


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: September 22, 1989

SUBJECT: Inshore-Offshore Allocations

ACTION REQUIRED

Receive preliminary NOAA-GC legal analysis of allocation proposals and the Fishery Planning Committee report. Give further direction on developing and analyzing alternatives.

BACKGROUND

In June the Council reviewed proposals that had been received on the issue of inshore-offshore allocations. The Fishery Planning Committee was asked to develop alternatives during the summer and NOAA General Counsel was requested to provide a preliminary legal analysis. This analysis is item C-8(a).

The Committee met on September 6 in Anchorage and will meet again on September 25. The draft report of their earlier meeting is under C-8(b). They worked on a preliminary problem statement, drafted five general alternatives and recommended the following schedule of development:

September 1989	Alternatives approved for analysis beginning in October.
April 1990	Amendment package approved for public review.
June 1990	Consider final approval of allocation amendment.
July 1990	Commence Secretarial review.
January 1991	Implementation.

It is the Committee's intent that this schedule could be changed at any time. Because the Council would need to have proposals for review at this meeting if the schedule is adopted, special notices were placed in the agenda mailing and in the Federal Register seeking allocative proposals by Wednesday, September 27. The Fishery Planning Committee may have additional recommendations following its meeting on Monday.

The Council needs to define the problem it is attempting to resolve, adopt alternatives for analysis, and decide on a schedule. Comments and proposals recently received on this issue are under C-8 Supplemental.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
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AGENDA C-8(a)
SEPTEMBER 1989

September 5, 1989

MEMORANDUM FOR: Fishery Planning Committee

FROM: GCAK - Jonathan Pollard

SUBJECT: General Guidance on Inshore-Offshore Allocations

At its June, 1989, meeting, the North Pacific Fishery Management Council requested that this committee address the issue identified above. A number of proposals have been submitted by interested parties for the committee's consideration. This memorandum is intended to provide the committee with preliminary legal guidance in evaluating these proposals. Because the proposals are preliminary and vague in many important respects, it is not possible to provide a detailed legal analysis. However, this memorandum generally discusses many of the relevant legal issues.

At the outset, it is important to recognize that the Magnuson Fishery Conservation and Management Act does not establish an "automatic" preference to groundfish quotas for shore-based processors, or for fishing vessels that deliver to shore-based processors. Any contrary expressions of legislative intent could not overcome the plain language of the Act. Congress' definition of "United States fish processors" clearly includes both shore-based and floating processors, and nothing in the other provisions requires preference to one or the other of these components.¹ However, neither does the Act flatly prohibit conservation and management measures that might allocate fishing privileges among various United States fishermen processing at sea or delivering to shore-based processors, if such measures satisfy the other provisions of the Act.

Although the Act requires no single approach to the issue under consideration, it does establish national standards against which all conservation and management measures must be compared. Two of the national standards seem particularly relevant - national standard 4, respecting allocations, and national standard 5, relating to efficiency. Also, several of the proposal raise interesting questions concerning U.S. free trade obligations under the General Agreement on Tariffs and Trade (GATT). By emphasizing

¹ Magnuson Act section 3(25), 16 U.S.C. § 1802(25), defines "United States fish processors" as "facilities located within the United States for, and vessels of the United States used or equipped for, the processing of fish for commercial use or consumption."



these legal requirements I do not mean to imply that other legal standards - such as the requirement to achieve the OY on a continuing basis - may be ignored.

National Standard 4 - Allocations:

Magnuson Act national standard 4 provides as follows:

Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be

(A) fair and reasonable to all such fishermen;

(B) reasonably calculated to promote conservation; and

carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.²

National standard 4 prohibits discrimination between residents of different States. Because the persons likely to benefit most directly under any of the proposals are likely to be Alaska residents, it might be argued that all of the proposals would run afoul of this requirement. However, NOAA has in practice also considered the incidence of the burden imposed by regulations as well as the benefit in determining compliance with national standard 4. For example, in evaluating king and Tanner crab FMPs that provided for exclusive registration areas benefitting Alaskan communities adjacent to certain fishing areas, NOAA determined that such provisions do not "discriminate between residents of different States" as long as the adverse effect falls equally on similarly situated Alaskans and non-Alaskans. In that situation, the burdens imposed by exclusive registration areas fell equally upon resident and non-resident owners of large, mobile crab fishing vessels. A NOAA General Counsel opinion discussing the identical requirement of Northern Pacific Halibut Act section 5(c) reaches the same conclusion concerning certain proposals designed to protect

² Magnuson Act section 301(a)(4), 16 U.S.C. § 1851(a)(4).

developing halibut fisheries off western Alaska.³ Obviously, some proposals may be more problematic than others, but all must pass muster under this standard.

National standard 4 also requires that any allocation be fair and equitable, calculated to promote conservation, and carried out so that no particular entity acquires an excessive share of fishing privileges. It is fair to say that each of the proposals constitutes, in one way or another, an allocation or assignment of fishing privileges. Consequently, each of the proposals would have to be justified in terms of fairness and equity, conservation promotion, and possible monopolistic effects.⁴

National Standard 5 - Efficiency:

National Standard 5 provides as follows:

Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources: except that no such measure shall have economic allocation as its sole purpose.⁵

NOAA guidelines state that this standard "prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose."⁶ This standard requires that all conservation and management measures, including those addressed in the submitted proposals, must be justified in light of the biological, ecological, and social objectives of the FMP as well as its economic objectives.

³ See memorandum entitled "Council Authority to Adopt Exclusive Registration Areas and Vessel Size Limits Under Section 5(c) of the Halibut Act in Order to Provide Special Protection to Developing Halibut Fisheries by Rural Alaskans," by Patrick J. Travers, NOAA Alaska Regional Attorney, dated December 4, 1983. As far as I am aware, this interpretation of national standard 4 has never been tested in court.

⁴ See NOAA Guidelines for Fishery Management Plans at 50 C.F.R. § 602.14(c)(3).

⁵ Magnuson Act section 301(a)(5), 16 U.S.C. § 1851(a)(5).

⁶ 50 C.F.R. § 602.15(e).

GATT:

Generally speaking, requirements that fish be landed in a particular location for processing may run afoul of international free trade obligations under GATT. For example, a Canadian law requiring fish caught off Canada to be landed in Canada for processing was successfully challenged by the United States as an unfair trade restriction. Obviously, a similar restriction imposed by the United States would be subject to a similar challenge, particularly if it had the effect of prohibiting U.S. fishermen from delivering groundfish harvests directly to Canada for processing. Once again, some of the proposals seem more problematic than others in this regard. In particular, establishment of a quota that only may be landed for processing at a particular place in Alaska may be most suspect. However, other proposals that simply establish an at-sea processing quota without requiring landing at a particular place may be more defensible under our GATT obligations.

Finally, several of the proposals suggest limiting access and prohibiting roe stripping as desired measures. Perhaps these proposals should be considered by the other committees and plan development teams that are currently exploring these issues.

cc: Jay Johnson, Margaret Frailey, Craig O'Connor
Steve Pennoyer, Jim Brooks, Dale Evans

[Excerpted from Summary of Fishery Planning Committee, September 6, 1989; complete summary found under agenda item C-7(c).

Onshore-Offshore Allocations

Jon Pollard presented the Committee with a brief legal evaluation of the proposals received from industry. He stated that National Standards 4 and 5 would be of particular concern in Council deliberations. He also reminded the Council of GATT implications. The Council can restrict foreign processors but cannot tell fishermen where to land their fish.

The Committee began by attempting to define the problem(s) which need to be resolved. The biological concern of a limited resource being pursued by too many vessels was stated. To this was added the possibility of diminishing the conservation of the stocks biomass due to excess effort and the social impacts resulting from decreased season length. It was noted that changes in use patterns of a resource may upset the balance and increase the possibility of management error. There needs to be stability and continuity for participants, their communities, the entire industry, and investments. The necessary changes in management, in response to changes in use, could be too slow in coming and the resource could be put in jeopardy.

The economic aspects of the problem were discussed from several sides. Short seasons caused economic and social hardships to Kodiak this year. This is a specific example of a general trend which may be happening to coastal fishing communities near the resource. All this is a symptom of a highly mobile fleet competing against stationary processing facilities for a limited resource. A major issue is how much protection the Council should give to shore-based processors or whether it would be better to just leave survival to the fittest. The Council may need to determine if suitable niches exist for each sector to reduce operational problems.

The Committee was provided with a copy of the Council's Comprehensive Goals. Although some may conflict, several were seen to be directly applicable to the situation as it now exists. The specific goals noted were:

- GOAL 2: Ensure that the people of the United States benefit from optimum utilization of the nation's publicly-owned fishery resources.
- GOAL 3: Promote economic stability, growth and self-sufficiency in maritime communities.
- GOAL 4: Achieve optimum utilization by the U.S. fishing industry of fishery resources in the Fishery Conservation Zone off Alaska.
- GOAL 5: Minimize the catch, mortality, and waste of non-target species, and reduce the adverse impacts of one fishery on another.

GOAL 7: To the extent consistent with other comprehensive goals promote the economic health of the domestic fishing industry; encourage the profitable development of underutilized resources; discourage unneeded investments in fisheries with excess harvesting capacity.

The thought was expressed that the problems went beyond Gulf pollock and could touch on all species and aspects of the industry. It was generally agreed that the problem was or soon would be pervasive. It was also acknowledged that a great deal of economic information from and about the industry would be necessary to fully analyze the implications of various alternatives.

The Committee considered several alternative problem statements and will complete that examination at its September 25 meeting.

The Committee reviewed industry proposals (Attachment 1) and identified several general alternatives:

1. Status quo with no change in regulations to address the problems.
2. Grant priority access to shore-based deliveries and allocate the TAC accordingly.
3. Create inshore-offshore allocations by dividing the quota up between harvesters delivering to these locations. This could be done with or without specific areas of operation.
4. Prohibit catcher/processors in the Gulf of Alaska and reserve a certain portion of the BSAI resource and area for harvesters delivering onshore.
5. Use traditional tools to extend the seasons and preserve product flow to all sectors of the industry.

The Committee recommended that proposals in Attachment 1 dealing with limited entry (#4,5) be considered with other such programs now being reviewed by the Council. In addition, #7 is being dealt with already in the roe-stripping amendment.

The Committee finished with several recommendations. The staff of all involved agencies should work to gather and organize baseline information. The Council should develop alternatives and finalize its definition of the problem at its September meeting. The public should be notified that proposals would be needed for the September meeting. A draft document, possibly an EIS, would be ready for approval at the April Council meeting and the Council should consider final action in June 1990 with implementation intended for 1991. The Committee intends that this schedule could be changed at any time.

The Committee also noted the need to define operational areas and communities where the problem might arise. The Council will need to know about the seasonal distribution of important groundfish stocks.



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September 15, 1989

Mr. Joe Blum
Chairman, Fisheries Planning Committee
North Pacific Fisheries Management Council
P.O. Box 103136
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Anchorage Alaska 99510

RE: Shoreside Preference

Dear Joe:

Let me begin by thanking you for your thoughtful approach to the questions being considered by the Fisheries Planning Committee. Careful, step-by-step guidance is exactly what this process demands. We appreciate your leadership.

After listening to the committee's deliberations at the recent Anchorage meeting, we came away firmly convinced that once you strip away the rhetoric and hysteria, there is no clearly defined management problem. For months now, we have watched the proponents of shoreside preference maneuver, coalesce and shape proposals to their liking without ever clearly defining the problem. Essentially, proponents of shoreside preference have been taking a shotgun approach--with factory trawlers at the mean end of the barrel.

We believe any proposal that would officially relegate a major portion of the U.S. fleet to second class citizenship would be a form of limited entry. However, if a new order of haves and have-nots is to be created, other criteria should also be considered. Who pioneered the domestic groundfish industry? Who has the largest investment? Who is the most competitive on the world market?

The rationale behind the creation of special allocations for shoreside processors simply doesn't hold water. Concerns about premature quota utilization, conservation and overcapitalization won't be alleviated by a change in management's allocation system. Furthermore, as Hugh Reilly, president of Western Fisheries in Dutch Harbor wrote in 1987, "We caution the NPFMC and the Administration of the established folly of an industrial

policy in which the government tries to pursue a role of selecting an industry's winners and losers. This is the function of the marketplace."

Statement of the Problem

As we see it, the issues driving the debate can be distilled down to several succinct real and false statements, including:

1. Fishing and processing in the DAP groundfish segment will be stopped as quotas are reached - some before the end of the fishing year.

The real problem worrying advocates of shore preference is premature quota utilization. This is a constant limiting factor in fisheries under quota management. But shore processors have no exclusivity when it comes to this concern. Even if there were no sea processing component, ultimately fisheries run up against the quota, fisheries stop and someone makes less money than if the fishery had not stopped. The Gulf and the Bering Sea have been under quota management since the plans were first developed in the late 1970's.

The quotas have been relatively constant since the inception of Council management of the North Pacific groundfish stocks with the exception of Gulf pollock, which fell dramatically three years ago. Until now, the DAP fisheries have had few quota closures. Now we have successfully Americanized the fisheries largely through sea processing. When quotas are reached, we American fishermen and processors must stop our operations. When foreign companies experienced such closures in the Bering Sea, they may have had opportunities to undertake fisheries elsewhere, either in their homeland or other distant nations. That opportunity is not available to the U.S. sea processors. These vessels were developed with the express purpose of fishing the North Pacific groundfish fisheries on a year around or nearly year around basis. Other fisheries or grounds are not available.

We are concerned that the Committee may erroneously accept the problem statement as framed by the proponents of shore preference, and in so doing, create a preferred segment of the groundfish industry. Perhaps the preferred class should be based upon other criteria. There are many other divisions in the fishery which may deserve consideration for such a preference. For example: old processing entrants vs. new processing entrants; large investment vs. small investment; large percent of income from groundfish vs. small; better quality vs. lesser quality; industrial vs. non-industrial; new processing technology vs. old technology and so on.

We have watched with understandable concern as the shore

positions were crafted. Some bring factory longliners into the favored class and others bring in motherships, so long as certain conditions are met. We believe the shore preference proposals attempting to create a favored class which happens to include the proponents in their entirety are insensitive and greedy. They do not address the issue of premature quota closures. They simply select those who will be closed first. All participants in the industry are hurt by premature closures, not just the shore plant component.

A second statement of a problem is one to which the proponents of shore preference might not readily admit, but which we believe is fundamental in their proposal:

2. The diminishment of the TALFF and JVP sectors removes the level second priority participants who have previously served as a quota buffer to the first priority.

The buffer advantage has served to stabilize the growth of the DAP segment. As an industry, we have now expanded to the extent that there is now no buffer and no subordinate class. Shore preference advocates are seeking to recreate the buffer by establishing a favored segment of the domestic groundfish industry. Qualifications for membership in the favored segment are based on arbitrary criteria and inaccurate assumptions.

False Statements of the Problem

We are concerned that the Council might follow a course defined by misrepresentations of the issues. Consider the following false statements of the problem:

False statement: The large sea processing fleet will cause damage to the conservation of the groundfish stocks.

Real statement: Large fleets fishing in an unregulated fashion will harm conservation.

To further their cause, some shore preference advocates are couching the issue to be one of conservation - probably in order to free themselves of the constraints of "allocation only" measures that are prohibited by the Magnuson Act. In large measure, it has been our boats that have developed the DAP bottomfish industry, on the fishing grounds and in the marketplace. Overall, we have performed in exemplary fashion in both areas and have established an admirable track record. Certainly there are conservation issues associated with the groundfish trawl fisheries, but the suggestion that these problems are unique to sea processors or that these issues can't

be managed by techniques other than a wholesale reallocation of resource access is misleading.

False statement: Mobility of the sea processors is a problem.

Real statement: Mobility of the groundfish processors provides the flexibility to provide a quality product that helps make the United States competitive in the world groundfish market.

All segments of the industry have competitive limitations. The Council should challenge two premises: 1) Competitive disadvantages should be equalized by regulation, and 2) Shore plants do not have the mobility of sea processors given the history of Alaskan fisheries such as salmon, crab and herring.

The shore preference proponents seek to distinguish themselves by their claimed lack of mobility by suggesting they are not competitive vis-a-vis the mobile processing fleet. The proposed remedy is to place the mobile fleet or certain elements of the mobile fleet at a newly created regulatory disadvantage. We suggest that this scheme is not only anti-competitive and anti-technological, but also unethical in view of the prior investment of the sea processors.

A comparable request by sea processors might seek relief because of the space advantages that shore processors have or because of the smaller cost of capitalizing the processing facility. Our segment of the industry recognized the strength and weakness of our investments and are quite willing to live with them. Clearly the shore component cannot claim surprise at the nature of the development of the industry. In all fairness, they cannot now suggest that the major tenets which attracted the investment into the American groundfish industry should now be abandoned. We are at the peak of the most significant economic growth in American fishing history.

Furthermore, the contention that shore processors won't be able to secure product for their plants while competing with our boats is false. Several large catcher vessels with hauling capacities up to 400 tons have been built for shore processing plants. More are on the way. These vessels are quite capable of catching and delivering fish from virtually the entire Bering Sea and much of the Gulf of Alaska. They were not built or converted under the assumption that they would have exclusive access to the resource. They are being built to take advantage of an opportunity in the marketplace--the same as catcher/processors.

Envisioning what the Shore Preference Proposals Might Do

The two major proposals on the table are by Kodiak and Dutch Harbor shore processors. We feel the proposals are irresponsible and can only be characterized as a grab for the fishery resources. We feel that they should be rejected by the Council, even for public review, because they are proposals that would turn the whole Americanization process on its head. It is the sea processing sector that has developed and matured under the present ground rules developed under the Processor Preference Amendment in 1978. Now we get the rug pulled out from under our feet?

The Kodiak proposal seeks to create a scheme in which factory trawlers are subordinated to a "mop up" position after the preferred class has utilized what it needs. It seems terribly ironic that fishermen and processors from Kodiak, that bastion of animosity toward forced limitation of effort, should now be lining up to create an elite element of the industry. The winners and losers from the Kodiak proposal are easy to indentify.

The Dutch Harbor processors proposal is for an exclusive fishing area which would totally exclude the factory trawlers. These are the primary pollock fishing grounds utilized by the American pollock fleet. It is an area developed and historically used by factory trawlers for pollock fishing. The idea of exclusive access to this area was considered repugnant when proposed for joint venture operations, vessels having a clear second status under the 1978 Processor Preference Amendments. Now interests in Dutch Harbor are demanding discrimination against their co-equal American sea processors.

It is difficult to consider these proposal with anything but a sense of dismay. The result could be the total loss of the \$1 billion investment from the sea processors. The changes would also result in the destruction of the North Pacific groundfish industry as the world class fishery it now is.

Looking at the inherent unfairness of the shore preference proposals

Aside from looking at any aspect of the merits of the shore preference proposal, one needs to consider the history of the development of this fishery. Under the existing regulatory structure, the foreign flag sea processing industry was converted from foreign sea processors to U.S. flag sea processors. The price for this conversion is significant. The investment in the sea processing segment of the bottomfish industry is estimated in a survey by Coopers and Lybrand to surpass \$1 billion dollars. Over 6500 American jobs have been created. We now have a "state-

of-the-art" processing industry in the American fisheries. It is not anticipated, or planned. It is here.

In seeking a preference for shore processors, the proponents fail to complete a necessary informational item under the Council's required format. The item requires a statement of the "foreseeable impacts of the proposal." Surprisingly the Dutch Harbor shoreplants foresee little impact on those to be denied access to the large exclusive zone they propose. Their statement regarding impact is:

When the overall Bering Sea/Aleutian Islands pollock quota is reached, the fishery will close.

The proposal is silent as to the impact of taking the sea processors off of the traditional and most productive fishing grounds - grounds that were developed by the sea processors.

The Kodiak processors through the Coastal Coalition shows a similar insensitivity for the effects of their proposal on the unfavored class. The stated impact from their proposal to place sea processors in a second priority status is:

This proposal does not create new problems. It does protect the shorebased operations and the resources on which they depend from the inevitable problems of an over capitalized factory trawler fleet.

Nothing is said as to the anticipated fate of those excluded from the new favored class. These proposals should be returned to the proponents. The Council should not permit them to release the guillotine without facing the obvious results.

Prior history of the DAP development sheds light on the issue

This is not the first effort by shorebased processors to create an exclusive fishery. In 1987 these same processors attempted to have the government draw a protective circle around Dutch Harbor. At that time many of those now advocating shore preference were involved in sea processing and stated their opposition to the government. Furthermore, in 1987 DAP shore and sea processors were successful in preventing the reflagging of foreign built processing ships. During the debate over this issue many statements were made about the merits of the growth of sea processing and about the problems associated with special economic allocations. We offer some of them for your consideration.

Frank Bohannon -

"Eliminating an option to increase at-sea processing is not the way to go. Legislation will not change the

location of the Bering Sea groundfish resource, decrease its perishability or increase the world price for the processed product. Those realities are fixed and drive the economics of the harvesting and processing industry in this fishery. On the other hand, we can adopt legislation that will keep every viable option for increased Americanization open and contribute to the development of the U.S. industry. That is the aim of AHSFA's proposals. Testimony of Frank Bohannon, American High Seas Fisheries Association, before the U.S. Senate Commerce Committee on the Anti-reflagging legislation

Chris Blackburn, Alaska Groundfish Data Bank

"Only a handful of Alaska plants are processing any substantial quantity of groundfish - three which worked under state or federal grants and the two Dutch Harbor surimi plants which are Japanese financed as part of and industry 'fish and chips' agreement.

"Alaska's failure to participate in the processing and harvesting of the abundant groundfish stocks off its shores appears to be the result of past policies designed to protect Alaska coastal communities and new policies which discourage fisheries investment in Alaska.

"Any processor, before making multi-million dollar investments, needs assurance that the state cannot arbitrarily close down the fishery." Resource Review September 1986

"The only problem identified was that Dutch Harbor vessels weren't getting enough groundfish and the proposal was simply to close so much area vessels would 'be forced' to deliver shorebased.

'Forcing vessels' is a dangerous precedent and certainly not one suggested when floating processors in Kodiak deprived the shorebased plants of substantial amounts of king crab, nor will it be a viable solution as the growing fleet of the U.S. floating groundfish processors and factory trawlers begin to compete with shorebased plants for vessels and product." Letter from Chris Blackburn to Anthony Calio dated February 16, 1987

Al Burch, Alaska Draggers Association - "Alaska Draggers has years of experience with all sorts of exclusive registration areas, exclusive area, closed areas and every other imaginable method designed to make one group competitive at the expense of another

group. Their proposed 100-mile closure around Dutch Harbor is just another in a long line of efforts to promote inefficiency under the guise of equalizing competitiveness.

"It is our experience that anti-competitive measures only result in assuring that the U.S. industry doesn't develop the resources to be competitive. Letter from Al Burch to Dr. Anthony Calio dated February 18, 1987

Hugh Reilly, President, Westward Fisheries - "We are dedicated to the continued economic and commercial solution of the Pollock requirements of the new Surimi plants in Dutch Harbor. We are vehemently oppose to legislated solutions -- which make no more sense in the fishing industry than they do in any other industry. And we caution the NPFMC and the Administration of the established folly of an industrial policy in which the government tries to pursue a role of selecting an industry's winners and losers. That is the function of the marketplace. Letter from Hugh Reilly, President, Westward Trawlers, Inc. to Anthony Calio dated February 18, 1987

Dave Harville, Kodiak and Western Fisheries - "I want to point out that the U.S. at-sea catcher fleet developed before the near shore fleet because there were not shore-based markets available. I am one of the many vessel owners who did everything possible, including giving away fish to shorebased processors, to stimulate shorebased development. But I also went through four shorebased bankruptcies attempting to bring fish ashore." Testimony before Subcommittee on Merchant Marine of the House Merchant Marine and Fisheries Committee - April 23, 1987

AFTA's proposed alternative

The kind of allocation which is being sought is defacto limited entry. The Council should treat it as such. Such allocations should be made on the basis stated in the Act for limited entry which is designed to assure fairness. The allocation scheme that is proposed to provide the relief that shore processors are seeking is exclusionary by its very terms. The vessels which would be excluded are identifiable at this point. Their operations would be virtually wiped out under such an allocative scheme.

AFTA proposes that if sea processing operations with existing investment were to be crippled by the shore preference allocative

action by the Council, a buy back program (either government or industry funded) should be undertaken to compensate fishing businesses and employees for this dramatic shift in government policy.

We believe that were the Council to undertake an allocative scheme, then the principles guiding the allocation be the degree of investment and past participation in the North Pacific groundfish fisheries, the dependence of the operation on the groundfish fisheries, the economic benefit to the nation, the contribution of the operation to inexpensive quality seafood for the consumer, the employment opportunities offered, as well as the impact on the many communities and individuals that the fishery benefits.

Finally, it is commonly known that no American business ever distinguished itself by sitting on the shore waiting for the tide to come in. The government should not foster this principle now.

Sincerely,

Edward D. Evans

Edward D. Evans
Executive Director

CC: John Peterson, NPFMC
AFTA membership



Southwest Alaska Municipal Conference

Putting Resources to Work For People

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SEP 21 1989

September 21, 1989

Mr. Clarence G. Pautzke, Executive Director
North Pacific Marine Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Clarence:

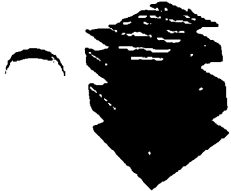
Enclosed are the onshore-offshore groundfish management proposals from the Southwest Alaska Municipal Conference. Please include these proposals in the discussions at the September meeting. Thanks.

Sincerely,

SOUTHWEST ALASKA MUNICIPAL CONFERENCE

Jerome M. Selby
President

JS:mw



Southwest Alaska Municipal Conference

Putting Resources to Work For People

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SEP 21 1989

GROUND FISH MANAGEMENT PROPOSAL Gulf of Alaska

1. Definition: Factory Trawler

For purposes of this regulation a factory trawler is defined as any trawl vessel which both catches and freezes or otherwise processes groundfish; or any vessel operating outside the baseline which receives fish from other trawl vessels.

A vessel or operation, after receiving its designation as shorebased or factory trawler for purposes of this regulation, may not change its designation or mode of operation without approval from an official oversight board or committee complying with all Alaska and federal administrative procedures.

2. All factory trawlers shall be banned from fishing or processing in the Gulf of Alaska, except as specifically provided for by the North Pacific Fishery Management Council and the Secretary of Commerce.

3. The Council and the Secretary may grant permission for factory trawlers to fish and process in the Gulf of Alaska in response to a written request from an operator or group of operators of such vessels. The request shall include an explanation of the area to be fished, the level of observer coverage, and the amount of target species and bycatch species to be harvested and/or processed.

4. In deciding whether to allocate any or all of the fish requested by factory trawlers, the Council shall take into consideration, among others, the following factors:

a. The extent to which the bycatch levels being sought would deplete the total bycatch levels allocated in the Gulf of Alaska;

b. The extent to which such factory trawler operations may result in a high catch per unit effort of bycatch and prohibited species;

c. The potential for localized depletion of target, bycatch, and prohibited species in the area or areas to be fished;

d. The capability of federal or state resource agencies to effectively manage and monitor the harvest in conformity with any harvest limitations imposed by the Council and the Secretary;

- e. The availability of observer data on fish stocks in and adjacent to the proposed area to be fished;
- f. The percentage of the TAC for each target species already harvested in the Gulf of Alaska; and
- g. The potential for significant disruptions of fishing operations of domestic fishermen delivering to onshore fish processors.

Objectives of Proposal:

To allow control of the at-sea processing fleet to prevent overfishing, localized depletions, excessive bycatch of halibut, crab, salmon and herring, pulse fishing at a rate which is unmanageable and factory trawler preemption of access to the resource.

Justification for Council Action:

The Council is charged with management and conservation of the stocks within its jurisdiction. The Council is also charged with deciding any allocation issues brought before it.

Foreseeable Impacts of Proposal:

Control of pulse fishing, ability to spread effort over the entire range of a stock, control of bycatch rates in relation to target species catch, regulating the harvest rate so that management can track catches in a timely manner and assuring equitable access to the resource by all users.

Possible Alternative Solutions:

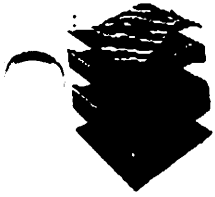
Blanket prohibition of factory trawlers in biologically sensitive areas or areas already fully utilized by other segments of the industry.

Supportive Data:

Nearly 80% of the 1989 Gulf of Alaska pollock harvest was taken by factory trawlers in two weeks out of only two limited areas. The 1989 Gulf pollock quota was taken so rapidly that management was unable to track the catches and overfishing resulted.

Lack of data on bycatch of halibut, crab, salmon, herring and black cod in the trawl fisheries threatens these stocks.

Even with observers the Council currently has no regulations allowing it to control fishing patterns to minimize bycatch.



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Putting Resources to Work For People

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GROUND FISH MANAGEMENT PROPOSAL Bering Sea

1. Definition: Factory Trawler

For purposes of this regulation a factory trawler is defined as any trawl vessel which both catches and freezes or otherwise processes groundfish; or any vessel operating outside the baseline which receives fish from other trawl vessels.

A vessel or operation, after receiving its designation as shorebased or factory trawler for purposes of this regulation, may not change its designation or mode of operation without approval from an official oversight board or committee complying with all Alaska and federal administrative procedures.

2. All factory trawlers shall be banned from fishing or processing in the Bering Sea in the area inside of 168 degrees through 163 degrees west longitude, and 56 degrees north latitude south to the Aleutian Islands chain.

3. The Council and the Secretary may grant permission for factory trawlers to fish and process in the above described area in response to a written request from an operator or group of operators of such vessels. The request shall include an explanation of the area to be fished, the level of observer coverage, and the amount of target species and bycatch species to be harvested and/or processed.

4. In deciding whether to allocate any or all of the fish requested by the factory trawlers, the Council shall take into consideration, among others, the following factors:

a. The extent to which the bycatch levels being sought would deplete the total bycatch levels allocated in the Bering Sea;

b. The extent to which such factory trawler operations may result in a high catch per unit effort of bycatch and prohibited species;

c. The potential for localized depletion of target, bycatch, and prohibited species in the area or areas to be fished;

d. The capability of federal or state resource agencies to effectively manage and monitor the

harvests in conformity with any harvest limitations imposed by the Council and the Secretary;

e. The availability of observer data on fish stocks in and adjacent to the proposed area to be fished;

f. The percentage of the TAC for each target species already harvested in the Bering Sea; and

g. The potential for significant disruptions of fishing operations of domestic fishermen delivering to onshore fish processors.

5. For all vessels, start the pollock harvesting season on a date no earlier than April 1 and no later than on June 1. If there is sufficient pollock quota remaining to provide for a fishery during the roe season (January 1 to March 15), the above described zone may be opened to all harvesting and processing vessels; provided, however, that the Council and the Secretary adopt measures to strictly regulate the percentage of the pollock TAC that can be harvested during the roe season.
6. Require the full utilization of all pollock harvested in the above described area. Heads, frames, and fish under 12 inches must be used for meal.

Objectives of Proposal:

To allow control of the at-sea processing fleet to prevent overfishing, localized depletions, excessive bycatch of halibut, crab, salmon and herring, pulse fishing at a rate which is unmanageable and factory trawler preemption of access to the resource.

Justification for Council Action:

The Council is charged with management and conservation of the stocks within its jurisdiction. The Council is also charged with deciding any allocation issues brought before it.

Foreseeable Impacts of Proposal:

Control of pulse fishing, ability to spread effort over the entire range of a stock, control of bycatch rates in relation to target species catch, regulating the harvest rate so that management can track catches in a timely manner and assuring equitable access to the resource by all users.

Possible Alternative Solutions:

Blanket prohibition of factory trawlers in biologically

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P.7

sensitive areas or areas already fully utilized by other segments of the industry.

Supportive Data:

Nearly 80% of the 1989 Gulf of Alaska pollock harvest was taken by factory trawlers in two weeks out of only two limited areas. The 1989 Gulf pollock quota was taken so rapidly that management was unable to track the catches and overfishing resulted.

Lack of data on bycatch of halibut, crab, salmon, herring and black cod in the trawl fisheries threatens these stocks.

Even with observers the Council currently has no regulations allowing it to control fishing patterns to minimize bycatch.



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AFTA'S PROPOSALS FOR THE "SHORE PREFERENCE" ISSUE

OUR PRIMARY APPEAL TO THE COUNCIL IS THAT IT NOT PROCEED WITH THIS EXERCISE AS AN ONSHORE/OFFSHORE ALLOCATION PROCESS. A MUCH BRADER RANGE OF ALTERNATIVES SHOULD BE REVIEWED ONCE THE COUNCIL COMES TO A CONCLUSION ON THE NATURE OF THE PROBLEM.

IF THE COUNCIL IS GOING FORWARD TO EXAMINE POSSIBLE SOLUTIONS TO RESOLVE THE, AS YET UNDEFINED PROBLEM, THERE ARE AT LEAST TWO ALTERNATIVES THAT WE WOULD LIKE TO HAVE THE COUNCIL INCLUDE IN ITS REVIEW:

1. THE COUNCIL SHOULD CONSIDER A MORITORIUM ON THE FURTHER DEVELOPMENT OF BOTTOMFISH PROCESSING AND HARVESTING CAPACITY, AS WAS PROPOSED BY AFTA LAST SPRING. THE COUNCIL HAS BEEN ADVISED BY ITS ATTORNEY THAT ALLOCATION OF ACCESS TO BOTTOMFISH RESOURCES ACCORDING TO WHERE THE FISH IS PROCESSED MAY NOT BE AN APPROPRIATE FISHERY MANAGEMENT TOOL UNDER THE MAGNUSON ACT. LIMITED ACCESS IS AN APPROPRIATE MANAGEMENT TOOL AND FISHERMEN SUBJECT TO AN ALLOCATIVE EXCLUSION FROM THE FISHERY ARE ENTITLED TO SAFEGUARDS THAT ARE CLEARLY SPECIFIED FOR LIMITED ENTRY PROGRAMS IN THE MAGNUSON ACT.

2. IF THE COUNCIL SEEKS TO ALLOCATE AMONG USER GROUPS TO RESOLVE THE OVERCAPACITY PROBLEM, AFTA PROPOSES THAT THE FOLLOWING CRITERIA USED:

1. HISTORY OF PARTICIPATION IN AND ECONOMIC DEPENDNECY ON THE GROUND FISH FISHERIES
2. ECONOMIC EFFICIENCY
3. AMOUNT OF INVESTMENT
4. ECONOMIC CONTRIBUTION TO THE NATION
5. ABILITY TO COMPETE IN THE WORLD MARKETS IN TERMS OF QUALITY AND COST.

IF WE ASK THAT THESE CRITERIA BE PROPOSED AS ALTERNATIVES TO ONSHORE AND OFFSHORE CLASSES.

3. WHILE WE ABHOR THE PROPOSAL TO DISCRIMIINATE AGAINST SEA PROCESSORS, IT IS ONLY REASONABLE THAT IF THIS ALTERNATIVE IS TO BE CONSIDERED BY THE COUNCIL, SEVERAL COMPONENTS TO THE ISSUE SHOULD BE EVALUATED AND CONSIDERED BY THE PUBLIC DURING THE PROCESS:

- A. IT SHOULD APPLY TO THE SALMON, CRAB, HALIBUT AND HERRING FISHERIES AS WELL.

B. SHORE PROCESSORS THAT ARE INCLUDED IN THE FAVORED CLASS SHOULD BE PROHIBITED FROM BUILDING AND OWNING CATCHER VESSELS IN ORDER TO MORE FULLY EMPLOY THE EXISTING FLEET OF FORMER JOINT VENTURE VESSELS.

C. AS THE SHORE PREFERENCE PROPOSALS ARE MEANT TO ADDRESS THE "PROBLEM" OF MOBILITY, THOSE PROCESSORS DESIGNATED TO BE IN THE FAVORED CLASS SHOULD HAVE MOBILITY RESTRICTIONS SO AS TO CURTAIL FURTHER SUCH "MOBILITY PROBLEMS", FOR EXAMPLE, PLANTS COULD NOT TAKE DELIVERIES FROM AREAS MORE THAN 24 HOURS BY BOAT FROM THE PLANT.

D. PROCESSORS PLACED IN THE FAVORED CLASS SHOULD BE REQUIRED TO PURCHASE FISH FROM VESSELS WITHOUT DISCRIMINATION AND AT A REASONABLE MARKET PRICE

E. VESSELS AND PROCESSORS WHICH BECOME DISADVANTAGED DUE TO THE GOVERNMENT'S ECONOMIC REALLOCATION WILL BE AFFORDED, IN FAIRNESS, A BUY BACK PROGRAM TO BE FUNDED BY THE FAVORED CLASS AND THE GOVERNMENT.

FINALLY BECAUSE OF THE ECONOMIC IMPORTANCE OF THIS ALLOCATIVE DECISION, WE ARE ASKING THE COUNCIL TO MAKE TWO PROCEDURAL DECISIONS AT THIS MEETING:

1. DEVELOP AN ENVIRONMENTAL IMPACT STATEMENT FOR THE ALTERNATIVES
2. PLAN TO HAVE HEARINGS EARLY IN THE PROCESS IN SEATTLE, DUTCH HARBOR AND OTHER COMMUNITIES WHERE DISENFRANCHISED OPERATORS, EMPLOYEES, AND ASSOCIATED BUSINESSES WOULD HAVE AN OPPORTUNITY TO COMMENT.

^{C-8}
Inshore/offshore
For permanent
record

ERIC SILBERSTEIN TESTIMONY
BEFORE NORTH PACIFIC FISHERIES
MANAGEMENT COUNCIL
9/28/89

LADIES AND GENTLEMEN...MEMBERS OF THE COUNCIL...GOOD
AFTERNOON, I'M ERIC SILBERSTEIN, PRESIDENT AND CHIEF EXECUTIVE
OFFICER OF EMERALD SEAFOODS, INC. IN SEATTLE. WE CURRENTLY
OPERATE A PAIR OF FACTORY TRAWLERS IN THE BERING SEA --
BOTH POLLOCK BOATS -- AND HAVE A THIRD UNDER CONSTRUCTION.

SOME PEOPLE IN THIS ROOM MAY NOT RECOGNIZE ME DRESSED AS I
AM TODAY. AN ALL-BLACK OUTFIT TOPPED OFF WITH HAT WOULD BE
MORE APPROPRIATE TO THOSE WHO'VE LABELED THE AT-SEA FLEET
AS "DISTANT WATER MARAUDERS" -- OR WORSE. BUT, AS I'VE
MAINTAINED ALL ALONG, WE NEED TO DISCARD THE RHETORIC AND
MISPLACED ANGER, AND WORK TOGETHER TO SOLVE A PROBLEM THAT'S
REACHED -- IN MY OPINION, ANYWAY -- CRISIS PROPORTIONS.

IN ORDER TO REACH A SOLUTION, ONE MUST ASK THE RIGHT
QUESTIONS. WITH THAT IN MIND, I OFFER THE FOLLOWING FOR
YOUR CONSIDERATION:

WHAT'S THE TRUE PURPOSE BEHIND A PROPOSAL TO CREATE A PREFERENCE FOR SHORE-BASED PROCESSORS OVER THOSE AT SEA?

IS IT TO CONSERVE THE RESOURCE: NO

CAN IT BE CONSTRUED AS EFFECTIVE MANAGEMENT OF THE RESOURCE: AGAIN, NO!

ISN'T IT SIMPLY AN ALLOCATION OF THE RESOURCE: MOST DEFINITELY!

DOES THAT REPRESENT GOOD PUBLIC POLICY: HARDLY!

HAVING ESTABLISHED THAT IT'S NOT, WHAT IS -- OR, PERHAPS MORE GERMAINE TO THE DISCUSSION TODAY -- WHAT WOULD AT LEAST REPRESENT A SOLID BEGINNING?

THE ANSWER IS ONE WE'VE OFFERED FOR SEVERAL MONTHS: AN IMMEDIATE, ACROSS-THE-BOARD MORATORIUM ON ANY ADDITIONAL PROCESSING CAPACITY. IF THIS CANNOT BE ACCOMPLISHED UNDER CURRENT LAWS, THEN LET'S AMEND THEM ACCORDINGLY. SHOULD THE PRESIDENT AND GOVERNOR BE UNABLE TO ISSUE SUCH AN EXECUTIVE ORDER, THEN DO WHATEVER IS NECESSARY TO EMPOWER THEM, AND IN THE MEANTIME, CHALLENGE ALL PARTIES INVOLVED IN THE FISHERY TO VOLUNTARILY RESTRICT THEIR

EXPANSION ACTIVITIES. *In any event, a moratorium should be an additional alternative to be formally evaluated by the staff, and I now ask that ~~we~~ it be added to the*

CONCURRENTLY, WE MUST PUSH FORWARD WITH A SENSIBLE OBSERVER

PROGRAM, GATHERING THE DATA SO DESPERATELY NEEDED IN ORDER

TO MAKE TRULY INFORMED DECISIONS REGARDING THE MANAGEMENT OF

THE NORTH PACIFIC BOTTOMFISHFRY. WE MUST ESTABLISH TRUE BFNCHMARKS

CONCERNING THE RENEWABILITY OF THE RESOURCE. THE ONLY WAY THAT

CAN HAPPEN IS THROUGH BETTER DATA.

AT'S
recommendations

SECOND. AND THIS MAY SURPRISE A FEW PEOPLE, WE ADVOCATE THE
ABOLITION OF ROE TARGETING. THAT IS THE PRACTICE OF TREATING
ROE AS A PRIMARY CATCH. INSTEAD OF A BY-PRODUCT. WE SHARE
EVERYBODY'S CONCERN ABOUT THE PRACTICE OF ROE-STRIPPING,
NEPHEW THE FACT IT'S BECOME AN INSTITUTIONALIZED ACTIVITY
WITHIN THE INDUSTRY, WE ALL MUST RECOGNIZE THE DANGERS IT
POSES. BY STOPPING, WE'LL START TO REBUILD THIS PRESSURIZED
RESPONSE. I CAN ASSURE YOU THAT SUCH A MOVE WOULD DO MORE TO
INSURE FISH FOR THE FUTURE THAN ANY PROPOSAL OFFERED BY
SPECIAL INTERESTS IN THIS ROOM -- WHETHER THEY BE REPRESENTED
ON THE PANEL OR IN THE AUDIENCE.

THIRD, A CONSORTIUM OF PRIVATE, STATE AND FEDERAL INTERESTS
NEEDS TO BE FORMED FOR THE PURPOSE OF ESTABLISHING AN EFFECTIVE
FISHERIES TRAINING PROGRAM IN ALASKA. WE, FOR ONE, WOULD BE
DELIGHTED TO RE-DIRECT THE MILLION DOLLARS PLUS EACH YEAR WE
SEND THE AIRLINES IN ORDER TO CYCLE CREWS IN AND OUT OF ALASKA.

IT MAKES SENSE FOR EVERYONE INVOLVED IN THE INDUSTRY, REGARDLESS
OF WHETHER OR NOT THEY'RE SHORE-BASED, AT-SEA, OR A SERVICE COMPANY,
NOW, WE ALSO NEED TO ASK CERTAIN QUESTIONS ABOUT THE RESPONSIBILITIES
OF THE COUNCIL ITSELF.

IS IT THE COUNCIL'S RESPONSIBILITY TO PRESERVE THE

ROTFOMFISHERY? WITHOUT QUESTION

IS IT MAKE RECOMMENDATIONS WHICH IMPROVE MANAGEMENT PRACTICES?

AGAIN, A RESOUNDING YES.

IS IT TO ASSIGN ALLOCATIONS OF THE RESOURCE TO VARIOUS SEGMENTS OF THE INDUSTRY? NOT UNDER THE STANDARDS ESTABLISHED UNDER

THE MAGNUSON ACT

LET'S ALSO POSE THE QUESTION OF WHETHER OR NOT CERTAIN MEMBERS

OF THE COUNCIL HAVE REAL OR APPARENT CONFLICTS OF INTEREST, THAT IS, WOULD THEY STAND TO BENEFIT IN ONE FORM OR ANOTHER FROM A

DECISION IN WHICH THEY WOULD HAVE A VOTE? UNFORTUNATELY, THE ANSWER HERE IS CLEARLY YES, SOME INDEED WOULD. *Exp. mtg.*

Excuse Thomas & I for coming from voting

PERHAPS SOME OF YOU HAVEN'T THOUGHT ABOUT THE REALITIES OF SHORE-BASED PREFERENCE. LET'S ASSUME, FOR THE MOMENT SUCH AN

ALLOCATION IS GRANTED, HERE'S JUST A FEW OF THE POSSIBLE

SCENARIOS:

INCREASED JOBS FOR ALASKANS? THINK AGAIN.. (USF EXAMPLE)

Creating a resource would be more appropriate

PRESERVATION OF THE RESOURCE? *SORRY*, I RECOGNIZE SOME OF

YOU WILL DISAGREE WITH THIS VIEWPOINT, HOWEVER, IF THERE'S

ANY CHANCE OF THIS OCCURRING -- AND, THE LIMITED RANGE OF THE

CATCHER BOATS NEEDED TO SERVICE THE SHORE PLANTS VIRTUALLY

ASSURES THAT IT WILL -- THEN YOU MUST RECOGNIZE THE THREAT

TO THE FISHERY.

I believe
① resource
② no jobs
③ serious
④ legal problems
⑤ did not
catcher boats
by Japan
sp. in
catcher boats
to the fishery

Debate
partly
partly
partly

FACTORY TRAWLERS WILL JUST QUIETLY GO AWAY, AND FISH SOMEPLACE
ELSE? NOT WITH NEARLY \$2 BILLION DOLLARS INVESTED, THE ONLY
PLACE WE'LL GO IS TO COURT, AND WHAT COURT -- WHEN CONSIDERING
SUCH OBVIOUS PROBLEMS AS THE CONFLICT OF INTEREST ISSUE AND
THE VIOLATIONS OF THE NATIONAL STANDARDS CONTAINED IN THE
MAGNUSON ACT (TO NAME JUST TWO) -- WOULD NOT RULE IN FAVOR
OF THE FACTORY TRAWLERS, GUESS WHO PAYS? THE AMERICAN TAXPAYER.
MORE ALASKAN BOATS WILL HAVE THE CHANCE TO PARTICIPATE IN THE
FISHERY WHEN THE TRAWLERS ARE GONE? THAT ASSUMES THE JAPANESE
COMPANIES OPERATING THE SHORE PLANTS DON'T OPT FOR BRINGING
THEIR OWN, NON-UNION CATCHER BOAT FLEET IN. PERHAPS YOU'D LIKE
TO ASSUME THEY WON'T, I WOULDN'T.
IN CLOSING, I WOULD SIMPLY LIKE TO URGE THE COUNCIL TO TABLE
THE PREFERENCE ISSUE ALTOGETHER, AND FOCUS ON THE
EMERGENCY CONDITION SURROUNDING THE BOTTOMFISHERY, SAVE
YOURSELVES A LOT OF GRIEF, THE TAXPAYERS A LOT OF MONEY, AND
-- MOST IMPORTANTLY -- SAVE THE FISH FOR FUTURE GENERATIONS.
THANK YOU.

KODIAK FISH COMPANY

F/V ALLIANCE
F/V PROVIDER

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September 19, 1989

Clarence G. Pautzke
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Re: Onshore/Offshore Allocation Issue

Dear Mr. Pautzke:

We submit these comments for the Council's consideration in formulating alternatives regarding the onshore/offshore allocation issue.

The conflict between onshore and offshore users is no longer a potential threat - it became real on March 24 in the Gulf of Alaska when a combination of shorebased and factory trawler effort consumed at least 66,000 mt of pollock in less than 3 months. About 80% of the 1989 quota was taken in only 24 days - during the time when pollock were schooling up before spawning and when roe was in prime condition. During the week of March 20 alone, 20,000 mt was caught. Most of that was gobbled up by a fleet of factory ships hungry for roe - who then moved on to other areas and other products. Unfortunately for Kodiak's shorebound plants, they could not do the same.

Also unfortunate is the infrastructure that supports shorebased processing - workers, landlords, merchants, suppliers, buyers, shippers, and fishermen among others. In the meantime, as Kodiak's plants sit idle, 175,000 mt of unused pollock in the Bering Sea was put up for grabs by foreign processing ships buying over the side from U.S. vessels. This quota was left untouched by U.S. factory processors who chose instead to vacuum up the small amounts of fish that were allocated to areas accessible to Kodiak's shore plants.

The question now before you is whether management councils have the authority to make allocations between conflicting users within the direct American processing realm. And, if you have the authority, to decide what allocations, if any, will be made.

After reviewing 50CFR602, we have come to the conclusion that the National Standards governing formulation of fishery management plans are very similar to the Bible - justification for virtually any action can be found.

We find many references to actions that may be taken to maintain the health of coastal communities. National Standard 1 in

50CFR602.11(e)(3)(i) specifically states that economic factors which may be relevant in modifying MSY to arrive at OY includes economies of coastal areas. "Some other factors that may be considered are the value of industrial fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas." Further, social factors to be considered include according to CFR "preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery."

This seems to give Councils permission to alter OY upward in order to sustain coastal communities. However, that hardly seems necessary when all the Council need do is direct mobile operations to operate in areas inaccessible to those coastal communities. This can't be construed as an economic deprivation to the factory fleets when quota is going begging in these areas.

National Standard 4 defines the guidelines for allocative measures addressed in a fishery management plan. Again from 50CFR602.14(c)(3)(i)(B). "An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups."... "The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo." Further along in the Factors in Making Allocations section of the regulations, Councils are advised. "In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries...."

Other National Standards also address various aspects of allocations including NS 5 - Efficiency and NS 7 - Costs and Benefits. Each standard presents a range of criteria against which to gauge management objectives. No standard offers pat answers to such problems as too much capacity and not enough fish or too much leverage and not enough margin. Nor do the standards define how benefits or hardships are to be weighed.

Clearly our selective quoting from the "Bible" of FMP formulation finds regulatory license to Councils to establish objectives which favor coastal communities. Doubtless, representatives of the factory trawlers can find similar support for objectives which do not. The regulations recognize that objectives may conflict with each other and advise management councils to choose between or rank competing objectives. So it remains purely a decision for the Council to make as to the value of maintaining healthy shorebased processing capabilities in Alaska's coastal communities. Surely without assurance of product to process, these traditionally fishing dependent communities will suffer and

3

decline. Even more tragic is that they may do so while the product they are starving for is left untouched by mobile factories in areas where the shore plants cannot reach.

In debating the issue of shoreside preference, we feel that the bottomfisheries of all of Alaska should be locked at together. It makes no sense to permit mobile operations to vacuum up quota in the Gulf of Alaska and then move on - leaving shorebound plants without product to process. This is particularly difficult to understand when 175,000 mt of pollock in the BS/AI will be unused by these fleets and so reallocated to JVP this fall.

We feel that the shorebased processors should be given a preference in the allocation scheme in the same manner that total DAP now receives a preference. In areas accessible to shorebased plants, shorebased processors should receive first priority for available product. In areas inaccessible to shore plants, American factory ships should receive first priority for product allocations.

Alternately, processors may be required annually to choose an exclusive registration area in which to buy product. An exclusive area scheme would keep factory fleets with huge input requirements from choosing areas with only enough fish for a short duration. Shore plants could, of course, only choose areas restricted to their catcher vessels' operating range. Each group would be bound to take product only from that area during that regulation year.

We feel either of these alternatives would result in a fair manner of allocating available product between onshore and offshore processors. If stocks are down and quota is short, each group may have to make do with less than what they each need. As it now stands, the shorebased plants are first to be idled - and, as is happening this year, are not operating while plenty of fish is available to foreign processors. This is not what the Magnuson Act was supposed to accomplish. If there had been no factory ships roestripping in the Gulf of Alaska last winter, the processors in Kodiak would have had considerably more product to process during the summer and fall

The factory fleet has adopted a "pulse" fishing style that has dimmed the prospects for profits for all of Alaska's bottomfish participants. Bill Atkinson in "Bill Atkinson's News Report" Issue 302, June 7, 1989, writes of the Japanese bottomfish market. "Part of the instability of prices for frozen bottomfish - according to comments from local processors - is the uncertain availability from the North Pacific. Only the season, and supply, of sablefish is stable and predictable. The processors complain that they cannot plan processing schedules for the other species from the North Pacific, such as redfish and turbot, because they are never certain when the product will become available. Rather than operating on a set schedule each year.

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4

the U.S. fleet jumps from species to species, depending on what is going for the highest prices at the time. Unfortunately, the majority of the fleet targets on the same species, causing prices to drop by the time the product starts arriving in Japan.... Due to the constant variation in the species supplied from the North Pacific at the present, however,...they have had to look for reliable substitutes, and squeeze import product into their operations when they can."

The frantic search for margin by the factory fleet is denying even the hope for participation by shorebound plants and their catcher boats and is playing havoc with the marketplace - which hurts the industry as a whole. Protection of Gulf of Alaska and Aleutian Islands/Bering Sea shorebound processors, populations, social infrastructure, and fishing fleets is within the power of the Council. That protection may even help to stabilize markets and so improve the profit margins of the entire industry. Clearly the present "no holds barred" and "protect the investors" management scheme is forcing us all into an economic fog from which some of us will probably never emerge. Overcapitalized ventures which are marginal even when such rapacious practices as roe stripping and pulse fishing are employed are not the responsibility of the Council. Responsible operators, both onshore and offshore, can prosper under an allocation scheme that allows shore plants fair access to their share of the resources of the North Pacific.

We urge the Council to provide such an allocation scheme.

Sincerely,

Mark Kandianis

Teressa Kandianis

MARK P. KANDIANIS
TERESSA M. KANDIANIS