it is another viewpoint. You have raised some legitimate questions, as Congressman AuCoin.

I am convinced that the Ambassador has negotiated in good faith, and I have faith that the provisions of the act will be complied with.

Mr. SHAROOD. In my prepared remarks, I think I said the same thing, Mr. Bonker. I want to reiterate it for the record.

We feel she has negotiated in good faith, there is no question about that. She has done an outstanding job. We hope however, that the Japanese agreement will not prove to be hers and our undoing.

Mr. STUDDS. She is about the only living thing in the State Department about whom I have ever seen a fisherman say a kind word.

Mr. AU COIN. I would like the record to show Mr. Sharood was minority staff counsel at the time the 200-mile act was before this committee and was one of the chief draftsmen of that legislation.

I would like to ask one further question of him, and that is, have you consulted any other legal opinions outside the State Department on the legal questions that you have raised? If so, what have you found?

Mr. SHAROOD. I have talked this over with a number of attorneys, both on the Hill and off the Hill, and frankly I cannot find anybody who is willing to support the position stated in this memorandum of law from the Department of State.

I understand why the State Department offers this legal opinion. But I cannot find any support for it. I have not talked to a single lawyer, as I say on or off the Hill, who is willing to support such an argument.

Mr. AU COIN. I thank you, Dick. I thank the Chair.

I simply have the feeling that what we are doing here has more to do with the Trilateral Commission approach to foreign policy than it does to the management of the fishery resources of the United States.

I thank the Chair.

Mr. LEGGETT. Mr. Emery.

Mr. EMERY. No questions at this point.

Mr. LEGGETT. Mr. Hughes.

Mr. HUGHES. I have no questions, Mr. Chairman.

Mr. LEGGETT. Mr. Evans.

Mr. EVANS. No questions.

Mr. LEGGETT. Thank you very much.

Mr. SHAROOD. Thank you very much. We appreciate the opportunity to testify before this committee.

Mr. LEGGETT. We will close the hearing now as far as testimony of witnesses is concerned.

I would like to read at this point a letter from the Secretary of State to Chairman Murphy, dated February 28, 1977.

"Dear Mr. Chairman:

"As you are aware, following the signing into law of the Fishery Conservation and Management Act of 1976 (P.L. 94-265), by President Ford on April 13, 1976, it has been necessary to renegotiate all earlier bilateral arrangements with foreign nations that traditional-

ly fished off our coasts. The Department of State has signed ten governing international fishery agreements (GIFAs) with foreign governments since that time. These agreements incorporate acknowledgment of U.S. management authority as set forth in the Act and establish the conditions under which foreign fishing will be allowed if a surplus is determined in excess of U.S. harvesting capacity in relevant fisheries.

"There are now before the Congress for review agreements with the Republic of Korea, Japan, Spain and the European Economic Community (EEC), three of whose member state, the Federal Republic of Germany, France and Italy, have traditional fisheries off our coast. These agreements are similar to the six which were reviewed by the Congress under the provisions of section 203 of the Act and approved by a Joint Resolution which President Carter signed into law on February 21, 1977, as P.L. 95-6.

"The agreement with Japan for 1977 is different in form but not in substance from other governing international fishery agreements which recently have been negotiated. It consists of an exchange of notes. Attached to that exchange of notes is an initialed long-term agreement covering the period 1978-1982, which has been transmitted to Congress for its information. It will be resubmitted for formal oversight following its signature later this year.

"This short-term agreement of unusual form is the result of our efforts to accommodate the constitutional procedures of Japan, which are so similar to ours, without foreclosing the option of fishing by Japanese vessels in conformity with our law during 1977. The short-term agreement does not require this lengthy process.

"There are a number of elements in the short-term agreement that support our assertion that the underlying requirement of the Act has been met; that is, that the agreement fully acknowledges our fishery management authority. These are, first, the fact that a long-term agreement awaiting Diet approval exists, and that it is a public document before Congress; second, the reference in paragraph 1 of the short-term agreement that 'Japanese fisheries off the coast of the United States will be conducted in accordance with ... the laws and regulations of both countries ...'; third, the fact that the Government of Japan will initiate the vessel application procedure as acknowledged at paragraph 2(a) of the short-term agreement; fourth, the fact that the facilitation of the operation of those vessels off the coast of the United States is within the discretion of the United States under paragraph 2(b) of the short-term agreement; and, fifth, the fact that Japanese fishing vessels off the U.S. coast will have U.S. permits on board and be subject to U.S. enforcement.

"I believe that these four agreements are of crucial importance to both the foreign countries involved and to the United States. All of these countries are important allies and our relations, which extend far beyond fisheries matters are crucial ones. We have consulted closely with officials of the states and industries most concerned in the negotiations which produced these agreements. I believe that both the intent and the provisions of the Act have been fully complied with.

"We have, however, a critical problem with respect to timing. The Act becomes effective with respect to foreign fishing within the 200-mile fishery conservation zone on March 1. If these four agreements have not been approved by the Congress by then, we face a risk of serious difficulties with the countries involved.

"I therefore urge that you do everything possible to assure Congressional approval of these GIFAs immediately.

"I would like to add here that on February 24 we signed a reciprocal fishery agreement with Canada. That agreement is not a governing international fishery agreement but I am aware of your interest in it and we will discuss it separately in another communication.

"Sincerely, Cyrus Vance."

Mr. YOUNG. Did I hear you right when you said consequences far beyond fishery matters concerning this GIFA?

Mr. LEGGETT. Yes.

Mr. YOUNG. If I may continue——

Mr. AUCOIN. I rest my case.

Mr. YOUNG. That is the thing that burns my tail. Fish second and international relations first.

You are right, Mr. AuCoin, absolutely right. He could have left that out and been a lot better off.

Mr. LEGGETT. I believe what he is stating is that we are asking for lots of concessions from Japan from time to time consisting of landing rights of the Alaskan Airways Airlines——

Mr. YOUNG. I beg to differ. If I had my way, I would shut off JAL and they would not land at Anchorage.

Mr. LEGGETT. It is a 2-way street.

Mr. YOUNG. They have got to have our street more than we have theirs.

Mr. LEGGETT. We do have base agreements which are considerably helpful in protecting the integrity of the total Continental United States, including Alaska, and I believe that is generally what he had in mind and probably not much more.

Mr. STUDDS. Will the Chairman accept a motion on the previous question, whatever it was?

Mr. LEGGETT. That there be a motion to pass the resolution pending before the committee to the full committee with a technical amendment: On page 2, line 6, insert "(for 1977)" after the word "States."

I will accept a motion that H.R. 3753 with the referenced amendment be passed to the full committee at this time and take it up tomorrow.

Does someone want to make that motion?

Mr. FORSYTHE. Yes.

Mr. YOUNG. Before we vote, as you well know, if necessary, I will use my prerogative to take a roll call vote. Again let me state for the record that I think the Ambassador has done a good job, I think Mr. Schoning has done a good job.

I think it is also time for this committee and this Congress, to state that we do not deeply appreciate the new Secretary of State picking right up where Secretary Kissinger left off. You talk about a 2-way street, Mr. Chairman.

I know how much involment the Japanese have with the United States. I also know how many of those other countries are fishing off our coasts as the good people in the back of the room mentioned and they are going to look upon this as weakening of our position for political reasons, and not recognizing the management of the fish.

I hope that through the submission of the permits to the Commerce Department and this constant supervision by this committee that we again can establish some credibility as far as the 200-mile limit goes, and show what we intend to do with it.

If there comes a time, as I stated before, any time while in this little position that I serve in, that I see that the Japanese are not truly trying to recognize the management concept, I am going to do everyting I can to see that this supposedly 2-way street is a 1-way street. It disturbs me deeply that Secretary Vance would come out with the same line that we have been listening to for the last 20 years.

Mr. STUDDS. I call for the question.

Mr. LEGGETT. There has been a motion made that we pass out the resolution as amended. The previous question has been called for.

All in favor say aye.

[Chorus of "ayes."]

Mr. LEGGETT. Opposed?

[Chorus of "noes."]

Mr. LEGGETT. The ayes have it.

All in favor of the resolution, as amended, signify by saying aye.

[Chorus of "ayes."]

Mr. LEGGETT. Opposed?

[Chorus of "noes."]

Mr. LEGGETT. The ayes have it. The resolution will be reported to the full committee, and we will take it up at 9:30 tomorrow morning.

I want to thank all of you very much for your cooperation.

[Whereupon, at 5:05 p.m., the subcommittee adjourned, subject to the call of the Chair.]

INTERNATIONAL FISHERY AGREEMENTS

THURSDAY, MARCH 17, 1977

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FISHERIES AND WILDLIFE
CONSERVATION AND THE ENVIRONMENT,
COMMITTEE ON MERCHANT MARINE AND FISHERIES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 10:15 a.m., in room 2203, Rayburn House Office Building, Hon. Robert L. Leggett, Chairman of the subcommittee, presiding.

Mr. LEGGETT. The Subcommittee on Fisheries and Wildlife Conservation and the Environment will please come to order. I am very sorry for being late.

This morning the subcommittee will hold hearings on legislation to give congressional approval to the United States-Canada fisheries agreement signed on February 24, 1977.

The reciprocal agreement was transmitted by the President to the Congress on February 28, and in his message the President made it clear that it was not a Governing International Fishery Agreement—better known as a GIFA—within the terms of the Fishery Conservation and Management Act. He said that: "...the reciprocal accommodations of United States and Canadian interests required inclusion in the agreement of provisions which are not consistent with certain sections of the act." Additionally, "Positive congressional action therefore is required to bring the reciprocal agreement into force."

Finally, the President requested that the Congress pass appropriate legislation that would have the effect of bringing the agreement into force and effect.

Pursuant to that request, Colleagues Forsythe, Oberstar, Akaka, and Hughes joined me on March 14 in introducing H.R. 4954. Briefly explained, H.R. 4954 would give congressional approval to the agreement, as contained in the President's message to the Congress, and it would provide that the agreement would be in force and effect only for the period from March 1 to the end of the year.

During this period, nationals and vessels of Canada could fish within the 200-mile fishery zone of the United States and for anadromous species and Continental Shelf fishery resources beyond the zone in accordance with the provisions of the agreement, notwithstanding the requirements of Title II of the Fishery Conservation and Management Act.

In other words, our 200-mile Fishery Zone Act, that applies to countries that have entered into GIFA's with us, would not apply with respect to nationals and vessels of Canada fishing within this zone. The agreement itself would control and regulate such fishing.

Finally, it should be pointed out that the 1973 Reciprocal Fisheries Agreement between the United States and Canada—covering the nationals and vessels of the two countries as it relates to fishing within 12 miles of each other's shores—which was extended by exchange of notes on April 22, 1976 to April 24, 1977—will remain in force and effect until it is superseded by the entry into force and effect of this new reciprocal agreement.

The bill and Department reports will appear in the record at this point.

[The documents follow:]

95TH CONGRESS
1ST SESSION

H. R. 4954

IN THE HOUSE OF REPRESENTATIVES

MARCH 14, 1977

Mr. LEGGETT (for himself, Mr. FORSYTHE, Mr. OBERSTAR, Mr. AKAKA, and Mr. HUGHES) introduced the following bill; which was referred to the Committee on Merchant Marine and Fisheries

A BILL

To amend the Fishery Conservation Zone Transition Act in order to give effect during 1977 to the Reciprocal Fisheries Agreement between the United States and Canada.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That the Fishery Conservation Zone Transition Act (Public
4 Law 95-6; 91 Stat. 14-16) is amended by adding at the
5 end thereof the following new section:

6 “SEC. 5. RECIPROCAL FISHERIES AGREEMENT BETWEEN
7 THE UNITED STATES AND CANADA.

8 “(a) CONGRESSIONAL APPROVAL.—The Congress here-
9 by approves the Reciprocal Fisheries Agreement between
10 the Government of the United States and the Government

1 of Canada (hereinafter in this section referred to as the
2 "Agreement"), as contained in the message to Congress
3 from the President of the United States dated February 28,
4 1977. The Agreement shall be in force and effect with
5 respect to the United States during the period beginning
6 March 1, 1977, and ending at the close of December 31,
7 1977.

8 " (b) APPLICATION.—During the period when the
9 Agreement is in force and effect with respect to the United
10 States—

11 " (1) vessels and nationals of Canada may fish
12 within the fishery conservation zone, or for anadromous
13 species and Continental Shelf fishery resources beyond
14 such zone, but only pursuant to, and in accordance with,
15 the provisions of the Agreement; and

16 " (2) title II of the Fishery Conservation and Man-
17 agement Act of 1976 (relating to foreign fishing and
18 international fishery agreements) shall not apply with
19 respect to fishing within the fishery conservation zone,
20 or for anadromous species and Continental Shelf fishery
21 resources beyond such zone, by vessels and nationals
22 of Canada.

3

1 “(c) DEFINITIONS.—As used in this section, the terms
2 ‘fishery conservation zone’, ‘anadromous species’, and ‘Con-
3 tinental Shelf fishery resources’ shall have the same respec-
4 tive meanings as are given to such terms in section 3 of
5 the Fishery Conservation and Management Act of 1976.”.

THE SECRETARY OF STATE
WASHINGTON

March 7, 1977

Dear Mr. Chairman:

On February 24 a US-Canadian reciprocal fisheries agreement was signed in Washington. This agreement is the result of four months of intensive negotiations, necessitated by the extension of fisheries jurisdiction by both countries.

The agreement governs fishing for 1977 only; we will continue seeking long-term permanent agreement with Canada on a range of fishery related issues. For 1977, however, this agreement protects U.S. fishery interests off Canada and does so in a manner which does not prejudice our position on disputed maritime boundaries with Canada. On a reciprocal basis, the agreement also accommodates Canadian fishery interests in our fishery conservation zone.

As such a reciprocal accommodation is not possible under the detailed terms of P.L. 94-265, this agreement is not a governing international fishery agreement (GIFA) as contemplated by the Act. Thus positive congressional action will be required to bring the agreement into force and it is being submitted to the Congress for such action.

The Honorable

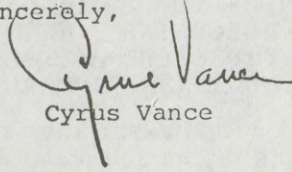
Robert L. Leggett,
Chairman,

Subcommittee on Fisheries and Wildlife
Conservation and the Environment,
U.S. House of Representatives.

- 2 -

Because of its urgency, I hope you will be able to support prompt consideration and approval of this reciprocal agreement in the interest of both our fisheries concerns--and our general cooperative relationship with Canada.

Sincerely,

A handwritten signature in dark ink, appearing to read "Cyrus Vance". The signature is fluid and cursive, with a large initial "C" and a long, sweeping underline.

Cyrus Vance

Mr. LEGGETT. Our first witness today is Ambassador Ridgway. We are very pleased to have you here, and your statement will appear in the record. We have had a letter from Cyrus Vance, the Secretary, indicating the matter is urgent, and he hopes we will be able to support prompt consideration and approval of the agreement. Without objection, his letter will appear in the record.

Your statement is 13 pages, you can expand on that as you care.

STATEMENT OF AMBASSADOR ROZANNE L. RIDGWAY, DEPUTY ASSISTANT SECRETARY, OCEANS AND FISHERIES AFFAIRS, DEPARTMENT OF STATE, ACCOMPANIED BY DAVID COLSON, OFFICE OF THE LEGAL ADVISER

Ambassador RIDGWAY. I know that the subcommittee's schedule and schedules of the subcommittee's members is especially tight these days, and I will not attempt to read my statement. I have a corrected version, which is only corrected in the literary sense, it is before the subcommittee, and I will confine myself to it.

Mr. LEGGETT. The statement you filed with the subcommittee is not literary?

Ambassador RIDGWAY. It has the wrong verb on occasion.

Mr. LEGGETT. We will try to find out where the corrections appear.

Ambassador RIDGWAY. I have trouble with the subjunctives.

If I could just briefly highlight, I think, I can save some time.

What I would hope we could do would be to consider this agreement in the framework of where we have been with Canada in a series of negotiations. Both the United States and Canada have extended their jurisdictions to 200 miles, and the question of recognition of fisheries jurisdiction did not arise, and is not an issue between the United States and Canada. Both governments anticipate that the extension of jurisdiction by the two countries might raise issues which would have to be resolved. I made my first trip in this position to Ottawa in October of 1975 and reviewed with the Canadians the various tasks that seemed to flow from the prospect that both countries, probably by January 1977, would have a 200-mile fisheries jurisdiction in place.

We decided at that time that the issues were so complex that they ought to be kept separate, that is, that we would discuss separately maritime boundaries, salmon, and traditional fisheries; and the hope then was that by January 1, 1977, we would have at least for consideration three documents the total of which represented a new comprehensive fisheries relationship between the United States and Canada. We were not able to meet that goal.

In October of 1976 we decided that we had to turn to the question of a short term arrangement which would give us time in 1977 to return to the long term negotiations. At that time three incredibly complex negotiations which we had deliberately kept separate all had to be brought together into a single document for the interim period.

We negotiated in November, in January, in Los Angeles, and I believe you are aware, Mr. Chairman, and most of the subcommittee members are aware, that we brought back from Los Angeles an

incomplete document, and that two very difficult issues were still unresolved.

First, how to describe in the agreement the status of the boundary question between the United States and Canada. It was not possible to construct a formula which was neutral and preserved the positions of both. With respect to salmon, there was the question relating to the intermingling of U.S. and Canadian stocks—question of salmon interception, which we have been trying to negotiate for 20 years.

We concluded an agreement on February 24, which is the document that has been submitted. We do believe that document, preserves the domestic management system of the act, and at the same time acknowledges that between the United States and Canada there is a very real mutual interest in a long term solution of the problem of interception. Concerning the boundaries, we believe the formula is neutral.

I think the committee asked before, why there is not a GIFA. We began our statement by noting that since this agreement was to accommodate U.S. interests in the Canadian zone, we would expect Canada to request the same kind of accommodation of their interests in our zone. We could not construct such accommodations within the terms of the act. What we have is an effort to respect the domestic management systems and the institutions of the act yet still achieve our objectives concerning U.S. interests in the Canadian zone.

Mr. LEGGETT. Let me ask you this, is there Canadian fishing in our zone at the present time?

Ambassador RIDGWAY. Yes.

We have agreed that there would be provisional application of the agreement, pending the opportunity for Congress to take action to approve or not approve the agreement. The discussions that we had, I believe it was March 1 or February 28 when I appeared before the subcommittee, Mr. Chairman. I indicated that it was our view that as a policy matter, since Canada was permitting U.S. fishermen to fish in the Canadian zone without agreement, that it was in the interest of the fishermen of both sides to provisionally apply the agreement.

Mr. LEGGETT. We mutually agreed on it.

Mr. FORSYTHE. Agreed to each others zones.

Mr. LEGGETT. It was reciprocal.

Ambassador RIDGWAY. Those would be my comments, Mr. Chairman, in terms of highlights.

We have not had an opportunity to see the bill introduced, but we have been in consultation with the subcommittee staff and counsel. We will be providing our formal comments on the bill.

Mr. LEGGETT. You support generally the bill that is before us?

Ambassador RIDGWAY. Yes, I do.

Mr. LEGGETT. Do you have amendments to offer to the bill?

Ambassador RIDGWAY. I believe there will be amendments. We are working with the Department of Commerce on that. There are some requirements that flow from the agreement for exchange of information. I think there will be a proposal coming forward to make it possible to meet those obligations.

Mr. LEGGETT. Now, do you anticipate that we will have an agreement by the end of the year, will it apply to 1978; or do you anticipate that we will have a bilateral exception to the law *ad infinitum*?

Ambassador RIDGWAY. I would be reluctant to say that we are not going to have something, because we expect to return to negotiations on both the salmon and other fisheries. I did make mention in my statement of the difficulty we are having not only between the United States and Canada, but within the United States, of forging an understanding of a common purpose. We do not want to rush in, that would seem to inspire misunderstanding. There is need to have something in place for 1978. If we are forced to choose between having something in place by 1978 of a long term nature that people neither understand, nor want, nor support, or another short term agreement, I would have to opt in favor of looking at the situation for another year, rather than a long term agreement.

Mr. LEGGETT. What is the general situation with respect to the fish tonnage that can be taken by each country in the other's fishing zone?

Ambassador RIDGWAY. Mr. Chairman, I came prepared to answer the question in dollars. I will give it to you in dollars.

Mr. LEGGETT. You can do it either in dollars or tonnage.

Ambassador RIDGWAY. One must exclude from this the boundary regions in which both countries are fishing.

Mr. FORSYTHE. Will the Chairman yield at this point?

Mr. LEGGETT. Certainly.

Mr. FORSYTHE. What are the boundary regions? That is something I do not understand.

Ambassador RIDGWAY. If we could go to the agreement, Mr. Forsythe. The Canadian Government on November 1, 1976, published coordinates respecting certain fishing zones. The United States on November 4 published certain limits of our zones; and the result was an area in which there are overlapping claims, and that is described as the "boundary region" in the agreement.

Mr. FORSYTHE. The overlap.

Ambassador RIDGWAY. That is correct. The value of U.S. fisheries in Canadian waters taken in a 1971-1975 average—the waters that the United States considers Canadian—on the West Coast, is approximately \$8 million. The projected figures on the East Coast are approximately \$7 million. Some of my colleagues from Commerce may have more recent figures. We did not pick these out to make a case. These are the best figures we could get at the time.

The value of Canadian fisheries in U.S. waters—and those would be what Canadians consider U.S. waters—on the West Coast is \$8.1 million. We have reached a one-to-one relationship. The value of Canadian fisheries in U.S. waters outside the disputed area on the Atlantic side is \$2.4 million, based on the projected 1977 figures.

The Canadian interest in the "boundary region" is very, very large, something in the neighborhood of \$17 million.

Mr. LEGGETT. \$17 million in dispute?

Ambassador RIDGWAY. Yes, in the disputed area \$17 million, the Canadian interest.

Mr. FORSYTHE. Is there U.S. fishing in that same area?

Ambassador RIDGWAY. Yes, in this instance it is about \$3 million.

Mr. LEGGETT. The disputed is just on the East Coast?

Ambassador RIDGWAY. That is the same primary disputed area. Mr. Colson reminded me that there are other disputed areas on the Pacific side where we have started from different points so we ended up with different lines. These are very small areas that one could call overlapping. As far as we know that is a technical problem and can be straightened out. We have not included, of course, the Arctic boundaries, where there are large differences.

Mr. LEGGETT. And what species are we generally talking about, salmon?

Ambassador RIDGWAY. For the United States in Canadian waters, starting on the West Coast, we are talking about halibut, salmon, shrimp, albacore, and the other ground fish, including sole and perch. On the East Coast we are talking about some billfish, ground fish, and squid.

For Canada, on the other hand, their interest would seem to be in halibut and salmon, their major interest. They have a substantially smaller interest in the category of ground fish, and a substantially smaller interest in albacore. On the East Coast, with respect to the first figure, that \$3.4 million, we are talking about ground fish and squid.

Within the boundary region, the major fishery is in scallops.

Mr. LEGGETT. And the \$17 million and \$3 million are primarily involving scallops.

Ambassador RIDGWAY. That is correct.

Mr. LEGGETT. Very interesting. Mr. Forsythe, any questions?

Mr. FORSYTHE. Yes, Mr. Chairman; thank you.

Back to that boundary region, about how big an area are we talking about.

Ambassador RIDGWAY. Generally it is referred to as the northeastern third of Georgia's bank. I have not seen the figures per miles, but it is an exceptionally valuable part of the fisheries grounds.

Mr. FORSYTHE. I did not find who enforces what wherein the agreement.

Ambassador RIDGWAY. There are two systems of enforcement in the agreement. The first is exclusively national enforcement of national regulations within the area clearly under the jurisdiction of each.

Mr. FORSYTHE. Except the boundary.

Ambassador RIDGWAY. The United States enforces against all foreigners, including Canadians, within those areas that are not overlapping—outside those areas that are not overlapping claims.

Concerning the boundary regions where both countries have put forth claims, we had to arrive at a system in which each of us enforces against all other people, but not against each other. Each of us does enforce against third parties, and prosecutes under the national law of the prosecuting party. We have each agreed not to allocate to third parties in the boundary regions.

Mr. FORSYTHE. That was my next question, there is no licensing of third parties by either nation.

Ambassador RIDGWAY. By either.

Mr. FORSYTHE. In this agreement we pick up ICNAF, Canada is a member of ICNAF.

Ambassador RIDGWAY. That is correct.

Mr. FORSYTHE. Do we set a precedent with this where we set a ICNAF quota.

Ambassador RIDGWAY. I think the only precedent that has been set is the recognition that somehow we are looking at a future where the United States and Canada are going to have to find some way to sit down and coordinate our management of certain kinds of stocks. The reference in the agreement to ICNAF was for convenience more than anything else. These were stocks and allocations that had previously been agreed to. Rather than open up a major negotiation on what the numbers for certain fisheries were, we accepted the ICNAF numbers.

Mr. FORSYTHE. Well, that could then lead to some way of pulling management plans together between the two nations.

Ambassador RIDGWAY. That is correct.

Mr. FORSYTHE. That would have to be worked out.

Ambassador RIDGWAY. That is correct. That is one of the major tasks of the negotiations on the long term agreement.

Mr. FORSYTHE. On page 7 of the agreement, there is an article on the top of the page that "Nothing in the present agreement shall affect either bilateral or multilateral agreements to which either government is party."

What agreements do we have there?

Ambassador RIDGWAY. I have a different copy, Mr. Forsythe, what article are you reading?

Mr. FORSYTHE. Article XVII.

Ambassador RIDGWAY. There are several bilateral agreements. The United States and Canada are still part of the International Pacific Halibut Convention, and each of us is still presently a member of the International Northwest Pacific Fisheries Commission. In addition there is a very important salmon convention which remains in force. That is the Fraser River Salmon Convention.

Mr. FORSYTHE. I have no other questions at this point.

Mr. LEGGETT. What role has the council established under the 200-mile fishing zone act played in this situation? Has it set any quotas?

Ambassador RIDGWAY. With respect to the numbers that relate to east coast fisheries, the numbers there refer to ICNAF. As a matter of fact, those were the numbers of the preliminary management plans. There was a heavy degree of reliance on the work that had already been done multilaterally in the implementation of our own domestic system.

It is true, Mr. Chairman, that if the regional councils introduced regulations on size, season, gear, and area restrictions for the U.S. fishermen, those would apply to Canadian fishermen under the agreement.

Mr. LEGGETT. The understanding is that whatever regulations are applicable to domestics they would also be applicable to Canadians is that right?

Ambassador RIDGWAY. That is correct.

Mr. LEGGETT. Are quotas provided for in the agreement?

Ambassador RIDGWAY. We have allocations for the Canadians in the American zone, and we have allocations for the United States in the Canadian zone in some fisheries. Those quotas could not be changed.

Mr. LEGGETT. And essentially those quotes are the status quo, pretty much so, are they not?

Ambassador RIDGWAY. Yes, a combination of status quo, and in some cases we have through bilateral consent reached an agreement as to certain allocations which take into account the state of the resource. We did not try to renegotiate the east coast numbers between the two countries.

Mr. LEGGETT. I would presume that since we have a single-year agreement, that everything is in a state of flux with respect to what we will do next year?

Ambassador RIDGWAY. In fact, I would use the word "limbo."

Mr. LEGGETT. Thank you. Mr. Bonker?

Mr. BONKER. Ambassador, I want to commend you for your continuous struggle in negotiating these difficult agreements. I have no objection to a short term agreement with Canada, similar to the one we have with Japan.

In our area the issue is more complex because of recent court decisions on fishing rights. As you know, we had a Federal court ruling in 1974 which requires that 50 percent of all of the fish belong to the Indians. That has imposed some rather harsh sacrifices on behalf of the other fishermen. The effect of the court decision in the past has been on inside waters, and it has been a big controversy in our State. When we passed the 200-mile bill last year, I had no idea that the management council would become involved in the implementation of this Federal court decision.

It appears that our regional council has developed a plan that is based on the Federal Court decision, and in effect imposing the same hardships in the outside areas as it has on the inside. I am going to pursue that line of questioning with Commerce when they follow you this morning.

My first question is, are you familiar with Canada's management plan for that area?

Ambassador RIDGWAY. Yes. I believe Canada, at least in general terms, goes the opposite way of what we have in mind.

Mr. BONKER. Well, it is my understanding that Canadian salmon trollers are scheduled to begin fishing April 15 in those areas that have been set aside for Canadian fishing on our coast.

Ambassador RIDGWAY. That is not correct.

Mr. BONKER. Is it true that the agreement before us incorporates the former fishing agreements that we had with Canada?

Ambassador RIDGWAY. In part, yes, the area within 3 to 12 miles.

Mr. BONKER. Is it not true that in the past the fishing season has been from April 1 through October?

Ambassador RIDGWAY. That is about what the State of Washington has set. I want to say, pursuant to your comments, Mr. Bonker, the management system for fisheries between 3 and 200 has not been determined by the United States, and until it is—

Mr. BONKER. It has not been determined by the United States. What about the second regulations published in the draft of the Pacific Regional Council Plan that I have before me?

Ambassador RIDGWAY. If it is approved. If I could point to the article VIII, Mr. Bonker, the two parties recognize that each shall manage fisheries within its jurisdiction within the terms of its domestic laws.

In this case the United States, through the regional council, has not yet determined what the regulations will be. The Canadians are bound to fish under the same terms as apply to the Americans in the U.S. zone.

Mr. BONKER. Well, assuming the management plan that I have before me is going to be approved by Congress, it establishes specific seasons for salmon fisheries from May 1 through May 31 for Chinook, and for all salmon species the troll season will be from July 1 through September 15. That is considerably less fishing time than what they have been allowed to fish in that area in the past.

If these regulations will be imposed on U.S. fishermen, will Canadian fishermen continue to fish in those areas as they have in the past?

Ambassador RIDGWAY. They will fish in the area, but under the same regulations imposed on the U.S. fishermen.

Mr. BONKER. In the zones that have been established for Canadian fishermen off our coast, and I am talking about the zone that is north of Carroll Island, approximately 48 degrees north latitude. Canadian fishermen can fish only at the same time and under the same regulations as American fishermen.

Ambassador RIDGWAY. They can, but only when Americans can fish there. They are bound under this agreement to fish in accordance with the same regulations as U.S. fishermen.

Mr. BONKER. Are you saying, then, that the Canadians are prepared to accept these regulations that are going to severely limit fishing seasons and fishing catch off our coast?

Ambassador RIDGWAY. They know that if those are the regulations that are finally approved by the Secretary of Commerce, that they must. As I pointed out, Mr. Bonker, there were discussions, and the Canadians believe, as do many of the members on the U.S. side of the fishing industry, that what is needed is a coordinated system of management to extend all the way from California to Alaska. The coordinated system of management would serve for the long term, and even the short term. It was not possible. Both sides recognize that Canadian salmon appear off the United States, and U.S. salmon off the coast of Canada, and that neither country can talk about "escapement" and management systems unless arrangements have been made to limit interceptions, so that the salmon go home again, and so that there is a coordinated system of management.

When the United States and Canada were negotiating this agreement Canada asked what were going to be the regulations off the coast of the United States for salmon in the season of 1977. I could not respond since that will be a function of how the FCMA works, and a function of the decisions of the regional councils.

The Canadian view was that while they have great respect for how the United States intended to manage, that our system of management made it impossible for us to tell them exactly what the terms and conditions were going to be off our coast, indeed for

any fishing, while we were demanding specificity regarding our fishery off their coast. Accordingly they wished to use the negotiations as an opportunity to negotiate positive terms and conditions for the 1977 salmon fishery.

We could not resolve this problem in the negotiations. The responsibility is with the regional council. The plan at that time was in the public forum—as it still is. All we could do is to go to an article VIII approach which recognizes that the United States will manage and which says that in the management for this period we will try to get as close as we can to the existing pattern for reciprocal fisheries, something that is supported by many American fishermen, and that we will also take account of the fact that some of these fish are Canadian salmon, and that Canada needs to know what the impact of our management is on their salmon, so that they can make the appropriate adjustments at home.

The decision has to be made by the council, and ultimately by the Secretary of Commerce.

Mr. BONKER. Let me try to focus on a particular issue. Former treaties have allowed American and Canadian fishermen to fish off the coasts of the other country, and the agreement you presented us today incorporates those agreements. You say the prerogative rests with the local council on how they are going to establish regulations for fishing within those jurisdictions. I agree that they do have the authority to establish those limits for American fishermen in those waters. I am talking specifically about Canadians fishing in those areas that have been designated fishing areas for Canadians, to fish in concert with American fishermen in those areas.

On April 15 American fishermen will not be able to fish in that area. There is no possibility that Canadians will continue to fish, even though the Americans cannot.

Ambassador RIDGWAY. No, sir; they cannot.

Mr. BONKER. All right, then, what kind of reciprocal action will take place off the Canadian coast for American fishermen? They are not going to give up here and not gain somewhere else.

Ambassador RIDGWAY. The Canadians, in the first place under the existing reciprocal in this area, between 3 and 12 miles, are bound by U.S. regulations.

If the Canadians may not fish in that area as of April 15 because the Americans cannot fish there, then I would not expect the Canadians to do anything except, if they wish, say that the Americans may not fish in the Canadian zone as of April 15. They are entitled to do so under the agreement.

Article V has in it the language, "Each party shall have the right to limit such fishing for salmon in its zone by nationals and vessels of the other to the same time periods as its nationals and vessels are permitted such fishing for salmon in the zone of the other."

It is legal language saying that we could not go fish off their coast if they could not fish off ours.

Mr. BONKER. So, you are saying we are fully protected in that area north of Carroll Island against the possibility of Canadians fishing when Americans cannot; but you anticipate that the Canadians are going to reciprocate somewhere in the areas off their coast where we have been traditionally allowed to fish.

Ambassador RIDGWAY. Yes, sir.

Mr. BONKER. But you do not know what that is going to be.

Ambassador RIDGWAY. The agreement gives them the opportunity to limit the fishing.

Mr. BONKER. Were these things discussed when you met with the Canadians?

Ambassador RIDGWAY. Yes, they were very much discussed, and that is why the agreement is structured the way it is. They have great difficulty with many of the proposed regulations. What they were concerned about was the situation in which, with a closure on our side of the line, everybody would be on their side of the line, and that would create an undesirable situation. It was discussed in great detail, and resulted in agreement that if we start restricting the seasons, through restrictions on our own fishermen, which would apply to their fishermen, they would have the right, then, to do the same on their side.

Mr. BONKER. One final brief question. Do you feel that the Federal court decision involved here should be used as a means of effecting council management plans and regulations on fishermen off our coast? I mean, it seems to me it would make your work terribly difficult and complex, trying to meet a Federal court ruling on Indian fishing rights when you are dealing with other nations.

Ambassador RIDGWAY. To the extent we are talking about off-shore resources, the U.S. management system does have an impact on international negotiations. I have very carefully stayed away from positions that reflect law and social objectives in our country. They are part of the domestic management system. I limit myself to that, so that the management system itself is not hindered by what was negotiated internationally.

Mr. LEGGETT. Mr. Emery?

Mr. EMERY. One of my primary concerns, obviously, is going to be that this tradition of so-called boundary areas is between the State of Maine and Canada, which I guess is the subject of considerable dispute.

Mr. LEGGETT. Where is Mr. Tribble?

Mr. TRIBBLE. I am right here, sir, on the majority side.

Mr. EMERY. It was not exactly clear to me what the various landings in this area have been. To clarify the question, I am going to ask you what is the total value of the landings within that disputed area; do you have that available?

Mr. LEGGETT. She gave us a figure earlier. The value she gave us was—

Ambassador RIDGWAY. \$20 million, something like that.

Mr. LEGGETT. \$17 million on the East Coast.

Mr. EMERY. I am interested in the boundaries between Maine and Canada. Do you agree that the total value is \$20 million?

Ambassador RIDGWAY. About \$20 million.

Mr. FORSYTHE. \$2 million on the East Coast.

Ambassador RIDGWAY. Yes.

Mr. EMERY. \$17 million Canadian and \$3 million American, and there is no figure on the catch from other nations in this area.

Ambassador RIDGWAY. Previously there has been very significant catch, but we have closed it down this year.

Mr. EMERY. What would you estimate would be the value? I am asking that question to determine whether or not the combined American-Canadian catch would be approaching that figure.

Ambassador RIDGWAY. What we project, Mr. Emery, under a U.S. management system, over the long term, is that the area's fisheries will be worth \$56 million.

Mr. EMERY. Theoretically, at least, the total of the American catch and the Canadian catch would be something less than half, more than a third.

Ambassador RIDGWAY. Yes, over the long term under optimum conditions.

Mr. EMERY. So, the catch in that area from the United States and Canada combined, at this point in time, and our objective for the future, we can maintain the yield as long as we do not allow foreign fishing.

Ambassador RIDGWAY. As long as we manage it in a responsible fashion.

Mr. EMERY. To clarify the point I am making, do you think the area can be managed between the United States and Canada in some kind of joint arrangement, satisfying the needs of both countries, without damaging the stocks in that region?

Ambassador RIDGWAY. Mr. Emery, the United States believes that the area belongs to the United States. We are not considering joint management.

Mr. EMERY. I am glad to hear that, that is good.

What are the prospects for resolving the fishing question separately, let us say the seedbed boundary problems, mineral resources. It occurs to me we are really facing two separate problems, one relating to the management of fisheries resources, and one of management of offshore resources of other kinds.

Ambassador RIDGWAY. A third problem, Mr. Emery, which comes to mind with respect to management, is the need for a line. We have to have a line first, and then it will be possible to identify long term interests. However, regardless of where the line is drawn, some kind of cooperative efforts are needed; and we do not have the answer now.

Mr. EMERY. Do you feel that the Canadians may be potentially interested, or possibly more interested in minerals or oil and gas in that disputed area, than they are in fishing rights, or resources?

Ambassador RIDGWAY. I am advised that Canada already leased in that area; they leased in the mid 1960's.

Mr. EMERY. The point, I guess, I am trying to make, it appears to me that fishing is potentially a peripheral issue, possibly the second largest to oil and gas development. Would you agree with that?

Ambassador RIDGWAY. No, I would not. We are gathered here today with respect to fisheries that do not even approach the \$1 million mark.

Mr. EMERY. Sure.

Ambassador RIDGWAY. A lot of time and talent has gone into this agreement. My estimate is that some 85 industries have given their time voluntarily in support of this. I am convinced that fishing is not a peripheral issue.

Mr. EMERY. That is all the questions I have, Mr. Chairman, thank you.

Mr. LEGGETT. The Canadians fish scallops in the disputed zone. Do we fish scallops in that area, too?

Ambassador RIDGWAY. I should correct my earlier statement. The scallops in the United States are a small portion of the \$3 million.

Mr. LEGGETT. So, all the scallops are fished by the Canadians.

Ambassador RIDGWAY. For the most part.

Mr. LEGGETT. Now, is there anything in the agreement that set a limit on activities in that disputed area?

Ambassador RIDGWAY. No, sir. With respect to the United States, we enforce our regulations against our citizens.

Mr. LEGGETT. But there are no regulations that apply, is that right?

Ambassador RIDGWAY. As Mr. Colson points out with respect to the disputed area for Canada, there are ICNAF obligations there, but the enforcement is national. The ICNAF regulations are part of their domestic law. I have been told by my colleagues from the Department of Commerce that the process is now nearly completed for the regulations the United States wishes to have for its fishermen in the area.

What is happening is that the two countries through their domestic system have produced regulations for their own fishermen, and they are being applied in the disputed area.

Mr. Chairman, I find that I have used an incorrect figure for the value of the U.S. catch in the "boundary region" off the Atlantic coast. Instead of \$3 million, I should have said approximately \$10 million for the U.S. catch. The figure ranged from \$8 million to \$11.5 million during 1973-1975.

Mr. TRIBLE. No questions.

Mr. LEGGETT. Mr. Mannina?

Mr. MANNINA. Thank you, Mr. Chairman.

Roz, just a few quick questions. Under the agreement effected the size limits, the seasons in the area apply equally to both nations. Is it conceivable on the part of the Department of Commerce to develop a management plan establishing size limits, seasons, that would be applicable to domestic fishermen pursuant to the agreement?

Ambassador RIDGWAY. Yes, and applicable to Canadian fishermen.

Mr. MANNINA. Is there a substantial difference between the Fishery Conservation Management Act and this agreement?

Ambassador RIDGWAY. Mr. Manni. I am not sure I understand the question.

Mr. MANNINA. Well, the management plan is not applicable to domestic fisheries. What I am trying to determine is, the preliminary management plan, pursuant to article VIII, I think it is, could be applicable to domestic fishermen.

Ambassador RIDGWAY. No, I am sorry. The agreement does not do that. What we anticipated here is the regional council producing a management plan and that it would apply to fishermen of both countries.

Mr. MANNINA. Thank you. In article VII, with respect to tuna fishing it states, "Under appropriate regulations implementing agreed international recommendations." Could you elaborate what the agreed international recommendations are?

Ambassador RIDGWAY. Yes. First of all, as to article VII. The purpose of this article is to ensure that the question of tuna fishery jurisdiction does not arise between the United States and Canada and to construct a system which allows both parties to go forward.

However, it also appears that the United States and Canada each is a member of the Inter-American Tropical Tuna Convention and the International Convention for the Conservation of Atlantic Tuna. To the extent that we have cooperation in the international organizations to which we both belong, that is consistent with the position of both countries.

Mr. MANNINA. Since Alaska has the capacity to harvest halibut offshore, are there any plans to renegotiate the halibut convention.

Ambassador RIDGWAY. We have been in consultation with the North Pacific council, and we have also had a number of expressions of interest on this issue from the Governor of Alaska. In response to those inquiries we have said that we will undertake the process by which we could obtain the authority to give notice of intent to withdraw. I am advised that we have now obtained such authority.

Now, we have pointed out very carefully in those letters that the decision to proceed for giving notice of intent to withdraw should not be taken as evidence of the wisdom of withdrawal or as evidence of a particular position in renegotiation. The people that have long been associated with IPHC are deeply concerned as to doing something to replace the management system, so that the resources which do appear off the coast of both countries are not subjected to the full pressure on each side of the line, which can lead to very quick destruction of the resources.

Mr. MANNINA. It is your intent to renegotiate the agreement, and if that is not a satisfactory effort, then to withdraw?

Ambassador RIDGWAY. No, I am saying we are going to attempt to renegotiate, and if we do not succeed we hold consultations with everyone concerned, the U.S. fishermen and the Canadians to determine where we go next.

Mr. MANNINA. When will those renegotiations be conducted?

Ambassador RIDGWAY. I expect it will not be undertaken before summer—it takes 2 years, by the way, to leave the halibut convention. I reported previously that we gave notice of intent to withdraw from the INPFC on February 10.

Mr. MANNINA. Thank you. Thank you, Mr. Chairman.

Mr. LEGGETT. Mr. Bonior?

Mr. BONIOR. I have no questions, Mr. Chairman.

Mr. LEGGETT. Now, what you are telling us is that the agreement you negotiated with the Canadians in the best interest of the United States and the U.S. fishermen for the current calendar year, is that correct?

Ambassador RIDGWAY. That is correct.

Mr. LEGGETT. And it is the very best agreement that can be negotiated at this time.

Ambassador RIDGWAY. That is correct.

Mr. LEGGETT. And the enforcement provisions that you have in this agreement are not going to lead, to the best of your knowledge, to further aggravation of our respective relations in fishing in these two areas.

Ambassador RIDGWAY. That is correct.

Mr. LEGGETT. We could go over the verse and line of the agreement, and that probably might be the orderly thing to do, but I believe since counsel has read the agreement we can proceed to hear the other witnesses. I would hope that you would stay around and be prepared to answer questions of the other witnesses who may raise questions about the agreement because you are our expert in this agreement.

Mr. Bonker?

Mr. BONKER. I would also ask the Ambassador if she would keep the committee informed from time to time on the progress and development as you negotiate a permanent GIFA with Canada and Japan. When you come before the committee we are precluded from any involvement or suggestions that go into a GIFA, and many of us do have particular interests and concerns. I do not like just accepting the package or working against it. So, I hope you will keep the committee informed.

Mr. AuCOIN. Will the gentleman yield?

Mr. BONKER. Yes.

Mr. AuCOIN. I would like to associate myself with the remarks of the gentleman from Washington. What I am concerned about in this case and the case of a permanent Japanese GIFA, is that we will have a "take it or leave it" sort of situation which puts this committee in a very tough spot. Maybe that is to your advantage, but I consider it to be to the committee's great disadvantage.

I think we could approach the whole thing a lot more constructively if—when there are particular problems along the way that you feel the committee should know about—you would bring those problems to the committee at that time. I think that would be very constructive.

Ambassador RIDGWAY. I would be more than happy to do just that. I think we have had some of the drafts of the Canadian agreement floating around that showed variations in the two positions.

But I think particularly as to the long term negotiations, as Mr. Bonker pointed out, that is going to be a long road. We will commit ourselves to just exactly what you are asking.

Mr. AuCOIN. If I can continue to use the gentleman's time for just 1 more minute. I think it is clear we do not have a GIFA, and the Ambassador has stated for the record why it is that we do not.

Thus, the record should be clear that the 200-mile act is not fully enforced in this case. I am sure the Ambassador stated for the record the legal authority on which this procedure rests.

Mr. LEGGETT. The record is clear in these respects, and we are reciprocally "winking" at this law at the present time, until the Congress acts.

Mr. FORSYTHE Mr. Chairman, I have one question.

Mr. LEGGETT. Go ahead.

Mr. FORSYTHE I think we recognized in this committee that it was not going to be possible with Canada to clearly stay within the limits of the law, and that we were going to establish a reciprocal agreement. Their waters are so important to this nation and the reverse is true.

Mr. LEGGETT. If you could provide us with a copy of the chart that you were looking at a while ago with respect to the disputed area, we will include it in the record.

Under article X of the agreement it provides that "Each party subject to its domestic laws, will continue to permit transfer of herring between nationals and vessels of the two parties in the zone. The parties agree that the principal purpose of this provision is to enable the continuation of transfers of herring intended for purposes other than reduction."

That, to our fishermen, as well as to me, is not particularly explanatory.

Ambassador RIDGWAY. It happens also not to be very self explanatory to me. I find that the procedures and interrelationships of the U.S. and Canada herring fishermen and processing industry are complicated. If I can explain it this way, I am advised by those who are in herring—

Mr. LEGGETT. Maybe this means something more when we translated in French.

Ambassador RIDGWAY. Actually, translated in French, you have a third issue here, which causes problems.

But the fishing and processing of herring operations within the United States and Canada over the years developed a relationship in which herring were transferred back and forth to keep plants on both sides going. Fishermen of both countries transferred herring to vessels of others, offloaded or shipped herring, so that everybody would keep the plants going.

One of the concerns that both sides have in the herring industry is that herring, which is a scarce resource, will be not processed for food purposes, but will be processed for fishmeal, thereby denying the more attractive use of the resource.

That is the best I can do. It is very complicated. The U.S. and Canadian industries are closely related. In some instances they have arrangements that must go back at least a 100 years, and they want to make sure that they will continue to have the opportunity—

Mr. LEGGETT. To transfer of herring back and forth to keep the respective facilities busy. That still does not explain the phrase "intended for purposes other than reduction." Other than reduction of what?

Ambassador RIDGWAY. Of herring. These transfers of herring are to keep the plants going that are producing canned, tinned herring.

Mr. LEGGETT. Is that clear for the record?

[Laughter]

Mr. BONKER. Ambassador, in response to my query and concern about fishing off our coast vis-a-vis Canadian fishing, you pointed to article VIII, did you not?

Ambassador RIDGWAY. Yes.

Mr. BONKER. "That the parties recognize that each shall manage fisheries within its jurisdiction within the terms of its domestic law." At that point you pointed to our management council plan.

In subsection (b) it says, "In the case of reciprocal salmon fisheries in the interest of the state of origin in salmon span. . ." Salmon from Puget Sound rivers in Washington State migrate—almost all of them—into Canadian waters. Are you prepared to say that Canadians are going to have a domestic management plan that takes into account the protection of salmon spawned in our areas, in this country. If not, how are we going to be protected?

Ambassador RIDGWAY. What that phrase does, Mr. Bonker, is that each country, the zone of which includes salmon of the other, that each country in its management plan—whatever it might be, and what new system each country has chosen for management—must take into account through the consultative process the interest of the other. As the process goes on, going all the way up to whatever the level is in government which finally approves the plan, the country in whose rivers the salmon spawn has a voice in the preparation of the plan.

Mr. BONKER. Well, we have no assurance that our plan and the Canadian plan are going to be thoroughly compatible with each other. That is what bothers me about making a decision and approving a treaty or an interim agreement with Canada before we see what the management plans are. It is my understanding the Canadians are upset because our plan is accommodating the domestic court decisions while their plan is attempting to address only conservation.

Ambassador RIDGWAY. There are limits on where they can go, Mr. Bonker. We are entitled to fish in any manner the Canadian fishermen are entitled to fish in the Canadian zone.

Mr. BONKER. Would you say that their domestic plan could impose additional restraints?

Ambassador RIDGWAY. Yes. They can impose them on their own fishing, and then we are obliged, our fishermen are obliged to fish in a like manner. The situation constructed here is one of equity. Canadian fishermen will not fish under U.S. regulations in the U.S. zone that are more favorable than those that the American fisherman is fishing under; conversely, the American fisherman in the Canadian zone will fish under the same regulations as the Canadians do.

Mr. BONKER. Well, I think if we did not have the court ruling, that would be the case. It appears to me it is going to be more complex. So, it will be interesting to see how it works out.

Mr. LEGGETT. Let me bring out one other thing. It is provided that in the boundary area only the two nations' ships shall be fishing. Are we providing in our GIFA's with other countries that such countries shall not fish in that disputed area?

Ambassador RIDGWAY. No, Mr. Leggett, we did not do that in the GIFA's. In the management plans which are in operation there are windows in which the foreign fishermen may fish. These windows do not include the disputed areas.

Mr. LEGGETT. I will recognize Mr. Studds now, and then I will allow Mr. AuCoin to ask further questions.

Mr. STUDDS. Has Mr. AuCoin had a chance?

Mr. LEGGETT. Oh, everybody has had a chance, even staff.

Mr. STUDDS. Thank you. I only have one question. I apologize for being late. Normally I could not possibly resist the Ambassador, but this morning it was General Brown—he was absolutely irresistible.

[Laughter.]

Mr. STUDDS. I am sorry I missed your testimony.

I do have one question which speaks to the concern of the New England fishermen. In article II, paragraph 3 of the agreement it states, "Fishing by nationals and vessels of each party in the zone of the other shall continue in accordance with existing patterns, with no expansion of effort nor initiation of new fisheries."

In the next article, article III, paragraph 2, "On the Atlantic coast, fishing by Canadian nationals and vessels in the United States zone for those stocks included in the 1977 Canadian allocations agreed ad referendum at the annual special meetings of ICNAD held in 1976, shall cease when those allocations have been taken."

My question is, and the concern of some of our fishermen is, are those two provisions perhaps in some sense contradictory because the ICNAF allocations include, as you know, first-time allocations of squid and butterfish; there is reason to believe the Canadians are looking towards new and expanded fisheries in these areas.

Now, what have we done here, are those two things compatible, which takes precedence? What do you think?

Ambassador RIDGWAY. There are two ways to approach it. You are quite correct. There are in the allocations to Canada, allocations for fisheries they have not had previously. We believe that article II, paragraph 3, "with no expansion of effort nor initiation of new fisheries" is later qualified in any instance in which something specific was put into the agreement. If the fishery is not specifically mentioned in the agreement then you could not go out and start up a new fishery.

Mr. STUDDS. So, in a way, the Canadians may have managed to establish a new traditional fishery, to put the two words together, "new" and "traditional."

Ambassador RIDGWAY. I think we had a discussion before about "recent customary international law."

Mr. STUDDS. I have tried my best to express myself. So you sense a new traditional fishery emerging here?

Ambassador RIDGWAY. No, I do not. I see a comprehensive agreement.

Mr. STUDDS. So, you are not concerned about their using it as a lever in trying to expand. At this point those allocations are firm, under article II, paragraph 3 (non-expansion), I assume beyond those quotas.

Ambassador RIDGWAY. Yes.

Mr. STUDDS. Thank you.

Mr. LEGGETT. Mr. AuCoin?

Mr. AuCoin. I would like to ask the gentleman from Massachusetts what butterfish is.

Mr. STUDDS. Butterfish? It is a very small fish.

Mr. AuCoin. It is unimportant.

Mr. STUDDS. There are those of us who think so.

Mr. AuCOIN. I would like to follow up on the question that was imposed by the gentleman from Washington and make sure the record is clear on this. Did I understand the Ambassador to say that this reciprocal agreement is ironclad in terms of guaranteeing that American fishermen are treated no differently than Canadian fishermen in their management plan?

Ambassador RIDGWAY. Not better than, the other way around.

Mr. AuCOIN. But could American fishermen be more restricted?

Ambassador RIDGWAY. Yes, they could.

Mr. AuCOIN. Than the Canadians.

Ambassador RIDGWAY. I would like to go back to the example that Mr. Bonker used earlier, Mr. AuCoin. The United States was not able to tell Canada in the course of the negotiations what the management regime would be on the U.S. side for 1977 because those decisions were still before the regional council, and coming up through the process of the Fishery Conservation and Management Act. We did, however, share with Canada the then current draft management plan, so that they would have an indication of the direction in which the United States was moving.

Canada is not clear at this point that it is going to manage in the same fashion, in the same restrictive fashion concerning control over salmon in the zone.

The Canadians open the salmon fishery on April 15, and the United States was not going to open the trawl fishery until July 1. The American trawling fleet could then come into the Canadian zone on April 15, but the Canadian trawl fleet would not be allowed to go into the U.S. zone until July 1. We have said first of all, in an ideal situation the regulations on both sides would apply equally to fishermen of both countries, and in no situation would someone have better treatment.

But because of this possibility that the two management schemes for 1977 are going to be substantially different, and that there will be enormous transfer of effort into the Canadian zone, we have said in the agreement that in that instance, Canada, if it chooses, could state that inasmuch as Canadian fishermen can only fish in the U.S. zone as of July 1, U.S. fishermen may only fish in the Canadian zone until July 1, even if the Canadian season opens as of April 15th.

Mr. STUDDS. Will the gentleman yield briefly?

Mr. AuCOIN. I will be delighted to yield.

Mr. STUDDS. You may not have noticed it before, but butterfish have heretofore been submerged in the anonymity of other fin fish—it is now emerging on its own.

Mr. Chairman may I ask if it is proper—I would appreciate it, if you have no objection, that the report reflect the colloquy which I just had with Ambassador Ridgway.

Mr. LEGGETT. You will see that all salient portions of the testimony will be included in the record.

Mr. STUDDS. I trust the Chairman's judgment in that.

Mr. LEGGETT. You asked about butterfish. We were regulating "dugong," and we asked about that, and none of the witnesses had ever seen a "dugong," but one of them had seen pictures. The "dugong," looks like a torpedo, but it does not have a warhead.

[Laughter.]

Mr. AuCOIN. I have a further question—I did not mean to yield my entire time.

[Laughter.]

Mr. AuCOIN. Has the Pacific Regional Council been fully advised of this reciprocal agreement, and if so, what is their response?

Ambassador RIDGWAY. Yes, it has been fully advised. Copies have been made available not only to all the advisory members, but to council chairmen. I have a copy of a telegram from John McKeen, the chairman of the Pacific council, saying that the key members of the delegation had received it, and it was consistent with where we were heading when we were together in Los Angeles.

Mr. AuCOIN. Have you had any indications from any of the councils that this procedure might cause difficulty for regional management plans?

Ambassador RIDGWAY. No. The expressions I received, from the many people that have been associated not only with this negotiation, but the negotiations for the longer term agreement which we were not able to conclude is that we have made the best of a very difficult situation. While this may not be the happiest solution for everybody's interests, it was the best that could be achieved overall, in the situation.

Mr. AuCOIN. And by 1978, do you expect an agreement with Canada with the provisions of the 200-mile act covered in that agreement?

Ambassador RIDGWAY. Mr. AuCoin, I do not, unless somebody instructs me that the United States has no fisheries off the coast of Canada.

Mr. AuCOIN. I did not hear your answer, I am sorry.

Ambassador RIDGWAY. I do not intend, at this point, to seek a GIFA unless someone instructs me that we are not interested in pursuing fisheries off the coast of Canada. It was the charge to create the most favorable economic situation for our men in the Canadian zone that has kept us from concluding a GIFA. As long as we operate there, we have to be prepared to reciprocate.

Mr. LEGGETT. I am advised that we have 15 minutes in which to vote on H.R. 405, to provide consideration of the NASA authorization bill.

So, considering the fact that my colleagues have exhausted their questions, as has the staff at this point—this will be an excellent time to recess for 15 minutes.

[Whereupon a short recess was taken.]

[The statement follows:]

STATEMENT OF ROZANNE L. RIDGWAY

Mr. Chairman:

I am pleased to have the opportunity to return to these familiar surroundings and to resume our consideration, together, of the agreements intended to create a new structure for the conduct of our international fisheries relationships. With me is Mr. David Colson, of the Office of the Legal Adviser of the Department. I suspect all of us welcomed the period between March 1 and today as an opportunity to take a bit of a break, and that all of us found that, in fact, until the structure is complete, relaxation is not a feature of our world. The agreement being considered today, and the agenda for the future, represent at least as broad, and as great a challenge as has already been met.

As I have said on previous occasions, the negotiations between the United States and Canada to reach an accommodation of our mutual fisheries interests are unique. The question of recognition of extended jurisdiction does not arise, as both countries have acted to extend their fisheries jurisdiction to 200 miles. But that act on the

part of each does pose questions related to maritime boundaries, traditional fisheries, and the management transboundary stocks.

The location of maritime boundaries is a politically sensitive issue. The actual fishery relationship goes back to the beginning of our history as a nation. And, fish stocks important to both countries are distributed, or migrate, off the coasts of both. For both countries, the pursuit of fish, fishing and science has come to be characterized by formal and informal relationships, surrounded by fact and folklore, and, unfortunately, good days and bad days. We must deal not only with substance, but also with perceptions as we address the need to answer all of the questions in order to build the new relationship.

The specific agreement for consideration is the Reciprocal Fisheries Agreement which the United States and Canada signed in Washington on February 24. I believe it is as important to understand the path that led to the Agreement, as it is to understand its terms.

In October 1975, on the first trip to another country that I undertook subsequent to assuming my present responsibilities, I went to Ottawa. The purpose of the trip was two-fold:

to review with Canadian officials the fisheries implications of the impending extension of jurisdiction; and, to organize our consideration of those matters and establish a timetable for their resolution.

It has been clear from the outset that the United States and Canada, in order to establish a new comprehensive relationship pursuant to the extension of jurisdiction, would have to resolve difficulties involving

- maritime boundaries
- salmon
- traditional fisheries

It was agreed that each was so complex, that each would be dealt with separately. It was our hope that new arrangements for all three would be in place, or agreed to, by January 1, 1977.

We did not meet that date. The maritime boundary questions are immensely difficult. The negotiations for a long-term agreement for all fisheries except salmon are difficult enough as between the United States and Canada. As the Subcommittee knows, Mr. Chairman, they seem to be even more difficult to address within our own country. Since my appearance here in late September, at which it became clear that there

was considerable misunderstanding as to the form and content of an agreement, we have taken no further steps. The issue isn't going to go away, but I believe now, as I did in the ensuing months, that progress could be achieved only when there was a broader understanding in the United States of our objectives, and the sense of challenge to institutions or perquisites gave way to a concern for finding the most effective way of organizing our resource interests.

As for salmon, Mr. Chairman, I have not previously brought the issue to the Subcommittee. However, it is as difficult as each of the others, and, some would say even more difficult because it is accompanied on the U.S. side by social, economic, and legal constraints.

Let me talk briefly about salmon. Salmon originating in U.S. and Canadian rivers intermingle in areas all the way from California, Oregon, and Washington, to British Columbia, and Alaska. Fishermen of each country intercept salmon produced by the other. This includes not only salmon of the Fraser River, but also Washington and Oregon hatchery salmon, and salmon of the Alaska "panhandle" streams which, in fact, rise in Canadian lakes.

The overall problem has intensified in recent years and there has been a renewal of the effort, which has been intermittent over nearly 20 years, to resolve the problem of interceptions. It is absolutely essential that we do so. It is not possible to manage salmon, to ensure escapement, or to realize on the investment in enhancing salmon rivers, if, in practice, the salmon are being intercepted. The problems are complex and they are highly political. We have not arrived at an answer.

Thus, three important issues, deliberately kept separate, not only were not resolved as we approached January 1, 1977; they also became joined by the pressure to do something of an interim nature about all three of them at once. The two governments turned their attention to a short-term agreement for 1977, which if reached and concluded, would permit a return to the negotiations for longer-term arrangements.

At the outset, I would note that the short-term U.S./Canadian Reciprocal Fisheries Agreement is not a governing international fishery agreement -- a GIFA -- within the terms of the Fishery Conservation and Management Act of 1976. The

protection of U.S. fishing interests off Canada during 1977 required conclusion of a different type of Agreement, one which requires positive legislative action by the Congress to bring it into force. I will return to the question of the legal nature of the Agreement, but let me now address the provisions of the Agreement.

In the negotiations for a short-term agreement, and in close consultation with representatives of the U.S. fishing industry, we articulated and sought satisfaction of a number of specific U.S. interests. These included:

1. continuation of the important U.S. fisheries in the Canadian zone during 1977, without regard to a determination of surplus by the Canadian domestic management system;

2. relief for U.S. fishermen from the permit requirements and related conditions which would otherwise apply under Canadian regulations in the Canadian zone;

3. continuation of recreational fishing by U.S. nationals in Canadian waters without addition of new permit and other administrative requirements which would otherwise apply under Canadian regulations in the Canadian zone;

4. continuation of scientific cooperation and consultation between U.S. and Canada on fishery matters of mutual concern;

5. special arrangements in the disputed boundary areas which would not prejudice the U.S. position on maritime boundaries.

Satisfaction of these interests required a reciprocal accommodation of Canadian interests in the U.S. zone.

The Agreement which has been negotiated represents, in our view, a fair accommodation of reciprocal interests, without doing harm to the purposes and policies of our legislation. It provides that fishing by fishermen of each country will go forward off the coasts of the other during 1977 in accordance with existing patterns, subject to certain allocations, with no expansion of effort nor initiation of new fisheries. The general provisions regarding fishing and allocations are contained in the first four articles of the Agreement. The Agreement contains specific limitations on certain fisheries. On the West Coast, for instance, we accept application of a total allowable catch to fishing off British Columbia for rockfishes and black cod applicable to

both Canadian and U.S. fishermen and allocations between fishermen of the two countries for shrimp. On the East Coast, both countries agreed to accept those allocations which had been bilaterally agreed ad referendum in the ICNAF context during meetings held in 1976.

The question of salmon trolling for 1977 was one of the more difficult issues to resolve. The issue involved whether Canadian trolling in U.S. waters during 1977 would be subject to restrictions that may be placed on U.S. fishermen under a fishery management plan that is being developed under the new U.S. domestic management system, or whether the Agreement would include specific regulations for the salmon troll fishery which would have pre-empted the U.S. management system during the 1977 season. The solution affirms the domestic management authority of each country in its own zone but provides for consultations at the technical and official levels during the process of preparing

such regulations and prior to application. These consultations will be conducted within the process established by the FCMA. They will be guided by the principles of preserving existing patterns of fishing and the interest of the state of origin in salmon spawned in its rivers. During the negotiations and in the Preamble of the Agreement, both sides reaffirmed their commitment to continue work toward a long-term agreement on salmon interceptions. The purpose of these negotiations would be to achieve an equitable solution to the problems caused by intermingling of salmon stocks of U.S. and Canadian origin and the interception of those stocks by fishermen of the non-origin state.

The Agreement includes important provisions to relieve fishermen of both countries from certain of the permit and related conditions which would otherwise apply to them in the waters of the other. Such provisions for commercial fishing are found in Article XI, and for recreational fishing in Article XII. I would note that the provision regarding recreational fishing does not in any manner prohibit relevant state regulations and licensing requirements within state waters.

The U.S. and Canada also agreed to facilitate access to their ports to fishing vessels of the other (Article XIV).

The Agreement contains provisions on consultations between the two sides (Articles VIII and XVI). In our view, these are more than hortatory Articles. U.S. and Canadian officials have already agreed to convene in April a regional meeting on the East Coast to discuss questions of mutual interest regarding herring. The meeting will include interested industry representatives and appropriate management officials, including on our side members of the New England Regional Council. On the West Coast, consultations have already begun to discuss the salmon regulations for 1977, including all affected interests and, again, on our side, members of the Pacific Regional Council.

The Agreement provides for necessary exchange of fisheries statistics and continuation of cooperative fishery research by the two countries (Articles XIII and XV).

The issue of how to deal with disputed maritime boundary areas, particularly that on Georges Bank in the Gulf of Maine, was, along with salmon, one of the two most controversial questions to be addressed in the Agreement. The issue was settled through a

neutral characterization of disputed boundary areas -- "boundary regions" -- and through agreement on special enforcement arrangements for such areas; specifically, flag state enforcement as between the U.S. and Canada in the boundary regions; no allocation to third countries in the boundary regions; and U.S. and Canadian enforcement against third parties in the boundary regions. These provisions (the Preamble and Article IX) effectively describe the boundary situation following the publication of the claimed lateral limits of their zones by both countries. It is clearly understood that beyond these published claims the Agreement will be enforced by the coastal state.

To return to the legal nature of the Agreement, as I noted earlier, satisfaction of U.S. interests required reciprocal accommodation of Canadian interests in the U.S. zone. The Fishery Conservation and Management Act states in Section 201 (a) that no foreign fishing is authorized in our zone unless it is authorized under an existing fishery agreement, GIFA or treaty and is pursuant to a permit developed in accordance with the domestic management system. The necessary reciprocal accommodation of interests was not possible under

these terms. Specifically, the Agreement allows fishing to go forward in the zone of the other, under a total allowable catch but without regard to coastal state harvesting capacity. It also allows fishing to go forward without the requirement of licenses or permits. Therefore, the Agreement does not require Canadian vessels to meet all the conditions and restrictions that the Act says may be part of a permit nor does it limit Canadian fishing in our zone only to a determination of surplus. At the same time, the Agreement does preserve the right of the domestic management system to develop management plans; accordingly, no restraint is placed on our domestic management system to develop management plans affecting U.S. fishermen. If they do so, Canadian fishermen are obliged to abide by the same restrictions (Article VIII). The Article does mean that new TAC's or new national allocations, may not be imposed.

Though the Reciprocal Fisheries Agreement is consistent with the general U.S. domestic management structure, it does vary with certain provisions of the FCMA as they would otherwise apply to Canada during 1977. For this reason, the Agreement is not a governing international

fishery agreement, as described by the terms of the Act. Accordingly, the Agreement cannot be brought into force under the 60-day Congressional oversight provisions in Section 203 of the Act which only applies to governing international fishery agreements.

The Reciprocal Fisheries Agreement thus must either be submitted as a treaty, for the advice and consent of the Senate, or to both Houses of Congress for legislation to establish the legal basis to allow Canada to fish in our zone during 1977, and thereby meet our interests in the Canadian zone. Given the interim nature of the Agreement, the interests of both Houses of Congress in its provisions and the need for rapid action, approval of the Agreement by legislative action of both Houses seems an appropriate way of bringing it into force. The provisions of the Reciprocal Fisheries Agreement then would become subsequent legislation.

I have had an opportunity to review the analysis of the Agreement prepared by the Congressional Research Service. I hope I have answered most of the questions posed by that analysis. If not, I would be happy to answer them now or, to answer any other questions the Subcommittee might have.

Thank you.

Mr. LEGGETT. The meeting will please come back to order. We now have Mr. David Wallace, representing NOAA of the Department of Commerce, and his associates, Mr. James Storer, Mr. Henry Beasley, and Mr. Stephen Powell.

STATEMENT OF DAVID H. WALLACE, ASSOCIATE ADMINISTRATOR, MARINE RESOURCES, NOAA, DEPARTMENT OF COMMERCE, ACCOMPANIED BY JAMES A. STORER, INTERNATIONAL FISHERIES PROGRAM; HENRY R. BEASLEY, NEGOTIATING DIVISION; AND STEPHEN POWELL, COUNSEL

Mr. LEGGETT. I understand you have submitted some clarifying amendments to counsel. Since we will be marking up the bill this afternoon, you can comment on them at this time, if you care to.

Your statement, Mr. Wallace, will appear in the record as if read in full, and you can expand on that as you care to.

Mr. WALLACE. Thank you, Mr. Chairman. I believe in the interest of time, I will not expand on the statement. I believe it states the situation as we see it.

I would like to make just a couple of comments about the statistics which were discussed a little earlier by Ambassador Ridgway because I believe they are important and significant. That is the question of the sort of balance that we have here between the U.S. and Canadian fishermen fishing off each other's coasts.

On the Atlantic coast we have several fisheries going off the Canadian Maritime Provinces, particularly for species called redfish and pollock, and these have been carried on traditionally over a long period of time. One of these fisheries was established 40 or 50 years ago, so, this has been a continuing and important activity by our New England, particularly Maine, fishermen over a long period of time.

Now, on the Pacific coast our catch has been in the area of about \$8 million, as Ambassador Ridgway pointed out, and these were primarily made up of halibut and salmon, with some other species contributing to this.

In the disputed area the scallop fishery is obviously the big one as far as Canada is concerned. The U.S. dollar value at the present time is really below the potential in the future for us. We also feel rather strongly—and I am responding to a comment that was made earlier on this—that the resources on Georgia Bank are of great importance to the United States. I am not sure of the value, or the difference between the value of the fisheries concerned and gas and oil resources that exist there. There is no question that a projection of the optimum yield over a long period of time on the Georgia Bank is an extremely important and valuable fishery resource.

Mr. LEGGETT. Are you now talking about the disputed area?

Mr. WALLACE. Yes, sir.

Mr. LEGGETT. You are talking about the window at Georgia's Bank?

Mr. WALLACE. As the Ambassador pointed out, the Canadian claim would include about one-third of Georgia's Bank. Our own evaluation of that area is that Georgia's Bank belongs to the United States. Certainly, from a biological standpoint, Georgia's Bank, the fishery that there is carried on is in support of the United States.

Mr. LEGGETT. Well, the Canadian line as I see it from this chart here, is a strange line indeed. It projects directly south here into Maine and then extends out over Georgia's Bank. It seems almost contrived to get the strongest hold over Georgia's Bank.

In the statement that you have submitted you state that you have been in touch with the State Department and you have seen the discussion draft; however, we have not fully analyzed H.R. 4954 or developed and administration position on the bill. In the next few days we hope to submit to the committee a report commenting in detail on the bill, and including suggested language to amend the bill to authorize the collection of catch data.

Mr. WALLACE. Mr. Chairman, may I explain—

Mr. EVERETT. We drafted this legislation ourselves, pursuant to the President's request that legislation be passed that would agree to the reciprocal arrangement.

Mr. LEGGETT. It seems to me we are not complying with the President's desire to minimize paperwork. He asks us to draft a bill and to proceed, and we have not really gotten the language clear.

Mr. WALLACE. Mr. Chairman, I believe the bill was drafted on the 14th, and I must say, we have just had a chance to look at it.

Mr. LEGGETT. We are prepared to go to markup this afternoon. Are you going to have your thoughts together by then?

Mr. WALLACE. We are serving as a drafting service, if you will, Mr. Chairman, on some thoughts that were involved in the catch data.

Mr. LEGGETT. Then this draft of amendments before us is your best current position?

Mr. WALLACE. I must say, Mr. Chairman, that this has not been officially cleared by the Department of Commerce.

Mr. LEGGETT. Whom do you have to clear it with?

Mr. WALLACE. Well, certainly we have to clear it on an official basis with the Assistant Secretary for Policy.

Mr. LEGGETT. And who is that?

Mr. WALLACE. Mr. Jasinowski.

Mr. FORSYTHE. We still have an opportunity for that before the full committee.

Mr. LEGGETT. Surely.

Let me ask you, do you have any questions about the testimony of the previous witness?

Mr. WALLACE. No. I thought, Mr. Chairman, that it was very adequate, it covered the subject quite well. I just wanted to verify the statistics that Ambassador Ridgway gave you, and they tallied generally.

Mr. LEGGETT. Scallops appear to be almost a nationwide seafood in the United States. There are \$17 million worth of scallops that are harvested by the Canadians. Are those used by the Canadians, or packaged and reshipped to the United States? How are these disposed of, do you know?

Mr. WALLACE. A substantial part of them are sold here in the United States.

Mr. LEGGETT. Why is it that the United States is not more aggressive in developing this fishery, considering the fact that the Soviet's fishing is not an inhibiting factor?

Mr. WALLACE. Mr. Chairman, the facts are that traditionally the scallop fishery has been a U.S. fishery. The town of New Bedford, Mr. Studds' constituency, was considered the center of the scallop industry for the United States, and has been an important industry for a long time.

Mr. LEGGETT. What is the total dollar value of the scallop fisheries in general?

Mr. WALLACE. Let me finish here because there is a little bit of a story here. About 10 or 12 years ago there was a substantial decline in the production of scallops for reasons which I am not sure of.

Mr. LEGGETT. It was not because all the statistics came out that it was shark meat?

Mr. WALLACE. No, I think there was actually an absence of the stocks. So, the fishermen in New Bedford, those that were involved in the scallop industry, were put in an awkward position, a difficult position, and many of them converted to doing other kinds of fishing out of New Bedford. Now the stocks are beginning to come back, and the prospects for scallops are very promising.

I can assure you that the Bedford fishermen and others are preparing and wish to go back to the scallop fishery. So, our production and value of stock is going to be increasing very substantially. At this moment I cannot tell you the total value.

Mr. LEGGETT. Does anybody know?

Mr. WALLACE. We can get it for you, but I do not have it at my fingertips.

[The following was received:]

[The following was received:]

Value of sea scallop catches in INCAF^{1/} areas 5 and 6 by Canada and the United States, 1961-76

Year	Canada		Total	United States					Grand Total
	5ZE	6		New England	Middle Atlantic			South Atlantic	
					Chesapeake	Total			
-----Thousand U.S. dollars ^{2/} -----									
1961	3,823.0	-	3,823.0	9,035	1,238	131	-	10,404	14,227
62	5,137.1	-	5,137.1	8,857	1,134	33	-	10,024	15,161
63	6,036.4	-	6,036.4	8,257	978	22	-	9,257	15,293
64	7,147.3	-	7,147.3	7,955	1,194	95	-	9,244	16,391
65	6,617.2	-	6,617.2	8,350	3,051	1,725	56	13,182	19,799
66	5,324.3	3,046.2	8,370.5	5,520	1,186	919	-	7,625	15,995
67	7,348.3	102	7,358.5	5,438	1,174	1,154	-	7,766	15,124
68	11,844.6	1,041.3	12,885.9	8,850	2,194	2,268	42	13,354	26,240
69	10,503.5	4.4	10,507.9	5,636	982	1,474	13	8,105	18,613
70	12,187.7	-	12,187.7	6,028	835	995	-	7,858	20,046
71	12,720.6	-	12,720.6	6,418	771	802	-	7,991	20,712
72	17,899.5	70.0	17,969.5	8,628	933	1,856	-	11,417	29,387
73	15,795.8	-	15,795.8	7,072	1,067	1,347	-	9,486	25,282
74	20,581.6	-	20,581.6	7,174	817	1,276	-	9,267	29,849
75				13,379	1,780	2,330	-	20,489	
				22,230	6,030	4,865	1,432	34,557	

1/ International Commission for the Northwest Atlantic areas 5 and 6 cover from Maine to Cape Hatteras, North Carolina.

2/ Based on U.S. exvessel prices.

Mr. FORSYTHE. Mr. Chairman?

Mr. LEGGETT. Yes.

Mr. FORSYTHE. Has the Canadian scallop industry been a rapidly expanding one?

Mr. WALLACE. The Canadians have been in the scallop business for a long period of time, too, and they have been fishing in the area that we are talking about.

Mr. FORSYTHE. It is not something new.

Mr. WALLACE. It is nothing new.

Mr. LEGGETT. Do you know the value of the scallop fishery?

Mr. WALLACE. Mr. Dykstra is here.

Mr. LEGGETT. Mr. Dykstra, what is the value of the scallop fishery, do you know?

Mr. DYKSTRA. I could not tell you, no.

Mr. LEGGETT. All right, Mr. AuCoin?

Mr. AU COIN. Thank you, Mr. Chairman.

We will soon hear from the National Federation of Fishermen. In their testimony, I would like to call to your attention a quote that the federation uses from Mr. Dick Sharood, who testified before this committee in the 94th Congress. He said—and I would like your response to his comments—“We are concerned that the decision to deal with the U.S.-Canada fisheries outside the scope of the act will be a precedent for handling other equally complex fisheries in this manner. We are concerned that the regional councils, which have been given a very important statutory role to develop the management plans and to determine optimum yield, will be superseded and preempted by a web of treaties. We are concerned that the right of U.S. fishermen to harvest up to the optimum sustainable yield will be reversed by treaties which may grant to foreign nationals shares that exceed the surplus which might be available to them under the act. Indeed, a treaty might require that the United States fishing effort be held down artificially in order to stay within OSY and still give foreigners the share guaranteed them under a treaty. What if a council develops a management plan for a stock on which Canadians, as well as other foreigners fish? If the Canadian effort has been carved out of the equation by a treaty, how will the councils develop plans that are equitable and legally sound for the other countries engaged in the fishery? A corollary is, of course, once a stock has been taken out of the council's area of jurisdiction for all purposes? A treaty preempting the councils is not the way to insure coordination with Canadian management activities. The act authorizes the Secretary of State to negotiate boundaries with adjacent and opposite nations. It does not authorize him to exempt any stocks from the act. To the contrary, the entire thrust of the act is to maximize management through the councils; hence, the GIFA process and the limitation extension of existing bilaterals and the requirement to renegotiate inconsistent treaties.”

How would you react to those concerns, which I think have been stated very clearly and very eloquently?

Mr. WALLACE. Well, I think first in responding directly, this concern is in relation to this current agreement that we are talking about. The duration of the agreement itself, I think, tends to guard against a long term commitment in which the council would not have any opportunity.

Mr. AuCOIN. What is the guarantee?

Mr. WALLACE. The guarantee is that this particular agreement is only to the end of this calendar year.

Mr. AuCOIN. And then what do you expect to happen?

Mr. WALLACE. Well, we are in the process, or will be over the next several months, of looking at a much longer term agreement with Canada.

Mr. AuCOIN. A reciprocal agreement?

Mr. WALLACE. Some kind of—

Mr. AuCOIN. Reciprocal? Not a GIFA.

Mr. WALLACE. I think not a GIFA.

Mr. AuCOIN. Which runs into the same question I just posed to you.

Mr. WALLACE. Well, except that the negotiation, or the participation on the kinds of controls that are going to be imposed along the U.S. coast are certainly going to be done in relation to the activity of the councils that exist on the Pacific coast, in Alaska, and on the East coast. I do not think there is any question at all that they are going to be deeply involved in making the necessary evaluations and arrangements for these management plans.

Mr. AuCOIN. What does "deeply involved" mean?

Mr. WALLACE. Well, the council has the opportunity to develop the management plan.

Mr. AuCOIN. What happens if the treaty supersedes a portion of that management plan.

Mr. WALLACE. I think such a treaty would go into effect only after extensive discussions and negotiations involving the councils themselves and others. I just do not think that we would do this kind of thing in their absence, in view of the concerns that have been expressed here. I cannot imagine negotiating an agreement that was not cognizant and responsive to that concern.

Mr. AuCOIN. You are saying to this committee that this procedure is the only way you see to solve the problem if we suspend the 200-mile act in order to accommodate the problem we have with the Canadians?

Mr. WALLACE. No, I do not think I said that.

Mr. AuCOIN. That is the meaning I get from what you said.

Mr. WALLACE. What I was really trying to say is that I believe that the councils are going to be involved in making—

Mr. AuCOIN. But the 200-mile limit puts the councils in the driver's seat. I think this was the concern Mr. Sharood was referring to last year, and the concern I have this year, that you are going to place the councils in a second-fiddle position.

Mr. WALLACE. Well, I guess I have to say that I consider the councils the basic concept for making management plans for fisheries off our coasts.

I also realize, however, that in carrying out international negotiations with our neighbors, there are involvements on the part of the Federal Government. These things, it seems to me, have to be taking place in some coordinated fashion.

Mr. AuCOIN. Well, Mr. Chairman, we could pursue this for some time. I have raised my concerns here and those of the federation.

We do have a full committee session in which we can pursue this further.

I want the record to show that I am concerned about this whole range of problems.

Mr. LEGGETT. Mr. AuCoin, the record will show your continuing concern. I recommend to all the members the CRS material in the file, which generally covers some of the conflicts which this legislation raises.

Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

In view of the fact that with no other nation do we have the joint stock problem, have the fisheries of this nation continued to cross real, as well as unreal borders at this point? Are we not going to have some kind of joint management between Canada and the United States for the fisheries involved? I would suggest it should be some type of a joint council arrangement. But could we get something very similar to our councils where there are jointly overlapping fisheries.

Mr. WALLACE. Mr. Forsythe, I think we have to keep in mind that the Canadian governmental structure is somewhat different from ours, and that all of those fishery negotiations and management are done at the Federal level. The whole operation of dealing with management in Canada is done by the Federal Government.

Mr. FORSYTHE. Let me back up on one of these points. Can you conceive of any other nation that we would have this same kind of joint interest in a fishery?

Mr. WALLACE. I suppose the possibility exists that we might have such conditions in Mexico, although I am not too certain of that.

Mr. FORSYTHE. It is going to be a problem and I share the concerns that the gentleman has regarding the regional council's rule. You are going to have to find some way in which that regional council is going to really have the impact of joining management. That is something serious to look at.

But certainly, as far as these two nations are concerned, our interests are so intertwined and joint, even the question of defining what this transfer of herring is, I think would have to be done very carefully.

Mr. WALLACE. Mr. Forsythe, I certainly agree with you. I believe, though, that the agreement as it stands now and for the period of time that it is designed, does not in any way endanger the rights of control by the councils to do their jobs.

Mr. FORSYTHE. Well, let us face it, the councils have had no control in what has been happening in the 1977 fishing season. I would say that the management plans were basically handed to them. There would not have been time for the councils to organize to get the statistics to do the management job, to which they were assigned. I think they have very graciously, acceded to that situation.

Mr. WALLACE. I completely agree with you.

Mr. FORSYTHE. But we are looking beyond December 31, 1977. There are a lot of things that are going to have to happen in 1977, as far as all councils are concerned, with a view to the 1978 fisheries. I am sure there is going to be considerable pushing, and

on the east coast I have seen a lot of concern from fishermen about allocations. We still have a good distance to go to really make this whole operation work.

I frankly hope that we do not get something set in concrete so that issues can be worked out with good will on all sides.

One more question. In a press release dated January 28 of this year the National Pacific Halibut Commission stated that "Reducing the incidental catch by foreign fishermen is necessary to rebuild the halibut resource."

Are there any plans to reduce the halibut catch before renegotiations with the halibut commission take place?

Mr. WALLACE. If you do not mind, I would like to consult with my colleagues on this.

Mr. LEGGETT. You can provide that for the record.

Mr. WALLACE. That is a very complex question, and I want to be sure to give the right answer. If you do not mind, Mr. Forsythe, I would like to have the opportunity to give this to the committee in writing because I have no ready answer.

Mr. FORSYTHE. Please do.

[The following was received:]

HALIBUT TAKE

Efforts to reduce incidental halibut take by third party nations include—for countries fishing under Governing International Fishery Agreement—area, seasonal and gear restrictions which tend to minimize their take. Regulations prohibit any retention of halibut by such third party nations.

Mr. LEGGETT. The Chair will state that the authority of the councils, as far as I understand it, in spite of all of these amendments the act remains intact in full force. I would observe that it would be nice to govern each and every country's fishing in our waters by GIFA's. We have seen that the GIFA's, however, with respect to Mexico would not have been extremely efficacious as far as American fishermen are concerned. It would have been nice had we been able to negotiate a reciprocal agreement with Mexico to maintain our fisheries in their waters on a status quo basis, at least with respect to Mr. de la Garza's position, who feels that his "ox has been gored," so to speak, but that did not occur.

Mr. Bonker has the time. Please excuse me for interrupting.

Mr. BONKER. Mr. Wallace, when we passed this law the purpose of it was conserving the fishery resources off the coasts of the United States and, among other things, the promotion of domestic commercial, and recreational fishing and sound conservation principles.

In section 5 of draft 2 of the Pacific Regional Fisheries Management Council's plan, in a section entitled: "Unavoidable Adverse Effects," it calls for reductions up to 40 percent of fishing in that area.

Do you not think that is a rather dramatic and severe reduction to fishermen who expected protection and wise management, and promotion of recreational and commercial fishing in that area?

Mr. WALLACE. Well, 40 percent obviously is a substantial reduction. I assume that is the management plan that you are reading from.

Mr. BONKER. Yes, it is.

Mr. WALLACE. Of the Pacific council.

Mr. BONKER. Draft No. 2. I understand there may be two more drafts circulating about. I want you to answer the question first.

Mr. WALLACE. I think 40 percent is a substantial reduction; there is no question about that.

Mr. BONKER. Have you seen the latest draft of the Pacific Management Council's plan?

Mr. WALLACE. I am not sure I have seen the latest; I have seen some drafts.

Mr. BONKER. Are you familiar with the Federal court decision of 1974 in that area, on Indian fishing rights?

Mr. WALLACE. In a general sense, yes.

Mr. BONKER. When we discussed this legislation for 2 years in the House, never once did we ever talk about Indian fishing rights. And yet we find that in this management council plan section 2.8.1, under "Objectives" it says that, "Immediate regulation change should be limited to Oregon and Washington ocean waters, north of Tillamook Head in order to comply with present judicial requirements mandating greater fishing opportunities to treaty Indian fishermen."

In the legal counsel's statement at a hearing in Seattle, he said that two major considerations were used in the formulation of this plan. One was the court order or interpretation for Indian fishing rights, and how to deal with salmon allocation to the Indians.

Now, Mr. Wallace, if that were a consideration before our committee, I would have never supported this bill. I am just wondering whether your Department and the management council in formulation of these plans were fulfilling congressional intent which was conservation of fish stocks and protection of domestic fishermen from foreign encroachment.

Mr. WALLACE. I would be happy to read the law to you, sir.

Mr. BONKER. Please. Section 303?

Mr. WALLACE. Section 303.

Mr. BONKER. I am familiar with that.

Mr. WALLACE. Subsection a(2) which says that any fishery management plan shall "contain a description of the fishery, including, but not limited to"—and then there is other language—"and the nature and extent of foreign fishing and Indian treaty fishing rights, if any."

This is a very specific reference to Indian treaty fishing rights; and therefore, it seems to me, that the counsel is required to at least take into consideration the treaty rights that might exist.

Mr. BONKER. Section 303 provides that any fishery management plan which is prepared by any council, or by the Secretary with respect to any fishery shall contain a description. It did not say that it would implement in accordance with, but just contain a description. Just the same as with any other nation's traditional fisheries, our treaties with other nations contain a description.

Now, this is a pretty volatile issue in our area. And on the House side, never once did we take up that issue to that extent. The fishermen in my area get the impression that that bill was passed as a vehicle to further implement the court decision. And when

they cite it as a primary objective of the plan; that this plan has been developed for the purpose of complying with the court decision on fishing rights for Indians, that is not fulfilling the intent of Congress because we never took up that issue.

It may be unavoidable. You have not heard from the Federal court on the issue. You are anticipating, or implying it in the formulation of the plan but you are not complying with it.

Mr. WALLACE. Mr. Bonker, you keep saying "you," as though we had developed the management plan. I must point out to you, sir, that this plan was being developed by the Pacific council.

Mr. BONKER. But, Mr. Wallace, your department has overview.

Mr. WALLACE. I assure you, Mr. Bonker, we were not writing this management plan.

Mr. BONKER. But you can approve or disapprove. And if it is not fulfilling congressional intent you can approve or disapprove such portions of the plan that do and send them back to the council for modification.

Mr. WALLACE. That is exactly right. It is very interesting though because up until now it has been made very clear by the Congress that the management plans must be developed by the councils themselves, and we agree with that. But I also agree, we are going to have to look at this plan at the appropriate time, when it is submitted.

Mr. BONKER. Well, I think, Mr. Wallace, that your department could look at that plan and recommend striking those phrases that deal with compliance with any Indian fishing rights, because that was not the intent of this legislation. I do not think this should be implied by the management council.

Now, as I mentioned, there is a volatile fishing interest involved in this. Nobody really looks at that issue objectively. I think your department can. You are detached and should be very interested in seeing that the plans are compatible with the Fishery Conservation and Management Act. You should look beyond the legislation at the House committee hearings and the committee reports, to see if they address Indian treaty fishing rights in a substantial manner like the management plan does.

I have submitted a statement to the management council, voicing the same concerns at that level. But I want to make sure that on your level you have the benefit of my views and concerns as well.

Mr. WALLACE. Yes, I understand that, Mr. Bonker, and I can assure you that your view will be taken into consideration at the department.

Mr. BONKER. Let me ask you just a few short questions. You are not in receipt of the latest plan so you do not know how to identify the latest plan that is before the department.

Mr. WALLACE. Well, all of them have been informal up to this point anyhow because we have a regional director who is a member of the council. So, he has available whatever the latest draft is. I must say, personally I am not sure which drafts I have seen.

Mr. BONKER. Do you know if your regional director has been consulting with the Department of State, and with your counterparts in Canada, to make sure that there is some compatibility between the plans adopted by the two countries?

Mr. WALLACE. Well, State has an observer-member on the council—not a voting member. I am positive that that representative also has been advised as to the action taken by the council. More than that, there have been discussions between the members, some of the members of the council and their technical people, and their counterparts in Canada. Some meetings took place last week.

Mr. LEGGETT. So we have that straight now on Indian fishing rights, in spite of the fact that there is a court decision interpreting an old treaty, I presume that the act that we have in Public Law 94 265 is currently the supreme law of the land, and allows the councils to designate a surplus and make apportionment, and give consideration to foreign, Indian, and other kinds of fishing rights, and will determine how much will be taken by domestics, and how much will go for foreign.

Mr. WALLACE. That is the way I interpret the law, Mr. Chairman.

Mr. LEGGETT. And do I gather that the council on the Pacific coast is making management plans that would appear to be not in consonance with the views of your constituency; is that correct?

Mr. BONKER. Essentially, Mr. Chairman, that is correct.

Mr. LEGGETT. And you are looking forward to a locally developed management plan to be checked by the Department of Commerce under the authority that is vested in the Department under the 200-mile fishery zone act.

Mr. BONKER. The Pacific council developed this management plan that provides jurisdiction for the first time in waters from 3 to 200 miles. This plan is being used as a vehicle to limit and greatly curtail fishing in outside areas in compliance with the Federal court order. I do not think that we should be taking that step until there is direction or an order from the court to the management council to do so.

There is just no way that any of us in the Northwest who have supported this legislation would have supported it if we had known it was going to be used as a vehicle to provide half of all the fish in that area to the Indians. This is having a dramatic and adverse effect on our outside fishermen, and that was not the intent of this law at all. It was to protect them, not take away.

I know there is going to have to be some curtailment of all fisheries in order to accommodate all the user groups; and I feel there is a practical compromise to be reached. But this is much too severe and dramatic, and it is contrary to the law, as I see it.

Mr. LEGGETT. Mr. Mannina?

Mr. MANNINA. Thank you, Mr. Chairman.

Dave, you have suggested an amendment to the bill. With respect to the second amendment dealing with enforcement, you suggest that section 307 of the act not apply to Canadian vessels. Section 307 refers to prohibited acts. However, the penalties provided in section 308 and section 309 are keyed to prohibited acts in section 307. What penalties would you assess against Canadians violating regulations if section 307 doesn't apply.

Mr. POWELL. Mr. Mannina, first of all, that is a draft suggestion.

Mr. MANNINA. I understand.

Mr. POWELL. My personal opinion is that it is not necessary to spell out that section 307 does not apply. What this suggested

amendment is intended to do is indicate that insofar as Canadian vessels fishing in our zone, outside the terms of the agreement, they are subject to the penalty provisions of the Fishery Conservation and Management Act as are other countries' vessels. That is all that it is intended to do.

Mr. MANNINA. I see. With respect to article VIII, clause 2, Dave, do you share Roz's view that this is not intended to apply to domestic fishing?

Mr. WALLACE. I believe that is correct.

Mr. MANNINA. Thank you, Mr. Chairman.

Mr. LEGGETT. We apparently have no other questions on the table, so thank you very much, gentlemen.

[The statement follows:]

STATEMENT OF DAVID H. WALLACE, ASSOCIATE ADMINISTRATOR FOR MARINE RESOURCES, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION OF THE U.S. DEPARTMENT OF COMMERCE

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to discuss the Reciprocal Fisheries Agreement between the United States and Canada which was signed on February 24, 1977. The Department of Commerce supports this Agreement and strongly urges prompt Congressional action to place it in full force and effect. This Agreement will enable important United States fisheries off Canada to continue during 1977 pursuant to existing patterns while long-term arrangements are being negotiated and considered. The Agreement provides similar access on a reciprocal basis for existing Canadian fisheries off the United States.

The approach of this Agreement is similar to that used in the past to provide reciprocal fishing opportunities for United States and Canadian fishermen in the 12-mile fisheries jurisdiction zones established by Canada in 1964 and by the United States in 1966.

While the Agreement is designed to insure and simplify reciprocal access, conservation procedures have been incorporated. The key concept of this Agreement is to permit, for 1977, the continuance but not the expansion of existing traditional fisheries. As is set forth in Article II, paragraph 3:

"Fishing by nationals and vessels of each party in the zone of the other shall continue in accordance with existing patterns, with no expansion of effort nor initiation of new fisheries."

In addition, to further protect against possible overfishing, catch quotas are specified for certain key stocks taken by the United States off Canada and by Canada off the United States.

Within this general context, either country may apply and enforce, under its own domestic law, supplementary conservation measures affecting the size limits, seasons,

areas, gear, and bycatch in the fisheries off its coasts. Such regulations for a particular coastal zone will apply equally to the fishermen of both countries operating in the zone.

The United States fisheries that will continue off Canada under this Agreement are significant. On the Pacific coast the total United States catch off Canada had an average annual value of \$8 million from 1971 to 1975, and a value of about \$5.6 million in 1975. On the Atlantic coast United States fisheries off the Canadian Maritime Provinces had a total landed value of \$5.5 million in 1975.

Article XIII provides for timely exchanges of fisheries statistics between the two countries to permit an accurate determination of when any catch level referred to in the Agreement is reached and otherwise to insure the Agreement's effective implementation. In other words, the United States, under the Agreement, has assumed an obligation to collect and provide Canada with pertinent data on United States catches off Canada in the fisheries subject to catch limits, in exchange for similar information from Canada regarding such fisheries off our coasts. This will facilitate the conservation programs of both countries.

In order to fulfill this obligation, we will need legislative authorization to collect the necessary data from the United States fishermen operating off Canada. We believe that such authorization should be incorporated in whatever legislation is enacted to give effect to the Reciprocal Fisheries Agreement.

On March 14, Mr. Leggett introduced H.R. 4954, a bill

"To amend the Fishery Conservation Zone Transition Act in order to give effect during 1977 to the Reciprocal Fisheries Agreement between the United States and Canada."

We have been in contact with Department of State staff and have seen a discussion draft prepared by the Committee staff. However, we have not had time to fully analyze H.R. 4954 or to develop an Administration position on the bill. In the next few days, we hope to submit to the Committee a report commenting in detail on the bill and including suggested language to amend the bill to authorize the collection of catch data.

Thank you, Mr. Chairman. I would be pleased to try to answer any questions.

Mr. LEGGETT. I see we have two more witnesses to be heard, Mr. Sharood and Ms. Sloan. It is nice to have you before our subcommittee. I presume, Ms. Sloan, we will hear you first.

STATEMENT OF LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION OF FISHERMEN, ACCOMPANIED BY RICHARD SHAROOD, COUNSEL, AND JACOB J. DYKSTRA, EASTERN REGION PRESIDENT

Ms. SLOAN. Thank you, Mr. Chairman. I think rather than reading my testimony—

Mr. LEGGETT. Your statement will appear in the record as though fully delivered. Do we have it?

Ms. SLOAN. I think so. I have given it to the appropriate gentleman.

Mr. LEGGETT. All right.

Ms. SLOAN. I think the first point is, since the federation does represent so many different fisheries, we do have support of the agreement—in some cases enthusiastic support, in some cases reluctant support—but we do not oppose the 1977 agreement with the understanding there are some things we would like to see changed in 1978.

Mr. LEGGETT. You support it with respect to those constituent members of your group who support it. What about those who oppose it?

Ms. SLOAN. None of the members oppose it. Some of them are much more reluctant than others about conceding support; but none that I speak for oppose it.

The first thing about which we are concerned when it comes to dealing with 1978 is that the industry be involved, not just as an advisory group across the hall, but from the beginning, and that gets to the question of the transboundary stocks which Mr. Forsythe discussed and to Mr. AuCoin's quote from Mr. Sharood's comments when he testified before you last September. For all of Mr. Wallace's statement about the councils being deeply involved and so forth and so on, we still do not know what that means.

We have submitted to Mr. Wallace a formal proposal about how the councils should be involved, but we have received no formal indication of how our proposal has been taken. We submitted that proposal the end of October, and received no formal indication on what the councils' role will be. We have assurances, but the same kind that you heard this morning. We are looking for details, so that we can understand precisely and clearly, and try to work it out.

Mr. LEGGETT. We are going to have to figure out, I think, whether or not we are going to have more official advisories, or council-type official advisories, and exactly how we are going to do that. We have some time to work that out. I hope we can do that before we arrive at this point next year. And secondly, I would hope that we allow ample time for consultation so that everybody gets an opportunity to present their views into the final compromise equations that necessarily have to be involved.

Ms. SLOAN. That is what we are hoping too, Mr. Chairman, and again it concerns us, given the complexity of the Canadian negotia-

tions, and the fact that we are going to have to start negotiating a permanent agreement for 1978, pretty quickly. So, we are raising that question again with regard to transboundary stocks, involving the councils' role, a real role, not a decorative one, getting as much involvement as we possibly can.

Another thing which comes up when we look at how complicated it is, and why we are looking at a 1-year agreement at this time, we suggested and continue to suggest an alternative approach to the single agreement. We suggest three of them; one for the east coast, one for the west coast, and one, perhaps, because of its particular complexity, for the salmon. This is because, as many of us understand it, the Canadians want one agreement because they can play off the east coast against the west coast, particular fisheries on a given coast. We feel it might take more sense to look at west coast—there are obviously going to be tradeoffs, regardless, but to look at west coast fisheries and to tie these fisheries negotiations in a way that has not been done yet, to the boundaries because it is completely unrealistic to look at the negotiations in the long term for fisheries without knowing what we are talking about in regard to boundaries. We do have significant areas of dispute on those coasts.

Mr. LEGGETT. You are suggesting we ought to have three separate agreements?

Ms. SLOAN. Rather than one, if we cannot possibly work with a GIFA. When we testified before you last fall, we stated that a GIFA with some deviations from the act was possible, and I think that is still possible. But if we are not going to have a GIFA, I think that we have to consider fisheries and boundaries more closely than we have. There has been an official disregard, as we see it, over the interrelationship of fisheries and boundaries. They are handled by two separate offices.

Mr. LEGGETT. That might be accommodated by developing a hybridized council on each side, one on the Atlantic and one on the Pacific, and then let this council make recommendations with respect to the kinds of plans to be developed.

Ms. SLOAN. Well, that is the kind of possibility that we would like to get on with exploring now. There are ranges of possibilities, and we would like to begin exploring them now.

As regards the 1977 agreement specifically, Mr. Studds discussed with Ambassador Ridgway the squid and butterfish problem and the expansion of Canadian fisheries in the U.S. zone. I think we can ask Jake to comment on how he feels on Ambassador Ridgway's assessment that this does not represent new traditional fisheries.

Mr. DYKSTRA. This is my greatest concern with this agreement. I have been in contact with the industry people in New England, and they told me that the Canadians very definitely plan to expand into my area and Mr. Forsythe's area with some fisheries operations.

I am very much concerned that this might mean that my fishermen not only will have less fish to harvest, but perhaps they will have more competition from the Canadians than they already have in the marketplace. So, that is a matter of concern. I believe that the Canadians are trying to set a precedent because they have been very insistent that these particular quotas be kept where they are, and I think that is for a purpose.

Mr. LEGGETT. Was the answer the Ambassador gave to the question posed by Mr. Studds in that regard that the status quo would be maintained except where the agreement provides for differences? So, in fact the agreement does provide for changes in the status quo for this year.

So, you indicate that they have great aspirations in this area, and whatever they do under those provisions has been negotiated. That is possible.

Mr. DYKSTRA. I am not saying that they are going to be catching large quantities of fish in 1977. I do not think that is their intention, and the quotas would not allow that in any event because they are not that large. I think what they are trying to do is to launch this as soon as possible based on the 1977 precedent and they have plans to expand beyond the 1977 quotas.

Mr. LEGGETT. I think what we want to do is to make sure that we have a very solid, intertwined bargaining group that bargains with them for next year. We hope we can get that group established as soon as possible.

Mr. Sharood?

Mr. SHAROOD. Thank you, Mr. Chairman. Following up on what Jake and Lucy have just said about the Canadian situation on the east coast, I hope that the committee will make it very clear—and it can do so in its report—that the committee's and Congress' approval of this agreement should not be taken by either our Government or the Canadian Government as a precedent for any expansion of the Canadian fishery.

We understand the circumstances under which the Canadian allocation was based upon the ICNAF quota agreed to last year, but there is, as you have heard, legitimate concern that this will be a foot in the door, and that the Canadians will be back next year seeking and expecting to receive at least as much squid and butterfish as they received this year, and maybe even more.

We hope that the committee will make it abundantly clear that approval should not be interpreted as acceptance of this kind of a precedent.

Following up on what Mr. AuCoin said earlier, quoting my prior testimony, we are not convinced that an agreement with Canada cannot be entered into that conforms to the requirements of the act as a governing international fishery agreement. We have a precedent now well established in this agreement that is being considered today, as well as in the Japanese agreement, that we are prepared to depart from the letter of the law in terms of what is a GIFA. We are willing to call many things a GIFA that may not necessarily totally comply.

Ambassador Ridgway has made the argument that we cannot require the Canadians to sign a GIFA because of the permit and fee requirements, which the Canadians do not impose on Americans fishing in Canada. The Canadians can sign a GIFA with us that waives the permit and fee requirement, and the Congress could approve that GIFA containing such waivers thereby exempting Canada from the permit and fee requirement.

It seems to me that is a very technical problem that can readily be overcome. Everyone acknowledges that there is a unique situa-

tion with Canada in that regard. But I do not see the problem raised by Ambassador Ridgway as being of such magnitude as to justify taking away from the councils their unique and very important role of determining the optimum yield of the stocks and the surplus.

Now, we have to acknowledge that this agreement being considered today does do that. As far as Canada is concerned this year, the council is bound by the agreement. There will be no opportunity for the council with respect to any resource that the Canadians are harvesting in U.S. waters to come up with an optimum yield or surplus that in any way affects the Canadian fishing.

We think in the long run that is not the way it ought to be done. As previously indicated, a suggestion has been made by us to the Commerce Department for an alternative approach to the GIFA. We have not even received a formal indication of the acceptability of that approach. The idea that the council will be involved, or "deeply involved," or similar words, does not answer the question.

We feel before we go back and negotiate further with the Canadians over 1978 and beyond, that the whole question of how the United States is going to handle this side of the management of transboundary stocks ought to be settled. We ought to have our own house in order. We ought to have arrived at an agreed position on how we are going to manage the resource on our side before we go back and talk to the Canadians over U.S. fishing in Canadian waters, on Canadian fishing in U.S. waters.

If we are trying to resolve the management side, the U.S. management side during negotiations with Canada, it seems to me there is a great likelihood they are going to come up with something that is probably not going to be acceptable to a great many people. It just seems elementary that we should resolve these issues now, before going back and negotiating further. We have gotten no further in terms of resolving this issue than the phrase "the councils will be deeply involved;" that is as far as it has gotten, and that does not really tell us very much.

Mr. LEGGETT. This committee ought to resolve the issue on the Panama Canal, too.

Mr. SHAROOD. I agree with that.

Mr. LEGGETT. Let me ask you this, do you represent fishermen that fish the \$11 million worth of fish in Canadian waters?

Ms. SLOAN. Some of them, yes; primarily on the west coast, fishing off Vancouver.

Mr. LEGGETT. You represent—

Mr. SHAROOD. I am the counsel for the NFF.

Mr. LEGGETT. So we understand, who is representing whom?

Ms. SLOAN. The federation represents east and west coast fishermen.

Mr. LEGGETT. And how many of those fishermen do you represent?

Ms. SLOAN. How many fishermen?

Mr. LEGGETT. I have to figure out who your clients are. I mean the State Department is attempting to represent all of the American fishermen. Now, if you are not representing all of the American fishing interests—

Ms. SLOAN. Certainly not all of them, we do not represent any distant water fishermen.

Mr. LEGGETT. I want to know who you represent on the west coast.

Ms. SLOAN. We represent fishermen in Alaska, Washington, Oregon, and in California who fish for shrimp, ground fish, crab, salmon, and albacore; that is on the west coast. On the east coast we represent ground fish fishermen in New England—

Mr. LEGGETT. Are there a substantial number of fishermen in the United States that fish off Canadian shores that you do not represent?

Ms. SLOAN. I think we represent a cross-section. In terms of absolute numbers, I would have to check that out.

Mr. DYKSTRA. I think what the chairman is getting at is that the fishermen from Maine, Boston, and Gloucester, who fish off the Nova Scotia coast, are not represented by the federation.

Mr. LEGGETT. So, if our subcommittee is representing all American fishermen, then necessarily we have to take into account the interests of some fishermen that your group does not represent.

Ms. SLOAN. On the west coast we do represent the albacore fishermen and the salmon-ground fish fishermen, who fish off Canada.

Mr. LEGGETT. How about shrimp and the salmon fishermen?

Ms. SLOAN. A very negligible number of our boats on the west coast fish shrimp.

Mr. LEGGETT. How about sole, perch, and cod?

Ms. SLOAN. Sole and perch, and cod; we represent fishermen who fish off the coast of Canada for those fish, on the west coast.

Mr. DYKSTRA. To keep this in focus, the ground fishermen, for instance, out of Seattle, and the albacore fishermen on the west coast need this agreement, and I would have been much more vocal in my opposition to it had I not been considering their interests. So, I think there is a balance.

Mr. LEGGETT. I sense that your interest is somewhat fractured.

Ms. SLOAN. Well, this is why I say, Mr. Chairman, we find this agreement acceptable, there are some of our members that are pleased with it. Our albacore members and our ground fishermen who fish off Vancouver are pleased with it. But the people on the east coast whom Jake represents—his organization is one of my members, as are some of the Atlantic organizations, New Jersey, and New York, they are much more concerned. So, it is a fragmented industry, as you know because the industry fishes for many different kinds of species and has different kinds of views.

Mr. LEGGETT. The reason I ask that is that provision sets no precedent whatsoever. We ought to take a side glance as to whether we have more opportunities in their waters or whether they have more opportunities in our waters.

Hopefully, the American fisherman has more opportunity in Canadian waters.

Mr. SHAROOD. Mr. Chairman, while you have been raising this question of "who do you represent," I have been trying to figure out in my mind whether we have said anything, or taken any position that in any way jeopardizes the position of any American fisherman off Canada. Frankly, I cannot come up with any in my own mind.

On the east coast, if we would pursue the approach that we are suggesting, that the council role not be diminished, the Canadians are still going to determine what is surplus to their Canadian fishermen. I do not think the Canadians are in a position to give the American fishermen any more in their own zone off the east coast—that is the particular area where we seem to have a gap in our representation—I do not think they are prepared to give us any more than we are necessarily prepared to give their people down here. I cannot believe that the Canadians are that, if you will, generous to the United States, that they are going to risk jeopardizing their own fishermen in order to give the Americans a leg up.

We do not, as far as I know, have any reciprocal situation where by virtue of ICNAF quotas to the United States we are gaining a foothold in a new fishery in the Canadian zone, as opposed to the squid and the butterfish situation in the U.S. zone.

I do not think that the fact that this group does not specifically speak for all U.S. fishermen on the east coast in any way alters the validity of the position we are offering. And on the precedent question, I just do not see where what we have suggested would endanger the position of the U.S. fishermen going up to Canada.

Mr. LEGGETT. Well, obviously your position is generally not in opposition to approving this legislation.

Ms. SLOAN. No.

Mr. LEGGETT. And we obviously have a lot of work to do in developing the American fishery interests in the future. Sometimes, you know, these programs are best worked out in such a way as to get a kind of benevolent type of dictatorship, rather than the kind of way we have operated in the past, a meshing of fishermen democracies.

Mr. SHAROOD. It is harder this way, but hopefully in the long run it would be better this way.

Mr. LEGGETT. A fisherman democracy would be better, provided all the interests are properly represented.

Ms. SLOAN. Mr. Chairman, that is a point we have made before, and we make right now. There is a tendency still to confuse the council's viewpoint in a region and the industry's viewpoint. Most of my people do not feel that the councils necessarily represent the commercial industry viewpoint at all. So, to say what the council's position is, is not to assume that the industry's position tracks that all the time, or even ever, at this point.

Mr. LEGGETT. That is one of the compromises we built into the law.

Ms. SLOAN. Yes.

Mr. LEGGETT. And we hope we get a balance with the compromises represented by Mr. Sharood and ourselves.

[Laughter.]

Mr. LEGGETT. Mr. Forsythe?

Mr. FORSYTHE. Thank you, Mr. Chairman.

On this Canadian fishing down on Georgia's Bank and below, has there been much Canadian groundfishing there, do you know?

Mr. DYKSTRA. They have on Georgia's Bank. The main fishery that they have had below Cape Cod has been the scallop fishery when the scallop fishery was better down there. There have been

times when there has been a lot of Canadian scallop fishing down there.

Mr. FORSYTHE. So, at least in current times there is more fishing for butterfish down there.

Mr. DYKSTRA. That is right, yes.

Mr. FORSYTHE. I have no further questions.

Mr. LEGGETT. Mr. AuCoin?

Mr. AUCCOIN. Mr. Sharood, you said you were still convinced the traditional GIFA format was an operative vehicle for the Canadian agreement, and any unusual cases that might arise could be built into it.

Mr. SHAROOD. Yes, sir.

Mr. AUCCOIN. In the recitation of problems that the Ambassador encountered, did you hear any problems that you feel could not have been accommodated by such waivers in a traditional GIFA format?

Mr. SHAROOD. Of course the Canadian situation is complicated as she has indicated very eloquently. There are many issues involved here—the boundaries, the fisheries, and other considerations. It may very well be that the Canadians do not want to sign this kind of agreement; and it may very well be that we have accommodated that desire for a variety of reasons.

Mr. AUCCOIN. The Japanese probably do not want to sign such an agreement, either.

Mr. SHAROOD. No, but the Japanese, of course, are not right across the border from us.

What I am saying is that I do not think the specific arguments that have been raised against the signing of a GIFA are valid. There are other reasons that mitigate against the signing of a GIFA, or a GIFA-like agreement that does not encroach upon the authority of the council, but I have not heard them here, they have not been stated.

The problem of American fishermen going up to Canada, I think, can be addressed in an agreement with Canada which is signed simultaneously with the GIFA. We have signed an agreement with Mexico. The Chairman has alluded to the fact that Mr. de la Garza's people are not very happy with it, but we have signed a separate agreement dealing with American fishing rights off Mexico. I do not see why a similar type of agreement could not be signed with Canada.

Again, however, I do not think the fact that you call it a GIFA, or that it is legally a GIFA in a strict sense is really what is important. Our concern is, to what extent is this going to detract and take away from the legitimate authority of the council. If we take that authority away, we have to think down the road very carefully as to how the councils are going to do their job of total management over the resources.

Mr. AUCCOIN. That bothers me more than anything else.

Mr. SHAROOD. That is really the key to the whole problem.

Mr. AUCCOIN. Sometimes you take a step, a small step and think it is worth it. And then, one thing builds on another and before you know it you have a totally different situation on your hands. I worry about the precedent of the reciprocal agreement, and what

the long-range effect may be on regional councils and their ability to establish and manage management plans.

Mr. LEGGETT. If the gentleman will yield. Do you not run the danger, if you do it the other way and we enter into GIFA's that say, "You will be bound by our GIFA and we will be bound by your GIFA." Then the councils proceed to make some determination which may not be on the basis of maximum sustainable yields. But because of what we have done, we look at what they have done.

Do you not have a tremendous tendency to have reciprocal awards on items that have nothing to do with the maximum yield?

Mr. SHAROOD. Well, our law, of course, is clear as to what criteria will govern these determinations. The Canadians have read the law, and they hopefully believe that we are going to be governed by the law, and the councils are going to be governed by the law, and the Secretary of Commerce is going to take her job seriously in terms of her review of these management plans.

It seems to me we have to have similar good faith in terms of our acceptance of the fact that the Canadians are going to manage the resources in their zone in an intelligent and biologically sound, and even-handed manner, also.

Mr. LEGGETT. Well, the Canadians appear to be reasonable in governmental affairs, I presume.

Mr. SHAROOD. I do not think we should start out with the assumption that either side, whether it is them managing in their zone or us managing in our zone, is going to act in bad faith.

Mr. AUCOIN. It seems to me—if I can reclaim my time for just a second—

[Laughter.]

Mr. AUCOIN. [continuing.] That the easy way out is to proceed with reciprocal agreements.

Mr. LEGGETT. Civilized.

Mr. AUCOIN. When you go that road you take the easy way out. But sooner or later you run the risk of the management councils not being worth the paper their authorization is written on.

I yield back my time.

Mr. SHAROOD. What really underlines our concern, Mr. AuCoin, is the fact that there has been a failure to enunciate any kind of a clear administration position on where we are going in this regard. Until we find out where they intend to go, our position will be to be very conservative and to insist that we adhere to the letter of the law because we have nothing better to go on at this point.

Mr. AUCOIN. I appreciate your testimony. I noticed the Ambassador seemed to have an extreme headache during some of the comments you have made.

Mr. LEGGETT. If anybody has any comments to give to the staff that relate to the markup, the meeting begins in 55 minutes.

[The statement follows:]

Mr. LEGGETT. The meeting stands adjourned.
 [The information submitted for inclusion in the record follows
 herewith:]

STATEMENT OF LUCY SLOAN, EXECUTIVE SECRETARY, NATIONAL FEDERATION
 OF FISHERMEN

Good morning, Mr. Chairman, gentlemen. I'm Lucy Sloan, Executive Secretary of the National Federation of Fishermen. With me are our counsel, Richard N. Sharood, and our Eastern Region President, Jacob J. Dykstra.

As you know, NFF is a federation of United States coastal fishermen's organizations; we represent fishermen working from the Bering Sea to Mexico and from the Gulf of Maine to the Florida Keys.

Our members accept, albeit reluctantly in some cases, the proposed reciprocal fisheries agreement between the United States and Canada for 1977. However, before I comment briefly on specific parts of the agreement, I'd like to make some general comments about our dealings with the Canadians as regards fisheries.

First, I'll emphasize yet again how important the industry thinks it is that industry representatives be included in the negotiating process from the very beginning when the Executive discusses alternative approaches to the negotiations through the final stages when agreements and regulations are drawn up. Several of our people reinforced their concern on this point after they read the somewhat unclear part of Article VIII, paragraph 3 which says, "Consultations on regulations respecting reciprocal salmon fisheries shall take place at the technical and official levels during the process of preparing such regulations, and, prior to their final approval and application, at the Secretarial or Ministerial level upon the request of either party." Many think "technical" is ambiguous, and one of the salmon representatives said to me, "This is one of the ways industry's gotten clobbered!"

Second, despite our repeated requests to be included in developing the United States' position on management of transboundary stocks, we in industry are effectively no more part of the Executive's process on this than we were when we testified before you during the last week of the 4th Congress last fall. Mr. Sharood said, in part:

We are concerned that the decision to deal with US-Canada fisheries outside the scope of the Act will be a precedent for handling other equally complex fisheries in this manner....We are concerned that the Regional Councils, which have been given a very important statutory role to develop the management plans and to determine optimum yield, will be superseded and preempted

by a web of treaties. We are concerned that the right of US fishermen to harvest up to the optimum sustainable yield will be reversed by treaties which may grant to foreign nationals shares that exceed the surplus which might be available to them under the Act. Indeed, a treaty might require that the United States fishing effort be held down artificially, in order to stay within OSY and still give foreigners the share guaranteed them under a treaty. What if a Council develops a management plan for a stock on which Canadians, as well as other foreigners, fish? If the Canadian effort has been carved out of the equation by a treaty, how will the councils develop plans that are equitable and legally sound for the other countries engaged in the fishery? A corollary is, of course, once a stock has been taken out of the Council's area of jurisdiction by treaty with one country, is it to be taken out of the Council's jurisdiction for all purposes? ...A treaty preempting the Councils is not the way to insure coordination with Canadian management activities....The Act authorizes the Secretary of State to negotiate boundaries with adjacent and opposite nations. It does not authorize him to exempt any stocks from the Act. To the contrary, the entire thrust of the Act is to maximize management through the Councils; hence, the GIFA process and the limitation on extension of existing bilaterals and the requirement to renegotiate inconsistent treaties.

Unfortunately, gentlemen, this 1977 agreement does not put us any further ahead in trying to resolve these issues than we were on 28 September 1976. Management of transboundary stocks has, of course, been complicated by the quite different positions the United States and Canada are taking on where the boundaries should be. Many of us in industry think that it is unrealistic to separate these negotiations from fishery negotiations in the somewhat arbitrary fashion State has chosen so far.

Third, the complex interrelationship between managing transboundary stocks and determining where the boundaries should be reinforce our thoughts that there should be at least two agreements for 1978 and following: one for the West Coast fisheries, one for the East Coast--and perhaps, given the particular complexity of that fishery, one for salmon alone.

As regards the 1977 agreement specifically:

Article II, paragraph 3 states that there shall be "no expansion of effort nor initiation of new fisheries." But Article III, paragraph 2 states, "On the Atlantic Coast, fishing by Canadian nationals and vessels in the United States zone for those stocks included in the 1977 Canadian allocations agreed ad referendum at the Annual and Special Meetings of ICNAF held in 1976, shall cease when those allocations have been taken."

These two provisions contradict one another; the ad referendum allocations include first-time allocations of squid and butterfish. The Department of State says that Article III, paragraph 2 prevails over Article II, paragraph 3.

In previous years, the Canadians had not asked for an allocation of squid, presumably because they had no interest in it. Butterfish has

not before been allocated separately; it has been included in "other finfish." And the Canadians have not ever before had a fishery for butterfish.

In the past month Canadian industry representatives have outlined to some of our people their plans for expansion of Canadian squid and butterfish fisheries in United States waters--expansion which we consider would be detrimental to New England and Mid-Atlantic fishermen. We think that the 1977 quotas on squid and butterfish are specifically intended to try to establish "traditional" fisheries to use as a lever in future negotiations, and we object strongly to these expansionist quotas.

Further, if it had not been so difficult to reach this agreement and so relatively far into 1977 fishing, our members whose fisheries are affected by these quotas would have requested that Congress reject this agreement on these grounds of expansion.

Someone may point out that Article XVII says "Nothing in this Agreement shall be construed to affect or prejudice any position or claim which has been or may subsequently be adopted by either party in the course of consultations, negotiations...." That may be what it says. But we think, from what we have heard from other sources, that it is not a few tons of squid and butterfish in 1977 that the Canadians are seeking, but rather they are seeking to set a valuable precedent--a precedent with which the United States Executive seems willing to go along.

Our Pacific groundfish fishermen are comfortable, for the most part, with the Articles dealing with their fisheries. They have some concern that the Dixon Entrance ground is not specifically mentioned in this agreement, for in the longer-term agreement they would hope not to be excluded from that area where they have fished in the past. They also appreciate that the quotas for rockfishes and black cod in the Canadian zone are not allocated by nation, but given rather as aggregate catches by fishermen of both nations.

The halibut representatives with whom we've talked say they are satisfied with the provision to continue fishing in accord with approved International Pacific Halibut Commission recommendations and regulations.

On shrimp off Vancouver Island, some of our people have queried the US' 750 metric ton allocation because although Canada has begun a shrimp fishery here, they do not think Canada yet has the harvesting and processing capability to take the balance of the optimum yield for this stock.

Our salmon members' consideration of this agreement has been part of a more involved process which includes assessing--and in several cases, opposing--the Pacific Regional Council's proposed fishery management plan for salmon. Obviously, the interrelationship between this agreement and that plan is vital and, if they should turn out to conflict, awkward. For now, industry representatives tell me that although they consider the salmon articles vague, they think they agree with what they think they understand are the details which State and External Affairs have worked out to amplify these articles.

National Federation of Fishermen

17 March 1977

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As regard the longer-term agreement, our salmon fishermen have two major concerns: working out with the Canadians--including the Canadian salmon fishermen--realistic solutions to the interception problems, and assuring that United States fishermen are an integral part of every step of the evolution of that agreement.

As regards Article XV on cooperative fishery research and the exchange of data and statistical information, we certainly agree that this is desirable. Our only concern is that trade-offs not be made at the scientific and technical levels which in any way preempt the Councils' roles in determining optimum yield.

Thank you. We appreciate this opportunity to appear before you today.



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February 28, 1977

To: House Merchant Marine and Fisheries Committee
Attn: Ned Everett

From: American Law Division

Subject: United States - Canada Bilateral Fisheries Agreement of
February 24, 1977

This memorandum is submitted in response to your request for comments upon the above agreement. The present agreement supercedes, of course, the draft agreement which was the subject of attention in our earlier memorandum to the Committee of February 23, 1977. As was true with the previous memorandum, the remarks which follow are primarily intended to suggest possible issues which the Committee may wish to raise for purposes of assessing the compatibility of the agreement with the Fishery Conservation and Management Act of 1976, Pub. L. No. 94-265, 90 Stat. 331 [the Act].

1. A question might be raised concerning the legal authority for the agreement. The agreement was signed on February 24, 1977, and if given effect, will endure until December 31, 1977 [Art. XVIII (2)]. The Act requires that after February 28, 1977, foreign fishing must be conducted in accordance with the GIFA stipulations of Sec. 201. The Act also

provides that no fishery agreement may be made by the United States after May 31, 1976, unless it is in accordance with the GIFA requirements of Sec. 201 (c) [Sec. 202 (c)(2)]. The apparent nonincorporation of the Act's GIFA requirements into the agreement, particularly as contrasted with the obvious presence of such requirements in all of the other recent bilateral fishery agreements which the Committee has considered, appears to raise, therefore, an issue concerning the legal authority for the agreement. Although the Act authorizes the Secretary of State to negotiate boundary agreements [Sec. 202 (a)(3) and (d)], and the present agreement appears to be an "interim arrangement" pending resolution of boundary issues between the Parties, it would not seem that this grant of authority could be used to postpone the GIFA requirements of the Act beyond February 28, 1977.

If the Committee determines that the present agreement is without authorization under the Act, validation of the instrument may nevertheless occur by the passage of approving legislation. In the recently enacted Fishery Conservation Zone Transition Act, Pub. L. No. 95-9 [Transition Act], for example, a number of specified bilateral fisheries agreements were approved, notwithstanding the otherwise prohibitive 60 day delay rule of Sec. 203 of the Act. Although the Transition Act determined that the agreements specified therein were in substantial compliance with the Act, such a determination is not a legal prerequisite to amendatory legislation.

2. A question could be raised concerning the extent to which prior fishery agreements are continued by the present agreement. The Act requires that no fishery agreement which pertains to foreign fishing within the United States fishery conservation zone, or beyond the zone in the case of anadromous species, which is in effect on June 1, 1976, may thereafter be renewed, extended, or amended, unless it is in accordance with the GIFA requirements of Sec. 201(c) [Sec. 202 (c)(1)]. Although the agreement specifically provides that a prior 1973 agreement between the Parties (24 U.S.T. 1729) will be superceded upon the coming into force of the present agreement [Art. XVIII(3)], it is elsewhere stated that "[n]othing in the present Agreement shall affect either bilateral or multilateral agreements to which either government is a party" [Art. XVII (3)]. As these agreements remain unspecified, their relevancy for purposes of the Act's prohibition against the continuation of fishery agreements after June 1, 1976, can not be definitively ascertained. The continuation of prior agreements might also be suggested by the reference to "other agreements" in Art. XIV (regarding port access), and to "existing patterns" in Art. II (3) (regarding fishing by nationals and vessels of each Party in the zone of the other).

It may also be noted that notwithstanding United States withdrawal from ICNAF, effective December 31, 1976, the present agreement continues the 1977 Canadian fishing allocations, agreed upon ad referendum at the Annual and Special Meetings of ICNAF held in 1976, in the United States zone on the Atlantic coast until such time as Canada has taken those allocations [Art. III (2)]. Similarly, ICNAF allocations determined prior to United States

withdrawal are apparently continued by the Agreed Minutes to the Poland, German Democratic Republic, and Romanian agreements. See. H. Doc. 94-613, 94th Cong., 2d Sess. 19 (1976) [Poland]; H. Doc. 95-35, 95th Cong., 1st Sess. 11 (1977) [German Democratic Republic]; and H. Doc. No. 95-34, 95th Cong., 1st Sess. 14 (1977) [Romania].

3. Under Art. IV (4) of the agreement the United States is obligated to cease shrimp fishing in the Canadian zone on the Pacific coast after United States nationals and vessels have taken a catch of 750 metric tons. This allocation represents a United States compromise of 290 metric tons from its previous draft agreement proposal of 1040 metric tons and a Canadian compromise of 230 metric tons from its earlier proposal of 520 metric tons.

4. A question might be raised concerning the extent to which the Parties have left unresolved the matter of salmon trolling regulations in that area of the Pacific coast delimited by Art. V (1) of the agreement. The United States earlier draft proposal [Art. V (3)] appeared to contemplate the imposition of new regulations in the United States zone subject to consultations with Canada prior to the application of the regulations. Canada's draft proposal, on the other hand, seemed to envision the continued applicability of 1976 salmon fishing regulations unless the Parties otherwise agreed. As neither of these positions is reflected in Art. V of the present agreement, it appears that the issue may be unresolved. This inference seems further substantiated by the addition of a new purpose to clause 6 of the Preamble reflecting the Parties' desire to negotiate "an agreement on Pacific salmon problems of mutual concern."

5. Some clarification may be desirable concerning the source and nature of the "agreed international recommendations" referenced by Art. VII of the agreement with respect to the continuation of tuna fishing off the coasts of each Party. As the jurisdiction of the Act does not extend to highly migratory or tuna species [Sec. 3(6) and (14)], and as the Secretary of State is authorized to negotiate agreements for the conservation and management of this species [Sec. 202 (a)(4)(B)], there would not appear to be any additional issue regarding the compatibility of Art. VII with the Act.

6. A question might be raised concerning the consistency of Art. VIII(4) of the agreement with the Act. Under this provision, fishery conservation and management regulations other than those relating to size limits, seasons, areas, gear, and by-catch, and other than those required for the implementation of the present agreement, are not to be applied by either Party to the vessels and nationals of the other Party in its zone. The Committee may wish to know, therefore, (1) what other conservation and management regulations (apart from those specified) might be inoperative as a result of this provision against Canadian vessels in the United States zone, and (2) whether the operation of this provision effectively exempts or waives other conservation and management regulations (apart from those specified) which would otherwise be applicable to Canadian nationals and vessels in the United States zone under the Act.

In this regard, it may be noted that the present agreement adds new language to Art.VIII from the earlier draft providing that the Parties "recognize that each shall manage fisheries within its jurisdiction within the terms of its domestic laws" [Art.VIII (1)]. While this statement, standing alone, would appear to render unnecessary any further inquiry concerning the compatibility of Art. VIII (4)'s regulatory exclusions with the Act, Art. VIII (1) also provides that --

[I]n the application of their domestic laws
[the Parties] shall be guided by the following principles:
a. preserving existing patterns of
their reciprocal fisheries in keeping
with the provisions of Article II....

Reference to Art. II of the agreement indicates inter alia, merely that the Parties have agreed to permit fishing within their respective zones "in accordance with the provisions of this Agreement" [Art. II (1) and (2)] and that such fishing is to continue "in accordance with existing patterns" [Art. II (3)]. It would appear, therefore, that the "domestic law" reference of Art. VIII (1) is qualified to some extent by guiding principles of uncertain, and perhaps, under the Act, questionable applicability. Under Art. II, for example, the question appears to remain whether "the provisions of this Agreement" and "existing patterns" are compatible with the Act and, more specifically, whether the regulatory exclusions contemplated by Art. VIII (4) of the agreement are consistent with the Act.

The Parties also agree that the application of their domestic laws is to be guided by another principle, as follows:

- b. in the case of reciprocal salmon fisheries, the interest of the state of origin in salmon spawned in its rivers [Art. VIII (1)(b)].

It may be asked whether this language modifies to some extent the Act's assertion of United States exclusive fishery management authority over anadromous species, such as salmon [Art. 102 (2)]. The agreement's recognition of the "interest" of the state of origin in salmon spawned in its rivers arguably is not necessarily recognition of the Act's claim of exclusive authority.

7. A question might be raised concerning the compatibility of "flag State" enforcement in the boundary regions under Art. IX (1) of the agreement after March 1, 1977. After this date the Act would seem to assert exclusive United States jurisdiction in the area [Secs. 102 and 104] and to require a "binding commitment" from Canada to abide by United States enforcement under the GIFA stipulations of Sec. 201 (c)(2)(A) of the Act.

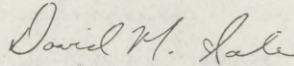
8. A question might be raised concerning any possible conflict between the "third party" provisions of Art. IX (2) and (3) of the agreement and rights acquired, or to be acquired, by foreign nations with which the United States has recently concluded GIFA commitments. Is it likely, for example, that a foreign nation will assert traditional fishing rights against the United States, on the basis of a GIFA commitment, in an area which is

subject to the restrictions embodied in Art. IX (2) and (3) of the Canadian agreement?

9. An inquiry might be made concerning the herring transfer provisions of Art. X of the agreement. This Article provides, subject to the domestic laws of the Parties, for the transfer of herring between nationals and vessels of the two Parties. The principle purpose of this provision "is to enable the continuation of transfers of herring intended for purposes other than reduction." These nonreduction purposes remain unspecified and some clarification may be deemed desirable by the Committee, particularly in view in recent proposals to amend the Act to limit the ability of a foreign controlled United States vessel from transferring its catch to a foreign ship. See H.R. 2564, 95th Cong., 1st Sess. (1977), 123 Cong. Rec. H619 (Jan. 31, 1977) [daily ed.].

10. A question may be raised concerning the consistency of the permit waiver under Art. XI of the agreement. Section 204 (a) of the Act requires that after February 28, 1977, no foreign fishing vessel shall engage in fishing within the United States zone, or beyond the zone in the case of anadromous species, unless such vessel has on board a valid permit issued under the Act. Moreover, Sec. 204 (b)(1) of the Act conditions the eligibility of a foreign nation to obtain a permit upon the prior conclusion of a GIFA with the United States.

11. A question might be raised regarding the advisability of the agreement's termination date of December 31, 1977. If the agreement is determined by the Committee to be without authorization under the Act, it is nevertheless approved, its continuation until December 31, 1977, does not appear to allow for the contingency of an earlier resolution of the board issue and perhaps the conclusion of a Canadian GIFA. Perhaps the Committee would want to seek assurances from the Executive branch that any GIFA commitment concluded by the United States with Canada prior to December 31, 1977 will supercede the present agreement.



David M. Sale
Legislative Attorney

[Whereupon, at 1:05 p.m., the subcommittee adjourned, to reconvene at 2 p.m. on the same day.]

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