

**ROYAL ALEUTIAN SEAFOODS, INC.**

*701 Dexter Avenue North, Suite 403*

*Seattle, WA 98109*

*(206) 283-6605 / Fax (206) 282-4572*

August 31, 1999

Chris Oliver  
NPFMC  
605 West 4<sup>th</sup> Ave., Suite 306  
Anchorage, Alaska 99501

RECEIVED

SEP - 7 1999

N.P.F.M.C

Dear Mr. Oliver,

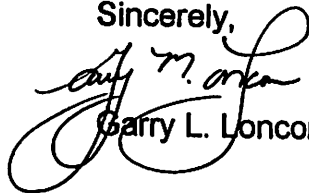
This letter is written to address the issue of cross over Pollock boats that fished Opilio fishery in 1999.

In the interest of statistical integrity, there is a significant issue of cross over AFA Pollock boats into the 1999 Opilio fishery. As you know, the AFA Pollock boats would NOT have been able to cross over had the emergency rule that was passed by the Council been implemented! At this point, to adequately assess the effect of this cross over, the total pounds delivered by these boats needs to be quantified and subsequent calculations reflect these cross over deliveries which were never intended to be part of the equation.

This has a serious impact and it is essential that these figures be addressed.

Please find attached a list of the registered boats that were non qualifying vessels.

Sincerely,



Barry L. Loncon, CEO

**Attachment Loncon/Oliver 8-31-99**

**Registered boats that were non qualifying vessels.**


<b>AJ</b>	<b>Registered</b>	<b>Did fish</b>
<b>Alsea</b>	<b>Registered</b>	<b>Did fish</b>
<b>American Eagle</b>	<b>Registered</b>	<b>Did not fish</b>
<b>Anita J</b>	<b>Registered</b>	<b>Did fish</b>
<b>Arctic Wind</b>	<b>Registered</b>	<b>Did fish</b>
<b>Argosy</b>	<b>Registered</b>	<b>Did fish</b>
<b>Caitlan Ann</b>	<b>Registered</b>	<b>Did not fish</b>
<b>Fierce Allegiance</b>	<b>Registered</b>	<b>Did fish</b>
<b>Flying Cloud</b>	<b>Registered</b>	<b>Did fish</b>
<b>Half Moon Bay</b>	<b>Registered</b>	<b>Did fish</b>
<b>Marcy J</b>	<b>Registered</b>	<b>Did fish</b>
<b>Nordic Fury</b>	<b>Registered</b>	<b>Did fish</b>
<b>Storm Petrel</b>	<b>Registered</b>	<b>Did fish</b>
<b>Sunset Bay</b>	<b>Registered</b>	<b>Did fish</b>
<b>Vesteraalen</b>	<b>Registered</b>	<b>Did fish</b>



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
Office of General Counsel  
P.O. Box 21109  
Juneau, Alaska 99802-1109

DATE: October 7, 1999

MEMORANDUM FOR: North Pacific Fishery Management Council

FROM: Lisa L. Lindeman  
Alaska Regional Counsel 

SUBJECT: Excessive Share and Processing "Sideboard" Limits under the American Fisheries Act

### Introduction

The North Pacific Management Council has requested legal opinions on issues related to the excessive share and processing "sideboard" limitation provisions included in the American Fisheries Act (AFA), Title II of Division C, P.L. 105-277. Specifically, the Council has requested opinions on the following issues:

1. Whether and to what extent the Council may elect not to implement excessive share and processing sideboard limitations under Sections 210 and 211 of the AFA; and
2. Whether the Council may recommend an excessive pollock processing share under Section 210(e)(2) that is greater than 17.5%.

This memorandum will address each of these issues in turn.

### Issue 1

Conceptually, the AFA's excessive share and processing sideboard limitation provisions can be divided into two groups: (1) those that expressly prescribe excessive share or processing sideboard caps; and (2) those that defer responsibility to the Council/Secretary to implement appropriate protective measures. Examples of the first group include sections 210(e)(1) (which establishes a pollock harvesting excessive share cap of 17.5%) and 211(c)(2)(A) (which prescribes crab processing sideboard caps on eligible motherships and shoreside processors based on historic processing levels). Examples of the second group include sections 211(c)(1)(B) (which directs the Council to recommend processing sideboard limitations for Secretarial approval), and 211(c)(2)(B) (which directs the Council to recommend crab and groundfish harvesting and processing excessive share limitations). The analysis of whether and to what



extent the Council may elect not to implement a particular excessive share or processing sideboard provision differs depending on which of these two groups the provision falls into.

With regard to the first group, excessive share and processing sideboard caps that are expressly prescribed by the AFA may be superseded only to the extent permitted by Section 213(c)(1), which provides as follows:

*The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act . . . that supercede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery (emphasis added).*

Consequently, under section 213(c)(1), the Council may recommend measures to the Secretary superseding prescriptive provisions such as sections 210(e)(1) and 211(c)(2)(B) (either in whole or in part). Any such measures, however, must qualify as "conservation and management measures in accordance with the Magnuson-Stevens Act," and must also meet the specific requirements of section 213(c)(1). In other words, not only must the Council meet the normal Magnuson-Stevens Act standards, but it also must develop a record supporting the conclusion that its superseding measures are necessary either for "conservation purposes" or to "mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery," take into account all pertinent factors, and are fair and equitable.

In our opinion, it would be very difficult to justify superseding measures that totally negate the excessive share and processing sideboard limitations that are expressly prescribed by the AFA. In order to do so, the record would have to provide compelling evidence that excessive share/processing sideboard caps would have substantial and unavoidable adverse consequences (either in the form of conservation impacts or other adverse effects per section 213(c)(1)), and that these adverse consequences outweigh the benefits of the protections the prescribed caps would provide.

We believe it would be less difficult to justify superseding measures that merely modify the prescribed limitations, as opposed to negating them altogether. For example, if the Council developed a record showing that the crab processing sideboard limitation scheme prescribed by section 211(c)(2)(B) would have unintended adverse impacts on crab fishermen and that a different approach would mitigate impacts on crab fishermen while providing similar protections for so-called non-AFA processors, then the Council likely could recommend measures implementing the modified approach.

The analysis for the second group of provisions -- those that direct the Council/Secretary to develop appropriate excessive share/sideboard protective measures -- is somewhat different. These provisions do not prescribe any particular protective measures. They leave this to the

Council and Secretary. Consequently, these provisions give the Council significant latitude in determining what protections are necessary and appropriate. Logically, this would seem to imply that the Council could choose to recommend no protective measures. However, this would run counter to Congress' intent that protective measures shall be implemented. This intent is clear from the directive language employed in sections 211(c)(1)(B) and 211(c)(2)(B) -- with section 211(c)(1)(B) providing that "the North Pacific *shall* recommend" processing protective measures, and section 211(c)(2)(B) stating that "the North Pacific Council is *directed* to recommend" excessive share limitations (emphasis added).

In effect, the AFA "presumes" that protective measures are necessary, and directs the Council to develop and recommend them to the Secretary. In our opinion, this statutory presumption can only be overcome by a record clearly establishing that no protective measures are necessary and/or feasible. In the alternative, if the record supported the conclusion that protective measures under sections 211(c)(1)(B) or 211(c)(2)(b) would have unavoidable and unacceptable adverse conservation or other impacts, we believe the Council could recommend measures superseding them under section 213(c).

### Issue 2

Analysis of whether the Council may recommend an excessive pollock processing share greater than 17.5% necessarily begins with the language of section 210(e)(2), which provides as follows:

Under the authority of section 301(a)(4) of the Magnuson Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5% (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

Standing alone, the first sentence of section 210(e)(2) appears to give the Council/Secretary broad discretion in determining an appropriate excessive share cap, subject only to national standard 4 (16 U.S.C. 1851(a)(4)). The last sentence adds a requirement that the Council consider the need for catcher vessels to have a competitive market, but does not otherwise circumscribe the Council's discretion. Thus, if section 210(e)(2) consisted solely of the first and last sentences, the Council clearly could recommend an excessive share cap in excess of 17.5%, as long as such a cap were consistent with national standard 4 and took into account the needs of

catcher vessels in having a competitive market.

But section 210(e)(2) includes another, middle, sentence:

In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share.

An argument could be made that this language indicates a legislative intent that the excessive share cap not exceed 17.5%. Otherwise, why did Congress focus on the 17.5% figure, and why was it so concerned that any "grandfathered" cap not exceed 17.5%. Alternatively, this language may be read as doing nothing more than providing limited grandfather protection (i.e., up to 17.5%) to large processing companies "in the event" a cap were established at a level below their current market share, without in any way prejudicing the Council's discretion to recommend a higher cap. Moreover, the legislative history provides no support for the notion that section 210(e)(2) was intended to cap processing excessive shares at 17.5%. The discussion of the AFA in the conference report for P.L. 105-277 states only that section 210(e)(2) "directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the BSAI directed pollock fishery."

The courts have held that where a "statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the [administering] agency's answer is based on a permissible construction of the statute." Chevron U.S.A. v. Natural Resources Defense Council, 467 U.S. 837, 843, 104 S.Ct. 2778, 2781 (1984). Consequently, the Council and Secretary have significant latitude in interpreting section 210(e)(2), so long as their interpretation is "permissible."

In our opinion, interpreting section 210(e)(2) to allow the Council to recommend, and the Secretary to approve, a pollock processing excessive share cap greater than 17.5% is a permissible construction under the Chevron standard. But any such cap must be supported by a record demonstrating that it is consistent with national standard 4 and fairly takes into account the needs of catcher vessels in having a competitive market.

cc: Jay S. Johnson  
Margaret Frailey Hayes  
Blaine H. Hollis  
Steve Pennoyer

October 6, 1999

Mr. Richard B. Lauber  
Chairman, North Pacific Fishery  
Management Council  
605 W. 4th Avenue  
Suite 306  
Anchorage, AK 99501-2252

Dear Rick,

We would like to provide the North Pacific Fishery Management Council a brief report on the status of electronic reporting for the shoreside sector of groundfish fishery catch and production information. This subject will be addressed during the Council's upcoming October meeting.

The National Marine Fisheries Service (NMFS) and the State of Alaska Department of Fish and Game (ADF&G) both collect information from the shoreside sector. NMFS requires that processors maintain a daily logbook of deliveries and production and submit weekly production reports that summarize the logbook information. ADF&G requires that fish tickets be submitted for each delivery of groundfish.

Recent developments in the groundfish fisheries, including requirements resulting from the American Fisheries Act and measures to protect Steller sea lions, have increased NMFS need for vessel specific delivery information on a daily basis. In 2000, NMFS will receive daily electronic reports of groundfish deliveries by vessel from shoreside processors that receive groundfish from AFA-eligible catcher vessels. Processors using the electronic logbook and reporting system will not be required to maintain a separate paper logbook or to submit separate weekly production reports.

NMFS and ADF&G have agreed to pursue development of a single reporting system for groundfish deliveries that will further simplify reporting and greatly reduce reporting burden on the industry. The system would be developed during 2000 for implementation in 2001. The attached document details a Consensus Statement developed by a work group of NMFS and ADF&G staff regarding development of this system.

Objectives for the system include:

1. One-time data entry by processors. Once an element of data is captured into a database, all printed reports and data submissions to meet both State and Federal requirements can be produced from the database.

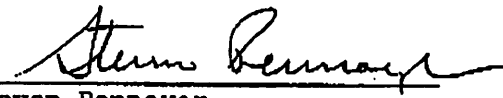
2. Standards-based reporting system. Specifications for the system will be published or made otherwise available to the public. The processing industry and third party developers may produce software to capture and report the required information in a manner that accommodates both electronic and paper submissions of delivery data.
3. A single database of landings data for use by all agencies and analysts.

We anticipate that this system will substantially improve the quality and timeliness of information from the groundfish fishery, while greatly reducing the overall reporting burden on industry.



David Benton  
Deputy Commissioner, ADF&G

Sincerely,



Steven Pennoyer  
Administrator, Alaska  
Region, NMFS

Attachment



## CONSENSUS STATEMENT

Staff from the Alaska Department of Fish & Game, Commercial Fishery Division (ADF&G) and National Marine Fishery Service, Sustainable Fisheries Division (NMFS) met on September 9, 1999 to discuss joint data acquisition needs and collection mechanisms. NMFS staff included Susan Salveson, Galen Tromble and David Ackley. Earl Krygier, Jeff Hartman, Carmine DiCostanzo, Herman Savikko, Bob Piorkowski and Gail Smith represented ADF&G. The objective of the meeting was to reach consensus on a groundfish fisheries data collection mechanism acceptable to both agencies. One which will meet immediate and long-term in-season/long-term management requirements of both agencies.

The group initially focused on interim modifications to data collection methods for Year 2000. NMFS staff stated that these modifications are necessary to meet the requirements of the American Fisheries Act, as well as measures to protect Steller sea lions. NMFS has requested that ADF&G review the Year 2000 data collection plan to assure that their proposed program is acceptable to the State. NMFS has agreed to provide ADF&G staff with a written report describing modifications to their existing reporting program to meet Year 2000 requirements. All parties understand that data collection mechanisms must be in place prior to January 2000. ADF&G will review the program to determine if the proposed procedures will have a negative impact on ADF&G data collection programs. ADF&G staff understands that a review, with written comments, of the NMFS Year 2000 data acquisition procedures must be completed without delay.

Moving beyond the short-term goal of meeting Year 2000 management requirements, the group focused on reaching consensus on a cooperative interagency fishery information collection and management program. An interagency effort will be needed to develop this program. The working group recognizes that the following initial consensus plan likely will be periodically amended as both agencies work toward a joint 2001 data acquisition program.

Consensus was reached on the following items:

- ADF&G and NMFS agree with the concept of an integrated data collection system that will produce a single agreed upon set of data about the groundfish fisheries.
- ADF&G and NMFS agree that an integrated data collection system will incorporate historic ADF&G fish ticket data sets.
- ADF&G and NMFS agree that a goal is development of an integrated data collection system that will allow industry to provide data elements only once for both agencies.
- Information systems implemented by NMFS in the Year 2000 to meet inseason management responsibilities will not impact ADF&G data collection programs. The data collected inseason shall be treated in the following manner:
  - a) Distribution shall be restricted to NMFS, Council staff, and ADF&G
  - b) Data sets and reports shall be identified as preliminary
  - c) Inseason data will be replaced with fish ticket data when it is available.

NMFS and ADF&G agree that it is in the best interest of both agencies to recognize the fish ticket data set as the official source of catch information for groundfish delivered to shoreside processors.

- NMFS will not circumvent State of Alaska confidentiality statutes. Data detailing landings by vessel collected for inseason management will be used by NMFS and protected from release consistent with the standards of State of Alaska confidentiality statutes for fish ticket data
- An interagency work group will be formed to determine the scope of issues related to development and management of an integrated data collection system.

- NMFS and ADF&G agree to work cooperatively in the development of an integrated system.
- The work group will develop a project development timeline to meet the 2001 implementation goal.
- The work group's tasks will include establishment of protocols for data collection and navigation through problems.

Attachment 1

**GOA Co-ops Committee  
Minutes  
April 22, 1999**

The GOA Co-ops Committee convened on April 22, 1999 at approximately 5:45 PM. Members in attendance were Dave Hanson (Chairman), Chris Blackburn, Duncan Fields, Ken Helligso, John Iani, Dick Jacobsen, Brent Paine, Joe Plesha, Ken Roemhildt, and Mike Simpson. Staff in attendance were: Jane DiCosimo, Chris Oliver, Darrel Brannan, and Chuck Hamel. Eleven members of the public were in attendance.

The February 11, 1999 memo to Chairman Lauber requesting the formation of the committee from Chris Blackburn was used to start the discussion to identify the problem in the GOA fisheries and the purpose of the committee. Ms. Blackburn informed the committee that AGDB had submitted a legal brief to NOAA GC, stipulating that the Council has the ability administratively under the AFA to name and limit GOA processors.

Earl Comstock, representing the Fair Fisheries Coalition, distributed a legal brief to the committee that the coalition had submitted to NOAA GC, stipulating that the Council had no authority for developing co-ops under the AFA.

The committee decided to limit its current focus to a review the applicability of fishery cooperatives in the GOA, but noted that other options may be considered by the committee if it determines it is appropriate to do so. It will provide a preliminary report to the Council at the October 1999 meeting. The committee noted that the Council is scheduled to receive a NMFS discussion paper on co-ops at its October meeting. Further details of BSAI and GOA sideboard issues will have also been decided by the June 1999 meeting. The committee report is timed to take into consideration the unanticipated linkages between these other Council activities.

The committee has tentatively scheduled its next meeting for the afternoon of Sunday, June 6, or the evening of Monday, June 7, during the next Council meeting week. In preparation for that meeting, committee members will provide their views on problems in Gulf of Alaska fisheries for distribution to the full committee to develop a problem statement. Council staff will provide a summary of catch histories of pollock by catcher vessels for 1995-97 by vessel size category, regulatory area, and onshore processor.

The committee adjourned at approximately 6:45 p.m.

**GOA CO-OP COMMITTEE  
MINUTES  
JUNE 6, 1999**

The GOA Co-op Committee convened in June 6, 1999 at approximately 6 pm in Kodiak, Alaska. Members in attendance were Dave Hanson (Chairman), Chris Blackburn, Duncan Fields, Ken Helligso, Joe Plesha, Mike Simpson, Dave Fraser for Brent Paine, Matthew Moir for Ken Roemhildt, Beth Stewart for Dick Jacobsen. John Iani was absent. Staff included Jane DiCosimo, Darrel Brannan, Chuck Hamel, Sue Salveson, Jay Ginter. Others in attendance included Al Burch, Earl Comstock, Kris Norosz, Jim McManus, John Dooley, Angelique Iankov, Craig Cross, and Carl Haflinger.

The committee briefly discussed the letter sent to the committee by Lisa Lindeman, NOAA General Counsel, which answered a number of questions submitted to her by Dave Hanson on behalf of the committee related to Council authority under the Magnuson-Stevens Act for implementing fishery cooperatives in the GOA. Her letter opined that the MSA: 1) does not authorize limits on the number of GOA shoreside processors, but does authorize limits on the number of catcher vessels and catcher/processors and 2) the Council could allocate a percentage of the GOA pollock TAC to a fishery cooperative after October 1, 2001.

The committee discussed reviewing the possibility of single or multi-species IFQs and/or single or multi-species cooperatives as alternatives for managing groundfish in the GOA. They decided that if all species and areas were managed under cooperatives, sideboards would be unnecessary. A subcommittee was appointed to prepare a draft statement for the GOA groundfish fisheries. Pending identification of the problem statement, the committee recommended that the Council could consider an analysis of:

Fisheries

- 1) pollock only, with sideboards
- 2) pollock and cod, with sideboards
- 3) all groundfish, with no sideboards

Participation, assuming moratorium and LLP qualified)

- 1) co-op with plant where most of previous year's fish was processed (BSAI cooperative model)
- 2) Dooley-Hall model
- 3) co-op with processor to whom 1995-97 deliveries were made (UCB model)

Sideboards are needed unless all fisheries and areas have co-ops

- 1) non-trawl fisheries
- 2) crab fisheries

The committee requested additional guidance from Lisa Lindeman on the degree of latitude to which the Council could apply sideboards between processors.

The committee identified the lack of participation in GOA rockfish and flatfish fisheries by the Sand Point and King Cove fleet as a future agenda item.

The committee tentatively set September 20 in Seattle as the date and location of its next meeting.

The meeting adjourned at approximately 7:30 pm.

October 4, 1999

Mr. Richard P. Lauber  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, Ak. 99501-2253

RECEIVED  
OCT - 5 1999  
N.P.F.M.C

**Re: Agenda Items C-1, C-2, and C-6**

Dear Mr. Lauber,

A catastrophe looms over the Gulf of Alaska groundfish fisheries for the year 2000. Due to a combination of factors, a tremendous increase in fishing pressure on pollock and P-cod in the Gulf is almost certain. Although the economic impact to long time fishermen of those specific stocks will be severe, the catastrophe will belong to the entire Alaska groundfish industry. Our industry is under scrutiny from Federal Court. We must adhere to the RPAs and spread out the harvest of pollock and other fish both spatially and temporally in order to mitigate any further stress on Stellar Sea Lions. Short pollock and p-cod derbies in the Gulf this winter are the absolute opposite of what we need at this time. It is incredible that despite attempts to slow down and spread out our fisheries, we are about to achieve the exact opposite

The causes for this pending calamity are several. I list them here:

**1. Opilio crab quota**

- The Opilio crab season will be very short in 2000 due to the drastic quota reduction.
- A large number of Bering Sea crabbers are eligible under LLP to pot fish for P-cod in the Gulf of Alaska.

**2. BSAI Fixed Gear P-cod Split**

- The upcoming Council decision concerning the BSAI P-cod fixed gear split could potentially prohibit a large part of the Bering Sea crab fleet from fishing in the Bering Sea P-cod fishery.
- If the NPFMC allocates the BSAI P-cod fixed gear fishery to recent participants; the Gulf of Alaska will be the only open access fishery available to idle crabbers.

**3. AFA GOA Sideboards and Sideboard Exemptions**

- AFA vessels with less than 1700 mt annual average pollock landed catch history in the Gulf are exempt from any of the Sideboards. That exemption will allow as many as 45 AFA qualified vessels to fish on Gulf stocks with no Sideboards.
- Due to the excess capacity in the AFA Co-ops, these exempt vessels will not be needed to fish in the BSAI, so unlike in years past, they can fish full time in the GOA from now on.

Taken together these issues will increase the usual Gulf groundfish fleet by a hundred or more vessels. It is fairly easy to imagine what sort of fishery will result from all of this, coming as it does on the heels of the 6 hour C season pollock derby in area 610 this fall. This huge potential increase in fishing effort on Gulf stocks flies in the face of Sea Lion

RPA's. In fact they show blatant disregard for the entire sea Lion jeopardy problem. What response can we expect from Judge Zilly? He will be forced to intercede.

#### **Possible solution**

Tweaking the GOA Sideboards again to close loopholes created with the exemptions is an exercise in futility. As the new *Discussion Paper on Inshore Sector catcher Vessel Cooperatives in the Bering Sea/ Aleutian Islands Pollock Fisheries* by Robert Halvorsen, et al, demonstrates, much excess fishing capacity will result from AFA Co-ops. That excess capacity is going to go somewhere, and the Gulf of Alaska is the only area left open. Loopholes will be found to get around whatever Sideboards that are created. Creating or changing Sideboards is a waste of time.

The only solution available is to do for the Gulf what is proposed for the BSAI fixed gear P-cod fleet. Give an allocation of pollock and P-cod in the GOA to vessels with significant recent participation during the same years on which the Sideboards are based (95-97). If the Gulf fleet is limited to just those vessels that are LLP qualified, with recent history in pollock and p-cod fisheries, then Sideboards basically won't matter anymore. No surprise, but the same action applied to all Federal GOA p-cod fisheries would stop the influx of the horde of new pot boats.

Only complete comprehensive rationalization of all the fisheries in the EEZ is likely to end the last "race for fish". Since the ITQ tool is not available at the moment, stricter Limited Entry schemes will have to suffice. If such a plan can be enacted for the BSAI fixed gear fleets, the same can be done for the Gulf of Alaska fishermen.

A crisis is coming. In 2000, environmental scrutiny is going to be applied to our industry as never before. We have worked hard for the past year to rationalize fisheries in order to reduce impacts on threatened species. The unforeseen Opilio crash combined with ongoing rulemaking for BSAI p-cod and AFA Co-ops, threaten to undermine all of the work of the last year. This situation must be addressed right now. I can think of one solution. I wish you well; the entire industry is depending on you.

Best regards,



Joe Childers for Alaska Peninsula Independent Trawlers Coalition

**Royal Aleutian Seafoods, Inc.***701 Dexter Ave., N., Suite 403**Seattle, WA 98109**(206) 283-6605 / Fax (206) 282-4572*

5 October, 1999

RECEIVED  
OCT - 5 1999  
N.P.F.M.C.

Mr. Clarence Pauztko, Executive Director  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

Re: American Fisheries Act  
EA/RIR Analysis

Dear Mr. Pauztko and Council Members:

Established in 1988, Royal Aleutian Seafoods (RAS), 100% American owned, has attracted crab fisherman seeking an alternative market to the much larger pollock processors that also process crab. RAS has played a pivotal role in establishing fair prices not only for fisherman that deliver to RAS, but to the crab fleet in general.

**RAS's future existence is threatened by the passage of the American Fisheries Act .** This letter is not intended to address why a non-pollock processor, such as RAS, is at a competitive disadvantage to AFA-eligible processors, because Congress already has recognized this fact. Specifically, Section 211(c) of AFA mandates certain safeguards to protect processors excluded from the pollock fishery from adverse impacts as a result of the AFA.

I participated in the processor sideboard committee meeting in August and appreciate the opportunity to share with Mr. Richard B. Lauber, the point of view of a non-pollock processor. It became clear during the committee meetings that the pollock processors that benefited from AFA, and that had previously agreed with safeguards as established in AFA, now were attempting to eliminate safeguards adopted for crab.

The AFA processors favored a "daily throughput limit," as a substitute for the safeguards mandated in the AFA. Given the status of the crab processing industry, which has tremendous excess processing capacity, establishing daily or average weekly throughput caps recommended by the AFA processors simply serve the interests of the AFA processors and represent no cap at all. Attachments A and B illustrate the excess capacity that exists among the non-AFA eligible processors. For purposes of attachments A and B, non-AFA processors is defined as Icicle Seafoods, Norquest Seafoods, Royal Aleutian

## Royal Aleutian Seafoods, Inc.

NPFMC  
5 October, 1999  
2

Seafoods, and Snopac Products. The attachments demonstrate the capability of the non-AFA processors to process crab from crab vessels that are unable to deliver to AFA processors if the AFA processors reach their historic cap included in the AFA. In 1998 and 1999, non-AFA processors had the capacity to purchase up to 49%, and 60%, respectively of the GHL for those years, while actual purchases was approximately 36% for both years. The argument that non-AFA processors are capable of processing the crab remaining once the AFA processors are capped at historic levels is further strengthened in years with relatively low GHL's. For example, in 1996 opilio fishery when the GHL was 65.7 million, non-AFA processors as a group were capable of processing greater than the entire GHL, or 111%, in a similar time period as the fishery was prosecuted. For 2000 opilio fishery, the GHL for the open access fishery is set at a historic low of 26 million and the forecast for upcoming years remains bleak.

To address the Council's concerns relative to the unintended impacts to crab fisherman from the implementation of a processing cap on AFA companies, **RAS supports the publication of weekly processing or catch information in the aggregate for AFA and non-AFA companies.** Establishing a pre-season GHL guideline for both AFA and non-AFA companies, coupled with weekly reporting on in-season totals, will allow crab fisherman the flexibility in determining market availability for AFA companies on an in-season basis. Simply, with advance warning, crab fisherman are able to take specific action in order to prevent the AFA processors from reaching a cap and therefore excluded from additional crab purchases.

Section 211(c)(2)(A) prohibits all facilities owned by eligible mothership and shoreside processors involved in a pollock fishery from processing in the aggregate for each calendar year more than their historical percentage of each species of crab. The historic percentage is determined by averaging processing levels achieved in 1995, 1996, and 1997. Any processing operation in which 10% or more of the facility is owned or controlled by a mothership or shoreside processor is included in the cap under this subsection. The Processor Sideboard Committee Report to the Council dated August 9-10, 1999, Attachment 3, reports the average processing levels for the years 1995-1997 for AFA processors at 63.3% (using Council AFA list) and 56.2% (using amended Fair Fisheries Coalition (FFC) AFA list). The amended list provided by the FFC of AFA members more accurately reflects true AFA participants. **RAS supports the statutory requirements of the AFA regarding the implementation of a crab processing cap for AFA eligible companies based on historical participation.** Further, the Council has to be aware that custom processing could present a loophole for AFA processors to exceed the established historic caps. **Any form of processing by a AFA-eligible processor, whether for its own account in the form of direct purchases, or on a custom processing basis, must count against the processing cap as established in the AFA.**



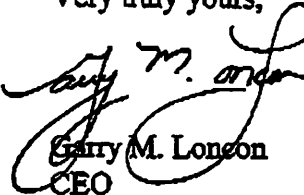
## Royal Aleutian Seafoods, Inc.

NPFMC  
5 October, 1999  
3

The AFA eligible companies already dominate the crab fisheries, and without enforceable, protective restrictions AFA eligible companies will undoubtedly utilize their new-found economic windfall through a protected-class status that the AFA ensured to eliminate competition in non-pollock fisheries. Independent fishing vessel owners and Alaskan communities will suffer from the elimination of the independent processing companies, which provide a competitive alternative marketplace for crab fisherman.

Please accept these comments from a company that does not benefit from AFA, but wishes to remain in a competitive position in the Bering Sea crab fisheries. It is time for the Council to do the "right" thing and fulfill Congressional intent to mitigate the adverse impacts to non-eligible AFA processors, and act as a impartial steward for Alaskan fisheries.

Very truly yours,



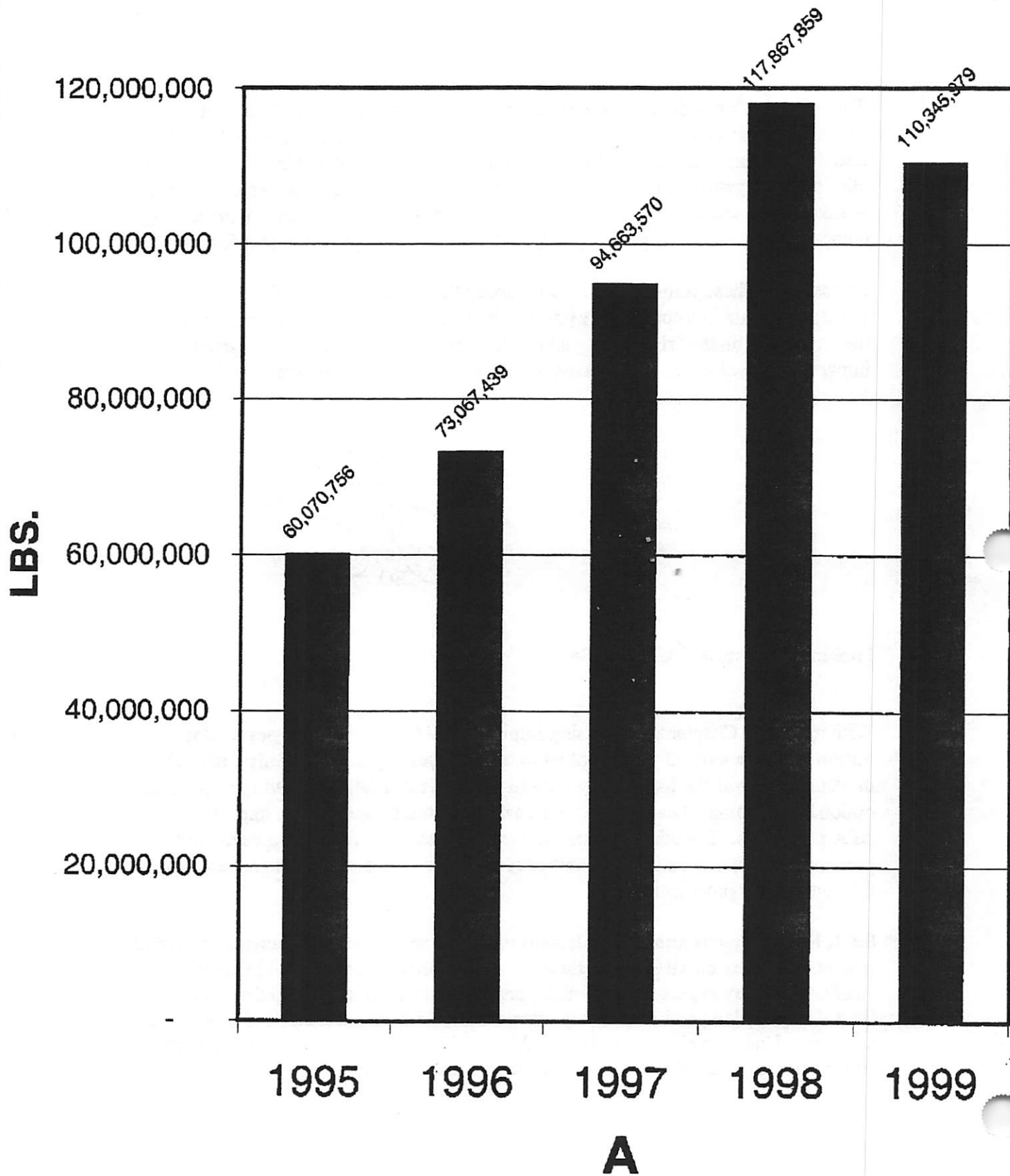
Garry M. Lonson  
CEO

### Preferred Options in EA/RIR/IRFA:

With respect to Chapter 8, Processing Limits, 8.5, RAS strongly supports adoption of option 8.5.3, an overall limit applied to all facilities of all AFA entities, with the modification that the limit apply only to processing of fully utilized species. This option best accomplishes the Congressional intent to mitigate adverse impacts to non-AFA processors. The other options represent far less restrictive measures to AFA processors and fail to fulfill the Congressional intent of minimizing the adverse impact to the non-pollock processors.

**8.6.1, RAS supports annual implementation and in-season enforcement of overall processing limits on all AFA facilities of AFA entities. Closure should be done by NMFS when they expect the cap will be reached, except for single trip fisheries like Bristol Bay red king crab, where any overages should be deducted from the cap in the next year. Under no circumstances should the AFA eligible entities be under a self-enforcement regime subject only to post season fines and sanctions.**

# Total Lbs. Non-AFA Could Have Processed



### Total % GHL Non-AFA Could Have Processed

