

Agenda Item #12
June 28-29, 1979

MEMORANDUM

To: Council, SSC, and AP
From: Jim H. Branson, Executive Director
Date: June 22, 1979
Subject: Area restrictions for joint ventures in the Gulf of Alaska

BACKGROUND INFORMATION

The purpose of this agenda item is to explore the concept of restrictions on joint ventures in a manner consistent with the Processor Preference Amendment. There is an adequate legal basis to consider and use restrictions (i.e. area closures) to protect U.S. processors (NOAA General Counsel, Kim White).

Two procedures could be used to implement this concept:

1. A restriction as a condition of the permit, or
2. A restriction as a provision of the FMP.

One weakness of the first alternative is our inability to do more than recommend conditions and restrictions to the Secretary. Another may be the concept of "regulating by permit."

Restrictions on joint ventures are probably not limited to regulatory or statistical area alone, but could conceivably include any of the following options: (1) radius protection around U.S. processors, (2) time closures, (3) provisional closures (i.e., quota restrictions, gear restrictions, flexible time restrictions, etc.) based on changes during the year in U.S. processor capability, resources, etc. The projected DAH by area (agenda 10) immediately identifies areas of high interest to U.S. processors. The attached memo from Bob Thorstenson explores some of these possibilities rather well.

The Pacific Fishery Management Council recommended that no joint venture be allowed to operate landward of 12 miles off the Oregon-Washington-California coast. The Secretary overruled that recommendation and allows (currently) the delivery of fish from U.S. catcher boats to the foreign processors to within 3 miles of shore.

COUNCIL ACTION

Direction to the PDT on drafting an amendment to the Gulf and Bering Sea FMP's on joint ventures utilizing the measures discussed. The new DAH/TALFF/OY models considered in Agenda Item 14 must be considered in conjunction with any other conditions on joint ventures.

MIH

Retyped from telecopied original.

AGENDA #12
JUNE 1979

20 June 1979

MEMORANDUM

TO: Clem Tillion, Chairman
North Pacific Fishery Management Council

FROM: Robert M. Thorstenson, President
Icicle Seafoods, Inc.

RE: Imposition of Conditions and Restrictions on Foreign Factory
Ships and Permits

I am writing regarding agenda item number 12 which will be considered at the North Pacific Fishery Management Council meeting on June 28 and 29 in Alaska. It is my understanding that the Council intends to consider an amendment to the Gulf of Alaska Groundfish Fishery Management Plan whereby certain areas of the Gulf would be closed to joint venture operations in order to implement the provisions of Public Law 95-354, the processor preference law. I wish in this memorandum to express some of the views of those of us in the processing industry concerning the necessity of imposing such time and area restrictions and to support the Council's decision to develop same. I hope that we will have an opportunity to make a more substantial submission to the Council at the July meeting and intend to do so and would like to request time to make a presentation at that meeting. Therefore, on a preliminary basis, I have the following thoughts that I would like to submit to the Council.

BASIS FOR IMPOSITION OF
CONDITIONS AND RESTRICTIONS

Initially and foremost, it must be recognized that the Secretary of Commerce through the Regional Councils has the discretionary authority not to grant a foreign factory ship permit for operations within the 200-mile zone, even if there is a surplus of U.S. harvested fish. That is, in order to foster the development of the United States fishing industry, such permit applications could be denied. As a general matter, I am not advocating this position, but rather advocate the vigorous enforcement of the processor preference law along with imposition of conditions and restrictions on any permits that will be issued. If appropriate conditions and restrictions are imposed upon the permits and the United States processors are not inhibited in their development or adversely affected by the operation of the foreign factory ships in the 200-mile zone, there would be no reason not to have the additional value of increased United States harvesting activities accrue to the nation. However, it must always be kept in mind that the goal of Congress and the only way to achieve the greatest value of our 200-mile fishery resources is to have the United States fishing industry eventually fully harvest and process all

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fishery resources in the zone.

It is no longer questioned by the Regional Councils or the Secretary of Commerce whether such conditions and restrictions can be legally imposed; indeed, several conditions and restrictions have been imposed on the recent Soviet permits in California, Oregon, and Washington and the Soviet and Korean permits that have been issued for Alaska. The issue now is, what types of conditions and restrictions would best protect all segments of the United States fishing industry and cause it to develop while, at the same time, permit certain factory ship operations within the 200-mile zone.

TYPES OF CONDITIONS AND RESTRICTIONS

1. Area Restrictions

It is clear that foreign operations should not be permitted in those limited areas where the United States fishing industry is initiating operations. These areas in Alaska include:

1. Kodiak
2. Seward
3. Sitka
4. Homer
5. Cordova
6. Dutch Harbor
7. Sand Point
8. King Cove

It would be appropriate to protect these areas from foreign factory ship operations. There is no reason why foreign operations should be allowed to occur in these areas when other vast areas remain open. Indeed, it would be extremely harmful to permit foreign factory operations in those limited areas where the United States fishing and processing industries have chosen to initiate their operations.

Stated most simply, the scope of protection offered to processors in these areas should be whatever is necessary to cause them to develop fully. For example, one day's steaming distance from each area would be a reasonable level of protection and still leave vast areas open for joint venture operations.

2. Time Restrictions

The area closure suggested above could fluctuate depending upon the nature of operation of the domestic industry in those areas that was being protected. For example, for a year-round domestic operation

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the closure would, of course, be on a full time basis. For a start-up operation that would operate only at certain times in certain areas during the season, it may be reasonable to only close such areas to foreign factory ships at those certain times.

General time closures may also be appropriate to close all areas at certain times to encourage maximum utilization by the United States fishing industry. For example, when the domestic industry is targeting upon salmon or crab, it may be appropriate to permit foreign factory ship operations in certain areas for bottomfish. Whereas, when such species are not being fished or processed, it would be appropriate to encourage domestic bottomfish utilization and protect the industry from such foreign operations.

3. Gear Restrictions

Gear restrictions also should be imposed upon the U.S. harvesting operations that intend to deliver to foreign factory ships in order to assure that the domestic industry has available to it those species which it chooses to utilize. It appears that sablefish and Pacific cod will be targeted upon by the United States fishing industry before other bottomfish species. Gear restrictions (and other conditions and restrictions) should be imposed to assure that the domestic industry has sufficient amounts of these species available to it to meet its needs.

4. Conditions

Restrictions generally should be absolute in most circumstances, that is, the restrictions imposed on the foreign factory ship permits should be fully effective. It may be possible, however, in certain circumstances to incorporate conditions into a permit that would provide for increased or additional foreign factory ship operations under certain circumstances. For example, it may be appropriate to lift a gear restriction if a foreign factory ship operator provided a suitable method to transfer prohibited species (so long as the OY had not been exceeded) back to the domestic industry.

In conclusion, I very much appreciate the opportunity which the Council has provided for this input to their Fishery Management Plan amendment process and hope that you will give these several concepts your consideration.

20 June 1979

MEMORANDUM

TO: Clem Tillou, Chairman
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FROM: Robert M. Thorstenson, President
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RE: Imposition of Conditions and Restrictions on Foreign Factory
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FILE	ACT	INFO	ROUTE TO	INITIAL
			Exec. Dir.	
			A. Exec. Dir.	
			Admin. Off.	
			Exec. Sec.	
			Writer/1	
			Writer/2	
			Sec. Recep.	
			Sec. Typist	
			JUN 20 1979	
			12:30 pm	

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