MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: April 12, 1999

SUBJECT: American Fisheries Act (AFA)

ESTIMATED TIME
12 HOURS

ACTION REQUIRED

(a) Initial Review of AFA sideboard EA/RIR/IRFA.
(b) Initial Review of AFA housekeeping amendments.

BACKGROUND

(a) AFA Sideboard Caps

The AFA requires that the Council submit measures to mitigate the impacts of cooperatives on the non-AFA fleet by July 1999. To meet this deadline, the Council must make a final decision on the sideboard amendment package in June, which requires an initial review of the analysis at this meeting.

Chapters 6, 7, and 8, from the analysis focus on the development of sideboard limits for catcher/processors, catcher vessels, and processors, respectively. AFA provided direction to the Council when developing protection measures. A summary for each sector is included below. However, it is important to note that the AFA also allows the Council to modify these sections of the Act.

Catcher/Processor Harvest Limits (Chapter 6)

For catcher/processors the Act specifies in section 211(b)(2) a not-to-exceed formulation for protecting non-pollock groundfish fisheries in the BSAI, paraphrased as follows:

> (A) Non-pollock groundfish harvests by the 20 listed catcher processors cannot exceed the percentage of the harvest available that is equivalent to the total harvest by the 29 listed catcher processors in 1995-1997 relative to the total amount available for harvest in those years.
>
> (B) Prohibited species limits for the 20 listed catcher processors cannot exceed the percentage of the PSC available that is equivalent to the total PSC harvested by the 29 listed catcher processors in 1995-1997 relevant to the total amount available for harvest in those years.
>
> (C) Atka mackerel harvests are limited to 11.5% in the central Aleutians and 20% in the western Aleutians.

Catcher Vessel Harvest Limits (Chapter 7)

To mitigate the impact of AFA on the non-pollock fisheries, section 211(c) mandates that "*by not later than July 1, 1999 the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to - (A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery*".

Processing Limits (Chapter 8)

The AFA requires the Council to submit measures by July 1999 to "*protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.*"

Specific language about processing restrictions for the 20 AFA-eligible catcher processors is found in §211(b)(3) and §211(b)(4):

> *(3) BERING SEA PROCESSING.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—*
>
> *(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and*
>
> *(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.*
>
> *(4) GULF OF ALASKA.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—*
>
> *(A) harvesting any fish in the Gulf of Alaska;*
>
> *(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as Area 630 under the fishery management plan for Gulf of Alaska groundfish; or*
>
> *(C) processing any pollock in the Gulf of Alaska (other than as bycatch in non-pollock groundfish fisheries) or processing, in the aggregate, a total of more than 10 percent of the cod harvested from Areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.*

Section 211(c) includes specific language discussing processing limits for BSAI crab for AFA-eligible motherships and inshore processors:

> *(2) BERING SEA CRAB AND GROUNDFISH.*
>
> *(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor, mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned*

or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

General guidance is also provided under Section 211(C)(1)(B) to *"protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery."*

Other sections of the AFA provide additional directives to the Council, paraphrased below:

1. The Council cannot alter the list of eligible processors, unless the TAC increases or an eligible plant is lost.

2. By July 1999 the Council must recommend measures to "protect processors not eligible to participate in the (BSAI) directed pollock fishery from adverse effects of the AFA or fishery cooperatives...".

3. The Council must have in place by January 2000 measures to prevent AFA motherships and shoreside processors from processing, in aggregate, a greater percentage of the total catch of BSAI crab than they processed in 1995-1997 (on average).

4. The Council must submit measures to establish excessive share caps for harvesting and processing of all groundfish and crab in the BSAI, though under no time certain.

5. The Council can develop any other measures it deems necessary (at any time) to protect other fisheries and participants under its jurisdiction from adverse impacts caused by the AFA or co-ops in the directed pollock fishery.

The EA/RIR/IRFA describing these issues, including the Executive Summary, was mailed to members of the Council, AP, and SSC on April 7, 1999.

(b) AFA Housekeeping Amendments

The AFA substantially changed the statutory climate in which the Council was acting during its deliberation for final action of I/O3 in June 1998. Along with other actions affecting the BSAI pollock fishery, the AFA allocated 10% of the BSAI pollock TAC to the Western Alaska community development program (increased from 7.5%) and divided the remaining directed pollock fishery allocation: 50% to catcher vessels harvesting pollock for delivery to the inshore component; 40% to catcher processors harvesting pollock for processing by the offshore component; and 10% to catcher vessels harvesting pollock for processing by a new mothership component. As a result, on December 15, 1998, the Secretary disapproved the inshore/offshore allocations recommended by the Council in BSAI Amendment 51 for the period January 1, 1999 through December 31, 2001 and substituted the AFA percentages for 1999. Changing these percentages through 2004 in the BSAI FMP to conform with the AFA is the subject of Action 1.

The Act also signed changes to replacement restrictions for AFA-eligible vessels into law. This is the subject of Action 2. Action 3 is the sole action under consideration for GOA Amendment 62. This action is not mandated by the Act, but conforms with Council intent to mirror the allocation sunset dates for pollock and Pacific cod allocations in the GOA and BSAI. During its discussion of preparation of this analysis, the Council indicated that the actions under Alternative 2 for Actions 1, 2, and 3 were its preferred alternatives.

The analysis was mailed to you on April 6, 1999. The executive summary is attached as Item C-3(b). Final action is scheduled for June 1999.

ACTION 1. BSAI POLLOCK ALLOCATIONS

Alternative 1: No action.

Alternative 2: Change the current inshore/offshore directed pollock allocations in the Bering Sea/Aleutian Islands FMP to conform with those allocations mandated by the American Fisheries Act of 1998. ***Preferred***

ACTION 2. GOA POLLOCK ALLOCATIONS SUNSET DATE

Alternative 1: No action.

Alternative 2: Extend the sunset date of the current pollock and Pacific cod allocations in the GOA FMP to conform with the date mandated for the Bering Sea/Aleutian Islands area in the American Fisheries Act of 1998. ***Preferred***

ACTION 3. REPLACEMENT VESSELS IN THE BSAI DIRECTED POLLOCK FISHERIES

Alternative 1: No action.

Alternative 2: Change restrictions in the BSAI FMP to conform with replacement requirements for eligible vessels under the American Fisheries Act of 1998. ***Preferred***

AGENDA C-3
APRIL 1999
Supplemental

SEA HAWK SEAFOODS, INC.

Fishermen's Center Building
1900 West Nickerson St. #205
Seattle, Wa. 98119-1650
Phone: (206) 285-8142 Telefax: (206) 270-9325

March 22, 1999

RECEIVED
MAR 25 1999
N.P.F.M.C

North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, Ak. 99501-2252

Fax: (907) 271-2817

Attn: Chris Oliver

Re: American Fisheries Act Issues

Dear Mr. Oliver,

Thank you for your 3/11/99 reply and taking the time to talk to me on the phone this afternoon.

As we discussed, I understand the Council does not have direct authority to manage salmon fishing and processing, however, the passage of the American Fisheries Act has altered the status quo and has now given the pollock producers benefiting from the passage of the American Fisheries Act an unfair advantage and will adversely effect shoreside salmon processors such as Sea Hawk Seafoods.

I do not oppose entry and participation of floating processors in the Alaskan salmon fishery to those that have not benefited from the passage of the American Fisheries Act, only to those that have received the special rights and privileges granted by the Act.

Protection from those that were granted these special rights and privileges is specifically addressed in section 211(c), paragraph (1), part (B), page 1559 (see attached) of the American Fisheries Act:

> (B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the Act or fishery cooperatives in the directed pollock fishery.

Past participation does not allow those benefiting from the Act to continue to exploit other fisheries if it adversely effects other processors that do not benefit.

This issue is very important to shoreside salmon processors such as Sea Hawk Seafoods and I would appreciate if you would keep me informed as to the anticipated scheduling of public testimony before the Council so I can attend and testify.

Sincerely,

Terry Bertoson,
President

(1) REQUIRED COUNCIL RECOMMENDATIONS.—By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing

Mezich Allegiance, Inc.

Rick W. and Mary L. Mezich

April 5, 1999

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: COMMENT ON AGENDA ITEM C-3, AMERICAN FISHERIES ACT
FV FIERCE ALLEGIANCE, MVP #7304B

Dear Mr. Lauber:

I am writing to introduce our fishing vessel company, *Mezich Allegiance, Inc.*, owned by my wife, Mary Mezich, and I since 1992. I have been a Bering Sea crab vessel owner/operator since 1978. Our vessel, the *Fierce Allegiance*, has been continuously involved in Bering Sea king and tanner crab fishing since 1987, under the previous names, *Duffy Sea and Allegiance.* The vessel ADF&G number is 55111 and the MVP number in 7304B. Immediately following the purchase of the vessel in 1992, we converted it to a crabber/trawler and we entered it into the pollock B season that same year. The vessel also fished the Bristol Bay king crab and bairidi seasons in the fall. Since then, the vessel has fished Bristol Bay king crab every year it has been open, and it has fished the opilio crab seasons and the pollock B seasons every year, 1992 through present. The vessel is one of the unique AFA qualified pollock catcher vessels that met the 1996 and/or 1997 opilio landing requirement for the NPFMC proposed Emergency Rule to prohibit crossovers into the 1999 opilio fishery.

To the best of our knowledge, the *Fierce Allegiance* is an American Fisheries Act qualified shorebased pollock catcher vessel, and thus it is subject to the NPFMC proposed restrictions for pollock vessels involved in other fisheries. As such, we are very concerned about the potential impacts of the restrictions on the ability of our vessel to fish in the BSAI king, bairidi, and opilio crab fisheries. Unlike most of the offshore and shorebased pollock catcher vessels, our vessel revenue since 1992, has been much more dependent on crab fisheries than the pollock fishery. In fact, due to its regular participation in crab fisheries, it is fully qualified for Alternatives 2-8 in the LLP, not just the nominal qualification of one landing in 96, 97, or 98, as required for recent participation under Alternative 9. Apparently, this is the preferred alternative of most of the pollock catcher vessels that only sporadically participate in the Bristol Bay king crab fishery. Our company supports the Alternative 4 landing requirement, because we feel there are too many vessels speculating on the sale of limited entry permits in the upcoming crab LLP that are not regular participants.

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At the December 1998 NPFMC meeting, Dr. Scott Matulich made a presentation to the NPFMC about the relative economic dependency between dedicated crab vessels and pollock crossover crab vessels. Mr. Matulich showed that in the case of opilio crab, there were only three pollock crossover vessels that account for 53% of the total opilio crab revenue of all 39 pollock crossover vessels during 1995-1997. The same three vessels also accounted for 30% of all crab revenue for the 39 crossover vessels for the same period. The *Fierce Allegiance* is one of the three vessels identified by Dr. Matulich.

In reviewing our bookkeeping records recently, I compared the *Fierce Alegiance's* gross income from crab and pollock fisheries for the period 1992 through 1998, to determine the relative economic dependency between the fisheries. During this period of time, the vessel earned on average, 60% of its income from crab and 34% from pollock. During the AFA pollock qualifying period, 1995-1997, the vessel earned 54% of its income from crab and 36% from pollock.

In conclusion, we wish to request that our vessel, the *Fierce Allegaince*, be excluded from the list of vessels subject to AFA restrictions in BSAI crab fisheries. This request is based on the unique ability of the vessel to meet the most stringent of crab landing requirements in the crab LLP alternatives, and that the vessel earns the majority of its' income from crab fisheries, for which we can produce IRS records to document.

Thank you for your consideration.

Sincerely,

Rick Mezich
Mezich Allegiance, Inc.- President

cc: Steve Pennoyer, RD, NMFS, AK Region

VICTOR SEAFOODS

April 12, 1999

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

Re: P/V NORTHERN VICTOR Operations

Dear Rick:

I request that this letter be included as public comment on the American Fisheries Act ("AFA") agenda item for the April 1999 meeting of the North Pacific Fishery Management Council.

Comments by Fair Fisheries Coalition.

Representatives of the Fair Fisheries Coalition presented testimony at the February 1999 Council meeting and in a letter on the letterhead of Sea Hawk Fisheries, Inc. regarding the operations of our processing vessel in the opilio crab fishery and in pink salmon fisheries in Prince William Sound. Both the testimony and the letter are grossly inaccurate and I write to correct the record.

Opilio Fishery.

Victor Seafoods entered the opilio fishery as a crab processor in 1998 and provided an alternative market for crab fishermen in both 1998 and 1999. In mid-1997, Victor Seafoods' owners decided to invest well over a million dollars in adding crab processing capability to the P/V NORTHERN VICTOR. The owners determined that crab processing would be a profitable long-term business and the installation was completed in 1997. Victor Seafoods has used crabbers in 1998 and 1999 and combination crabber-trawlers in 1999 for deliveries. The combination crabber-trawlers used for deliveries in 1999 are moratorium qualified and fully qualified under the adopted license limitation plan for crab.

In testimony in February 1999, Mr. Gary Loncon of Royal Aleutian Seafoods, and a member of the Fair Fisheries Coalition, stated that the NORTHERN VICTOR had entered the opilio fishery only because of the AFA and that it had used boats that would not be eligible if it were not for the AFA.

The investment of the NORTHERN VICTOR's owners to install crab processing equipment was made before the original bill resulting in the AFA was even introduced in

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Congress. The installation was completed in 1997 and operations begun in January 1998 before even a hint of life had been breathed into the AFA. The AFA was irrelevant to the owners' decision. The NORTHERN VICTOR entered the opilio fishery in 1998 and provided an alternative market to crab fishermen, in competition with Mr. Loncon's company.

All of the vessels that delivered crab to the NORTHERN VICTOR are fully qualified under the moratorium and under the Council-approved and Secretary of Commerce-approved LLP, even though the LLP has not yet been implemented.

In sum, the NORTHERN VICTOR entered the opilio fishery and provided a new market in 1998, well prior to the AFA and when the pollock fishery was an olympic fishery and open to the entry of any processor. We made the investment in the crab fishery at the same time when Mr. Loncon's company or others could have made parallel investments in pollock processing, but chose not to do so. We took the risk in an open fishery—they did not.

Pink Salmon Fishery.

The P/V NORTHERN VICTOR began pink salmon processing operations in Prince William Sound in 1996, continued in 1997 and 1998, and will continue to process pink salmon. Encouraged by hatcheries, fishermen, and the State of Alaska, Victor Seafoods worked hard to build a successful market for pink salmon fillets in Europe. Victor's investment in the NORTHERN VICTOR and in market development was substantial and was made years prior to the AFA. Throughout 1996, 1997, and 1998, Victor worked exclusively with local fishermen in Prince William Sound and has provided them a market for pink salmon that they often could not sell elsewhere. The NORTHERN VICTOR purchases pink salmon both from fishermen in the commercial fishery and cost recovery fish from hatcheries.

In a memorandum dated March 4, 1999, authored by Mr. Terry Bertoson of Sea Hawk Seafoods, Inc. and forwarded to Clarence Pautzke of the Council staff, Mr. Bertoson charges that Victor is using the AFA to enter the pink salmon fishery and that Victor is bringing "out of state super seiners" into the fishery to the detriment of local fishermen. Mr. Bertoson's letter also states that Victor is using the AFA in order to bring additional processing capacity into Prince William Sound in August, 1999 while the NORTHERN VICTOR operates in the pollock fishery in the Bering Sea.

We work exclusively with local salmon fishermen in Prince William Sound in purchasing pink salmon. The sentiments of local fishermen in favor of our operation are clear from the dozens of phone messages from fishermen interested in working with us. Victor has developed a new market over the last several years for pink salmon fillets, a market that other processors have either not be able to develop or have not tried to develop. That benefits of that new market flow directly to local fishermen and hatcheries as well as to us.

We began processing pink salmon in Prince William Sound in 1996, years before the AFA was even introduced, let alone enacted. The AFA was irrelevant to our decision.

With regard to the 1999 summer and fall pollock fishery, Victor proposed to the Council and to the National Marine Fisheries Service that it be split into three seasons with openings on June 1, September 1, and October 1 so that we could continue to process pink salmon. Unfortunately, NMFS decided on two summer and fall seasons with openings on August 1 and September 15. Salmon fishermen and hatcheries encouraged us to find a way to continue to process pink salmon and to supply the European market. The NORTHERN VICTOR will process pink salmon in June and July in the Sound, but is not available in August because of the pollock opening (it is difficult to perceive how this unavailability is an advantage for us). In order to respond to the hatcheries and the fishermen, we are discussing with several companies the possible charter of other processing platforms which, with one exception, are entirely unrelated to the AFA and would have been available in any case.

Again, we believe that the objection is a competitive one since we do provide an alternative market for fishermen to sell their fish. We made a long-term commitment to the hatcheries and salmon fishermen in 1996, completely unrelated to the AFA, and we intend to keep that commitment.

I appreciate the opportunity to present these comments to the Council and to put the correct facts on record.

Sincerely,

Terry L. Leitzell
Vice President for Legal
And Government Affairs

Roger Overa
F/V American Star
16 Columbia Key
Bellevue, WA 98006

To: Rick Lauber, Steve Pennoyer and John White.

It is my feelings, that it is my duty, and to my best interest, as a Bering Sea crab fisherman to inform the council; and reply to the Fleetnet message to ACC crab boats, dated March 17, 1999, and all interested parties. of my observations during the 1999 Opilio crab fishery.

As a working Bering Sea crab fisherman, I am aware of what is going On around me and my fishing operation. At the start of the season, I did notice a fishing vessel that also is a pollock fishing vessel. (This vessel is listed on the list of vessels/owners/crab processors/pollock processors list on the memo dated March 16.) This vessel was fishing crab in the beginning of the Opilio crab Season, then this vessel left the crab fishery to go fish pollock. He did this, leaving his crab gear on the grounds, which could make it possible, for this boats, sister boat, to increase gear capacity. And work twice as many pots on the grounds as other fishermen in the opilio fishery.

When the indicated fisherman came back into the Opilio fishery. when the pollock fishery closed, he was heard stating that, "this worked out really well For us this year."

As an Opilio crab fisherman, I am concerned about my livelihood, and Feel that this type a participation in the fishery handicaps our ability To reach our share of the fishery harvest.

Concerned Opilio Crab Fisherman,

Roger Overa
American Star

Alaska Groundfish Data Bank — P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: COMMENTS ON AGENDA ITEM C-3(a)

DATE: APRIL 14, 1999

SENT BY FAX: 2 PP

AGENDA ITEM C-3(a)

COMMENTS ON SIDEBOARDS TO THE GULF OF ALASKA FOR AMERICAN FISHERIES ACT 208 ELIGIBLE VESSELS

SUBMITTED BY ALASKA GROUNDFISH DATA BANK APRIL 14, 1999

Alaska Groundfish Data Bank appreciates the opportunity to comment on proposed sideboards to the Gulf of Alaska for AFA Section 208 vessels during the initial review period.

ALASKA GROUNDFISH DATA BANK POSITION FOR THE GULF OF ALASKA

1. NATURE OF SIDEBOARDS: The sideboards for the Gulf should be a cap not a quota or an allocation for Section 208 vessels with history in the Gulf of Alaska

2. VESSEL HISTORY: Section 208 vessels' history in the Gulf of Alaska is the average catch for the years 1995, 1996, and 1997 by quarter.
   Since halibut bycatch allocations for the Gulf trawl fleet are apportioned quarterly and since the allocation of the quarterly halibut cap release between the Deep and Shallow Complexes reflects the intended fisheries for that quarter any shift among quarters has the potential to disrupt the established fisheries.
   For example, if a vessel decided to fish shallow flats, normally a second quarter fishery, in first quarter the trawl Pacific cod fishery could be curtailed by the shallow flatfish fishery.

3. SIDE BOARDS FOR FLATFISH: Since it is halibut bycatch, not the flatfish TAC, which determines the catch of flatfish, the side boards should be halibut driven as follows:
   For each quarter multiply the aggregate Shallow Complex flatfish target catch for Section 208 vessels and multiply the total by the current halibut bycatch and mortality rates to determine the amount of halibut mortality bycatch which should be allocated to the qualifying Section 208 vessels.
   The same methodology should also apply to the Deep Flatfish Complex.
   Actual target catch or reasonable proxy should be used since the halibut bycatch rate is based on the total catch not just the flatfish in the catch.

4. SIDEBOARDS FOR NON-FLATFISH FISHERIES: Catch of non-flatfish species, including pollock, available to AGDB believes should be limited to the average catch, by target species, based on average catch history.

Chris Blackburn • Director • (907) 486-3033 • FAX (907) 486-3461 • e-mail 7353974@mcimail.com

OTHER ISSUES

1. INSHORE/OFFSHORE GULF SUNSET: AGDB appreciates the staff's bringing this issue forward. AGDB member feel the Bering Sea and Gulf of Alaska I/O sunset dates should be the same.

2. DEFINITION OF AN INSHORE MOTHERSHIP: AGDB supports whatever wording was used in the original Inshore/Offshore regulations.

3. DO SIDEBOARDS APPLY TO COOP ELIGIBLE VESSELS OR JUST TO VESSELS PARTICIPATING IN A COOP. No position. Members felt they wanted to hear the debate and have more information.

Thank you for considering our comments.

Chris Blackburn, Director
Alaska Groundfish Data Bank

Independent Catcher Vessel Association
2442 NW Market Street, #349, Seattle, WA. 98107
Phone & Fax (206) 783-6081

April 13, 1999

Mr. Richard Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, # 306
Anchorage, Alaska 99501-2252

RE: Dooley-Hall Proposal

Dear Mr. Lauber:

As you know, we first presented the Dooley-Hall Proposal to the Council at the February meeting. At that meeting, the Council voted to have a Discussion Paper prepared. At the April Council meeting, we plan to ask the Council to up grade our Proposal to a full analysis. A packet of information concerning our proposal is enclosed which we would like to have distributed to each member of the Council and to each member of the Council's Advisory Panel. It includes a copy of our original Position Statement and Proposal which was submitted to the Council in February, a Statement of our Position and Response to Questions and Objections raised to the Dooley-Hall Proposal and a copy of the a copy of the Testimony of James Wilen to be presented to the Council regarding the Competitive Implication of the American Fisheries Act.

Thank you for your cooperation.

Sincerely,

John A. Dooley,
President

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Presented at the February, 1999 Meeting of the North Pacific Management Council

Position Statement – Independent Catcher Vessels On the American Fisheries Act of 1998

Problem:

Under the language of the American Fisheries Act, pollock vessels which enter into co-ops and deliver to shorebased processors are prevented from forming a co-op if the processor doesn't bless it. They are inhibited in their ability, if a co-op is formed, to get the best fair price. They are prevented from entering into a co-op with a different processor in the following year. And last, they are prevented from freely moving between competing buyers.

Solution:

We would like the council to initiate consideration and analysis of regulations that support reasonable vessel plant negotiations. The proposed change would allow vessels in a co-op to deliver their catch history to the market of their choice. For example, if one plant will pay 9 cents a pound because they are producing fillets and another will pay 8 cents per pound because they are producing surimi, we feel that we should be able to deliver to the plant with the highest prices; even though we may not have been in a co-op relationship with that processor in the previous year.

Discussion:

We are not saying that our fish will automatically flow to the plant paying the highest price because other factors such as room in the rotation schedule, roe maturity and the November 1 closure will, for the most part, cause most of the vessels to deliver to their traditional markets. However, with so many restrictions placed upon us, we cannot be sure of getting a reasonable price for our fish if we are locked forever into a co-op arrangement with a single processor.

Under our proposed modification, the plant that is the most efficient and pays the most may be rewarded with small increments in market share. Certainly a competitive market for all our fish should be a major goal for the State of Alaska, the Magnuson-Stevens Act and the American Fisheries Act.

Recommended Council Action:

Council documents showed that bargaining power has suffered since 1992. The key question for the analysis of the action we propose is:

Will the "Pro-Competition" provisions have a positive or negative effect on fish prices?

Thus Mr. Chairman and council we respectfully urge you to utilize the authority provided to you in Section 213 (c) (1 & 3) to supersede the provisions of Section 210 (b) (1) of the American Fisheries Act by initiating consideration and analysis of the following regulatory changes,

"Pro-Competition" Motion

1) Modify the definition of "qualified Catcher Vessel" found in 210 (b) (3) to read, **"any vessel meeting the criteria of Section 208 (a) and eligible to harvest the allocation under 206 (b)(1).** Strike the language that qualifies a catcher vessel by stating ~~during the year prior to the year in which the fishery cooperative will be in effect, delivered more pollock to the shoreside process to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor~~.

and

2) Modify paragraph 210 (b)(1)(A) to read **"is signed by the owners of any 5 (7 - 10 could be sup-options), or more qualified vessels, may form a co-operative**; and modify paragraph (B) to read: **"specifies,** (strike: ~~"except as provide in paragraph (6)")~~ **that such catcher vessels will deliver pollock in the directed pollock fishery only to** (strike: ~~such shoreside processor during the year in which the cooperative will be in effect and that such shoreside processor has agreed to process such pollock")~~ **those processors eligible under Section 208 (f).**

In Fishermen's terms

The modification to the first paragraph would allow all the boats on the AFA list to deliver to any of the shoreplants on the AFA list, regardless of where the vessel delivered in the past.

The proposed change to the second paragraph would allow groups of 5 - 10 boats to form a co-op. This paragraph also strikes the language that requires permission from a shoreplant to form a co-op.

Selected passages from the American Fisheries Act

Section 210 (b)(1) FISHERY COOPERATIVE LIMITATIONS - ONSHORE CATCHER VESSEL COOPERATIVES.

(1) CATCHER VESSEL COOPERATIVES.-Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80% or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

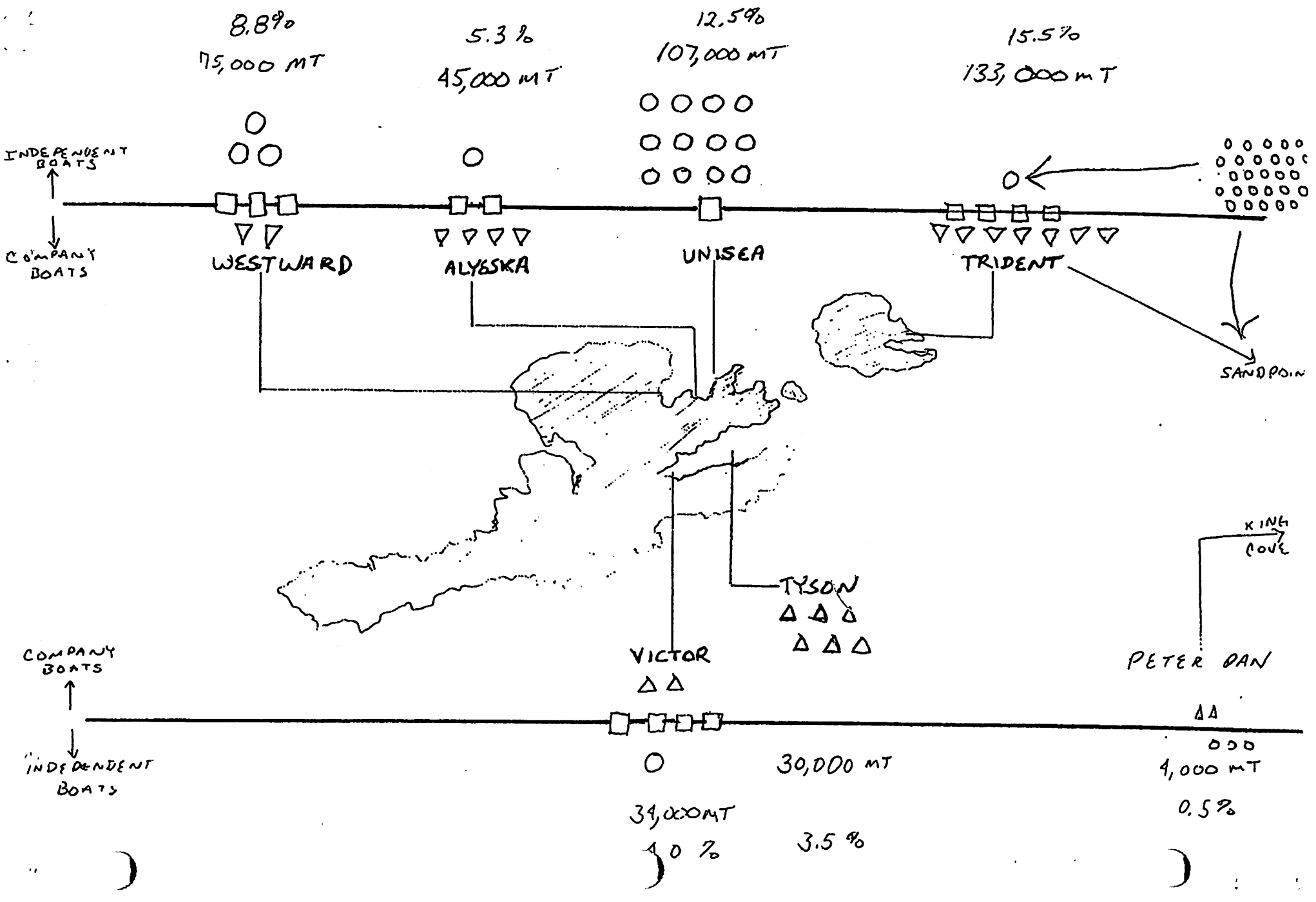
(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock,

(3) QUALIFIED CATCHER VESSEL.-For the purposes of this subsection, a catcher vessel shall be considered a 'qualified catcher vessel' if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock harvested in the directed pollock fishing to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

Section 213 (c) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.-The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede 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 caused by this title or fishery cooperatives 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;

1999 SNAPSHOT



TESTIMONY

To be presented to the

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

regarding

COMPETITIVE IMPLICATIONS OF THE
AMERICAN FISHERIES ACT

Nearly everyone is familiar with the term "monopoly" and what it means. A monopolist is a single seller of a product or service. For most items we purchase, there are many sellers, which leads to a market that is described as a competitive market. Consumers generally have a wide choice among brands of gasoline to purchase, or bread, or butchers to patronize. In a competitive market, the competition among sellers for consumers ensures that purchasers get products and services at reasonable prices. In addition, competition among sellers drives a process of continual improvement in the product, adoption of lower cost methods of production, and innovation in both product development and production. In this way a competitive market benefits society at large by producing a mix of products that are most desired by consumers and at lowest costs.

In a market dominated by a monopolist, or single seller, many of these advantages provided by the forces of competition are lost. A single seller can charge any price he wishes, and can produce products that are unresponsive to market needs, simply because he is the only seller available. Monopolies emerge for several reasons. An exclusive patent may give a producer a monopoly, and if there are no close substitutes for the product, the monopolist will be able to exercise monopoly power and keep prices and profits high over an extended period. Monopolies are also granted by governments, usually in situations in which there are substantial economies of scale so that it is less costly to have one firm spreading its fixed costs over the whole market than several smaller firms operating at higher average costs. Typical examples include utilities such as telephone and power supply companies and when governments sanction such a monopoly it is with regulatory oversight, to guard against overcharging and inefficient production.

A close cousin to a true monopoly is what is called an oligopoly, or market dominated by a small number of sellers. Although firms in industries characterized by small numbers of sellers have been prosecuted for covert market segmentation and price fixing, they

need not actually get together to explicitly collude over prices. Instead, oligopolists may engage in what is referred to as tacit collusion, which involves independent actions intended to raise prices above competitive levels. Often a "price leader" will emerge who will set industry price levels, and other follower firms match the leader's moves in adjusting prices up and down to take advantage of market conditions.

The history of the United States regulatory policy is dominated by alternating cycles of growth in market power in some industries, followed by prosecution for anti-competitive behavior, regulations, and in some cases dissolution. The current wave of mergers and anti-trust lawsuits against companies such as Microsoft are current examples reminding us that the same forces operate almost continuously in a dynamic economy characterized by innovation and entrepreneurship. Over the past few decades, however, economists and political scientists have begun to appreciate that the creation and maintenance of monopolies is something more than simply a process dictated by patents and the characteristics of technology. As observers have begun to understand, many monopolies are created and sustained by special considerations handed out by government bodies, often the same bodies allegedly in place to ensure that public interests are not harmed. The terms used to describe this process include "regulatory capture" or "government failure" or "bureaucratic rent seeking", and they all describe the manner in which those who might gain from monopolization seek to influence the political process in a manner that ensures their existence and ability to exercise market control

While the term monopoly is generally familiar to most, few are as familiar with a similar term, namely **monopsony**. A monopsony is symmetric with the notion of a monopoly, but a monopsony exists when there is a single **buyer** of a raw product or input to a production process. Under normal competitive circumstances, there are many buyers for products, and this ensures the same advantages that are secured when there are many sellers in a market. In particular, when the input purchasing market is competitive, input suppliers receive a competitively determined price that reflects the true value of the input as a component of production. In addition, competition among buyers ensures that they are constantly striving to adopt the latest production technology, produce using the most efficient methods, and innovate in the market in which they sell their product. In contrast, when only a single buyer exists for a raw product, the buyer will use his market power to control input prices at the lowest feasible level, generally just enough to keep input suppliers in business but at marginal levels of profitability. In addition, without competition in the input market, a monopsonist faces less competitive impetus to adopt innovations in production and marketing.

A monopsony or oligopsony may emerge for several reasons. First, it may be the case that the product into which the raw product is converted is, itself, characterized by monopoly power. If there is a single producer and seller of a product, then it may be possible for the producer to also control input prices paid for the raw input. This would occur particularly if the input can only be used to produce the product in question. Second, an input market may be monopsonized if input suppliers are isolated regionally. In some cases, even when the buyers of crops sell processed products into reasonably competitive national product markets, they may have few or no local competitors in the

raw product input market because of relative geographical isolation. In these cases, if the input is perishable and the transportation costs of shipping to a distant competitor are large, input suppliers often have no choice other than selling to a single regional buyer, who will exploit his position of relative market power. Finally, a monopsony or oligopsony may be created by a government or regulatory body, simply by specifying the rules of conduct for parties subject to regulations. All of these preconditions exist in the Alaskan pollock fishery.

Given that all of the above preconditions exist in the pollock fishery, it should not be surprising to find that for the past decade, the inshore market for raw pollock has essentially operated as an oligopsony, or market dominated by only a few buyers, in this case, four major players. As I have testified to before, there is strong evidence that the Alaskan pollock fishery is simply not competitive, either at the wholesale or exvessel level. In the wholesale market, two firms dominate the Japanese surimi business, through horizontally and vertically integrated facilities at all levels from transport, to secondary and tertiary production, to retail outlets. These two firms depend upon a flow of inexpensive raw material from Alaska, and the two major Japanese players have every incentive to keep wholesale surimi prices capped, allowing most of the potential resource returns from this vertically integrated production/marketing system to be captured in Japan. These two firms are notorious for exercising overt and covert methods of market discipline, including announced "price ceilings" or "price ideas" that keep wholesale buying pressure from the competitive fringe to the big two in line.

If this were not enough, there are strong reasons to expect that these two firms have also been exercising oligopsony power in the exvessel market for raw pollock, depressing those prices as well. In the first place, there are simply not enough buyers to make the exvessel pollock market competitive. In fact, exvessel prices are essentially negotiated by the two Japanese firms through the three Dutch Harbor plants that they own or control, and the Bering Sea Marketing Association, with the fourth major processor in Akutan taking a sidelines position. In the second place, the fleet of catcher vessels as a whole ultimately only has one market outlet for its fish, since the entire inshore TAC must ultimately be delivered to the inshore plants. With a captive supply, and no mechanisms in place that cause them to bid competitive prices for raw pollock, inshore processors can effectively set their own price for raw pollock, independent of market conditions and of any forces that would normally operate in a competitive input market..

What actual evidence exists that the inshore exvessel market is not competitive? First, it does not behave as a competitive market ought to behave. In a competitive input market, the price of the raw product will generally vary (and often more dramatically) with the wholesale price. This has not happened in the Alaskan fishery; between 1991-1996, wholesale prices increased by over 35% whereas exvessel prices remained relatively flat. This meant that although processors paid harvesters about 42% of wholesale value of processed products in 1991, the share had dropped to 31% by 1996. This kind of share erosion would not occur in a competitive market. Indeed, under normal circumstances, a given percentage increase in value of wholesale products would increase exvessel prices by more than the percentage increase. Perhaps the strongest evidence of an

uncompetitive inshore exvessel market is the comparison with the one market that we know is reasonably close to competitive, and that is the CDQ market for raw fish. This is not a perfect market comparison for several reasons, but most of the reasons actually bias the CDQ prices downward and hence this is a conservative comparison. The bottom line is that CDQ royalty values are higher than similarly negotiated prices inshore and the gap is growing. Different individuals will read this evidence and make various allowances for the differences. But in the end, it is difficult to explain away differences that are so large; and a similar point can be made for the lease prices earned by catcher vessels delivering offshore.

In a manner that perhaps should not be surprising, the American Fisheries Act, as currently written, actually makes this situation worse by enhancing the market power of those who currently control both wholesale and exvessel prices in the pollock fishery. While it easy to gloss over important details because they are obscured by legalese, the Act clearly has the fingerprints of special interest lobbying all over it, with various provisions inserted that serve no public interest but that give the processing sector an unfair advantage over an already disadvantaged harvesting sector. One of the most bald-faced provisions designed to eliminate competition in the exvessel market is the proviso that requires members to sell to the processor that handled the bulk of their fish in the previous year. This essentially transforms an oligopsony (with two players) into several monopsonies which give sole buyer status to each plant in turn. Hence instead of negotiating a price with (ostensibly) two firms and then negotiating side deals about where to deliver, vessel owners must negotiate a price with just one buyer, with whom they are locked into delivering. If there were few incentives to induce processors to pay reasonable prices under the old system, there are not surprisingly even fewer incentives under the new system. The sideboards that have been added to the American Fisheries Act, including those requiring that processors "buy into" any coop and those that restrict catcher vessels' ability to deliver to the processor of choice all serve to place even more uncompetitive market power into the hands of processors. This will operate directly at the expense of catcher vessels, which have already over much of this period, been subject to uncompetitive markets for raw fish.

There are many reasons why the Council should be concerned about the provisions of this Act that affect the competitiveness of the exvessel market. First, the provisions of the Act will tip the market power balance even more against the many small harvester vessel firms that have suffered most from market discrimination in the sector over the past decade. In the long run, this may drive the last remaining independent vessels out of business, leaving complete control of the fishery in the hands of processors. Second, the inshore sector is already held captive by the two Japanese conglomerates that have every incentive to continue past practices that leave most of the returns from the pollock fishery in Japan rather than Alaska. Third, a significant benefit that Alaskans receive from the pollock fishery derives from landings taxes that are based on negotiated exvessel prices. To the extent that the exvessel market is made more uncompetitive, the inevitable result is lower prices than would otherwise be the case, and consequently lower tax returns to Alaska.

Finally, the long term benefits from this resource to both Alaskans and U.S. citizens at large depend upon a healthy and innovative processing/harvesting industry that is able to compete in a global market. The Alaska pollock fishery experienced some of the risks associated with being tied to directly to the Japanese economy recently, and this is just a foreshadowing of how important it is to broaden markets in a global setting, develop new products, cut costs by adopting new technology, etc. One of the most important advantages of fostering competition is that it keeps firms innovative and foreward looking. The recent legislation leading to reallocation of raw pollock inshore has potentially dedicated even more of this resource to a single-product, single country market. An important way that the Council could remove some of the market risk associated with this would be to allow raw product to flow freely to whichever processing system can generate the most value, whether that be surimi, fillets and other products, or completely new products not yet developed.

What are the intermediate run implications of a system that gives processors even greater license to choose prices at will? I believe that this system is headed toward one in which processors ultimately bankrupt remaining independents by squeezing exvessel prices, ultimately capturing catcher vessel catch records and property rights to the entire inshore TAC. There is, after all, little incentive for processors to want to retain an independent fleet of vessels with whom they must deal repeatedly over prices for raw fish. With respect to the catcher vessels, if prices are not high enough to earn a reasonable return on vessel capital, vessel values will fall as capital is written down. For those independents with significant debt, banks will call loans that are no longer backed with sufficient equity and they will have to exit from the fishery. For those with vessels that are paid for, declining capital values will gradually erode owners' equity and eventually they too will sell out. Because these vessels are specialized, and because the sideboards of new legislation give pollock catcher vessels few other options, vessels will be sold at fractions of their purchase prices, and for prices that reflect mainly the value of catch histories. In the end, the processing plants will buy out the catch records of the last remaining independent vessels, adding those to vessels already acquired. This will then leave the entire inshore fishery in the hands of the processors as a whole, and it will cause an even larger fraction of the share of returns from this resource to wind up under foreign ownership. The ultimate irony for catcher vessel owners is that the price that they will be able to negotiate for their catch histories will be dependent upon the artificially manipulated exvessel prices engineered by the processors over the past decade. Adding market power to the processors is thus equivalent to giving them two bullets; one to keep exvessel prices low, and the other to keep catch history prices low when they ultimately take over the independent catcher fleet.

Independent Catcher Vessel Association
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Phone & Fax (206) 783-6081

April 12, 1999

A STATEMENT OF OUR POSITION AND A RESPONSE TO SOME OF THE QUESTIONS AND OBJECTIONS RAISED TO THE DOOLEY-HALL PROPOSAL

1. What is the Independent Catcher Vessel Association?

ICVA is a non-profit corporation made up of the owners of independent shore-based catcher vessels. It was formed after the passage of the American Fisheries Act in an attempt to protect interests of the independent catcher vessels in the Bering Sea shore-based catcher boat fleet. We formed the ICVA because the interests of the independent vessels in the pollock fleet have been, at best, overlooked and, at worst, deliberately disadvantaged by certain provisions of the AFA which favor of the interests of the processors over the interests of the independent catcher vessels.

2. What is the Dooley-Hall Proposal?

At the February meeting of the Council, two independent catcher vessel owners, John Dooley and Margaret Hall, asked the Council to recommend modifications to the regulations implementing the American Fisheries Act which would eliminate the requirement that catcher vessels which enter into co-ops market their fish only to the processor to which they sold the majority of their fish in the proceeding year. Because the proposal was introduced by John Dooley and Margaret Hall it has been called the Dooley-Hall Proposal. However, it is the proposal of the ICVA and is being advanced unanimously by all ICVA members.

3. Why is the Dooley-Hall Proposal so important to independent catcher vessel owners and operators?

The American Fisheries Act which was passed by Congress last fall brought additional fish to the shore-side sector and gave the shore-based catcher boats the ability to form co-ops both of which were beneficial to the fleet and welcomed by catcher vessels and processors alike. However, in the last days before the Act became law, certain additional provisions were added which gave the processors significant advantages at the expense of the independent catcher boats.

(i) We may only enter into a co-op if we agree to sell our fish to the same processor to which we sold the majority of our fish in the proceeding year.

(ii) We cannot enter into a co-op at all without the consent of that processor.

(iii) Catcher vessels are restricted in their ability to move between markets or from one co-op to another.

Taken together, these provisions strip away all of the independence from the independent catcher boats. If the AFA is implemented as presently drafted, we will be permanently tied to a single market. We will have lost the simple freedom to sell our fish to whom we choose, a right that all of us have taken for granted and which we continue to take for granted in all other areas of our lives.

The importance of market freedom is obvious. As it is, we only have a limited number of processors with which we can negotiate prices for our fish. That limited market makes the process of negotiating a fair ex-vessel price extremely difficult. However, if the AFA is implemented as drafted, we won't even have a limited number of buyers to work with. Each of us will have only one buyer because we will only be able to sell our fish to the one processor to which we sold the majority of our fish for the proceeding year. Under that system, we will be faced with a return to the situation we all faced years ago where our processor posted a price and we were forced to "take it or leave it."

4. Doesn't the AFA allow a catcher vessel to move from one market to another if it goes through an "open access" year?

It is true that under the Act, we can move from one market to another but only if we will forgo our right to participate in co-op for one year and fish in the open access fishery. The problem with that approach is that once co-ops are formed, there will be only a very limited pool of fish left in the open access fishery. We have carefully analyzed the amount of fish that will be available and have looked at the capacity of the vessels that will target on that limited pool and have determined that it would be economic suicide for any catcher boat to try to go through an open access year in order to change markets. The likely loss would be 40-50% of the boats gross revenue for that year which is a loss none of us can afford. Therefore, we will not be able to use the open access year to move between markets. Once co-ops are formed, we will have to stick with the co-ops to protect our catch history and, under the AFA, we will not be able to sell our catch to any other processor other than the processor which first bought our fish.

5. Would adoption of the Dooley-Hall Proposal change "the deal" that was made in Washington D.C. that lead to the enactment of the American Fisheries Act?

The argument is being made that a deal was made in Washington D.C. and that it is a breach of faith to try to change it. However, not everyone signed onto any "deals". Most of the independent catcher vessel operators were fishing during the time that the discussions leading to the AFA were under way and not a part of the process.

However, regardless of who was involved in those discussions, a significant part of the process was the inclusion of Section 213 which states in part:

> (C) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.
>
> The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnusson-Sterns-Act;
>
> (i)
>
> that supersede 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 that three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed family and equitably to the extent practicable among and within the sectors in the directed pollock fishery...

Section 213 (c)(1) provides a mechanism for the Council to recommend measures to "mitigate adverse effects in fisheries or in owners of fewer than three vessels in the directed pollock fishery." That is exactly what the Dooley-Hall Proposal asks the Council to do. We are asking the Council to recommend measures to mitigate adverse effects of certain provisions of the Act on the owners of independent catcher vessels in the on-shore pollock fleet.

The addition of Section 213 was made with exactly our sort of situation in mind. Section 213 is a part of the Act and was a part of "the deal." Therefore, far from breaking any "deal", we are acting in strict accordance with "the deal" by asking the Council to recommend measures to mitigate adverse impacts on independent catcher vessels which were not adequately analyzed, thought through or addressed in the process of drafting the Act.

6. Shouldn't we try the current system for a year or so to see how it works before we change it?

This question has been raised as an argument in favor of delaying even an analysis of the impact of the restrictions placed on shore-based catcher boats by the AFA. It has also been argued that the Council does not even have the authority to act until we can demonstrate the

existence of actual "adverse impacts" and that we will not be able to meet that requirement until we have first lived with the Act as presently drafted and suffered the losses which we will face when the processors are free to exercise their monopsony power over us.

However, both of these arguments miss the mark. The purpose of every EA/RIR that the Council performs and the purpose of every Regulatory Flexibility Analysis that every governmental agency performs is to predict the consequences of a variety of alternative actions and to select the alternative which fits with the policy goals. That is a process that will work well here as a analysis performed by NMFS, with reference to the economic studies done by those with expertise in the effect of monopsony control on ex-vessel prices in the seafood industry, will adequately reveal the problems for independent catcher vessels now built into the AFA.

It makes no sense to argue that vessel owners must first suffer adverse impacts before the Council or NMFS can act to mitigate those impacts, if in fact those impacts are predictable. It is a fundamental concept of economics and the functioning of markets, that a seller will have less bargaining power is there is only one buyer for its product, than if the seller has access to multiple buyers. Thus, if we are required as a condition of forming a co-op to sell only to the buyer which we sold to in the prior year, it is obvious the co-op will have less bargaining power than if such a restriction did not exist. This is clearly a predictable adverse impact arising from the present terms of the AFA.

It would also be very difficult to prove negative impacts by proceeding with implementation of the present co-op rules for a year and "seeing what happens". To do so is not an experiment with controls and defined variables. The Council would not be able to come back and observe that co-op A, which was locked into a particular processor, was able to get 8 cents/lb., while co-op B. which had freedom to market its fish to a variety of buyers, got 10 cents/lb. There are no references, because all co-ops in the shore-side sector will be locked into a specific co-op.

The negative impacts of processor specific co-ops, processor veto over co-ops, and the inability of co-op members to move between co-op and processors, all come down to one thing - a shift of bargaining power. If this impact were not real and predictable, then the processors would have no reason for objecting to allowing co-ops to operate within a competitive market.

7. If the Dooley-Hall Proposal is adopted, won't the catcher vessels have so much power that they will "bankrupt the processors."

This argument has been made by some of the processors but it is hard to see now they can make it with a straight face. In the first place, the AFA gave seven shore-based processors an oligopsony (a market dominated by a small number of buyers). They are the only processors which can operate on-shore and the only processors to which we may sell our catch. We may not sell our fish off-shore and we may not sell to any shore-side processor other than those seven

which are specifically qualified by the AFA. That gives those seven processors a tremendous degree of control over the bargaining process and leaves us at a significant disadvantage.

As a practical matter, we have been living with limited markets for years and it is reflected in the ex-vessel prices that we have received . Our prices have declined from 42% of the gross wholesale value of the processed products in 1991 to 31% by 1996. (See attached Testimony of James Wilen regarding Competitive Implications of the American Fisheries Act, PP 3.) That is a situation that we don't like as we have already been forced into the position of subsidizing the shore-based processing industry while we have seen our own prices decline to break-even, or as in the case of 1998 prices, well below break-even levels. However, while we maybe resigned to living with the oligopsony created by the AFA and to be limited to the seven buyers qualified by the AFA, we don't want to see the situation get any worse.

The provisions of the AFA would certainly make things considerably worse for the shore-based fleet. Under the provisions of the AFA as presently drafted, we would not have seven potential buyers, we would only have <u>one</u> buyer because we will only be able to co-op with <u>one</u> buyer and once we co-op with that buyer, we may never change. That would give each processor true monopsony power with total control over the ex-vessel prices paid to all boats in its co-op fleet.

All we are asking for is that things not get any worse for the shore-based fleet than what we have faced over the past decade. We are resigned to delivering exclusively to the seven shore-based processors qualified under the Act. We are only asking that we be free to co-op and sell to any of those seven buyers. In other words, we are asking that we be allowed to have at least the degree of market freedom that we have enjoyed in the past before the oligopsony powers granted to the shore-based processors by the AFA were enacted.

8. Why is it so important that the process of reviewing the Dooley-Hall Proposal be up-graded to a full analysis from a discussion paper at this meeting?

The AFA allows the shore-base fleet to enter into co-ops beginning in 2000. There is a lot of work that must be done between now and the time those co-ops are to be in place. Most of the shore-based fleet has already begun to discuss how those co-ops will be formed and implemented. We would like to see that process continue so that we can be ready on time.

At the same time, the independent catcher boats simply cannot live with the present rules which, a) give the processor the ultimate control over the formation of each co-op, b) restrict us from selling our catch to any buyer other than the processor to which we sold the majority of our fish in the proceeding year and c) prevent us from leaving one co-op and moving to another.

It is therefore vitally important that the Dooley-Hall Proposal be analyzed and considered on a time line which will allow its adoption at the June meeting. That will allow time for the

implementing regulations to be drafted as the co-ops are being formed. In that way, the rules will be known to all of us as we enter into these new co-op arrangements. To meet that time line, our proposal must be upgraded to a full analysis at the April meeting of the Council.

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Independent Catcher Vessel Association
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April 5, 1999

Clarence Pautzke
Executive Director
Council Staff
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-22524

Dear Clarence:

I am sending you this letter asking for your support to up-grade the Dooley-Hall Proposal at the April meeting to a full analysis.

On the 18rd of March, 1999 we held a meeting with Dave Benton and Jeff Bush at which time we asked David Benton for his support at the April meeting. He said that he had no objection to up-grading our proposal for full analysis, but he thought we should talk with N.M.F.S. and ask them if they could do the analysis in the time required. Shortly thereafter, we met with Steven Pennoyer and his staff. They said that they had no objection, and they could do it if the Council votes to upgrade our proposal to a full analysis.

Also attached is a letter from U.C.B. endorsing the Dooley-Hall Proposal.

Sincerely,

John C. Dooley

John Dooley

to her, that's impossible, because there is nothing to measure impacts against, due to the fact that we are all tied to one processor. We faxed John Sproul's letter to Lisa, and asked her to refer to item 3 which is Adverse Impacts.

As I told you at our meeting, I would keep you informed. I think this AFA 1221 Co-op should be looked at very carefully by the State of Alaska.

Your comments are needed at the Council level. I think this will help us to get the point across, "that AFA 1221 will put adverse Impacts on Fishermen."

Thank you,

John Dooley

FAX

DATE: March 23, 1999

TO: Dr. John T. Sproul
National Marine Fisheries Service - Sustainable Fisheries Division

FAX: 907 586-7465

FROM: John Dooley, President
Independent Catcher Vessel Association

COPY: Jay J. C. Ginter, Chief of Operations
National Marine Fisheries Service

FAX: 907-586-7131

Dear John:

To follow up on our discussion the other day, I would like to provide an informal analysis on a number of the issues we discussed. In particular, I wanted to reiterate the catcher boats' view that neither section 1 of the Act of June 25, 1934 (the Fisherman's Act) (15 U.S.C. 521), nor section 210(b) of the American Fisheries Act permit an inshore fish processor to be part of a cooperative exempt from the anti-trust laws of the United States. Our view that processors are not included under the Fishermen's Act has been supported by the courts, and the issue was extensively discussed by the United States District Court for the Southern District of Mississippi in the 1993 case United States of America v. Samuel Hinote (823 F. Supp. 1350), which relied on the 1978 Supreme Court case National Broiler Marketing Association v. United States (436 U.S. 816).

The Hinote court found that section 1 of the Fishermen's Act was based on section 1 of the Capper-Volstead Act (7 U.S.C. 291), which provides for farmer's cooperatives, and that the two sections were interchangeable, this making the analysis used by the Supreme Court in National Broiler regarding the Capper-Volstead Act applicable to the Hinote case involving a catfish processor claiming exemption under the Fishermen's Act (823 F. Supp 1350 and n.4). The Supreme Court said in National Broiler (436 U.S. 816 at 826-827) that

> "clearly, Congress did not intend to extend the benefits of the Act to processors and packers to whom farmers sold their goods, even when the relationship was such that the processor or packer bore part of the risk."

The Hinote court also found that processors were not included, and rejected the catfish processor's claim. The purpose of both Capper-Volstead and the Fishermen's Act for farmers and fishermen was to "bolster their market strength and improve their ability to weather adverse economic periods and deal with processors and distributors." (National Broiler, 436 U.S. 816 at 826).

Nothing in the American Fisheries Act changes the Fishermen's Act. The requirements in section 210(b)(1) of the American Fisheries Act that a fishermen's cooperative must have a contract implementing the cooperative that A) is signed by 80 percent or more of the qualified catcher vessels, and B) specifies that the vessels will only deliver pollock to the processor for which they are qualified and that the processor has agreed to process that pollock do not modify the Fishermen's Act. Rather, these requirements that must be met if a fishermen's cooperative wants the Secretary of Commerce to set aside their collective historical catch so that no other fishermen can take it. This is a new benefit not found in the Fishermen's Act, for which these new criteria apply (unless superseded upon recommendation by the North Pacific Fishery Management Council under section 213(c) of the American Fisheries Act). If one or both of the criteria are not met, then the Secretary may not set aside the fish for that cooperative, which means that the cooperative must fish in the open access fishery or be composed of 100 percent of the fishermen in order to agree to any allocation scheme other than open access.

QUESTIONS FOR CONSIDERATION

1. Are processors legally a part of a shoreside co-op as formed under the AFA Sec. 210(b)?

The answer to this question is clearly "No." Processors may and do enter into contracts with harvester co-op's, but they are not allowed to be members of such co-ops. Buying or selling co-ops involving collective setting of prices are generally illegal under 15USC Sec1 and probably violate anti-trust laws. This is the case except to the extent Congress creates exemptions from anti-trust law:

There are two sources of exemption. One is the 15 USC 521, this is the Fishermen's Act. The second is the AFA itself.

15 USC Sec.21 provides anti-trust exemption to ***fishermen***:

> ***"persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic produce, ...may act together... in collectively catching, producing, preparing for market, processing, handling, ...such products... ."***

This language is plainly limited to fishermen, it applies for the fish a person or company harvest, not to fish it purchases. In fact, in the case US v Hinote in 1993, the court rejected a claim by a processor that it was exempt under 15 USC 521, and stated that processors were outside the exemption because they were:

"acting as traditional 'middlemen,' the very group which Congress viewed as exploiting the true farmers it sought to protect under the Capper-Volstead Act. Indeed, it was the disparity of power between 'middlemen' and 'farmers' at which Congress took aim in enacting the Capper-Volstead Act."

The court went on to explain that the agricultural and fishing exemptions are essentially identical. (It may be useful to obtain the legislative history of the two bills that allow fishermen and farmers to co-op).

The second potential source of exemption for processors is the AFA itself, which does not provide an exemption to shorebased processors. By contrast, Sec210(d) does provide a specific exemption to motherships processors, stating that "the authority in section 1 of the Act of June 25, 1934 (...) shall extend to processing by motherships eligible under section 208(d)...".

Because exemptions to anti-trust laws are disfavored, they are construed very narrowly. Shorebased catcher co-ops are authorized under section 210(b)(1) if they are filed under section 210(a) - that is 15 USC 521, the Fishermen's Co-op Act of 1934. The only language pertaining to shorebased processors is found in section 210(b)(1)(B), and simply states it is necessary that "such processor has agreed to process such pollock" as a precondition for the Secretary allowing the co-op to harvest a certain amount of fish. This is not an exemption that makes the processor a part of a co-op. However, it is a de facto veto power over the co-op, since if the processor doesn't agree (sign a contract with the co-op) to process the fish, the co-op is not allowed to contract with any other processor.

2. How do other co-ops work?

Anti-trust exemptions were provided to fishermen and farmers by Congress to protect them from exploitation by processors. There is a great deal of similarity between the way co-ops work in the two industries, and you have little to fear from a comparison.

Fishing Sector: In the fishing sector there are many co-op in Alaska organized under 15 USC 521. None of them are subject to a veto power by a specific processor and nor are fishers required to see to any specific processor as a precondition for forming a co-op. There are several forms of co-ops.

Marketing Associations: MTC is a co-op, which on occasion has negotiated price for its members. The Bering Sea Marketing Association is a co-op under 15 USC 521.

Custom Processing Arrangements: Alaska Peninsula Fishermen's Co-op is made up of Area M gillnetters. They negotiate a contract with a processor to custom process their fish, and that contract is an annual contract.

Co-op Owned Processing: Seafood Producers Co-op (formerly Halibut Producers Co-op - Pete Granger was their executive director at one time) is an example of a fishermen's co-op which actually owns its own processing facilities. However, their members are under no obligation to deliver exclusively to SPC unless the membership itself so chooses.

Cooperative Harvesting Arrangements: Sitka Sound herring fishers have formed co-ops in the past to share the total catch and create a more orderly fishery. Under that co-op they can choose to work with any processor or group of processors that the co-op and its members choose.

The High Seas Catchers' Co-op is also an example of a co-operative harvesting arrangement, where members agree on the share of harvest per vessel, but under which individual members negotiate independently with individual processors.

In short, there is no precedent for restricting market choice of any co-op organized under 15 USC 521, unless the restriction comes about by the free choice of the members of the co-op. Neither, are processors allowed to be part of any of these co-ops. The harvester co-ops do sign contracts with processors on a "willing buyer, willing seller basis", but by forming a co-op the bargaining position of the fishers is strengthened. This was the intent of the Fishermen's Co-op Act of 1934.

Agricultural Co-ops: Agricultural producer co-ops were allowed anti-trust exemptions through similar legislation to the Fishermen's Co-operative Act. An example of an agricultural co-op is the "Blue Chelan" apple growers co-op. The growers collectively arrange to process and market their apple harvest. They may utilize co-op owned cold storage facilities (self-processing) or they may retain ownership of the product, but have another company handle their crop (custom processing).

There are a number of examples of agricultural co-ops that engage in processing, but they do so as producers operating under an anti-trust exemption. Alternatively, farmers may choose not to do any self- or custom-processing, but simple sell their crop collectively. Cargill may buy from any farm co-op, and a farm co-op may sell to any buyer (Cargill, General Foods,

Tyson, Con-Agra, etc.), but no co-op is forced to sell to any particular buyer as a condition of forming a co-op.

Farmers from co-ops to enhance their bargaining power and maximize the value they receive for their harvest. This was the intent of Congress in providing them anti-trust exemptions.

The one difference between farm and fishing co-ops is that farmers operate from a basis of property rights - they own the farm land from which they harvest their crops. PSPA and Trident may argue that because AFA co-ops provide the members with a certain amount of fish, that this represents a quasi-IFQ or quasi-property right. The processors might then argue that because of this quasi-property right that doesn't exist for other 15 USC 521 co-ops (though it does exist if the co-op is sector wide involving 100% of the harvesters), this provides the basis for treating AFA co-ops as a special case and justifies striping the co-op of market choice.

This is not a valid argument. It is the old two pie argument which was dismissed by the National Academy of Science's IFQ committee. It is also not a valid argument, because in the agricultural sector, farmers have not just quasi-property rights, but real property rights, and Congress didn't strip farmers' co-ops of the ability to sell to the processor of their choice.

3. Do "Adverse Impacts" need to be demonstrated in practice before the Council can act?

The purpose of every EA/RIR that the Council performs, and the purpose of every Regulatory Flexibility Analysis that any government agency performs is to predict the consequences of a variety of alternative actions and to choose the alternative that fits with the policy goals.

It makes no sense to argue that vessel owners must first suffer under the adverse impacts before the Council or NMFS can act to mitigate those impacts, if in fact those impacts are predictable. It is a fundamental concept of economics and the functioning of markets, that a seller will have less bargaining power is there is only one buyer for its product, than if the seller has access to multiple buyers. Thus, if co-ops are required as a condition of formation to sell only to the buyer which its members sold to in the prior year, it is obvious the co-op will have less bargaining power that if such a restriction did not exist. This is clearly a negative impact from the perspective of the members of the co-op.

It would also be very difficult to prove negative impacts by proceeding with implementation of 210(b) co-op rules for a year and "seeing what happens". To do so is not an experiment with controls and defined variables. The Council would not be able to come back and observe that co-op A, which was locked

into a particular processor, was able to get 8 cents/lb., while co-op B, which had freedom to market its fish to a variety of buyers, got 10 cents/lb. There are no references, because all co-ops in the shoreside sector will be locked into a specific co-op.

The price negotiated by offshore catchers might be a limited reference point, but processors could claim there were other factors that allow CPs to pay a higher price than shoreplants. Thus, the argument must be dealt with based on what we know about the functioning of markets from general economic theory and experience in other areas. On that basis, there is adequate basis for concluding that limiting a seller to one buyer, reduces the sellers bargaining power, and that is a negative impact.

The negative impacts of processor specific co-ops, processor veto over co-ops, and the inability of co-op members to move between co-op and processors at least annually, all come down to one thing - a shift of bargaining power. If this impact were not real and predictable, then the processors would have no reason for objecting to allowing co-ops to operate within a competitive market.

There are other predictable negative impacts of processor specific co-ops as well. The offshore sector has clearly demonstrated that through co-ops the pace of the fishery can be slowed down, and in doing so recovery can be raised dramatically, along with improvements in product quality and reductions in bycatch. This is a known fact. These benefits, which flow to consumers, non-pollock fishers, as well as to catchers and processors, will by forgone if shoreside co-ops are not form in 2000.

However, independent shoreside catcher vessel owners will be very reluctant to join co-ops if doing so requires surrendering any hope of real bargaining power. This can be demonstrated by vessel owners coming to the Council and to NMFS and stating just that in April. It follows that there are negative impacts that will occur from not considering alternatives to the rules for shoreside co-ops found in section 210(b), even if (or especially if) no co-ops are formed.

These negative impacts are evident to anyone who thinks it through (though a processor might call the shift of bargaining power a positive impact). However, decision makers like to hear it from professionals, so it would be useful to have a paper prepared by an economist stating the competition is a good thing.

Another negative impact that follows from a shift in bargaining powers is the transfer of benefit to foreign entities. If the degree of foreign ownership is greater in the processing sector than the harvesting sector (which it is, and will continue to be, since the AFA only Americanizes the harvest sector) then the extra margin of profit captured by processors will tend to leak out of the US economy and represent a loss of net benefits to the nation. Again, this is demonstrable by reviewing existing information about ownership by sector.

Hopefully this further clarifies our position to processors within part of co-ops. I have asked Earl Comstock of Sher & Blackwell, our legal counsel in Washington, DC, to follow up with you in the next few days to see if you have further questions.. Earl was formerly Senator Steven's chief counsel and is very familiar with the American Fisheries Act and the Council process. He can be reached at 202 463-2514 if you would like to contact him.

John Dooley

John Dooley

15 USCS § 521 (1998)

*** THIS SECTION IS CURRENT THROUGH 105-377, APPROVED 11/12/98 ***
*** WITH GAPS OF 266, 274, 276, 277, 285, 292, 297, 306, 312, 318, 321 ***
*** 330-334, 336-343, 347, 353, 355-359, 361-366, 368-370 ***
*** 372, 374 AND 375 ***

TITLE 15. COMMERCE AND TRADE
CHAPTER 13A. FISHING INDUSTRY

15 USCS § 521 (1998)

§ 521. Fishing industry; associations authorized; aquatic products defined; marketing agencies; requirements

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes; Provided, however, That such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association shall not deal in the products of nonmembers to an amount greater in value than such as are handled by it for members.

HISTORY: (June 25, 1934, ch 742, § 1, 48 Stat. 1213.)

NOTES:

RESEARCH GUIDE

FEDERAL PROCEDURE L ED:
Natural and Marine Resources, Fed Proc, L Ed, § 56:2177.

AM JUR:
54 Am Jur 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 218--224.

INTERPRETIVE NOTES AND DECISIONS

Fishermen's union is not exempt from antitrust acts (15 USCS § 1 et seq.) by reason of statutes authorizing fishermen's cooperatives (15 USCS §§ 521, 522). Hinton v Columbia River Packers Asso. (1942, CA9 Or) 131 F2d 88, 11 BNA LRRM 615.

Even if owners and operators of fishing boats were permitted to organize themselves under 15 USCS §§ 521, 522, they could not legally restrain production of, transportation of, and trade in food fish in vast territory, in violation of antitrust laws, and lower court properly instructed that neither such association nor its members could legally force any buyer of fish to enter into a price fixing contract by practices and tactics which were not free and voluntary. International Fishermen & Allied Workers v United States (1949, CA9 Cal) 177 F2d 320, cert den 339 US 947, 94 L Ed 1361, 70 S Ct 801.

Atlantic fisherman's union, bona fide labor organization, upon combining with business organization in restraining competition and monopolizing marketing of catch of fish in New Bedford, Massachusetts area, was not exempt under 15 USCS §§ 521, 522 from operation of antitrust acts. McHugh v United States (1956, CA1 Mass) 230 F2d 252, 29 CCH LC para.69818, cert den 351 US 966, 100 L Ed 1486, 76 S Ct 1030; Commonwealth v McHugh (1950) 326 Mass 249, 93 NE2d 751, 18 CCH LC para.65904.

Fishing association which fixed prices demanded by its members and, by violence and boycott, tried to exclude from market all persons not observing its fixed prices, exceeded any possible exemption conferred by 15 USCS §§ 521, 522, and was not immune from prosecution under Sherman Act (15 USCS §§ 1--7). Gulf Coast Shrimpers & Oystermans Asso. v United States (1956, CA5 Miss) 236 F2d 658, 38 BNA LRRM 2701, 31 CCH LC para. 70209, cert den 352 US 927, 1 L Ed 2d 162, 77 S Ct 225, 39 BNA LRRM 2123, reh den 352 US 1019, 1 L Ed 2d 561, 77 S Ct 554.

In transportation of considerable quantities of fish from high seas into state by vessels which intermingle while fishing with ships of foreign nations, interference by closing markets would be direct restraint upon foreign commerce; where party who had entered into contract to fish on high seas for California cannery was prevented from fishing in vicinity of cannery because his boat was not "assigned" to cannery by association of boat owners which controlled industry under contracts with canneries under which it reserved right to "assign" to each cannery limited number of boats, association and its officers and directors were liable for conspiracy to restrain such party from fishing and marketing his products, and whether union of fishermen innocently or designedly assisted in accomplishment of purpose of association could not absolve association from liability; association of boat owners, authorized to do business as marketing agency of aquatic products, is not freed from provisions of antitrust acts because they profess, in interest of conservation of important food fish, to regulate price and manner of taking such fish, unauthorized by legislation and uncontrolled by proper authority; mere fact that Secretary of Commerce has not acted under 15 USCS §§ 521 and 522, permitting him to control monopoly, does not indicate that combination may not actually exist in violation of statute. Manaka v Monterey Sardine Industries, Inc. (1941, DC Cal) 41 F Supp 531, 4 CCH LC para. 60731.

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deNORMANDIE
& OSCARSSON

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*** ALSO ADMITTED IN TEXAS
* ALSO ADMITTED IN MARYLAND
* ALSO ADMITTED IN DISTRICT OF COLUMBIA

JAN M. HELDE
CATHERINE A. SMITH
MICHELE M. KUMMERT
PARALEGALS

March 29, 1999

Via Facsimile (650) 726-4552

John Dooley
48 Fairway Place
Half Moon Bay, CA 94019

RE: Independent Catcher Vessel Association

Dear John:

When we met with Dr. John T. Sproul of NMFS last week, two issues were raised which are important to the Flex Analyses that John is doing of the Dooley-Hall Proposal. Those two issues were:

1. Whether a processor can be a member of a shoreside catch vessel co-op; and

2. Whether a vessel can sell or lease its catcher history to the other vessels in a co-op.

In my opinion, the answer to both of those questions is no for the reasons set forth below:

1. A processor cannot participate as a member of a shore based catcher vessel co-op.

There is nothing in the AFA which deals directly with this issue. The AFA does not suggest that a processor is to be a member of its dedicated catcher vessel co-op. The whole co-op may lose its anti-trust exemption and lose its ability to collectively negotiate prices for its fish.

2. A catcher vessel may not lease or sell its catch history to other vessels in a co-op at least until the Moratorium on IFQs is lifted on October 1, 2000.

The AFA does not limit the ability of a catcher vessel to sell or lease its catch history to other co-op members. However, I believe that it may be impossible for a boat to do so until at least October 1, 2000 due to restrictions contained in the Sustainable Fisheries Act, 16 U.S.C. 1853. That Act contains a moratorium on the development of further IFQ programs until that date.

Obviously, we are dealing here with a legislated co-op structure and not an IFQ program. At the same time, however, many of the elements of an IFQ would be present if vessel owners were allowed to lease or sell their vessel's catch history to other vessels in the co-op. That may well bring the issue under the Moratorium contained in 16 USC 1853 and prevent any such activity until at least October 1, 2000.

This is obviously an issue on which we will need to have NMFS legal counsel render an opinion before we can be sure of how the provisions of 16 USC 1853 may effect the AFA. I will draft a request for a legal opinion and send it to NMFS legal counsel this week. In the meantime, however, I believe that we should assume that catcher vessels will be prohibited from selling or leasing their catch history until at least October 1, 2000 and any analyses of the Dooley-Hall Proposal should take that assumption into account.

Sincerely,

YOUNG, deNORMANDIE & OSCARSSON, P.C.

John G. Young

JGY:mra
cc: Margaret Hall

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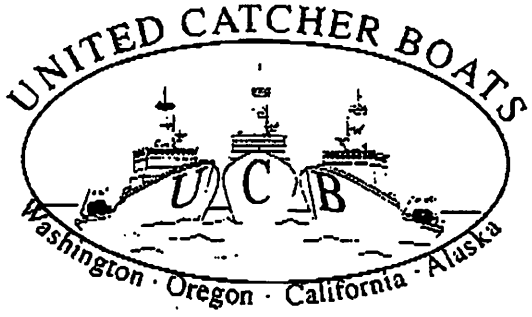

Brent C. Paine
Executive Director

Steve E. Hughes
Technical Director

Jeffrey R. Pike
Washington D.C. Representative

March 16, 1999

The Honorable Slade Gorton
United States Senate
Washington, D.C. 20510

Dear Senator Gorton,

I am writing to let you know that after extensive review and deliberation, the UCB Board of Directors voted overwhelmingly (11 Yes, 2 no, 1 abstain) to endorse the Dooley-Hall proposal (proposal) as put forward by a coalition of independent fishermen.

In our examination of the proposal, UCB Board Members looked closely at the provisions of the American Fisheries Act (AFA) to ensure that it is consistent with our understanding of the law. Under the proposal, which is now pending before the North Pacific Council, eligible catcher vessels would be able to form fishermen cooperatives and deliver fish to any of the seven eligible shoreside processors. UCB concluded that the Dooley-Hall proposal is fully within the scope of the authority vested in the North Pacific Council (Sec. 213) to mitigate the adverse impacts of cooperatives and the Act on independent fishermen.

During the negotiations of the AFA, the concept of cooperatives was introduced during the later stages of the process (the first week of October 1998). Industry representatives recognized that much work had already gone into the design of Offshore sector cooperatives and that legislating fair and equitable provisions for inshore fishermen cooperatives was

extremely difficult. The fact that there had never been an inshore cooperative, especially involving more than 90 catcher vessels, was one of the primary reasons for the inclusion of Sec. 213. Congress recognized that some of the fishery cooperative provisions may have adverse impacts on participants in the pollock fishery as well as in other fisheries and provided the North Pacific Council with broad authority to make corrections. Congress recognized that the Council was the most appropriate authority to remedy these concerns.

In fact, in his November 11, 1998 speech to the North Pacific Fishery Management Council, Senator Stevens stated the following:

> Much of the Act we just passed is going to be implemented by you and the NMFS. And there is actually authority in this Act for you to supersede many of our recommendations if you disagree with the way we've done it. Besides the U.S. ownership requirement, there are only two areas of this legislation that cannot be changed by your Council until 2004. Those are the allocations and eligibility criteria for the participants.

The Dooley-Hall proposal provides inshore fishermen with the same market freedom provided to catcher vessels in the offshore and mothership sectors. As already demonstrated in the negotiations that occurred in the development of the offshore sector cooperative, the ability of fishermen to deliver to any eligible processors resulted in fair negotiations between processor and fishermen. Dooley-Hall seeks to ensure the same fairness for fishermen during negotiations of inshore sector cooperatives.

Opponents of the proposal have alleged that UCB is now reneging on commitments it made during the AFA negotiations and that we are somehow trying to "break the deal". I could not disagree more strongly with these allegations.

First, the Dooley-Hall proposal does not undermine the cornerstones of the AFA, which were the reallocation of fish inshore, closed classes of fishermen and processors, efficiency of harvest, and decapitalization of the fleet by the removal of vessels. UCB was fully supportive of the efforts of

the American Fisheries Act Coalition in this group's attempt to decapitalize and rationalize the Bering Sea pollock fishery.

Second, not everybody within the UCB organization, as well as within other harvesting/processing groups, signed onto the "deal". For example, many of the UCB members were fishing during the Pollock "B" season last fall when negotiations were conducted, thus were unable to review and comment on the elements of the inshore coop structure.

Third, because of the magnitude of the changes that AFA can have on the relationship between the processor and vessel owner, UCB fully endorsed inclusion of Section 213 into the AFA. UCB fully intended that Section 213 allow for the Council to modify the processor specific coop provisions. This was a concession made to UCB representatives by the processor representatives as part of the "deal".

Fourth, the recent vote of our board reflected weeks of careful deliberations unlike the negotiations of S. 1221. Because of the hectic pace and constant changes to the legislation, our membership and board never had the opportunity to meet, discuss and vote on the final version of S. 1221. In our desire to conclude negotiations on the bill, we believed that Sec. 213 provided the type of safety valve necessary to mitigate adverse impacts that were not foreseen.

On behalf of UCB I want to thank you for your continued support and ask that you support the Council in whatever decision it makes.

Sincerely,

Frank Bohannan, President

Brent Paine, Executive Director

UNITED CATCHER BOATS
Washington · Oregon · California · Alaska

Brent C. Paine
Executive Director

Steve E. Hughes
Technical Director

Jeffrey R. Pike
Washington D.C. Representative

April 14, 1999

Chairman Lauber
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: Agenda Item C3 – American Fisheries Act

Dear Rick,

I am writing to let you know that after extensive review and deliberation, the UCB Board of Directors voted overwhelmingly (11 Yes, 2 no, 1 abstain) to endorse the Dooley-Hall proposal (proposal) as put forward by a coalition of independent fishermen.

In our examination of the proposal, UCB Board Members looked closely at the provisions of the American Fisheries Act (AFA) to ensure that the proposal is consistent with the law. Under the proposal, which is now pending before the North Pacific Council, eligible catcher vessels would be able to form fishermen cooperatives and deliver fish to any of the seven eligible shoreside processors. UCB concluded that the Dooley-Hall proposal is fully within the scope of the authority vested in the North Pacific Council (Sec. 213) to mitigate the adverse impacts of cooperatives and the Act on independent fishermen.

During the negotiations of the AFA, the concept of cooperatives was introduced during the later stages of the process (the first week of October 1998). Industry representatives recognized that much work had already gone into the design of offshore sector cooperatives and that legislating fair and equitable provisions for inshore fishermen cooperatives was extremely difficult. The fact that there had never been an inshore cooperative, especially involving more than 90 catcher vessels, was one of the primary reasons for the inclusion of Sec. 213. Congress recognized that some of the fishery cooperative provisions may have adverse impacts on participants in the pollock fishery as well as in other fisheries and provided the North Pacific Council with broad authority to make corrections. Congress recognized that the Council was the most appropriate authority to remedy these concerns.

In fact, in Senator Stevens' November 11, 1998 speech to the North Pacific Fishery Management Council, he stated the following:

Much of the Act we just passed is going to be implemented by you and the NMFS. And there is actually authority in this Act for you to supersede many of our recommendations if you disagree with the way we've done it. Besides the U.S. ownership requirement, there are only two areas of this legislation that cannot be changed by your Council until 2004. Those are the allocations and eligibility criteria for the participants.

The Dooley-Hall proposal provides inshore fishermen with the same market freedom provided to catcher vessels in the offshore and mothership sectors. As already demonstrated in the negotiations that occurred in the development of the offshore sector cooperative, the ability of fishermen to deliver to any eligible processor resulted in fair negotiations between processor and fishermen. Dooley-Hall seeks to ensure the same fairness for fishermen during negotiations of inshore sector cooperatives.

Opponents of the proposal have alleged that UCB is now reneging on commitments it made during the AFA negotiations and that we are somehow trying to "break the deal". I could not disagree more strongly with these allegations.

First, the Dooley-Hall proposal does not undermine the cornerstones of the AFA, which were Americanization, the reallocation of fish inshore, closed classes of participants, efficiency of harvest, and decapitalization of the fleet by the removal of vessels. UCB was fully behind the efforts of the American Fisheries Act Coalition to decapitalize and rationalize the Bering Sea pollock fishery.

Second, not everybody within the UCB organization, as well as within other harvesting/processing groups, signed onto the "deal". For example, many of the UCB members were fishing during the Pollock "B" season last fall when negotiations were conducted, thus were unable to review and comment on the elements of the inshore coop structure.

Third, because of the magnitude of the changes that the AFA can have on the relationship between the processor and vessel owner, UCB fully endorsed inclusion of Section 213 into the AFA. UCB fully expected that Section 213 could be used by the Council to modify the processor specific coop provisions. This was a concession made to UCB representatives by the processor representatives as part of the "deal".

Fourth, the recent vote of our board reflected weeks of careful deliberations unlike the negotiations of S. 1221. Because of the hectic pace and constant changes to the legislation, our membership and board never had the opportunity to meet, discuss and vote on the final version of S. 1221. In our desire to conclude negotiations on the bill, we believed that Sec. 213 provided the type of safety valve necessary to mitigate adverse impacts that were not foreseen.

Thank you very much for consideration of our comments.

Sincerely,

Frank B. Bohannon

Frank Bohannon, President

VICTOR
SEAFOODS

March 16, 1999

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

Re: Groundfish Processing & Single Geographic Location

Dear Rick:

I am writing to support action by the Council at its April and June meetings to eliminate the current regulatory requirement that a vessel processing groundfish in the inshore sector in the Bering Sea must process groundfish in a single geographic location throughout the entire fishing year. The requirement was placed in the regulations as part of the inshore-offshore management system for pollock, primarily so that a vessel could not operate in both the offshore sector (as a catcher-processor, for example) and in the inshore sector (as a mothership) during the same seasons or year. The American Fisheries Act defines and restricts each sector so that cross-over is no longer legally possible.

FEBRUARY 1999 COUNCIL MEETING

The Council motion to specify options and issues for analysis by the Council staff and National Marine Fisheries Service for the April meeting included a reference to the "single geographic location" requirement in Section 8 dealing with non-pollock processor protections. Council Member Dave Fluharty asked for clarification as to whether the analysis would include elimination of the requirement. Mr. Oliver responded that it would. I also testified at both the February and December meetings in favor of elimination of the requirement.

PROPOSAL

We recommend the elimination of the regulatory requirement that an inshore component groundfish processing vessel be required to operate in a single geographic location in Alaska state waters for the fishing year to process Bering Sea pollock. The requirement to operate in a single geographic location to process Gulf of Alaska pollock and Gulf of Alaska Pacific cod could remain in effect.

INSHORE-OFFSHORE REGULATIONS

The inshore-offshore regulations require that a floating processor operate in a single geographic location in Alaska state waters for the entire fishing year in order to be

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part of the inshore component (see 50 CFR 679.2 definition of "Inshore component"). When the inshore-offshore program was begun, the Council and NMFS structured the regulations so that a processor could not operate in both the inshore and offshore sectors during the same year and could not change sectors by season. The requirement to operate in a single location meant that an inshore floating processor could not shift to the offshore sector in the same year, nor could an offshore mothership move inshore for part of a year. In addition, the single location requirement provided some measure of competitive protection for processors in the Gulf of Alaska.

AMERICAN FISHERIES ACT ("AFA")

A. Three Exclusive Sectors. The AFA defines and specifies the processors that are part of each of the three sectors. The three motherships that operate at sea in the EEZ are named in Sec. 208(d); the catcher processors are named in Sec. 208(e); and the shoreside processors are defined in Sec. 208(f). Each of these sectors is exclusive under the AFA and no processor is eligible in more than one sector. Consequently, the primary policy rationale for the single location requirement has been eliminated. With regard to the second rationale relating to the Gulf of Alaska, we are willing to continue to process GOA groundfish in a single GOA location for the entire fishing year.

B. AFA Reference to Single Location. Although the AFA has a reference to the single geographic location definition, the AFA does not require that the NORTHERN VICTOR operate in a single location. The following analysis supports that conclusion:

1. Shoreside Processor. Sec. 205 (12) defines "shoreside processor" as including any vessel that receives unprocessed fish, which the NORTHERN VICTOR does. The definition does not contain the single location restriction.
2. Inshore Component. Sec. 205 (6) defines "inshore component" for allocation purposes to include shoreside processors, including those eligible under Sec. 208 (f). This section defines the inshore component that receives the 50% allocation of Bering Sea pollock and does not contain the single location restriction.
3. Closed Inshore Sector. Sec. 208 (f) limits the Bering Sea pollock shoreside processors to those shoreside processors, including vessels that operated at a single location, that processed more than 2000 metric tons of pollock in the inshore component in 1996 and 1997. This is the only mention in the Act of the single location matter. This section uses the single location definition only with reference to historical operations by inshore pollock processors during 1996 and 1997, i.e. a floater operating in a single location in those years is defined as part of the closed inshore processing component for the future. This reference to the single geographic location has no current or future application in the AFA.

Consequently, the AFA does not require that an inshore floating processor operate in the future in a single geographic location.

We appreciate your attention to this issue and urge that it be included in the analysis to be presented to the Council in April.

Sincerely,

Terry L. Leitzell
Vice President for Legal
And Government Affairs

AGENDA C-3
APRIL 1999
Supplemental

SEA HAWK SEAFOODS, INC.

Fishermen's Center Building
1900 West Nickerson St. #205
Seattle, Wa. 98119-1650
Phone: (206) 285-8142 Telefax: (206) 270-9325

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

March 5, 1999

North Pacific Fishery Management Council
605 West 4th Ave., Stuite 306
Anchorage, Ak. 99501

Fax: (907) 271-2817

Attn: Clarence Pautzke

Re: American Fisheries Act Violations

Dear Mr. Pautzke,

It appears the fears expressed by the large number fishing groups and individuals regarding the potential abuse and adverse effects on other Alaskan fisheries voiced prior to the passage of S. 1221 may be coming true.

Specifically, I am referring to the plans for the M/V Northern Victor, a Bering Sea "shoreside" processor, sailing into Prince William Sound with a contingent of out of state seiners and stripping away millions of pounds of salmon that should go to the local fishermen and processors of the area.

To add insult to injury, the Northern Victor group also plans to use the legislated immunity granted the Bering Sea pollock processors to form fishery cooperatives to bring in other factory trawlers to process Prince William Sound salmon when its "shoreside" processing vessel must sail to the Bering Sea in order to participate in the August 1st opening of the Pollock B Season.

Since the American Fisheries Act calls for the North Pacific Management Council to control and monitor the adverse activities that the passage of the American Fisheries Act might have on the other non-related fisheries in the State of Alaska, I call upon you address Northern Victors apparent violation if they are allowed to continue with their plans to process salmon in Prince William Sound.

Your prompt attention to this matter is urgently needed in order to avoid irreparable damage to the local fishermen and processors of Prince William Sound or any other area in the State of Alaska.

Sincerely,

Terry Bertoson,
President

FAIR FISHERIES COALITION

Fair Fisheries Coalition Current Membership

(As of April 18, 1999)

Fishermens Organizations

Alaska Crab Coalition
Alaska Fisheries Conservation Group
Alaska Herring Seiners Association
Bristol Bay Driftnetters' Association
Deep Sea Fishermens Union of the Pacific
Kenai Peninsula Fishermen's Association
Kodiak Seiners Association
North Pacific Fisheries Association
Petersburg Vessel Owners Association
Purse Seine Vessel Owners Association

Processors

All Alaskan Seafoods, Inc.
Centurian Seafoods
Chignik Pride Fisheries
Coastal Fisheries, Inc.
Dragnet Fisheries, Inc.
Icicle Seafoods, Inc.
New West Fisheries, Inc.
NorQuest Seafoods, Inc.
Fishermen's Finest, Inc
Royal Aleutian Seafoods, Inc.
Royal Pacific Fisheries
Sahalee of Alaska, Inc.
Sea Hawk Seafoods, Inc.
Snopac Products, Inc.
Sun Dragon Fisheries
The Auction Block, Inc.
Woodbine Alaska Fish Co

Four Large Catcher-Processors

US Liberator
US Intrepid
American No. 1
Pathfinder

PO BOX 5531 - BELLINGHAM, WASHINGTON 98227
1.888.786.4171 - 360.752.0784 - FAX: 360.671.2271 - EMAIL: granger@memes.com
3838 WEST 50TH AVENUE - ANCHORAGE, ALASKA 99502

Supporters of Fair Fisheries Coalition Objectives

The following organizations and municipalities have passed resolutions supporting the purposes and three objectives of the Coalition

Fishermens Organizations

Cordova District Fishermen United
Fishing Vessel Owners Association
United Fishermen of Alaska
United Cook Inlet Drift Association
United Salmon Association

Boroughs & Municipalities

Aleutians East Borough
City of St. George
Gulf of Alaska Coastal Communities Coalition, Inc.
City of Petersburg
City of Homer
City of Pelican
Kenai Peninsula Borough
City and Borough of Sitka
Village of Chignik Lagoon

United States Senate
COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025

March 15, 1999

Thorn Smith
North Pacific Longline Association
4209 21st Avenue West, Ste. 300
Seattle, Washington 98199

Dear Thorn:

Thank you for contacting my office about the effects of the American Fisheries Act and the need for protection for other fisheries. I appreciated the chance to read your comments.

I have contacted the Secretary of Commerce regarding the emergency measures. The National Marine Fisheries Service is concerned about implementing protection through the use of an emergency rule. However, they have indicated that they would give these protections full consideration if the recommendations were made by the North Pacific Council as fishery management measures. As you know, the American Fisheries Act requires the Council to recommend such measures by July 1999.

Thanks again for your comments.

With best wishes,

Cordially,

Ted Stevens

TED STEVENS

LEITZELL

April 25, 1999

INSHORE COOPERATIVES—INDUSTRY AGREEMENTS
The following is a listing of items to be included in cooperative agreements.

I. INDIVIDUAL COOP AGREEMENTS.

A. STATUTORY REQUIREMENTS.

1. List of member companies.
2. List of vessels.
3. Allocation of pollock to each member company.
4. Allocation of other groundfish to each member company.
5. Submission to NMFS/Council at least thirty days in advance of the fishery opening.

B. COUNCIL ISSUES.

1. Duration of 1 to 6 years.
2. Prohibition on linkage to delivery of other species.
3. Disclosure of catch and bycatch statistics.
4. Submission to NMFS/Council no later than December 1.

C. MONITORING AND ENFORCEMENT.

1. Legal structure: coop as a legal entity; designation of a representative; dissolution/survival, etc.
2. Waivers for catch records; acceptance of Year 2000 "interim" allocations; deadline for entrants.
3. Allocation to members split by seasons and inside/outside critical habitat; rollover provisions/restraints.
4. Monitoring of member catches; hire outside company.
5. Penalty on member for allocation violation on pollock or other groundfish; member acceptance of legal responsibility.
6. Bond or similar security for penalty payment.
7. Arrangement for penalty to be paid to disadvantaged members who catch less than their allocation.

II. INTER-COOPERATIVE AGREEMENT.

In addition to an agreement within each coop, an inter-coop agreement would be established among all inshore cooperatives.

A. Recognition of legal status of each cooperative, including designated representatives.
B. Agreement that any cooperative exceeding its allocation will pay a penalty to each negatively-affected cooperative.

Black Sea Fisheries Inc.
F/V Michelle Renee
P.O. Box 967
Port Townsend, WA. 98368
Ph. 360-379-0128 Fax. 360-379-0173

April 16, 1999

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

Re: (C-2) Trip Limits for Pollack Gulf of Alaska

Dear Mr. Lauber,

In December 1998 the NPFMC approved to implement a 300,000-pound trip limit for Pollock in the Gulf of Alaska. Our boat and many other boats that fish in the Gulf pack between 300,000 and 400,000 pounds. As the season began we found that these limits were very hard to maintain. It is difficult to judge exactly how much you have on board when you are trying to maximize your production. In order to stay within the limit and keep from being penalized we have to retain catch way under our capacity. This results in waste of resource, loss of revenue not only for the vessels, but the processors as well. NMFS agents are forced to give citations to individuals who are trying to make a living instead of dealing with the real violators. The 300,000-pound trip limit has put our vessel and many other Kodiak based vessels in a smaller vessel category. We have greater overhead expenses than smaller boats and must be able to maximize our production. We suggest the Pollock trip limit is raised to 400,000 pounds. This will solve the problems we mentioned and will include all the vessels that are based in Kodiak. We have listed some of the vessels affected by the existing trip limit.

F/V Michelle Renee, Arctic I, Arctic VI, Progress, Vanguard, Walter N, Mar Pacifico, Leslie Lee,

Sincerely,

Stolan and Angelique Jackov
F/V Michelle Renee

Dave Fraser

Re: "Economic Reliance on Crab by AFA Section 208 Crossover Vessels: Implications for Sideboards" – ("Testimony to the NPFMC, Anchorage AK, April 19-26 Scott C. Matulich, Ph.D.")

Professor Matulich has provided some interesting and potentially useful information about the participation of AFA qualified combination vessels in the crab fisheries.

However, the utility of the information is constrained by a lack of comparable information on non AFA qualified crab vessels. The information provided is inadequate to draw any conclusions on absolute dependence on various crab fisheries by "XO" vessels because it lack any cost data. Thus its utility is limited to making relative comparisons.

In order to make relative comparisons the presentation of each figure dealing with "XO" vessels needs to be paired with a comparable figure for "NXO" vessels. It can't be assumed that "NXO" vessels are an homogeneous group. There are likely a number of subsets of the "NXO" vessels which would become more evident if information on that class of vessels were presented in histograms like the Figures 3, 4 & 6, as well as the participation patterns in Figures 7 & 8.

Providing comparable vessel by vessel information on the "NXO" vessels is likely to show that amongst the 258 vessels, there are at least 3 or 4 additional subsets:
1 - 'life support licenses'
2 - < 60' vessels
3 - non-trawl groundfish/crab combo vessels
4 - 'true' non-combo crabbers

Aggregating these sub-sets as is done in series of Figure 1's on the bottoms of pages 9-12 may significantly understate the average revenue of the "true NXO crabbers" within the overall NXO vessels. This in turn would skew the information in the upper panel of Figure 1's on pages 9-12.

Because dis-aggregating the NXO vessels into sub-sets would be somewhat arbitrary and subjective (as is the splitting of XO's into XO3's and XO36's), I am not suggesting any parsing of the series of Figure 2's on pages 13-16. However, it would be useful to provide a set of figures for both the XO and NXO vessels similar in format to the Figure 3's and 4's, but scaled to absolute revenue, rather than percent of revenue.

Corresponding sets of histograms should be provided for Figure 3's and 4's for the NXO vessels.

Likewise a corresponding set of Figures 7 and 8 should be provided for the NXO vessels.

Finally, confirm that all RKC fisheries (Adak and Norton Sound) are included and Figures 7 and 8 should be enhanced with the addition of a row corresponding to the "Vessel total" row, which would provide the total of all vessels participating, as well as a row providing the GHL by year.

1999 BERING SEA POLLOCK FISHERY, 'A' SEASON, SHORESIDE PROCESSORS

A1

	TAC	CATCH	%COMPLETE
	117,850	125,886	107%
CHlimit	82,495	103,479	125%

A2

		TAC	CATCH	%COMPLETE
Specified	53,568			
Rollover	<8,036>	45,532	45,205	99%
CHlimit	37,498			
	<20,984>	16,314	23,273	142%

A total

	TAC	CATCH	%COMPLETE
	171,418	171,090	99%
CHlimit	119,992	126,752	106%

Note: TAC - CATCH = TAC Rollover: CHlimit - CHoverage = Adjusted CHlimit

1999 BERING SEA POLLOCK FISHERY, 'A' SEASON, CATCHER/PROCESSORS

			TAC	CATCH	%COMPLETE
A1			94,280	63,225	67%
	CHlimit		37,712	36,202	96%
A2			TAC	CATCH	%COMPLETE
	Specified	42,854			
	Rollover	31,055	73,909	73,000	99%
	CHlimit		17,142	12,177	71%
A total			TAC	CATCH	%COMPLETE
			137,134	136,225	99%
	CHlimit		54,854	48,379	88%

Note: TAC - CATCH = TAC Rollover: CHlimit - CHoverage = Adjusted CHlimit

1999 BERING SEA POLLOCK FISHERY, 'A' SEASON: CDQ, MOTHERSHIPS, & SEASON TOTALS

CDQ		TAC	CATCH	%COMPLETE
		44,640	42,828	96%
	CHlimit	44,640	28,844	65%

MOTHERSHIPS		TAC	CATCH	%COMPLETE
		34,282	36,783	107%
	CHlimit	17,142	18,675	109%

SEASON TOTALS		TAC	CATCH	%COMPLETE
		387,475	386,927	100%
	CHlimit	236,628	222,650	94%

Note: TAC - CATCH = TAC Rollover: CHlimit - CHoverage = Adjusted CHlimit

Rulemaking and Program Development Required to Implement AFA Inshore Co-ops

NMFS-Alaska Region

Definitions for purpose of AFA inshore co-op discussion

- MANAGEMENT: means active control over fishing activity. In open access fisheries, NMFS actively manages fishing activity through openings and closures. Under IFQ, CDQ (and inshore co-ops), the quota holder must bear responsibility for managing fishing activity.
- MONITORING: means collecting information on fishing activities to support management and enforcement. In general, individual quota programs require less NMFS management (closures etc.) and more NMFS monitoring (CDQ observer coverage, IFQ transaction terminals etc.)
- ENFORCEMENT: means taking action against violators. Enforcement of quota-based systems requires much better data (e.g., monitoring) than open access systems. For example, determining if a boat exceeded a quota requires much more data (and monitoring infrastructure) than determining if a boat violated an open access closure notice.

Legal Structure of Co-ops: Regulations Must Address...

- Structure of co-op: Contract requirements, member obligations, joint & several liability, designated representative, possible bond requirement?
- Application procedures: Deadlines, necessary information, signed waivers from vessel operators for release of fish ticket data (OMB approval required prior to information collection)
- Who is liable for violations/penalties: owner? operator? designated representative? processor? All members jointly?
- Dissolution requirements: Mid-year dissolution, withdrawal of a member vessel, continuing obligation for past violations after dissolution.

Database Issues

- ADF&G fish tickets are primary data source for 95-97 pollock (and other groundfish) landings.
- NMFS must develop verified "Official Record" of 95-97 pollock landings upon with inshore co-op allocations would be based.
- State law may require signed waivers from all vessel operators before fish ticket data can be released to owners or co-ops.
- Due to potential for database errors, appeals process must be established in regulation with finite deadline for appeals.
- Year 2000 fishing would be based on "interim" database due to lack of time for data verification and appeals.
- Vessel-specific PSC data may be inadequate or unavailable.

Misc. Management Issues

- Regulations must establish procedures for transfer of co-op shares between co-ops (AFA allows transfers of up to 10%)
- Regulations must distinguish between directed pollock fishing and pollock bycatch in non-pollock fisheries. Potential for complex interactions between directed fishing standards, IR/IU requirements, and pollock bottom trawl ban, especially when co-op fishing is open.
- Regulations should address issues such as delivery of pollock to outside processers under special circumstances (plant breakdown, plant fire, vessel breakdown, etc.).

Integration with Annual Specification Process

- Co-op agreements/contracts should be final by early fall of each year to provide adequate time for Council review prior to annual specification process.
- Separate inshore co-op pollock allocations and the non-co-op allocation would be specified in the interim & final specifications.
- Interim specifications also would include any non-pollock harvest limits that would be applied at either the inshore sector or cooperative level.
- Provisions for entry of additional vessels into a co-op after a cooperative has been formed and before the calendar year in which fishing under the co-op would occur. Possible December 1 deadline for late entries?

Integration with Steller Sea Lion RPA Measures

- Under RPA measures, each co-op share will have to be divided between four fishing seasons and inside/outside CH/CVOA
- Nine allocations X 4 seasons X in/out CH/CVOA = 72 possible inshore quotas (depending on final RPA measures adopted)
- Regulations must specify provisions for and restrictions on rollover of uncaught fish between seasons.
- Regulations must establish penalties and/or provisions for seasonal TAC and CH/CVOA overages.

Monitoring Requirements

- Monitoring inshore co-ops will require, at a minimum, the same level of monitoring as the CDQ program. The monitoring and accountability issues are essentially identical to CDQ.
- Monitoring inshore pollock co-ops may require changes to observer coverage requirements.
- Monitoring "sideboards" at co-op level will require CDQ-type observer coverage and retention requirements in non-pollock groundfish fisheries.
- Monitoring inshore co-ops will require electronic shoreside delivery reports (currently under development for 2000).
- Inshore co-ops will require changes to current logbooks and recordkeeping and reporting requirements.

Hypothetical Timeline for Jan 2000 Implementation

- October 1: Final regulations in place to guide co-op formation and database development.
- November 1: Deadline for submission of co-op agreements and application for quota share to NMFS.
- Late November: Database finalized. Draft proposed/interim co-op specifications and sideboards are finalized for distribution to the Council
- December 1: Possible deadline for late entries into a co-op.
- December Council meeting: Co-op agreements and proposed co-op quota share specifications are reviewed by Council with recommendations made to NMFS.
- Late December: Interim specifications published showing pollock quota allocated to each co-op and open access.

ECONOMIC RELIANCE ON CRAB BY AFA SECTION 208 CROSSOVER VESSELS: IMPLICATIONS FOR SIDEBOARDS

Testimony to the North Pacific Fisheries Management Council
Anchorage, AK

April 19-26

Scott C. Matulich, Ph.D.

Department of Agricultural Economics
Washington State University
Pullman, WA 99164-6210

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ECONOMIC RELIANCE ON CRAB BY AFA SECTION 208 CROSSOVER VESSELS: IMPLICATIONS FOR SIDEBOARDS

INTRODUCTION

Section 211(a) of the American Fisheries Act (AFA) requires the North Pacific Fisheries Management Council (Council) to "...recommend for approval by the Secretary such conservation and management measures as it deems necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery." Subsection (c)(1)(A) further requires the Council, by no later than July 1, 1999, to "recommend for approval by the Secretary such conservation and management measures to "prevent catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery." Such recommendations shall hereafter be referred to as sideboards.

The general intent of this report is to provide background information that may assist the Council in framing sideboards as they pertain to the north Pacific crab fisheries. This report provides the Council background information and analysis that portrays historical performance of section 208 crossover vessels and begins to identify likely behavioral motivations that underpin historical economic dependence--what has come to be referred to as "economic reliance".

It is important to recognize that the concept of "economic reliance" has no formal definition in economic theory. What may seem to be reliance to one individual may be regarded as non-reliance to another. Accordingly, the analysis presented in this report will illustrate various perspectives of historical reliance; each may yield different impressions/insights into how important a crab fishery has been to a particular vessel.

APPROACH

The general framework is to contrast economic performance of the 258 vessels qualified to fish crab under the License Limitation Program (LLP) Alternative 9 with the 39 AFA section 208 crossover vessels that are also Alternative 9 qualified. Both sets of vessels were identified by Council staff at the December 1998 Council meeting. The following notation is used to distinguish between the crossover and non-crossover vessels. The 258 non-crossovers are labeled "NXO", while the 39 crossover vessels are labeled "XO".

It became apparent during the analysis that the 39 XO vessels required a subdivision. Each policy period had a few XO vessels who fished a much larger percentage of opilio crab, the highest revenue crab fishery. Since these vessels appeared to behave differently than the remaining vessels, they were segregated into a separate category. The number of top opilio revenue earners among the 39 varied from year-to-year, but was never less than three. Accordingly, the segregated category was defined

as the top three vessels. This segregation is intended to provide visibility for the behavior of the class of top performers.

Several levels of comparisons are made in this analysis. The most aggregate level compares the distribution of estimated fishery gross earnings by NXO and XO. The least aggregated comparison enumerates each of the 39 XO vessels, though reports performance in terms of percentages of gross revenue in all fishing activities or percentage of crab-specific gross revenue in order to protect vessel anonymity and comply with state and federal confidentiality requirements. Consistent with objectives of Section 211 *PROTECTIONS FOR OTHER **FISHERIES***, only revenues earned from fishing are considered in this analysis.

Each comparison is made for four different policy periods: 1997, 1996-97, 1995-97, and 1988-97. It is through this yearly differential policy perspective that different notions of economic reliance come into focus. The first three policy periods take different views of recent participation. The shorter the historical perspective, the more difficult it is to provide any insight into a meaningful notion of economic reliance because it provides limited or no insight into vessel motivation or behavior. Longer historical views provide more information to infer vessel motivation and thus, how or why "reliance" changed over time.

For example, the single year, 1997, was potentially an anomalous year for discerning economic reliance; crab LLP was under reconsideration, with Council decision to be made in Fall 1998. Behavior in 1997 may have been more representative of the policy incentive to "fish-for-rights" as opposed to fishing for crab because it is an important contributor to vessel economic performance. A meaningful definition of economic reliance should be a function of behavior related primarily to economic performance and not solely a response to policy changes. A longer time perspective is essential to uncover what the underlying motivation may have been in 1997.

The fourth policy period takes a longer, 10-year perspective for one main reason. Unraveling the components of economic reliance requires examining a sufficient number of years in which there are no policies that could distort economic behavior. For example, 1991-94 were qualifying years under the original crab LLP. Specific qualifying years differed by crab species and, in some cases, area. These qualifying years conceivably could distort evidence of reliance for precisely the same fishing-for-rights reason that may have occurred in 1997. Furthermore, the Bristol Bay red king crab fishery was closed in 1995 making the 1995-97 policy period potentially less informative in terms of vessel behavior than desirable, at least for red king crab. The 1988-97 period contains years in which there are no policy-induced behavioral incentives. In fact, this 10-year policy period guarantees that the number of years in which there are no potential policy distortions is greater than or equal to the number potential policy distortion years for all crab species. It follows that this ten-year period provides an opportunity to examine behavioral consistency outside the potential distortion years.

The analysis unveiled below will illustrate that the use of averages to represent meaningful policy information should be viewed with skepticism.[1] Each policy period is examined working back to

[1] Averages were calculated assuming vessels existed all ten years, 1988 through 1997. Accordingly, no distinction was made between "did not fish" versus "did not exist". Average

1988. The analysis will show that conclusions drawn from each period may be misleading. As the analysis moves from policy period-to-policy period, some insights may be discovered, but sometimes at the expense of other distortions. The difficulty stems not simply from an incomplete view of history but from the use of averages and therefore, an inability to uncover behavioral motivation that strikes at the heart of economic reliance. It isn't until a year-by-year perspective is taken (Figures 7 and 8) that underlying economic motivations become clearer.

Throughout the analysis, no attempt was given to reconciling changes in fishing seasons that may have contributed to changing behavior. This potential shortcoming may be of greatest concern prior to the termination of the JV pollock era, i.e., prior to 1991.

DATA

The analysis was conducted using a blend of CFEC fish ticket data, 1988-97, and federal data on offshore landings, 1992-1997. The CFEC data contains complete landings (round pounds) and gross earnings estimates for fish and shellfish landed onshore. It also contains complete offshore data prior to 1991 when fish tickets were required for fish landed in the U.S. EEZ. Offshore reporting/record keeping responsibility shifted to the federal government in 1991, though some vessels continued to complete fish tickets on at least a portion of their offshore landings.

Catch and earnings (exclusive of roe bonuses) data for non-crossover vessels came from the CFEC fish ticket files. Data for the 39 AFA crossover vessels came from the CFEC files for crab and the blended federal and CFEC data for P. cod, pollock and an aggregate fish category, other finfish. Other finfish in the offshore sector was defined as only of Atka mackerel, yellowfin sole, rockfish and flatfish. The federal data contains only landings estimates. Corresponding gross earnings for fish landed offshore were derived by multiplying landings times an annual Bering Sea Aleutian Islands area exvessel price estimate for each species.[2] Like the onshore data, roe bonuses are not included in the pollock price estimate. Accordingly, pollock gross earnings are understated, making the crossover vessels appear more dependent on crab revenues.

Anomalies were found in the federal data set during data verification. The CFEC offshore landings data were at best partial during 1991-97. The blended crossover data consisting of the complete CFEC data, less CFEC offshore landings, plus federal offshore landings, theoretically had to be greater than or equal to the original complete CFEC data set. This was not always the case. CDQ data were missing from the federal data and there were substantial irregularities during the pre-CDQ period. Accordingly, the final blended data set used in this analysis was compiled under the following protocol. Federal offshore data replaced CFEC offshore data if and only if the federal landings data exceeded the CFEC counterpart; else, the complete CFEC data was used. This protocol was

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revenues for vessels that did not exist in the earliest years would be understated.

[2] Source: Exvessel prices in the domestic groundfish fisheries off Alaska by area gear and species, National Marine Fisheries Service office of the Pacific Marine Fisheries Commission.

implemented on a vessel-by-vessel, year-by-year basis. The result is a data set that accurately captures onshore landings but which under-states offshore landings, especially in the pre-CDQ time period. The implication of this unavoidable data deficiency is that it under-reports revenues from the XO fleet, making XO vessels appear to be more dependent on crab revenues.

ANALYSIS

The analysis presented below focuses on two species of crab: red king crab and opilio crab. The other crab species examined include bairdi, blue king crab and Korean horsehair crab. Bairdi Tanner crab was found to be the only one of these three species that may also be of potential economic importance to the crossover fleet. The analysis of this species has not been completed at this time. It will be available for the June 1999 Council meeting.

Figure 1 provides the most aggregate view of fishery-specific performance. It compares the average revenue earned by fishery for a typical vessel in the 258-vessel NXO fleet, to a typical vessel in the 39-vessel XO fleet. The XO fleet was divided into two groups in order to illustrate the differential importance that crab can have on some of the XO vessels. The top three crabbing vessels among the XO fleet are labeled XO3 for each historical period, while the remaining 36 XO vessels are labeled XO36. Segregating out the top three crab producers should not be construed to imply only three vessels rely heavily on crab. The extent of economic reliance varies across years, as will be shown throughout the analysis.

Fisheries are aggregated in Figure 1 into four species designations: crab, pollock, other finfish, and P. cod. The two graphs contained in this figure show the average gross earnings per vessel by species category and the percentage contribution of each species category to gross earnings. For example, in 1997, NXO vessels earned on average $620,000 in contrast to $1,680,000 for XO36, while XO3 vessels earned $1,469,000. Eighty-one percent of the NXO income derived from crab, whereas, crab accounted for less than 7% of XO36 income and 34% of XO3 income. Total 1997 crab earnings for a XO3 vessel were 74% of a XO36 vessel. As will be shown later, the disparity between XO3 and XO36 is due to primarily to the fact that XO3 vessels target opilio during the pollock A season. With the exception of a single vessel in a single policy period (1995-97), each the XO3 vessels earned considerably less than the top XO36 vessels who target pollock in both the A and B seasons every year.

The impression left by Figure 1: 1997 is similar to that of 1996-97, except that crab became more important to XO3 (crab's share of revenue rose to over 44%) and less important to XO36 (dropped to 5%). The 1995-97 and 1988-97 historical perspectives change more dramatically. The XO3 vessels earned, on average, more total income than their XO36 counterparts in 1995-97, because they earned almost as much income from crab ($566,163) as the average NXO vessel. The 1988-97 period yields yet a different conclusion. All vessel categories appear to rely more on crab than in any other period. Crab accounts for 85%, 9% and 69%, respectively, for NXO, XO36 and XO3. The average XO3 vessels even out-performed the average NXO vessel.

The appearance of increased economic reliance as the historical perspective elongates may be somewhat illusory. Each of the time periods contains behavioral incentives that must be understood in order assess the level of "reliance". The 1988-97 time period, for example, contains all years in which the behavioral motivation could have been fishing for rights. It also contains all years in which crossover entry into a particular crab fishery could have been motivated by high expected revenues. And crab income during these high expected revenue years may have been sufficiently large for just a very few number of vessels that the XO36 sub-fleet average was pulled up. These motivations and anomalies can be uncovered by systematically examining XO performance in each of the crab fisheries.

Figure 2 shows the percentage distribution of crab revenue for NXO and all 39 XO vessels. In 1997, 83% of the XO revenues were derived from red king crab. The remainder came from opilio even though only 3 XO vessels fished opilio. The NXO fleet, in contrast derived most of its income (70%) from opilio; only 20% came from red crab.

Comparing 1997 with 1996-97 would seem to suggest that there was not much structural difference between these historical periods, i.e., the underlying fishing behavior seemed to change little during the two years. In fact, this conclusion is not correct. Thirty-eight XO boats fished red crab in 1997 when LLP was being reconsidered; only 9 fished in 1996. One might think that the red crab share of gross revenues would fall dramatically when , in fact, it only dropped from 83 to 75% This slight drop is a consequence of total XO revenues falling as well.

The first striking change in the XO crab portfolio is apparent by contrasting 1997 with 1995-97. Opilio took on a more prominent role than red crab for XO vessels. Red crab's share for a so-called "typical" XO vessel dropped by nearly half, while opilio's share increased nearly three-fold (17 to 47%). This apparent change is misleading for two reasons. First, only 9 XO vessels fished opilio in 1995--twice the number of XO vessels that fished in 1996 and three times the number that fished in 1997. Second, 1995 alone accounted for more than twice the industry-wide opilio gross revenues of 1996 and 1997 combined, $180 million versus 85.6 million and 92.5 million, respectively (see 1998 Crab SAFE document, Table 5-28). This greater share of a larger sum of money was distributed across all 39 vessels, (which defines a "typical" vessel). But this limited participation and large variation in gross earnings across years belies "typical". No significant behavioral changes really occurred in this policy period, despite the appearance of change.

The 1988-97 historical perspective in Figure 2 is misleading for similar reasons. All LLP qualifying years are included in the XO average performance and all atypical gross earnings by a limited portion of the XO fleet are incorporated. The increased importance of bairdi is not examined here.

Figure 3 provides a more detailed examination of individual XO vessel performance because it reveals the vessel-by-vessel distribution of total revenue. Red king crab appears to play a **relatively** consistent role in the XO fleet income. However, it is important to keep in mind that thirty-eight of the thirty-nine XO vessels fished in 1997, while only nine fished in 1996. This difference appears to be due exclusively to the fact that 1997 was a LLP qualifying year, i.e., the high participation rate was induced by the policy incentive to fish-for-rights. Pre-season expected gross earnings (price times GHL) were nearly identical ($20 million in 1996 versus $22.8 million in 1997). Both were years of

low expected earnings, so, the high participation rate in 1997 cannot be attributed to greater expected earnings potential.

Red crab revenues as a share of total revenues dropped across the XO fleet in 1995-97 policy period because the Bristol Bay fishery was closed in 1994 and 1995. The 10-year policy horizon shows red crab revenues as a share of total revenues rose nearly to the 1997 level. This increased contribution to red crab is attributable to three additional LLP qualifying years, 1991 through 1993. Interestingly, the highest two expected income years, 1989 and 1990 generated very little red crab effort by the XO fleet, five and twelve vessels, respectively. Details surrounding the role LLP versus expected revenue will discussed later.

Caution is still warranted when inferences are made because 3 of the 4 Figure 3 graphs average across years. There clearly is a wide range of dependence on red king crab for revenue. The greatest variation between vessels deriving the lowest and highest share of revenue from red crab occurred in the last LLP qualifying year, 1997, when red crab accounted for as little as zero and as much as 18% of total revenues for an individual vessel. Comparing the distribution of total revenue across years seems to suggest some vessels "relied" on (*sic*, earned a substantial share of their income from) red crab. This inference is only partially correct. Vessels are sorted in Figure 3 from largest to smallest share of income due to red king crab, i.e., vessel ordering changes across time. A vessel that earned a large percentage share of income from red crab in one historical period may have earned a lower share in a different period. Moreover, the **average share** in 1996-97, 1995-97 and 1988-97 may be a reflection of participation in just a few years.

Figure 4 provides additional insight into the distribution of crab revenues across time. In 1997, only red king crab and opilio were landed by the XO fleet, and only three of the vessels landed opilio. One additional vessel landed opilio in 1996, and ten vessels landed bairdi. Some of the bairdi was bycatch to red king crab fishing in 1996. The 1995-97 period shows that about one third of the XO fleet derived significant crab earnings from baridi and opilio. This change in performance relative to subsequent years is due exclusively to 1995 fishing behavior. Opilio (and bairdi) became an even greater share of XO crab revenues in the 10-year scenario. Recall, however, that all crab accounted for a relatively minor share of gross earnings for most of the 39 XO vessels.

Figure 5 illustrates the significance of the top three XO crab vessels in terms of their share of opilio revenues, the big money crab fishery. In 1997, only three XO vessels landed any opilio at all. This share slipped to 90%, 63% and 61%, respectively in 1996-97, 1995-97 and 1988-97. The reason the 1995-97 share for XO3 slipped is because 1995 was a high expected revenue year for opilio. Even so, only 9 XO vessels participated in the 1995 opilio fishery, several after the A-pollock season ended. Participation by these 9 vessels represents a three-fold increase over the 1997 participation rate and more than double the rate of 1996. That increase in vessel participation combined with much greater earnings markedly decreased the relative importance of the top 3 vessels. The 1988-97 historical period was similarly influenced by five years of high expected earnings and, coincidentally, three LLP qualifying years. Again, annual participation remained low, peaking at 14 vessels in 1994. Perhaps the most important issue to be gleaned from Figure 5 is that few of the crossover vessels (not necessarily only three) consistently garnered much of the opilio earnings. This issue will become clearer when annual participation (Figure 8) is discussed.

Figure 6 provides further detail concerning the relative importance of the opilio fishery to crossover vessels. This figure shows opilio as a share of total revenue for 39 XOs. Several conclusions deserve amplification. First, it is clear that some vessels derived a substantial portion of their income from opilio, others derived little income from opilio, but the majority never relied on opilio. Second, those who fished opilio occasionally or who earned a relatively small fraction of their total income from opilio, typically did not target opilio instead of A-season pollock. Rather, they tended to finish the A season and then, turned to opilio, especially in years with long opilio seasons. The important sideboard inference is that capital freed up under a cooperative is most likely to have adverse economic impacts in the opilio fishery because: a) this is the highest value crab fishery and b) it is underutilized by most of the XO fleet, all of whom are LLP qualified for opilio, primarily through a general Tanner crab qualification.

As usual, care is warranted when drawing inferences across multiple year scenarios. Each of the historical periods portrayed in Figure 6 average XO performance across the specific years. This averaging over-states **annual** participation. For example, the 1988-97 period seems to suggest 24 different vessels participated, when in fact the correct interpretation is that 24 **different** vessels participated **at least** one of the 10 years. The maximum number of vessels to participate in a single year is 14; the minimum number is 3.

Figures 7 and 8 show the year-by-year participation of each XO vessel, which provides the behavioral insights that simply are not available from the various averages contained in Figures 1-6. These behavioral insights will help clarify the concept of economic reliance.

Both figures identify individual vessel participation by LLP qualifying and non-qualifying years for the entire 10-year period. The vessels are ranked from the highest to lowest number of participation years, summarized in the far right column. Three other features are contained in this graph. The second to last row summarizes the total number of vessels that participated in a particular year. The last row indicates the preseason expected revenue measured as price times GHL. The years of high expected revenue are highlighted. Bristol Bay closure years (1994-95) are also indicated.

Figure 7 reveals that most participation in the red king crab fishery appears to be motivated by qualifying for LLP. Of the 39 XO vessels, 30 to 38 fished in each of the four qualifying years (1991-93 and 1997). The maximum participation in non-qualifying years ranged from as little as three to at most 12 vessels.

Likewise, high expected revenue did not contribute to a high participation rate, i.e., revenue does not appear to be the motivational force underlying red king crab participation. Only five and 12 vessels participated in the two high expected revenue years, 1989-90. It also appears that red king crab participation is not generally motivated by a portfolio strategy, which one would expect if the vessels routinely participated in several fisheries in order to minimize the risk of revenue volatility. Few of the XO fleet **consistently** relied on red king crab as part of their overall fishing portfolio. Less than half of the fleet fished red king crab five or more of the 8 years that the Bristol Bay fishery was open; only 7 of 39 XO vessels fished at least 6 of the 8 years.

Figure 8 tells a different story about opilio. Regardless of any motivational factor, participation was low in all years, ranging from 3 to 14 vessels. Participation is, however, highest for the intersection of high expected revenue years (1991-95) and LLP qualifying years (1992-94 and 1997), making it difficult to discern which of these motivational factors is more important. It would appear that there is a limited but important portfolio effect with 5 vessels. One vessel fished all 10 years, one fished 8 years and three fished 5 years. The remaining 34 vessels fished 3 or fewer years during the 10-year period; 15 never fished opilio at all. But are still opilio qualified under the general Tanner crab LLP.

CONCLUSIONS

The question of economic reliance can now be brought into focus. Economic reliance is a composite of three motivational factors: 1) a portfolio effect in which routine/consistent participation occurs to lessen risk in a vessel's fishery portfolio, 2) opting to enter a fishery in order to take advantage of high expected returns, 3) policy-induced entry to secure the opportunity to fish a particular species at a future date, i.e., fishing for rights. All of these are legitimate dimensions of economic reliance. Which is more important for policy considerations is a question left open.

The above analysis demonstrates that crossover behavior differs in the two most important crab fisheries, red king crab and opilio. Entry into the red king crab fisheries is dominated by what appears to be policy-induced fishing for rights, though there is some portfolio effect but little expected revenue-induced entry. Entry into the opilio fishery is less clear cut, though motivations seem less important because of the limited number of crossover participants. As few as 5 crossover vessels can be construed as using opilio as part of a portfolio; a maximum of 14 and a minimum of 3 vessels fished in a single year.

If the Council is to consider economic reliance in setting sideboards for the various crab fisheries, the most important dimension probably is the portfolio effect. It is this behavioral consideration that identifies the vessels who stand to lose the most, i.e., those who have consistently utilized crab. Most of these vessels derive a substantial portion of their gross earnings from crab, and in some cases, may even use crab as the dominant source of income. However, it is critical to recognize that share of income from crab is not the essential litmus test in a portfolio context. Vessels who consistently fish a particular species of crab may utilize crab more as a risk hedge even though it may be a relatively minor income source.

Opportunistic behavior, i.e., targeting crab in high expected income years, probably is the second most important consideration in economic reliance, if only because it is a pure economic motive. Policy-induced motives (fishing for rights) ranks third. The principal economic interest underlying this behavior would seem to be a desire to preserve future opportunities, including the opportunity to participate in any future IFQ program.

Be advised that adherence to any of the three manifestations of economic reliance is likely to eliminate many XO vessels from the future opportunity to crossover into the opilio fishery. If any reliance criterion other than fishing for rights is used in sideboard formation, many vessels will be eliminated from red king crab because few vessels demonstrated any opportunistic use or consistently fished for red crab in non-qualifying years.

FIGURE 1. 1997
DISTRIBUTION OF TOTAL REVENUE,
NXO, XO36 AND XO3

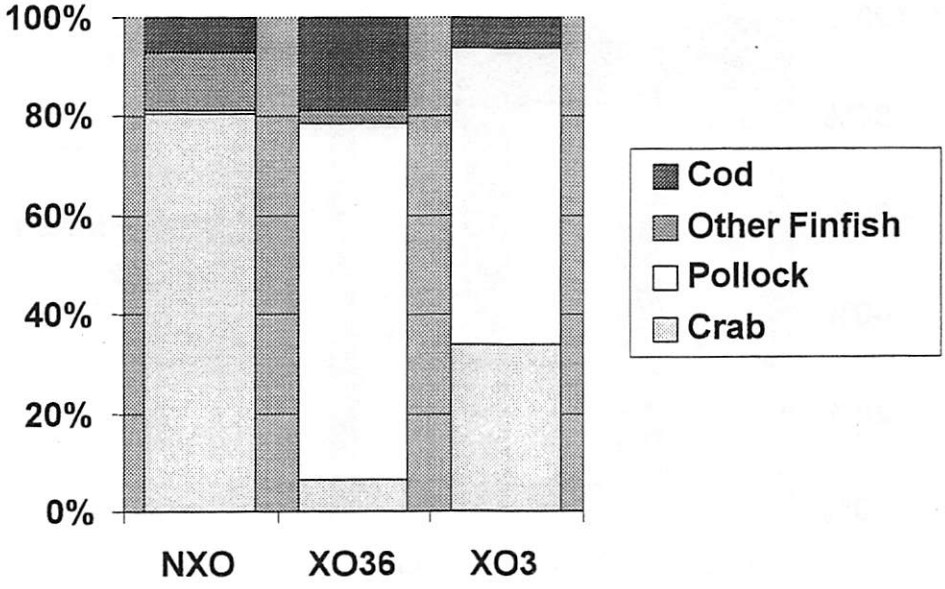

FIGURE 1. 1997
AVERAGE REVENUE BY FISHERY,
NXO, XO36 AND XO3

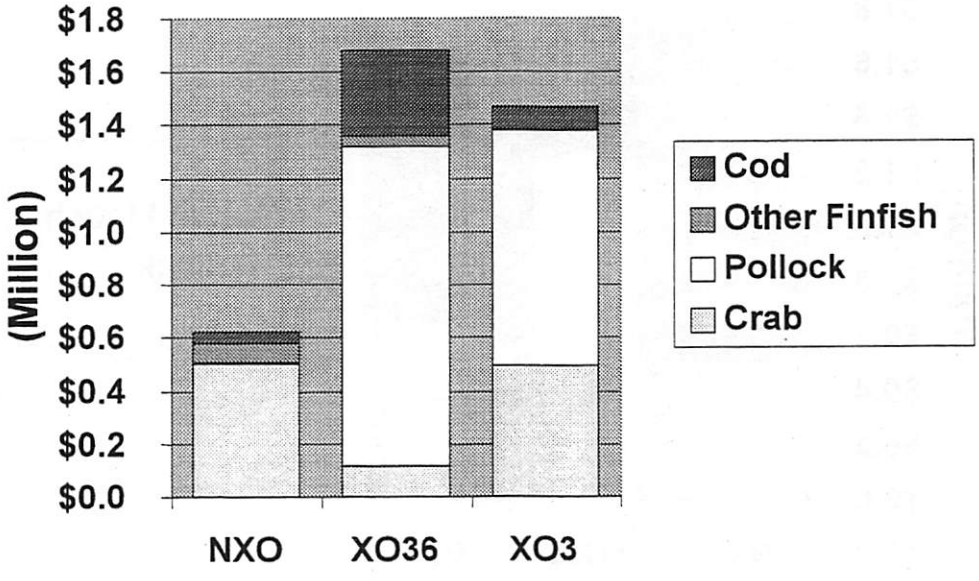

FIGURE 1. 1996-97
DISTRIBUTION OF TOTAL REVENUE,
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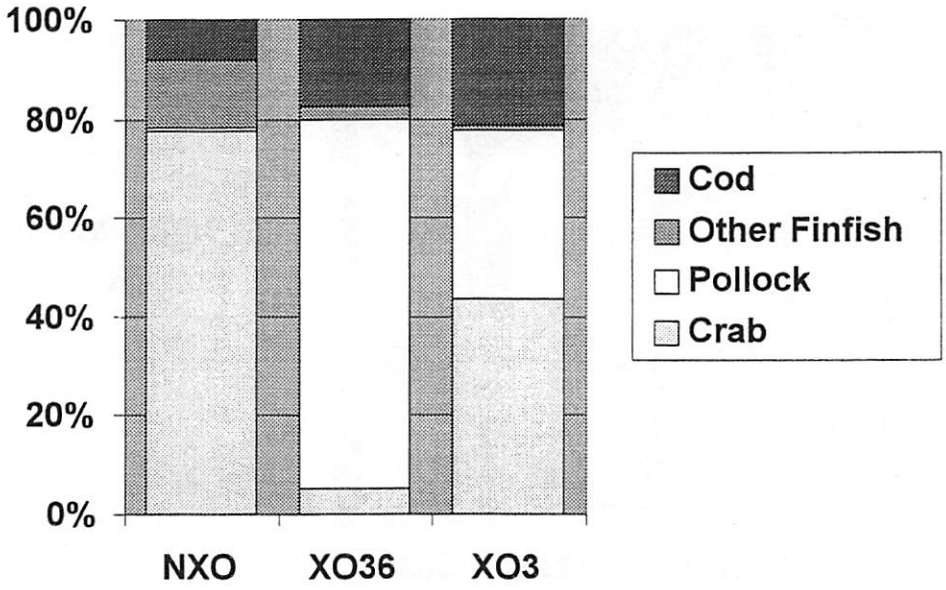

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AVERAGE REVENUE BY FISHERY,
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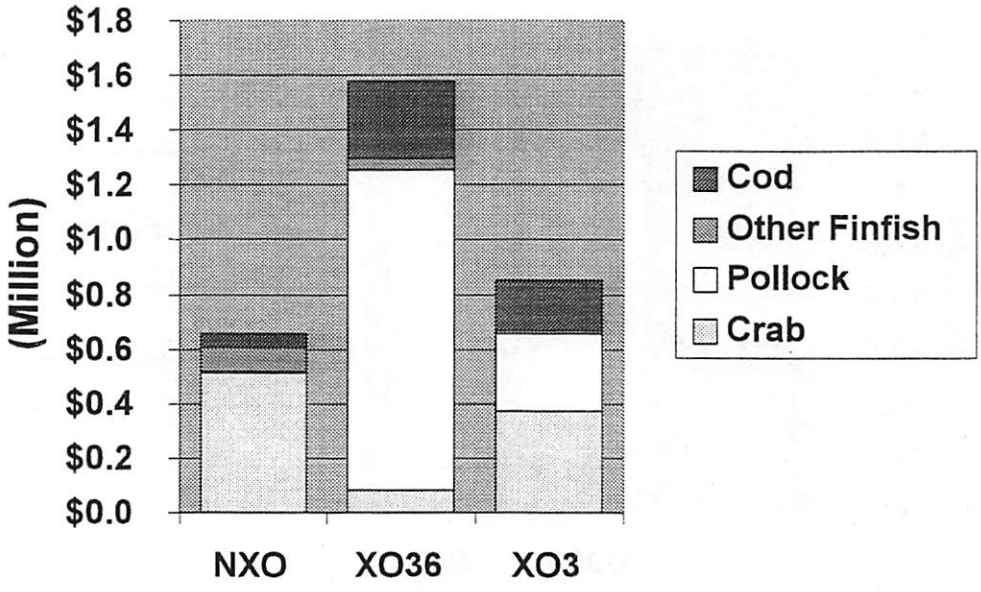

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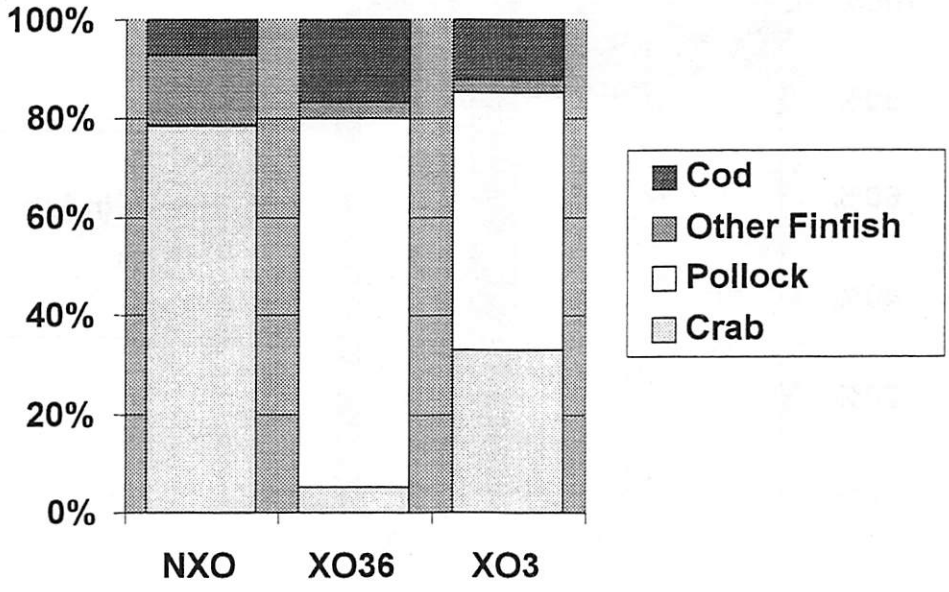
NXO, XO36 AND XO3



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AVERAGE REVENUE BY FISHERY,
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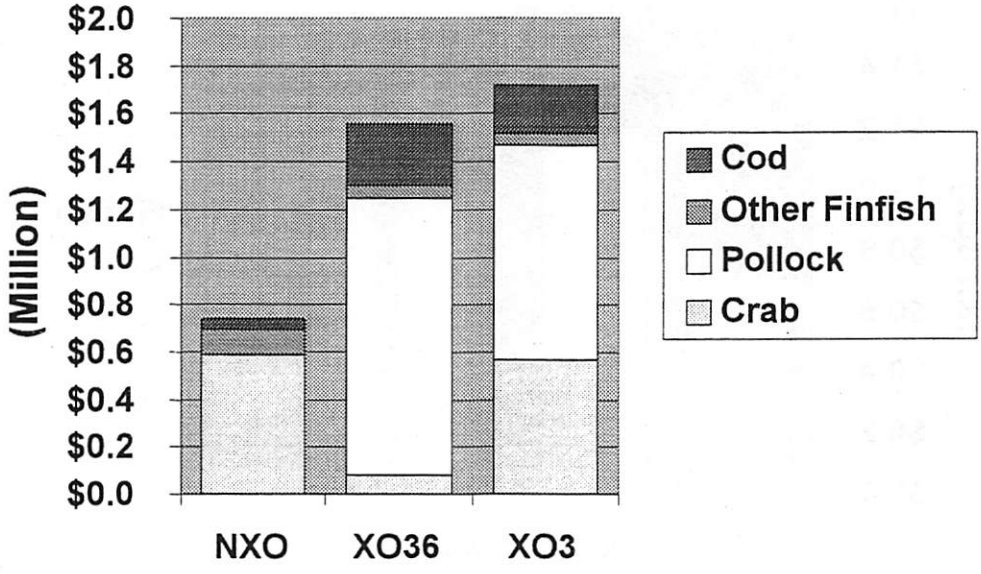

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DISTRIBUTION OF TOTAL REVENUE,
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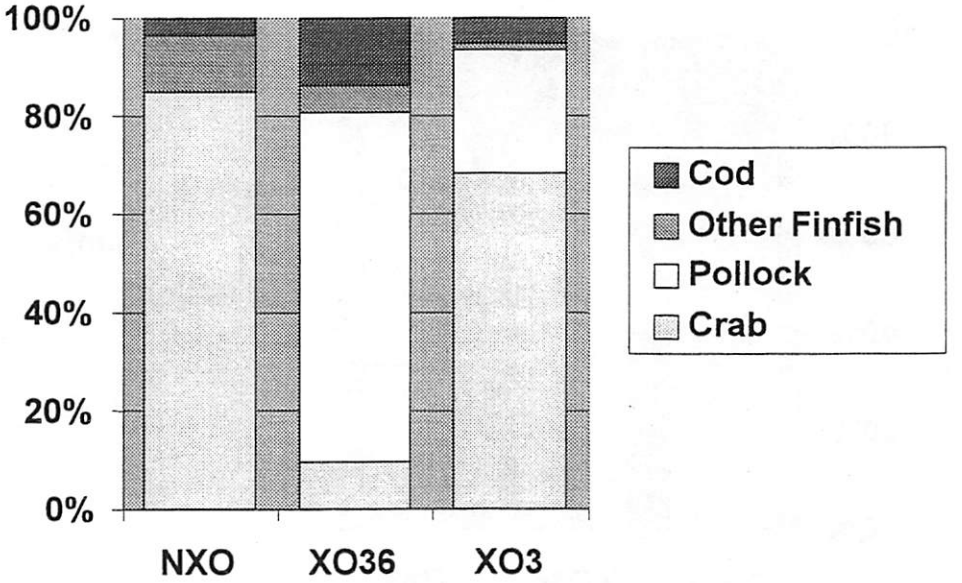

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AVERAGE REVENUE BY FISHERY,
NXO, XO36 AND XO3

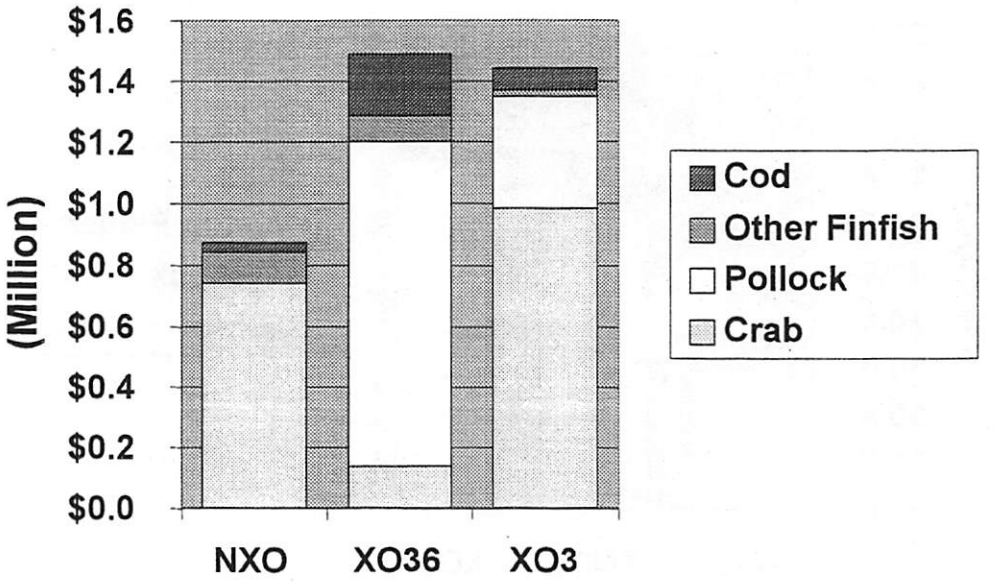


FIGURE 2. 1997
DISTRIBUTION OF CRAB REVENUE, XO

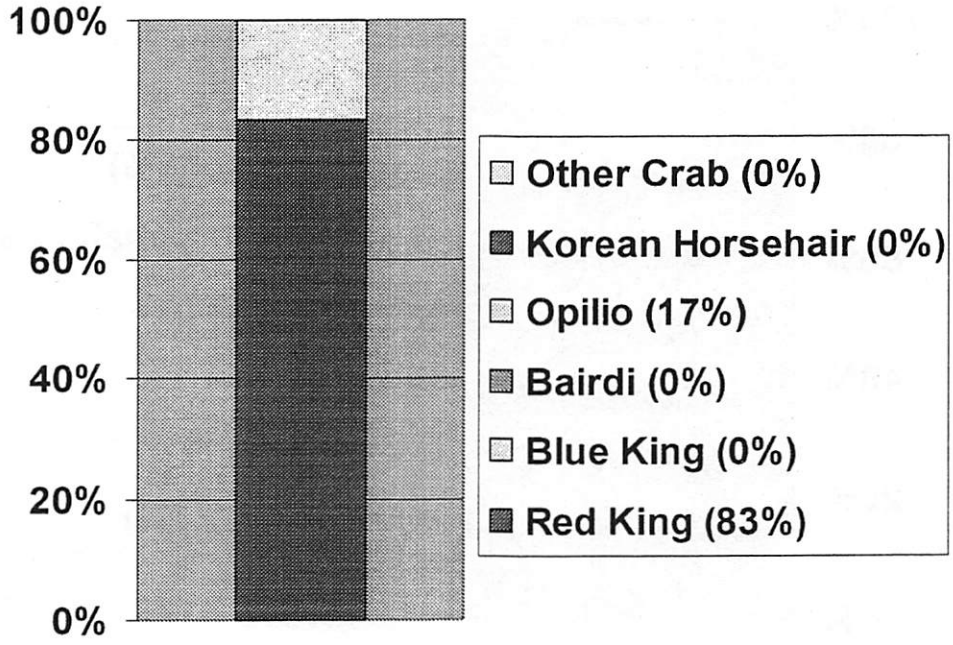
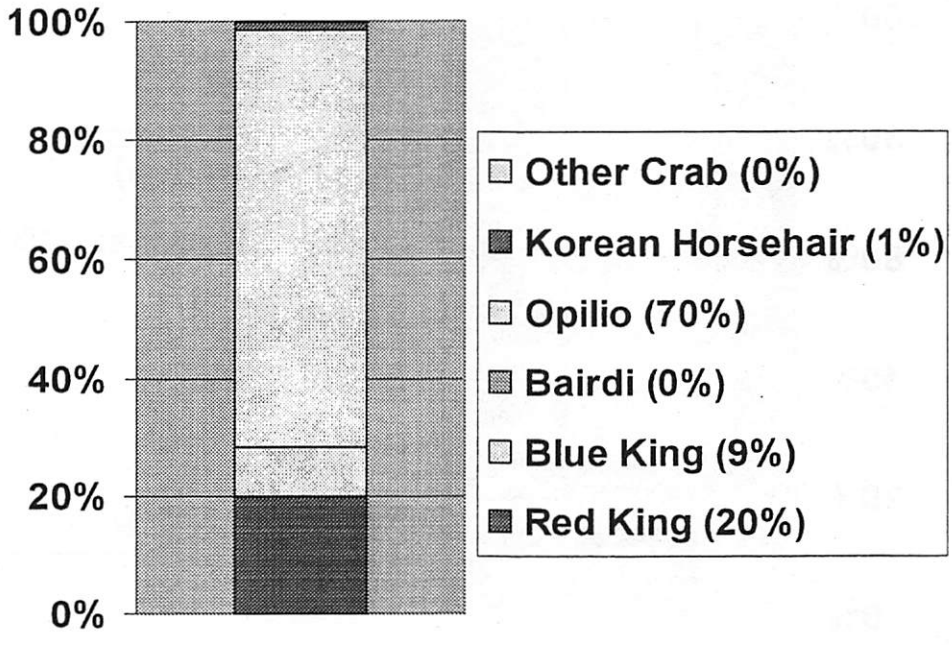


FIGURE 2. 1997
DISTRIBUTION OF CRAB REVENUE, NXO



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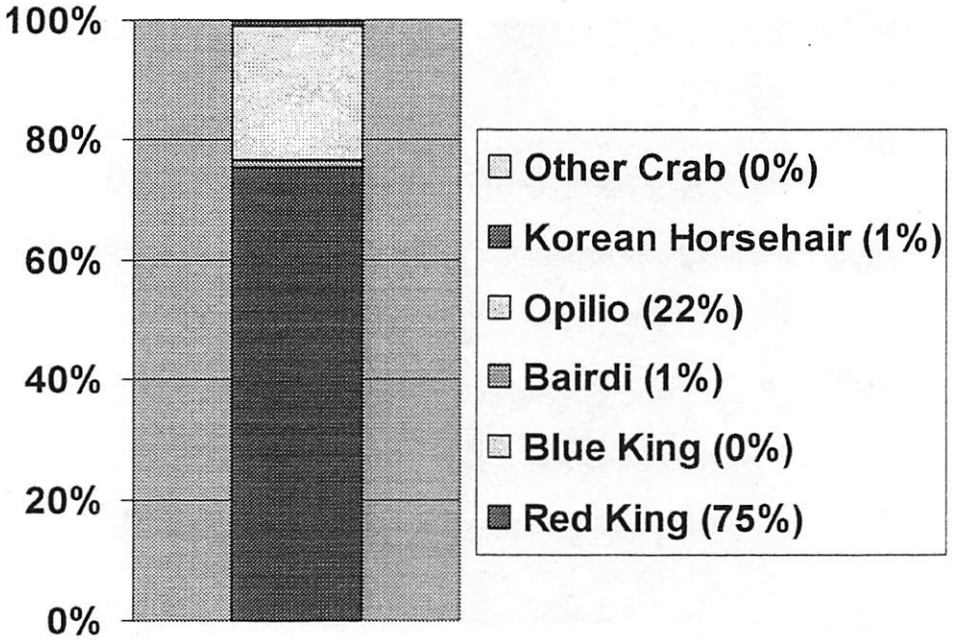
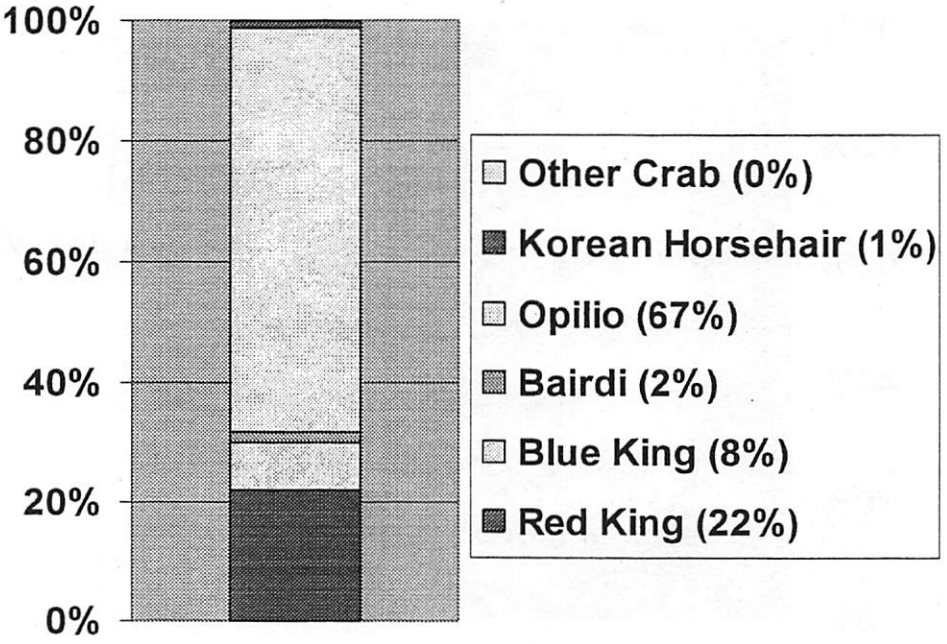


FIGURE 2. 1996-97
DISTRIBUTION OF CRAB REVENUE, NXO



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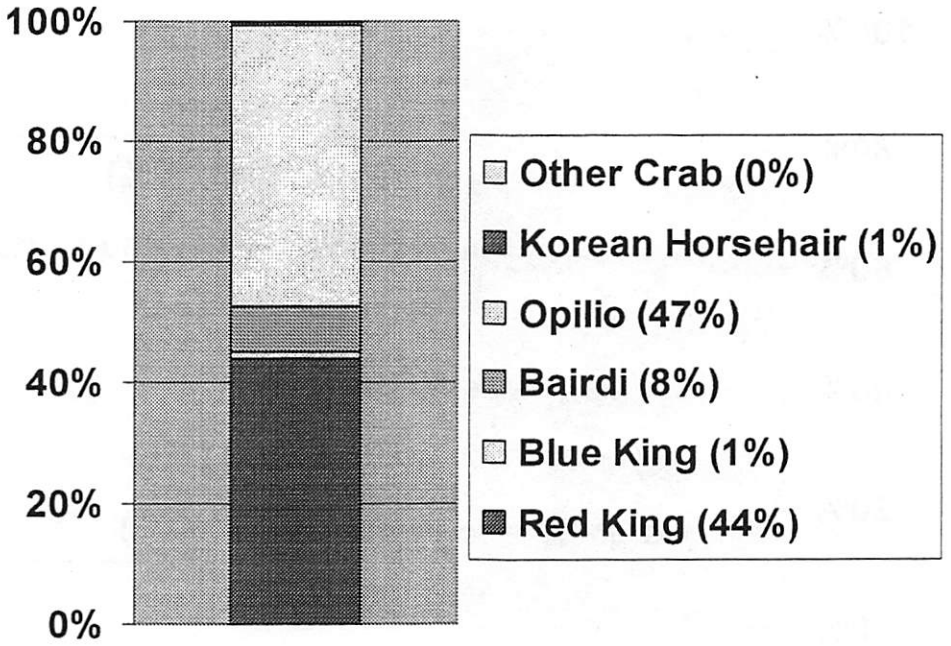

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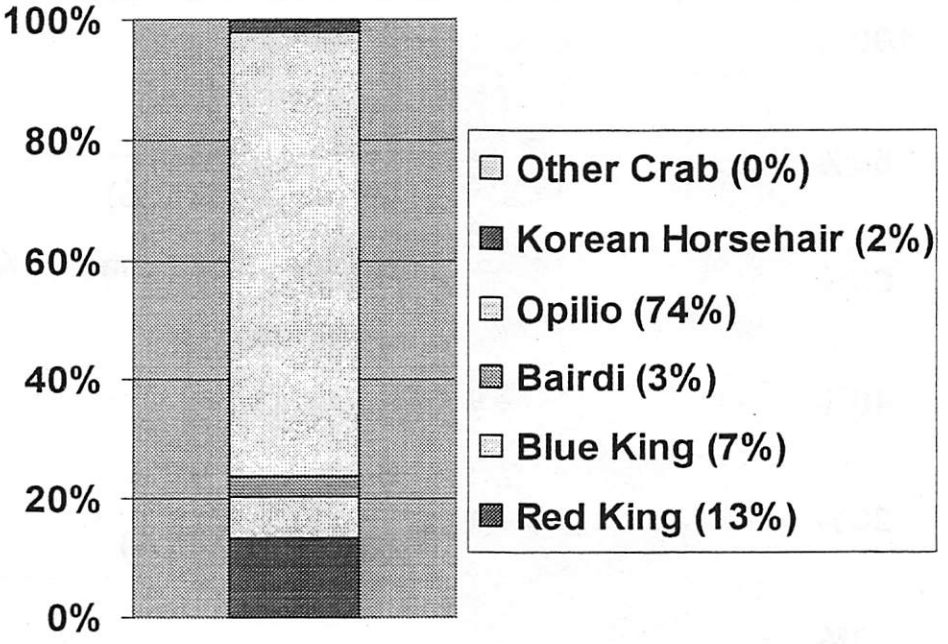

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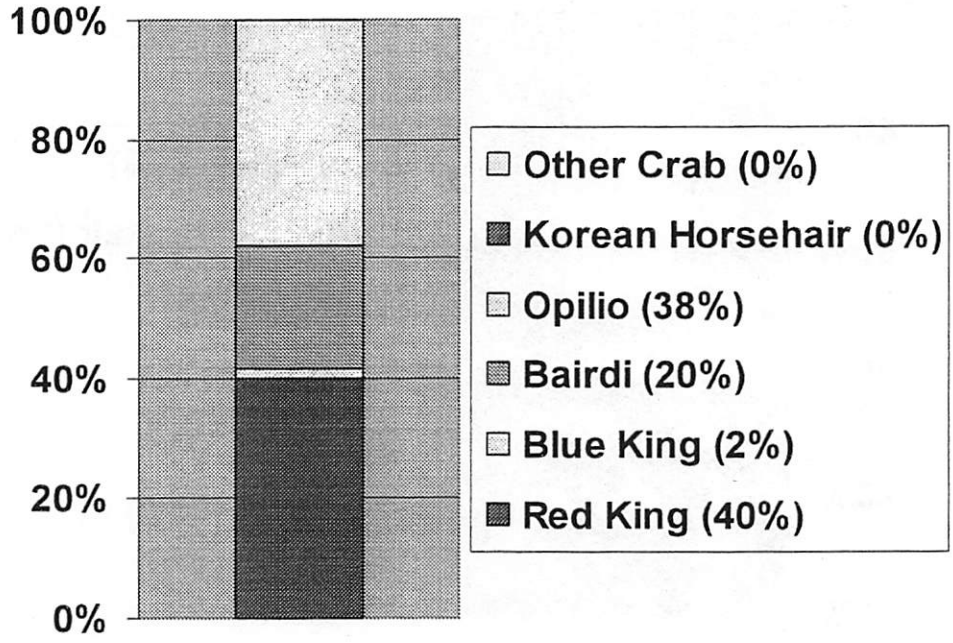

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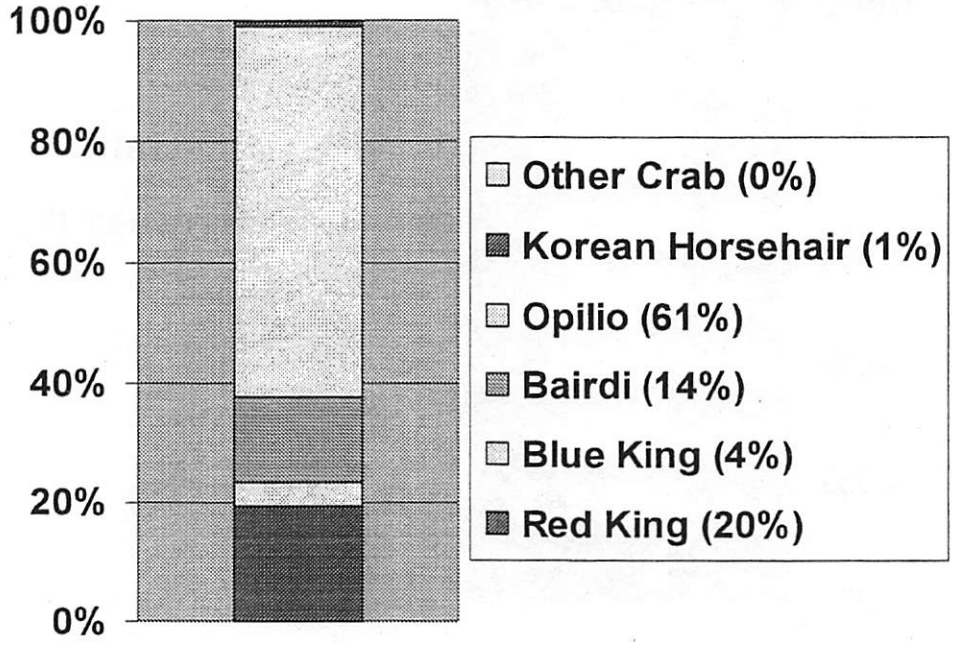


FIGURE 3. 1997
DISTRIBUTION OF TOTAL REVENUE, XO

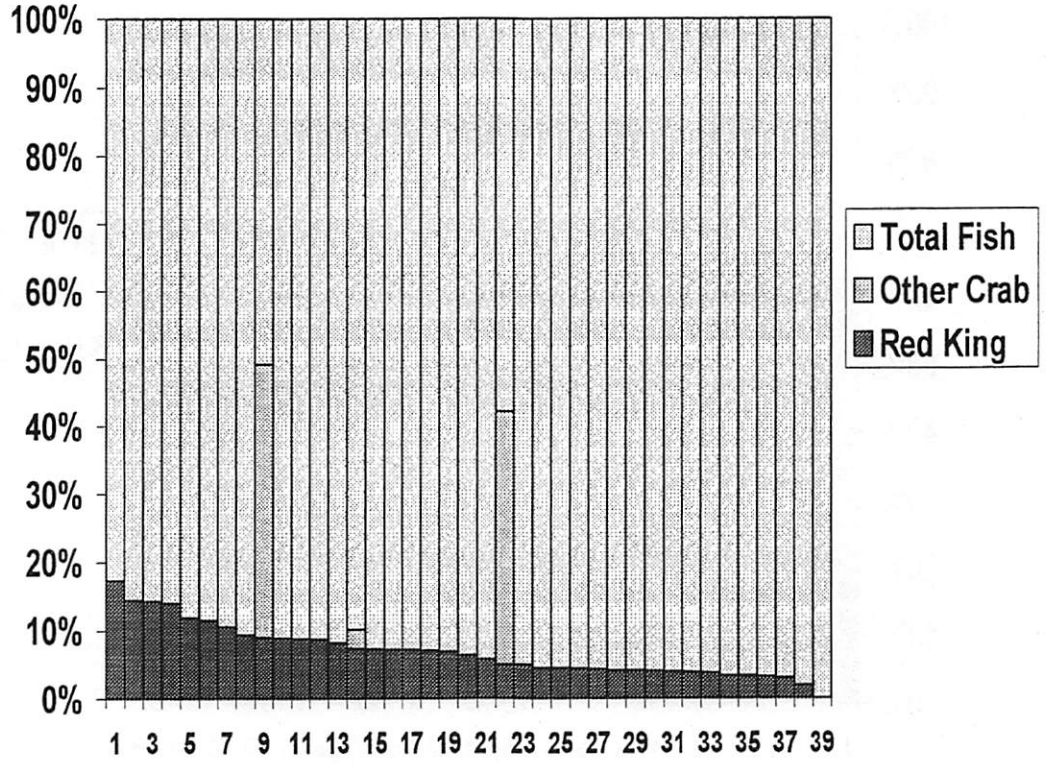
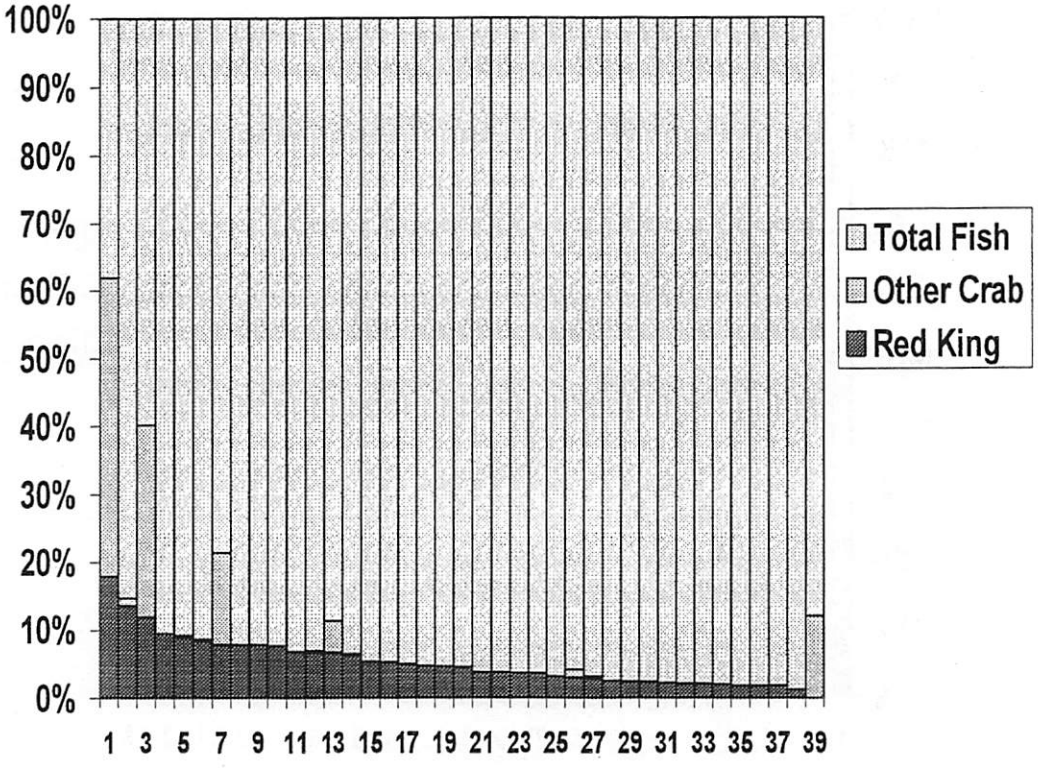


FIGURE 3. 1996-97
DISTRIBUTION OF TOTAL REVENUE, XO



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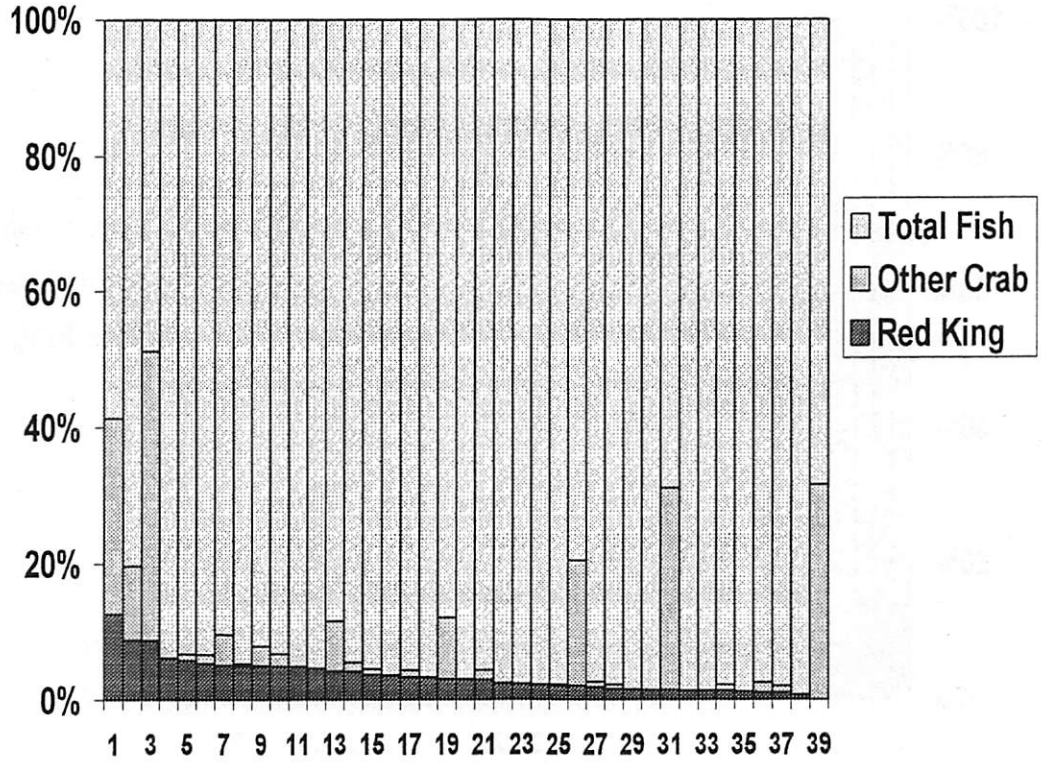

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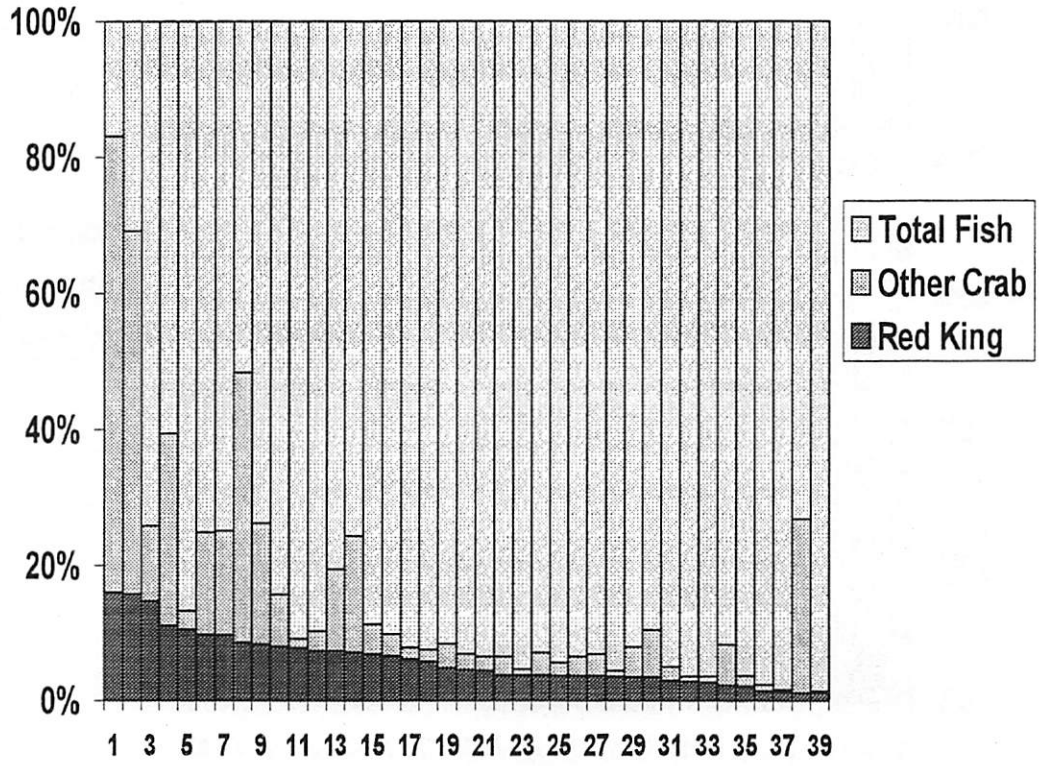
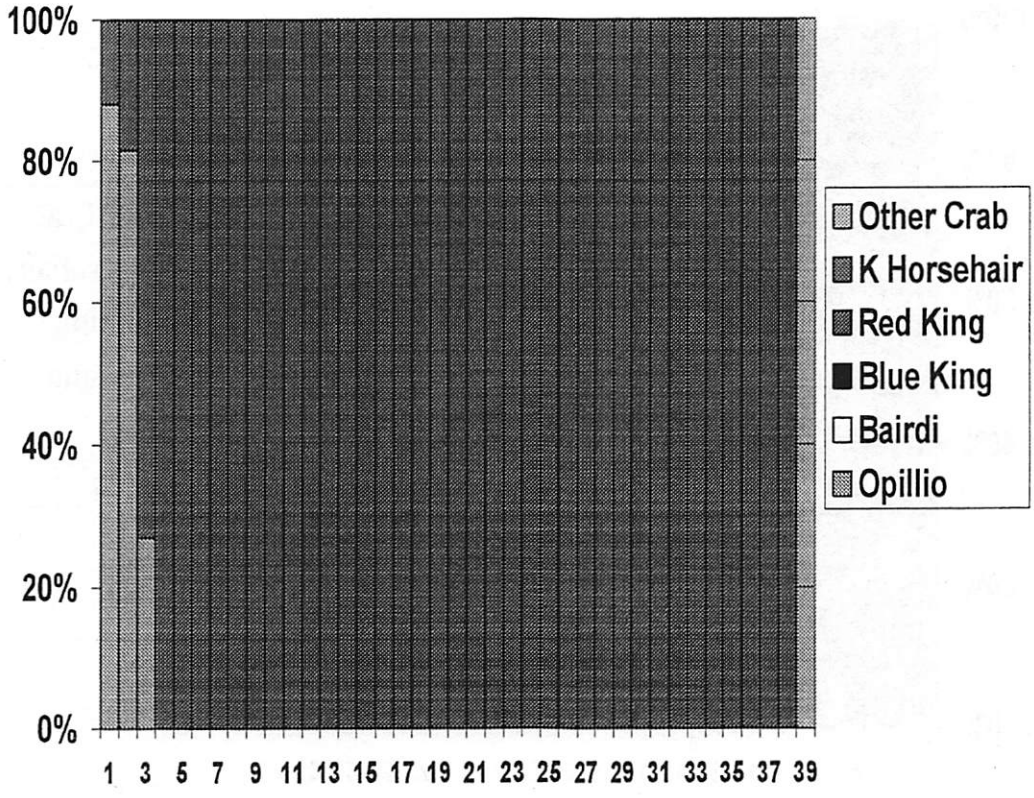


FIGURE 4. 1997
DISTRIBUTION OF CRAB REVENUES, XO



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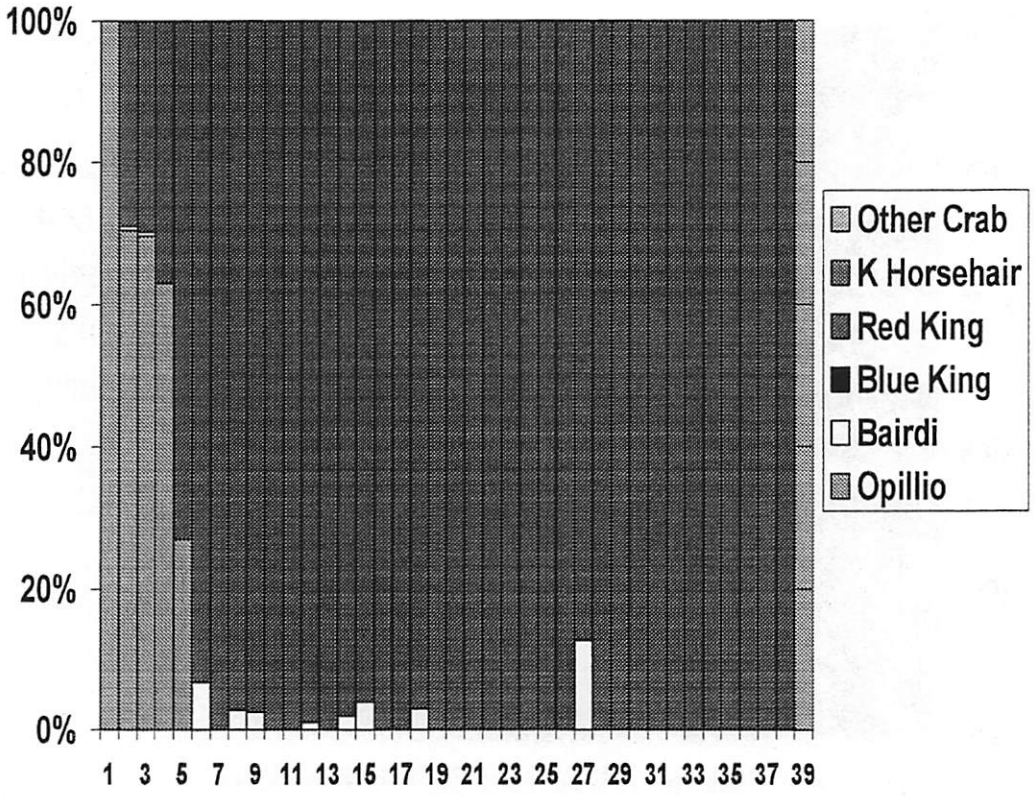

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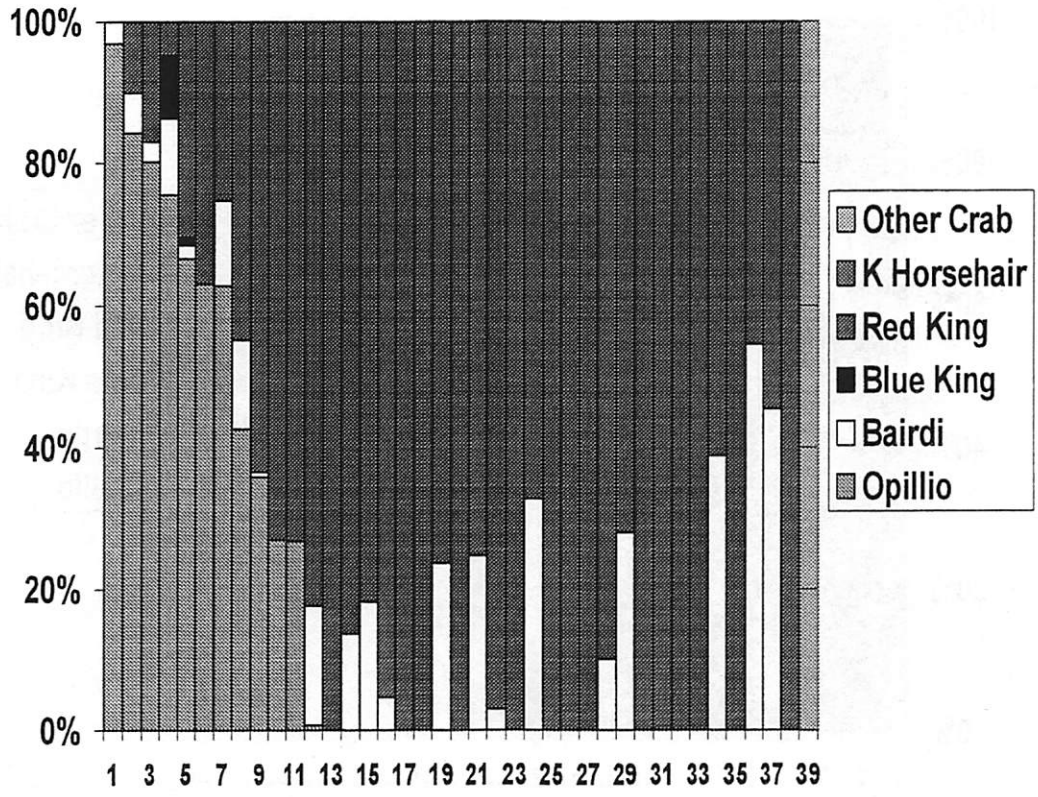

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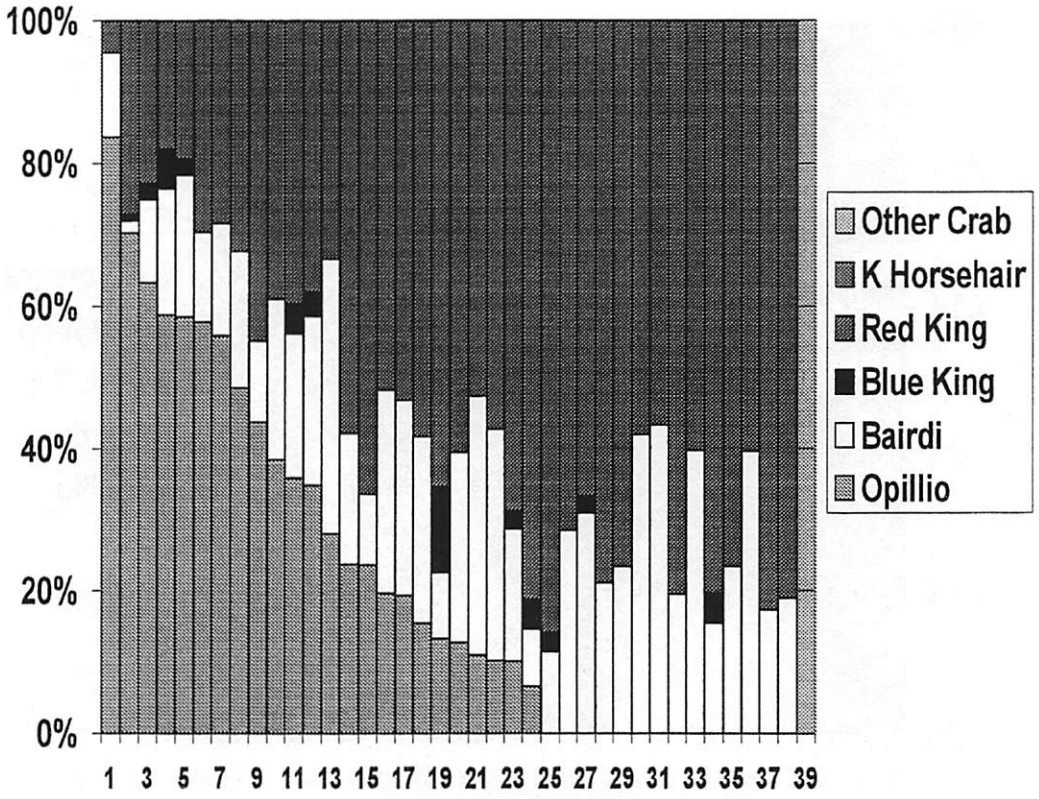
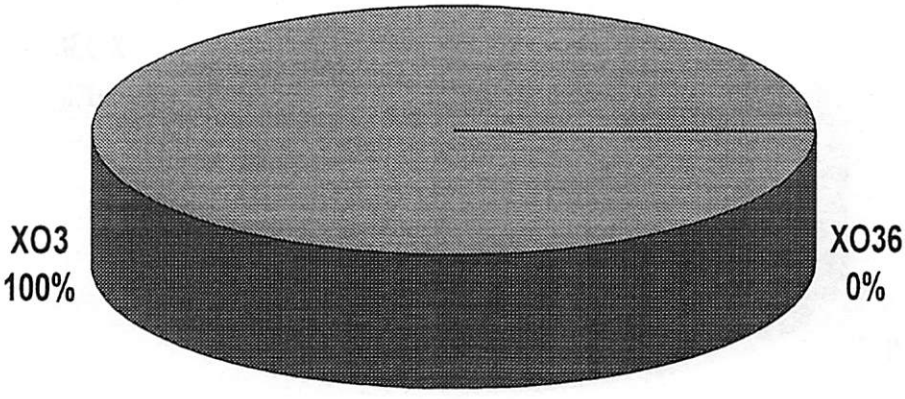


FIGURE 5. 1997
SHARE OF OPILIO REVENUE, XO3 AND XO36



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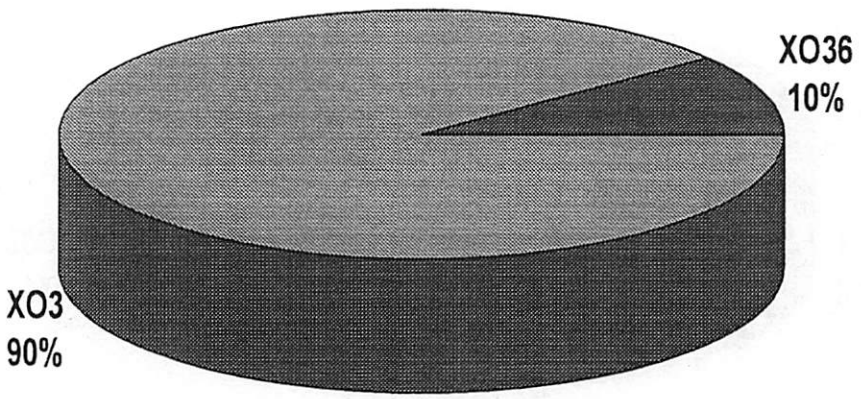

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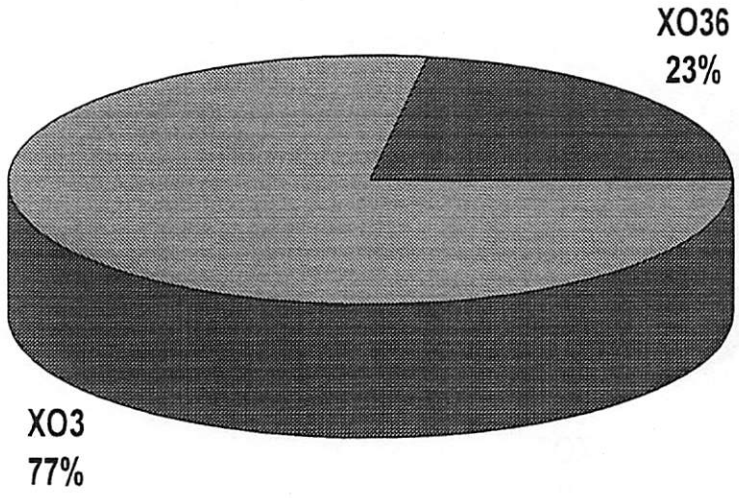

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SHARE OF OPILIO REVENUE, XO3 AND XO36

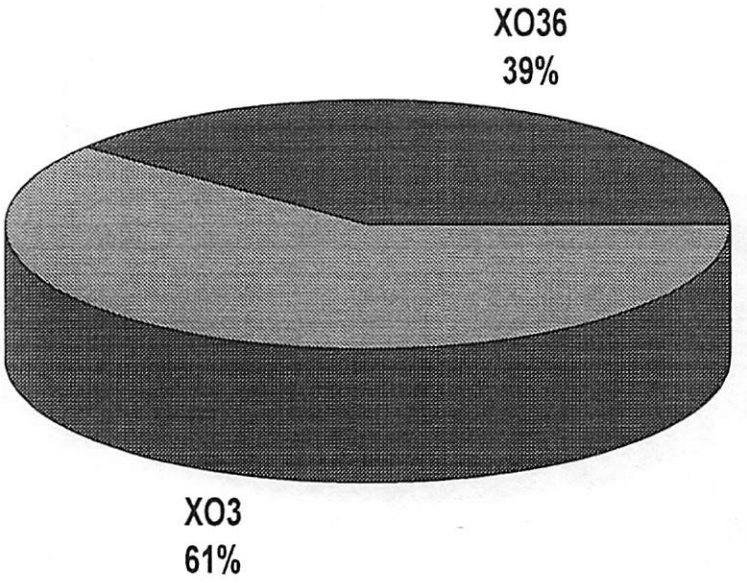
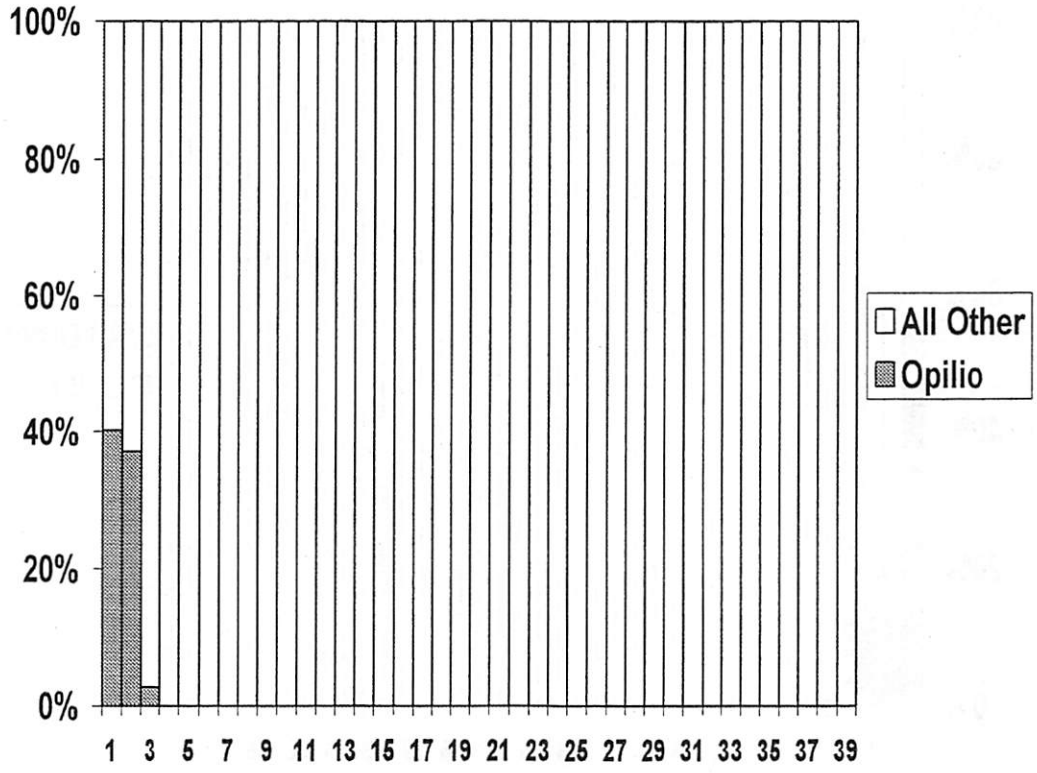


FIGURE 6. 1997
OPILIO AS SHARE OF TOTAL REVENUE, XO



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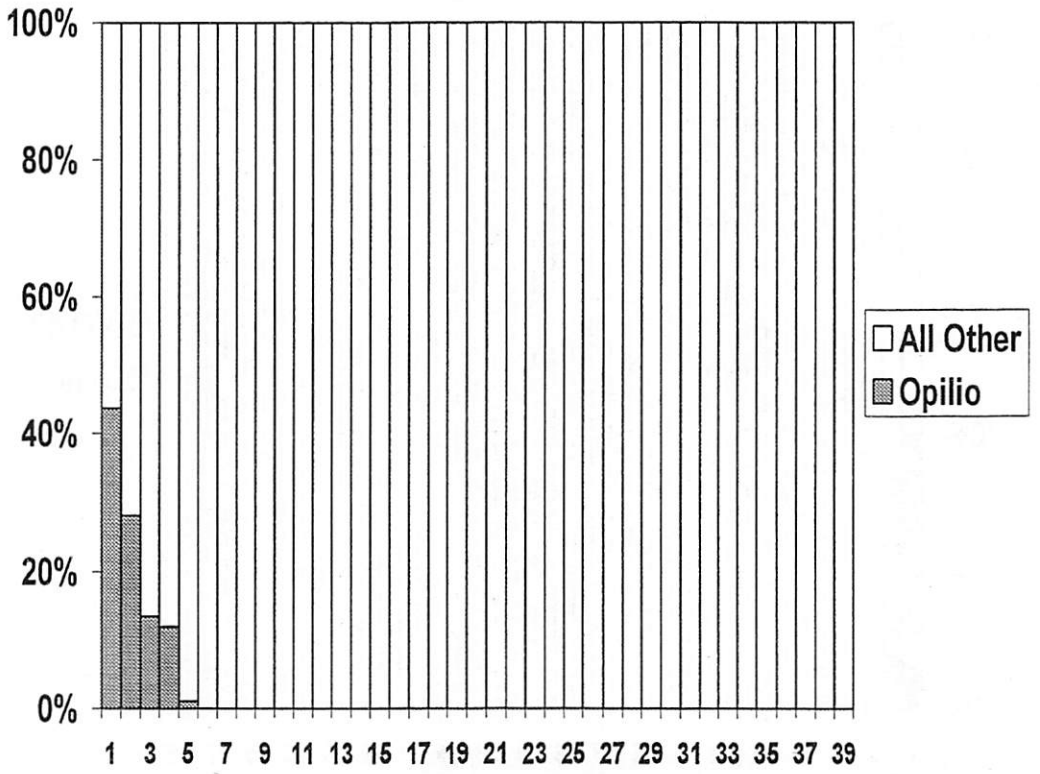

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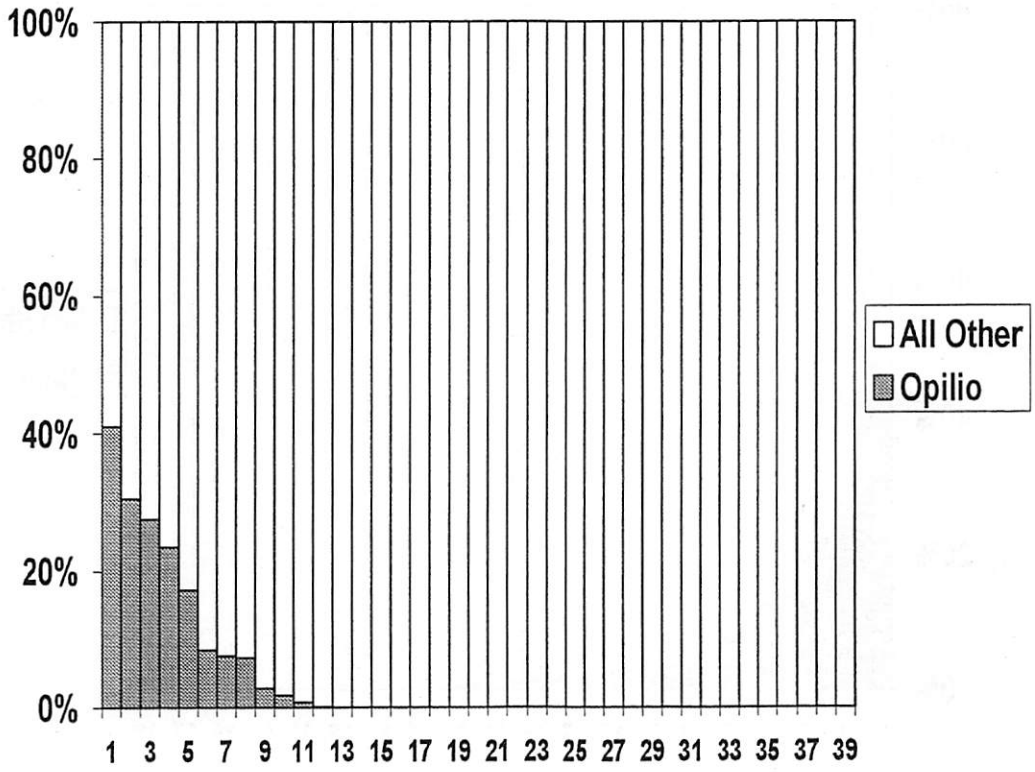

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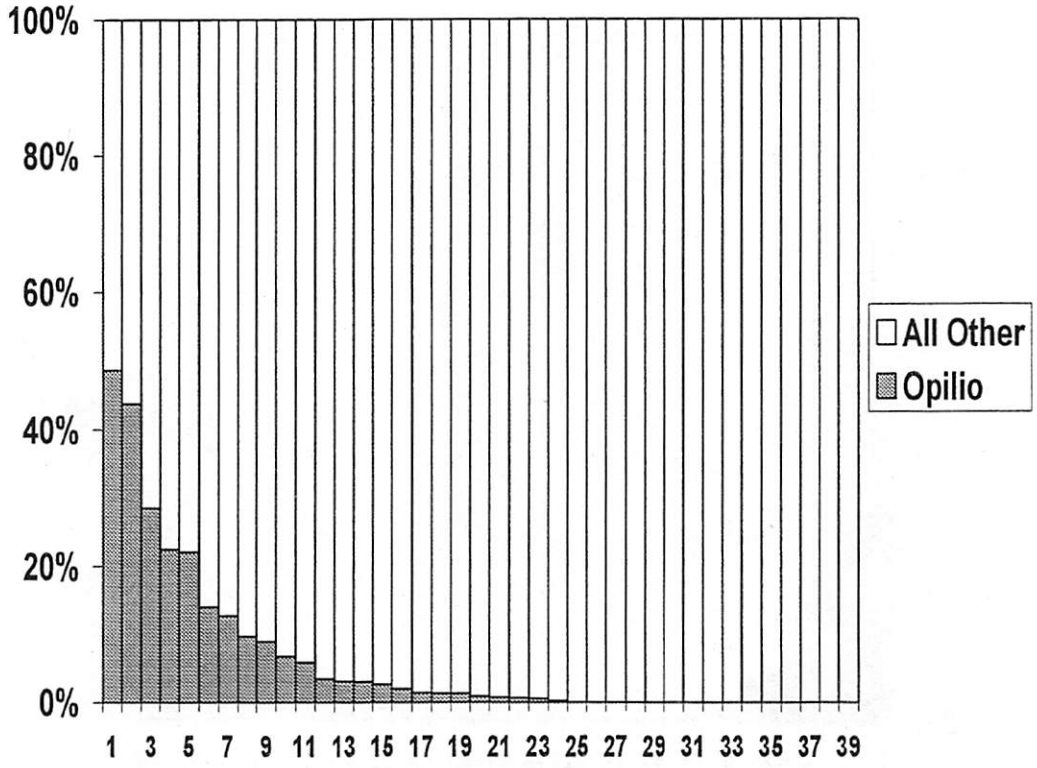


FIGURE 7. 1988-97
ANNUAL PARTICIPATION IN RED KING CRAB FISHERY, XO

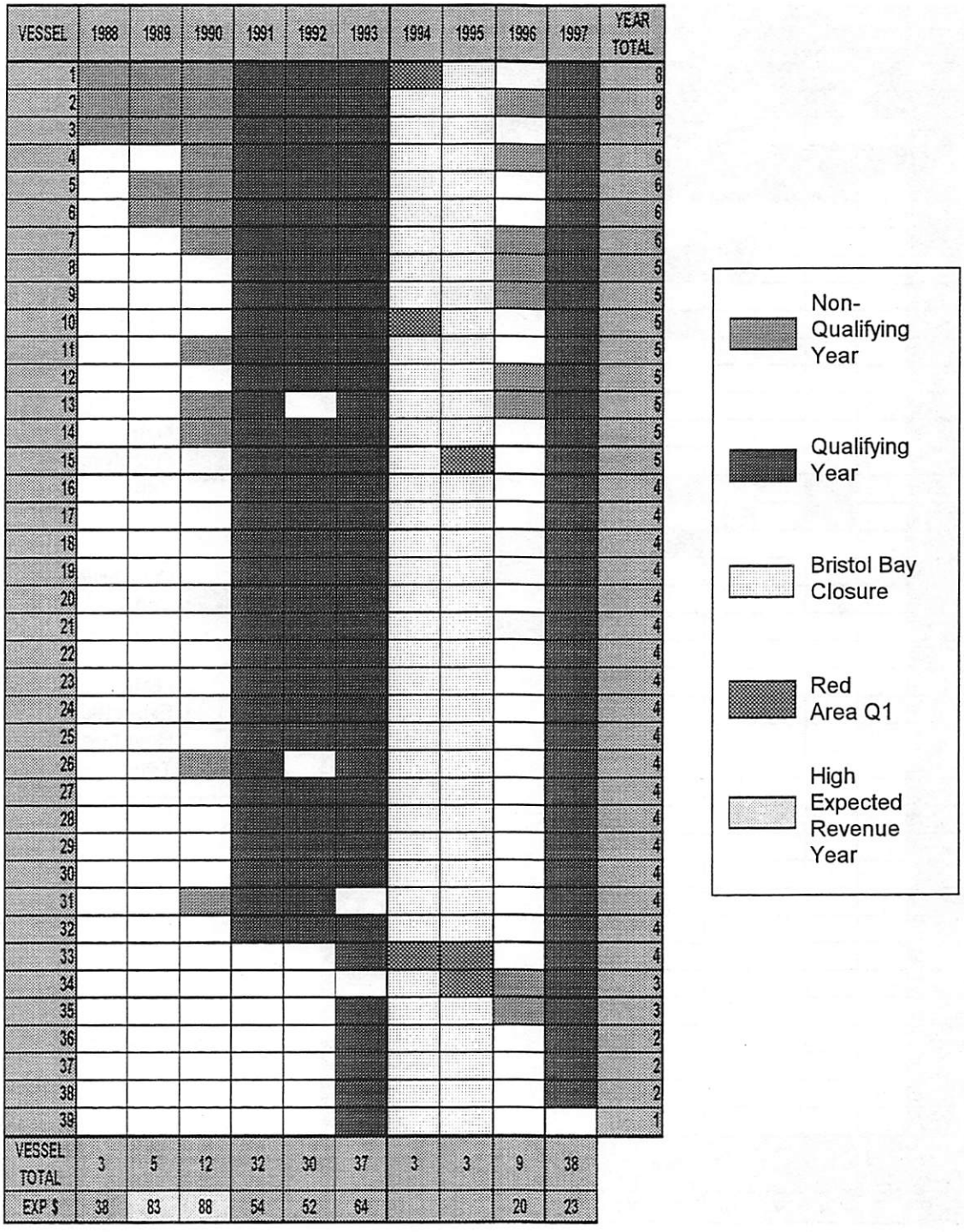
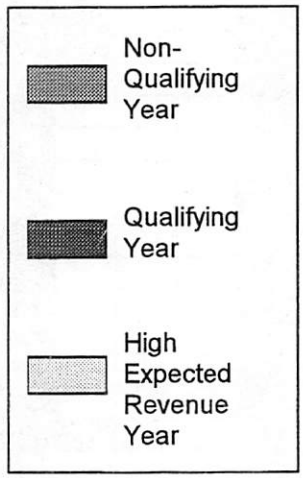


FIGURE 8. 1988-97
ANNUAL PARTICIPATION IN OPILIO FISHERY, XO

VESSEL	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	YEAR TOTAL
1											10
2											9
3											5
4											5
5											5
6											3
7											3
8											3
9											3
10											2
11											2
12											2
13											2
14											2
15											2
16											2
17											2
18											2
19											2
20											1
21											1
22											1
23											1
24											1
25											0
26											0
27											0
28											0
29											0
30											0
31											0
32											0
33											0
34											0
35											0
36											0
37											0
38											0
39											0
VESSEL TOTAL	3	6	4	8	10	9	14	9	4	3	
EXP $	85	99	89	158	167	155	138	135	67	92	



AGENT FOR:
Alaska Challenger
Bulldog
Husky
Labrador
Retriever
Tuxedni

ALASKA BOAT COMPANY

A Division of Wards Cove Packing Company

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Phone: 206/547-2100 • Fax: 206/547-5056
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C-3

AGENT FOR:
Alaska Rose
Bering Rose
Destination
Great Pacific
Sea Wolf

AMERICAN FI$HERIES ACT

24 April 1999

Mr. Chairman – Members of the Council:

My name is Ken Tippett and I work for Wards Cove Packing Co. as Fleet Manager of Alaska Boat Company. Alaska Boat Company is Agent for five trawlers and six crabbers. I address you today on various aspects of the American Fisheries Act.

Compensation for Inshore Catcher Vessels: PAGE 117 7.5.3
We manage two vessels that had substantial offshore catch history that now have a secure full-time inshore market. They are denied continued participation in the offshore sector due to enactment of A.F.A. It would be devastating to these two vessels to be unable to transfer their offshore catch history to inshore for the purposes of forming a co-op. The offshore sector at that time was the market for these vessels and they lost that history due to the vagaries of A.F.A. There were many inshore vessels that did deliveries of opportunity to the offshore sector between inshore rotations, etc. I can see justification for excluding those vessels with a minimum delivery cap. We also have a vessel that did that and his delivery was considered gravy at that time and should not be counted. We realize that if all vessels with offshore history brought that history ashore, it would "cost" the other inshore vessels an estimated 5.6% of their precompensation allocation. But that is nowhere near the 50% for one vessel and 66% for the other vessel's catch history that would be lost. We would recommend analyzing a higher delivery cap than the 1000 ton accumulative that has so far been analyzed. A 2,000, 3,000 or even 4,000 ton delivery cap would even be acceptable to sort out those that seriously fished offshore and lost out. A minimum total delivery cap of such magnitude would lower the impact on the other inshore vessels considerably.

Other vessels will say that these two vessels caught more offshore than vessels delivering inshore during the period in question. I can assure you this is not so. We have compared history with a comparable inshore vessel and that inshore vessel beat out one offshore vessel for both years and the other vessel one-year. The one-year the offshore vessel beat out the inshore vessel was 1996, the year that inshore vessels were on strike. While it is true that our two vessels did not generally deliver more offshore than comparable inshore vessels, we realize that may not be true across the board, and the analysis should look into that issue. No one should receive a windfall, but neither should boats with significant offshore catch history have that catch eliminated.

1996 Strike Year

This leads us into the question of what to do with the strike years. Even allowing us to pick two out of three years does not make it equitable for those vessels that lost a trip in 1996 because they were on strike. A fishing day was lost in 1995 and over Seven (7) days were lost in 1996, which is a complete rotation for Alyeska Seafoods, Inc. It was compounded by the fact that those vessels that did not tie up during price negotiations got an extra trip, so these vessels effectively have a two-trip advantage. Putting this into proper context those vessels that did not fish during price negotiations in 1996 will forever be penalized. Based on 1999 A season prices, a 500,000-pound vessel will be shortchanged over $46,000 per year and a 700,000-pound vessel over $64,000 per year at a minimum. The best two out of three years does nothing to compensate for this inequity.

Dooley-Hall Proposal

We feel that the Dooley-Hall proposal has some merit. Wards Cove Packing Co. has always maintained that individual vessels should be free to negotiate the terms and conditions under which they deliver product to the processor. We support analyzing the Dooley-Hall proposal for the basis for forming co-operatives. We would suggest that the Council be not too overly meddlesome in the actual by-laws of the co-ops beyond that proposed by Dooley-Hall and possibly a minimum number of vessels to form a co-op. We recommend that number to be five (5).

Crab and Groundfish Sideboards

We strongly feel that sideboards for participation in other fisheries be limited only to those vessels active in a co-op, during the time the co-opted fishery is open. Anything further than that becomes punitive to those vessels that opt to co-op. We do not feel that was the intent of the co-op provisions. We are sure that other fisheries will seek authority to co-op. This approach would work on those fisheries also. However, if the Council pursues those special interest sideboards, it will be a real nightmare when the other fisheries co-op.

Thank you

Ken Tippett

KAT/lw

Ken/Am Fish Act
4/24/99

EARL COMSTOCK

Testimony of the Fair Fisheries Coalition April 24, 1999

Mr. Chairman: The Coalition compliments the staff on the draft analysis, and fully supports putting the document out for public review with the following recommended additions or deletions:

- On page 167 the staff asks for direction with respect to whether or not the processing caps should apply only if the processor joins in a coop. These caps should apply regardless of whether or not an AFA eligible processor chooses to work with a coop. Section 211(c)(1)(B) directs the Council to recommend measures to protect non-AFA processors "from adverse effects as a result of this Act [the AFA] or fishery cooperatives..." The AFA processors have been given a 42 percent increase in pollock and a closed class, as well as the ability to work with coops. The increase and closed class are concrete benefits that apply irrespective of coops, and the traditional processing caps are needed to help mitigate the adverse impact of the increase and closed class on the non-AFA processors.
- The Coalition supports the AP recommendation that options 7 through 10 be deleted from the analysis of processing caps – applying individual caps would serve to protect the traditional processing share of the AFA processor from competition among AFA processors, which would be a further added benefit to those processors to the detriment of the non-AFA processors. The non-AFA processors must compete both with AFA and non-AFA processors to maintain their market share – the AFA processors should have to do the same.
- The Coalition strongly supports inclusion of a full analysis of the Dooley-Hall proposal. As the Regulatory Flexibility Analysis indicates, the existing provisions of

the AFA that tie inshore catcher vessels to a particular plant, or force the catcher vessel into the uneconomic option of losing catch history in the open access fishery, clearly harm independent catcher boats. It would make no sense to keep the Dooley-Hall proposal on a slower track because its adoption will have a fundamental impact on the regulations to implement cooperatives. The Council needs a full analysis to consider adopting Dooley-Hall in June, so they should preserve the option to take action on the proposal in June by including that analysis in the draft public document.

- The Coalition supports adoption of a comprehensive monitoring program, which includes information on processing and harvesting impacts from the AFA on State managed fisheries. The analysis should make clear that these fisheries will be included.
- In December the Council asked staff to examine the definitions to see if the AFA processors could expand their operations to other geographic locations and whether they could transfer their processing privileges. While there is some discussion of these issues on pages 31-38 (Chapter 4), and in the analysis with respect to entities and companies in the processing safeguards in Chapter 8, they are not squarely included in the analysis. The Coalition recommends that this discussion be expanded, and that the Council make clear that, so long as the closed class remains, inshore processors will not be able to expand their facilities to other locations or transfer their privileges to others without sale of the associated facilities that establish eligibility. The analysis should also make clear that for purposes of the AFA, the eligible shoreside processors are specific vessels and facilities, not the companies that own those facilities or vessels. This interpretation is the only one that will give meaning to

the replacement clause in section 208(f)(2), which permits the Council to recommend that catcher vessels be able to deliver to a non-AFA shoreside processor in the event of the "actual total loss or constructive total loss" of an eligible shoreside processor. Vessels can sink and facilities can burn to the ground, causing an actual or constructive total loss. There can never be the actual or constructive total loss of a corporation. Given that the closed class has been defended by the processors themselves as necessary to prevent further overcapitalization of the inshore sector, it would be contrary to that rationale to allow the AFA eligible processors to further overcapitalize by constructing or purchasing new facilities to process inshore pollock.

- The Coalition also supports the AP recommendation for a more detailed analysis of a 2 out of 3 year option for determining catcher vessel pollock history.
- Finally, the Coalition would like to once again state for the record its concerns about the allocation of scarce staff resources to development of AFA style coops and a closed class of processors for the Gulf of Alaska. The Council and the Secretary of Commerce do not have the legal authority under the Magnuson-Stevens Act to create a closed class of shorebased processors, and nothing in the AFA provides such authority. Further, the moratorium on IFQ programs in section 303 of the Magnuson-Stevens Act prohibits the Council from recommending to the Secretary of Commerce any set aside of fish for coops in the Gulf or elsewhere prior to October 1, 2000. Prior to conducting any further work in this area, the Council should ask NMFS to confirm the extent of what options a working group could realistically consider. It seems to the Coalition that the emperor has no cloths on this issue, and the Kodiak processors' interest in Gulf coops will radically diminish if there is no closed class.

Fishermen's Finest

Fishermen's Finest, Inc.

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TEL: (206) 283-1137 ■ FAX: (206) 281-8681

April 16, 1999

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

RE: American Fisheries Act Implementation - Sideboards
Agenda item C-3

Dear Chairman Lauber:

My company manages four H&G trawl and freezer-longline vessels operating in the open access and CDQ fisheries of the Bering Sea. We have long objected to building fences and subdividing the fishery and have consistently supported the Moratorium and License Limitation Programs over other limited-entry approaches. In accordance with this, we opposed pollock management provisions of the *American Fisheries Act* (AFA). However, since Congress chose to establish the pollock provisions and mandated that the Council protect the non-pollock fleet, we urge you to make those provisions meaningful.

At the last Council meeting pollock catcher-vessel interests, particularly those delivering to factory-trawlers, presented the outrageous suggestion that limiting their traditional catch of non-pollock species means something vague like limiting their "effort" or their "presence" during certain periods. These vessel owners are urging the Council to interpret the AFA as not intending to limit their actual harvest tonnage.

This is not the intent of the Act which clearly limits the activities of the pollock catcher vessels, all of which benefit by the specific allocations in the Act. The AFA allocations deprive the non-pollock fleet of fishing access year-round and whether or not pollock cooperatives are in effect, the pollock catcher-vessel fleet should be likewise bound by the AFA sideboards. To this end, looking at Attachment 1 to the February 1999 Council newsletter, **we oppose catcher vessel time restriction options 1, 2, 3, and 6; we support catcher vessel time restriction options 4 and 5**. Under determination of "Traditional Harvest Level" we support option c and suggest that it makes sense that sub-option 1, (average catch during AFA qualification years) is the reasonable approach.

Consistent with our past stance on allocation and limited-entry issues, we do not seek to get ahead through the implementation of the Act's sideboards. However, the pollock fleet chose to support the Act based on the agreement that they would forego expanding their harvest of

non-pollock species. The pollock fleet should be held to their bargain. The alternative is to transfer the overcapitalization problems the AFA sought to solve into the non-pollock fisheries.

It is imperative that NMFS develop and implement effective sideboards to protect the non-pollock fleet throughout the year. The Council can begin doing this by eliminating unreasonable alternatives that are contrary to the Act.

Sincerely,

Rudy A. Petersen

Helena Park