

What the Fishing Industry May Expect from the 91st Congress

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Abstract

The fishing industry may expect a surge of legislation from the 91st Congress. The first and most significant legislative effort that will be introduced, and most likely enacted, will require a substantially accelerated Food and Drug Administration (FDA) inspection program on fishing vessels and foreign and domestic fish processing plants. Both this legislation and proposals from the Commission on Marine Research, Engineering and Resources to reorganize the various marine related agencies will be considered very early in the next Congress. Legislative hearings on bills to extend and substantially revise the fishing vessel construction subsidy program, to implement the 1958 Fishery Convention, to extend the present capital reserve fund tax advantages enjoyed by the merchant fleet to the fishing fleet and to settle the question of Federal vs. state management responsibilities for living resources of the sea between the 3- and 12-mile limit are all expected early in the 91st Congress.

THE UNITED STATES CONGRESS has been aggressively investigating and enacting legislation affecting the United States fisheries during the past several years. I will not attempt to review in detail the numerous legislative proposals and committee hearings that have been directed toward problems of the fishing industry. I am certain you will recall the Congressional initiative and drive behind the enactment of the 9-mile fishing zone, the Foreign Fishing Vessel Seizure Act, the Fishery Research and Development Act, the Fishing Vessel Construction Act, the expansion of the Fisheries Loan Act, the Anadromous Fish Act and the Fish Protein Concentrate Act—to name a few. I feel certain that this attention will not slacken during the 91st Congress. In fact, I expect the pace to quicken with a running start, particularly by the Senate, on several proposals that will have a greater impact on the fishing industry than any previously mentioned.

The first legislative proposal I expect to receive action in the fisheries field by the 91st Congress will be a measure expected to be introduced by Senator Hart of Michigan providing for continuous inspection for sanitation and quality control of all fish processing plants. I will add here that I personally am as convinced that the measure will be enacted into law during the next Congress as I am that it will be reintroduced, of which I am certain. If this prediction has too clear a ring of inevitability about it for some, I suggest they re-examine the broad consumer enthusiasm, the strong Congressional Republican and Democratic vote and the heavy industry support exhibited for substantial strengthening of the Wholesome Meat Act and the Wholesome Poultry Act during the 90th Congress. The 91st Congress will pass both the Wholesome Fish and Wholesome Egg Acts. The real question is how they will read. There is broad support by government, consumer groups, labor and

industry to pass a meaningful, strong and reasonable fishery inspection measure. I believe it will be done. But I do not wish to suggest that there will be no difference of opinion as to how best to accomplish that objective. A number of very tough, but not unsolvable, problems have not been answered to the satisfaction of all. These questions were aired fully during extensive hearings held on this general measure by the Consumer Subcommittee of the Senate Commerce Committee in April of this year. The proposal to be introduced next session is expected to raise many of the same problems which were raised during the consideration of the measure last year. I will review briefly several of the more difficult problem areas which are expected to be mentioned again during the consideration of this legislation next year.

Section 104 of the bill as introduced last session (S. 2958) provides that: The Secretary shall cause to be made, by inspectors appointed by him for that purpose, a *continuous inspection of each establishment* where fish products are processed for interstate commerce.

Continuous inspection is defined as follows:

The term 'continuous inspection' means the application of inspection by a full-time inspector, except in cases where geographic distribution of establishments makes it reasonable, from the standpoint of carrying out the purposes of this Act, for one inspector to inspect more than one establishment on a substantially continuous basis.

This provision requires a Federal inspector resident in every fish processing plant whose duty would be to continuously inspect the establishment for sanitation and quality control and to determine if the good manufacturing practices promulgated by the Secretary for the establishment were being followed.

This type of continuous inspection of the plant is somewhat different from the present continuous inspection program for red meat and poultry in that the "continuousness" of the other meat inspection programs relates to the act of physically inspecting each item of raw product to be processed, namely, each individual side of beef or each broiler on the processing line.

For example, Section 6(b) of the Wholesome Poultry Products Act provides, "The Secretary, wherever processing operations are being conducted, shall cause to be made by inspection post mortem inspection of the carcass of each bird processed . . ." With respect to plant and facilities, Section 7 of the Poultry Act provides that each establishment slaughtering poultry shall have such equipment and maintain the facilities in accordance with regulations promulgated by the Secretary, but there is no requirement that there be a resident full-time continuous inspection of the plant or facilities. Under the present law, no poultry processing plant may operate without a Federal lay inspector on the processing line inspecting each bird, but the supervising veterinarian is not required by law or practice to be in the plant at all times.

The primary opposition to this requirement of continuous plant inspection has come from industry groups which have expressed the opinion that this form of continuous inspection system went even beyond the red meat and poultry inspection program for facilities and was unnecessary to assure the public of wholesome, unadulterated fishery products. These groups in the fishing industry have suggested that an inspection program would be adequate if the legislation would authorize the Secretary to promulgate good manufacturing practices regulations and have a surveillance type of inspection in which the inspector would visit an establishment as frequently and for as long

a period as necessary, but in any case, on a substantially more frequent basis than now occurs under the Food and Drug Administration inspection program. These groups opposed the requirement that an inspector be physically present in the plant during all operating hours.

It has been also argued that under the present concept of one inspector for each establishment, the government would be required to have one inspector in a plant occupying the area of one square block and four inspectors if there were four separately owned plants occupying the same area, even if one of the four only employed a dozen people. This also poses the more serious question of whether the benefits justify the cost of the continuous inspection program so designed. Estimates of the cost of a continuous type inspection run as high as \$60 million annually, which substantially exceeds the cost of the inspection program for so-called red meat or poultry. Accurate measures of "benefit" are difficult to come by and may involve a heavy injection of individual personal feelings.

On the other hand, one of the most serious legislative difficulties in proposing something less than "continuous" inspection of facilities is that Congress would then have to determine each year how much money would be appropriated for inspectors for the program. This may well mean doing little more than what is now being done under the Food and Drug Administration. The political advantage of requiring "continuous" inspection of facilities is that Congress is then faced with either appropriating the money necessary to have an inspector in every plant at all times or hearing from their constituents that plants and employees are idle because the agency did not have the money necessary to hire the inspectors to be present in every plant. The expectations are that even an economy-minded Congress will provide the funds necessary. Some are not certain that this self-imposed Congressional pressure could not be maintained while giving the Secretary authority to permit one inspector to be responsible for more than one facility. The bill already recognizes this possibility as presently written where "geographic distribution of establishments makes it reasonable." Perhaps other conditions may make it reasonable, in the Secretary's discretion, such as proximity or size of establishments, actual availability of inspectors or an exceptionally good inspection record. These are possibilities still being examined to give assurance that the inspection program will be funded effectively and still not be wastefully expensive.

The second major problem involves the inspection of foreign plants and boats which under the legislation would be required to meet the same good manufacturing practices and other regulations as the legislation imposes on domestic fishing boats and processing plants. A similar provision was added this year to the Wholesome Meat Act. The provision in the Wholesome Meat Act reads as follows:

Sec. 20. (a) No carcasses, parts of carcasses, meat or meat food products of cattle, sheep, swine, goats, horses, mules, or other equines which are capable of use as human food, shall be imported into the United States if such articles are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of this Act and regulations issued thereunder applicable to such articles in commerce within the United States . . .

Section 410(i) of the Hart Bill reads:

(1) *no fish* or fishery products shall be imported into the United States if such articles are adulterated or misbranded or otherwise fail to comply

with all the inspection, good manufacturing practices, and other provisions of this Act and regulations issued thereunder applicable to such articles in commerce within the United States: Provided, That whenever it shall be determined by the Secretary, in the case of any foreign country, that the system of plant and vessel inspection of fish and fishery products is at least equal to all the inspection, good manufacturing practice, and other provisions of this Act and regulations issued thereunder, and that reliance can be placed on certificates required by regulation of the Secretary as to compliance with the country's inspection, good manufacturing practice, and other requirements, the Secretary may accept such certificates as compliance with the comparable requirements of this subpart: . . .

The problem of foreign inspection of fish is substantially greater than in red meat since fishery imports comprise approximately 65% of domestic consumption, and come from over 100 countries. The cost of monitoring an inspection program of red meat in a foreign country will, of course, be substantially less than that of monitoring an inspection program involving a foreign fishing fleet and the plant facilities sprinkled up and down a distant coast line. A provision of this type could come dangerously close to fulfilling a protectionist trade function more effectively than any tariff barrier yet devised. The absence of a provision of this type could leave the American consumer exposed and the American fishing industry at an even more serious competitive disadvantage.

A third question involves whether the program should be administered by the Food and Drug Administration in the Department of Health, Education and Welfare, or by the Department of the Interior. Strong arguments can be made in support of giving the nod to either Department. The function of the Food and Drug Administration in the Department of Health, Education and Welfare has traditionally been a police activity involving the inspection of all types of foods and drugs. The function of the Bureau of Commercial Fisheries in the Department of the Interior has been primarily to promote the commercial fishing industry. However, the Bureau of Commercial Fisheries has also provided a voluntary inspection program for a number of years and is therefore familiar with both the fish business and, to a certain extent, inspection. In this connection, it should be pointed out that poultry and red meat inspection is administered by the Department of Agriculture, rather than the Food and Drug Administration.

Some have criticized the Bureau of Commercial Fisheries as not being sufficiently independent of industry to administer an effective inspection program. They reason that the primary mission of the Bureau is to promote, not police, the industry and therefore the Bureau would tend toward leniency. This question should also be reexamined. The Bureau has a fiercely independent record in dealing with the industry in numerous areas, including international fishery negotiations with the Department of State where the industry is consulted but the government alone sets the policy, often with the industry screaming. There is no record of any laxity in the present voluntary inspection system in the Senate hearings. In fact, the testimony indicated that some inspectors had been overbearing. The experience in poultry inspection with U.S.D.A. has been that industry itself has insisted on uniformity and strict compliance, undoubtedly motivated in part by a concern that competition might not be required to maintain the same high and often costly standards. No similar questions were raised about the independence of the U.S.D.A.

during the hearings on the red meat and poultry inspection laws, although the U.S.D.A. has ten agricultural promotion programs for each fishery promotion program of the Bureau of Commercial Fisheries.

There are a number of other controversial provisions in the bill as indicated by the earlier Senate hearings. These include the manner and frequency of vessel inspection, the question of whether the cost of overtime inspection should be borne by the industry, the question of clearance of packages and labeling, and the power to withdraw certification.

In summary this proposal is expected to generate again during the 91st Congress at least as much heat and controversy as it did during the 90th Congress. Despite this, I am convinced that some form of legislation in this area will pass during the 91st Congress.

The second bill that will receive early attention during the next session is the fishing vessel construction subsidy bill which expires on June 30, 1969. This program has permitted the Federal government to pay the difference between the cost of constructing a fishing vessel in the United States and the cost of constructing the same vessel in the lowest cost ship yard abroad. The program was initiated years ago and patterned after the Merchant Vessel Construction Subsidy Act, passed in 1936.

Numerous complaints have been filed against the legislation. They could be summarized as follows: (1) the program has been underfunded; (2) the administrative procedures make the program unattractive and (3) no provision is made for trading in old vessels. Despite these and other criticisms, there is a substantial agreement in the industry that the program has been generally useful in encouraging the construction of modern fishing vessels. Obviously, the program was not designed to replace the entire United States fishing fleet with new vessels, since there was an annual ceiling of \$10 million placed on the program. This could be substantially increased.

I expect early hearings in the House and the Senate on an extension of this act and the enactment of a substantially improved and expanded program. One alternative to this program would be the passage of legislation which would permit the establishment of a tax free capital reserve fund to be composed of earnings set aside by the vessel owner for the exclusive use by him to construct new fishing vessels. This type of tax incentive program, which is available to the United States Merchant Marine in addition to their vessel construction subsidy program, may be much more acceptable to the new Republican administration than it was to the Democratic.

Another fishery problem which should receive Congressional attention involves the question of whether the Federal government or the states should have jurisdiction over fishery resources between the 3- and the 12-mile zone. The Submerged Lands Act of 1953 confirmed the jurisdiction assumed by the states to manage fishery resources within the 3-mile territorial sea. However, in 1966, Congress extended the jurisdiction of the United States over fisheries out to a distance of 12 miles by establishing a 9-mile fishery zone contiguous to the 3-mile territorial sea. During Senate hearings on the bill, a question was raised as to whether the states or the Federal government should be given the responsibility of managing the fishery resources within the 9-mile zone. The Senate committee did not resolve the question and included in the Senate Committee report a statement making clear that the legislation only prohibited foreign vessels from fishing in the zone and should not be interpreted as conferring any additional regulatory authority upon either the Federal govern-

ment or the states. The House Merchant Marine and Fisheries Committee confirmed this by adding a specific provision to the bill stating that the act did not extend the jurisdiction of the states. This issue is still unresolved and today fishery resources within the 9-mile zone could be decimated by over-fishing with neither the state nor the Federal government capable of acting to conserve the resources. Some legislative action is needed. The fact that serious state-Federal government issues are involved is no excuse for further inaction. I personally am convinced that legislation could be drafted and passed that recognized the overriding interest of the Federal government in assuring an adequate and consistent conservation scheme and the interest of the states in assuring that any conservation program in the 3- to 12-mile zone meshed with the program within the 3-mile limit. Not dissimilar state-Federal government problems have been solved in the field of air and water pollution, red meat and poultry inspection and many others.

The 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas became effective 3 years ago when the requisite number of countries became signatories to the Convention. However, no legislation implementing this Convention has been enacted. Examples of prior acts needed to implement treaties include the Northwest Atlantic Fisheries Act of 1950 which was passed to implement the Northwest Atlantic Fisheries Agreement, and the North Pacific Fisheries Act of 1954 which was enacted to implement the North Pacific Fisheries Agreement of 1952. Legislation is needed to implement the 1958 Convention since the Department of State is engaged in negotiating a number of bilateral agreements under the Convention which could be enforced only by the enactment of provisions that would assure compliance by United States nationals. Until this legislation is passed, there is actually no legal means that the United States government could use to enforce the terms of any agreement on United States fishermen. For example, if we agree with Russia not to fish in certain fishing areas during a particular period and a United States national violates the agreement by fishing there, the United States government is without power to apprehend and punish the violator because no general enforcement provisions have been enacted. At a time when the law of the sea and international fisheries law is straining under severe economic and political pressures, the Department of State is expected to negotiate an increasing number of short term bilateral fishery agreements to solve particular problems. This legislation is important to the continued success of this effort.

Other legislation will be entertained by Congress affecting the fisheries. I will only mention several of these briefly. The Marine Resources and Engineering Development Act of 1966 established a Commission on Marine Sciences, Engineering and Resources to study the United States role on the oceans and recommend an adequate oceanographic program including food from the sea. This report is expected to recommend a drastic reorganization of agencies concerned with marine affairs and substantial new programs for ocean resources development. Legislation authorizing a survey of United States coastal fishery resources and a bill implementing the treaty to conserve Atlantic tuna are also expected.

The assignment of forecasting Congressional action is one to be avoided as you may plainly see from the evasiveness of many of my answers. The one answer in which I am fully confident is that the 91st Congress will be aggressive and will generate an unprecedented amount of activity for the fishing industry.