

The original documents are located in Box 42, folder “1976/04/13 HR200 Fishery Conservation and Management Act of 1976 (2)” of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

Copyright Notice

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material. Gerald R. Ford donated to the United States of America his copyrights in all of his unpublished writings in National Archives collections. Works prepared by U.S. Government employees as part of their official duties are in the public domain. The copyrights to materials written by other individuals or organizations are presumed to remain with them. If you think any of the information displayed in the PDF is subject to a valid copyright claim, please contact the Gerald R. Ford Presidential Library.

Exact duplicates within this folder were not digitized.



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 12 1976

MEMORANDUM TO: Robert D. Linder
FROM: James M. Frey *JM Frey*
SUBJECT: Additional State Department Materials on
H.R. 200

The attached materials were evidently sent directly to the White House through NSC and may have by now been included in the enrolled bill file.

The memorandum from the Secretary of State to the President appears to be a shorter version of the regular State Department views letter on H.R. 200, which was attached to OMB's enrolled bill memorandum. The draft veto message is the same as that transmitted to us by State and included in the enrolled bill file.

The new element is a draft signing statement prepared by State. If it is decided to have a signing statement, we would have no objection to the substance of State's draft.

Attachment

CONFIDENTIAL Attachment



EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

APR 12 1976

MEMORANDUM TO: Robert D. Linder
FROM: James M. Frey^(signed) Frey
SUBJECT: Additional State Department Materials on
H.R. 200

The attached materials were evidently sent directly to the White House through NSC and may have by now been included in the enrolled bill file.

The memorandum from the Secretary of State to the President appears to be a shorter version of the regular State Department views letter on H.R. 200, which was attached to OMB's enrolled bill memorandum. The draft veto message is the same as that transmitted to us by State and included in the enrolled bill file.

The new element is a draft signing statement prepared by State. If it is decided to have a signing statement, we would have no objection to the substance of State's draft.

Attachment



CONFIDENTIAL Attachment

NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20506

~~CONFIDENTIAL~~

April 7, 1976

MEMORANDUM FOR

James Frey
Assistant Director for Legislative Reference
Office of Management and Budget

SUBJECT: NSC Staff Comments and Recommendations on
"Fishery Conservation and Management Act of 1976"

The NSC staff has reviewed the "Fishery Conservation and Management Act of 1976" as sent to the President by the Congress and believes that the unilateral extension of U.S. fishery jurisdiction from 12 to 200 miles off our coasts mandated by the bill would have the following adverse effects on our foreign relations:

-- Unilateral action by the United States would almost certainly trigger similar, possibly more radical, unilateral actions on the part of other nations and would jeopardize the freedom of navigation and overall oceans interests we seek to protect in the Law of the Sea Conference. This is a concern of our distant water fisheries -- tuna, shrimp and salmon -- who oppose the bill.

-- Unilateral action at this time would violate our existing treaty obligations and customary international law.

-- A unilateral claim would risk unwanted confrontation with the Soviet Union, Japan and several other nations fishing off our coasts.

There are also positive considerations which point to the desirability of avoiding U.S. unilateral fisheries legislation:

-- The Law of the Sea negotiations are moving in the direction of a multilateral agreement on fisheries which is very similar to the legislation passed by the Congress. By awaiting completion of the Conference, the U.S. would achieve its fisheries objectives while honoring our treaty obligations and customary international law.

~~CONFIDENTIAL~~ (GDS)

DAO, 11/5/83

~~CONFIDENTIAL~~

- 2 -

-- The United States is proceeding in advance of UN agreement on a treaty text with interim bilateral and regional fisheries negotiations aimed at better protecting U.S. fisheries interests.

The NSC staff has consistently opposed this legislation on the basis of the adverse impact that unilateral U.S. claims to fisheries jurisdiction would have at this time on our relations with other nations. In the event that the President approves the legislation, we recommend that his signing statement point out the deficiencies in the legislation, together with the risks involved in enforcement, recommending that the Congress address these deficiencies in future legislation.

Mike Hornblow

Jeanne W. Davis

Staff Secretary

fn

~~CONFIDENTIAL~~ (GDS)

MEMORANDUM

NATIONAL SECURITY COUNCIL

2089

~~CONFIDENTIAL~~

April 9, 1976

MEMORANDUM FOR JAMES M. CANNON

FROM:

Jeanne W. Davi *JWD*

SUBJECT:

H. R. 200 -- Fishery Conservation and
Management Act of 1976

This is in reply to your memorandum of April 8 requesting the comments and recommendations of the NSC staff on the enrolled bill H. R. 200, recently submitted to the President for decision by OMB.

As indicated in our memorandum included in Mr. Lynn's staffing to the President on H. R. 200, the NSC has consistently opposed this legislation on the basis of the adverse impact that unilateral U. S. claims to fisheries jurisdiction would have at this time on our relations with other nations. We continue to hold this view.

In the event, however, that the President approves the legislation, we recommend that he do so with a signing statement pointing out the deficiencies identified in the legislation by the concerned agencies, together with the risks involved in implementation and enforcement, recommending that the Congress address these problems in future legislation. In this regard, we strongly recommend that the attached draft signing statement be circulated immediately to those agencies which have recommended disapproval of H. R. 200 -- including State, Defense and Justice -- for their comment and concurrence in the event that the President decides to approve H. R. 200 with a statement.

Attachment

cc: Jim Connor
Brent Scowcroft

~~CONFIDENTIAL~~ (GDS)

DPO, 11/5/85

DRAFT SIGNING STATEMENT

H.R. 200

I am signing today a bill to extend the exclusive fisheries jurisdiction of the United States to 200 miles. This extension of our jurisdiction will enable us to protect and conserve the valuable fisheries stocks off our coasts. It is indeed unfortunate that the slow pace of the international negotiations process has mandated our course of action here today, for the overfishing of stocks off our coasts simply cannot be allowed to continue any longer.

The need for a timely and successful Law of the Sea Conference is even more pressing today than ever before. I have directed our negotiators to make every effort, consistent with our basic interests, to conclude the substantive negotiations this year. The bill I sign today is generally consistent with the consensus emerging at the Conference. It is becoming increasingly apparent that a failure to reach substantive agreement this year will steer the world community toward increasing chaos and disorder respecting competing

use of the oceans. In the absence of a timely treaty, no nation can rest assured that its paramount interest in the oceans will be protected over time.

Some specific aspects of this legislation require comment. I supported this legislation on the condition that the effective date of the legislation would be delayed to give the Law of the Sea Conference adequate time to complete its work and to enable us to effect a transition without conflict and confrontation. But the requirement that new international agreements recognizing our jurisdiction be in force on March 1, 1977 after review by the Congress for 60 legislative days has the practical effect, given the likely congressional calendar during the eight months preceding March 1, of requiring that those agreements be completed early this summer. I am concerned about our ability to meet this schedule and have directed the Department of State to prepare and submit legislation to provide the necessary flexibility. In certain cases, the negotiation of an agreement may be completed by March 1, 1977 but not sufficiently in advance of that date to permit the

running of the 60 day period. The changes which we will propose would allow these agreements to be provisionally applied, without prejudice to the Congress' prerogative by subsequent statutory enactment to prevent the final entry into force of an agreement. In other cases, negotiations may be in progress on March 1, 1977. The proposed legislation would authorize the President to defer enforcement with respect to a particular nation if he determines that good faith negotiations are proceeding in a timely manner.

In addition, I am concerned about the provisions of the new law asserting exclusive fisheries management authority over anadromous species of US origin throughout their migratory range. To the extent that the United States undertakes unilateral enforcement of the prohibition on foreign fishing on the high seas seaward of the 200 mile zone, there is an especially serious risk of international conflict. The changes the Administration will propose will seek to preserve the objective of the new law while limiting enforcement seaward of the zone to cases covered by international agreements.

The task of issuing permits to over a thousand vessels and negotiating new agreements with over 15 nations will require the concerned Executive Branch departments to devote substantial resources in excess of those presently allocated to international fisheries affairs. The Departments of State, Commerce, and Transportation must do their best to implement the Act fully. Since available resources are finite, however, it is possible that full implementation may take some time and we will have to set priorities. Surely we would not wish to see the United States engaged in international disputes because of an absence of practical flexibility.

Section 203 requires special comment. This section directs the Secretary of State to negotiate international agreements under specified circumstances. I regard this section as an expression of the Congress' view that certain negotiations ought to be undertaken. This does not in any way impair the constitutional authority of the President to decide with whom, when and on what subjects international negotiations will be undertaken.



DEPARTMENT OF STATE

Washington, D.C. 20520

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C.

Dear Mr. Lynn:

This letter is in response to the April 1 request of Mr. James M. Frey and sets forth the views and recommendations of the Department of State on H.R. 200, the Fisheries Conservation and Management Act of 1976.

Pursuant to the President's memorandum of August 22, 1975, the Department made an all-out attempt to stop passage of any 200 mile bill. Following the passage of bills by substantial majorities in each House, and an announcement by the White House on January 29 that the President would sign a bill with a delayed effective date if all other provisions were satisfactory, officers of the Department undertook to seek necessary changes to the provisions of the bill in order to minimize its harmful effect on our oceans, foreign policy, and international law objectives.

The bill establishes a zone contiguous to the territorial sea out to 200 miles in which the United States assumes exclusive fisheries management authority, and asserts such authority over anadromous species (e.g. salmon) of US origin and continental shelf fisheries resources seaward of the zone. This authority does not extend to highly migratory species (tuna).

Foreign fishing may be permitted to the extent of any surplus over the harvesting capacity of US fishermen and under the optimum yield from each fishery. That is, the Secretary of Commerce and regional councils established by the act will set the total allowable catch for each fishery and determine what portion of this total will be harvested by American fishermen. The remaining



surplus will be allocated among foreign fishermen by the Secretary of State, subject to restrictions set by the Secretary of Commerce. However, foreign fishing in the zone or for anadromous or continental shelf species in or beyond the zone is prohibited after March 1, 1977 unless certain conditions are met. These conditions affect new and existing bilateral agreements and continuing multilateral treaties.

In the case of existing bilateral agreements that remain in force on March 1, 1977 (with Canada, Korea and the Soviet Union), the parties to the agreements must obtain "registration permits" for each vessel from the Secretary of State in order to verify that their vessels are authorized to fish. In the case of continuing multilateral treaties, "registration permits" will be similarly required of some 18 nations, including Japan, Canada, the USSR, Poland, the FRG, Spain and others.

In the case of agreements that expire before March 1, 1977 (with Japan, the USSR and Poland), no extension is permitted and the nations involved must conclude new "governing international fisheries agreements" that recognize our jurisdiction as set forth in the bill, and obtain permits for each vessel by which the Secretary of Commerce unilaterally sets the terms and conditions under which fishing is authorized.

These "governing international fisheries agreements" must be in force on March 1, 1977. However, the bill requires that they lie before Congress for 60 days while Congress is in session before they enter into force. Give the likely Congressional calendar for the months preceding March 1, 1977, these new agreements must be completed in the early summer.

Any foreign fishing vessel that does not have on board a valid permit issued under an existing agreement or a new governing agreement will be seized and prosecuted. Penalties include possible imprisonment of foreign fishermen.

We would, of course, recognize the fisheries jurisdiction of other nations out to 200 miles as a result of

our action. This will subject our distant-water fishermen to coastal state controls like our own. However, the extension of US jurisdiction does not include tuna and the Congress does not intend that we recognize the jurisdiction of other nations over tuna within their 200 mile zones. The bill seeks to protect our shrimp and tuna fleets' access to their distant-water fisheries (off Mexico, Brazil, Ecuador and Peru) by imposing import embargoes on fish products from nations that seize our vessels in their zones unless authorized under an agreement with us. The bill encourages our fishermen to continue such fishing by expanding compensation available under the Fishermen's Protective Act to include cases of seizures in waters recognized by the US as under foreign fisheries jurisdiction.

It is our view that this bill will lead to incidents at sea and other disputes with those nations with which we have fisheries relationships, and in which we will be regarded as in the wrong. The bill is, in concept, inconsistent with international law as heretofore maintained by the United States. Implementation of some specific provisions will, in our view, place the US in violation of international law. The prospect of resulting confrontations, particularly with the USSR and Japan, could be a most serious matter with ramifications going far beyond fisheries and the law of the sea.

The USSR at present engages in fishing off our Pacific Coast under Bilateral agreements that expire before March 1, and off our Atlantic Coast under a bilateral that expires after March 1 and under the continuing Convention on the Northwest Atlantic Fisheries (ICNAF). Several hundred vessels are involved. On the Pacific, they must agree to a governing agreement recognizing our jurisdiction by the early summer to avoid wholesale seizures. On the Atlantic, the USSR, which fishes under the bilateral and under ICNAF, must accept and display permits issued by the Secretary of State.

It is doubtful this can be accomplished because either type of permit represents a recognition of our jurisdiction. During negotiations in February, the USSR delegation refused even to discuss principles

that look toward an orderly transition to extended jurisdiction, whether through an LOS Treaty or unilaterally, until after the LOS Conference. While it might be easier for the USSR to accept US registration permits under the multilateral ICNAF framework, it is unclear whether the 17 nations represented in ICNAF will accept at the June annual meeting in Havana permits issued by the United States as required by the bill. On March 1, 1977, the USSR is likely to have the options of (1) leaving the fishing grounds, (2) fishing despite seizures while reacting diplomatically, or (3) entering a confrontation like the UK-Iceland "Cod War" -- unless, contrary to our expectations, they undertake to recognize our jurisdiction very soon.

Japan currently fishes in the Pacific under two bilateral agreements that expire before March 1 and under the continuing International Convention for the High Seas Fisheries of the North Pacific Ocean (INPFC), and in the Atlantic under ICNAF. Japan is heavily dependent on her distant-water fisheries both economically (total value in excess of \$11 billion) and for food. Nearly twenty percent of this distant-water catch is taken off US coasts. Avoiding wholesale seizures of the huge Japanese fleet requires the same steps described above with respect to the USSR, although Japan may be less likely than the USSR to place principle above practicality here.

There is, in addition, a special problem with respect to Japan's salmon fisheries, which under INPFC are confined to an area near the Aleutians west of 175° West Longitude. Japan could consider our extension of jurisdiction to be a material breach of the INPFC, leaving them free to fish salmon east of that line, which will harm the stocks and create a domestic political outcry. Moreover, Japan will regard any seizures of her vessels fishing for salmon seaward of the 200 mile zone as a blatant violation of international law, and we have received hints she may link her response to other issues.

Among the other nations that fish off our coasts are the FRG, the GDR, Cuba, Korea, Spain, Italy, Poland, Romania, Bulgaria, Ireland, France and Canada. All of

these nations except Korea and Ireland are members of ICNAF. Many of them, including the USSR, Japan, Poland, the GDR, and others, such as Taiwan, fish in the Pacific as well. Poland recently agreed to principles looking toward a transition to 200 miles and is not likely to raise major objections. Canada will soon extend her jurisdiction to 200 miles and, although our fisheries relationship is complex, difficult, and of special importance, we should be able to achieve a workable transition. We have no indication how the others will react, although none presently recognizes unilateral extensions of fisheries jurisdiction.

It is also important to consider our relations with nations off whose coasts our vessels fish, principally Mexico, Brazil and Ecuador, who also have claimed 200 mile jurisdiction. With respect to Mexico and Ecuador, the exclusion of tuna from our jurisdiction and our probable refusal to recognize their jurisdiction over tuna within 200 miles will be offensive. It will also be patently hypocritical, since we have nearly no tuna resources in our zone. It is unclear whether we will be able to conclude an acceptable agreement providing access to Mexico or Brazil's shrimp fishery for our fishermen, since Mexico is rapidly expanding its shrimp fleet and Brazil sought at the last negotiation (in 1975) to phase our fishermen out by 1978. In the absence of agreements, our vessels are likely to be seized because they are encouraged to fish without authorization by the compensation available under amendments to the Fishermen's Protective Act. We will be under great pressure to impose embargoes of their fish product imports as provided in the Act, for seizures under the same circumstances in which we will seize foreign vessels in our zone. This embargo would violate GATT and invite retaliation in the trade area, even while it would damage the objective of inducing good faith negotiations.

The provision in the bill for imprisonment of foreign fishermen invites similar actions by these nations against our fishermen, and could undermine our efforts to prohibit such imprisonment in a Law of the Sea Treaty.

The impact of the bill on our objectives at the Law of the Sea Conference will be seriously harmful since our action will encourage others to act unilaterally, even to

claim 200 mile territorial seas. This will rigidify negotiating positions as well as lead to disputes. Certain specific US positions may be undermined, such as our efforts to gain acceptance of an obligation fully to utilize fishery resources under coastal State jurisdiction (the bill contains no such express obligation).

Lastly, provisions directing the Secretary of State to negotiate under specified circumstances constitute a blatant infringement on the President's sole constitutional authority to decide when, with whom and on what subjects he will negotiate.

The Department of State, in view of the foregoing, recommends that the President veto H.R. 200. In light of the strong Congressional feelings on this bill, we recommend that the President issue a statement outlining the changes that would be needed to secure the President's signature and expressing the President's eagerness to sign a revised bill this session.

Sincerely,



Robert J. McCloskey
Assistant Secretary for
Congressional Relations

Enclosure:

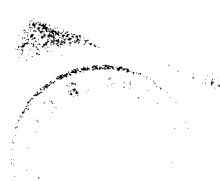
Draft Veto Message

VETO STATEMENT ON H.R. 200

I am today returning without approval H.R. 200, an enrolled bill to extend the exclusive fishery management authority of the United States to 200 miles, and beyond with respect to certain species. I strongly support an extension of our fisheries jurisdiction to 200 miles. I have said I will sign a bill extending fisheries jurisdiction to 200 miles provided that all other provisions are satisfactory. I am eager to sign this session a bill that accomplishes this purpose. It is only because I cannot support certain provisions of H.R. 200 that I must now return it to the Congress for further consideration.

The assumption by the United States of exclusive fisheries jurisdiction over such a broad expanse of ocean space, previously regarded as high seas for fisheries and other purposes, requires the most careful consideration of means calculated to achieve a transition without conflict and confrontation with foreign nations. Our legislation must stand up as a model for responsible action by others. In my view, however, H.R. 200 falls short in a number of important respects.

First, H.R. 200 provides inadequate flexibility to make the transition to extended jurisdiction without unnecessary disputes and possible confrontations with nations that have traditionally fished off our coasts. The bill provides that, in



several important cases, vessels of these nations will be seized next March 1 unless a governing international fishery agreement is in force after laying before Congress for 60 days. Given the likely congressional calendar during the eight months preceding March 1, this has the effect of requiring that the new agreements be negotiated and concluded in the early summer.

In certain cases, an agreement may be negotiated, but the 60 day period may not have elapsed by March 1. The bill should authorize provisional application of these agreements during the 60 day period, without prejudice to the Congressional prerogative to prevent the entry into force of the agreement by subsequent statutory enactment. In other cases, negotiations may be in progress on March 1, 1977. The President should be authorized to defer enforcement with respect to a particular nation during such time as he determines that good faith negotiations are proceeding.

The bill also requires all foreign fishing vessels to have permits issued by the United States on board after March 1, 1977 even if the issuance of such permits places the United States in violation of existing agreements. Where vessels are fishing under a multilateral treaty establishing a fisheries commission, the purpose of the permit requirement would be served if the bill permitted the acceptance of

registration permits issued pursuant to the terms of such a treaty.

Second, H.R. 200 contemplates unilateral enforcement of a prohibition on foreign fishing for anadromous species, such as salmon, seaward of the 200 mile zone. While such a prohibition is clearly necessary for the conservation of salmon stocks, we can only achieve it effectively under international agreements with affected States. In the absence of agreement, our actions would be considered lawless by others, and resulting disputes can only harm our relations with foreign nations.

Third, the bill contemplates prohibitions on imports from foreign nations in whose 200 mile zones our distant-water fishermen fish, if the foreign nation seizes our vessels without authorization from the United States or under other specified conditions. Yet the bill requires us to seize foreign vessels fishing in our zone without similar authorization from their governments. This provision should be modified.

Lastly, a number of specific amendments are needed to conform the legislation to positions we are advancing at the Law of the Sea Conference and to avoid restrictions on the President's Constitutional responsibility for international negotiations. I am particularly concerned that

the provisions on imprisonment of foreign fishermen will encourage other nations to take such action against our distant-water fishermen.

I do not regard these necessary amendments as altering the essential thrust and purpose of the bill. My difference with the Congress is solely one of the means best calculated to achieve our common objectives. I look forward to signing a revised bill during this session of the Congress.



**GENERAL COUNSEL OF THE
DEPARTMENT OF COMMERCE**
Washington, D.C. 20230

APR 2 1976

Honorable James T. Lynn
Director, Office of Management and Budget
Washington, D.C. 20503

Attention: Assistant Director for
Legislative Reference

Dear Mr. Lynn:

This is in response to your request for our views on H.R. 200, the Fishery Conservation and Management Act of 1976, an enrolled enactment.

The purpose of this legislation is to provide for the conservation and management of the marine fisheries resources of the United States through the establishment of a 200 mile fisheries zone contiguous to the territorial sea of the United States and the development of fisheries management plans and regulations to apply to both foreign and domestic fishing activities inside the zone and beyond for anadromous and continental shelf fisheries resources.

Under Title I of the Act, the United States shall exercise exclusive fisheries management responsibility within the zone over all species of fish (except tuna) and beyond the zone over anadromous fish of U.S. origin and continental shelf fisheries resources found on the U.S. Outer Continental Shelf. By definition, the Act does not apply to highly migratory species of fish (tuna), marine mammals, or sea birds. The effective date of Title I is March 1, 1977. This date applies to the exercise of exclusive fisheries management authority and the enforcement of management plans.

Title I is not intended to interfere with ongoing Law of the Sea negotiations or to relate in any way to activities other than those associated with fishing and conservation of living marine resources. The Act stipulates that any management procedures developed shall be subject to modification to conform to a future Law of the Sea treaty when it comes into force and effect for the United States.



Title II of the Act authorizes fishing in the zone by foreign vessels only under an existing international agreement or a special "governing international fishery agreement" entered into pursuant to section 201 of the Act. Foreign vessels will be permitted to fish only to the extent that the resource will not be taken by U.S. fishermen. The Title spells out the conditions and limitations that will apply to any such foreign fishing. An opportunity for Congressional review of all new agreements is provided in section 203. After March 1, 1977, all foreign fishing vessels operating in the zone, or beyond the zone for anadromous fish or continental shelf fisheries resources, will be required to have a permit. Authority is granted in section 205 to embargo fishery products from another country if that country does not provide U.S. distant water fishing vessels with rights and privileges similar to those afforded to foreign vessels by the United States under the Act.

Title III of the Act establishes a national program for the conservation and management of marine fisheries resources to be carried out by the Secretary of Commerce. The basic premise of Title III is that fisheries resources should be managed to provide for optimum sustainable yield. This implies assuring a continued food supply to the nation, opportunity for recreational fishing, and consideration of other economic and social goals. Implementation of the program will be through the development of regional management plans by eight Regional Councils. A Council will submit its proposed plan to the Secretary, who, after appropriate consultation with other involved Federal agencies, is authorized to adopt the proposal as a Federal plan and implement it with Federal regulations. The Secretary can reject or modify the proposal and send it back to the Council for revision. This entire process allows for considerable discussion and review by all interested or affected parties through hearings and publication in the Federal Register. Since the Regional Councils will be largely composed of state officials and other members nominated by the governors of the states, it is believed that most regional interests will be represented and their views reflected in the proposals developed by the Councils. The Secretary, through regulations and control over funding, will oversee the operation of the Councils.



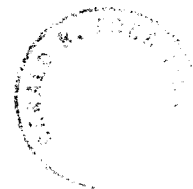
The historic jurisdiction of an individual State over the fisheries resources found within its boundaries (three miles for all States except Texas and Florida in the Gulf of Mexico) can be altered under certain circumstances involving a specific fishery to allow the Federal Government to step in and regulate the fishery if the Secretary finds after a hearing that a State has taken or failed to take certain actions which adversely affect the carrying out of a Federal management plan for the fishery.

Enforcement of the Act will be the responsibility of the Secretary, with the Coast Guard sharing the responsibility with respect to enforcement at sea. Suitable civil and criminal penalties for violations are included.

Title IV of the Act contains a number of amendments to other existing laws necessary to conform them to the purposes and policies of this Act.

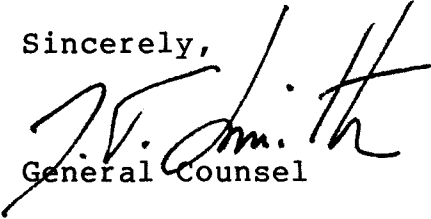
The Department of Commerce urges approval of H.R. 200 by the President. The Act provides a suitable jurisdictional framework within which the United States can initiate conservation measures necessary to protect its marine fisheries resources. By so doing it will assure the survival of an important source of food and enjoyment for the people of the Nation. It will also provide a means by which foreign fishermen may be licensed to take that part of the resource which is not utilized by U.S. fishermen, while being governed by applicable conservation regulations. In many respects the Act follows the provisions of the Single Negotiating Text developed at the 1975 session of the Law of the Sea Conference, and can thus be expected to be consistent with a treaty in most respects if one should be signed.

Estimates of the costs of implementing the Act and the appropriations requests are being developed within the Department and should be forthcoming shortly. While we do not have the projected amounts at this time, it is anticipated that they will be close to the amounts authorized in the Act. It should be noted that the Act provides in section 204 that the costs of implementation will be partially covered by permit fees collected from foreign fishing vessels,



beginning March 1, 1977. Based on current harvesting levels, estimates of the amounts that will be collected under the permits have not been developed, but the amounts are expected to be substantial.

Sincerely,



J.V. Smith

General Counsel



COUNCIL ON INTERNATIONAL ECONOMIC POLICY
WASHINGTON, D.C. 20500

April 6, 1976

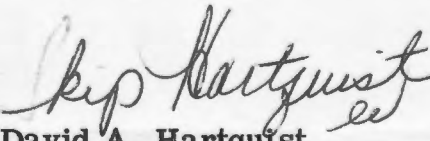
MEMORANDUM FOR:

James M. Frey
Assistant Director for
Legislative Reference
O M B

SUBJECT: Enrolled Bill Request, H. R. 200

CIEP strongly supports Presidential enactment of enrolled bill H. R. 200 on the following grounds:

1. It essentially contains the agreed upon provisions in the Single Negotiating Text of the Law of the Sea Conference;
2. it parallels actions already taken by Mexico;
3. it enables the U.S. government to immediately proceed with plans to implement this provision including the formulation of bilateral fishing limit agreements with the Japanese and Soviets.


David A. Hartquist
General Counsel



EXECUTIVE OFFICE OF THE PRESIDENT
COUNCIL ON ENVIRONMENTAL QUALITY
722 JACKSON PLACE, N. W.
WASHINGTON, D. C. 20006

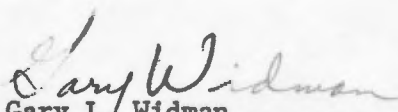
April 2, 1976

MEMORANDUM FOR JAMES M. FREY
ASSISTANT DIRECTOR FOR LEGISLATIVE
REFERENCE

ATTENTION: Ms. Ramsey

SUBJECT: H.R. 200 - Enrolled, "To provide for the
conservation and management of the fisheries,
and for other purposes"

This is in response to your request for the views and
recommendations of the Council on Environmental Quality
on the subject bill. The Council recommends approval
of this bill by the President.


Gary L. Widman
General Counsel





THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

APR 5 1976

Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Assistant Director for Legislative
Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of H.R. 200, "To provide for the conservation and management of the fisheries, and for other purposes."

The enrolled enactment would protect and conserve the fishery resources of the United States by establishing a fisheries conservation and management zone controlled by the United States in a 200 nautical mile zone off the coasts of the United States.

The Department is concerned about section 205 of the enrolled enactment. This provision would authorize the imposition of a limited trade embargo of imported fish products as a sanction to encourage and enforce certain types of fisheries agreements with other nations. Such agreements would be designed to ensure access to foreign fisheries for U.S. fishermen. The Department believes that the exercise of this authority to embargo trade would be inconsistent with United States trade policy and could possibly subject the United States to challenge under the provisions of the General Agreement on Tariffs and Trade (GATT) which generally prohibit the use of such import restrictions.

This disadvantage, however, is more than offset by benefits derived from other provisions of the enrolled enactment, which establish a sound national conservation program for our coastal fisheries which will help save this important national resource from depletion. Furthermore, by limiting foreign fishing to that portion of the maximum sustainable yield which U.S. fishermen are not able to harvest, the enrolled enactment would help to ensure that the national conservation program is observed by others. Finally, the broader provisions clearly reflect the emerging consensus regarding fisheries at the ongoing U.N. Law of the Sea Conference, and the effective date of March 1, 1977, will not have an adverse impact on the course of those negotiations.

In view of the foregoing, the Department would have no objection to a recommendation that the enrolled enactment be approved by the President.

Sincerely yours,

General Counsel
RICHARD E. ALBRECHT





OFFICE OF THE SECRETARY OF TRANSPORTATION

WASHINGTON, D.C. 20590

APR 5 1976

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Transportation concerning H.R. 200, an enrolled bill

"To provide for the conservation and management of the fisheries, and for other purposes."

The U.S. Coast Guard role under H.R. 200 is limited to that of enforcement. We do not have any objection to the enforcement provisions of the enrolled bill. We note, however, that the enrolled bill does not contain any authorization of appropriations for Coast Guard enforcement responsibilities. The conference report states that those authorizations will be included in the annual Coast Guard Authorization Acts.

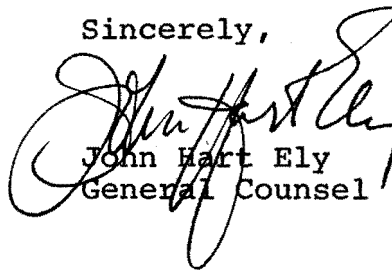
We are in process of developing an evaluation of associated costs and benefits of alternative strategies as directed in your March 2, 1976, budget allowance letter. However, it is clear that in any event the Coast Guard will require substantial funds over and above the estimates for fiscal years 1977 and 1978, as cleared by the Office of Management and Budget and subsequently transmitted to Congress, if we are to establish a credible enforcement program under the enrolled bill. Planning figures submitted to substantive and appropriation committees during recent hearings indicated total costs of \$274 million, including 869 positions, to implement the legislation through FY 1978. We emphasize that these costs are in addition to the amounts contained in the FY 1977 Budget and five year projections transmitted to Congress.



With respect to the broader implications of H.R. 200, the Department of Transportation remains of the opinion that unilateral action on the part of the United States in an area which is the subject of negotiation at the Law of the Sea Conference may affect our negotiating position at that Conference and detract from the possibility of achieving a Conference agreement. If our unilateral action on this issue contributes to a less satisfactory overall agreement or to the failure of the Conference, and if in the latter event other states also take unilateral action to expand their oceans jurisdictions, the result may have a serious impact on our air commerce and navigation as well as our fisheries interests.

The Department of Transportation defers to the Department of State on these areas of foreign relations and does not state that enactment of this bill will necessarily affect adversely the Law of the Sea Conference, but to the extent it does there is significant potential harm for our transportation interests.

Sincerely,



John Hart Ely
General Counsel





EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET

DATE: 4-21-76

TO: Bob Linder

FROM: Jim Frey

Attached are the following
views letters:

4/21/76 FTC - H.R. 7988 - *to J. Johnston*
EPA - H.R. 200 - *to Records*

Please have these letters included
in the appropriate enrolled bill
files. Thanks.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

APR 9 1976

OFFICE OF THE
ADMINISTRATOR

Dear Mr. Lynn:

This is in response to your request for a report on H.R. 200, an enrolled bill, "To provide for the conservation and management of the fisheries, and for other purposes."

The bill would establish, effective March 1, 1977, a 200 mile fishery conservation zone extending along the entire U.S. coastline. All fish within the zone would be managed by the U.S., plus anadromous fish and other Continental Shelf fishery resources beyond the zone. Foreign fishing within the zone would be subject to issuance of a U.S. permit and existing international agreements. Provisions governing allocation of fishery rights to foreigners, reciprocity, and fishery management plans are contained in the bill.

Authority to negotiate international fishery agreements for the U.S. is provided to the Secretary of State. Congressional oversight before ratification of an agreement is also provided.

The bill provides a National Fishery Management Program which would establish national fishery conservation and management standards, as well as 8 regional fishery management councils. The Councils would prepare fishery management plans for their fisheries which would require approval by Secretary of Commerce, who may also prepare such plans. Related administrative and enforcement provisions are contained in the bill.

The bill provides for coordinating its provisions with the anticipated comprehensive Law of the Sea Treaty as well as other existing law.

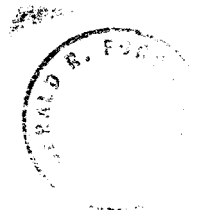
The Environmental Protection Agency recommends that the President veto the bill.

We are concerned that the bill's unilateral action on the issue of a 200-mile outer boundary to waters this Nation controls, when the Law of the Sea conference has not yet settled the issue and international law presently prohibits such unilateral action, may jeopardize successful conclusion of a satisfactory Law of the Sea Treaty. The present Conference on the Treaty provides a unique opportunity to reach sound international agreements on protection of the marine environment, an opportunity which we feel should still be pursued. If by March 1, 1977 or some other appropriate date the Conference has not yet achieved agreement, the Congress could enact a similar bill and make its provisions immediately effective. Under the present bill the U.S. would act now in a manner which will interfere with the progress being made by the Conference, but would not initiate protective measures until one year from now.

Unilateral action by this country could inspire similar and in many cases environmentally harmful actions by other nations. The Treaty, if successful, would have the opposite effect of binding every signatory, which is practically every nation of the world, to agreed environmental protection measures and to an instrument for later gaining additional environmental advances.

Recognizing that marine pollution is indeed a global problem and is not confined to arbitrary limits of national jurisdiction, U.S. Conferees are supporting treaty articles establishing an international legal framework for the prevention of pollution of the marine environment. Environmental issues presently being negotiated include:

- 1) Jurisdiction to set vessel-source pollution standards.
- 2) Jurisdiction to enforce vessel-source pollution standards.
- 3) International pollution control requirements for non-vessel activities (e.g., offshore oil and gas development, and nuclear power plants).
- 4) State responsibility and liability for damages to the marine environment.
- 5) Compulsory settlement of disputes.
- 6) Environmental assessment and monitoring.
- 7) Land-based sources of ocean pollution.

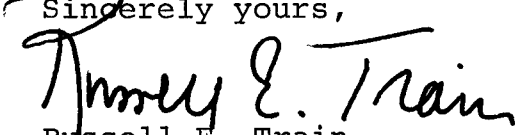


- 8) Ocean waste disposal (dumping).
- 9) Environmental impact and regulation of deep ocean mining.

A veto is necessary to protect the progress made on these and other matters.

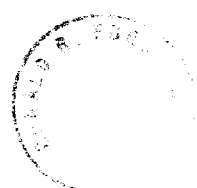
We have enclosed a draft veto message in accordance with OMB Circular A-19.

Sincerely yours,


Russell E. Train
Administrator

Honorable James T. Lynn
Director
Office of Management
and Budget
Washington, D.C. 20503

Enclosure



Department of Justice
Washington, D.C. 20530

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

In compliance with your request, I have examined a facsimile of the Enrolled Bill, H.R. 200, "To provide for the conservation and management of the fisheries, and for other purposes."

The Fishery Conservation and Management Act of 1976 would extend the exclusive fisheries jurisdiction of the United States out to 200 miles. The bill would also assert exclusive jurisdiction over anadromous species of fish (i.e., salmon) of United States origin beyond 200 miles, except where those resources are found within the territorial sea or fishery conservation zone of another nation as recognized by the United States.

The principal concern of the Department of Justice with respect to this bill is the effect it will have on promoting the rule of law which we believe is essential to the well-being of the Nation, both domestically and internationally. In this respect, the Department of Justice, in the deliberations within the Administration regarding this legislation, has maintained that the legislation is clearly inconsistent with and violates existing treaty obligations of the United States and customary international law as understood and practiced by the United States.

As the agency chiefly concerned with the enforcement of our laws, we are concerned with the prospects for incidents at sea and other disputes with nations which fish in the seas adjacent to our coasts which enactment of this bill, in its present form, presents. In our view, a small number of changes to the bill would serve to limit these prospects and minimize erosion to the rule of law while preserving the fundamental purpose of the bill.



The Fishery Conservation and Management Act of 1976 would not only extend our exclusive fishery jurisdiction out to 200 miles, but with respect to anadromous species of United States origin would extend our jurisdiction throughout all of the high seas. Although we disagree, arguments apparently can be made that in view of recent developments in international practice, action by the United States at this time to establish exclusive fisheries jurisdiction out to 200 miles would not be contrary to international law. However, no such arguments can, in our view, be advanced with respect to jurisdiction beyond 200 miles, such as that proposed in the Act with respect to anadromous species. To our knowledge, no nation now asserts such jurisdiction. For this reason, the assertion of this added jurisdiction may, in our view, justifiably result in more widespread and more intense opposition to the legislation than would occur if we merely asserted jurisdiction out to 200 miles. Modification of those aspects of the bill relating to jurisdiction over anadromous species, bringing that assertion of jurisdiction more into line with the general practice of nations, would eliminate the aspects of this legislation which are most objectionable as a matter of general international law.

As this bill is presently written, the State Department has little, if any, flexibility in working out the details of a transition from our existing treaty obligations and customary international law to the new regime established by the bill. In this respect, the bill sets unrealistic time limitations for negotiating new fishery agreements providing for this transition. Similarly, the bill seems to define the arrangements under which the transitions are to take place so narrowly as to deprive the Department of State of the flexibility necessary to obtain conformance with the underlying purposes of the bill without requiring, at least at first, a formal recognition of our claim. This appears to be the case with the detailed permit requirements established by the bill.

Modification of the provisions of the bill relating to foreign fishing within the proposed 200-mile limit, while not eliminating the objections which nations may have to that assertion of jurisdiction, might facilitate the application and ultimate acceptance of that jurisdiction and thereby minimize the prospects for confrontation and conflict.

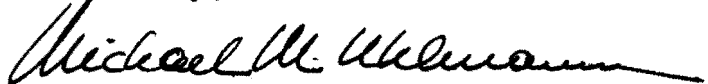


The bill purports to preserve international fishery agreements which exist at the date of its enactment. To the extent that the bill achieves this purpose, it serves to facilitate the transition to the new regime. However, at least one provision in the bill would seem to contravene this purpose. Thus, the bill authorizes foreign fishing pursuant to existing treaties and executive agreements, but subjects foreign vessels engaging in such fishing to the requirements that they possess permits issued by the United States and submit to inspection of such permits upon the request of any officer authorized to enforce the provisions of the bill. These requirements are inconsistent with the rights which the nations parties to these existing fishery agreements were accorded.

There are a number of other provisions in the bill which are unclear and which could be construed in such a manner as to create an inconsistency between the bill and the provisions of existing international fishery agreements. As a general rule a court will construe any ambiguity in the bill so as to avoid any such inconsistency. Nonetheless, in order to avoid confusion and possible litigation on these matters, modifications to these provisions would be advisable.

For the foregoing reasons, the Department of Justice recommends a veto of this bill. We understand that the President has expressed his support for the general concept of 200-mile-limit legislation. We believe, however, that the manner in which this bill applies that concept--in flat disregard of treaty obligations and without sufficient flexibility to enable the State Department to arrange with other nations an amicable transition--is in our view unacceptable. In addition, the provisions concerning anadromous species, which in our view violate well accepted international law principles, have to our knowledge not been endorsed even in principle by the President. In light of the President's previous comments on the subject, we recommend that the veto be accompanied by a statement which indicates willingness to accept specific alternative measures.

Sincerely,



Michael M. Uhlmann
Assistant Attorney General





GENERAL COUNSEL OF THE DEPARTMENT OF DEFENSE
WASHINGTON, D. C. 20301

RECEIVED
APR 8 8 56 AM '76
GENERAL COUNSEL
OF THE DEPARTMENT
OF DEFENSE
OFFICE

Honorable James T. Lynn
Director, Office of Management
and Budget
Washington, D.C. 20503

Dear Mr. Lynn:

Reference is made to your request for the views of the Department of Defense on the Enrolled Enactment of H.R. 200, 94th Congress, a bill "To provide for the conservation and management of the fisheries, and for other purposes." The bill provides that it may be cited as the "Fishery Conservation and Management Act of 1976."

Title I of H.R. 200 would, if enacted, establish a "fishery conservation zone" which would extend 200 nautical miles seaward from the United States territorial sea baseline. Within such zone, the United States should exercise exclusive fishery management authority over all fish except highly migratory species of tuna. Title I of H.R. 200 (and the enforcement-related provisions of Title III) would "take effect March 1, 1977."

It has been the consistent considered judgment of the Department of Defense that unilateral adoption of a 200-mile fisheries limit by the United States must not impair our ability to protect important national security interests. Foremost amongst these interests is the protection of the use of the high seas through a limitation of territorial seas to not more than 12 miles and freedom of passage through and over straits. In our judgment these interests would best be promoted and protected through the adoption of a comprehensive, internationally acceptable, Law of the Sea Treaty.

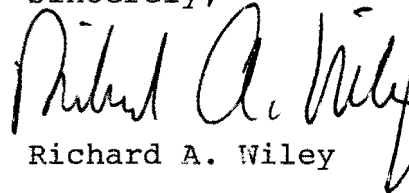
As the proposed letter of the President to the House of Representatives, which I have attached, points out, it is our belief that on balance the adoption of a bill such as H.R. 200 in its present form would be detrimental to pursuing, through the expected course of negotiations,



fundamental United States policy and objectives. Although amendments or revision might lead to mitigating these impacts, we would prefer to see the legislation even if revised put to vote as United States law following the 1976 Conferences.

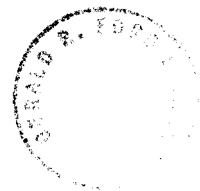
We attach the draft message for the President to the House of Representatives recommending that the bill should not be approved.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard A. Wiley". The signature is written in a cursive style with a large, prominent "R" and "W".

Richard A. Wiley

Attachments
a/s



TO THE HOUSE OF REPRESENTATIVES:

I hereby return without my approval H.R. 200 an enrolled bill to extend United States competence and jurisdiction over coastal fisheries to 200 miles.

I have taken into careful account the provisions of this bill intended to reflect fundamental United States policy which seeks to promote and protect United States interests in the uses of the seas and the seabeds through an internationally acceptable and comprehensive treaty embracing the law of the sea. Amongst these interests is the protection of the use of the high seas through a limitation of territorial seas to not more than 12 miles and freedom of passage through and over straits. The Third United Nations Conference on the Law of the Sea dedicated to these objectives is presently underway with two conferences scheduled for 1976.

In returning this bill I have noted that the effective date of implementation commences March 1, 1977. I have further noted that the bill reflects United States and international concern toward conserving and making an equitable allocation of fishery resources adjacent to United States coasts. Although these measures go far to protect basic United States positions, on the balance, the United States delegation at the Conference will be supported more effectively by pursuing United States fundamental policies, while deferring such legislation, during the coming critical year of negotiations.



NATIONAL SCIENCE FOUNDATION
WASHINGTON, D.C. 20550



OFFICE OF THE
DIRECTOR

April 6, 1976

Mr. James M. Frey
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20301

Dear Mr. Frey:

The National Science Foundation has consistently opposed unilateral establishment of a 200-mile fishery zone as contemplated in H.R. 200. This opposition has been based on the adverse impact such unilateral action would have on a variety of United States interests under negotiation in the United Nations Conference on Law of the Sea including marine scientific research. Jurisdictional claims to resources have historically led to controls over marine scientific research. Other countries will follow our lead in making claims to extended jurisdiction and it is inevitable that these claims will lead to control over or exclusion of scientific research. We are seeking a regime for research in the Law of the Sea Conference which will insure promotion of research. This legislation, if approved, will render the prospects of obtaining a good regime for science even more difficult.

Turning to specific aspects of the bill the Foundation would like to raise several problems which should be considered.

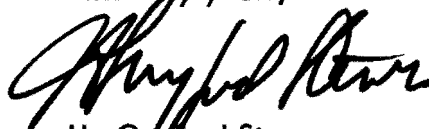
Section 205 imposes import restrictions on fish or fish products from foreign countries when a determination has been made that those countries are not meeting conditions prescribed in the bill. Such restrictions on imports appear to be counter to the general trade policy of the United States and may invite retaliation in other areas.

Finally, section 102 claims exclusive fishery management authority for the United States with respect to anadromous fish, principally salmon, throughout their migratory range except in the territorial waters and fishery zones of other countries. Since salmon in the Pacific Ocean migrate throughout the entire northern Pacific, this provision would place the United States in the position of claiming authority over the activities of foreign nationals in areas universally recognized as beyond the authority of any other country creating the risk of claims by others with respect to other activities of our nationals.



Based on the foregoing, the National Science Foundation cannot support approval of this bill. However, we recommend that if it is to be signed it be accompanied by a strong statement that this legislation is not intended to impair rights of others to conduct research within the 200-mile fisheries zone. Moreover, the bill in no sense represents the slightest retreat from the long established position of the United States that all the oceans of the world beyond the territorial limits must be open to marine research by all nations.

Sincerely yours,



H. Gifford Stever
Director



OFFICE OF THE SPECIAL REPRESENTATIVE
FOR TRADE NEGOTIATIONS

EXECUTIVE OFFICE OF THE PRESIDENT
WASHINGTON
20506

April 2, 1976

MEMORANDUM

TO: James M. Frey
Assistant Director for Legislative Reference
Office of Management and Budget

FROM: Alan Wm. Wolff *AW*
General Counsel

SUBJECT: Enrolled Bill HR 200

This office has reviewed HR 200 an enrolled bill "to provide for the conservation and management of fisheries and for other purposes." We will confine our comments to the trade policy implications of this enrolled bill.

Section 205 of Title II of the enrolled bill requires the prohibition of certain fish imports from a foreign country into the United States if the Secretary of State determines that such foreign country (1) refuses to conclude an international agreement with the U.S. allowing U.S. fishing vessels access to fisheries over which such country asserts management authority, (2) does not allow U.S. fishing vessels to engage in fishing for highly migratory species in accordance with an applicable international agreement whether or not such country is a party thereto, (3) is not complying with obligations of any existing international fishery agreement concerning fishing by U.S. vessels in any fishery over which such country asserts management authority, or (4) seizes any U.S. fishing vessel fishing in waters beyond such country's territorial sea, as recognized by the U.S. Once the requisite determination has been made, there is no discretion in the application of the law.

The prohibition of fish imports of a country as required under the provisions of Section 205 would violate U.S. trade obligations under the General Agreement on Tariffs and Trade (GATT). The United States would be subject to challenge in the GATT for failure to honor our international

obligations and possible retaliation by our trading partners. At a time when we are concerned with avoiding a series of trade restrictive actions, an inflexible statutory provision requiring the prohibition of imports under specified circumstances is clearly not in U.S. trade policy interests.

Moreover, and perhaps more importantly, the Administration has long opposed trying the extension of continuation of trade benefits to non-trade related conditions. Most recently, we have, in this regard, objected strongly to restriction on the extension of preferential tariff treatment for developing countries because of OPEC membership or for reasons of expropriation. The principle involved in this case is no different. We therefore believe that, for reasons of trade policy, HR 200 should not be enacted into the law.





United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

APR 5 - 1976

Dear Mr. Lynn:

This responds to your request for our views on the enrolled bill H.R. 200, "To provide for the conservation and management of the fisheries, and for other purposes."

H.R. 200 would establish a contiguous fisheries zone of 200 miles for the exclusive fishery management responsibility of the United States and extend United States responsibility and authority over anadromous fish in order to provide proper conservation management for such a zone and to protect the United States domestic fishing industry.

Since H.R. 200 involves major questions of law which will have an impact on the United States position in the Law of the Sea negotiations and the responsibility for developing Executive Branch policy on this legislation has been assigned to the Law of the Sea Task Force under the aegis of the Department of State, this Department defers to the Department of State on the question of whether the President should approve this bill.

Sincerely yours,

Assistant Secretary of the Interior

Honorable James T. Lynn
Director
Office of Management and Budget
Washington, D. C. 20503



THE WHITE HOUSE
WASHINGTON

Date 9.8.76

TO: Staff Secretary

FROM: Max L. Friedersdorf

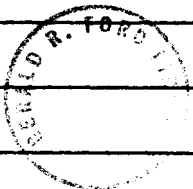
For Your Information ✓

Please Handle _____

Please See Me _____

Comments, Please _____

Other Recommend



but be signed without
statement or signing
ceremony.

THE WHITE HOUSE

WASHINGTON

April 9, 1976

MEMORANDUM FOR: JIM CAVANAUGH
FROM: MAX L. FRIEDERSDORF *M.L.F.*
SUBJECT: H.R. 200 - Fishery Conservation and
Management Act of 1976

The Office of Legislative Affairs concurs with the agencies
that the bill be signed.

Attachments



Date: April 8

Time: 1145pm

FOR ACTION: Paul Leach
 George Humphreys
 Steve McConahey NSC/S
 Bill Seidman Robert Hartmann (State Department
 Max Friedersdorf Judy Hope veto message attached
 Steve McConahey Ken Lazarus ✓

cc (for information): Jim Cavanaugh
 Ed Schmults
 Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date:

April 9

Time:

10:00am

SUBJECT:

H.R. 200 - Fishery Conservation and Management Act of 1976

ACTION REQUESTED:

 For Necessary Action For Your Recommendations Prepare Agenda and Brief Draft Reply For Your Comments Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign _____

Sign with signing statement _____

Veto _____

Counsel's Office recognizes the necessity for Presidential approval of H. R. 200 but strongly recommends the issuance of a signing statement in order to address several problem areas presented by the bill. A draft statement is attached.

Ken Lazarus 4/9/76

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
 For the President

Draft Signing Statement on H. R. 200

I have today granted my approval to H. R. 200, a bill to provide for the conservation and management of our fisheries, and for other purposes.

The assertion of exclusive jurisdiction over fisheries within an area of 200 miles from a nation's shores is entirely consistent with the current trend of international agreements. Accordingly, in communications with the Congress I have indicated my willingness to accept a bill extending fishery jurisdiction to 200 miles provided that all other provisions of such legislation are satisfactory.

Notwithstanding my support for the fundamental concept advanced by H. R. 200, I am duty bound to raise four potential problem areas which are raised by this legislation:

First, absent affirmative action, the subject bill could raise serious impediments for the United States in meeting its obligations under existing treaty and agreement obligations;

Second, the bill contemplates unilateral enforcement of a prohibition on foreign fishing for native anadromous species, such as salmon, seaward of the 200-mile zone. Enforcement of such a provision, absent bilateral or multilateral agreement, would be contrary to the sound precepts of international jurisprudence;

Third, the enforcement provisions of H. R. 200 dealing with the seizure of unauthorized fishing vessels, lack adequate assurances of reciprocity in keeping with the tenets of international law; and

Fourth, the measure purports to encroach upon the exclusive province of the Executive relative to matters under international negotiations.



Although the problems posed by H. R. 200 are of a major import, I am hopeful that they can be resolved by responsible administrative action and, if necessary, by curative legislation prior to the effective date provided by the measure. Accordingly, I am instructing the Secretary of State to lead Administration efforts toward an effective resolution of these matters.

#



EXECUTIVE OFFICE OF THE PRESIDENT

OFFICE OF MANAGEMENT AND BUDGET

WASHINGTON, D.C. 20503

APR 8 1976

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill H.R. 200 - Fishery Conservation and Management Act of 1976
Sponsors - Rep. Studds (D) Massachusetts and 25 others

Last Day for Action

April 13, 1976 - Tuesday

Purpose

Extends exclusive U.S. fisheries jurisdiction from 12 miles to 200 miles (and beyond for certain fisheries); restricts foreign fishing for fisheries covered under this extended U.S. jurisdiction; requires the renegotiation of existing international fisheries agreements; establishes a national fishery management program; and for other purposes.

Agency Recommendations

Office of Management and Budget	Approval
Department of Commerce	Approval
Council on International Economic Policy	Approval
Council on Environmental Quality	Approval
Department of the Treasury	No objection
Department of Transportation	No objection on enforcement provisions; defers to State on foreign policy aspects
Department of State	Disapproval (Veto Message attached)
Department of Justice	Disapproval
Department of Defense	Disapproval
National Science Foundation	Disapproval
Special Representative for Trade Negotiations	Disapproval
Environmental Protection Agency	Disapproval (informal)
Department of the Interior	Defers to State
National Security Council	No recommendation

To -
J. Cannon
4-8-76
11:30 a.m.




Discussion

The primary purpose of H.R. 200 is to effectively conserve and manage U.S. fishery resources by extending exclusive U.S. fisheries jurisdiction from the current statutory limit of 12 miles to 200 miles and by providing for the development and implementation of fisheries management plans applicable to all foreign and domestic fishing activities under such extended jurisdiction.

Title I of the enrolled bill -- Fishery Management Authority of the United States -- establishes, effective March 1, 1977, the new 200 mile fishery conservation zone contiguous to the U.S. territorial sea. The bill provides that within the new zone the United States shall exercise exclusive fishery management authority over all fish, except highly migratory species (i.e., tuna) -- it is intended that such species be managed pursuant to international agreements. Exclusive U.S. jurisdiction would also apply beyond the new zone to anadromous species (fish that spawn in U.S. rivers and streams and migrate to ocean waters -- e.g., salmon) throughout their migratory ranges and to all Continental Shelf fishery resources. The bill would maintain existing U.S. ocean jurisdiction without change for all purposes other than the conservation and management of fishery resources.

Title II -- Foreign Fishing and International Fishery Agreements -- establishes restrictions on foreign fishing in fisheries subject to extended U.S. jurisdiction. After February 28, 1977, no foreign fishing would be authorized within the zone, or for anadromous species or Continental Shelf fishery resources beyond the zone, unless pursuant to an existing international fishery agreement or to a new "governing international fishery agreement" negotiated under the bill. In addition, fishing by vessels of any foreign nation would be allowed only if such nation accords reciprocal fishing privileges to U.S. fishing vessels. H.R. 200 also would require foreign nations to obtain permits from the



Secretary of State for each of its vessels wishing to engage in the fisheries subject to extended U.S. jurisdiction. The bill requires the Secretary of Commerce to approve each permit and establishes detailed criteria for the issuance of such permits. Finally, the allowable level of foreign fishing would be limited to that portion of the optimum yield of any fishery which would not be harvested by U.S. fishermen, as determined under the bill.

Title II also provides for the transition to extended U.S. fisheries jurisdiction by requiring the Secretary of State to initiate promptly the renegotiation of any treaty pertaining to fisheries covered under the bill in order to conform such treaty to the bill's provisions. H.R. 200 states the sense of Congress that the United States shall withdraw from any such treaty if it is not so renegotiated within a reasonable period of time. Similarly, the bill directs the Secretary of State to negotiate new "governing international fishery agreements" which shall, among other things, acknowledge the exclusive fishery management authority of the United States established in the bill. After May 31, 1976, no existing agreement may be renegotiated or new agreement entered into unless it conforms to the provisions applicable to governing fishery agreements. The President is required to transmit the text of each governing fishery agreement to Congress. An agreement shall not become effective if Congress disapproves it by joint resolution within 60 calendar days of continuous session after Presidential transmittal.

Finally, Title II requires the Secretary of the Treasury to embargo fishery imports from any foreign country when the Secretary of State determines that such country has failed to negotiate in good faith to allow U.S. fishermen equitable access to its fisheries, has improperly seized U.S. fishing vessels, or in certain other circumstances.

Title III of the bill -- National Fishery Management Program -- establishes a national fishery

management program for the conservation and management of fishery resources subject to exclusive U.S. fishery jurisdiction. The Secretary of Commerce is generally responsible under the bill for carrying out the program although with regard to enforcement at sea, he shares that responsibility with the Secretary of the department in which the Coast Guard is operating.

Title III provides for the creation of eight Regional Fishery Management Councils similar in structure, purpose and functions but varying in terms of the total number of members. Membership of the Councils is composed of the principal State fishery officials from each constituent State, appropriate federal officials, and members appointed by the Secretary of Commerce from among lists of qualified individuals submitted by the Governor of each applicable constituent State.

The Councils' responsibilities include the preparation of management plans for each of the fisheries within their geographical jurisdictions consistent with the national fishery conservation and management standards contained in the bill. H.R. 200 sets forth in detail the mandatory and discretionary provisions of each such plan. Each Council is authorized to propose any regulations it deems necessary and appropriate to carry out any fishery management plan it prepares.

H.R. 200 requires the Secretary of Commerce, in consultation with other appropriate federal agencies, to review management plans prepared by the Councils for consistency with the bill's provisions and any other applicable law. He must notify the Councils of his approval, disapproval or partial disapproval of such plans. The Secretary is also authorized to prepare fishery management plans if any Council fails to submit a required plan or corrective changes to a disapproved plan in accordance with the bill's provisions. After approving or preparing any fishery management plan, the Secretary is authorized and directed to implement it and to promulgate such regulations as may be necessary for its implementation.

The entire process of approving and implementing plans provides for the consideration of interested parties' views. Plans and proposed implementing regulations must be published in the Federal Register with an opportunity for public comment, the Secretary is authorized to schedule hearings on proposed plans, and any regulations promulgated by the Secretary are subject to judicial review in accordance with existing law.

Title III also contains a limited exception to the principle in the bill that nothing in the legislation shall be construed as extending or diminishing the jurisdiction or authority of any State over fishery resources within its boundaries. The Secretary of Commerce may regulate any fishery within a State's boundaries covered by a fishery management plan if he finds, after an opportunity for a hearing, that such State has taken, or has failed to take, certain actions which adversely affect the carrying out of the plan.

Finally, Title III establishes certain prohibited acts, provides for civil and criminal penalties and civil forfeitures for violations, and authorizes enforcement of the bill's provisions including seizure of any fishing vessel used in violation of the bill. These provisions are to be effective March 1, 1977.

Title IV -- Miscellaneous Provisions -- authorizes the Secretary of Commerce, after consultation with the Secretary of State, to amend any regulations promulgated under the bill to conform to the fishery conservation and management provisions of any comprehensive treaty applicable to the United States resulting from the United Nations Conference on the Law of the Sea. It also authorizes appropriations to the Commerce Secretary to implement the bill. Amounts authorized are \$500,000 for fiscal 1976, \$5 million for the transition quarter, \$25 million for fiscal 1977 and \$30 million for fiscal 1978 (the conference report on H.R. 200 indicates that authorizations for enforcement expenditures will be provided



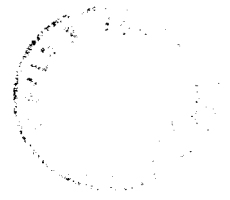
separately in annual Coast Guard Authorization Acts). Provisions of certain existing laws are also amended to conform them to H.R. 200, and compensation under the Fisherman's Protective Act is expanded to cover seizures of U.S. fishing vessels in waters not recognized by the United States as under foreign fisheries jurisdiction and in certain other circumstances.

H.R. 200 initially passed the House by a vote of 208-101 (1 voting present). The Senate adopted its version of the bill by a 77-19 margin. Subsequently, the House adopted the conference report on H.R. 200 by a vote of 346-52 (2 voting present). No recorded vote was taken in the Senate when it considered the conference report.

A number of agencies commenting on the enrolled bill state that enactment of H.R. 200 raises serious problems. Generally, they believe it could be harmful to the objectives we seek through negotiation in the United Nations Law of the Sea Conference, not only with regard to fisheries management and conservation but also in areas such as use of the high seas and passage through straits (Defense, Transportation), marine environment (Environmental Protection Agency), and marine scientific research (National Science Foundation). State and Justice express concern that the bill would lead to incidents at sea and other disputes with foreign nations fishing off our coasts -- especially Japan and the Soviet Union -- with possible ramifications going beyond fisheries and the law of the seas.

Specifically, agency comments cite the following major objections to H.R. 200:

- The bill's assertion of U.S. jurisdiction over anadromous species beyond 200 miles is clearly inconsistent with the general practice of nations (no other nation



asserts such jurisdiction) and would be contrary to international law (State, Justice, National Science Foundation).

- The requirement that foreign fishing vessels must obtain permits issued by the United States, even if fishing pursuant to an existing international fishery agreement as permitted under the bill, violates the rights accorded nations parties to such agreements (State, Justice).
- The bill provides insufficient flexibility to make a transition to extended U.S. jurisdiction, establishing unrealistic time limits for negotiating new governing international fishery agreements as required (State, Justice).
- The prohibition of foreign fish imports in certain circumstances, as required under the bill, would violate U.S. trade obligations under the General Agreement on Tariffs and Trade (GATT) and would invite retaliation by our trading partners (State, STR, Treasury, National Science Foundation).
- Including imprisonment of foreign fishermen as a penalty for certain violations of the bill will encourage other nations to take such action against our distant-water fishermen and could undermine our efforts to prohibit imprisonment in a Law of the Sea Treaty (State).

In addition, State believes the provisions in the bill directing the Secretary of State to undertake specific negotiations infringes on the President's constitutional authority for the conduct of foreign affairs. We note, however, that Justice does not object to the bill on this ground.

For some or all of the above reasons, State, Justice, Defense, and certain other agencies recommend that you disapprove H.R. 200. Nevertheless, State and Justice believe that with certain modifications,



some of the adverse consequences of the bill could be minimized while preserving its essential thrust and purpose. Accordingly, both departments recommend issuance of a veto message outlining the changes needed to correct the above deficiencies and indicating your willingness to sign such a revised bill. State's enrolled bill letter includes a proposed veto message along these lines.

Commerce and Treasury, in their enrolled bill letters supporting enactment of H.R. 200, state their belief that the bill will provide a suitable framework within which the United States can initiate conservation measures necessary to protect its marine fisheries resources. The Council on International Economic Policy joins those two departments in pointing out that the bill is consistent in many respects with the fishery provisions of the Single Negotiating Text developed at the 1975 session of the Law of the Sea Conference. In this connection, the conference report on H.R. 200, citing provisions such as the delayed effective date for extending exclusive U.S. fisheries jurisdiction and enforcement and the authorization to conform regulations issued under the bill to terms of an international treaty applicable to the United States, states that, "The legislation is not intended to interfere with or preempt ... negotiations at the third session of the Third United Nations Law of the Sea Conference."

While the Office of Management and Budget agrees that the bill contains undesirable provisions and recognizes the potential problems they could cause, we believe that their adverse effects can be mitigated by careful and effective administration and enforcement. In addition, as previously mentioned, the bill generally reflects the developing consensus within the Law of the Sea negotiations on fisheries conservation and management, and concern over the impact of the bill on overall U.S. objectives in these negotiations is speculative at this time. In view of the strong congressional support for this measure,



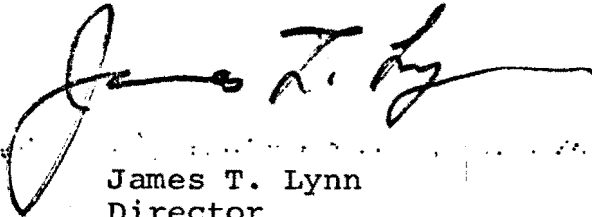
it is likely that disapproval of H.R. 200, even if premised on a need for corrective changes, would be overridden. Failure to sustain a veto in such circumstances could decrease the chances for favorable congressional consideration of corrective changes if it is determined that some are necessary as steps are taken to implement the bill. Accordingly, we recommend that you approve H.R. 200, keeping open the possibility of seeking amendments at a later time.

The National Security Council believes that in the event you approve this legislation, you should issue a signing statement to point out the deficiencies in the bill and the risks involved with enforcement and to recommend that Congress address these problems in future legislation. While opposing enactment of the bill, the National Science Foundation also recommends a signing statement in the event of approval to address certain of its concerns over marine scientific research.

In our view, no useful purpose would be served by a signing statement along the lines proposed by these agencies. Furthermore, as indicated above, we believe it would be premature to forecast the need for amendments in a signing statement until the executive branch has had an opportunity to operate under the bill and to determine the amendments, if any, that may be necessary.

The costs of implementing this legislation are not yet certain. In its enrolled bill letter, Commerce estimates its costs will be close to the amounts authorized in the bill. Commerce further points out that permit fees collected under the bill will partially offset implementation costs and expects the amounts collected to be substantial. Preliminary estimates of the Department of Transportation are that costs for enforcement under the bill through 1978 would exceed, by approximately

\$274 million, amounts requested for the Coast Guard in the 1977 budget and projected for 1978. Clearly, should you approve H.R. 200, we will need to review associated costs carefully before recommending any budget amendments.



James T. Lynn
Director

Enclosure

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: April 8

Time: 1145pm

FOR ACTION: Paul Leach
 George Humphreys
 Steve McConahey NSC/S
 Bill Seidman Robert Hartmann (State Department
 Max Friedersdorf Judy Hope ✓ veto message attached)
 Steve McConahey Ken Lazarus

cc (for information): Jim Cavanaugh
 Ed Schmults
 Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date:

April 9

Time: 10:00am

SUBJECT:

H.R. 200 - Fishery Conservation and Management Act of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign _____
 Sign with signing statement _____
 Veto _____

JRH
See attached comments

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

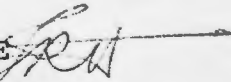
If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

WASHINGTON

April 9, 1976

MEMORANDUM FOR: GEORGE HUMPHREYS
FROM: JUDITH RICHARDS HOPE 
SUBJECT: HR 200 - Fishery Conservation and Management Act of 1976

ISSUES:

DOT's main concerns under this bill are: (1) enforcement; and (2) impence of air commerce and navigation.

1. The primary responsibility for enforcing the 200 mile limit will be with the Coast Guard, which will require an estimated increase of \$274 million, including 869 additional positions, over the proposed FY '77 budget and projection for FY '78.

2. DOT deferred to the Department of State on International issues presented by this bill, noting, however, that unilateral U.S. action may seriously affect transportation's air commerce and navigational concerns, as well as our negotiating position at the Law of the Sea Conference.

The State Department, in turn, urges veto, including the following transportation-related objections:

The assertion of U.S. jurisdiction beyond 200 miles for certain anadromous species (e.g. salmon) reaches farther from national shores than any other nation, and presents the liklihood of international incidents and enforcement problems on the high seas. International, unilateral retaliation against our ships and planes, is foreseen.

I have a third, non-transportation concern. Title III of the Bill provides for a National Fishery Management program, complete with 8 regional Fishery Management Councils, to prepare fishery plans and proposed regulations, which will be published in the Federal Register, subject to review,



comment and regulatory rule-making procedures, and ultimately judicial review. Civic and criminal penalties are provided for violations, and the Secretary of Commerce, may if any State actions adversely affect the FMP's (Fishery Management Plans), pre-empt the area.

These provisions may lead to additional layers of State and Federal bureaucracy, regulation and red tape which the President is trying to eliminate.

However, CEQ (Council on Environmental Quality) experts indicate that the reverse may be true; that is, fishing is already subject to Environmental Impact Statement requirements, and the FMP proposal may actually lessen and regularize the number of such statements to be filed.

RECOMMENDATION:

Despite the above-noted concerns, I recommend signing. National interests require preventative measures to deal with the depletion of world fish reserves, as well as access to the multi-trillion dollar copper, maganese, and oil reserves on the ocean floor.

I also recommend a signing statement which raises the serious concerns of State and Justice, includes the important issues of continued free passage by naval and shipping interests, and urges quick Congressional reconsideration of these questions.

cc: Judith Johnston
Art Quern



THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: April 8

Time: 1145pm

FOR ACTION: Paul Leach
 George Humphreys
 Steve McConahey NSC/S
 Bill Seidman Robert Hartmann (State Department)
 Max Friedersdorf Judy Hope veto message attached)
 Steve McConahey Ken Lazarus

cc (for information): Jim Cavanaugh
 Ed Schmults
 Jack Marsh

FROM THE STAFF SECRETARY

DUE: Date: April 9

Time: 10:00am

SUBJECT: 4/8 - 2:00 pm

H.R. 200 - Fishery Conservation and Management Act of 1976

ACTION REQUESTED:

- For Necessary Action
- For Your Recommendations
- Prepare Agenda and Brief
- Draft Reply
- For Your Comments
- Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign _____
 Sign with signing statement _____
 Veto _____



*Veto message and signing message edited.
 The political realities seem obvious, but
 no opinion is rendered as to the wisest
 course*

A handwritten signature in dark ink, appearing to be 'J.M. Cannon'.

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

James M. Cannon
For the President

THE WHITE HOUSE

ACTION MEMORANDUM

WASHINGTON

LOG NO.:

Date: April 8

Time: 1145pm

FOR ACTION: Paul Leach cc (for information): Jim Cavanaugh
 George Humphreys Ed Schmults
 Steve McConahey NSC/S Jack Marsh
 Bill Seidman Robert Hartmann (State Department
 Max Friedersdorf Judy Hope veto message attached)
 Steve McConahey Ken Lazarus

FROM THE STAFF SECRETARY

DUE: Date:

April 9

Time:

1000am

SUBJECT:

H.R. 200 - Fishery Conservation and Management Act of 1976

ACTION REQUESTED:

For Necessary Action

For Your Recommendations

Prepare Agenda and Brief

Draft Reply

For Your Comments

Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign _____

Sign with signing statement _____

Veto _____



PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President