fear of damaging our relations with other nations. Or we can follow the path of peace through strength.●

THE AMERICAN FISHERIES ACT

● Mr. BREAUX. Mr. President, the American Fisheries Act, S. 1221, was introduced last week by Senators STEVENS, MURKOWSKI, HOLLINGS and myself. This bill represents another major milestone in our long efforts to reserve U.S. fishery resources for bona fide U.S. citizens as well as take steps to substantially improve the conservation and management of our Nation's fishery resources through a reduction in the overcapitalization of our fishing fleets. To put the bill in perspective, I wish to remind my colleagues of the steps taken in the past to establish our fishery conservation zone now called the Exclusive Economic Zone or EEZ, to support an American preference for harvesting and processing fishery resources within that zone, to eliminate foreign fishing in our EEZ whenever sufficient U.S. capacity existed, and finally to reduce the conservation and management problems associated with excess capacity. The historical basis for such a bill is well established in U.S. fishery policy.

THE OPEN SEAS

For hundreds of years, a basic component of the freedom of the seas had been the freedom of fishing. Nations claimed narrow territorial seas where they exercised sovereignty on and above the surface down to and including the seabed, subject only to the right of innocent passage. Originally, this territorial sea was limited to 3 miles out from the coastline—that distance being the range which a cannonball could be fired from the shore to protect the coastal State's interest. Outside of the territorial sea, all nations enjoyed free access to fishery resources on the high seas, subject only to limitations imposed by international agreements and a general yet unenforceable understanding to conserve the resource.

ESTABLISHING THE EXCLUSIVE ECONOMIC ZONE

This concept was radically changed in 1945 with the issuance of the Truman Proclamation which declared that the continental shelf contiguous to U.S. coasts was ''appertaining to the United States, subject to its jurisdiction and control.'' Although the Truman Proclamation did not carry the force of international law, other nations followed suit in extending their jurisdiction beyond 3 nautical miles, some nations went out to 12 miles while others went all the way out to 200 miles. Congress contributed to this trend when it passed the 12 Mile Fishery Jurisdiction Act. In passing the Fishery Conservation and Management Act in 1976, Congress established a 200-mile fishery conservation zone where the United States would exercise sovereign rights over the conservation, harvesting and management of the resource. In 1983, President Reagan declared through Proclamation 5030 that the U.S. would exercise broad sovereign rights from the seaward limit of the territorial sea to a distance of 200 miles from the shore, thus establishing the Exclusive Economic Zone. The EEZ regime was reflected in the U.N. Convention on the Law of the Sea and although the United States has not ratified this treaty, we maintain that it is generally reflective of customary international law applying to the EEZ among other things.

AMERICANIZING THE FISHERIES

For more than 200 years, the Federal Government has been looking after our fishermen, starting as early as the Treaty of Paris of 1783 which secured fishing rights off the coast of New England. However, our management of fishery stocks was limited to our narrow territorial sea. This principle worked well until technology became very sophisticated in the early 1950's. Harvesting efficiency and capacity greatly increased and the presence of large foreign fishing fleets off our coast threatened the survivability of numerous stocks. In the 1950's, as large foreign fishing fleets loomed off our coast, Congress acted to protect the rights of our fishermen with the Fisherman's Protective Act of 1954. The Fish and Wildlife Act of 1956 also affirmed the rights of U.S. fishermen to waters off our own coast. In 1964, Congress passed the Prohibition of Fishing in the U.S. Territorial Waters by Foreign-Fishing Vessels and then in 1972, Congress passed the Prohibition of Foreign Fishing Vessels Act, again attempting to reserve the right to harvest U.S. fishing resources for U.S. fishermen. These laws were all precursors to the Fishery Conservation and Management Act of 1976 to which the names of Senators Magnuson and STEVENS were later added.

The Magnuson-STEVENS Fishery Conservation and Management Act. The Magnuson-STEVENS Act established a 200-mile Fishery Conservation Zone and further established U.S. management jurisdiction over all fishery resources within that zone. As a House cosponsor of the bill, I can recall the great debates of the day as the Magnuson-STEVENS Act was being discussed. Members feared retaliation by other nations because of our unilateral extension of authority out to 200 miles, but the fear of the foreign fishing fleets just off our coast was greater. Of special significance was the concept that U.S. fishermen should have the first right to harvest the fishery resources found within our 200-mile limit. Specifically, section 201 of the Magnuson-STEVENS Act states ''After February 28, 1977, no foreign fishing is authorized within the exclusive economic zone * * *'' unless certain conditions are met as set forth within the act. Section 2(b)(1) of the Magnuson-STEVENS Act stated as a purpose: ''to exercise sovereign rights for the purposes of exploring, exploiting, conserving, and managing all fish within the exclusive economic zone.'' This Americanization provision allowed for the gradual reduction of foreign fishing within U.S. waters as U.S. capacity increased.

THE AMERICAN FISHERIES PROMOTION ACT

However, the great promise of the Magnuson-STEVENS Fishery Conservation and Management Act to Americanize the fisheries was slow to come to fruition. As many Members may recall, numerous bills were introduced and debated to help the U.S. fleet establish itself in the new fishery conservation zone. In 1979, 60 percent of the edible and industrial fish we used was supplied by foreign companies despite the fact that 20 percent of the world's fishery resource was within our own zone. Foreign fleets still dominated our fishery conservation zone. As Chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment within the House Committee on Merchant Marine and Fisheries, I authored the American Fisheries Promotion Act. Popularly coined as the fish and chips bill, the legislation was designed to promote development of U.S. fisheries by providing a statutory mechanism to phaseout foreign fishing within our fishery conservation zone. Unfortunately, the phase out of foreign flag vessels did not fully achieve the goal of reserving the full economic benefits of our resources to U.S. citizens.

REFLAGGING ISSUES

Foreign companies were able to circumvent the intent of these laws by reflagging. Foreign-controlled companies could reflag their vessels under U.S. documentation laws and gain the same priority access to U.S. fishery resources as bona fide U.S. citizens were intended to enjoy. To counter such actions, Congress passed the Anti-Reflagging Act of 1987 which was designed to stop this practice and prohibit foreign ownership/control of U.S. fishing vessels. The exact method of ensuring this occurred was by requiring that a majority controlling interest in any corporation who owns fishing vessels operating in the U.S. fishery were bona fide U.S. citizens. To protect the financial investments of vessels already within the fishery, grandfather provisions were included in the bill. Unfortunately, interpretation of the grandfather provision has effectively nullified the original intent of that landmark legislation. Although the vessels now carry the American flag, effective control of the vessels is under foreign hands. This bill will restore the rights of bona fide United States citizens to have priority access to U.S. fishery resources which are well established under U.S. and international law. In essence, we seek to return to a de facto standard as set forth in section 201(d) which establishes that the total level of foreign fishing shall be the portion of the optimal yield which will not be harvested by U.S. vessels.

OVERCAPITALIZATION OF THE FLEET

A second issue that we deal with in this bill is the issue of overcapitalization of the fishing fleet. The increasing

demand for fish products throughout the world has created an incentive for increasing the size and capabilities of the world's fishing fleets. Traditionally, the United States has operated under an open access system of fishery management and increased demand has led to increased entry into the fishing industry. It is not disputed that the harvesting and processing capacity in the world far exceeds that required to efficiently harvest most resources.

The Magnuson-STEVENS Act's first National Standard requires that any fishery management plan be consistent with conservation and management measures to prevent overfishing while achieving optimal yield from the fishery. Controlling overfishing has been done in basically four types of programs—controlling the when, where, how and how much of fishing. Fishery managers control the when—establishing seasons in which a particular species may be fished. Fishery managers control the where—setting closed areas where fishermen cannot fish. Fishery managers control the how—restricting certain forms of fishing gear. And finally, fishery managers control the how much—setting total allowable catches to limit harvest. However, these methods have not always been successful and the collapses of the New England ground fishery and Bering Sea crab fishery are examples of that. The existence of ''derby style'' fishery where an excessive number of boats attempt to catch a limited resource in the shortest period of time possibly is one symptom of inadequate controls. Such derby style fishing in overcapitalized fisheries has led to a range of serious conservation, management, bycatch and safety problems in our fisheries. It is time to establish some form of control of fishing capacity, particularly if the capacity is under the control of foreign fishing companies. This bill will establish such control by reducing capacity with a preference for American companies—as Congress has long intended.

Mr. President, there are some areas of this bill which I will want to address further. For instance, the menhaden and tuna industries use large vessels to harvest their catch, primarily through purse seining. These fisheries operate outside of our Exclusive Economic Zone and are not subject to management by our traditional Regional Council system nor have they experienced the problems associated with overcapitalization. I will seek to ensure there are no unintended consequences of this bill on their industry. Mr. President, I think this bill continues the work that was started in 1976 and I look forward to a healthy and open debate on these very important issues.●

CLARIFYING TREATMENT OF INVESTMENT ADVISERS UNDER ERISA

● Mr. JEFFORDS. Mr. President, on Friday, September 26, 1997, I introduced legislation which amends title I of the Employee Retirement Income Security Act of 1974 [ERISA] to permit investment advisers registered with State securities regulators to continue to serve as investment managers to ERISA plans. At the end of last Congress, the Investment Supervision Coordination Act, landmark bipartisan legislation that adopted a new approach for regulating investment advisers, was passed and signed into law. Under this legislation, beginning July 8, 1997, States are assigned primary responsibility for regulating smaller investment advisers and the Securities and Exchange Commission is assigned primary responsibility for regulating larger investment advisers. Prior to the passage of the legislation, the issue arose that smaller investment advisers registered only with the States—and prohibited from registering with the SEC—would no longer meet the definition of investment manager under ERISA because the current Federal law definition only recognized advisers registered with the Securities and Exchange Commission. As a temporary measure, a 2-year sunset provision was included in the securities reform legislation extending the qualification of State registered investment advisers as investment managers under ERISA for 2 years. The purpose of this provision was to address the problem on an immediate basis while concurrently giving the congressional committees with jurisdiction over ERISA matters the opportunity to review and act on the issue. We have reviewed this issue and have developed the legislation that I am introducing today to permanently correct this problem.

Without this legislation, State licensed investment advisers who, because of the securities reform legislation, no longer are permitted to register with the Securities and Exchange Commission will be unable to continue to be qualified to serve as investment managers to pension and welfare plans covered by ERISA. Without this legislation, the practices of thousands of small investment advisers, investment advisory firms and their supervision of client 401(k) and certain other pension plans will be seriously disrupted after October 10, 1998.

For business reasons, it is necessary for an investment adviser seeking to advise and manage assets of employee benefit plans subject to ERISA to meet ERISA's definition of investment manager. It is also important, for business reasons, to eliminate the uncertainty about the status of small investment advisers as investment managers under ERISA. This uncertainty makes it difficult for such advisers to acquire new ERISA plan clients and may well cause the loss of existing clients.

Arthus Levitt, chairman of the Securities and Exchange Commission, has written a letter expressing the need for this legislation and his support for this effort to correct this problem. I ask that a copy of Chairman Levitt's letter be inserted in the RECORD.

It is my understanding that this bill is supported by the Department of Labor. In addition, this bill is supported by the Institute of Certified Financial Planners, the National Association of Personal Financial Advisors, the International Association for Financial Planning, the American Institute of Certified Public Accountants, and the North American Securities Administrators Association, Inc. Mr. President, the sooner that Congress responds in a positive fashion to correct this problem, the better for small advisers and the capital management marketplace.

The letter follows:

U.S. SECURITIES AND EXCHANGE COMMISSION,
Washington, DC, April 7, 1997.

Hon. JAMES M. JEFFORDS,
Chairman, Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN JEFFORDS: I am writing to urge that the Senate Committee on Labor and Human Resources consider enacting legislation to amend the Employee Retirement Income Security Act of 1974 (''ERISA'') in a small but terribly important way. Unless the Congress acts quickly, thousands of small investment adviser firms, and their employees, risk having their businesses and their livelihoods inadvertently disrupted by changes to federal securities laws that were enacted during the last Congress.

At the very end of its last session, Congress passed the Investment Advisers Supervision Coordination Act. This was landmark bipartisan legislation that replaced an overlapping and duplicative state and federal regulatory scheme with a new approach that divided responsibility for investment adviser supervision: states were assigned primary responsibility for regulating smaller investment advisers, and the Securities and Exchange Commission was assigned primarily responsibility for regulating larger investment advisers. We supported this approach.

Under the Coordination Act takes effect in the next few months, most of the nation's 23,500 investment adviser firms—regardless of their size—will continue to be registered with the SEC, as they have for many decades. Once the Act becomes effective, however, we estimate that as many as 16,000 firms will be required to withdraw their federal registration. Indeed, this requirement is crucial if the Act's overall intent of reducing overlapping and duplicative regulation is to be realized. But the withdrawal of federal registration is also what causes the problem for these firms under ERISA.

As a practical business matter, it is a virtual necessity for a professional money manager (such as an investment adviser) seeking to serve employee benefit plans subject to ERISA to meet ERISA's definition of ''investment manager.'' The term is defined in ERISA to include only investment advisers registered with the SEC, and certain banks and insurance companies. Once the Coordination Act becomes effective, large advisers registered with the SEC will of course continue to meet the definition. But small advisory firms will not be able to meet the definition of investment manager because they will be registered with the states rather than with the SEC. Thus they may well be precluded from providing advisory services to employee benefit plans subject to ERISA, even if they have been doing so successfully for many years.

The sponsors of the Coordination Act were aware that the interplay between the Act and ERISA could have substantial detrimental consequences for small advisers, and thus