

TESTIMONY OF

JAMES W. BRENNAN
ASSISTANT ADMINISTRATOR FOR FISHERIES
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

Before the

COMMITTEE ON ENERGY AND NATURAL RESOURCES
UNITED STATES SENATE

July 13, 1989

Mr. Chairman and Members of the Committee:

I am James W. Brennan, Assistant Administrator for Fisheries of NOAA in the Department of Commerce. It is a pleasure to be here today to present to you the views of the Department of Commerce on S. 712. NOAA is the Federal Government's civilian oceans and atmospheric agency. Our interests are largely in scientific and technical issues. NOAA is also responsible with the eight Regional Fishery Management Councils for conservation and management of fisheries off the coasts of the United States, and for protecting marine mammals and endangered species. These are programs with which I work personally. NOAA also assists the States with regard to management of the coastal zone. NOAA is thus responsible for some broad areas of interest that would be affected by the legislation before this Committee today.

The Committee is considering three different approaches to conducting a referendum to allow the people of Puerto Rico an

opportunity to choose between statehood, independence, and commonwealth status. We are concerned with the effect of provisions of titles II and IV.

Section 5 of title II (statehood), regarding state title to lands and property, provides that the new State of Puerto Rico would have "exclusive right to explore, exploit, lease, possess and use all seabed, natural, and mineral resources lying within the 200 mile economic zone continental shelf boundary around the waters of the Archipelago of Puerto Rico...." This section would grant the new State of Puerto Rico far greater jurisdictional and economic rights than those of other States. This change would represent a significant departure from longstanding policy and existing State/Federal relationships. We also question the effect this provision would have on living marine resources. Our concerns are similar to those discussed with regard to subpart 9 of title IV, which I will address.

Title IV of S. 712 (enhanced Commonwealth) includes several provisions which give us great concern, and raise issues which we believe the Committee must consider seriously.

Subpart 9 of Title IV deals with jurisdiction over maritime resources. This subpart would exclude the new Commonwealth of Puerto Rico from the Magnuson Fishery Conservation and Management Act and would give the new Commonwealth exclusive control over the fisheries resources of the Exclusive Economic Zone (EEZ) off

Puerto Rico. This would allow the Commonwealth, for example, to impose fees and restrictions on U.S. vessels fishing for other than highly migratory species. By clear implication, it would also allow the new Commonwealth to regulate the taking of highly migratory species within the EEZ by vessels of other countries.

The presence of another, independent fishing jurisdiction would complicate an already complex jurisdictional situation in fisheries. Currently, under the jurisdiction of the Caribbean Fishery Management Council, Puerto Rico shares fishery management responsibility for certain fishery resources, including sharks, swordfish and billfish, which migrate throughout the Atlantic and Caribbean areas. The South Atlantic, Gulf of Mexico, Mid-Atlantic and New England Fishery Management Councils share this authority. If Puerto Rico were given independent status with regard to fishery conservation and management, effective coordination and implementation of fishery management and conservation laws and policies would be much more difficult.

Fisheries should only be managed throughout their range. One management problem we have today is the multiplicity of jurisdictions involved in making fisheries management and conservation effective. The Committee should consider the inevitable precedent for further splitting up fisheries jurisdiction by creating more independent management authorities. Other territories or commonwealths, or even other States, could conceivably make arguments that their particular circumstances

warrant a deviation from the existing management structure.

In addition, S. 712 does not specifically address the new Commonwealth's status relative to the Caribbean Fishery Management Council established under the Magnuson Act. Currently, the Caribbean Council consists of Puerto Rico and the Virgin Islands. If Puerto Rico were excluded from the Magnuson Act, we question the effect on the Council and the Virgin Islands.

Puerto Rico's exclusion from the Magnuson Act would be inconsistent with the current U.S. policy on tuna. The United States does not recognize the right of coastal States to exercise exclusive fisheries management jurisdiction over highly migratory species on the high seas. By specifically providing that the new Commonwealth of Puerto Rico could not regulate vessels of the United States fishing for highly migratory species, the bill implies that the Commonwealth could regulate vessels of other countries. Thus, this provision of the bill would signal a change in the position of the United States and could undermine our negotiating position on this issue.

We also believe the Committee must consider the effect of subpart 4 of title IV on other important conservation laws. Subpart 4, regarding implementation of Federal policy, provides that Federal statutory law is locally inapplicable unless it is consistent with the policy established under subpart 3 and unless

it has "proper regard for the economic, cultural, ecological, geographic, demographic and other local conditions of the Commonwealth of Puerto Rico." The policy of the United States established under subpart 3 is to "enhance the Commonwealth relationship enjoyed by Puerto Rico and the United States" and to enable the people of Puerto Rico "to accelerate their economic and social development and attain maximum cultural and political autonomy within permanent union with the United States." This provision raises questions about the application of the Marine Mammal Protection Act of 1972 and the Endangered Species Act, and all of the other environmental and marine resource programs for which we are responsible, and which provide vital protection to important resources. It would appear these laws might not be consistent with the policy set forth in subpart 3 and so may not be applicable in the new Commonwealth. The United States has established a clear leadership position in the world conservation community, and this could be interpreted as backing off at a time when there is a critical need for helping these animals. We also are uncertain as to the effect of subpart 4 on the application of the Coastal Zone Management Act.

Mr. Chairman, we appreciate the work the Committee is doing in this regard and the need to be responsive to the concerns of the people of Puerto Rico. We also recognize that S. 712 deals, directly and indirectly, with some of the most important marine resource conservation legislation that the United States has enacted. We urge the Committee to give these issues careful

consideration as it evaluates the bill. We are willing to work with the Committee in this regard.

Thank you, Mr. Chairman.