

  
ACTION

April 9, 1976

MEMORANDUM FOR BRENT SCOWCROFT

FROM: Mr. Clift  

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

OMB Director James Lynn has sent the enrolled bill H.R. 200 -- the 200-mile fisheries legislation -- to the President for decision by Tuesday, April 13. State, Defense and Justice strongly recommend a Presidential veto. Commerce and OMB recommend approval. Treasury and Transportation have voiced no objection to enactment, although Transportation defers to State on the foreign policy aspects.

The NSC staff -- earlier to OMB and most recently to James Cannon -- has expressed opposition to the bill, citing as reason the illegality under international law of unilateral U.S. claims to the high seas and the adverse impact that implementation and enforcement of the legislation will almost certainly have on our relations with nations fishing off our shores.

Since passage of the bill by both Houses earlier this year, Administration agencies have worked closely with the House-Senate Conference Committee to eliminate the most objectionable provisions of the measure. In many instances we were successful, but in others we were not. There follows a brief summary of the deficiencies remaining in the legislation that have prompted the strong veto recommendations from Justice, State and Defense. In several instances we have identified the relevant section(s) of the legislation. The Bill is attached (Tab A).

General Deficiencies

-- Unilateral extension of our fisheries jurisdiction from 12 to 200 miles violates our existing treaty obligations and customary international law. (Section 101)



-- Unilateral fisheries action by the United States would invite confrontation with the Soviet Union, Japan and other nations fishing off our coasts.

-- Unilateral fisheries action would likely prompt other nations to make similar, possibly more radical claims which could impact adversely on our distant water fishermen who work off foreign coasts and on our commerce and navigation interests as a major ocean user.

Specific Deficiencies

-- The effective date of the legislation -- March 1, 1977 -- allows inadequate time and flexibility to undertake and complete the necessary international negotiations required to transition to the 200-mile zone. Some 23 agreements will require immediate renegotiation. (Section 202)

-- H.R. 200 authorizes unilateral enforcement of a prohibition on foreign fishing for anadromous (salmon) species seaward of the 200-mile zone. In the absence of an international agreement, our enforcement actions beyond 200 miles would be considered illegal by others and could result in confrontation. (Section 102)

-- H.R. 200 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 insure access to foreign fisheries for U.S. fishermen. The exercise of this authority to embargo trade would be inconsistent with U.S. trade policy and could possibly subject the United States to challenge under GATT provisions which generally prohibit the use of such import restrictions. (Section 205)

-- The provision in the bill for imprisonment of foreign fishermen found in violation of the act invites similar action by these nations against our own fishermen working off foreign coasts. (Sections 308-310)

-- A number of specific amendments are needed to conform the legislation to provisions we are advancing at the Law of the Sea Conference and to avoid restrictions on the President's constitutional responsibility for international negotiations.

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The Department of Justice's principal concern is the effect that this bill will have on promoting the rule of law which Justice believes all would agree is essential to the well-being of the nation, both domestically and internationally. In this respect, Justice maintains 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 this country. Thus, Justice underscores and reiterates the longstanding position of State, Defense and the NSC to this legislation.

In sum, we continue to believe that the President should veto H. R. 200. At the same time, however, we clearly understand the pressures for approval, including the likelihood of election-year attacks on the President's policy -- "e. g., Ford prefers to close his eyes to foreign plunder of dwindling U. S. fisheries." In the event that the President decides to approve this legislation, we believe he should 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, the White House Office, at NSC recommendation, has circulated for comment and concurrence a draft signing statement which would do this. OMB opposes such a statement commenting that no useful purpose would be served. We disagree, believing that the deficiencies in the bill must be pointed out to the international community and to the domestic opponents of U. S. fisheries action -- our high seas tuna, shrimp and salmon fishermen -- if overall U. S. oceans interests, including fisheries, are to be preserved and safeguarded.

We are forwarding this memorandum to outline the state-of-play and our continuing opposition to the legislation -- and to provide you with further background information in connection with your discussions with the President at the beginning of next week.

RECOMMENDATION

That you draw on the above in reviewing H. R. 200 with the President.

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