


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: September 18, 1997

SUBJECT: Foreign Vessel Transshipment Permit

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Review new Act language and review application from A.N.P. Shipping.

BACKGROUND

The amended Magnuson-Stevens Act contains revised provisions pertaining to foreign vessel transshipment permitting, as shown in Item C-10 (a). This is in addition to previous requirements that transshipments occur in specified locations (ports or recognized roadsteads), without permit. Now, vessels can apply for permits to make such transshipments anywhere in the EEZ, or within State waters *outside* of designated ports and roadsteads. The Secretarial review process for these applications includes consultation with the appropriate Council, and if within State waters, concurrence of the relevant State.

A.N.P. Shipping, on behalf of Boyang Ltd. Of Seoul, South Korea, has applied for such a permit for the M/V JOCHOH (owned by Coral Leasing of Panama City, Panama). Their application package is copied for you under Item C-10(b). Representatives for that firm are available to address the Council on the specifics of that application. The Council may wish to provide a recommendation to the Secretary on this application. A general discussion of the process may be beneficial as well, in the event additional applications are filed in the future.

Item C-10(c) is a letter from the U.S. Coast Guard expressing their concern over the new permitting process.

(d) TRANSSHIPMENT PERMITS-

(1) AUTHORITY TO ISSUE PERMITS.--The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who--

(A) submits an application which is approved by the Secretary under paragraph (3); and

(B) pays a fee imposed under paragraph (7).

(2) TRANSMITTAL.--Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

(3) APPROVAL OF APPLICATION.--The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that--

(A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) WHOLE OR PARTIAL APPROVAL.--The Secretary may approve all or any portion of an application under paragraph (3).

(5) FAILURE TO APPROVE APPLICATION.--If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

(6) CONDITIONS AND RESTRICTIONS.--The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.

(7) FEES.--The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

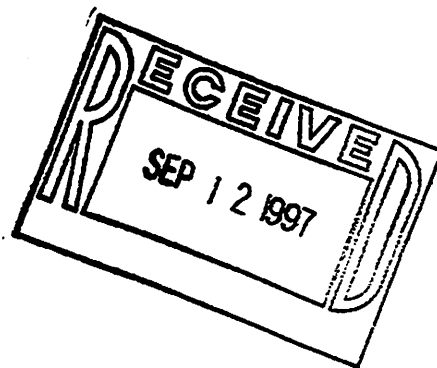


AGENDA C-10(a)
SEPTEMBER 1997

PRESTON GATES & ELLIS LLP
ATTORNEYS

September 12, 1997

Mr. Chris Oliver
Deputy Director
North Pacific Fisheries Management Council
Suite 306
605 West Fourth Avenue
Anchorage, AK 99501-2252



Re: Transshipment Permit Process

Dear Chris:

Thank you for including the process for obtaining transshipment permits under Section 204(d) of the Magnuson-Stevens Act on the September 23rd agenda of the North Pacific Fisheries Management Council. I am attaching a copy of an application submitted to NMFS by A.N.P. Shipping on behalf of Boyang which will be before NMFS at the time of the meeting. I am providing some background information on transshipment permits which we also request be included in the Council members' meeting materials.

As I mentioned, this firm has been working with the National Marine Fisheries Service in connection with the transshipment permit process. We have enclosed correspondence from NMFS on this subject. Proposed transshipment operations in State waters will require State concurrence. Section 204(d)(3) also provides for a consultative role for the Council in this context.

We understand that on the morning of September 23rd someone from the Council's staff or perhaps NMFS will initially brief the Council on the 1996 transshipment permit amendments. Dick Ford of this firm and Stuart Laney of A.N.P. Shipping, Vince Addington of Alaska Maritime Agencies, Inc. and Tom Rueter of North Star Maritime Agencies will attend the meeting to provide any additional background or answer any questions on the pending permit or on transshipment permits generally.

Although the carriers intend to be as specific as possible with regard to the transshipment locations in preparing their applications, the permit application will also necessarily contain general area wide designations e.g. the "Aleutian Chain", or the "Bering Sea". Due to the inherent uncertainties as to where and when transshipments may be necessary and the lead time required to get a permit, greater specificity will not be possible. Subject to a duty to provide reasonable advance notice of a more precise location to NMFS and the Coast Guard prior to a specific transshipment, NMFS expressly authorizes this approach. See NMFS July 14, 1997 letter

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Mr. Oliver
September 12, 1997
Page 2

at paragraph 4. Regardless of where the transshipments occur (in the EEZ or in State waters), the foreign vessels will still have to obtain foreign clearance from U.S. Customs prior to departing for destinations outside of the United States. Thus, there will be no substantive change in how the cargoes are treated for export control purposes.

If you have any questions, please give me a call.

Sincerely,

PRESTON GATES & ELLIS LLP

By: 
Joseph K. Donohue

Enclosures

A.N.P. SHIPPING CO.

P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 26646

September 12, 1997

International Fisheries Division
National Marine Fisheries Service
Department of Commerce
1315 East West Highway
Silver Spring, Maryland 20910

Re: REQUEST FOR PERMITS TO BE ISSUED UNDER SECTION 204(d) (Transshipment Permit)

VESSEL: M/V JOCHOH

A.N.P. Shipping Company, as agents for and on behalf of Boyang Ltd. of Seoul, South Korea, requests that the National Marine Fisheries Service issue a Foreign Fishing Permit under section 204(d) (Transshipment Permits) of the MSFCMA for the refrigerated transport vessel M/V JOCHOH.

DESCRIPTION OF TRANSHIPMENTS TO BE CONDUCTED: The operators of the M/V Jochoh anticipate requests from U.S. processing companies to transship fisheries products from U.S. Flag processing vessels to the subject vessel in the Bering Sea, Gulf of Alaska, and along the Aleutian Island chain during calendar year 1998. Cargo to be transshipped will include Pollock, Sole, and other Bottomfish from N.M.F.S. managed Fisheries, and Salmon, Crab, and Herring from State of Alaska managed Fisheries. Specific locations that have been proposed by U.S. processors so far as possible transshipment locations include Urilla Bay, parts of Kiska Island, and various locations in Bristol Bay for transshipping of Herring and Salmon. Due to the lead time required for this permit and the uncertainty at this time as to where and from which processors the vessel will actually transship, we request that reporting of specific transshipment locations and other pertinent information be deferred until just prior to each individual transshipment.

We would like to suggest (per the comments of Rolland A. Schmitten in his letter to Richard Ford of Preston, Gates & Ellis dated 07/14/97) that the vessel operators or their agent provide at least 48 hour notice to the N.M.F.S. Regional Administrator for Alaska and the appropriate U.S.C.G. District Office of the transshipment location, the U.S. processing vessel involved, the amount and type of cargo to be transshipped, and any other information that N.M.F.S. or the U.S.C.G. would require. Please note that the subject vessel will be entering with both U.S. Customs and Immigration at an Alaskan Port within the Anchorage District of U.S. Customs prior to the anticipated transshipments and will obtain a clearance from U.S. Customs at an Alaskan port within the same District prior to sailing to a Foreign destination.

TRANSHIPMENTS CONDUCTED IN TERRITORIAL SEAS: Due to the uncertainty of where the vessel will be asked to actually transship cargo, we respectfully request that the permit be considered valid for transshipments both in the U.S. EEZ and in the Territorial waters of the State of Alaska and that N.M.F.S. take whatever action is appropriate to secure the concurrence of the State of Alaska.

ALASKA NORTH PACIFIC SHIPPING CO.

- STEAMSHIP AGENTS -

A.N.P. SHIPPING CO.

P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 26646

COMPLIANCE WITH MSFCMA SECTION 201 (c) (2): This application confirms that the subject vessel intends to fully comply with all requirements in Section 201(c) (2). However, at the pleasure of N.M.F.S. and the U.S.C.G., the vessel would like to request an exemption from the following requirements without prejudice to the permit application itself.

1. **OBSERVER COVERAGE 201 (c) (2) :** We ask that you waive the requirement for observer coverage given the following circumstances:
 - A) If the subject vessel is loading Bottomfish, it is most likely that the U.S. processing vessel from which the cargo is being unloaded from will already have an observer onboard and available to monitor the transshipment if this is deemed necessary.
 - B) Due to the uncertainty of her actual loading schedule and the high probability that the vessel will also be loading at various ports or roadsteads that are not considered to be "at sea", coupled with the short duration of the anticipated off loads considered to be "at sea", it is likely that successful placement of an observer would be problematic.
 - C) After completing all transshipments, the vessel will still have to clear U.S. Customs at an Alaskan port prior to leaving for a foreign destination. While in port obtaining clearance, there should be ample opportunity for U.S. Customs, N.M.F.S., or the U.S.C.G. to inspect the cargo if this is deemed necessary.

2. **TRANSPONDERS 201 (c) (2) (D):** We ask that the U.S.C.G. waive the requirement for the placement of transponders onboard the subject vessel given the following circumstances:
 - A) Adequate communication devices are already onboard the vessel to report to the agent and/or N.M.F.S./U.S.C.G. any information that may be required.
 - B) As a transport vessel, the subject vessel does not catch or process fishery products on its own. Any transshipment activity would obviously require the presence of two vessels, both of which are required to report transshipment details to N.M.F.S. and the U.S.C.G.
 - C) The vessel would still have to obtain U.S. Customs clearance at an Alaskan port prior to her departure which should again provide ample opportunity for inspection of both her cargo and ships logs if this is deemed necessary. It would seem that the need for a VMS would be considerably less given these circumstances.

3. **REQUIREMENT TO DISPLAY CALL SIGN 50 CFR SECTION 511.5 (a):** We ask that the requirement to display the vessel's call sign in the manner designated in this section be waived given the following circumstances:
 - A) Although falling under the definition of "fishing vessel" in the MSFCMA, the vessel is defined as a cargo vessel by the U.S.C.G. and is not capable of catching or processing fish.
 - B) Depending on where the vessel is in its trading pattern and the timing of when this permit is issued, it may not be possible for the crew to physically paint the call sign on the vessel in the manner designated in this section before the first transshipment.
 - C) In view of the fact that the vessel has adequate communication equipment for the reporting requirements and will need to obtain clearance from U.S. Customs before her departure, it would seem that the need for this requirement is greatly diminished.

ALASKA NORTH PACIFIC SHIPPING CO.

- STEAMSHIP AGENTS -

A.N.P. SHIPPING CO.

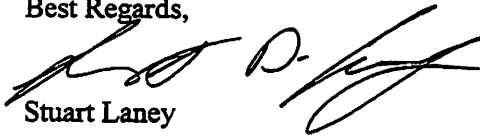
P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 26646

We hope that the above sufficiently meets your requirements for a Foreign Fishing Vessel Transshipment permit. In addition we have attached a completed VIF for the M/V Jochoh and a fee payment in the amount of \$354.00 We respectfully request that you process this application without delay and advise us at your earliest convenience if a permit will be issued for the M/V Jochoh.

Best Regards,



Stuart Laney

A.N.P. Shipping Company

Tel: 907-272-6145

Fax: 907-276-0033

ALASKA NORTH PACIFIC SHIPPING CO.

— STEAMSHIP AGENTS —

FISHING VESSEL IDENTIFICATION FORM (VIF)

NO: _____

- (1) VESSEL NAME: M/V JOCHOH (2) CALL SIGN: 3 F T G 5
 (3) HULL NO: 22658-96 (4) VESSEL TYPE: REFRIGERATED TRANSPORT
 (5) LENGTH (METERS): 113.38 (6) GROSS TONS: 4,458
 (7) NET TONS: 2,252 (8) MAX SPEED (KNOTS): 15.8
 (9) OWNER NAME: CORAL LEASING S.A.
 ADDRESS: 33A 5th AVENUE PANAMA, CITY, PANAMA
 (10) AGENT NAME: A.N.P. SHIPPING COMPANY
 ADDRESS: P.O. BOX 10-1300 ANCHORAGE, ALASKA 99501
 (11) PROCESSING EQUIPMENT: NONE
 (12) HOLD CAPACITY (IN CUBIC METERS - BALE CAPACITY ONLY):
 HOLD #1: 2,498 HOLD #2: 2,543 HOLD #3: 1,615 HOLD #4: _____
 (IF MORE THAN 4 HOLDS, GIVE TOTAL HOLD CAPACITY) _____
 (13) LIST LAST APPLICATION NUMBER _____ IF NONE, CHECK XX
 (14) ARE JOINT VENTURE OPERATIONS BEING REQUESTED? YES ___ NO XX (IF YES, ATTACH JOINT VENTURE SUPPLEMENTAL RESPONSES)
 (15) CHECK IF VESSEL IS CERTIFIED TO BE IN COMPLIANCE WITH THE FLAG NATION'S HEALTH AND SAFETY STANDARDS XX YES
 (16) FISHERY FOR WHICH PERMIT IS REQUESTED:

FISHERY	REQUESTED SPECIES	GEAR	ACTIVITY		
			CATCH	PROCESS	OTHER

- (17) TRANSSHIPMENT POINT (LATITUDE AND LONGITUDE) BERING SEA & G.O.A. (SEE COVER I
 (18) IS TRANSSHIPMENT POINT WITHIN THE INTERNAL OR TERRITORIAL WATERS OF A STATE? YES XX NO ___ IF YES, IDENTIFY STATE ALASKA

**PAGE TWO OF FISHING VESSEL IDENTIFICATION
FORM FOR M/V JOCHOH**

OWNER:

CORAL LEASING S.A.
33A 5TH AVENUE
PANAMA CITY, PANAMA

OPERATOR:

JOCHOH MARINE S.A.
16TH FLOOR TURRE SWISS BANK BLDG
53RD STREET
PANAMA CITY, PANAMA

MANAGEMENT COMPANY:BOYANG LTD

10TH FLOOR KANGNAM JEIL BLDG.
#822-4, YOKSAM-DONG
KANGNAM-KU
SEOUL, KOREA

A.N.P. SHIPPING CO.
 (ALASKA NORTH PACIFIC SHIPPING CO.)
 P. O. BOX 10-1300 272-6145
 ANCHORAGE, AK 99510

**National
 Bank of Alaska**

13185

89-5
 1252

09/11 1997

PAY THREE HUNDRED FIFTY FOUR AND NO CENTS DOLLARS \$ 354.00

TO
 THE
 ORDER
 OF
 DEPARTMENT OF COMMERCE - NOAA

[Signature]
 NP

⑈013185⑈ ⑆125200057⑆0037701525⑈

A.N.P. SHIPPING CO.

DETACH AND RETAIN THIS STATEMENT
 THE ATTACHED CHECK IS IN PAYMENT OF ITEMS DESCRIBED BELOW.
 IF NOT CORRECT PLEASE NOTIFY US PROMPTLY. NO RECEIPT DESIRED.

DELUXE FORM WVC-3 V-2

DATE	DESCRIPTION	AMOUNT
09/11/97	PAYMENT TO NOAA FOR TRANSSHIPMENT PERMIT APPLICATION FOR THE M/V JOCHOH 369-936	354.00

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard
District

P.O. Box 25517
Juneau, AK 99802-5517
Staff Symbol: mpo
Phone: (907) 463-2226

AGENDA C-10(c)
SEPTEMBER 1997

16750
August 21, 1997

- Mr. Steven Pennoyer
- Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802



Dear Mr. Pennoyer:

With the rewrite of Section 204(d) resulting from the Magnuson-Stevens Act, the transshipment of fish products to foreign vessels can occur virtually anywhere in the U.S. EEZ. As you know, NMFS is currently exploring regulations to implement this provision of the Act. We think this ability to transfer anywhere within the EEZ is a bad idea for Alaska at this time.

At sea transfers throughout the zone increase the difficulty of monitoring the compliance and quality of foreign vessels under the port state control provisions of SOLAS. Also, it increases our surveillance load at a time when resources are fully employed monitoring other activities.

It is our understanding this provision was intended to address problems in other parts of the U.S. We request that you not exercise the discretionary authority in Alaska granted to you by the Magnuson-Stevens Act regarding this issue.

Sincerely,

A handwritten signature in black ink that reads "J. V. O'Shea". The signature is written in a cursive style with a long horizontal stroke at the end.

J. V. O'Shea
Captain, U. S. Coast Guard
Chief, Maritime Operations Plans and
Policy Branch
By direction of the Commander

Copy: Commandant (G-OPL)
Commandant (G-MOC)
PACAREA
NPFMC
ADF&G (Mr. Benton)

TRANSSHIPMENT PERMITS
Authorized by 1996 Amendments
to Magnuson-Stevens Fishery Conservation
and Management Act

I. The Magnuson-Stevens Act Was Amended In 1996 To Allow Foreign Flag Vessels To Obtain Permits To Transship Fish Or Fish Products At Sea From U.S. Flag Vessels Within The EEZ or Within State Waters.

A. 1996 Amendments: Section 204(d)(1) of the Magnuson-Stevens Act provides in relevant part:

The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who ... [obtains a permit and pays the fee].

Relevant sections of the Magnuson-Stevens Act are attached at Tab 1.

- B. Lead agency and application package:** The National Marine Fisheries Service ("NMFS") is the lead agency for the Department of Commerce. The application package for the transshipment permit is provided at Tab 2. Correspondence from Mr. Schmitten of NMFS dated May 22, 1997 and July 14, 1997 which describes the permitting process is also included at Tab 2 and 3 respectively.
- C. State concurrence required for operations in State waters:** An application seeking authorization to transship at sea in State waters requires State concurrence. NMFS will transmit the application to the Governor of the State of Alaska. We have been advised that Earl Krygier of the Alaska State Department of Fish & Game will be the principal contact on these applications.
- D. Coordination:** In addition to the concurrence of any affected State, the application procedure includes coordination with the State Department, the Coast Guard, and the Council. M-S Act § 204(d)(2).
- E. Consultation:** NMFS will also consult the North Pacific Fishery Management Council with respect to applications relating to Alaska. M-S § 204(d)(3).

II. Anticipated Operations For 1998.

- A. **Most likely operations:** The phrase "at sea" means generally locations outside of ports, harbors and designated roadsteads. Although harvesters, processors and the carriers are still considering the desirability and practicability of operations beyond 3 miles, the most likely operations, at least initially, will occur close to shore, i.e. in State waters.
- B. **Customs compliance:** Permitted foreign flag vessels will enter a customs port or station in Alaska, proceed to one or more transshipment points to take on cargo, and then return to a customs port or station to clear for a foreign destination. There should be no regulatory impacts in connection with customs or export control provisions.
- C. **NMFS/Coast Guard compliance:** To the extent a specific transshipment point has not been identified in the application, NMFS suggests that 48 hours notice to the Regional Administrator and the Coast Guard would generally suffice to put the agencies on notice of a pending operation by a permitted carrier. Tab 3, page 2. There should be little impact on the ability of those agencies to monitor operations, ascertain compliance with relevant regulations and otherwise obtain reporting necessary to serve the fishery management and conservation purposes of the Magnuson-Stevens Act. Again, the vessels will be returning to an Alaskan port which would provide an additional opportunity for NMFS and the Coast Guard to inspect the cargo if that is deemed necessary.

III. Transshipment operations "at sea" were previously precluded by the Magnuson-Stevens Act.

- A. **NOAA interpretation of "at sea":** NOAA's General Counsel determined in 1977 that the definition of "fishing" precluded foreign flag transportation vessels from conducting support operations "at sea." M-S Act § 3(15). For purposes of the Magnuson-Stevens Act, "at sea" was defined as encompassing "all waters extending seaward from the baseline of the territorial sea, except for ports, harbors and recognized roadsteads customarily used in lieu of ports for the loading and unloading of goods." NOAA General Counsel letter, December 22, 1977 Tab 4. See also at Tab 4 July 9, 1986 letter from NOAA Deputy Administrator to Senator Stevens reiterating the 1977 position.
- B. **NOAA determination of ports/roadsteads:** The subsequent implementation of the interpretation of "at sea" led to case by case determinations with regard to designated ports and roadsteads. NOAA, in response to inquiries from industry, proceeded to designate these locations primarily on a case by case basis. See, for example, correspondence from NOAA dated August 26, 1992, October 27, 1992 and January 14, 1993. (Tab 5)

IV. Purpose And Effects Of 1996 Transshipment Permit Amendments.

- A. NOAA essentially acknowledged that the old rule was unnecessarily restrictive from a practical standpoint. NOAA supported the 1996 amendments in part to get the agency out of the roadstead designation business.
- B. U.S. harvesters and foreign export carriers wanted greater operational flexibility than was allowed under the prior system. Having the option to transship "at sea" can provide for greater efficiency, more time on fishing grounds, less running time to an official port or roadstead.
- C. The Magnuson-Stevens Act's objective to achieve full utilization and retention of by-catch will be more readily achievable with more flexible and accessible transportation support alternatives.

(11) ISSUANCE OF PERMITS.--If a foreign nation notifies the Secretary of State of its acceptance of the conditions and restrictions established by the Secretary under paragraph (7), the Secretary of State shall promptly transmit such notification to the Secretary. Upon payment of the applicable fees established pursuant to paragraph (10), the Secretary shall thereupon issue to such foreign nation, through the Secretary of State, permits for the appropriate fishing vessels of that nation. Each permit shall contain a statement of all conditions and restrictions established under paragraph (7) which apply to the fishing vessel for which the permit is issued.

(c) REGISTRATION PERMITS.--The Secretary of State, in cooperation with the Secretary, shall issue annually a registration permit for each fishing vessel of a foreign nation which is a party to an international fishery agreement under which foreign fishing is authorized by section 201(b) and which wishes to engage in fishing described in subsection (a). Each such permit shall set forth the terms and conditions contained in the agreement that apply with respect to such fishing, and shall include the additional requirement that the owner or operator of the fishing vessel for which the permit is issued shall prominently display such permit in the wheelhouse of such vessel and show it, upon request, to any officer authorized to enforce the provisions of this Act (as provided for in section 311). The Secretary of State, after consultation with the Secretary and the Secretary of the department in which the Coast Guard is operating, shall prescribe the form and manner in which applications for registration permits may be made, and the forms of such permits. The Secretary of State may establish, require the payment of, and collect fees for registration permits; except that the level of such fees shall not exceed the administrative costs incurred by him in issuing such permits.

104-297

(d) TRANSSHIPMENT PERMITS-

(1) AUTHORITY TO ISSUE PERMITS.--The Secretary may issue a transshipment permit under this subsection which authorizes a vessel other than a vessel of the United States to engage in fishing consisting solely of transporting fish or fish products at sea from a point within the exclusive economic zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States to any person who--

- (A) submits an application which is approved by the Secretary under paragraph (3);
- and
- (B) pays a fee imposed under paragraph (7).

(2) TRANSMITTAL.--Upon receipt of an application for a permit under this subsection, the Secretary shall promptly transmit copies of the application to the Secretary of State, Secretary of the department in which the Coast Guard is operating, any appropriate Council, and any affected State.

(3) APPROVAL OF APPLICATION.--The Secretary may approve, in consultation with the appropriate Council or Marine Fisheries Commission, an application for a permit under this section if the Secretary determines that--

(A) the transportation of fish or fish products to be conducted under the permit, as described in the application, will be in the interest of the United States and will meet the applicable requirements of this Act;

(B) the applicant will comply with the requirements described in section 201(c)(2) with respect to activities authorized by any permit issued pursuant to the application;

(C) the applicant has established any bonds or financial assurances that may be required by the Secretary; and

(D) no owner or operator of a vessel of the United States which has adequate capacity to perform the transportation for which the application is submitted has indicated to the Secretary an interest in performing the transportation at fair and reasonable rates.

(4) WHOLE OR PARTIAL APPROVAL.--The Secretary may approve all or any portion of an application under paragraph (3).

(5) FAILURE TO APPROVE APPLICATION.--If the Secretary does not approve any portion of an application submitted under paragraph (1), the Secretary shall promptly inform the applicant and specify the reasons therefor.

(6) CONDITIONS AND RESTRICTIONS.--The Secretary shall establish and include in each permit under this subsection conditions and restrictions, including those conditions and restrictions set forth in subsection (b)(7), which shall be complied with by the owner and operator of the vessel for which the permit is issued.

(7) FEES.--The Secretary shall collect a fee for each permit issued under this subsection, in an amount adequate to recover the costs incurred by the United States in issuing the permit, except that the Secretary shall waive the fee for the permit if the foreign nation under which the vessel is registered does not collect a fee from a vessel of the United States engaged in similar activities in the waters of such foreign nation.

104-297

(e) PACIFIC INSULAR AREAS.--

(1) NEGOTIATION OF PACIFIC INSULAR AREA FISHERY AGREEMENTS.--The Secretary of State, with the concurrence of the Secretary and in consultation with any appropriate Council, may negotiate and enter into a Pacific Insular Area fishery agreement to authorize foreign fishing within the exclusive economic zone adjacent to a Pacific Insular Area--

(A) in the case of American Samoa, Guam, or the Northern Mariana Islands, at the request and with the concurrence of, and in consultation with, the Governor of the Pacific Insular Area to which such agreement applies; and

(B) in the case of a Pacific Insular Area other than American Samoa, Guam, or the Northern Mariana Islands, at the request of the Western Pacific Council.

95-354, 104-297

(7) ESTABLISHMENT OF CONDITIONS AND RESTRICTIONS.--The Secretary shall establish conditions and restrictions which shall be included in each permit issued pursuant to any application approved under paragraph (6) or subsection (d) and which must be complied with by the owner or operator of the fishing vessel for which the permit is issued. Such conditions and restrictions shall include the following:

(A) All of the requirements of any applicable fishery management plan, or preliminary fishery management plan, and any applicable Federal or State fishing regulations.

(B) The requirement that no permit may be used by any vessel other than the fishing vessel for which it is issued.

(C) The requirements described in section 201(c)(1), (2), and (3).

(D) If the permit is issued other than pursuant to an application approved under paragraph (6)(B) or subsection (d), the restriction that the foreign fishing vessel may not receive at sea United States harvested fish from vessels of the United States.

(E) If the permit is issued pursuant to an application approved under paragraph (6)(B), the maximum amount or tonnage of United States harvested fish which may be received at sea from vessels of the United States.

(F) Any other condition and restriction related to fishery conservation and management which the Secretary prescribes as necessary and appropriate.

96-470

(8) NOTICE OF APPROVAL.--The Secretary shall promptly transmit a copy of each application approved under paragraph (6) and the conditions and restrictions established under paragraph (7) to--

(A) the Secretary of State for transmittal to the foreign nation involved;

(B) the Secretary of the department in which the Coast Guard is operating; and

(C) any Council which has authority over any fishery specified in such application.

(9) DISAPPROVAL OF APPLICATIONS.--If the Secretary does not approve any application submitted by a foreign nation under this subsection, he shall promptly inform the Secretary of State of the disapproval and his reasons therefore. The Secretary of State shall notify such foreign nation of the disapproval and the reasons therefor. Such foreign nation, after taking into consideration the reasons for disapproval, may submit a revised application under this subsection.

96-561, 99-272, 101-627

(10) FEES.--

(A) Fees shall be paid to the Secretary by the owner or operator of any foreign fishing vessel for which a permit has been issued pursuant to this section. The Secretary, in consultation with the Secretary of State, shall establish a schedule of reasonable fees that shall apply nondiscriminatorily to each foreign nation.

(B) Amounts collected by the Secretary under this paragraph shall be deposited in the general fund of the Treasury.



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1995 East West Highway
Silver Spring, MD 20910
THE DIRECTOR

2

MAY 22 1997

Received
MAY 20 1997
Richard D. Ford

Mr. Richard D. Ford
Preston, Gates and Ellis
701 Fifth Avenue
Seattle, Washington 98104-7078


Dear Mr. Ford:

Thank you for your recent letter regarding the issuance of transshipment permits under Section 204(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA).

Following the amendment of the MSFCMA to provide for the issuance of permits under the newly created Section 204(d), my staff reworked the application package used for Section 204(b) permits to accommodate applications for Section 204(d) permits. A minimum of changes was made to the application package in order to obtain a more expedient approval under the Paperwork Reduction Act for the revised application package. A copy of the revised application package is enclosed. Responses to the numbered questions/suggestions in your letter are also enclosed.

I trust this information will be of assistance to you in developing any applications you may wish to submit on behalf of your clients.

Sincerely,


Rolland A. Schmitt

Enclosures



Responses to numbered questions/suggestions of Richard D. Ford:

1. The permit application fee is \$354.00.
2. We agree that a single permit could authorize multiple transshipments over a specified period of time. While the revised Vessel Identification Form (VIF) provides for identification of a single transshipment point, an operation contemplating multiple transshipments at points not yet determined should be discussed in the cover letter that must accompany the VIF(s) being submitted.
3. Application information required is discussed in the enclosed application package.
4. We believe that 45 days should be considered the minimum time necessary to allow for the processing of a permit wherein no complications arise. Any person may file an application for a Section 204(d) permit with the National Marine Fisheries Service (NMFS).
5. Your recommendation regarding providing notice to U.S. carriers is being considered.
6. If a single transshipment point and other pertinent details are not specified in the application package, a reasonable degree of prior notice would have to be provided via radio or other appropriate means for each transshipment to be conducted under a Section 204(d) permit.
7. We believe a faxed copy of a permit would be acceptable.
8. We do not believe combinations of transshipments among roadsteads/ports and "at-sea" locations would be problematic.
9. Permitted vessels would have to comply with all applicable regulations regarding navigation, immigration, customs, etc.
10. Unless such particulars are identified and discussed in the cover letter accompanying the application VIF(s), information regarding species transshipped, etc., would have to be provided via radio or other appropriate means.
11. We agree that direct application by an owner or agent to NMFS would meet the statutory requirement.
12. At this time we believe that requirements for "bonds or financial assurances" will be reserved for use with applicant vessels that have a history of problematic operations or a history of violations. In lieu of permit denial, such applicants

may be provided the opportunity of a permit contingent upon establishment of appropriate bonds or financial assurances.

An application requesting authorization to conduct transshipments in water areas that include state waters will be forwarded by NMFS to the Governor(s) of the affected state(s). Authorization to transship in state waters could not be provided without the concurrence of the Governor(s) of the affected state(s). It is possible that a Governor of an affected state who wishes to attach conditions to any transshipments conducted in the affected state's waters could enumerate those conditions in a letter indicating the Governor's conditional concurrence for the requested transshipment activities. To the extent such conditions were harmonious with all Federal laws, regulations, etc., this letter could then be attached to and made a part of the Section 204(d) permit issued to the applicant. Coordination between NMFS and the Governor(s) of the affected state(s) would hopefully ensure the expedient development of harmonious conditions for attachment to a Section 204(d) permit.

**GENERAL INSTRUCTIONS FOR FOREIGN FISHING APPLICATIONS
REQUESTING PERMITS TO BE ISSUED UNDER SECTION 204 OF THE
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT**

Requests for permits to be issued under Section 204(b) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) must be submitted by an authorized representative of a foreign nation having a Governing International Fishery Agreement with the United States. Representatives of applicant foreign fishing nations must complete Vessel Identification Forms (VIFs), as appropriate, complete and sign the basic application form for vessel permits to be issued under Section 204(b), and answer the supplemental questions on joint venture operations. This material must be submitted to the Department of State's Bureau of Oceans and International Environmental and Scientific Affairs, Office of Marine Conservation, Washington, D.C. 20520 (Phone (202) 647-3940, Fax (202) 736-7350). At the time the application material is submitted to the Department of State, an application fee of \$354.00 per vessel must be submitted to the Department of Commerce's National Marine Fisheries Service, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910 (Phone (301) 713-2337, Fax (301) 713-0596). Checks must be drawn on U.S. banks and made payable to "Department of Commerce - NOAA."

Requests for permits to be issued under Section 204(d) of the MSFCMA may be submitted by any person. Applicants must complete VIFs, as appropriate, together with a cover letter describing the nature of the transshipments to be conducted and confirming that the applicant will comply with the requirements of Section 201(c)(2) of the MSFCMA with respect to activities authorized by any permit issued pursuant to the application. This material, together with an application fee of \$354.00 per vessel, must be submitted to the Department of Commerce's National Marine Fisheries Service, International Fisheries Division, 1315 East West Highway, Silver Spring, Maryland 20910 (Phone (301) 713-2337, Fax (301) 713-0596). Checks must be drawn on U.S. banks and made payable to "Department of Commerce - NOAA."

Submission of application information is mandatory in order to be considered for a permit and is used in determining if a permit should be issued. Except for any price information considered and identified as confidential by applicants (see question 11 of supplemental questions to be answered and attached to joint venture applications), application information is not confidential. Public reporting burden for this collection of information is estimated to average slightly over 2 hours for joint venture applications, 1.5 hours for fishing applications, and .75 hours for transshipment applications. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and

completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of reducing this burden, to the International Fisheries Division (F/SF4), Office of Sustainable Fisheries, National Marine Fisheries Service, 1315 East West Highway, Silver Spring, Maryland 20910. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

**INSTRUCTIONS FOR COMPLETING FISHING VESSEL
IDENTIFICATION FORMS (VIF's) FOR FOREIGN FISHING PERMITS TO BE
ISSUED UNDER THE MAGNUSON-STEVENS FISHERY CONSERVATION AND
MANAGEMENT ACT (MSFCMA)**

Complete a VIF form for each vessel for which a permit is requested. Please read the instructions carefully before beginning to enter information. VIFs for permits to be issued under Section 204(b) of the MSFCMA (e.g., joint venture permits) should be submitted together with other appropriate application material to the Department of State. VIFs for permits to be issued under Section 204(d) of the MSFCMA (i.e., transshipment permits) should be submitted together with other appropriate application material to the Department of Commerce. Timely submissions of completed applications will ensure prompt consideration of requests.

Type the form in English. Complete all appropriate items, except the space near the top, right-hand corner labeled "NO:."

(1) Vessel Name: Enter the name of the vessel. Where necessary, transliterate into Roman characters. Do not translate the name into English.

(2) Call Sign: Enter the vessel identifying markings permanently affixed to the vessel as required by the foreign fishing regulations, normally the international radio call sign.

(3) Hull Number: Enter the hull number or other alpha-numeric mark on the vessel.

(4) Vessel Type: Enter one of the following vessel types:

Stern Trawler/Processor	Factory Ship
(small: 0 - 289 GRT)	Refrigerated Transport
(medium: 290 - 1,399 GRT)	Cargo Transport
(large: 1,400 plus GRT)	Tanker

If other than one of the above, identify and describe the type.

(5) Length: Enter the vessel's overall length to the nearest meter.

(6) Gross Tons: Enter the gross registered tonnage, rounded to the nearest metric ton.

(7) Net Tons: Enter the net registered tonnage, rounded to the nearest metric ton.

(8) Maximum Speed: Enter the vessel's maximum speed in nautical miles per hour.

(9) Owner Name and Address: Enter the names and mailing

addresses of all owners of the vessel. If there is more than one owner, enter the first name and address on the form and the other names and addresses on attached pages. "Owner" includes any person, company, or government agency that own(s) the vessels; any charterer, whether bare boat, time, or voyage; and any person or company that acts in the capacity of a charterer, including, but not limited to, parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel.

(10) Agent Name and Address: Enter the name and address of the person in the United States that will act as agent for the vessel in accordance with the requirement at Section 201(c)(2)(F) of the MSFCMA.

(11) Processing Equipment: List any fish processing equipment aboard the vessel such as fillet lines, freezers, surimi plant, fish meal/oil plant, etc.

(12) Hold Capacity: Enter in cubic meters the hold capacity for each hold or other space (including flash freezers) in which fish or fish products may be stored. Use bale capacity only. If there are more than four (4) holds, give the total hold capacity in cubic meters. Otherwise, list the holds individually. Record this information accurately; the information is used by NMFS enforcement and U.S. Coast Guard personnel to determine the quantity of fish or fish products aboard the vessel.

(13) Indicate if the vessel has fished in the EEZ in prior years by listing the last permit application number. If the vessel has never applied for a permit, indicate "none" in the space provided.

(14) If joint venture activities are requested, place an "X" after "YES" and attach the required supplemental information (see supplemental questions on joint ventures).

(15) Indicate if the vessel is certified to be in compliance with the flag nation's health and safety standards by placing an "X" in the space provided.

(16) Fisheries for Which a Permit is Requested:

Fishery: If the vessel is applying for a permit to be issued under Section 204(b) of the MSFCMA (e.g., a joint venture permit), enter the three letter code from the following list for each fishery for which an application is made:

NWA - Northwest Atlantic Ocean

Requested Species: If the vessel is applying for a permit to be issued under Section 204(b) of the MSFCMA, list the species requested for joint ventures.

Gear: Leave blank.

Catch: Leave blank.

Process: Leave blank.

Activity - Other: If the vessel is applying for a permit to be issued under Section 204(b) of the MSFCMA, using the Activity Codes listed in Attachment 1, designate the activities requested in each fishery using the format shown in Attachment 2.

(17) If the vessel is applying for a permit to be issued under Section 204(d) of the MSFCMA, enter the latitude and longitude of the transshipment point requested.

(18) If the vessel is applying for a permit to be issued under Section 204(d) of the MSFCMA, indicate whether the transshipment point requested above is in the internal or territorial waters of a State and identify the State.

FISHING VESSEL IDENTIFICATION FORM (VIF)

NO: _____

- (1) VESSEL NAME: _____ (2) CALL SIGN: _____
- (3) HULL NO: _____ (4) VESSEL TYPE: _____
- (5) LENGTH (METERS): _____ (6) GROSS TONS: _____
- (7) NET TONS: _____ (8) MAX SPEED (KNOTS): _____
- (9) OWNER NAME: _____
ADDRESS: _____
- (10) AGENT NAME: _____
ADDRESS: _____
- (11) PROCESSING EQUIPMENT: _____
- (12) HOLD CAPACITY (IN CUBIC METERS - BALE CAPACITY ONLY):
HOLD #1: _____ HOLD #2: _____ HOLD #3: _____ HOLD #4: _____
(IF MORE THAN 4 HOLDS, GIVE TOTAL HOLD CAPACITY) _____
- (13) LIST LAST APPLICATION NUMBER _____ IF NONE, CHECK _____
- (14) ARE JOINT VENTURE OPERATIONS BEING REQUESTED? YES ___ NO ___ (IF YES, ATTACH JOINT VENTURE SUPPLEMENTAL RESPONSES)
- (15) CHECK IF VESSEL IS CERTIFIED TO BE IN COMPLIANCE WITH THE FLAG NATION'S HEALTH AND SAFETY STANDARDS _____
- (16) FISHERY FOR WHICH PERMIT IS REQUESTED:

FISHERY	REQUESTED SPECIES	GEAR	ACTIVITY		
			CATCH	PROCESS	OTHER

- (17) TRANSSHIPMENT POINT (LATITUDE AND LONGITUDE) _____
- (18) IS TRANSSHIPMENT POINT WITHIN THE INTERNAL OR TERRITORIAL WATERS OF A STATE? YES ___ NO ___ IF YES, IDENTIFY STATE _____

**INSTRUCTIONS FOR THE BASIC APPLICATION FORM FOR
VESSEL PERMITS TO BE ISSUED UNDER SECTION 204(B)**

1. **Fishery**: Enter "NWA" to denote "Northwest Atlantic Ocean" as the fishery in which fishing operations are being sought. Applicable regulations and descriptions for each fishery are contained in the foreign fishing regulations (50 CFR Part 600, Subpart F). Applications for fisheries other than those identified in the regulations should be submitted by letter to the U.S. Department of State. In order that full consideration may be given to the request, such letter applications should fully describe the proposed fishing operation and provide the following information: fishery, species, gear, and tonnage requested, if any; or nature of fishing operations requested.
2. **Species**: Enter the species requested for the joint venture (JV). If only support operations involving activity codes 5, 6, 7, 8 or 9 (to be designated on individual VIF's) are being requested, enter "Support" in the "Species" column and leave the remaining columns blank.
3. **Total Tonnage Requested for Each Species**: Leave the "Directed" column blank. Enter requested JV transfer amounts in the "Joint Venture" column.

THE UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OMB NO. 0648-0089
 (EXPIRES 7-31-98)

BASIC APPLICATION FORM TO REQUEST VESSEL PERMITS
TO BE ISSUED UNDER SECTION 204(b) OF THE
MAGNUSON-STEVENS FISHERY CONSERVATION AND MANAGEMENT ACT

In accordance with the provisions of the Magnuson-Stevens Fishery Conservation and Management Act, the Government of _____ submits this permit application for vessels operating under its flag to fish within the Exclusive Economic Zone of the United States, or beyond that zone for anadromous species during the year 1997.

Vessel Identification Forms and supplemental information describing any joint venture operations are attached to this application. The fisheries, species, and quantities requested for directed and/or joint venture operations are as follows:

Fishery	Species	Total Tonnage Requested For Each Species	
		Directed	Joint Venture

Submitted: _____
Date

Signature

Official's Title

Supplemental information describing each joint venture operation proposed is attached to this application (see instructions for supplemental questions on joint ventures).

Yes _____ No _____

**SUPPLEMENTAL QUESTIONS
TO BE ANSWERED AND ATTACHED TO
APPLICATIONS FOR JOINT VENTURE PERMITS
TO BE ISSUED UNDER SECTION 204(B)**

Attach a response (typed on 8 1/2" by 11" paper) to the following 11 questions for each distinct joint venture requested (e.g., the receipt of Atlantic mackerel from vessels of one company or business enterprise would be distinct from the receipt of Atlantic mackerel from vessels of another company or business enterprise). The involvement of more than one foreign vessel or of more than one vessel of the United States does not, in itself, constitute a distinct venture.

Answer the questions completely. If you consider any price information submitted in answer to question 11 proprietary, so indicate.

- (1) Names and types of foreign vessels to be employed. Number of foreign vessels to be employed at any one time.
- (2) Names and types of vessels of the United States which have been contracted and/or agreed to deliver U.S. harvested fish. Number of U.S. vessels to be employed at any one time.
- (3) Name, address, telephone number, and fax number of the person within the United States who will coordinate these operations with the foreign company. Note that the person may be different than the designated representative referenced in the foreign fishing regulations.
- (4) Name, address, telephone number and fax number of person or company within the United States who will be the American partner and if different, the same information for the principal contact with owners/operators of vessels of the United States.
- (5) Geographical area(s) in which vessels will operate. Use fishing area designations of the foreign fishing regulations.
- (6) Months and seasons during which vessels expect to operate.
- (7) List by species and quantity the processed products expected to be produced and ultimate expected market. Identify species and quantities, if any, which will reenter the United States.
- (8) Procedures to be employed to minimize the amount of incidental catch and prohibited catch received by foreign vessels. Describe intended disposition by species.

(9) Method of transfer from vessels of the United States to foreign vessels (e.g., delivery of zippered cod ends to processing vessels, transfer from deck to deck with initial sorting on vessels of the United States, transfer of unsorted fish to transports for further delivery to processing vessels, etc.).

(10) Relationship to other fishing operations (e.g., foreign vessels will be used exclusively to receive United States harvested fish, vessels of the United States will deliver certain species to foreign vessels and other species to United States fish processors, etc.). State if an application has been or will be made to process fish in U.S. internal marine waters. Describe any trade agreements or other considerations related to this proposed fishing operation.

(11) Please provide, if possible, the approximate price, by species, to be paid for United States harvested fish (U.S. dollars per mt). If prices are under negotiation, please specify, if possible, the range of prices being considered (U.S. dollars per mt). If you consider any price information provided proprietary, so indicate by submitting it on a separate sheet of paper marked "considered proprietary information."

ATTACHMENT 1

Activity codes are defined as follows:

1 - Catching, scouting, processing, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

2 - Processing, scouting, transshipping, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

3 - Transshipping, scouting, and supporting foreign vessels. Activity is limited to fish harvested or to be harvested by foreign vessels in the EEZ.

4 - Processing, scouting, transshipping, and supporting U.S. vessels delivering fish to foreign vessels. Activity is limited to the receipt of unprocessed fish harvested or to be harvested by U.S. vessels.

5 - Transshipping, scouting, and supporting foreign vessels. Transshipments limited to fish received or to be received from foreign vessels processing fish from U.S. harvesting vessels.

6 - Transshipping, scouting, and supporting U.S. vessels. Transshipments limited to U.S. harvested fish processed aboard U.S. vessels.

7 - Processing, transshipping, and supporting foreign vessels. Activity limited to fish harvested or to be harvested by foreign vessels seaward of the EEZ.

8 - Transshipping (*), and supporting foreign vessels. Activity is limited to fish harvested or to be harvested seaward of the EEZ by foreign vessels or fish duly authorized for processing in the internal waters of one of the States.

9 - Supporting U.S. fishing vessels and U.S. fish processing vessels and any foreign fishing vessels authorized under any activity code under this section.

(*) Including transshipping to U.S. vessels.

ATTACHMENT 2

EXAMPLES

a.) A factory ship which will participate in a JV and also expects to take on fish processed at sea by U.S. vessels:

FISHERY	REQUESTED SPECIES	GEAR	CATCH	PROCESS	OTHER
NWA	Mackerel				4 6

b.) A stern trawler with processing capability which will participate in a JV and also expects to transfer in the EEZ fish from an internal waters operation:

FISHERY	REQUESTED SPECIES	GEAR	CATCH	PROCESS	OTHER
NWA	Mackerel				4 8

c.) A cargo/transport which expects to transfer in the EEZ fish which were caught shoreward of the EEZ:

FISHERY	REQUESTED SPECIES	GEAR	CATCH	PROCESS	OTHER
NWA					8



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1335 East-West Highway
Silver Spring, MD 20910
THE DIRECTOR

3

Received
JUL 21 1997
Richard D. Ford

JUL 14 1997

Mr. Richard D. Ford
Preston, Gates and Ellis
701 Fifth Avenue
Seattle, Washington 98104-7078

Dear Mr. Ford:

Thank you for your recent letter regarding your additional questions concerning permit application and issuance procedures for transshipment permits under Section 204(d) of the Magnuson-Stevens Fishery Conservation and Management Act.

Responses to the numbered questions/suggestions in your letter are enclosed.

I trust this information will assist you in developing any applications you may wish to submit on behalf of your clients.

Sincerely,

David Egan

(for) Rolland A. Schmitten

Enclosure

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES



Responses to numbered questions/suggestions of Richard D. Ford:

1. A permit will be valid from the date of signature through December 31 of the calendar year in which the permit is issued and will allow multiple transshipments/trips.
2. Under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) (16 U.S.C. 1801 et seq.), vessels transshipping under authority of a permit issued in accordance with Section 204(d) are "fishing" under the definition of "fishing" in the MSFCMA. Each Vessel Identification Form (VIF) should include an international radio call sign for the applicant vessel. Requests to exempt applicant vessels from displaying their call signs can be considered on a case-by-case basis by the National Marine Fisheries Service (NMFS) and the U.S. Coast Guard (USCG).
3. VIF information item 16 does not apply to applicants for permits to be issued under Section 204(d). As noted in the directions, the "Fishery," "Requested Species," and "Activity - Other" sections of VIF information item 16 require information entry only if applying for a permit to be issued under Section 204(b) (e.g., a joint venture permit).
4. In lieu of a transshipment point and other particulars being specified in a permit application, NMFS will consider issuing a permit contingent upon the vessel operator or owner providing information satisfactory to the appropriate NMFS Regional Administrator and USCG District Office, specifying transshipment points and such other information as the Regional Administrator and USCG may deem necessary. Based on the nature of the transshipments, the Regional Administrator and USCG will determine the manner and schedule for reporting required information and will inform the vessel agent of the requirements. The exact amount of advance notice required will depend on the nature of the transshipment operations. Forty-eight hours advance notice would, no doubt, be satisfactory for many transshipment scenarios.
5. (a) As noted in item 2, vessels transshipping under Section 204(d) permits are "fishing" and are subject to all the requirements of Section 201(c)(2). However, the observer requirements of Section 201(c)(2)(D) can be waived, under Section 201(h)(2). We anticipate that the requirement would be waived in most instances of transshipping, either because the harvesting vessel has an observer onboard or because the operation of the transshipment vessel within the U.S. Exclusive Economic Zone would be of such short duration that placement of an observer would be impractical.

(b) Your reference is to Section 201(c)(2)(B), however, we believe you intended to refer to Section 201(c)(2)(C). Under this section the USCG can require the installation of a vessel

monitoring system (VMS) if it deems installation of such equipment appropriate. We are hopeful that many vessels permitted under Section 204(d) will be able to report via radio, voice phone or fax such information as the Regional Administrator and USCG require, thereby avoiding having to install VMS equipment. However, for your information, the latest minimum VMS standards provided to us by the USCG are as follows:

(i) The VMS must be tamperproof, i.e., must not permit the input of false positions; furthermore, if a system uses satellites to determine position, satellite selection must be automatic to provide an optimum fix and must not be capable of being manually overridden by any person aboard a fishing vessel or by the vessel owner.

(ii) The VMS must be fully automatic and operational at all times, regardless of weather and environmental conditions.

(iii) The VMS must be capable of tracking the vessel in all U.S. waters in the Ocean from the shoreline of each coastal state to a line 215 nautical miles offshore, and must provide position accuracy to within 400 meters (1,300 feet).

(iv) The VMS must be capable of transmitting and storing information including vessel identification, date, time, and latitude/longitude.

(v) The VMS must provide accurate hourly position transmissions every day of the year. In addition, the VMS must allow polling of individual vessels and any set of vessels at any time and receive position reports in real-time. For the purposes of this specification, "real-time" shall constitute data that reflect a delay of 15 minutes or less between the displayed information and the vessel's actual position.

(vi) The VMS must be capable of providing network message communications between the vessel and shore. The VMS must allow NMFS to initiate communications or data transfer at any time.

(vii) The VMS vendor must be capable of transmitting position data to NMFS-designated computer systems via a modem at a minimum speed of 9600 baud. Transmission must be in ASCII text in a file format specified by NMFS.

(viii) The VMS must be capable of providing vessel position histories for a minimum of one year and providing transmission to NMFS of specified portions of archived data in response to NMFS requests and in a variety of media (tape, floppy, etc.).

(ix) Operating requirements include that all required VMS units must transmit a signal indicating the vessel's accurate position at least every hour, 24 hours a day, throughout the year.

6. NMFS has implemented this program based on the statute and revised forms. Your clients may apply for permits at any time.



December 22, 1977

Lawrence P. Bredie, Esq.
Cadwalader, Wickersham & Taft
Eleven Dupont Circle
Washington, D.C. 20036

Dear Larry:

In your letter of November 23, 1977, you state that your opinion has been requested by NEFCO as to whether it is legal under the Fishery Conservation and Management Act of 1976 (FCMA), for foreign-flag vessels to engage in certain processing and transportation activities within the territorial sea.

In general, we agree with the interpretation of the Act which you have conveyed to your client. Section 307(2)(A) of the FCMA prohibits foreign vessels from engaging in fishing within the boundaries of any State. The term "fishing" is defined by the FCMA to include support activities when conducted "at sea". To the extent that the support activities are not conducted "at sea", the FCMA does not apply. We read "at sea" to encompass all waters extending seaward from the baseline of the territorial sea, except for ports, harbors, and recognized roadsteads customarily used in lieu of ports for the loading and unloading of goods.

Our conclusion is that a foreign vessel may not conduct fishery support activities in the territorial sea, except when such activities are conducted in ports or roadsteads.

We further concur that the FCMA does not prohibit "export operations" of the kind described in your letter, where cargo is loaded at a port or roadstead.

Assuming that the vessel qualifies under the definition of "vessel of the United States," the World Seafoods proposal would seem to be lawful under the FCMA. See the 1978 NOAA Foreign Fishing Regulations, 50 CFR §11.2(dd), 42 F.R. 60682-60689, November 28, 1977. The prospects for, and

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the implications of, obtaining U.S. documentation or numbering for such a foreign-flag vessel would be within the jurisdiction of the U.S. Coast Guard, and certain other aspects of the proposed activities may be within the jurisdiction of the Customs Service, so we are forwarding your inquiry and this reply to them for their consideration; there are also other issues as to the applicability of Federal and state law which you have raised and on which we do not comment.

I hope that these thoughts will be useful in giving advice to NMFCC. Please let me know if we can be of further help.

Sincerely,

Bill

William G. Brewer, Jr.
General Counsel

cc: Joseph A. Velenias
Chief, Merchant Vessel Documentation Division
U.S. Coast Guard

Charles W. Hart, U.S. Customs Service

David H. Wallace
Robert W. Schoning
Robert A. Smith
Brooks J. Bowen



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Washington, D.C. 20230

THE DEPUTY ADMINISTRATOR

Honorable Ted Stevens
United States Senate
Washington, D.C. 20510

Dear Ted,

Your letter of April 22, 1985 and the telegram from Alaska Governor Sheffield to Secretary Saldrige that you enclosed, both concern advice given by the NOAA Regional Attorney in Juneau to Mr. John Maher of the Sitka firm, Seaboy Alaska. I have ascertained that the Regional Attorney's advice was consistent with prior NOAA General Counsel opinions dating back to 1977. In essence, these opinions provide that the export of fish or fishery products from the U.S. is not subject to regulation under the Magnuson Fishery Conservation and Management Act.

As I understand Mr. Maher's situation, he had intended to purchase herring directly from U.S. fishing vessels in the territorial sea, and had chartered a Canadian vessel to transport the product, without processing it further, to Prince Rupert, British Columbia, for sale to Canadian processors. The Regional Attorney advised Mr. Maher that the Magnuson Act generally prohibited such an operation in the territorial sea but not in port. On the basis of this advice, Mr. Maher altered his plans to receive the product at the dock, but ultimately abandoned the project when threatened with legal action by Alaskan authorities.

The same question was raised in November 1977, by an attorney for the New England Fish Company, who requested advice on a "so-called export operation whereby foreign-flag vessels entered the three-mile zone, loaded partially processed Bering Sea herring at one or more ports or locations and then transported such cargo, without processing it further, to foreign destinations." He stated his belief that the National Marine Fisheries Service was "correct in its interpretation that the [Magnuson Act] does not have any effect on such vessel export operations." The NOAA General Counsel agreed, by letter of December 22, 1977, so long as the cargo involved was loaded "... at a port or roadstead." To our knowledge, this interpretation has had no adverse effect on the development of the U.S. fishing industry.

cc: DA, AA, GC, CA, ES
Control No. 22298
Prepared By: RJH/MA



In sum, NOAA's consistent position has been that over-the-side sales to foreign processors in the territorial sea are generally prohibited by the Magnuson Act, because of the statute's definition of "fishing", which covers support operations at sea. On the other hand, we don't believe that transfers in ports occur "at sea", within the meaning of the statute, even if some harbor areas may be seaward of the baseline from which the territorial sea is measured.

Finally, as to purchases in internal waters, we don't believe that mere transportation of fish, without more, constitutes "processing" requiring the Governor's approval under section 306(c) of the Magnuson Act. To interpret the law otherwise could impose severe restraints on the export of fisheries products.

I apologize for the delay in responding to your letter, but believe that the recent discussions between our staffs have led to a better mutual understanding of the legal and practical problems surrounding over-the-side sales in the Alaska region.

Sincerely,



Anthony J. Calio



UNITED STATES DEPARTMENT OF COMMERCE
 N.O.A.A. / National Marine Fisheries Service
 Alaska Enforcement Division
 P.O. Box 21868
 Juneau, Alaska 99802-1868

5

DATE: August 26, 1992

MEMORANDUM FOR: FOR THE RECORD

FROM: F/ENS - *David C. Flannagan*
 David C. Flannagan

SUBJECT: DESIGNATION OF A PORT FOR THE PURPOSE OF
 MAGNUSON ACT ENFORCEMENT - ST. PAUL, ALASKA

The Magnuson Fishery Conservation and Management Act prohibits foreign vessels from conducting fishery support operations "at sea" within the maritime boundaries of any State. NOAA General Counsel has taken the position that vessels that are in port; within the internal marine waters of a State; or at established roadsteads are not considered to be "at sea" for purposes of transshipment of processed fish to vessels for export. Established roadsteads are traditional anchorages that have been used for the lightering of goods to and from an adjacent coastal town or village that does not have a suitable deep water port.

For the purpose of Magnuson Act enforcement of the prohibition on foreign support operations within the maritime boundaries of the State of Alaska, the following waters are designated as within the Port of St. Paul. It has been established that these waters have been used as anchorages for the purpose of conducting commerce with the adjacent town or village. Foreign flag vessels may load fisheries products for export from U.S. flag vessels within these waters provided that they comply with all other applicable Federal, State and local laws. Further restrictions apply to any other type of foreign support operations within the boundaries of the State:

The Port of St. Paul includes all waters within the maritime boundary of the State of Alaska and within three miles of St. Paul Island, excluding Otter Island, on the south side of St. Paul Island (Pribilof Islands) east of a line extending true south from Southwest Pt. at 57-09.68N latitude/170-25.00W longitude and west of a line extending true south from Halfway Pt. (Polovina Pt.) at 57-09.68N latitude/170-10.20W longitude.





UNITED STATES DEPARTMENT OF COMMERCE
 N.O.A.A. / National Marine Fisheries Service
 Alaska Enforcement Division
 P.O. Box 21868
 Juneau, Alaska 99802-1668

DATE: January 14, 1993

MEMORANDUM FOR: DISTRIBUTION

FROM:

F/ENS - David C. Flannagan

SUBJECT: DESIGNATION OF A ESTABLISHED ROADSTEADS FOR THE
 PURPOSE OF MAGNUSON ACT ENFORCEMENT

As of January 14, 1993, the below listed sites have been designated as established roadsteads for the purpose of Magnuson Act enforcement. It has been established that these waters have been used as anchorages for the purpose of conducting commerce with the adjacent town or village. Foreign flag vessels may load fisheries products for export from U.S. flag vessels within these waters provided that they comply with all other applicable Federal, State and local laws. Further restrictions apply to any other type of foreign support operations within the boundaries of the State:

The Besboro Island Roadstead includes all waters within the maritime boundary of the State of Alaska and within 3 nautical miles of the east side of Besboro Island which are south of 64°08.5" N. latitude and north of 64°06.8" N. latitude.

The Hagemeister Island Roadstead includes all waters within the maritime boundary of the State of Alaska in Hagemeister Strait which are west of a line extending from the northeast end of Hagemeister Island at 58°49.6" N. latitude, 160°41.2" W. longitude to the mouth of Quigmy River at 58°56.9" N. latitude, 160°39.8" W. longitude and east of a line extending from the mouth of an unnamed river at 58°44.7" N. latitude, 160°53.6" W. longitude to the tip of Tongue Point at 58°48.6" N. latitude, 160°50.4" W. longitude.

The St. Paul Island Roadstead includes all waters within the maritime boundary of the State of Alaska on the north side of St. Paul Island which are west of 170°05.8" W. longitude and east 170°17.7" W. longitude.



REMINDER

This determination summarizes regulatory requirements and is for general informational purposes only. For more information concerning regulatory requirements, consult the applicable regulations or contact the NOAA Alaska Enforcement Division in Juneau at 907-586-7225. Additionally, foreign vessel operators should take care to observe laws administered by other State and Federal agencies, including the Alaska Department of Fish and Game, the U.S. Customs Service, the U.S. Department of Labor, the Immigration and Naturalization Service, the Coast Guard, and the Environmental Protection Agency.

Distribution:

NOAA General Counsel
F/AKR - Steve Pennoyer
USCG - Bill Anderson
ADF&G - Carl Rosier
AK Dept of Commerce - Carl Luck
Pacific Associates - Joe Kyle
Arctic Alaska - Dave Benson
North Star - Tom Rueter
Alaska Maritime - Dutch Harbor
International Shipping Services - Elwood Peterson
George Pletnikoff
Kathryn Railsback
Paul McFarland



UNITED STATES DEPARTMENT OF COMMERCE
N.O.A.A. / National Marine Fisheries Service
Alaska Enforcement Division
P.O. Box 21868
Juneau, Alaska 99802-1668

October 27, 1992

Mr. Elwood Peterson
International Shipping Services, Inc.
Market Place, Two
2001 Western Ave., Suite 430
Seattle, WA 98121

Dear Mr. Peterson:

I would like to thank you and the other industry participants for your valuable input into the ports and roadsteads meeting on October 26, 1992. Our intent at this point is to confirm a number of determinations made at the meeting and initiate deliberations on the other unresolved sites.

I would also like to reiterate concerns expressed at the meeting regarding other restrictions that may apply to any internal waters or other sites listed. Use of these areas is limited to loading products onto foreign hulls for export. Processing of fish aboard a foreign hull in the internal waters of the State can only occur upon issuance of an Internal Waters Joint Venture Permit issued by the Governor of Alaska. Further, Department of Defense restrictions may apply to some Islands within the Aleutian Chain. Vessels should seek clarification from the DOD prior to entering bays on any island under DOD control. Some islands which may have entry restrictions are Adak, Amchitak, Kiska, and Shemya. Nothing in these determinations should be considered as authority to enter any sea lion rookery buffer zone. These zones are published in federal regulations and all entry within 3 miles of the sea rookeries is prohibited.

INTERNAL WATERS

Several sites listed as unresolved locations appear to be wholly within the internal waters of the State. Transfers to foreign vessels may occur in these waters without further determination from NOAA. My understanding of these sites is as follows:

BETHEL - It was indicated at the meeting that transfer operations were occurring well within the Kuskokwim River. All rivers within Alaska are considered internal waters. A closing line has been drawn across the mouth of the Kuskokwim River. That line is depicted on page 28 of the territorial sea and baseline guide distributed at the meeting.

SQUAW HARBOR - It was indicated at the meeting that Squaw Harbor was located within Baralof Bay on Unga Island. No closing line has been drawn across Baralof Bay; however, it does qualify as



internal waters (chart included).

UGASHIK BAY - It was indicated at the meeting that transfer operations were occurring well within the bay. No closing line has been drawn across the Ugashik Bay; however, it does qualify as internal waters (chart included).

NASH HARBOR - No closing line has been drawn across Nash Harbor; however, it does qualify as internal waters (chart included).

KOKECHICK BAY - A closing line has been drawn across Kokechik Bay; however, it is indiscernible in the baseline guide provided to you (chart included). Closing lines have been drawn across Scammon Bay (just north of Cape Romanzof) and are depicted on NOAA Chart No. 16240 (8th Ed., Jan 5/80).

GUSTY BAY (Tanaga Island) - No closing line has been drawn across Gusty Bay; however, it does qualify as internal waters (chart included).

HOT SPRINGS BAY (Tanaga Island) - No closing line has been drawn across Hot Springs Bay; however, it does qualify as internal waters (chart included).

CAPE SASMIK/SOUTH BAY (Tanaga Island) - Cape Sasmik does not meet either internal waters criteria or our criteria for port determination. South Bay located one mile west of the cape does, however, qualify as internal waters (chart included).

CONSTANTINE HARBOR (Amchitka Island) - No closing line has been drawn across Constantine Harbor; however, it does qualify as internal waters (chart included). DOD entry restrictions may apply.

DESIGNATION OF A PORT FOR THE PURPOSE OF MAGNUSON ACT ENFORCEMENT

A number of the sites listed as unresolved locations appear to meet our criteria for designation as ports for the purpose of Magnuson Act Enforcement. Our procedure for making this determination has included seeking concurrence from a number of Federal and State representatives. I am providing you with draft proposals for your review and comment. Upon receipt of your comments I will seek concurrence from the various representatives. I expect concurrence would take no longer than a week. I intend to be in travel status from November 3rd through November 22nd. If your comments are received prior to October 30, I will forward the drafts for concurrence on November 2. If your comments are received after that date, I will forward the drafts upon my return. In either case I would expect that we can make final determinations by the first week of December.

DRAFT PORT DESIGNATIONS

EGEGIK - The Port of Egegik includes all waters within the

maritime boundary of the State of Alaska adjacent to the entrance to Egegik Bay which are south of 58°15.5" N. latitude and north of 58°09.5" N. latitude.

FALSE PASS - The Port of False Pass includes all waters within the maritime boundary of the State of Alaska in Ikatan Bay and Isanotski Strait west of a line extending from Ikatan Pt. at 54°46.6" N. latitude/163°11" W. longitude to an unnamed point at 54°50.5" N. latitude/163°13.1" W. longitude and south of 54°57.3" N. latitude.

SAND POINT - The Port of Sand Point includes all waters within the maritime boundary of the State of Alaska in Popof Strait south of 54°21.5" N. latitude and north of a line extending from Hardscratch Pt. at 54°15.85" N. latitude/160°32" W. longitude to an unnamed Point at 54°17.35" N. latitude/ 160°28.2 W. longitude.

UNALAKLEET - The Port of Unalakleet includes all waters within the maritime boundary of the State of Alaska adjacent to the entrance to the Unalakleet River which are south of 64°25" N. latitude and north of 64°19" N. latitude.

MEKORYUK (Nunivak I.) - The Port of Mekoryuk includes all waters within the maritime boundary of the State of Alaska adjacent to Cape Etolin on the north side of Nunivak I. which are south of 60°30" N. latitude, east of 165°57" W. longitude and west of 166°16" W. longitude.

TANUNAK (Nelson I.) - The Port of Tanunak includes all waters within the maritime boundary of the State of Alaska adjacent to Cape Vancouver on the west side of Nelson Island which are east of 165°30" W. longitude, south of 60°34" N. latitude and north of 60°28" N. latitude.

OLD HARBOR (Kodiak I.) - The Port of Old Harbor includes all waters within the maritime boundary of the State of Alaska in Sitkalidik Strait west of 153°16.8" W. longitude and north of Cape Liakik at 57°06.8" N. latitude/153°27.1" longitude.


UNRESOLVED LOCATIONS

Four of the sites identified fall outside the criteria established within the region and approved by our central office. These sites are Hagemeister Strait, the north side of St. Paul Island, the north side of Summit Island and the east side of Besboro Island. We will forward all supporting documentation to the Central Office this week. I would expect that a decision on these locations would be rendered before the end of the year.

If you identify additional areas in the future I would recommend that you contact us as soon as possible. If the areas are in internal waters we can give you an opinion within a day. If the area qualifies as a port it will take from one to two weeks for confirmation. We cannot render crisis determinations; therefore

we request that you plan ahead when dealing with any area outside internal waters where no determination has been previously made. Should you have question concerning this response I encourage you to contact me at (907) 586-7225.

Sincerely,



David C. Flannagan
Special Agent in Charge

cc: J. Kyle
J. Pollard



C-10
UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

SEP 19 1997

Mr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99510

Dear Mr. Pautzke:

Section 204(d) of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) provides for the issuance of transshipment permits authorizing foreign vessels to conduct fishing operations consisting solely of transporting fish or fish products at sea from a point within the U.S. Exclusive Economic Zone or, with the concurrence of a State, within the boundaries of that State, to a point outside the United States.

Enclosed for your review is an application for a permit to be issued under Section 204(d). The application requests authorization for transshipment activities in 1998. We would appreciate receiving by December 1, 1997, any comments or recommendations you wish to make with respect to the issuance of the requested permit. You will note the general conditions and restrictions that will apply to the permit are found at Section 204(b)(7) of the MSFCMA.

Thank you for your assistance with this matter.

Sincerely,

Gary C. Matlock

Gary C. Matlock, Ph.D.
Director, Office of
Sustainable Fisheries

Enclosure



A.N.P. SHIPPING CO.

P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 26646

September 12, 1997

International Fisheries Division
National Marine Fisheries Service
Department of Commerce
1315 East West Highway
Silver Spring, Maryland 20910

Re: REQUEST FOR PERMITS TO BE ISSUED UNDER SECTION 204(d) (Transshipment Permit)

VESSEL: M/V JOCHOH

A.N.P. Shipping Company, as agents for and on behalf of Boyang Ltd. of Seoul, South Korea, requests that the National Marine Fisheries Service issue a Foreign Fishing Permit under section 204(d) (Transshipment Permits) of the MSFCMA for the refrigerated transport vessel M/V JOCHOH.

DESCRIPTION OF TRANSHIPMENTS TO BE CONDUCTED: The operators of the M/V Jochoh anticipate requests from U.S. processing companies to transship fisheries products from U.S. Flag processing vessels to the subject vessel in the Bering Sea, Gulf of Alaska, and along the Aleutian Island chain during calendar year 1998. Cargo to be transshipped will include Pollock, Sole, and other Bottomfish from N.M.F.S. managed Fisheries, and Salmon, Crab, and Herring from State of Alaska managed Fisheries. Specific locations that have been proposed by U.S. processors so far as possible transshipment locations include Urilla Bay, parts of Kiska Island, and various locations in Bristol Bay for transshipping of Herring and Salmon. Due to the lead time required for this permit and the uncertainty at this time as to where and from which processors the vessel will actually tranship, we request that reporting of specific transshipment locations and other pertinent information be deferred until just prior to each individual transshipment.

We would like to suggest (per the comments of Rolland A. Schmitten in his letter to Richard Ford of Preston, Gates & Ellis dated 07/14/97) that the vessel operators or their agent provide at least 48 hour notice to the N.M.F.S. Regional Administrator for Alaska and the appropriate U.S.C.G. District Office of the transshipment location, the U.S. processing vessel involved, the amount and type of cargo to be transshipped, and any other information that N.M.F.S. or the U.S.C.G. would require. Please note that the subject vessel will be entering with both U.S. Customs and Immigration at an Alaskan Port within the Anchorage District of U.S. Customs prior to the anticipated transshipments and will obtain a clearance from U.S. Customs at an Alaskan port within the same District prior to sailing to a Foreign destination.

TRANSSHIPMENTS CONDUCTED IN TERRITORIAL SEAS: Due to the uncertainty of where the vessel will be asked to actually transship cargo, we respectfully request that the permit be considered valid for transshipments both in the U.S. EEZ and in the Territorial waters of the State of Alaska and that N.M.F.S. take whatever action is appropriate to secure the concurrence of the State of Alaska.

A.N.P. SHIPPING CO.

P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 28646

COMPLIANCE WITH MSFCMA SECTION 201 (c) (2): This application confirms that the subject vessel intends to fully comply with all requirements in Section 201(c) (2). However, at the pleasure of N.M.F.S. and the U.S.C.G., the vessel would like to request an exemption from the following requirements without prejudice to the permit application itself.

1. **OBSERVER COVERAGE 201 (c) (2):** We ask that you waive the requirement for observer coverage given the following circumstances:
 - A) If the subject vessel is loading Bottomfish, it is most likely that the U.S. processing vessel from which the cargo is being unloaded from will already have an observer onboard and available to monitor the transshipment if this is deemed necessary.
 - B) Due to the uncertainty of her actual loading schedule and the high probability that the vessel will also be loading at various ports or roadsteads that are not considered to be "at sea", coupled with the short duration of the anticipated off loads considered to be "at sea", it is likely that successful placement of an observer would be problematic.
 - C) After completing all transshipments, the vessel will still have to clear U.S. Customs at an Alaskan port prior to leaving for a foreign destination. While in port obtaining clearance, there should be ample opportunity for U.S. Customs, N.M.F.S., or the U.S.C.G. to inspect the cargo if this is deemed necessary.

2. **TRANSPONDERS 201 (c) (2) (D):** We ask that the U.S.C.G. waive the requirement for the placement of transponders onboard the subject vessel given the following circumstances:
 - A) Adequate communication devices are already onboard the vessel to report to the agent and/or N.M.F.S./U.S.C.G. any information that may be required.
 - B) As a transport vessel, the subject vessel does not catch or process fishery products on its own. Any transshipment activity would obviously require the presence of two vessels, both of which are required to report transshipment details to N.M.F.S. and the U.S.C.G.
 - C) The vessel would still have to obtain U.S. Customs clearance at an Alaskan port prior to her departure which should again provide ample opportunity for inspection of both her cargo and ships logs if this is deemed necessary. It would seem that the need for a VMS would be considerably less given these circumstances.

3. **REQUIREMENT TO DISPLAY CALL SIGN 50 CFR SECTION 511.5 (a):** We ask that the requirement to display the vessel's call sign in the manner designated in this section be waived given the following circumstances:
 - A) Although falling under the definition of "fishing vessel" in the MSFCMA, the vessel is defined as a cargo vessel by the U.S.C.G. and is not capable of catching or processing fish.
 - B) Depending on where the vessel is in its trading pattern and the timing of when this permit is issued, it may not be possible for the crew to physically paint the call sign on the vessel in the manner designated in this section before the first transshipment.
 - C) In view of the fact that the vessel has adequate communication equipment for the reporting requirements and will need to obtain clearance from U.S. Customs before her departure, it would seem that the need for this requirement is greatly diminished.

A.N.P. SHIPPING CO.


P.O. BOX 10-1300

ANCHORAGE, ALASKA 99510

TELEPHONE (907) 272-6145 • FAX (907) 276-0033 • CABLE: NORTHSHIP • TELEX: 26648

We hope that the above sufficiently meets your requirements for a Foreign Fishing Vessel Transshipment permit. In addition we have attached a completed VIF for the M/V Jochoh and a fee payment in the amount of \$354.00. We respectfully request that you process this application without delay and advise us at your earliest convenience if a permit will be issued for the M/V Jochoh.

Best Regards,


Stuart Laney

A.N.P. Shipping Company

Tel: 907-272-6145

Fax: 907-276-0033

OMB NO. 0648-0089
(EXPIRES 7-31-98)

FISHING VESSEL IDENTIFICATION FORM (VIF)

NO: _____

- (1) VESSEL NAME: M/V JOCHOH (2) CALL SIGN: 3 F T G 5
- (3) HULL NO: 22658-96 (4) VESSEL TYPE: REFRIGERATED TRANSPORT
- (5) LENGTH (METERS): 113.38 (6) GROSS TONS: 4,458
- (7) NET TONS: 2,252 (8) MAX SPEED (KNOTS): 15.8
- (9) OWNER NAME: CORAL LEASING S.A.

ADDRESS: 33A 5th AVENUE PANAMA, CITY, PANAMA

- (10) AGENT NAME: A.N.P. SHIPPING COMPANY
- ADDRESS: P.O. BOX 10-1300 ANCHORAGE, ALASKA 99501

(11) PROCESSING EQUIPMENT: NONE

- (12) HOLD CAPACITY (IN CUBIC METERS - BALE CAPACITY ONLY):
 HOLD #1: 2,498 HOLD #2: 2,543 HOLD #3: 1,615 HOLD #4: _____
 (IF MORE THAN 4 HOLDS, GIVE TOTAL HOLD CAPACITY) _____

(13) LIST LAST APPLICATION NUMBER _____ IF NONE, CHECK XX

(14) ARE JOINT VENTURE OPERATIONS BEING REQUESTED? YES ___ NO XX (IF YES, ATTACH JOINT VENTURE SUPPLEMENTAL RESPONSES)

(15) CHECK IF VESSEL IS CERTIFIED TO BE IN COMPLIANCE WITH THE FLAG NATION'S HEALTH AND SAFETY STANDARDS XX YES

(16) FISHERY FOR WHICH PERMIT IS REQUESTED:

FISHERY	REQUESTED SPECIES	GEAR	ACTIVITY		
			CATCH	PROCESS	OTHER

(17) TRANSSHIPMENT POINT (LATITUDE AND LONGITUDE) BERING SEA & G.O.A. (SEE COVER L)

(18) IS TRANSSHIPMENT POINT WITHIN THE INTERNAL OR TERRITORIAL WATERS OF A STATE? YES XX NO ___ IF YES, IDENTIFY STATE ALASKA

**PAGE TWO OF FISHING VESSEL IDENTIFICATION
FORM FOR M/V JOCHOH**

OWNER:

CORAL LEASING S.A.
33A 5TH AVENUE
PANAMA CITY, PANAMA

OPERATOR:

JOCHOH MARINE S.A.
16TH FLOOR TURRE SWISS BANK BLDG
53RD STREET
PANAMA CITY, PANAMA

MANAGEMENT COMPANY:BOYANG LTD

10TH FLOOR KANGNAM JEIL BLDG.
#822-4, YOKSAM-DONG
KANGNAM-KU
SEOUL, KOREA

ITEM C-10Ca)

Tom Durden

FOREIGN VESSEL TRANSHIPMENT C-7D

ALASKA MARINE PILOTS ASSOCIATION

P.O. Box 920226
 Dutch Harbor, AK 99692
 (907) 581-1240
 Fax (907) 581-1372

Mr. Rick Lauber, Chairman
 North Pacific Fisheries Management Council
 Suite 308
 605 West Fourth Ave.
 Anchorage, AK 99501-2252
 (via fax- 907-463-5298)

September 19, 1997

Mr. Lauber:

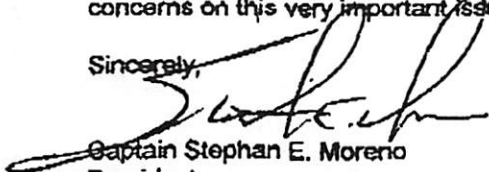
It is our understanding that the North Pacific Fisheries Management Council (NPFMC) will be considering requests for transshipment permits within the EEZ in the remote areas of the Bering Sea, not previously identified as ports or roadsheads. In reviewing the documentation, we do not see any consideration given to marine pilotage issues. Alaska Marine Pilots is a state designated marine pilot organization responsible for providing marine pilotage services to foreign vessels in the western region of Alaska. We have some serious concerns with this proposal and feel it is imperative that you consider our issues in these deliberations.

Alaska law requires that marine pilots be aboard all foreign vessels navigating the state waters of Alaska. The broad area designation being sought in the permit requested by ANP Shipping's such as "Aleutian chain" or "Bering Sea" means that vessels could go in any remote harbor where it would be difficult or impossible to board a marine pilot on the ship. If these broad designations are granted, and a pilot cannot be boarded, these vessel can move in Alaska waters without the expertise of a marine pilot. This circumvents a system that ensures safe and sound navigation of vessels in state waters.

Additionally, the areas being considered are environmentally sensitive and these exemptions could seriously threaten Alaska's coastline and marine resources. Consider that many of these areas contain protected species within the boundaries of Alaska Maritime Wildlife Refuges and in the event of a maritime casualty the infrastructure does not exist to mitigate the damage caused by the discharge of oil or other hazardous substances. We also note that the permit request includes proposed exemptions from observer coverage, transponders, and display of call sign letters. To grant these exemptions would further remove measure to identify what activities are taking place within the EEZ.

Alaska Marine Pilots feel that these serious issues must be considered before any further action is taken. We will have a representative of our organization present at the meeting in Seattle who could go into further detail on the issues of marine pilotage. Thank you for considering our concerns on this very important issue.

Sincerely,



Captain Stephan E. Moreno
 President

c.c- Alaska Board of Marine Pilots

Paul Fuhs
C-10

September 21, 1997

To: North Pacific Fisheries Management Council

From: International Longshore & Warehouse Union Local 200, Unit 223
Dutch Harbor, Alaska

Re: At Sea Transfer Permits

Mr. Chairman and Members of the Council, thank you for the opportunity to testify on what we consider to be a very important issue. We apologize for not being here in person today, but our workload during Pollock "B" season is substantial and makes any travel very difficult.

On the issue of "At Sea Transfers" of fish products to foreign cargo vessels, we believe that if a permit is issued to the M/V Jochoh, a process will be initiated which will eventually result in a substantial loss of American jobs in many coastal communities throughout Alaska. We see this single application as a first test of Section 204(D) of the Magnuson-Stevens Act, and if successful will result in a flood of similar applications from a great many more foreign cargo vessels, primarily Japanese and Korean, which carry a large variety of fish products from Alaskan waters to the Far East and other destinations.

A few years ago, when the foreign cargo vessels were legally allowed to use their own crew members to perform cargo handling work, even in Alaskan ports such as Dutch Harbor, the I.L.W.U. protested this practice, and after several years of struggle convinced Congress to amend the Immigration and Nationality Act so that American Longshore workers would perform the work whenever

Page One

and wherever they were able, but in other cases foreign crew members could still legally handle cargo. This created a large number of jobs for Alaskans, primarily in Dutch Harbor but in other ports as well, while not disrupting the fishing industry.

In Dutch Harbor, the I.L.W.U. now handles most of this cargo coming and going through the port. we have expanded our membership to 65 members and often employ up to 150 people a day during the busy seasons. Many thousands of hours come from the hand stowing of fish products on these foreign cargo vessels. The system works well, contributes large amounts of money to the local economy, and supports many people.

We have recently received a grant from the State of Alaska to train people who in turn can go to a number of coastal communities, such as Atka, Akutan, Sand Point, St. George , St. Paul etc. and train people to run the ships gear and stow these same vessels. We hope to create quite a few jobs in the process.

Whether or not this application is in part a response to this training program, going down this road of expanded opportunities for foreign vessels to operate more freely outside of established ports will no doubt deal a real blow to future employment opportunities for coastal residents, and probably impact established ports such as Dutch Harbor in the not too distant future.

Further, we believe the primary beneficiaries to all this will be the foreign carriers themselves. There doesn't seem much to be gained by the fishing industry as a whole, and while one cannot blame the carriers for attempting to lower their costs, we cannot also abide the potentially large number of jobs put at risk around the State of Alaska should these applications go forward.

Further there is a legitimate concern as well that improving the climate for the foreign carriers will give them an added advantage against their competition, the U.S. flagged container

Page Two

carriers in Alaska. They service Dutch Harbor, Anchorage, and Kodiak, and between them they employ several hundred people around the state. The competition between the foreign and U.S. flagged carriers is fierce, and we do not see any reason to skew the playing field here, particularly when local jobs are on the line.

So in conclusion, we appeal to the North Pacific Fisheries Management Council in their consultative capacity, to recommend denial of this permit application to N.M.F.S.

If we can answer any questions you may have on this issue, please contact Ritchie York at (907) 581-1837 or Pete Hendrickson at (907) 581-1804.

Thank you for your time and consideration on this matter.

Ritchie York
President, I.L.W.U. Local 200, Unit 223

Pete Hendrickson
Labor Relations Representative, I.L.W.U. Local 200, Unit 223

Page Three