

JOINT VENTURES

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JOINT VENTURES

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NOTICE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

U.S./Foreign Fishing Ventures Within Fishery Conservation Zone

AGENCY: National Oceanic and Atmospheric Administration

ACTION: Policy Statement

SUMMARY: The National Oceanic and Atmospheric Administration ("NOAA") announces a policy regarding foreign vessel permit applications to receive U.S. harvested fish from vessels in the U.S. fishery conservation zone (the "FCZ"). Such permit applications will be approved if the application and the activities described therein meet the requirements of the Fishery Conservation and Management Act of 1976 (the "Act") and other applicable law.

DATE: This policy is effective upon publication.

FOR FURTHER INFORMATION CONTACT: Mr. Alfred J. Bilik, Enforcement Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, Washington, D.C. 20235, Telephone number (202) 634-7265.

SUPPLEMENTARY INFORMATION: On February 8, 1978 an interim policy was proposed for public comment, 43 FR 5398.

The proposed interim policy, in addition to considering conservation and management factors, would have granted a preference to the domestic processing industry by allowing permits to be approved only when "the capability and intent of the U.S. fishing industry to harvest fish . . . exceeds the capability and intent of the U.S. processing industry to

process such fish." Comments on the proposed interim policy were received until February 23, 1978. Additionally certainly other comments concerning the legal authority of the Secretary to adopt the proposed interim policy were received after the comment period ended. All of these comments were considered in the adoption of this final policy.

Several of the comments questioned the legal authority of the Secretary of Commerce (the "Secretary") under the Act to adopt a policy which would deny a foreign fishing permit application for support activities at sea for reasons other than conservation and management, or failure to meet the requirements of the Act. Additionally, many persons commented that the Secretary of Commerce does not have the authority under the Act to adopt a policy for approving or disapproving applications for foreign fishing permits which would grant a preference to U.S. processors over foreign processors and thereby limit the opportunity of U.S. fishermen to sell fish to foreign vessels in the FCZ.

Several commenters focused on the domestic advantages and disadvantages which would have been created by our proposed policy. Some fishermen objected to the proposed interim policy because it would have limited their access to foreign markets. Some domestic processors supported the proposed interim policy since it would have allowed a better opportunity to develop a capacity in underutilized fisheries and would have protected existing markets for more fully developed fisheries. Others, however, opposed the approval of any foreign fishing permit applications for the receipt of U.S. harvested fish in the FCZ and alleged that such activities would constitute unfair competition. Additionally, several localities and Regional Fishery Management Councils opposed the proposed interim policy since it would have allowed foreign competition which they believed could hinder the development of local industry and diminish the resulting economic benefits. These Regional Councils believe more time should be allowed to monitor progress by domestic processors toward utilizing species which are the subject of present applications or to evaluate more information on the impacts of such operations.

Our analysis and consideration of these comments, as well as our review of the legal and policy issues, have led to the conclusion that a permit approval/disapproval policy which gives a preference to domestic processors should not be adopted. We believe the Secretary lacks sufficiently clear legislative direction to adopt a policy which considers factors not directly related to conservation and management of the resource and the requirements of the Act. In addition, since the FCMA is a conservation and management statute, NOAA has concluded that decisions to approve or deny foreign fishing permit applications for the receipt of U.S. harvested fish in the FCZ should not be made on the basis of the competitive factors referred to above.

Other comments focused on the procedural aspects of the proposed policy. These comments concerned the role of the Regional Councils, opportunity for public comments on a final decision by the Secretary and the creation of an administrative record for judicial review of the permit decision. We have determined that existing statutory provisions adequately address these procedural matters, and that there is no need to incorporate special procedures into this final policy.

Several commenters raised several international problems which would have been created by implementing the policy as originally proposed. These problems included the inconsistency of the proposed policy with the Administration's current foreign trade policy of non-interference with the export of food products; and the possibility that foreign nations will view our policy as being protectionist, thereby causing those nations to adopt similar policies. We have determined that these concerns are valid and substantial, and have altered our policy accordingly.

In light of NOAA's review of the proposed interim policy and the comments received during the public comment period, the proposed interim policy has been revised, as set forth below.

Policy

The Secretary of Commerce will encourage the development of the U.S. fishing industry consistent with the purposes of the Act and other applicable law. As one means of carrying out this objective, the Secretary may approve applications for foreign fishing vessel permits to allow foreign vessels to receive U.S. harvested fish from vessels within the U.S. fishery conservation zone. Any such permits granted will be approved if the application and the activities described therein meet the requirements of the Act (including the national standards) and other applicable law.

Any permits issued will contain appropriate conditions and restrictions, which may include (but are not limited to) the following:

1. The vessels may receive only species designated in the permit;
2. When fish are transferred to the vessel, from either a U.S. or foreign vessel, the information required by 50 C.F.R. section 611.9(b) shall be recorded in the receiving vessel's log before the next transfer operation begins;
3. The Secretary may include any other restriction or condition deemed necessary for conservation and management purposes or as may be required under existing FMP's or PMP's.

In addition, current Foreign Fishing Regulations require foreign vessels to take aboard an observer at NMFS's request, and to maintain logs of all fish transferred, including information about the species and amounts of fish, and name and nationality of vessels involved.

The policy will apply to applications for foreign fishing permits to allow foreign vessels to receive U.S. harvested fish from vessels in the U.S. fishery conservation zone. This policy is established on an interim basis.

/s/ W. Meibohm
Assistant Administrator
for Fisheries

May 10, 1978
Date

*Published on May 12 in Federal Register.

ture measurements be made in the truck cab?

6. Describe the most effective means for the measurement of heat if different from WBGT.

7. Would it be desirable to have a new Federal motor vehicle safety standard related to heat in cabs?

Those desiring to comment on this Advance Notice of Proposed Rulemaking are asked to submit in writing three copies of their views, data, and arguments. All communications received will be considered before any proposals for rulemaking action are undertaken.

All comments submitted will be available, both before and after the closing date, for examination by interested persons in the Docket Room of the Bureau of Motor Carrier Safety, Room 3402, 400 Seventh Street SW, Washington, D.C. 20590. If it is determined to be in the public interest to proceed further after summarizing the comments and considering the available data and comments received in response to this Advance Notice, a Notice of Proposed Rulemaking will be issued.

(49 U.S.C. § 304, 49 U.S.C. § 1655, 49 CFR 1.48 and 49 CFR 301.60.)

Issued on January 27, 1978.

ROBERT A. KAYE,

Director,

Bureau of Motor Carrier Safety.

[FR Doc. 78-3372 Filed 2-7-78; 8:45 am]

[3510-12]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

FOREIGN FISHING

Interim Policy

AGENCY: National Oceanic and Atmospheric Administration.

ACTION: National Marine Fisheries Service Proposed Interim Policy.

SUMMARY: An interim policy is proposed to govern consideration of applications for permits by foreign vessels seeking to purchase or receive fish from U.S. fishing vessels in the Fishery Conservation Zone. Comments received by February 23, 1978, will be considered before adopting and implementing an interim policy.

DATE: Comments due on or before February 23, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Alfred J. Bilik, Enforcement Division, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. De-

partment of Commerce, Washington, D.C. 20235, Telephone 202-634-7265.

SUPPLEMENTARY INFORMATION: The National Marine Fisheries Service is proposing this interim policy governing issuance of foreign fishing vessel permits to allow foreign vessels to purchase or receive fish from U.S. fishing vessels in the Fishery Conservation Zone. The proposed interim policy is designed to address only permit applications submitted under Preliminary Management Plans (PMP's) in effect on January 1, 1978, for the 1978 fishing season and will be replaced by a more comprehensive policy covering both PMP's and Fishery Management Plans that are implemented by the Secretary. The Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., (the Act), provides for a national program for the conservation and management of the Nation's fishery resources within the Fishery Conservation Zone (FCZ). Under the Act, procedures are established for foreign participation in fisheries under the exclusive management authority of the United States. Any foreign vessel harvesting fish or supporting fishing operations in the FCZ must have a foreign vessel permit. Activities in support of fishing include those in which a foreign vessel in the FCZ purchases, or receives transfer of, fish from a U.S. fishing vessel. The amount of fish that foreign vessels may harvest in the FCZ is limited by the allocation of part of the total allowable level of foreign fishing (TALFF) made by the Department of State to the flag nation of the vessel. However, purchases or transfers from U.S. vessels to foreign vessels do not count against the allocation to the foreign vessel's flag nation. The consequence of all this is that a potential conservation problem now exists. The new market for U.S. caught fish which would be created by such purchases or deliveries may induce greater U.S. fishing effort in a fishery which in turn may cause the optimum yield in a fishery to be exceeded. The proposed interim policy creates a mechanism to closely review foreign permit applications, involving the sale of U.S. harvested fish to foreign vessels in the FCZ, thereby alleviating the possibility that the optimum yield in a fishery would be exceeded. At the same time the proposed interim policy seeks to preserve foreign market opportunities for U.S. fishermen when such sales or deliveries would not unduly affect the development of other segments of the U.S. fishing industry. This proposed interim policy is being published to solicit public comments. Comments received on or before February 23, 1978, will be considered by the Administrator before adopting an interim policy.

PROPOSED POLICY

In order to address pending or expected applications submitted under

Preliminary Management Plans effective January 1, 1978, the following interim policy is proposed to govern the Secretary's consideration of applications for permits to allow foreign vessels to purchase or receive fish from U.S. vessels within the FCZ during the 1978 fishing season.

The Secretary of Commerce shall encourage the development of all segments of the U.S. fishing industry consistent with the purposes of the Act and other applicable laws. As one means of carrying out this objective, the Secretary may approve applications for foreign fishing vessels permits to allow foreign vessels to purchase or receive fish from U.S. harvesting vessels within the Fishery Conservation Zone on a case-by-case basis. Any such permits granted shall contain appropriate conditions and restrictions.

Permits shall be approved only when the Secretary is satisfied that (1) the optimum yield for the fishery involved will not be exceeded; (2) the capability and intent of the U.S. fishing industry to harvest fish to be sold or delivered exceeds the capability and intent of the U.S. industry to process such fish; and (3) the relevant foreign vessel has capability and intent to process such fish. Actions with respect to applications for permits for 1978 shall have no precedential effect on any applications for permits for subsequent years.

In implementing this policy, the Secretary of Commerce may also take into consideration one or more of the following in evaluating a permit to issue a permit to a foreign vessel to purchase or receive fish from a U.S. harvesting vessel within the Fishery Conservation Zone.

- (1) Potential for displacement of any domestic fishing and associated industries for other stocks or species.
- (2) Potential for gear conflicts between U.S. vessels involved in harvesting such fish and other stocks or species.
- (3) Employment opportunities or losses for domestic labor.
- (4) Impact on exvessel, wholesale, and retail prices.
- (5) Impact on income of domestic fishermen, processors and industry workers.
- (6) Impact on the U.S. consumer.
- (7) Impact on the degree of market control by either U.S. or foreign processors.
- (8) Impact on export or import restrictions imposed by foreign nations on United States products.
- (9) Effect of overall U.S./foreign trade policy guidelines.
- (10) Potential for expansion of U.S. fleets.
- (11) Possible detrimental effects to any segment of the fishing industry.

Dated: February 3, 1978.

JACK W. GEHRIN
Deputy Director, National Marine Fisheries Service

[FR Doc. 78-3482 Filed 2-7-78; 8:45 am]

By Mr. MAGNUSON (for himself, Mr. STEVENS, and Mr. JACKSON):

S. 3050. A bill to provide for the regulation of foreign fish processing vessels in the fishery conservation zone, and for other purposes; to the Committee on Commerce, Science, and Transportation.

REGULATION OF FOREIGN FISH PROCESSING VESSELS

● Mr. MAGNUSON. Mr. President, today I am introducing, on behalf of Senators STEVENS, JACKSON, and myself, a bill to provide for the regulation of foreign fish processing vessels within our 200-mile fishery conservation zone. Two weeks ago during hearings before the Senate Committee on Commerce, Science, and Transportation, the National Oceanic and Atmospheric Administration (NOAA) announced that it did not have the legal authority under the Fishery Conservation and Management Act of 1976 (Public Law 94-265) to deny foreign permit applications for foreign processing vessels within our fishery conservation zone, except on the basis of conservation and management.

This illustrated a situation which the Congress did not anticipate when it passed the FCMA. It is a problem that has developed since the law was passed and this bill would clarify Congress policy regarding this matter.

The bill I am introducing does several things. First, it provides that foreign processing vessels may be granted a permit to come inside our 200-mile zone and buy fish from U.S. fishermen only when U.S. processors do not have the adequate capability to process the fish caught by U.S. fishermen. Second, it provides that the FCMA's provisions for fees and for obtaining a license for a fishing vessel also apply to processing vessels. Third, it provides that in determining whether to grant permits to foreign fishing or processing vessels, the Secretary of Commerce may consider whether the foreign nations applying for the permit imposes artificial trade barriers against the importation of U.S. fish.

Finally, the eight Regional Fisheries Management Councils, established by the FCMA, will determine the "capacity and extent to which processing facilities of the United States, on an annual basis, will process that portion of the optimum yield that will be harvested by fishing vessels of the United States."

This bill would provide that for species that are fully developed or utilized by U.S. processors, such as crab and salmon, there would be no joint venture permits issued. For those species where there is not adequate U.S. processing capability, permits would be issued to foreign processing vessels on an annual basis. If, within any year's time, U.S. companies have enlarged their processing capabilities of these underutilized species, such as hake or pollock, the foreign processing permits would be reduced to the extent of the newly developed capability.

Mr. President, I ask unanimous consent that the text of the bill be printed at this point in the Record.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 3050

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) Section 2(a)(7) of the Fishery Conservation and Management Act (16 U.S.C. 1801 (a)(7)) is amended by striking "United States fishermen" and inserting in lieu thereof the following: "the United States fishing industry."

(b) Section 2(b)(6) of such Act (16 U.S.C. 1801(b)(6)) is amended by inserting after "development" the following: "by the United States fishing industry".

Sec. 2. (a) Section 3(10) of the Fishery Conservation and Management Act (16 U.S.C. 1802(10)) is amended by striking ", or (D) any operations at sea in support of, or in preparation for, any activity described in subparagraphs (A) through (C)".

(b) Section 3(11) of such Act (16 U.S.C. 1802(11)) is amended by striking "storage, refrigeration, transportation, or processing," and inserting in lieu thereof the following: "fueling or repair. Such term does not include any processing vessel."

(c) Section 3 of such Act (16 U.S.C. 1802) is further amended by inserting the following immediately after paragraph (20) thereof, and renumbering paragraphs (20) through (25) as (22) through (27), respectively:

"(20) The term process or processing means any method of freezing, cooking, canning, smoking, salting, drying or other treatment of fish which does or is intended to prepare such fish for commercial use or consumption.

"(21) The term processing vessel means any vessel, boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for, processing, storage, refrigeration, or transportation of fish or fish products."

Sec. 3. Section 201(e) of the Fishery Conservation and Management Act (16 U.S.C. 1821(e)) is amended by: (1) striking "and" at the end of paragraph (3); (2) renumbering paragraph (4) as paragraph (5); and (3) inserting immediately after paragraph (3) the following:

"(4) any applicable tariff or nontariff condition on the importation of fish or fish products from the United States that are greater than those imposed by the United States; and"

Sec. 4. (a) Section 204(a) of the Fishery Conservation and Management Act (16 U.S.C. 1824(a)) is amended by inserting "processing vessel or" after "foreign".

(b) Section 204(b)(1) of such Act (16 U.S.C. 1824(b)(1)) is amended by inserting "and for each of its processing vessels that wishes to operate in the fishery conservation zone" before the period.

(c) Section 204(b)(3)(A) of such Act (16 U.S.C. 1824(b)(3)(A)) is amended by inserting "processing vessel and" after "each".

(d) Section 204(b)(4) of such Act (16 U.S.C. 1824(b)(4)) is amended by striking "such application in the Federal Register and" and inserting in lieu thereof the following: "a notice of receipt of the application in the Federal Register. Such notice shall summarize the contents of the applications from each nation with respect to the matters described in subparagraphs 3 (C), (D), and (E) and shall be set forth according to Council. The Secretary of State".

(e) Section 204(b)(6) of such Act (16 U.S.C. 1824(b)(6)) is amended by striking "After" and inserting in lieu thereof the following: "(A) Except as provided in paragraph (B) and after"; and by adding the following new provision:

"(B) The Secretary may approve any application for a foreign processing vessel that proposes to receive fish harvested by vessel of the United States unless United States processing capability is adequate for processing the fish harvested from the fishery involved; in such case the Secretary shall deny the permit application. In deciding whether to approve such an application, the Secretary may consider whether the application imposes any tariff or nontariff conditions on the importation of fish or fish products which are greater than those imposed by the United States."

(f) Section 204(b)(7) of such Act (16 U.S.C. 1824(b)(7)) is amended by—

(1) inserting in the first sentence thereof

"processing vessel or" immediately before "fishing vessel"; (2) inserting in paragraph (B) thereof "processing vessel or" immediately before "fishing vessel"; and (3) inserting the following new paragraph after paragraph (C) and renumbering the succeeding paragraph accordingly:

"(D) For any processing vessel the requirement that such vessel shall only receive the amount of fish consistent with the provisions of paragraph 6(B)."

(g) Section 204(b)(10) of such Act (16 U.S.C. 1824(b)(10)) is amended by inserting "processing vessel or" after "operator of any foreign"; and by inserting "processing and" after "with respect to foreign".

(h) Section 204(b)(11) of such Act (16 U.S.C. 1824(b)(11)) is amended by inserting "processing vessels or" after "appropriate"; and by inserting "processing vessel or" after "apply to the".

(i) Section 204(b)(12) of such Act (16 U.S.C. 1824(b)(12)) is amended by inserting "processing vessel or" after "If any foreign".

(j) Section 204(c) of such Act (16 U.S.C. 1824(c)) is amended by inserting "processing vessel and" after "permit for each"; by inserting "processing or" after "under which foreign"; by inserting "processing or" after "wishes to engage in"; by inserting "processing or" after "with respect to such"; and by inserting "processing vessel or" after "the owner or operator of the".

Sec. 5. Section 303(a)(4) of the Fishery Conservation and Management Act (16 U.S.C. 1853(a)(4)) is amended by inserting immediately after subparagraph (B) thereof the following:

"(C) the capacity and extent to which processing facilities of the United States, on an annual basis, will process that portion of the optimum yield that will be harvested by fishing vessels of the United States; and"

DRAFT

ALASKA BOARD OF FISHERIES
FINDING OF EMERGENCY

The Alaska Board of Fisheries finds that an emergency exists and that the attached regulation is necessary for the immediate preservation of the public peace, health, safety or general welfare. A statement of the facts constituting the emergency is:

1. The Board of Fisheries, as the fisheries rule-making entity of the State of Alaska, is responsible for implementing and making specific statutes pertaining to fisheries matters.

2. During the past year, a number of proposals have surfaced involving the prospective use of foreign vessels in various capacities with respect to fish resources commercially taken. In conjunction with each such proposal, there have been questions as to whether the intended operation is consistent with state law. As the number, variety, and complexity of proposed operations using foreign vessels is expected to increase, it is important that the law in this area be as distinct as possible.

3. AS 16.05.905 - 910 imposes a prohibition on aliens not lawfully admitted to the United States, specifically that they may not engage in commercial fishing activities. However, the term "commercial fishing activities", drafted long before there was much interest in joint ventures and other proposals involving foreign nationals, leaves some doubt as to its scope, and therefore the extent of the prohibition. Moreover, the Board of Fisheries possesses other authorities which may be invoked where there is ambiguity as to permissible activities and a need to insure that local natural resources are protected from unwarranted exploitation.

4. The present uncertainty regarding the legality of operations involving foreign vessels and nationals has caused a number of undesirable consequences detrimental to the public welfare, including (1) the possibility of confusion and inadvertent violations, (2) the inability of individuals and organizations to be certain of the rules before making plans and investments, and (3) the possibility of needless acrimony among competing interest groups who are unclear on what to expect. Since a purpose of the Board of Fisheries is to provide for the orderly harvesting and utilization of fisheries resources, adoption of the attached regulation by emergency is necessary to protect the public interest. In adopting this regulation, the Board of Fisheries desires to carry out its police power to protect and conserve local natural resources by prohibiting and discouraging clandestine illegal fishing activities without

imposing an inappropriate burden on lawful foreign commercial activities.

5. Also germane is the fact that part of the aforementioned problem stems from ambiguities in the scope and provisions of the Federal Fishery Conservation and Management Act of 1976 (Public Law 94-265).

Under authority of AS 16.05.251, AS 16.05.475, AS 16.05.905, AS 16.05.910, AS 16.05.920, and AS 16.05.920, the attached regulation is therefore adopted as an emergency regulation to take effect immediately upon filing by the lieutenant governor as provided in AS 44.62.180(3).

DATE _____

Chairman, Alaska Board of
Fisheries

I, _____, lieutenant governor for the State of Alaska, certify that on _____, 1978 at _____ .m., I filed the attached regulation according to the provisions of AS 44.62.

Lieutenant Governor

(d) With respect to paragraph (c)(2) of this section, the commissioner may recognize and designate constructive ports provided

- (1) the ports are within the internal waters of the state;
- (2) there is no existing port within reasonable running time from fishing grounds which are the subject of a substantial fishery; and
- (3) there is no significant opportunity for clandestine violations of (a) of this section or evasion of other applicable state and federal laws and regulations.

(e) The provisions of this section apply to foreign vessels and aliens in the internal waters and the territorial sea of the state.

(f) The Commissioner, after consultation with the Board of Fisheries, may, under conditions and limitations determined by him, grant a limited exception to this section with respect to a particular fishery and permit foreign vessels to process fish resources at an existing or constructive port, or to transport fish resources outside the state from an existing or constructive port before processing takes place, if he determines after investigation that

- (1) the volume of fish resources expected to be taken in the fishery under current regulations exceeds the anticipated processing capability of facilities operated by United States processors;
- (2) there is no practical opportunity for United States processors to make emergency arrangements to handle the excess volume;
- (3) there is a likelihood of substantial wastage of fish resources taken in the fishery if foreign processing or transportation capacity is not utilized; and
- (4) there is no significant likelihood of clandestine foreign fishing operations if the exception is granted.

(g) As used in this section,

- (1) "aliens" means aliens not lawfully admitted to the United States; and

(2) "existing ports" means those Alaskan marine ports designated in 19 C.F.R. §1.2.

Authority: AS 16.05.251
AS 16.05.475
AS 16.05.905
AS 16.05.910
AS 16.05.920
AS 16.05.940

END OF REGULATION

NOTICE OF PROPOSED CHANGES IN THE
REGULATIONS OF THE ALASKA BOARD OF FISHERIES

Pursuant to the Administrative Procedure Act, Alaska Statutes 44.62, notice is hereby given that the Alaska Board of Fisheries, under authority vested by Alaska Statutes 16.05.251, 16.05.270, 16.05.475, 16.05.905, 16.05.910, 16.05.920 and 16.05.940, proposes to adopt, amend or repeal regulations contained in Title 5 of the Alaska Administrative Code which implement, interpret and make specific the provisions of Title 16, Alaska Statutes.

There are presently in effect emergency regulations governing commercial fishing and related activities by aliens not lawfully admitted to the United States. The Board proposes that regulations covering generally the same subject matter to those now in effect be made permanent. Regulations now effective, which will comprise the subject of Board action, are as follows:

5 AAC 39.198. COMMERCIAL FISHING AND RELATED OPERATIONS BY ALIENS NOT LAWFULLY ADMITTED TO THE UNITED STATES. (a) Foreign vessels and aliens are prohibited from:

- (1) the catching, taking, or harvesting of fish resources;
- (2) the tendering, offloading, or other movement or handling of fish resources until processing has been completed;
- (3) the processing of fish resources; or
- (4) any attempt at, preparation for, or assistance of the foregoing; and
- (5) with the intent of disposing of the fish resources for profit, or by sale, barter, trade, or in commercial channels.

(b) As used in this section, "processing" means completion of:

- (1) cooking;
- (2) canning;
- (3) smoking;
- (4) salting, which means uniformly mixing at a minimum salting level of at least 10% of the weight of the fish resources;
- (5) drying; or
- (6) freezing.

(c) Aliens are not prohibited from transporting fish resources outside the state, or engaging in other business activities respecting fish resources, after processing has been completed, if said aliens are aboard a foreign vessel and the foreign vessel, during all phases of its operations:

(1) is not equipped for harvesting fish resources; .

(2) is tied up to or anchored at (or, where fish resources are being transported outside the state, departing from) an existing port or a constructive port recognized and designated by the commissioner; and

(3) is in compliance with applicable state and federal laws and regulations.

(d) With respect to paragraph (c) (2) of this section, the commissioner may recognize and designate constructive ports provided:

(1) the ports are within the internal waters of the state;

(2) there is no existing port within reasonable running time from fishing grounds which are the subject of a substantial fishery; and

(3) there is no significant opportunity for clandestine violations of (a) of this section or evasion of other applicable state and federal laws and regulations.

(e) The provisions of this section apply to foreign vessels and aliens in the internal waters and the territorial sea of the state.

(f) The commissioner, after consultation with the Board of Fisheries, may, under conditions and limitations determined by him, grant a limited exception to this section with respect to a particular fishery and permit foreign vessels to process fish resources at an existing or constructive port, or to transport fish resources outside the state from an existing or constructive port before processing takes place, if he determines after investigation that:

(1) the volume of fish resources expected to be taken in the fishery under current regulations exceeds the anticipated processing capability of facilities operated by United States processors;

(2) there is no practical opportunity for United States processors to make emergency arrangements to handle the excess volume;

(3) there is a likelihood of substantial wastage of fish resources taken in the fishery if foreign processing or transportation capacity is not utilized; and

(4) there is no significant likelihood of clandestine foreign fishing operations if the exception is granted.

(g) As used in this section:

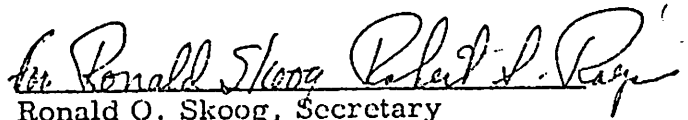
(1) "aliens" means aliens not lawfully admitted to the United States; and

(2) "existing ports" means those Alaskan marine ports designated in 19 C.F.R. §1.2.

Notice is also given that any persons interested may present written statements or arguments relevant to the action proposed in this notice. Written comments should be mailed so as to be received by the Board of Fisheries, Subport Building, Juneau, Alaska 99801 before 1:00 p.m. on July 10, 1978.

All persons interested in or affected by the proposed regulations are hereby informed that, by publishing this legal notice, the Board of Fisheries may consider all of the subjects covered by the proposed regulations contained in this notice; the Board is not limited by the specific language or confines of the regulations proposed. On its own motion, after receipt of written comments, the Board may adopt, amend, reject, supplement, or take no action on these matters. In addition, the Board may adopt other regulations necessary to implement, administer, or enforce the regulations adopted by the Board. All persons interested in or affected by the subject matter areas contained in this legal notice should make written comment if they wish to have their views considered by the Board.

Date: May 12, 1978


Ronald O. Skoog, Secretary
Alaska Board of Fisheries

FOREIGN PROCESSORS IN HERRING FISHERIES

RESOLUTION NO. 78-3

- WHEREAS, the Alaska Board of Fisheries has regulated the exclusion of the foreign processors to participate in the herring fishery activity taking place in the Kulukak/Togiak area of Bristol Bay, and
- WHEREAS, such a decision will more than likely affect the ability of the herring fisherman to market herring at a reasonable price, and
- WHEREAS, such a decision is in complete favor of the participating domestic processors to reap extremely high profits off the fishery, and
- WHEREAS, the most numerous and typical businessmen presently participating in the herring fishery are herring fisherman, and not processors;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Bristol Bay Native Association, Inc., gathered in Dillingham, Alaska on this 11 day of May, 1978 that the Board of Fisheries considers the position of the Bristol Bay herring fishermen in their next meeting and plan to include the foreign vessels in processing of herring in years to come.

SIGNED: *William F. ...*
President

ATTEST:

J. ...
Secretary

CERTIFICATION:

I hereby certify that the foregoing resolution was duly passed by the Full Board of Directors of the Bristol Bay Native Association, Inc., at a meeting in Dillingham, Alaska this 11 day of May, 1978.

J. ...
Secretary

SOCIOECONOMIC STUDY OF HERRING

RESOLUTION NO. 78-4

- WHEREAS, the North Pacific Fisheries Management Council has set aside funds to complete a socio-economic study of the herring fishery development occurring at the Togiak/Kulukak Bay area of Bristol Bay, and
- WHEREAS, the Alaska Board of Fisheries has decided to exclude the participation of the foreign processors in the local herring fishery, and
- WHEREAS, such a decision may have an adverse impact on the income and participation of the herring sac roe and roe-on-kelp fishermen of Bristol Bay;

NOW THEREFORE BE IT RESOLVED, by the Board of Directors of the Bristol Bay Native Association, Inc., gathered in Dillingham, Alaska this 11 day of May, 1978 that the North Pacific Fisheries Management Council includes in their socioeconomic study the affects of the decision of the Alaska Board of Fisheries to exclude the foreign processors on the income of the local herring sac roe and roe-on-kelp fishermen of Bristol Bay.

BE IT FURTHER RESOLVED, that the study includes how much income, the local Bristol Bay herring fisherman has made, as compared to the domestic processors participating in the herring fishery.

BE IT FURTHER RESOLVED, that the study reveals the marketing outlets of the local Bristol Bay herring fishermen in the 1978 herring season with the exclusion of the foreign processors.

BE IT FURTHER RESOLVED, that the study reveals the average price per ton received by the local Bristol Bay fisherman, as well as, determines it's benefit to the local economy.

SIGNED: W. Eugene F. Belandier, V.P.
President

ATTEST:

[Signature]
Secretary

CERTIFICATION:

I hereby certify that the foregoing resolution was duly passed by the Full Board of Directors of the Bristol Bay Native Association, Inc., at a meeting in Dillingham, Alaska this 11 day of May, 1978.

[Signature]
Secretary

Appendix 2

North Pacific Fishery

Management Council

John Rasmuson, Chairman
John L. Branson, Executive Director

Suite 32, 333 West 4th Avenue
Post Office Mall Building



Mailing Address: P.O. Box 3136DT
Anchorage, Alaska 99510

Telephone: (907) 274-4563
FTS 265-5435

May 2, 1977

The Honorable Juanita Kreps
Secretary of Commerce
United States Department of Commerce
Commerce Building
Washington, D. C. 20230

Dear Madam Secretary:

At its sixth plenary session in Anchorage, on April 28, the North Pacific Council reviewed 13 permit applications from foreign ships to fish within the Fishery Conservation Zone off Alaska. The Council recommended that seven applications be recommended for approval. These were for the:

- #3 Chil Bo San Ho (KS-77-0074)
- #5 Chil Bo San Ho (KS-77-0075)
- #6 Chil Bo San Ho (KS-77-0076)
- Anyo Maru #11 (JA-77-20541-B)
- Shinsei Maru #2 (JA-77-20319-B)
- H Moyo Maru
- Jinam 305 (to replace the Soo Gong 51)

The Council recommended that the following permit applications not be approved:

- Gae Chuk Ho
- Soo Gong 31
- Bookneung
- Tae Yang #11
- Tae Yang #12
- Tae Yang #15

The six applications recommended for disapproval are those South Korean vessels belonging to the Korea Marine Industrial Development Corporation which were to have been used in the Gulf of Alaska to buy raw fish from American fishing vessels and process it aboard. The Council, both in its April 27 and 28 meeting and at the fifth plenary session in March, has heard a great deal of testimony from both sides of this controversial question. The Council members both individually and as a group have studied the problem at length and after due deliberation, by a vote of six to two recommend that you not issue these permits.

The Honorable Juanita Kreps
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May 2, 1977

Three of the voting members were absent when the vote was taken. Two of the non-voting members entered the debate and expressed concurrence with the majority conclusion.

Because of the important policy considerations involved, I will in this letter attempt to summarize the issues raised in the debate on this motion and the comments by the Council members.

Our procedure upon receipt of permit applications is first to refer the applications to an Advisory Panel subcommittee. The deliberations of the subcommittee are open to the public and various individuals participated in the discussion. The subcommittee had the benefit of advice from Mr. Kim White, legal counsel recently assigned by NOAA to Alaska. Legal opinions from private sources bearing on the subject were also considered.

The Chairman of this subcommittee reported to the Council that the majority of the review committee was of the opinion that the applications for vessels belonging to the K.M.I.D. Corporation not be approved at this time. However, the Chairman pointed out that there was considerable division of opinion on this recommendation and several of the subcommittee members were influenced by reservations expressed by Mr. White as to whether the regulations contemplated the licensing of a processing vessel which was not in itself part of a directed foreign fishing effort. This matter, Mr. White wished to research further and indeed the Council had previously requested a review of other legal questions pertaining to foreign fishing.

While the Council members observed the legal question, the debate indicated a more fundamental concern with the consequences of permitting off-loading fishery stocks from domestic catcher boats to unregulated foreign processors in Council waters. This is a matter of principle and the decision not to approve the applications at this time was made primarily to avoid approving a new policy of fishery operation without adequate perception of the consequences and conviction of its general desirability.

It is agreed by all the Council members that it is highly desirable to encourage the entrance of American fishermen into the catching of groundfish and particularly Alaska pollock. It is also not disputed that, at this time, there does not exist

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the domestic processing capacity to handle the quantity of pollock which the Korean venture has declared as its objective. Nevertheless, and even though testimony was presented that Alaskan fishermen are very interested in this Korean offer, no domestic fishermen have yet signed up to fish for the venture. Indeed, a resolution was presented from the United Fishermen's Marketing Association, Inc. (headquartered in Kodiak, Alaska) that in part stated that "Unless American processors are afforded the same priority treatment under the Act as American fishermen enjoy, ventures like that proposed by K.M.I.D.C./Devenny could retard the development of American processing and marketing of under-utilized species and potentially destroy present processing of fully utilized species such as shrimp, crab, salmon, herring." The full text of this resolution as well as a resolution of the Board of Directors of the National Fisheries Institute are attached.

The following summarizes the Council's concern:

1. Any short-term benefits to American fisherman to market groundfish by selling directly to floating foreign processors could have a long-term inhibiting effect on the development of U.S. processing capability. The adverse impact on plans of domestic processors was testified before the Council.
2. A serious conservation problem is presented. The total allowable catch for Gulf of Alaska pollock in 1977 was set at 150,000 metric tons, all of which (with the exception of 1,000 metric tons) was allocated to foreign nations. The Korean venture projects a harvest of an additional 60,000 to 80,000 metric tons above the biologically set maximum.
3. A further conservation and management problem is that the fishing would be on mixed stocks. While it is alleged that the venture is directed towards pollock, the permit applications did not specify the species. It is apparent that there would be a substantial bycatch of other species with unknown impact and certainly adverse effect on halibut stocks which legally are required to be returned to the sea.
4. There is no current regulatory method for controlling an American trawl fishery by time and area closures or gear restrictions. It is anticipated that in the permanent management plan there will be introduced these regulatory measures, including division of the Gulf of Alaska into the same number of groundfish areas as used by INPFC.

The Honorable Juanita Kreps
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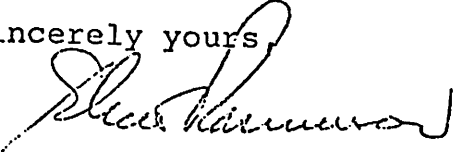
5. An approval of this venture would likely open the door to other nations, with potentially chaotic conditions and we are currently unprepared to manage them.

6. If this venture is officially approved, it will encourage similar arrangements in various other species, with indeterminate consequences in conservation, management, and social and economic impact. The desirability of some kind of primary domestic processing rule will certainly be discussed by the Council.

7. Many millions of dollars have been invested in domestic processing plants by both U. S. and foreign companies and more is contemplated. It is essential that the rules be fixed and not changed in midstream.

From the above, it is apparent that the Council did not want to approve the applications, which appear simple and perhaps isolated on the surface but are fraught with substantive and unreckoned consequences for the future. The Council believes that a policy should be developed to cover these matters and, upon formulation, will forward its recommendations to you.

Sincerely yours,



Elmer Rasmuson
Chairman
North Pacific Fishery
Management Council

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
 Jim H. Branson, Executive Director

Suite 32, 333 West 4th Avenue
 Post Office Mall Building



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March 2, 1978

Mr. Terry L. Leitzell
 Assistant Administrator for Fisheries
 National Marine Fisheries Service
 3300 Whitehaven Street, Page Bldg. 2
 Washington, D.C. 20235

Dear Mr. Leitzell:

At its meeting in Anchorage on February 23rd and 24th the North Pacific Council considered the proposed interim policy to govern consideration of applications for permits by foreign vessels seeking to purchase or receive fish from U.S. fishing vessels in the U.S. Fishery Conservation Zone.

While generally supporting the recommendations made by the Pacific Council at its meeting a week earlier in Portland, the Council suggested some other areas in the interim policy that they felt should be changed and/or strengthened. They feel that the supplementary information preceding the proposed policy in the Federal Register should recognize the need to offer protection under the Act to the domestic processing sector, and that that need should be recognized as a primary justification for the interim policy. While it is true that a potential conservation problem exists with joint ventures, most of the testimony at the public hearings on this subject centered around the need for U.S. processors to be able to compete fairly in the market.

The second of the three criteria for approval in the proposed policy which says "The capability and intent of the U.S. fishing industry to harvest fish to be sold or delivered exceeds the capability and intent of the U.S. industry to process such fish." touches on this point, but in the Council's opinion, does not state the case as fully as it should.

A possible revised wording might be in the sentence in the supplementary information section that starts "The consequence of all this is that a potential conservation problem now exists, in addition the ability of U.S. processors to compete for the products of a limited harvesting ability against foreign processors operating with lower overheads and fewer regulatory restrictions may be severely impaired."

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In addition, in the same criteria (2) referred to early^{ier}, the Council suggests that it read "the documented capability and intent of the U.S. fishing industry to harvest fish-----" Although recognizing that documentation of intent may be difficult, they feel that some verification of industry's intentions and their existing or proposed capabilities in this field is very desirable.

The Council also feels that some consideration of economic factors should be included in the policy statement. The present language might be interpreted to require a measurement of capability of intent without reference to the price paid to fishermen. One of the obvious fears of U.S. processors is that foreign processors, because of their lower wages and the lack of restrictions such as FDA and OSHA regulations that are imposed on American processors, will be able to substantially outbid American processors for the raw product.

As mentioned earlier, the Council did concur in and support the recommendations and amendments submitted to you by the Pacific Fishery Management Council in their letter of February 22nd, specifically, in the paragraph beginning; "In implementing this policy, the Secretary of Commerce may also take into consideration one or more of the following in evaluating a permit application and in setting conditions and restrictions governing any permit for a foreign vessel to purchase or receive fish from a U.S. harvesting vessel within the Fishery Conservation Zone."

Change standard 2 for evaluating a proposal to: "potential for gear and other conflicts between U.S. vessels or between U.S. and foreign vessels involved in harvesting such fish and other stocks or species in the same area and at the same time."

Add a 12th consideration as follows (12) potential for detrimental effects on fish stocks due to by-catch, impact on sanctuary areas or other factors.

The Council also felt that the interim policy should apply to FMP's implemented or in the hands of the Secretary to be implemented as of January 1st, 1978. This would include the Council's Fishery Management Plan for Groundfish in the Gulf of Alaska.

The Council also suggests that you consider a policy of "three-tiered allocation" in which fish caught by American fishermen for delivery to a foreign processor in the FCZ would be from that country's allocation. Countries participating in joint ventures with American fishermen should receive special consideration in their allocations and a specific portion of that country's allocation should be identified for use only in joint ventures. The three-tiered system then would consist of (1) regular allocations of resource surpluses to foreign countries, (2) allocations to foreign nations for use only in joint ventures, (3) that portion of the OY that has been identified as the domestic annual harvest. This system would accomplish two things. First, it would prevent overruns on

optimum yield, since once an allocation identified as for use in joint ventures was used the joint venture would cease, and secondly, it would provide a relatively painless transition from a foreign fishery to a U.S. fishery as domestic harvests increased and foreign allocation of both types decreased.

The Council would be very interested in working with you in promulgating a policy and regulations to further this concept.

The current climate in Alaska for joint ventures of the type proposed by KMIDC/Davenny and Associates is very difficult to define. Three U.S. processing companies in Alaska currently have standing offers for various species of groundfish for their plants in Dutch Harbor, Sand Point, Kodiak and Petersburg. None of them have been successful in getting fishermen to catch all of the product they would like to buy. So far as we can tell, their prices appear to be competitive with the announced prices of KMIDC/Davenny. On the other hand, Mr. Davenny, in his presentation at the last Council meeting, identified several fishermen who were anxious to fish for him and deliver to a Korean processor in the Gulf. It would appear that the only immediate competitive advantage that a foreign processor might have would be the so far theoretical ability of the catching vessels to deliver more fish at sea than they could to shore processors by eliminating the run into the plant when loaded.

The Council recognizes the extremely complex nature of this issue and welcomes the opportunity to work with your Department in developing a sound policy. They also appreciate the extension of the comment period so that they could be included in this first review of the interim policy.

Sincerely,

Jim H. Branson
Executive Director

cc: 7 Regional Councils

COPY

North Pacific Fishery Management Council

Harold E. Lokken, Chairman
Jim H. Branson, Executive Director

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February 27, 1978

Mr. David Wallace,
Acting Assistant Administrator for Fisheries
NOAA, National Marine Fisheries Service
3300 Whitehaven Street, Page Bldg. 2
Washington, D.C. 20235

Dear Dave,

At its meeting February 24th the North Pacific Council took the following action on the foreign permit applications held for their consideration as outlined in my letter to you of February 10th.

They recommended approval for application # JA-78-0821 for the MATSUEI MARU # 72.

Recommended approval of application # JA-78-0822 for the EIKYU MARU #26 with the proviso that it not be permitted to have crab gear aboard when engaged in the longline fishery, nor longline gear aboard in the crab pot fishery. The attached letter from Mr. Sadayuki Kashiwagi, Anchorage representative of the Japanese Fisheries Association, outlines the activity and schedule intended for this ship in 1978.

Deferred a recommendation on application # JA-78-0851, TAISAN MARU #1 until further information on its proposed activities can be received from the Japanese Fisheries Association. We were told by Mr. Kashiwagi that this ship did not intend to start operating until May and that a delay in approval of its permit application would not interfere with its schedule. The reason for its application to conduct support activities in areas where it does not intend to fish has still not been satisfactorily explained. We expect the requested information from the Japan Fisheries Association prior to the next Council meeting.

On applications # KS-78-0042 - SOO GONG #51 and KS-78-0079 - BOOK NEUNG, which had applied for permits for processing and support activity in the Gulf of Alaska and the conduct of a joint venture purchasing raw fish from American boats, the Council voted to postpone a decision until July. This is in line with established Council policy which postponed consideration of joint venture applications until July 1, 1978 in order to better evaluate the activities of U.S. processors and fishermen in the groundfish fisheries off Alaska. The Council is currently financing

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a study on the effects of joint ventures and will have those study results available for consideration by their June meeting.

Two other applications for permits were received too late for the Council to consider at this meeting, however, they both fall within the guidelines allowing staff review. I therefore recommend approval for permit application # JA-78-0724, the KAIYO MARU #12, a stern trawler, and application # JA-78-0723, KAKUDAI MARU #31, a crab pot boat attached to one of the two mothership fleets operating in the Bering Sea.

Sincerely,

Jim H. Branson
Executive Director

cc: Ron Naab
Attn: Perry Allen

JOINT VENTURES

	<u>Page</u>
5. INDUSTRY PHILOSOPHY	
A. <u>In favor of joint ventures</u>	
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Title: Statement of Marine Resources Co., Inc., prepared for the Hearings on Joint Ventures Conducted by the National Marine Fisheries Service and the North Pacific Fishery Management Council; dated September 1, 1977.	
2. Summary of Testimony of Davenny/KMIDC Witnesses at Joint Venture Hearings.	5-22
B. <u>Opposed to joint ventures</u>	
1. Statement to North Pacific Fishery Council by Bill Deshler, President of Pacific Pearl Seafoods, August 24, 1977, at Kodiak, Alaska.	5-27
2. Letter to Elmer Rasmuson, Chairman, North Pacific Fishery Council, from Jay S. Gage, President of Peter Pan Seafoods, Inc., date May 24, 1977	5-32
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September 1, 1977

STATEMENT OF MARINE RESOURCES CO., INC. PREPARED FOR THE
HEARINGS ON JOINT VENTURES CONDUCTED BY THE NATIONAL MARINE
FISHERIES SERVICE AND THE NORTH PACIFIC FISHERIES MANAGEMENT
COUNCIL

STATEMENT PREPARED BY
DR. WALTER T. PEREYRA
VICE PRESIDENT AND GENERAL MANAGER FOR U. S. OPERATIONS

This written statement has been prepared by Marine Resources Co., Inc. to explain the benefits which the United States will derive from business arrangements involving the offshore processing of certain underutilized fish species caught by U. S. fishermen within our 200-mile Fishery Conservation Zone. Additional points are also raised with regard to the interrelationship of joint ventures and the development of the U. S. domestic fishing industry.

Portions of this statement were presented orally at the public hearings in Seattle and Kodiak on August 5 and 24, 1977 respectively. This statement is in addition to the one prepared for the July 22, 1977 joint venture hearing held in Seattle by NMFS and the Pacific Fisheries Management Council. Both statements together constitute the complete position of our Corporation on this subject.

BACKGROUND

Our company was incorporated in the State of Washington last July, culminating some three years of discussions between the Bellingham Cold Storage in Bellingham, Washington, and the Soviet Ministry of Fisheries. The capital stock in this joint

venture corporation is equally held by Bellingham Cold Storage and Sovrybflot, the Ministry of Fisheries' international joint venture arm. A U. S. citizen, Mr. James Talbot of Bellingham Cold Storage, is President of our joint venture corporation.

We presently have offices in Seattle and Bellingham, Washington. In the near future, we will open an office in Nakhodka, the principle Soviet fishing port on the Siberian Pacific Coast. It is my understanding that our Nakhodka office represents the first permanent commercial office to be opened in the Soviet Union outside of Moscow by an American firm.

COMPANY BUSINESS ACTIVITIES

The main intention of our Company is to open up new markets to U. S. fishermen for underutilized species such as Pacific hake and Alaska pollock. We have no interest in harvesting or processing species such as salmon, crab, shrimp, rockfish, and other bottomfish in which there already exists a strong U. S. fishery or processing operation. Such competitive activities would be disastrous to both our joint venture partners.

As now envisioned, our joint venture corporation will purchase hake and pollock from U. S. fishermen to be delivered to a Soviet factory vessel for processing. Ownership of the factory vessel would remain with the Soviet Ministry of Fisheries. They also would be responsible for its operation. The finished product, which would be owned by our Corporation, would be

processed to the highest quality standards possible and sold on the international market. Obviously, we will not become involved in any business activities which cannot generate a reasonable profit. In this regard we are no different than any other U. S. corporation.

Besides joint fishing activities, our Corporation will also become involved in vessel repairs, marketing of Soviet fishery products, and in provisioning the Soviet fleet with perishables, water and fishing gear. In regard to this latter commercial activity, as of August we have had three supply ships from the Pacific fleet call in Seattle to purchase provisions. These vessels have purchased some 600 tons of perishables and other supplies representing more than \$275,000 in direct business activity to the Port of Seattle. Prior to the formation of our joint venture company, this ship supply business was handled out of Vancouver, Canada.

Our Company has taken a number of positive steps directed at developing the capacity of the U. S. fishing industry to catch and utilize underutilized resources such as hake and pollock.

1. Thirty-five thousand and 70,000 pounds of frozen hake and pollock (round, headed and gutted, and filleted) were obtained as samples. These samples were freely distributed to NMFS, University and industry groups for product development and testing.

2. A meeting was arranged between highline U. S. trawl skippers in the Seattle area and the trawl master and captain of the Soviet hake trawler MYS DALNIY to discuss hake fishing methods and procedures for transferring trawl codends at sea.

3. Arrangements are being made to conduct an experiment involving a U. S. trawler and a Soviet stern-ramp vessel to better understand the practical problems associated with codend transfer at sea.

4. Arrangements are being made to have a group of U. S. processors, fishermen and fish technologists visit the Soviet processing vessel SULAK to observe hake handling, processing, and storage procedures.

SULAK OPERATION AND PERMIT CONSIDERATIONS

This summer we had planned to experimentally process hake aboard the SULAK, a large factory ship recently outfitted by the Soviets at considerable expense for the processing of hake and pollock caught by U. S. fishermen. This expressed interest on our part was in part responsible for the 6800 metric ton, domestic hake setaside in the Pacific Trawl Fishery PMP. Unfortunately, though, the Secretary of Commerce declined to make a decision on the SULAK permit application pending the outcome of NMFS/Regional Council hearings on this subject. This delay has killed any opportunity we might have had to mount a joint fishing operation this year. Furthermore, it will assure that U. S. fishermen will underharvest their share of the hake TAC.

The SULAK represents a substantial investment -- some \$1.5 million in new processing equipment alone. Therefore, when the Soviets learned that their original permit application for the SULAK to receive hake from U. S. fishermen was not going to be approved, they obviously had to seek an alternative course of action. Consequently, in July they re-submitted the SULAK permit application along with those for five, new Soviet stern trawlers which would fish for the SULAK. On August 11, these applications were approved and the permits granted, thereby allowing this fleet to fish and process hake off the Pacific northwest this fall. Unfortunately, though, the SULAK permit specifically prohibits any operations in support of U.S. flag vessels. Thus, we will not be able to experimentally purchase hake from U. S. fishermen for processing aboard the SULAK as originally proposed.

At this point it would be instructive as a case study to look at the similarities and differences between the permitted operation and that which was denied. As for similarities, in both cases hake would be caught within our 200-mile zone and delivered to the SULAK for processing. Also, in both cases, our joint venture company would undertake to market the processed hake in the U. S. and abroad.

The principal difference between the two operations is the nationality of the vessels harvesting the fish. In the permitted modus operandi, Soviet, not U. S. vessels, will be fishing for the SULAK. Furthermore, since there has been a

legal determination that the flag of the capturing vessel is the controlling factor as regards to whose quota the fish are charged, the hake catch will continue to be part of the Soviet quota.

The present change in the SULAK situation has important ramifications with respect to the development of our domestic groundfish fisheries on underutilized species. As long as the permit specifically restricts operations in support of U. S. flag vessels, our Company will not be able to buy hake or pollock from U. S. fishermen for processing aboard the SULAK. This export market for the U. S. fishermen will be there but, because of the permit restrictions, U. S. fishermen will not be allowed to participate in that market. Foreign fishermen, on the other hand, will not be limited by any such market restriction and thus will be able to catch hake or pollock and land them on the SULAK. In this regard, we could purchase hake and pollock from any foreign vessels which have a valid permit to fish for these two species -- Polish, Taiwanese, Japanese and ROK vessels.

It seems to us that this situation is clearly discriminatory against U. S. fishermen and is in direct contradiction to one of the declared purposes of the FCMA..."to encourage the development of fisheries which are currently underutilized or not utilized by United States fishermen, including bottom-fish off Alaska."

Besides being contrary to one of the stated purposes of the Act, conditions placed on a permit restricting operations

in support of U. S. flag vessels may be illegal unless it can be shown that such restrictions are necessary for purposes of conservation and management of the resource. In support of this point, we refer to Sec. 204 (7) (D) which states:

"Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate" (emphasis added)

In the case of the SULAK, sufficient hake was set aside in the PMP to allow for a modest domestic hake fishery. It is obvious that the quantities of hake now being landed incidentally by west coast trawlers are going to be substantially less than the 6800 metric ton domestic allocation. Thus, it would be difficult to argue that further restrictions are needed on the SULAK to conserve and manage the hake resource.

With regard to the conservation and management argument, we further question whether or not restricting access by U. S. fishermen to offshore foreign markets for underutilized species is consistent with certain of the National Standards for Fishery Conservation and Management. Specifically we refer to 301 (a)(5):

"Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources..."

and 301(a)(7):

"Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication..."

It would seem that the restrictive language attached to the SULAK permit is going to increase costs and promote inefficiencies in the harvesting of underutilized resources by U. S. fishermen. For these reasons and the others stated above, we

feel this condition is inconsistent with the FCMA and therefore not a legal condition attached to the permit.

OTHER POINTS REGARDING PROCESSING OF U.S. CAUGHT
FISH ABOARD FOREIGN PROCESSING VESSELS

Development of Domestic Processing Industry

There has been considerable testimony by the opponents to joint ventures that by allowing hake and pollock caught by U. S. fishermen to be processed aboard foreign offshore processing vessels, we will prevent the shoreside processing segment of the domestic industry from developing. Our Corporation is sympathetic to this expressed concern by the shoreside processors, in that most of the fish companies in the Pacific Northwest and Alaska are important customers, either directly or indirectly, for Bellingham Cold Storage. For that reason, it is not in our long-term interests to become involved in any activities which might adversely affect these important business relationships.

This concern notwithstanding, though, it seems to us that the international nature of the groundfish market and its resource base is now, and will continue in the future to be the determining factor as to whether or not the domestic processing industry is economically competitive in the marketplace. Preventing U. S. fishermen from selling to foreign offshore processors is not going to change these facts of life. The following facts are cited to illustrate this point.

As is well known, the groundfish market in the United States is overwhelmingly dominated by imported, frozen blocks and fillets. In 1976 these imports amounted to some 600 million pounds at a value of \$400 million.⁽¹⁾ In terms of round weight, these imports equate to around 1 million metric tons of groundfish catch. By way of contrast, in 1975 the entire U. S. trawl fishery for groundfish along the Pacific coast amounted only to some 54,000 tons.

Frozen groundfish blocks are primarily manufactured from the cod-like species (cod, haddock, hakes, pollock, etc.). In recent years the total world catch of these species has averaged around 12 million metric tons (Table 1). Of that total, only 1.5 million (12.5%) was taken from waters off the U. S. (Table 2). It is quite apparent that by far the majority of the landings of this important raw material base for the groundfish block industry come from foreign waters. Indications are that total world landings could be increased further through development of the underutilized hake resources off Chile and Argentina and world-wide grenadier stocks.

Alaska pollock is a further case in point. In 1975 the total reported catch of this important groundfish species in the North Pacific, Bering Sea and Japan Sea was slightly more than 5 million metric tons (Table 3). Removals by all nations from the U. S. portion of the Bering Sea and the Gulf of Alaska contributed only 25% to this aggregate catch. Obviously, the

(1) Fisheries of the United States, 1976 (ed. by Leslie A. Robinson). U.S. Dept. of Commerce, NMFS, 96pp.

majority of the pollock resource is not under U. S. jurisdiction and control.

TABLE.

1. -- WORLD COMMERCIAL CATCH OF FISH, CRUSTACEANS, MOLLUSKS, AND OTHER AQUATIC PLANTS AND ANIMALS (EXCEPT WHALES AND SEALS), BY SPECIES GROUPS, 1974 AND 1975

Species group	1974 (1)		1975	
	<u>Thousand metric tons</u>	<u>Million pounds</u>	<u>Thousand metric tons</u>	<u>Million pounds</u>
	----- <u>Live weight</u> -----			
Herring, sardines, anchovies, et al.	14,123	31,136	13,745	30,302
Cods, hakes, haddocks, et al.	12,673	27,939	11,835	26,091
Freshwater fishes	9,272	20,441	9,624	21,217
Miscellaneous marine and diadromous fishes.	8,289	18,274	8,126	17,915
Redfish, basses, congers, et al.	4,795	10,571	4,951	10,915
Mollusks.	3,462	7,632	3,819	8,419
Mackerels, snoeks, cutlassfishes, et al.	3,610	7,959	3,559	7,846
Jacks, mullets, sauries, et al.	3,591	7,917	3,519	7,758
Salmon, trouts, smelts, et al..	2,451	5,403	2,826	6,230
Crustaceans	2,024	4,462	1,951	4,301
Tunas, bonitos, billfishes, et al.	2,095	4,619	1,920	4,233
Miscellaneous aquatic plants and animals.	1,520	3,351	1,300	2,866
Flounders, halibuts, soles, et al.	1,190	2,623	1,146	2,526
Shads, milkfishes, et al.	743	1,638	760	1,675
Sharks, rays, chimaeras, et al.	575	1,268	565	1,246
River eels.	55	121	59	130
Sturgeons, paddlefishes, et al.	24	53	28	62
Total (2).	70,493	155,409	69,732	153,731

(1) Revised. (2) Figures may not add to totals because of rounding and conversion. Source:--Food and Agriculture Organization of the United Nations (FAO), Yearbook of Fishery Statistics, 1975, Vol. 40.

TABLE 2.--1977 TOTAL TAC OR CATCHES FOR CODS, HAKES,
HADDOCK AND POLLOCK WITHIN U.S. FCZ

Atlantic Species	TAC OR CATCH (Approx.) (metric tons)
Red hake	44,000
Silver hake	129,000
White hake	3,250
Atlantic Cod	25,000
Haddock	6,000
Atlantic pollock	14,000
Subtotal	<u>221,250</u>

Pacific Species

Alaska pollock	1,100,000
Pacific cod	65,000
Pacific hake	130,000
Subtotal	<u>1,295,000</u>

Total both areas 1,516,250

TABLE 3.--BREAKDOWN OF RECENT ALASKA POLLOCK LANDINGS

TOTAL POLLOCK CATCHES, FAO AREAS 61 & 67, 1970 - 1975

	1970	1971	1972	1973	1974	1975
AREA 61 (W of 175° W, N of 20° N)						
JAPAN	1,273,400	1,770,900	1,995,700	2,395,300	2,061,642	1,817,851
ROK	13,400	71,300	148,500	257,000	297,218	387,801
USSR	672,500	802,900	638,300	1,275,000	1,392,200	1,700,415
<u>SUBTOTAL</u>	<u>1,959,300</u>	<u>2,645,100</u>	<u>2,782,500</u>	<u>3,927,300</u>	<u>3,751,060</u>	<u>3,906,067</u>

AREA 67 (E of 175° W, N of 40° N)						
JAPAN	1,073,300	884,700	1,039,600	625,600	793,908	859,509
POLAND	---	---	---	---	---	631
USSR	24,500	59,000	391,100	64,200	362,000	257,701
USA	2,000	100	100	0	27	17
<u>SUBTOTAL</u>	<u>1,098,000</u>	<u>943,800</u>	<u>1,430,800</u>	<u>684,800</u>	<u>1,155,955</u>	<u>1,117,858</u>
 TOTAL	 3,057,300	 3,588,900	 4,213,300	 4,617,100	 4,907,015	 5,023,925

TOTAL POLLOCK CATCH OFF U.S. COAST (From INPFC Reports and NMFS data files)

Bering Sea

JAPAN	1,651,438	993,756
USSR	213,896	216,567
ROK	9,200	3,438
<u>SUBTOTAL</u>	<u>1,874,534</u>	<u>1,213,761</u>

Gulf of Alaska

JAPAN	14,000	38,000
USSR	20,000	10,000
OTHER	1,000	trace
<u>SUBTOTAL</u>	<u>35,000</u>	<u>48,000</u>
 TOTAL	 1,909,534	 1,261,761

It has been argued by some that the foreign fisheries operating off our coast are contributing to our balance of payments deficit in fishery products by exporting an appreciable portion of the fish caught within our 200-mile zone back into the U. S. Import statistics and recent analysis do not support this supposition. The majority of imports of edible fishery products into the U. S. are high valued species such as tuna, shrimp, lobster, scallops, etc., which are not caught off the U. S. In September 1976, NMFS's Office of International Fisheries reported that out of a total foreign catch of 3,311,800 metric tons caught in 1974 off U. S. shores, only about 372,500 metric tons or 11.2 percent was exported back to the United States. Clearly, the majority of the fish caught off the U. S. is destined for foreign markets, not the United States.

The situation involving Alaska pollock blocks is illuminating with regard to the origin of fish used to make blocks imported into the U. S. Two-thirds of the pollock blocks (60 million pounds) imported into this country last year came from South Korea. Interestingly, these blocks were produced from pollock caught off Kamchatka and in the Japan Sea. This fish did not come from the Gulf of Alaska or eastern Bering Sea as some have recently stated.

Opponents to joint ventures have cited the domestic industries success in rapidly developing the market for king and snow crab as an example of what they will do with the

market for underutilized groundfish species. While the crab market development is certainly laudable, it is not valid to contrast it with the situation involving hake and pollock. First, in the world today, three-quarters of the king crab and more than half of the snow crab catch is taken by U. S. fishermen from U. S. waters. Therefore, imports do not present the same competitive element that we find in the groundfish market. Furthermore, crabs are held alive, thus fishing vessels do not have to return to port as often to unload as they do with perishable groundfish such as hake and pollock. Finally, although meat yields of snow crab and pollock are somewhat similar, snow crab is six times more valuable.

Comments on Proposed Means of Regulating Offshore Processors

I would now like to offer some comments on several proposals I have heard regarding the regulation of offshore processors receiving fish from U. S. fishermen. One suggestion has been made that joint venture pollock fisheries be permitted, but only in circumscribed areas such as the Bering Sea. This type of restriction would work to the disadvantage of the U. S. fishermen in that:

(1) In our case the principal market is for pollock larger than 30 cm. for the production of fillet blocks. Since the average size of pollock in the Bering Sea is presently considerably smaller than those in the Gulf of Alaska, we would be forced to pay a lower price for Bering Sea pollock.

(2) Smaller boats would not be able to work as effectively in the Bering Sea as they could in the Gulf.

(3) Foreign fishermen would be permitted to harvest the surplus OY in the Gulf with less competition from U. S. fishermen. Besides giving the foreigners a competitive advantage, this would also help to maintain the foreign quota in the Gulf.

(4) It is recognized that the pollock stocks in the Gulf of Alaska are presently at a high level of abundance relative to the mid 60's. The fishable biomass is predicted to drop with the loss of the dominant 1970 and 1973 year classes. CPUE will also drop as the fishable biomass goes down. Therefore, to minimize risk in the development of a U. S. pollock fishery, we should encourage the fishery in the Gulf now on the anticipated high CPUE, not later when catch levels will be lower.

In the case of Tanner crab, we certainly didn't require that U. S. fishermen develop the less valuable C. opilio stocks in the northern Bering Sea before moving into the Gulf to fish the more valuable C. bairdi - - - why should we treat pollock any different?

Regarding closures, if certain areas were closed to U. S. fishermen, the closures would have to be based on a demonstrated need for conservation. Furthermore, the closures would have to effect all U. S. fishermen equally, irregardless of their market arrangements. To do otherwise would be discriminatory and

in direct contradiction to national standard 301 (a)(4),

".....If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and....."

Another suggestion has been that special landing taxes or use charges be levied against foreign processors that receive fish from U. S. fishermen. The intention would be to equalize the foreigner's operating costs with those of the on-shore processor. Apart from the obvious difficulties of determining an appropriate fee, this scheme also would be discriminatory against U. S. fishermen in that his catches would be taxed at a higher rate than would those of the foreigners. Besides having his earnings substantially reduced, the U. S. fisherman's market for underutilized species would be considerably weaker. Moreover, it would appear that such fees would be inappropriate in that they would not be consistent with the fee standards outlined in the Act under Sec. 204 (b) (10).

Incidental Catch Considerations

Concern has been expressed about U. S. fishermen delivering incidentally caught species along with the target species to the foreign processing vessel. In a trawl fishery on pollock it is impossible to avoid some incidental catch. For example, in the Gulf of Alaska the incidental catch in the Soviet pollock fishery is running about 10 percent. Since we plan to transfer the codends directly from the catching vessel without prior sorting, this incidental catch would come aboard the processing vessel.

As was mentioned earlier, though, our interest is in utilizing hake and pollock, not the incidental species. Therefore, one possible solution to this problem would be for the fisherman to arrange a market for the incidental species with a domestic processor. The incidental groundfish could then be frozen in the round aboard the processing vessel and delivered to the shoreside processor in some manner. Such an arrangement would have the advantage of allowing the U. S. fisherman to sell his entire catch while at the same time providing the domestic processor with a continuous supply of high quality, frozen groundfish for his operation.

Vessel Owners and Fishermen Impacted by Restrictions on Markets

Denying the U. S. vessel owners and fishermen access to the large offshore market, will severely impact their earning capacity. As the recent comparative analysis done by Mr. Sig Jaeger, of the North Pacific Fishing Vessel Owners Association, has shown, the U. S. fisherman's earning potential on pollock is substantially better when fishing for a floating processor than when landing the fish onshore. Projecting the returns to be expected from a 120-foot trawler with 1125 HP fishing for pollock at 5.5¢ per pound, he showed that the gross boat share would be 3.2 times greater for the vessel delivering to a floating operation than one delivering to a shore plant (\$222,511 versus \$70,119 respectively). Furthermore, the man share for the vessel delivering to the floater was more than double that for the shoreplant vessel (\$27,636 versus \$12,085, respectively).

Benefits to the U. S. labor force and fish processing industry

One argument which has been made against the SULAK application and joint ventures in general is that these operations will take jobs away from the U. S. fishing industry. Since the Pacific hake and Alaska pollock fisheries at present are entirely foreign operations and do not involve any U. S. labor, it is difficult to see where U. S. labor is being displaced. The proposed SULAK operation will immediately provide more jobs for U. S. fishermen, suppliers, ship builders, ports, etc. In the long run, stimulation of the U. S. processing industry will also expand employment in that and related sectors. Thus in actuality, it is foreign, not domestic, labor which will be displaced by joint venture arrangements.

After evaluating the joint venture issue in detail, we have concluded that the SULAK operation will stimulate and enhance, not impede, the development of U. S. processing capabilities. In support of this statement we offer the following observations:

(1) Acquisition of midwater trawling capacity by the U. S. fleet - While it is generally recognized that U. S. fishermen could successfully harvest hake and pollock, this capacity has never been completely demonstrated under actual commercial fishing conditions. Midwater trawling is the accepted method of harvesting these species, particularly when it is deemed desirable to minimize the impact on non-target species.

By and large, U. S. trawlers do not now have the gear for, nor the experience in, midwater trawling. There is certainly an interest, though, in acquiring this capacity. The proposed SULAK operation would accelerate the development of a U. S. midwater trawling capability. This expansion in the fishing power of the U. S. fleet should certainly benefit the U. S. processor by increasing the varieties, quantities and timeliness of actual or potential landings by U. S. fishermen.

(2) Expansion of the U. S. trawl fleet - Within the past year the markets for certain underutilized species, e.g. Tanner crab, sablefish, shrimp and groundfish, have improved substantially. As a consequence there is not a shortage of suitable, large vessels to engage in expanded trawl fisheries for latent species. We have estimated conservatively that it will take some 250 modern, full-time trawlers to harvest the quantities of Pacific Ocean and Bering Sea groundfish presently allocated to foreign nations. Utilization of this potential by the U. S. fishing industry, both fishermen and processors, can only come about if the present capacity of the U. S. trawl fleet is expanded considerably. In this connection the proposed SULAK operation will be stimulatory.

(3) Investment risk reduction - The cost of investment capital in any endeavor is in part a product of the degree of

risk associated with the investment activity. In the case of expanding U. S. processing capacity to handle unutilized fish resources, the lack of an existing U. S. fishery or established capacity to harvest these resources increases the risk, and hence the money cost, of the venture. We feel that the joint venture fishery involving the SULAK will establish the capacity and capabilities of the U. S. fleet to harvest hake and pollock, thereby eliminating one unknown in the investment equation. This reduction in investment risk should make it easier for U. S. processors to plan for and take advantage of the under-utilized resources off our coast.

(4) Expanding product availability - The high perishability of Pacific hake and pollock has been one of the major impediments to the development of a U. S. fishery on these species. The SULAK offers an opportunity to freeze hake and and pollock caught by U. S. boats before the onset of quality deterioration. Depending upon the requirements of shoreside processors, it should be possible to provide from the SULAK, or other offshore processing vessel, a dependable supply of frozen hake and pollock in either a whole or semi-processed form, and thereby stimulate the development of the U. S. processing industry.

SUMMARY

In summary we feel strongly that the preferential allocation right granted U. S. fishermen in the FCMA should not be weakened by denying him access to the large, offshore foreign market. To do so would be contrary to one of the stated purposes of the Act. Moreover, it could prevent the full and rapid development of U. S. fisheries on underutilized species with resulting losses in jobs and business activity in the fishing and supporting industries. Also, weakening this provision could contribute to the permanency of certain foreign fisheries off our coast.

From a policy standpoint the FCMA is not the proper vehicle for protecting the domestic industry from foreign competition on the domestic market. That protection is provided by the Shipping Act, anti-trust acts, Predatory Dumping Act, etc. The FCMA was not intended to augment or replace these legislative Acts. If injury is accruing from foreign competition in the marketplace, then industry should seek relief through the Federal Trade Commission, not by reducing the effectiveness of FCMA.

In the final analysis it is the U. S. fisherman who stands to lose if competitive markets such as we can provide with the SULAK are declared off-limits to him. Furthermore, the export earnings which would be generated by these fisheries will be lost to the U. S. economy. For these reasons we are of the opinion that it is in the best interests of the United States and the rehabilitation of the U. S. fishing industry to maintain an environment whereby the American fisherman can sell his catch in a competitive marketplace with a minimum of restrictions.

SUMMARY OF TESTIMONY OF
DAVENNY/KMIC WITNESSES
AT JOINT VENTURE HEARINGS

Presented at Feb. 1978

Council meeting
- Introduction to
notebook given to C. ...
by Ely at that meeting

Unlike any of the other witnesses at the joint venture hearings, we organized our testimony around the questions asked in the Paper for Use in Joint Venture Hearings which was passed out by NMFS in each of the cities where the hearings were held. We kept our remarks solely to the Davenny/KMIC proposed project and preceded our answers to the questions posed in the Paper with the following points:

(a) When the USSR kicked Korean fishing vessels out of its newly established 200 mile zone last winter Korea had nowhere to turn for pollock except to U. S. waters. However, the FCMA quotas assigned Korea for pollock in 1977 were far below the amounts of pollock which Korea had taken in the Bering Sea and Gulf of Alaska in preceding years. Korea was thus desperate, being a heavy pollock consuming nation. Its principal hope for increasing its pollock intake, other than through annual negotiations with the U. S. State Department for a larger percentage of the foreign quota, was to purchase from American fishermen who might be interested in supplying pollock. The Japanese and the Russians, on the other hand, with satisfactory quotas and, in the case of the USSR, with adequate stocks of domestic pollock within its 200 mile zone, were not going to pay American fishermen the higher prices necessary to attract them away from such species as crab and shrimp.

(b) Pollock is consumed in large quantities in the round by the poorer classes of Korean society. Some of the larger pollock are processed as semi-fillets on the Korean processing vessels and returned to Korea where they are candled utilizing cheap Korean labor to remove pin bones, hard cysts, pus pockets and the larger parasites. The candled fillets are then packed in five pound blocks and exported, principally to the U. S., where Mrs. Paul's Kitchens of Philadelphia is the principal buyer. Other buyers are Van de Camp and Certi Fresh. Five pound fillet blocks - compete in a large world bottom fish market, principally with cod and mackerel from the North Atlantic. Unlike species over which the U. S. has a virtual monopoly, such as salmon, king crab and halibut, there is a solid ceiling above which the price of pollock fillets cannot go. The result is that so far no U. S. processor has been able to produce five pound pollock blocks in competition with those produced by Korea, and, to a lesser extent, Japan.

(c) Pollock has a short "shelf life" between the time it dies in the process of coming to the surface in

trawls and the time it is frozen after processing. The Japanese keep their catcher vessels no further away than 40 miles than the processing ships. Some NMFS officials say that 75 miles is the maximum range for U. S. style catcher boats associated with shore based processors. Therefore, a pollock processing operation developed in Alaska utilizing shore based plants would require a plant approximately every 150 miles and such plants would be at the mercy of the ever moving pollock stocks. The cost involved in all probability would be prohibitive except for plants adjacent to known stable, rich pollock fishing grounds.

After making these preliminary points we then answered the questions put in the Paper. The questions and summaries of our answers follow.

1. What are the affects on the resource, both target species and by catch, as perceived by you? We see no adverse affects on the resource. With observers on board our processor vessels and by utilizing a fish ticket procedure we would anticipate that a wealth of data will be gathered on pollock and associated by catch which is not presently available to NMFS. In addition there is considerable opinion that pollock are predators with respect to salmon fry and shrimp larvae. Many fisheries management people believe that salmon and shrimp populations will increase with the reduction of pollock stocks.

2. What are the advantages and disadvantages to the U. S. harvester? It adds new money to his pocket, being a new specie for which there is presently no market. It allows him to develop new skills and to provides an additional use for the present U. S. trawler fleet. It gives him a new market for a new product. A possible disadvantage testified to by several witnesses was the risk that the foreign floating processors would move away in the dark of night leaving the American fisherman with a heavy investment and a boat for which there was no market. Our response to this was that Korea as a nation has nowhere else to turn for pollock. It is unlikely that processing vessels once committed and licensed to buy from U. S. fishermen will leave the fishing grounds. If this risk becomes a problem a procedure for posting some sort of bond might be worked out. However, the State of Alaska which has had considerable experience with out of state floaters requires a bond only for payment of taxes due the State of Alaska and not for amounts due fishermen.

3. What are the advantages and disadvantages to the U. S. processor? A joint venture operation conducted prior to the time U. S. shore based processors are willing and able to

buy bottom fish develops an experienced trawling fleet for the first time in the Pacific Northwest which fleet is then available to U. S. processors when and if they develop markets for bottom fish. In addition, the advent of foreign companies into a new fishery may well provide opportunities for U. S. processors to enter into direct joint ventures directly with foreign companies. In addition, having an experienced catcher fleet may assist U. S. processors in developing an efficiently processed product which one day may be able to compete on the world market. In terms of disadvantages we could identify none. The product being produced competes on a world market where U. S. costs of production, none of which can be controlled either by us or NMFS (such as minimum wage laws, OSHA, EPA, and FDA) make the cost of the product produced so high that it is non-competitive. There is nothing that any of us can do to repeal these laws and therefore to reduce costs for U. S. processors. Either they must wait until world market prices rise or they must work for tariff barriers to be created by the U. S. government to protect U. S. processors. However, the establishing of protective tariffs is not within the purview of NMFS. Finally, we pointed out that American corporations such as Mrs. Paul's, Van de Camp and Certi Fresh are also "processors" and that they are heavily dependent upon pollock fillets supplied by Korea.

4. What are the advantages and disadvantages to the U. S. consumer? The consumer benefits from the continuity of the present source of supply to companies such as Mrs. Paul's Kitchens. The prices paid by the consumer therefore remain stable. If protective tariff barriers are imposed by the U. S. at the instance of domestic processors the U. S. consumer will have to absorb those costs as they are passed on by the U. S. processors.

5. What other social and economic considerations should be taken into account by a national policy on joint ventures? One of the express purposes of FCMA is to promote efficiency in the production of fish. Operating in close proximity to processing vessels conserves fuel and does not require ice (as does running many hours back to shore based plants). There is a substantial impact on shore based communities as a result of Alaska fishermen developing a cash market for a presently unfished for species. True, there is a larger multiplier effect whenever a shore based processing plant is built in a community. However, until pollock can economically be produced by shore based plants the cash paid to fishermen delivering to foreign floating processors cannot be discounted as having substantial economic impact. The development of new markets immediately for American

fishermen would appear to be very much in line with the purpose of FCMA. To prevent fishermen from selling pollock until such time as shore based processors can make money buying pollock was not the intent of Congress in passing FCMA.

6. What should be the extent of NMFS rule making on this question? We proposed that NMFS regulations should expressly permit foreign vessels to purchase from American fishermen unutilized species and the unutilized portions of underutilized species within the Zone. Reasonable conditions might be placed on such activities in the way of permit fees but to impose taxes that are designed to equalize the cost of producing pollock fillets as between foreign floating processors and U. S. shore based processors would totally defeat joint venture projects and drive foreign buyers away, leaving the American fisherman where he is today with no market for pollock which he finds in great quantities along the Alaska coast. We proposed that there be flexible allocation reviews throughout the year so that product not taken by joint venture operations can be reassigned to foreign quotas and that unutilized foreign quotas can be reassigned to U. S. fishermen for delivery to foreign purchasing vessels. Subsequently we proposed a specific set of regulations incorporating our idea of a scheme for accomplishing these ends. A copy is attached.

7. What action should be taken on specific proposals affecting this region? We propose that the Davenny/KMIDC proposal be approved at the earliest possible date and, in our testimony in the Pacific Region, we proposed that the Soviet project also be approved although we testified that we knew little about its specific provisions. We stated this even though we understand that Marine Resources Company plans to bring its Soviet processing vessels into Alaskan waters to compete against KMIDC's processing vessels. Competition cannot be anything but beneficial to U. S. fishermen in terms of increasing market opportunities and probably the price paid to him. Since permits for foreign processing vessels are required under FCMA the entire concept is subject to review on an annual basis by both the Councils and NMFS. Therefore, to permit the pending application to proceed is not an irreversible decision for all concerned. Review of advantages and disadvantages of "joint ventures" should be a regular part of the annual licensing procedure.

8. What should be the national policy on joint ventures? The intent of Congress in passing the FCMA was not that it be a processors' relief bill. To interpret it as U. S. processors would have you, rather than in favor of U. S. fishermen is to counter the intent of Congress. To

permit joint ventures will open new opportunities for American fishermen, will not harm shore based processors, will preserve the relatively inexpensive price paid by U. S. consumers for products such as fish sticks and McDonalds' fillet-of-fish and will, if competition develops among foreign processors, result in U. S. fishermen being in a bargaining position to sell their product for increasingly higher prices. In addition, as joint venture projects, particularly with Korea, begin to harvest all of the OY for pollock in both the Gulf of Alaska and the Bering Sea substantial pressure will be put on the Japanese who no longer can rely on their large foreign quotas. They may then either send in their own processing vessels to buy from U. S. fishermen or encourage the Alaska shore based processors, which they own or substantially control through financing or markets, to develop bottom fish buying and processing operations.

PRESENTATION TO: North Pacific Regional Council
William K. Deshler, President
Pacific Pearl Seafoods
SUBJECT: Foreign Joint Ventures
DATE: August 24, 1977

I am Bill Deshler, President of Pacific Pearl Seafoods, a wholly-owned subsidiary of Amfac, Inc. We own and operate seven seafood processing plants in the State of Alaska and a reprocessing plant in Bellingham, Washington.

Pacific Pearl is strongly opposed to foreign processing vessels purchasing fish caught within the 200-mile limit. We respectfully recommend that all applications for such permits be denied. I recently wrote a letter to Governor Hammond expressing our concern. In part, that letter read:

"Dear Governor Hammond:

I am writing you because of a very genuine concern I have with regard to the future of our business in the State of Alaska. As you may be aware, Pacific Pearl acquired Wakefield Seafoods on July 1, 1976. We took this action because of our desire to significantly expand an already substantial commitment to the Alaskan seafood industry. The histories of the Pacific Pearl and Wakefield operations are essentially similar: Wakefield pioneered the Alaskan frozen crab business, while Pacific Pearl pioneered automatic shrimp peeling and processing of canned crab in the state. In order to successfully accomplish these missions, each of these companies had to make major commitments to the communities in which they operated, fishermen and employees. These initial efforts were successful -- due in large part to the cooperation of many Alaskans. Consequently, the first Alaskan crab processing facility and one small shrimp cannery have grown to seven Alaskan plants.

Our strategy in acquiring and building new facilities emphasizes shore-based plants, located in the major raw product resource areas of the state, which can be largely supported by local resident employees and businesses. In some instances (such as Sand Point), we are not only the community's major employer, but also the electric utility, city dock, fuel distributor, and until recently, the water utility. For your reference, we now operate the following facilities, which incidently are 100% domestically owned:

Seldovia:	55 resident employees 40-60 resident fishermen
Kodiak:	175 resident employees 100-200 resident fishermen

Sand Point:	100 resident employees 100 resident fishermen
Dutch Harbor: (2 plants)	100 resident employees 50-100 resident fishermen
Akutan:	25-50 resident employees 10 resident fishermen

Just as many Alaskans are dependent on us for their livelihood, we are dependent on them for our continued success. As the crab and shrimp seasons have become increasingly compressed in recent years, many of our employees, as well as the company's management, have been concerned about how the resulting voids would be filled. When the Fisheries Conservation and Management Act of 1976 became law, we felt the answer lay in expanding our processing efforts to include species previously harvested and processed by foreign fleets and motherships. We were so committed to this idea, that the two new plants we have constructed during the last two years were specifically designed and built with this in mind.

'I was glad to read the "Alaska Fisheries Council Statement of Policy" dated March 8, 1977, and approved by you wherein as a matter of public policy your office opined that, 'First preference for the catching, processing, and marketing of fisheries resources within the FCZ should go to Alaskan and other United States citizens and firms.'

I am firmly convinced that granting a foreign operation (such as KMIDC, Sovrybflot and others) permission to process North Pacific bottomfish is a very, very serious mistake - philosophically, strategically, and economically. For example, to grant the KMIDC request would effectively establish a monopoly. Moreover, this single firm would be exempt from all of the laws and regulations on which we rely to control monopolies and oligopolies in our economic system. (such as federal and state antitrust and pricefixing statutes). Strategically and economically, it would not be possible to entice a domestic processing firm to even attempt to compete in this environment. The economical return to domestic processors, employees, merchants, and bankers, consumers, and local and state governments is in this situation nil. American fishermen may benefit marginally from such an operation in its early stages. But I can assure you that once fishermen have made substantial investments in vessels and gear to harvest these species, the screws will begin to tighten and these individuals will be forced to either fish for subsistence prices and meet their mortgage payments, or have their business foreclosed. Competition is a powerful economic force - generating efficiency, technological improvements, and financial rewards better and more effectively than any other concept yet devised.

Gentlemen, I urge you to help create an environment which will allow domestic operations (both fishermen and processors) to develop the North Pacific bottomfish industry. Give us a climate - for two or three years - that will, at the end of this period, allow us to compete on equal footing with foreign operations. I am confident both the fishing and processing segments of the industry will not only meet this challenge, but that in the end, we will be more efficient and effective than our foreign counterparts.

Actions speak louder than words. I would like to spend a few moments explaining what Pacific Pearl has done, is doing, and intends to do in developing this business:

1. We recently completed construction of an 80,000 square foot processing plant here in Kodiak. To process our traditional products - i.e. crab and shrimp - only 25-30,000 square feet are required. The additional floor space, refrigeration capacity, etc. was specifically incorporated in the original design and construction to facilitate a large scale bottomfish operation. We are currently building a new plant at Dutch Harbor, whose floor space is twice as great as that required for the crab lines. Again, this was done to accommodate a bottomfish operation. I think it is important to note two things regarding these facilities:
 - a. The additional floor space and refrigeration capacity in these plants represents a very sizeable investment in, and commitment to the Alaskan bottomfish industry.
 - b. We would not have invested these additional sums at this point if we did not anticipate utilizing the resulting facilities in the fairly near term.
2. We have had a formal project team investigating the market situation and processing technologies associated with North Pacific Bottomfish for over two years.
3. We have purchased, are actively soliciting, and have a standing offer to buy bled, gutted, head-on cod at both our Sand Point and Kodiak locations for 15½¢ per pound.
4. We have offered to take delivery of 10,000 pounds of Pollack at 10¢ per pound in Kodiak in order to conduct processing and marketing studies of this species.
5. We have expended money to finance fishing gear for local fishermen. This gear is specifically designed

for use in harvesting bottomfish.

6. We went to Sealand and successfully petitioned for a lower rate to transport bottomfish in order to facilitate development of this business.
7. We intend to begin installing bottomfish processing equipment at our main plant in Kodiak next year. We have already designed several line configurations for the facility and are actively pursuing this project.

Frankly, we are very concerned about several factors which relate to domestic development of the North Pacific bottomfish industry:

1. I have already addressed our concern with regard to foreign operations in the industry.
2. Both Japan and Korea have established import bans on Alaskan Pollack. This may or may not hinder market development for this product.
3. We are not certain that a fishing fleet and effort would be available to support the processing operations we envision.
4. Most importantly, we recognize that we have a lot to learn about the fishing, processing and marketing of North Pacific bottomfish. This being the case, it would be a grave mistake to bite off more than we could chew. Such a circumstance would seriously hamper the otherwise bright future of this business. I think it is vitally important that all segments of the industry learn to walk before attempting to run. For our part, we intend to continue to move forward as fast as practicable - at a good, stiff measured pace.

In conclusion, Pacific Pearl is strongly opposed to foreign operations in North Pacific Bottomfish. We have already made a multi-million dollar committment to this bottomfish industry and, given a proper business climate, will continue to invest and will see it through. Responsibility is the key to this development. My confidence that we can successfully accomplish this task is based on an excellent track record by the people who really determine the success or failure of such efforts. Our eight plant managers represent 154 years of experience in the Alaskan Seafood Industry. Several of these individuals are the same ones who encouraged Ivar Wendt and Lowell Wakefield to develop the Tanner crab industry. There is no substitute for experienced, responsible, managers in local areas, who have a genuine, deep-seated concern for their community, their employees, suppliers and fishermen. In my mind, this ingredient is critical to the responsible development of

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William K. Deshler
August 24, 1977
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this business. I encourage you to check our record as a citizen in the Seafood industry and the communities in which we operate - check with local merchants, fishermen, Sealand, our customers. I would welcome the opportunity of discussing some of our plans and ideas in greater detail with any of the Council Members at our main plant here in Kodiak.



SEAFOODS, INC. 1220 DEXTER HORTON BLDG., SEATTLE, WASHINGTON 98104 • (206) 624-4344 • TELEX: 32-9445

JAY S. GAGE, *President*

May 24, 1977

Mr. Elmer Rasmuson,
Chairman,
North Pacific Fishery
Management Council,
P.O. Box 600,
Anchorage, Alaska 99501

Dear Elmer:

At the last council meeting, I verbally expressed my concern and the concern of my company over American fishermen being permitted to deliver to foreign vessels. It is our firm belief that one of the tenets of the 200 mile law is to provide a mechanism for the United States industry to develop ways of processing and marketing those species of fish within the 200 mile zone that heretofore have not been exploited by U.S. processors.

It seems to us totally unrealistic to grant permission to foreign vessels to receive fish and at the same time, for the United States processors to acquire capital in order to meet the challenge presented by the enactment of the 200 mile law.

Moreover, it seems totally inconsistent for the United States industry to attempt to do this, knowing full well that foreign vessels operating outside U.S. jurisdiction totally escape United States law and regulatory agencies, whose regulations we must comply with. (EPA, FDA, OSHA, etc.) Ironically, a large part of the market is in the United States and I cannot see how U.S. processors could realistically compete with foreign producers.

Many coastal towns in Alaska are dependent on local fish processing facilities and certainly, one of our goals is to try and make such facilities year-around operations, to the extent possible. For example, at our King Cove location, we are rebuilding our plant which was destroyed by fire last year. Reconstruction has already begun. It is our present intent to buy ground fish at King Cove in 1978. But, my concerns as

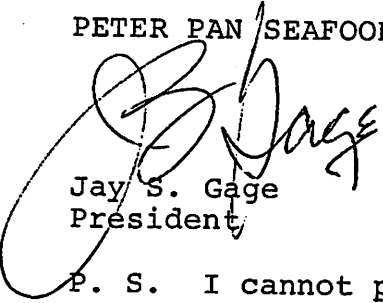
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Mr. Elmer Rasmuson
North Pacific Fishery
Management Council
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outlined above, certainly jeopardize the success of this venture and I would urge the council to think through the long range ramifications of approving such permits, as obviously the precedent would be established and every other species presently processed at shore plants would be in jeopardy.

Respectfully submitted,

PETER PAN SEAFOODS, INC.



Jay S. Gage
President

P. S. I cannot personally attend this meeting and would respectfully ask that this letter be entered into the record.

----- Jay S. Gage

cc: Donald McKernan
Douglas Eaton
Harold Lokken
Charles Meacham
Henry Eaton
Clem Tillion
Frank Haw
James Brooks
John Donaldson
Harry Rietze
Jan Riffe
Rear Admiral J.B. Hayes
John Harville
Lorry Nakatsu

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ERIK ROSENQUIST
ALICE F. GUSTAFSON
BRUCE N. HOLLIDAY

R. A. GUS MOEN
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BEN J. GANTT, JR.
JAMES D. ROLFE
BRUCE M. PYM
FREDERICK O. FREDERIGESON
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GERALD T. PARRS, JR.
R. BRUCE JOHNSTON
JOHN T. JOHN
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ROBERT A. MEDVED
DANLIAN C. SMITH

DONALD O. GRAHAM (1894-1974)

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DONALD O. GRAHAM, JR.
PARTNER ON LEAVE

DWIGHT J. DRAKE
UTAH BAR

March 29, 1978

Mr. Joseph Swing
District Director
U.S. Immigration and
Naturalization Service
815 Airport Way South
Seattle, Washington 98134

District Director
U.S. Immigration and
Naturalization Service
632 West Sixth Avenue
Room 401
Anchorage, Alaska 99501

Gentlemen:

We are general counsel for Icicle Seafoods, Inc., an Alaska seafood processor with worldwide distribution of its products. Icicle owns or has substantial interests in processing plants located in Petersburg, Sitka, Seward, Ninilchik and Homer, Alaska. As a major purchaser and processor of all seafood products commercially harvested in southeastern Alaska, the proposal of the joint venture of Korean Marine Industry Development Corporation and R.A. Davenny and Associates Inc. of Anchorage, Alaska, to purchase and process pollock in southeastern Alaska is of vital importance to our client.

I have reference in this letter to the proposal by the above Korean and Alaska companies to form a joint venture to utilize Korean workers aboard a Korean processing vessel. The vessel would be moored or anchored in ports or "constructive" ports in southeastern Alaska and handle pollock. The details of this venture, with which I am sure you are familiar, are set forth in two letters to the U.S. Department of Labor. The first letter, dated December 20, 1977, is from a Washington, D.C. attorney, Tersch Boasberg, to Aaron Bodin, Chief of the Division of Labor Certifications in Washington, D.C. The second letter is

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from an Anchorage attorney, Robert C. Ely, to Jess C. Ramaker, Seattle Regional Administrator of Employment and Training Administration.

Our client opposes this venture and takes issue with a number of statements that have been made in support of the visa petitions. Mr. Ramaker has suggested that our comments be addressed to your office, both in Seattle and in Anchorage since the final decision will be in the hands of the Immigration Service. However, since we believe this proposed venture would have severe impact on the U.S. labor market, we are also sending a copy of this letter to the Department of Labor in Seattle.

There is a fundamental error in the implication that an abundance of pollock is available to southeastern Alaska processing plants. The three processors offering to buy pollock this past winter have been unable to fill their requirements. Our own client is committed to increase its production and has already ordered over \$250,000 of new equipment to be used in processing and freezing bottomfish. Although the present harvest of pollock is low, and undoubtedly will be increased in the near future, the fact remains there is, at the present time, a shortage of this specie for processing in Alaska plants and this concerns our client.

The threshold argument for sanction of this venture by the U.S. Department of Labor is rather absurd. It proceeds along the line that since the Korean Government will not permit employment of U.S. workers aboard their processing vessels, there can be no deprivation of the U.S. work force because there is no viable employer to whom American workers could be referred for employment. In other words, our Government is asked to assist in the implementation in this country of a discriminatory nationalistic employment policy prescribed by the Republic of Korea for its floating processors.

There is no difference in principle or in practical effect between this proposal and one which might involve, for an example, the production of Datsun automobiles in Seattle by a branch of that parent Japanese manufacturing company. Suppose the Japanese Government had a similar exclusionary employment policy and the foreign manufacturer sought U.S. Government permission to bring to Seattle all required Japanese plant workers in order to comply with the Japanese law. The question would immediately come to mind what does the foreign government's labor policy or exclusionary laws have to do with a branch plant located in the United States. The answer would be that it can have no effect whatsoever.

Similarly, the Korean processing vessel, which would be regarded in Mr. Boasberg's words as "a U.S. branch office of a foreign-owned company" cannot avoid compliance with all U.S. and Alaska

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laws. It would bring with it no extra territorial status with respect to its discriminatory employment policies.

The proponents of this venture cite the advantage in utilizing "low cost Korean labor" for processing. They frankly admit that such advantage would enable them to offer higher prices to fishermen than competing U.S. processors. They erroneously conclude, however, that such a competitive advantage "will have no adverse impact on the U.S. labor market."

One hardly needs to be an economist to see the fallacy in such an argument. If cheap labor in this labor intensive processing business enables the foreign processor to offer higher prices for raw product than its U.S. competitor, the product will soon become unavailable to U.S. processors. The impact on U.S. workers will be immediate and severe. The economic effect on U.S. plant workers will be equally adverse whether cheap labor competes in this particular fish processing business, or were permitted to compete in the hypothetical foreign automobile manufacturing plant located in our midst. Any labor intensive business that has to compete against a substantially lower production cost of a competitor will soon be out of business together.

Icicle has employed an average of 42 plant workers in Petersburg this past winter in bottom fish production. They have processed in excess of 1,000,000 pounds of pollock since January and would have produced more had the product been available. As more gear becomes committed to this fishery, there is every expectation that pollock production will increase in southeastern Alaska.

Neither Pelican Storage Co. of Pelican, nor New England Fish Company at Ketchikan, have been able to purchase their requirements this past winter. With the development of this fishery in its infancy in the United States, it would be fatal to its survival if our Government were to sanction unfair competition from foreign processors at this time.

There are a considerable number of inaccurate statements made by the proponents of the venture concerning production methods, marketing procedure and the economic potential of pollock in the United States. Suffice it to say there is a substantial existing market for this high protein seafood product in the United States, and a number of domestic

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processors are already committed to develop the resource as an entirely American effort. This development of the bottom-fish resource is entirely consistent with the stated purposes and policy of the recently enacted Fishery Conservation and Management Act of 1976.

I trust this application for visas will be denied as a threat both to the U.S. labor force and to the orderly development of a new fishery resource within our recently established Fishery Conservation Zone.

Yours very truly,

James D. Rolfe

JDR/bp

Mr. Jess C. Ramaker, Regional Administrator

SEAFOOD: A Strategic National Resource

INTRODUCTION

*Presented to Council
Aug 29, 1977 by Reed
Rogers*

On March 1, 1977 the Fishery Conservation and Management Act of 1976 went into effect, creating what has now become known as the 200-mile fishery zone. The new law has set the stage for what could become a healthy and progressive American fishing industry and has presented the United States with the opportunity to develop and manage a strategic national resource. The law has received widespread support in this country from labor, industry and the public, but it has raised concern on the part of a number of foreign nations.

There now appears to be an effort by some of these nations to avoid the impact of this law through newly devised techniques. One is the simple expedient of foreign companies' acquiring ownership of American vessels (and with it their rights to fish within the 200-mile limit without being subject to foreign quotas) and/or American processing facilities. Another technique is for foreign owned factory ships now operating under permit with their own fishing boats within the 200-mile limit to buy fish from American boats. Under this scheme, foreign owned factory ships could position themselves just outside our three mile territorial limit and buy from American ships and not have this catch count against their quota. These processing ships are not subject to any of the OSHA, EPA, minimum wage or other protective legislation applied to American ships, nor do they pay federal, state or local taxes. Thus, potentially they can buy American caught fish, process it, and sell it worldwide precluding American processors access to this market.

We believe that allowing this activity circumvents the intent of Congress, can thwart the orderly development of our fishing industry, and is contrary to wise public policy for the management and control of our fishery resources.

Both of these techniques pass a resource which could be of vital economic and strategic import to this country to the hands of others.

The economic, social and political implications of the full development of a U. S. owned fishing industry are enormous and there is a growing public constituency for action to insure that these opportunities are not lost. This matter is receiving significant, growing media coverage and widespread support among labor and fishermen's groups (See Exhibit 1).

Briefly, the national opportunity includes:

1. The ability to increase the U. S. catch from 4 to 5 billion pounds to over 27 billion pounds annually (Exhibit 2).
2. The ability to take long-term control of a strategic food resource which has political, economic and social characteristics as formidable as the U. S. wheat supply (Exhibit 2).
3. The opportunity to increase U. S. sales of seafood at the processor level from \$3 billion to \$7 billion annually.
4. The opportunity to create an increase in U. S. fishery related jobs from 450,000 today to a minimum of 628,000 jobs (Exhibit 3).
5. An opportunity to reverse a \$1.5 billion annual balance of payments deficit accrued by the current net U. S. importing of seafood to perhaps as much as \$2 billion inflow (Exhibit 4).
6. The ability, with the seafood processing industry fully developed, to provide the local and federal revenue to build the schools, hospitals, roads and other community infrastructure for coastal communities, thereby establishing a solid financial foundation for the full and permanent development of the U. S. fishing industry and the survival of coastal communities where fishing has been the heritage of the people.
7. An opportunity to manage our fish protein resources in a manner which will insure their conservation and their long-term survival; in other words, an opportunity to sustain our fish protein resources for future generations.

Passage of the Fishery Conservation and Management Act of 1976 was a vital first step to achieve these opportunities, but implementing rules and regulations are in the process of being formulated by the Executive Branch of the Federal Government, which will to a great extent dictate whether or not the U. S. industry fully develops and whether these opportunities will be fully realized.

In addition, ambiguities have emerged in the law that demand clarification by the Congress.

A second generation of legislation is needed which will insure that the full potential of the 200-mile zone will not be lost.

(j) A National Food Policy must be articulated that establishes America's long-term goals for the development, conservation, utilization and distribution of agricultural and ocean food resources.

These issues and others related to them are more fully developed in the following pages.