

M E M O R A N D U M

TO: Council, SSC and AP Members

FROM: Jim H. Branson *JHB*  
Executive Director

DATE: September 19, 1984

SUBJECT: Joint Venture and Foreign Allocations Policy

*ACTION REQUIRED*

*Final adoption of policies drafted by Council Workgroup.*

BACKGROUND

At the Council's direction, a workgroup consisting of Keith Specking (Chairman), Bob McVey, Rudy Peterson, Jon Winther, Don Collinsworth, Bob Lucas, Steve Pennoyer, Joe Kurtz, Rick Lauber, Al Burch, Choate Budd, Craig Hammond, Greg Baker, Fred Gaffney, Pat Travers, Clarence Pautzke and myself met in Juneau on June 28-29 and drafted proposed policies on foreign allocations and joint venture permit review for Council consideration. The two policies were sent out to public review on July 12 with a deadline of September 15, 1984.

The Council needs to consider final adoption of the two draft policies with changes as desired which are highlighted below. A summary of the public comments and the comments in full are also included. The policies will be vital to the Council decision process in December when joint venture permits and foreign allocations for 1985 must be reviewed and acted upon.

Draft Policy: Review of Foreign Fishing Vessel Permit Applications

This draft policy is under C-4(a) and focuses on Council procedures in reviewing permit applications. It has the following highlights:

1. The Council will request to review all permit applications for the Alaska region.
2. The Executive Director is authorized to routinely approve all permits except for joint ventures, serious violators, new countries, and unusual operations.
3. Permits requiring more than routine approval will be reviewed by the Advisory Panel, Permit Review Committee, and the Council at regularly scheduled meetings.

4. The Permit Review Committee shall have four Council and two Advisory Panel members.
5. Serious violations are those resulting in penalties of \$10,000 or more (revised from old \$3,000) and seizures.
6. Major permit review will be in December and specific deadlines are established for publishing permit applications in the Federal Register and receipt by the Council.

Draft Policy: Joint Ventures and Allocations

This draft policy is under C-4(b) and embodies an approach to determine the mix of joint ventures off Alaska and how fish should be allocated to foreign countries. It has the following highlights:

1. It is in the greatest national interest for the resource to be both harvested and processed by U.S. industry. The Council will give highest priority to operations that are wholly American.
2. A major review will be held each December for prospective joint ventures for the coming year.
3. Deadlines for publishing in the Federal Register and receipt by the Council are established.
4. Preference categories of operations and criteria will be used to numerically rank joint ventures in cases of shortages of groundfish and in recommending directed fishing allocations for foreign nations. Each applicant will be requested to describe in writing how their operations meet the criteria.
5. The Council expects to approve most joint ventures for species with TALFF. If TALFF exists, the criteria will be used mainly as a basis for recommending directed fishing allocations to foreign countries.
6. The rank ordering of joint ventures will become especially important when the biologically available yield is insufficient to meet all JVP demands.
7. For groundfish species with no TALFF or where available resources may limit JVP, 50% of the JVP will be held in reserve until July 1. The Council will review operations, augmentations, and new requests in May for these species and recommend what further JVP allocations should be made to each joint venture.
8. Tonnage requests on permit applications are considered firm targets. In-season augmentation requests for species with TALFF may be acted on by the Regional Director. The Council will review all other requests for augmentations or new operations at regular meetings. An Interim Action Committee may be appointed as necessary.

Written Public Comments Received

Written comments have been received from the following:

Fish Producers Associates  
Profish International  
Ocean Spray Fisheries  
North Pacific Fishing Vessel Owner's Association  
International Longshoremen's and Warehouseman's Union  
Korea Deep Sea Fisheries Association  
Japan Deep Sea Trawlers Association  
Hokuten Trawlers Association  
North Pacific Longline Gillnet Association

A summary of comments is under C-4(c) and the comments in full are under C-4 supplemental.

9/27/84

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

*INTERIM*

DRAFT PROPOSED POLICY

on

Joint Ventures and Allocations

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Conservation and Management Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be harvested, processed, and marketed by U.S. industry. However, until the domestic industry can harvest, process, and market the available groundfish resource, the Council will encourage joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources. Joint ventures are generally considered to be operations in which U.S. fishermen deliver raw fish to foreign processors at sea. Ownership of the finished product may be foreign or U.S. Other forms of joint ventures are possible and will be appraised on their individual merits as they are formulated.

The Council will continue to give highest priority to target operations that are wholly American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

The Council intends that any country to whom a direct allocation is given must also be engaged in "over-the-side" joint ventures or the purchase of U.S. produced products. A relationship of a one-to-one ratio for joint venture fishing to foreign directed fishing at the earliest possible date is most desirable at this time. After this ratio is achieved, TALFF will be put on a

sliding scale toward total elimination of foreign fishing as American industry (harvesting/processing/marketing) comes on line.

Joint Venture Permit Review Procedure. The Council will hold its review each December of all prospective joint ventures for the coming year. This will coincide with the Council making its final recommendations on apportioning available groundfish yields to Domestic Annual Processing (DAP: totally U.S. harvested and processed), Joint Venture Processing (JVP: U.S. harvested and foreign processed), and Total Allowable Level of Foreign Fishing (TALFF: foreign harvested).

The Council expects to receive all permit applications for foreign vessels to operate in joint ventures at least two weeks before the week of the Council meeting. Applications are expected to be complete and to have been published in the Federal Register by Friday preceding Council meeting week. In no case will the Council consider applications published later than Monday of the meeting week.

In addition to the information required on the NMFS permit application form, each applicant is requested to describe in writing how their operation meets the criteria listed in Table 1. In cases of shortages of desired species, the Council will use this information to rank individual joint ventures and to formulate Council recommendations.

Applications for joint operations submitted subsequent to the December meeting will be reviewed and recommended for approval or denial based upon the merits of the proposed operation compared to previously approved or denied applications and the availability of resources to be allocated.

Each applicant is encouraged to present oral testimony before the Council's Advisory Panel (AP) and Permit Review Committee, as well as the full Council.

Normally the AP and Permit Review Committee will meet during Council week.

<sup>04</sup>The Council will ~~attempt to arrange its agenda to review permits on Wednesday afternoon:~~ *Renew permits & the rest of the week*

Joint ventures are expected to make realistic requests for allocations that lie within their capability to perform. The Council will compare these

*Committee's Record*

requests in aggregate with NMFS projections of JVP derived from industry surveys and will closely monitor attainment of joint venture goals during the season.

Permit Review Criteria. Groundfish operations which are legitimately wholly domestic in the harvesting and processing of our fishery resources which do not involve foreign flag vessels, fall under the Council's definition of DAP and therefore will not need permits. They will be given first priority in groundfish apportionments.

Second level priority is granted to operations involving foreign processing vessels and U.S. harvesters and other sectors of the U.S. industry. The Council intends to give preference to those joint venture operations or nations which clearly evidence maximum U.S. industry involvement in all phases of the operation and which give strongest support to the development of the domestic industry for underutilized species.

The Council will use the criteria in Table 1 to appraise joint operation requests relative to each other and make its recommendations to NMFS. Other factors not listed may be considered also.

The relative ordering of joint operations using these criteria will become especially important when biologically available yield is insufficient to meet all DAP and JVP demands. In those cases, the operations of lowest merit relative to the others will be in the highest risk of not receiving recommended approval or approval at requested levels.

For each approved joint venture operation, the Council shall recommend a maximum amount of fish that may be received by the foreign vessels of that joint venture operation. It is intended that this amount be incorporated in the permits of those foreign vessels, subject to subsequent augmentation by the Regional Director under the following paragraph. Each permit should provide that a maximum of 50% of the amount stated in that permit may be received until the Regional Director, after consultation with the Council and the U.S. joint venture partner, determines that the venture is proceeding satisfactorily.

The Council considers tonnages by species requested on foreign permit applications to be firm targets. Any requests for in-season augmentation may be acted on by the Regional Director if TALFF remains. However, the Council will review all requested augmentations for species with no TALFF. The Council may appoint an Interim Action Committee to review requests for augmentations and new joint ventures if they must be acted on outside a regularly scheduled Council meeting.

Table 1. Criteria for the review of joint venture requests and allocations\*

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- Purchase of finished or semi-finished U.S. product, especially underutilized species
  - Efforts to lower or remove trade barriers.
  - Level of U.S. industry involvement in all phases of joint operation (harvesting, processing, marketing)
  - Ratio of country's total joint venture request to total anticipated direct fishing allocation.
  - Enhancement of U.S. employment at sea and ashore
  - Destination and final marketing of products and competition with U.S. products
  - Achievement of joint operation requests and past participation in purchasing, processing and harvesting groundfish from off Alaska.
  - Proof of financial responsibility by foreign partner.
  - Transfer of capital and investment to U.S. infrastructure.
  - Compatibility of joint operation with other U.S. fisheries and incidental species (i.e. gear conflicts, ground preemption, environmental degradation, bycatch of highly valued species totally utilized by U.S. industry, etc.)
  - Partnership relations, ease of dispute settlement.
  - Foreign participation in fisheries research off Alaska.
  - Technology transfer.
  - Reporting of fishery and market information beyond that required by law.
  - Potential net economic contributions of the joint venture to the U.S. fishing industry.
  - Compliance with U.S. laws and treaties.
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\*No priorities meant or implied.



ADVISORY PANEL'S RECOMMENDATION FOR  
DRAFT PROPOSED POLICY ON  
JOINT VENTURES AND ALLOCATIONS

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Conservation and Management Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be both harvested, processed and marketed by U.S. industry. However, until the domestic industry can harvest, process and market the available groundfish resource, the Council will encourage joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources, and that will foster total U.S. development of these resources by all segments of the domestic industry. The Council recognizes that joint ventures are to be temporary in nature and are to be used as a tool through which 100% U.S. utilization will be achieved.

Joint ventures are considered to be operations in which a U.S. partner and a foreign partner join together to jointly harvest, process, market, and/or finance fishery activities within the FCZ. U.S. fishermen may deliver raw fish to foreign processors at sea. Ownership of the finished product may be foreign or U.S. Other forms of joint ventures are possible.

The Council intends that any country to whom a direct allocation is given must also be engaged in "over the side" joint ventures. Nothing less is acceptable. A relationship of a one to one ratio for joint venture fishing to foreign directed fishing at the earliest possible date is most desirable at this time. After this ratio is achieved put TALFF on a sliding scale toward total elimination of foreign fishing as American Industry (harvesting/processing) comes on line.

The Council believes that in order for joint ventures to be successful as a tool by which 100% U.S. utilization is achieved, development opportunities for all segments of the U.S. industry must be enhanced. Thus, the extent to which "over the side" joint venture allocations will be considered by the Council will be determined on the extent to which the foreign partner offers to positively assist the development of all segments of the U.S. industry.

In no event will a direct "over the side" joint venture be approved in the absence of verifiable evidence that the foreign partner is positively assisting in the development of other segments of the U.S. industry. And, in no event will a direct allocation be approved in the absence of a joint venture.

The Council will continue to give highest priority to operations that are 100% American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

DRAFT PROPOSED POLICY

on

Joint Ventures and Allocations

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Conservation and Management Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be both harvested and processed by U.S. industry. However, until the domestic industry can both harvest and process the available groundfish resource, the Council will encourage joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources. Joint ventures are generally considered to be operations in which U.S. fishermen deliver raw fish to foreign processors at sea. Ownership of the finished product may be foreign or U.S. Other forms of joint ventures are possible and will be appraised on their individual merits as they are formulated.

The Council will continue to give highest priority to operations that are wholly American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

Joint Venture Permit Review Procedure. The Council will hold a major review each December of all prospective joint ventures for the coming year. This will coincide with the Council making its final recommendations on apportioning available groundfish yields to Domestic Annual Processing (DAP: totally U.S. harvested and processed), Joint Venture Processing (JVP: U.S. harvested and foreign processed), and Total Allowable Level of Foreign Fishing (TALFF: foreign harvested).

The Council expects to have all permit applications for foreign vessels to operate in joint ventures at least two weeks before the week of the Council meeting. Applications are expected to be complete and to have been published in the Federal Register by Friday preceding Council meeting week. In no case will the Council consider applications published later than Monday of the meeting week.

In addition to the information required on the NMFS permit application form, each applicant is requested to describe in writing how their operation meets the criteria listed in Table 1. The Council will use this information to rank individual joint ventures in cases of shortages of desired species and to formulate Council recommendations on foreign allocations as described below.

Each applicant is strongly encouraged to present oral testimony before the Council's Advisory Panel (AP) and Permit Review Committee, as well as the full Council. Normally, the AP will review permits on Tuesday of Council week and the Permit Review Committee will meet early on Wednesday morning. The Council will attempt to arrange its agenda to review permits on Wednesday afternoon.

Joint ventures are expected to make realistic requests for allocations that lie within their capability to perform. The Council will compare these requests in aggregate with NMFS projections of JVP derived from industry surveys and will closely monitor attainment of joint venture goals during the season.

Permit Review Criteria. In evaluating prospective groundfish operations the Council has established four broad categories which, in order of priority, are:

Category A: The U.S. partner harvests, processes and markets.

Category B: The U.S. partner harvests and processes, but foreign partner markets.

Category C: The U.S. partner harvests and markets, but foreign partner processes.

Category D: The U.S. partner harvests, but foreign partner processes and markets.

Categories A and B will usually fall under the Council's definition of DAP and therefore will not need permits. They will be given equal and first priority in groundfish apportionments. Categories C and D generally are the only ones that entail a foreign processing vessel and therefore need a permit. The joint ventures currently operating off Alaska fall into these two categories.

Within each category, the Council will use the criteria in Table 1 to rank the joint venture requests and make its recommendations to NMFS. In reviewing requests, the Permit Review Committee will assign up to the indicated maximum number of points for each criterion. Total scores will serve as guidelines for ranking requests. Other factors not listed may be considered also.

The Council anticipates that most joint ventures will be approved for groundfish species and management areas having a TALFF, so long as a flagrant violations record does not exist for the applicant's foreign vessel or company. Where a TALFF exists, the Council will use the above criteria mainly for making recommendations for directed fishing allocations to the respective countries.

The rank ordering of joint venture operations using these criteria will become especially important when biologically available yield is insufficient to meet all DAP and JVP demands and a mid-year review is required as described below.

Mid-year Permit Review. For species where there is no TALFF or available yield is insufficient to supply all DAP and JVP requests, 50% of the JVP for that species will be held back until July 1. In May, the Council will review

progress by operating joint ventures and all requests for new joint ventures and recommend suitable apportionments of groundfish among the participants. The above criteria will be used to rank individual joint ventures. Where available groundfish yields are insufficient to supply all joint ventures, those operations of lowest ranking will be in highest risk of not receiving further JVP allocations.

The Council considers tonnages by species requested on foreign permit applications to be firm targets. Any requests for in-season augmentation may be acted on by the Regional Director if TALFF remains. However, the Council will review all requested augmentations for species with no TALFF. The Council may appoint an Interim Action Committee to review requests for augmentations and new joint ventures if they must be acted on outside a regularly scheduled Council meeting.

Table 1. Criteria for the review of joint venture requests and allocations

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Higher Priority: (maximum 5 points)

- Purchase of finished or semi-finished U.S. product.
- Efforts to lower or remove trade barriers.
- Enhancement of U.S. employment at sea and ashore.
- Destination and final marketing of products and competition with U.S. products.
- Achievement of joint venture request and past participation in purchasing, processing and harvesting groundfish from off Alaska.
- Compliance with U.S. laws and treaties.
- Willingness of U.S. vessels to take observers.
- Ratio of country's total joint venture request to total anticipated direct fishing allocation.
- Proof of financial responsibility by foreign partner.
- Extent to which U.S. companies retain title to, market and sell joint venture products.

Medium Priority: (maximum 3 points)

- Technology transfer.
- Foreign participation in fisheries research off Alaska.
- Compatibility of joint venture with other U.S. fisheries and incidental species (i.e. gear conflicts, ground preemption, environmental degradation, by-catch of high-valued species totally utilized by U.S. industry).
- Length of participation in joint ventures off Alaska.

Lower Priority: (maximum 1 point)

- Transfer of capital and investment to U.S. infrastructure.
  - Partnership relations, ease of dispute settlement.
  - Reporting of fishery and market information beyond that required by law.
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(Miss Soren draft)

Moved to

9/27/84

NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

DRAFT PROPOSED POLICY

on

Joint Ventures and Allocations

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Conservation and Management Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be both harvested and processed by U.S. industry. However, until the domestic industry can both harvest and process the available groundfish resource, the Council will encourage joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources. Joint ventures are generally considered to be operations in which U.S. fishermen deliver raw fish to foreign processors at sea. Ownership of the finished product may be foreign or U.S. Other forms of joint ventures are possible and will be appraised on their individual merits as they are formulated.

The Council will continue to give highest priority to target operations that are wholly American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

ADD AP TP #4

Joint Venture Permit Review Procedure. The Council will hold a major review each December of all prospective joint ventures for the coming year. This will coincide with the Council making its final recommendations on apportioning available groundfish yields to Domestic Annual Processing (DAP: totally U.S. harvested and processed), Joint Venture Processing (JVP: U.S.

harvested and foreign processed), and Total Allowable Level of Foreign Fishing (TALFF: foreign harvested).

The Council expects to have all permit applications for foreign vessels to operate in joint ventures at least two weeks before the week of the Council meeting. Applications are expected to be complete and to have been published in the Federal Register by Friday preceding Council meeting week. In no case will the Council consider applications published later than Monday of the meeting week.

In addition to the information required on the NMFS permit application form, each applicant is requested to describe in writing how their operation meets the criteria listed in Table 1. In cases of shortages of desired species, the Council will use this information to rank individual joint ventures and to formulate Council recommendations on foreign allocations as described below.

Applications for joint operations submitted subsequent to the December meeting will be reviewed and recommended for approval or denial based upon the merits of the proposed operation compared to previously approved or denied applications and the availability of resources to be allocated.

Each applicant is encouraged to present oral testimony before the Council's Advisory Panel (AP) and Permit Review Committee, as well as the full Council. Normally the AP and Permit Review Committee will meet the Monday and Tuesday of Council week. The Council will attempt to arrange its agenda to review permits on Wednesday afternoon.

Joint ventures are expected to make realistic requests for allocations that lie within their capability to perform. The Council will compare these requests in aggregate with NMFS projections of JVP derived from industry surveys and will closely monitor attainment of joint venture goals during the season.

Permit Review Criteria. Groundfish operations which are legitimately wholly domestic in the harvesting and processing of our fishery resources which do not involve foreign flag vessels, fall under the Council's definition of DAP and therefore will not need permits. They will be given first priority in groundfish apportionments.



Second level priority is granted to operations involving foreign processing vessels and U.S. harvesters and other sectors of the U.S. industry. The Council intends to give preference to those joint venture operations or nations which clearly evidence maximum U.S. industry involvement in all phases of the operation and which give strongest support to the development of the domestic industry for underutilized species.

The Council will use the criteria in Table 1 to appraise joint operation requests relative to each other and make its recommendations to NMES. Other factors not listed may be considered also.

*no priority in listing if they meet the*

The Council anticipates that most joint ventures will be approved for groundfish species and management areas where there is a TALFF, so long as a flagrant violations record does not exist for the applicant's foreign vessel or company.

The relative ordering of joint operations using these criteria will become especially important when biologically available yield is insufficient to meet all DAP and JVP demands. In those cases, the operations of lowest merit relative to the others will be in the highest risk of not receiving recommended approval or approval at requested levels.

Mid-year Permit Review. Each operation's request will be appraised on its own merits and recommended tonnages will be lumped together by nation for final appraisal. Individual operations which are appraised as undesirable will be denied permits.

The Council considers tonnages by species requested on foreign permit applications to be firm targets. Any requests for in-season augmentation may be acted on by the Regional Director if TALFF remains. However, the Council will review all requested augmentations for species with no TALFF. The Council may appoint an Interim Action Committee to review requests for augmentations and new joint ventures if they must be acted on outside a regularly scheduled Council meeting.

*ADD TP 4 of AP recommendation under general policy.*  
*A*



Table 1. Criteria for the review of joint venture requests and allocations

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- Purchase of finished or semi-finished U.S. product, especially underutilized species
  - Efforts to lower or remove trade barriers.
  - Level of U.S. industry involvement in all phases of joint operation (harvesting, processing, marketing)
  - Ratio of country's total joint venture request to total anticipated direct fishing allocation.
  - Enhancement of U.S. employment at sea and ashore
  - Destination and final marketing of products and competition with U.S. products
  - Achievement of joint operation requests and past participation in purchasing, processing and harvesting groundfish from off Alaska.
  - *Compliance w/ U.S. Laws & treaties.*
  - Proof of financial responsibility by foreign partner.
  - Transfer of capital and investment to U.S. infrastructure.
  - Compatibility of joint operation with other U.S. fisheries and incidental species (i.e. gear conflicts, ground preemption, environmental degradation, bycatch of highly valued species totally utilized by U.S. industry, etc.)
  - Partnership relations, ease of dispute settlement.
  - Foreign participation in fisheries research off Alaska.
  - Technology transfer.
  - Reporting of fishery and market information beyond that required by law.
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*ADD : Potential net economic contribution of the JV to the U.S. fishing industry (Per SSC Rec.)*

SUMMARIES OF COMMENTS ON DRAFT POLICIES FOR  
JOINT VENTURES, FOREIGN ALLOCATIONS, AND PERMITS

Fish Producers Associates

Review joint venture applications earlier than December to allow for more lead time in planning business arrangements. Regarding criteria, create a new "Highest" category (15-pt max) which includes transfer capital and investment to U.S. infrastructure, enhancement of U.S. employment, purchase of U.S. product, efforts to lower or remove trade barriers, and ratio of joint venture to directed fishing allocation. Other criteria in Table 1 under "Higher" category would remain there and the criteria under "Medium" and "Lower" would remain the same.

Profish International

Replace term "Joint Venture" with "Joint Fishing Operation". Council should not expect written testimony on how an operation meets the criteria in Table 1 until Council week as this is highly competitive information. Need more elaboration on processing joint venture requests after December. Will need more time for Council and Committee evaluation of permits. Numerical ranking system may need simplification. Use range rather than exact percentage of JVP to be held back where no TALFF exists. If tonnage requests on applications are binding, they should be on a national, not operational, level.

Clarify inseason augmentation process. General policy statement on page 1 of joint venture policy is too restrictive regarding groundfish species for which joint ventures may fish, and treatment of non-target bycatches should be clarified. Preference categories need reworking and are not relevant when addressing strictly foreign allocations. Disagrees with ranking of criteria and numerical-ranking system as too complex. Various criteria are critiqued. Policy on joint ventures will need to evolve as industry does. Need to further explore the whole concept of allocations to operations. A Council-Industry Workgroup should be established to address broader allocational issues.

Ocean Spray Fisheries

Ensure extensive Council/Industry interaction on formulating the joint venture policy -- take it slowly. This policy, however it finally is drafted, will be very important to the future of the U.S. groundfish industry.

North Pacific Fishing Vessel Owner's Association

Regarding the Joint Venture Policy. Allocate JVP on national level, not by operations. Leave enough time for thorough review of joint venture requests. It must be explicit that a totally U.S. operation takes precedence over joint ventures. A one-to-one joint venture to direct allocation is most desirable; then start eliminating TALFF altogether. The four preference categories are

misleading. Numerical ranking by criteria may be too complex. Need to clearly address bycatch issues. Establish Industry-Council workgroup to further examine draft policy.

Regarding Foreign Allocations Policy. Need definitive policy relating TALFF allocations solely to fisheries tradeoffs. Council should review all proposed TALFF allocations with its entire "family."

#### International Longshoremen's and Warehousemen's Union

General proposed policy is a positive step but does not go far enough. No country should get a direct allocation unless it is positively and seriously participating in joint ventures. And to participate in joint ventures, a foreign participant should be involved in assisting other segments of the U.S. industry in domestic groundfish development. He encloses a proposed draft "General Policy" substitute.

#### Korea Deep Sea Fisheries Association

Regarding Permit Review Policy. Clarify definitions of serious violations and do not prejudge guilt before the case is settled. Legally define "seizure." Do not examine violations over a year old if settled.

Regarding Joint Ventures and Allocations Policy. Review joint ventures on national level, not operation by operation. Rework criteria dealing with U.S. employment and destination and final marketing of products and competition with U.S. products. Simplify review procedures.

#### Japan Deep Sea Trawlers, et. al.

Simplify and restructure policy to focus on the continuity of existing joint venture operations. Use single preference category for joint venture operations requiring a foreign vessel permit. Who markets the product should not be a pivotal issue in who gets to joint venture. Do not assign priorities to criteria. There are no objective standards for using the criteria. Criteria should be examined on a national level, not operations level. The Japanese expect assurance of a stable directed allocation based on annual industry-to-industry negotiations. The policy is much too complex. If in the previous fishing year a nation did not perform to at least 80% of its expectations, it should not be given a joint venture allocation significantly in excess of its past performance level.

Regarding the Permit Review Policy, cases must be settled before a vessel is classified as a serious offender. Need Interim Action Committee to review permits between meetings.



Therefore, it is in that concept that we should encourage the transfer of capital and investment to shore based plants and the participation of foreign investors in American processor vessels. Perhaps the level of investment should be held to 49% to a foreigner and if this could not be, so let free enterprise take its place.

Therefore, it appears to me this particular category should be placed in the most newly created category of highest priority receiving ten or fifteen points. I would then suggest moving the following categories to the highest priority as follows:

1. Transfer of capital and investment to U. S. infrastructure.
2. Enhancement of U. S. employment at sea and shore.
3. Purchase of finished or semi-finished U. S. product.
4. Efforts to lower or remove trade barriers.
5. Ratio of country's total joint venture request to total anticipated direct fishing allocations.

If we look at these areas, the first brings the necessary seed or investment capital into the U. S. industry. The second would be a take-off from the first wherein once the investment was made into a shore based plant or an at sea processor, it would necessitate in the employment of U. S. citizens, which would lead to the third area providing the joint venture partner with 49% ownership in the plant to purchase some of the finished product from that plant, which would lead to number four wherein a participating foreign joint venture partner would be seeking to have trade barriers removed allowing for product he has an economic interest in to be received in his country's market place.

In addition to the above, placing the fifth number into the highest category would insure that those countries enjoying direct fishery allocations would want to continue such enjoyment by increasing its ratio of joint venture participation.

These highest priority areas are workable now, I believe, with the present participants seeking allocations and joint venture requests from the United States. If we were to leave so many items within the highest priority and so few in a lower priority it would appear there is no incentive for these foreign nations to do much more than what they are presently doing. The placing of a fourth category with the highest percentage points allocated would help to accomplish setting out a distinguishing set of ideas along with the lengthening the difference between the high and the low from a full five points to a possible full fifteen points.

As I reviewed the other items in the higher priority they should either stay in that priority or go to a lower one for the following reasons.

A. Destination and final marketing of products and competition with U. S. Products. It will be a long time before we will be able to control or have much influence in that area.

B. Achievement of joint venture request and past participation in purchasing, processing and harvesting groundfish from off Alaska: Although this category could greatly help a company such as our own, since we have been a past achiever of joint venture, it is an area that could be said "thank you gentlemen, for all you did yesterday, but more important, what are you going to do for us tomorrow?" The past is the past. Let us move everyone forward giving them credit but not in the highest category.

C. Compliance with U. S. laws and treaties: The rationale here is that anyone who does not comply there are appropriate penalties and actions that can be taken for their failure to live up to our laws or treaties. Why reward someone for something that is supposed to be as normal as breathing? We do not give out awards for people who do not create crimes in a given day but there are laws to punish those who abuse the rules of society. Therefore, I would keep this area from the highest priority but I also would not encourage the abuse of laws by placing it in the lowest category.

D. willingness of U. S. vessels to take observers: This is an area which is important but should go without saying that all vessels will have observers as a mandatory function. Therefore, it does not have to be put into the highest category.

E. Proof of financial responsibility by foreign partner: This is not an area of the U. S. government's responsibility officially since it should be understood that anyone purchasing fish should have the responsibility to pay for it. It is entirely up to the parties of the agreement to insure they are paid. Quite naturally, the U. S. government holds a trump card wherein if a foreign partner fails to pay for fish, the U. S. government could withhold further allocations to the nation that person represents. One might add to that the timely payment by the foreign partner. In other words, to read "proof of financial responsibility and timely payment by a foreign partner", leave it in the higher priority but do not move it up to the newly created highest priority.

F. Extent to which U. S. companies retain title to, market and sell joint venture products: This area would pretty much take care of itself once the higher priority items were met one through five. Therefore, I would suggest leaving this item within the higher priority area but not giving it the highest status.

I do appreciate the fact you have given us the opportunity to comment on the proposed draft.

Clarence Pautzke

-4-

August 23, 1984

I personally felt the thought behind it was very productive. If there are any areas of ambiguity within my statements, kindly call upon me for clarification.

Attached kindly find a revised Table I restating the items as addressed above, showing four categories in lieu of three.

Sincerely,

A handwritten signature in cursive script that reads "Charles A. Lehn". The signature is written in dark ink and is positioned to the right of the typed name.

Charles A. Lehn  
President

CAL:c  
Enclosures

Table 1. Criteria for the review of joint venture requests and allocations.

---

Highest Priority: (maximum 15 points)

- Transfer of capital and invest to U. S. infrastructure.
- Enhancement of U. S. employment at sea and ashore.
- Purchase of finished or semi-finished U. S. Product.
- Efforts to lower or remove trade barriers.
- Ratio of country's total joint venture request to total anticipated direct fishing allocation.

Higher Priority: (maximum 5 points)

- Destination and final marketing of products and competition with U. S. products.
- Achievement of joint venture request and past participation in purchasing, processing and harvesting groundfish from off Alaska.
- Compliance with U. S. laws and treaties.
- Willingness of U. S. vessels to take observers.
- Proof of financial responsibility by foreign partner.
- Extent to which U. S. companies retain title to, market and sell joint venture products.

Medium Priority:

- Technology transfer.
- Foreign participation in fisheries research off Alaska.
- Compatability of joint venture with other U. S. fisheries and incidental species (i.e gear conflicts, ground preemption, environmental degradation, by-catch of high-valued species totally utilized by U. S. industry.)
- Length of participation in joint ventures off Alaska.

Lower Priority:

- Partnership relations, ease of dispute settlement.
- Reporting of fishery and market information beyond that required by law.



PROFISH INTERNATIONAL

1530 Westlake Ave. N., Suite 700  
 Seattle, WA 98109 U.S.A.  
 (206) 283-3500 Telex 320355

ACTION	ROUTE TO	DATE

August 30, 1984

Mr. Jim Branson  
 North Pacific Fishery Management Council  
 605 West Fourth  
 Anchorage, Alaska 99510

Dear Jim:

Enclosed are ProFish International's comments on the Council's Draft Proposed Policy on Joint Ventures and Allocations. Our comments are organized into two sections, one discussing procedures and the other discussing content. I look forward to reviewing these comments with the Permit Review Committee and the Council during the September sessions.

As an introductory comment we would suggest the term "Joint Venture (s)" be abolished from official council language as it relates to types of fishing operations. "Joint Fishing Operations" or "JFO" more precisely describes the range of activities intended to be covered by the draft policy. If the Council adopts the new term and disciplines itself to use it I'm sure others will follow and it will be accepted.

Procedures

1) Page 1, bottom paragraph. In addition to the formal permit applications the Council requests a written description of how each operation meets the criteria listed in Table 1. It is not clarified when and to whom this information is to be submitted. Practically speaking the Council should not expect this additional information much before it begins the formal review process by the Permit Review Committee during council meeting "week". Operations will be looking for a competitive edge to help them receive the highest grade possible and therefore will be exposing their hands carefully and only as necessary.

2) It doesn't seem clear how the Council will act on permit applications which come in after the deadline for consideration at the December meeting. For example what if a new application for a Shelikof pollock joint operation for March comes to the Council's attention during the January meeting? If unallocated fish exists and reserves

are abundant is there any reason not to approve a satisfactory application? On the otherhand if everything has been allocated except the reserve mandated for release in July then is this permit denied? I would recommend more elaboration here.

3) Top of Page 2. I'm quite concerned that this policy draft seemingly fails to recognize the time consuming nature of this joint fishing operation appraisal process. When one considers the several priorities, the numerous criteria, all the nations and species and areas, together with the point grading system suggested, it is clear the Permit Review Committee cannot accomplish all of this on one Wednesday morning. Substantial staff assistance together with a strong, well prepared chairman and all day Monday and Tuesday will most likely be necessary at least for the December meeting. This committee will be doing some of the most important practical business work the Council has.

4) The scoring or point system incorporated into the criteria categories in Table 1 are more detailed and specific compared to the simple listing of these criteria as proposed by the Industry workgroup. If an actual scoring system such as this is used it should not be projected as an end-all, be-all sort of analysis. It is important to emphasize that this numeric grading process done by the Permit Review Committee is only an exercise in appraising relative merits to which other considerations will likewise play an important part. It is necessary for the industry to be kept aware of this multi-faceted analysis method.

5) Bottom of page 2, Midyear Permit Review. It is potentially dangerous for the Council to lock itself into a specific percentage of the JVP to be held in reserve until after July 1. It doesn't make sense for some species where that species is not uniformly available or fishable throughout the year such as cod and atka mackerel or where the demand for a species is unequal between the two yearly time periods specified as is the case with roe bearing pollock in Shelikof Straits. The Council would give itself more flexibility and be able to respond to industry's needs better if a range of percentages, say 20-50 percent were identified to be held in reserve or perhaps better yet if the words "50% will be held back until July 1" are changed to "up to 50% may be held back...".

6) The final paragraph on page 3 announces that the Council considers tonnages on permit applications to be "firm targets". Does this then mean a "firm allocation" is given to each operation? There is some confusion among those of us trying to decipher this as to whether the

reference is to a ceiling or to an expected minimum? Industry's perception is that at the present time JFO's are conducted within a species specific JVP pool shared by all operators working on that species. First come, first served. Is this new policy intending to do away with the pool concept? Perhaps it is time, but is it necessary or even proper to go all the way to the other extreme by allocating tonnage by individual operation? If the management regime desires tighter reins on joint operations or the ability to monitor them more closely, a middle ground approach of allocating species and tonnages by nation might be the proper solution.

Granting tonnages for joint operations nation by nation offers several advantages over two extremes of pooling or operation by operation allocation. It is consistent with TALFF allocation procedures. It puts some of the management responsibility back on the foreign nation and its fishery associations, so as to emphasize their accountability to the USA side for compliance, performance and scoring in the criteria analysis. Permit review and approval or denial would continue to take place for each individual operation, but the tonnage totals would be tallied and allocated nationally. In-season management would follow nation by nation thresholds which still involves monitoring each operation but lumps them into convenient groups. Management actions in regard to TALFF which arise from JFO considerations can be more readily justified because of the consistencies in looking at a nation's performance as a whole.

In summary we would suggest each operation's request for tonnage be viewed as a firm minimum target with lumping by nation to assist in the allocation of species where less resource is available than the total being requested by all the participants. Lumping by nation also aids in the appraisal of several of the criteria listed in Table 1 and strengthens the bond between JFO performance and TALFF considerations.

I do not understand the intended procedure for handling in-season augmentation. What is the relevance to JFO allocation whether TALFF remains or not? If TALFF has been allocated then it can't be taken back. If reserves remain then what happens or who is allowed to take action?

#### Content

7) Page 1, third paragraph of General Policy. This Draft Proposed Policy appears to ignore the question of how to manage JFO's which have a by-catch of species which may be fully or nearly fully utilized by the domestic industry.

I'm referring to non-prohibited species such as cod, POP, blackcod, etc. The industry workgroup approached this problem because it was requested to do so by several council members and because it was felt management issues will be arising soon in this context. The sentence "...and joint ventures will only be considered ..." is too restrictive. The industry workgroup draft at the bottom of Page 1 provides more flexibility. Another option would be for the current Draft Proposed Policy to emphasize on Page 1 that "JFO's will only be considered for target operations on groundfish species not harvested and processed ...".

Additionally, we think the Council should make a statement on how non-target by-catches are viewed. Some by-catches such as cod may be desired and can be increased or decreased through fishing technique. Allocations of by-catch either by nation or by individual operation therefore may be necessary to help properly manage this situation. The middle paragraph of Page 5 of the Industry Workgroup Draft further elaborates on this issue. I strongly recommend the Council incorporate some of this language or something similar into its adopted policy statement.

8) Permit Review Criteria, page 2. Categories A and B are irrelevant to the JFO permit review process and should be removed. They are confusing. To be consistent, if they are placed at the top of the heap, then the various alternatives involving foreign harvesting should be included in categories E,F,G, etc. A and B will not involve a foreign processing vessel and therefore what difference does it make if a foreign partner is somehow involved in the sales? The draft alludes to this by indicating that they will be treated equally.

If the Council wishes to make a statement about the first preference of DAP operations then it can best be done in an introductory paragraph before the discussion of different types of JFO's and their priorities. Mixing of the two should be avoided.

In terms of defining these JFO's and prioritizing them I would like to refer the Council to my letter of June 27, 1984. You'll recall the Industry Workgroup Draft started with four JFO categories fashioned after New England and Mid Atlantic Council Policy. I've narrowed it down to three types, with a middle category encompassing the more nebulous areas of partial U.S. control or involvement in the processing and marketing components. I urge the Council to more closely consider this format. If

you desire to encourage more U.S. control in all aspects of JFO's then this system makes sense. Lots of grey area remains and I think always will. I would recommend that you not be overly concerned about it. As hard as you try you just are not going to be able to put these types of commercially competitive and dynamic operations in nicely labelled boxes. First of all you want to make a philosophical statement for yourself and for the participants to understand the regulatory environment in which they do business. Second, you want a system or format designed to better help you manage. Just as the point grading system suggested in Table 1 will serve as a guideline rather than a definite yea or nay analysis so too will the categorization process here help you get a feel for the overall operation. But it can't be definitive either.

The A-B-C system in our letter of June 27 identifies the orientation and emphasis for greater U.S. involvement. It will require the operators to provide evidence as to which category they fall into yet gives you the flexibility of combining fact, testimony and "feel" into your overall grading process.

9) Page 2, third paragraph up from the bottom, final sentence "where TALFF exists, ...". I don't see the relevance of JFO prioritization criteria affecting TALFF decision. The criteria listed in Table 1 certainly relate more to decisions about levels of TALFF to particular nations than the decision about whether a particular JFO is structured one way or another. The Council may want to include criteria A-B-C into consideration but isn't Table 1 really more comprehensive and relevant?

10) Table 1 now incorporates three groups of prioritized criteria and a point system for grading. The point system is detailed, specific and to some extent burdensome and must be kept in perspective if it is used. My inclination is to suggest the Council follow the Industry Workgroup Report and list the criteria and indicate their importance yet not be too energetic in ranking them. Use of the point system involves the added responsibility of not becoming too myopic in its use as an end-all, be-all.

The existence of a "lower-priority" category has negative connotations. I don't feel we really want to identify any specific consideration as being of "low importance". Other, as yet unidentified criteria may be worth only one or two points but those can be added as they come up. Another problem with the "lower priority" group is that it shows partnership relations and ease of dispute

settlement as being less important than length of participation in JFOs. This is backwards. Two groups, one "high" and one "medium" could incorporate all these criteria perhaps more efficiently.

11) Concerning the Specific Criteria we would offer the following comments:

A) Purchases of product should refer to domestically underutilized species as the MFCMA was recently amended to do.

B) Enhancement of U.S. employment at sea sounds good but there can be negative connotations as well. An operator who "over-boats" a JFO so as to claim more U.S. labor is employed and therefore deserving more points would have a detrimental effect on the operation, and the original participants.

C) The issue of "destination and final marketing of products and competition with U.S. products" is a very dangerous one in which to be fair. For example if Country A gives Company No. 1 round pollock produced by Country A to sell to Country B to produce pollock fillets for the U.S. market in barter exchange for deliveries of some other raw fish by Company No. 1, then is this arrangement any better than Country C which makes fillets from U.S. caught pollock for the U.S. market? Products can easily be washed through other countries as well, in order to cloud the origin issue.

D) Willingness of U.S. vessels to take observers is irrelevant in this table and should be eliminated completely. The foreign vessels all have observers. Regulations exist or soon will for U.S. vessels to accommodate observers if requested. If an individual U.S. harvester is causing difficulty with observers then he should be dealt with individually.

E) How specifically will the Council appraise a countries ratio of total JFO tonnage to TALFF tonnage? In order to receive 5 points will a nation have to match the same ratio as another nation which is denied an allocation or receives a reduced allocation for non fishery related political reasons? I hope not.

F) Proof of financial responsibility is a useful criteria as long as a good record is "proof" enough. A bad apple or a new entrant should receive most of the scrutiny here. No additional burden should be placed on the trustworthy operators.

G) U.S. company participation in the ownership and marketing of JFO products will closely relate to the criteria about destination of products and their competition with U.S. products. It may make some relevance to know if the U.S. company involved is domestically or foreign owned. Additionally, this criteria refers directly to the category A-B-C determinations about the overall structure of the JFO. There is some redundancy and potential for "double crediting". It may be more desirable to combine this criteria with the previous one on destination and competition in the marketplace.

H) A criteria rewarding length of participation in its own right is also potentially dangerous. We should also be promoting competition and I don't see that mentioned anywhere. Its fine to give credit for well functioning relationships with a long history or even better a long term commitment. However at the same time an avenue should exist for giving credit to a new entrant which constructively stimulates competition.

In conclusion, the process of analyzing JFOs and how the management regime will relate to them has been very constructive. The final document will be much further advanced but may not last as long as the previous Council policy statement. The industry is changing rapidly and policy must of course keep pace. That is why it is so important to incorporate the "latest available information" and approaches now so the policy can be truly applicable.

The Industry Workgroup Draft made mention of changing conditions and the policy's need to evolve. The latest draft from the permit review committee does not relate to this. Perhaps you think it unnecessary but I would simply ask you to think about it one more time in the sense that it is not only a management policy for yourselves but also a document industry will study and scrutinize very, very carefully.

As a closing comment, a serious jab can be made at our overall approach to JFOs which are domestic as well as foreign operations. The system is backwards. A system has been designed which is establishing "resource shares" ultimately to be "shared" by domestic fishermen without the appropriate Environmental Impact Statement, etc. If such a system is in our long term interest then allocations should be given directly to the U.S. harvesters who could then go out and select the Joint operation partner to whom they would sell their fish.

Our final suggestion to the Council would be advise not to over-react to the perceived need to allocate by individual operation. Nation by nation makes the most sense now but we urge the Council to take two actions. The first is to adopt a more modern Joint Fishing Operation Policy and at the same time establish a work group of Council and industry people to begin addressing the broader issue of allocations within the context of developing domestic fisheries and what rights will be granted and what mechanisms will be used, if allocations indeed are to be made.

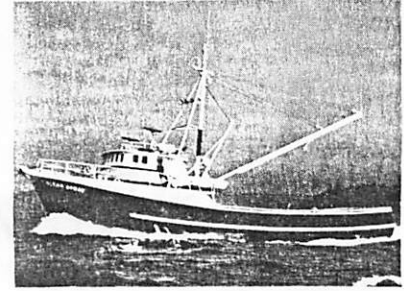
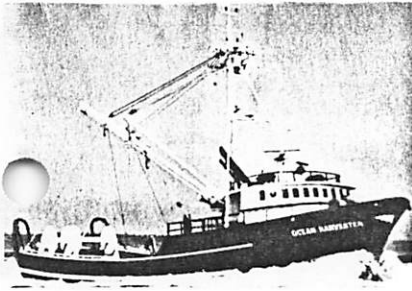
Best regards,



Michael G. Stevens  
Vice-President

MGS/lc



**Ocean Spray Fisheries, Inc.**4315 11TH AVENUE NORTHWEST  
SEATTLE, WASHINGTON 98107*Harvesters of The North Pacific Fisheries since 1968*  
Member of North Pacific Fishing Vessel Owners Association

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September 13, 1984

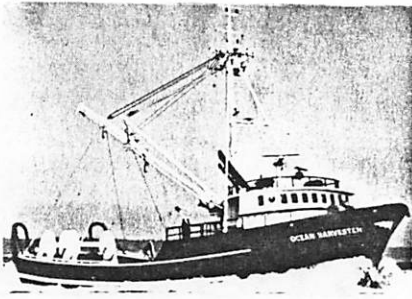
Jim Branson  
Executive Director  
North Pacific Fisheries Management Council  
P.O. Box 103136  
Anchorage, Ak 99510

Re: Comments on Draft Proposed Policy on Joint Ventures and  
Allocations.

Dear Jim:

A comment was made the other day that the J.V Policy document that we are all trying to put together is one that can be likened to the drafting of our country's constitution in that it is going to require a lot of work and extraordinary vision. Presumably so, as it will be a document that we will all be using for guidance as our J.V. fisheries grow. Without reservations, I can say that from an industry's viewpoint, the end product that the council produces is going to markedly affect our ability to survive the next five years as a viable trawl presence in the North Pacific. Therefore, I urge that the council give every opportunity for a thorough and complete industry/council interaction to take place and that the council not take the formation of this document as just another day's chore. What policies come from this document will probably shape the direction and development of the groundfish industry more so than any other single council action; therefore, I urge you to make haste --- slowly.

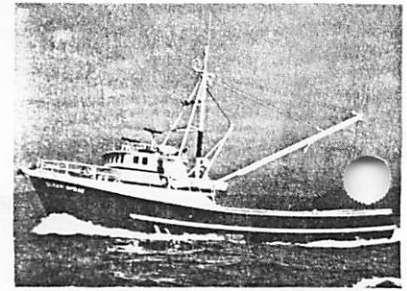
The fine tuning of this document and the addressing of the individual criteria as offered in the Draft, I feel should be better served by the industry work group and the council working together in a timely fashion without the stigma of pressing deadlines. It should be a document that does not become a hard and fast bible without "wobble room" -- as the very nature of our industry dictates room for modification



# Ocean Spray Fisheries, Inc.

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and future change. The document as mentioned, should be used more as a guideline for granting permits with the final council review and interchange serving as the determining factor. The council interchange and permit review time-frame must be expanded to allow sufficient time to address effectively these extremely important applications. Too --- the review committee, at times, has been short changed on some breakfasts and if we are to have clear, concise thinking, they should be allowed time for food and beverage.

In review, I feel that I should again express the importance that this document will have on our ability to eventually "Americanize" the North Pacific bottom fishery. I pray that all the council members be instilled with the foresight+wisdom of our country's forefathers and that every possible opportunity be given to the final framing of this important document.

Respectfully submitted:

OCEAN SPRAY FISHERIES, INC.  
Dennis Petersen

DP/tb



ations and perhaps "weed out the bad actors" prior to their entering into unenforceable contracts with American fishing interests. The Council would continue to review/monitor individual foreign companies and their proposed operations, but the individual operation totals will be combined for an allocation to the parent nation. With this policy JVP evaluations and allocations would reinforce and be consistent with the manner in which TALFF is currently allocated.

- II. The Council has proposed that a yearly review take place in December to evaluate all prospective joint ventures for the coming calendar year. This concept is good from a planning stand-point but we would address three points prior to consideration. First, as stated earlier, the bottom line allocation after reviewing the individual operations will go to the parent Foreign Nation, not each operation. Secondly, there must be a mechanism to allow for consideration of new joint ventures during the year if, and only if, it has been determined that the U.S. industry does not have the capacity (i.e. harvesting/processing). Any allocation considered for a joint venture in-season would be granted to the parent Nation, if the Council and industry so desire. Thirdly, because the exercise of joint venture review at the Council level has become one of the most important duties in the eyes of fishermen, there must be ample consideration time for both the Permit Review Committee, Council and the Council family. The historical early morning Wednesday review by the Permit Review Committee will most likely not be adequate, especially at the December meeting, it will could take multiple days of Committee review.
- III. The Magnuson Fishery Conservation and Management Act (MFCMA) provides that American interests have priority to the fisheries resource in our FCZ, it must be explicitly clear that a realistic bonafide domestic operation takes precedence over any over-the-side joint venture sale to a foreign entity. We probably will have a good example this year, specifically in the Bering Sea cod fishery. In turn, it must also be made clear that American J.V. operations take precedence over any foreign directed fishery. An excellent example this year is the atka mackerel fishery where the J.V. operations were shut down because the OY reserve was reached much earlier than what anyone expected. Surely it would have been the intent of the MFCMA to have all the mackerel OY caught by American vessels.

- IV. A relationship of a one to one ratio for J.V. fishing to foreign directed fishing at the earliest possible date is most desirable at this time. After this ratio is achieved, industries next goal should be to put TALFF on a sliding scale towards total elimination of foreign fishing as American Industry (harvesting/processing) comes on line.
- V. The four broad categories which are under consideration for J.V. review tend to be misleading. The four categories are as follows:
- Category A: The U.S. partner harvests, processes and markets;
  - Category B: The U.S. partner harvests and processes, but the foreign partner markets;
  - Category C: The U.S. partner harvests and markets, but the foreign partner processes;
  - Category D: The U.S. partner harvests, but foreign partner processes and markets.
- We recognize as the work group did in the draft that categories A and B are domestic operations not in need of a permit. Therefore, categories C and D are the examples that must be considered during the Council J.V. These are also the examples we are commenting on.
- VI. The potential complexity of the proposed criteria point system (Table 1) could prove to be a burdensome exercise for the Council. The Industry Workgroup Report suggested that the Council list the criteria and designate their importance possibly by indicating a high/medium/low priority. This would then allow for more flexibility and subjective evaluation. Using the point system at this time, is too specific and definitive, not allowing much "wobble room". Criteria outlined in the Industry Workgroup Report would allow the Council this needed flexibility.
- VII. In the current draft there is no consideration of by-catch levels and acceptability. This issue needs to be clearly addressed and outlined within the context of a J.V. review. For example, in 1985 it is likely that the U.S. industry will be fully utilizing the atka mackerel and cod resource in the Bering Sea. How do we then allow J.V. operations to take cod and atka mackerel by-catches incidentally to their target species? What is an acceptable by-catch level?

In conclusion to our joint venture comments we encourage the Council to fully evaluate comments from the industry. We strongly recommend at this time that the Council does not hastily endorse a policy that could be burdensome and overwhelming in complexity. NPFVOA applauds the efforts of the Council to-date and recognizes a need for policy, but suggests that a Council and Industry workgroup re-address this issue and explore to the extent possible all options. We feel it is absolutely necessary that industry has strong representation and input into all future J.V. policy discussions and decisions. Let us not forget that the complexity of the fishery is changing at such a rapid rate that any policy will need to be reviewed periodically.

Comments on Policy for Foreign Fishing Allocations (TALFF):

Having the ultimate "hammer" in dispensing American fish to other countries in the form of TALFF, has probably been the one genuine plus all segments of the American fishing industry can point to as being extremely helpful. It has allowed the dog to finally take over the functions of tail wagging rather than the opposite.

Industry sees the strategic use of TALFF by our government as perhaps the single most important indicator of what kind of support U.S. harvesters/processors can expect. The mechanisms are in place, but how TALFF is manipulated by our Commerce Department, NMFS, the State Department, the Pentagon, the Congress and lastly, the Administration is the crux of this strategic allocation issue. Should these government institutions deem it in the "best interest" of our country, for reasons outside of pure fisheries biology, to deal out TALFF, industry will ultimately suffer. Therefore, having a definitive government policy oriented towards development of the industry would be the catalyst that would allow us to again become "bankable". If this is not in the interest of our government, we need to know so industry can make the appropriate business decisions. Whatever the Council can do to elicit this policy statement and give industry direction would be a very positive step. There are plenty of interested parties awaiting this direction but for whatever reasons, our U.S. policy is presently rudderless.

In the future, with some policy direction, it is industry's wish that the Council review all proposed TALFF allocations with its entire "family". If these proposals include the marketing of product in the U.S. in competition with domestic product, appropriate leverage should be placed to effectively make fishing privileges more difficult to come by and perhaps J.V. ratios more meaningful to harvesters. As a tool, we have this very important "hammer". Now it is our hope to use this in the most effective manner possible.

Mr. Jim Branson  
September 12, 1984  
NPFVOA Comments

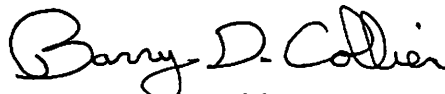
page 5

Thank you again for this opportunity to comment on these important issues. As stated earlier, we look forward to participating in the discussion at the September Council meeting.

Sincerely,



Dennis Petersen  
President  
NPFVOA



Barry D. Collier  
Executive Director  
NPFVOA

BDC/DP:djp





Mr. Jim Cambell  
August 24, 1984  
Page 2

would be curtailed and replaced by steadily increasing domestic participation. Eventually, 100% U.S. utilization would be achieved. Joint ventures were to open the door -- and the rest of the domestic industry would follow.

In order to be a successful tool however, joint ventures have first had to become successful themselves and thoroughly entrenched in the industry. There is no longer any question that they have reached that point. Thus, it is now appropriate for the Council to utilize this tool in a manner which will enhance the development prospects of the rest of the domestic industry without causing undue harm to domestic fishermen engaged in joint venture operations.

Therefore, I recommend the Council adopt a two pronged approach to TALFF, JVP and DAP:

1. The Council should no longer link direct allocations to joint venture participation. Rather, the Council should adopt the policy that no country will be granted a direct allocation of any sort if it is not positively and seriously participating in a joint venture(s).
2. As a prerequisite to participation in a joint venture the Council should require that the foreign participant be positively and seriously involved in assisting other segments of the U.S. industry in our domestic development. This participation could be realized through any of the operations outlined in Table I of the Draft.

In order to achieve the goal of this recommendation I have attached to this letter a proposed Draft "General Policy" substitute. I would appreciate the Council's close consideration of this proposal and I look forward to meeting with you and other Council members in Anchorage.

Very truly yours,

  
Larry Cotter  
President

cc: The Honorable Ted Stevens  
The Honorable Frank Murkowski  
The Honorable Don Young  
Greg Baker  
Rick Lauber

DRAFT PROPOSED POLICY

on

JOINT VENTURES AND ALLOCATIONS

General Policy. The North Pacific Fishery Management Council is responsible by law for assuring the conservation of fishery stocks off Alaska and fostering the development of the United States fishery for those stocks currently underutilized by this country, though they may be fully exploited by other nations. The Magnuson Fishery Management and Conservation Act allows the Council to equitably allocate harvest privileges, and the Council intends to use these allocations to increase American participation in underutilized fisheries consistent with the Act.

The Council believes it is in the greatest national interest for the resource to be harvested, processed and marketed by U.S. industry. However, until the domestic industry can harvest, process and market the available groundfish resource, the Council will encourage joint ventures between Americans and foreigners that will increase U.S. participation in the utilization of these resources, and that will foster total U.S. development of these resources by all segments of the domestic industry. The Council recognizes that joint ventures are to be temporary in nature and are to be used as a tool through which 100% U.S. utilization will be achieved.

Joint ventures are considered to be operations in which a U.S. partner and a foreign partner join together to jointly harvest, process, market, and/or finance fishery activities within the FCZ. U.S. fishermen may deliver raw fish to foreign processors at sea in "over the side" joint ventures. Ownership of the finished product may be foreign or U.S. Other forms of joint ventures are possible.

The Council intends that any country to whom a direct allocation is given must also be engaged in "over the side" joint ventures. Nothing less is acceptable.

The Council believes that in order for joint ventures to be successful as a tool by which 100% U.S. utilization is achieved, development opportunities for all segments of the U.S. industry must be enhanced. Thus, the extent to which "over the side" joint venture allocations will be considered by the Council will be determined on the extent to which the foreign partner offers to positively assist the development of all segments of the U.S. industry.

DRAFT PROPOSED POLICY  
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GENERAL POLICY

This assistance may take the form of agreeing to: 1.) purchase finished or semi-finished U.S. bottomfish product; 2.) utilize U.S. labor; 3.) provide financial assistance and/or capital to U.S. fishery components; 4.) transfer technology; 5.) provide training, and; 6.) to engage in other activities as outlined in Table I.

In no event will a direct "over the side" joint venture be approved in the absence of verifiable evidence that the foreign partner is positively assisting in the development of other segments of the U.S. industry. And, in no event will a direct allocation be approved in the absence of a joint venture.

The Council will continue to give highest priority to operations that are 100% American, and joint ventures will only be considered for groundfish species not harvested and processed totally by U.S. industry.

RECEIVED SEP 14 1984

**KOREA DEEP SEA FISHERIES ASSOCIATION**

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	INITIAL
Exec. Dir.	J
Deputy Dir.	
Admin. Off.	
DATE: <u>SEPT. 14 1984</u>	
Staff Asst. 1	
Staff Asst. 2	
Staff Asst. 3	
Economist	
Sec./Bkkr.	
Sec./Typist	

North Pacific Fishery Management Council  
Permit Review  
P.O. Box 103136  
Anchorage, AK 99510

Re: Comment of Draft Proposed Policy on Review of Foreign Fishing Vessel Permit Applications and Joint Ventures and Allocations

COMMENT ON NORTH PACIFIC COUNCIL'S "DRAFT PROPOSED POLICY ON REVIEW OF FOREIGN FISHING VESSEL PERMIT APPLICATIONS"

The Korean fleet has a good record of enforcement, which we intend to maintain. We have had very few problems in having our vessels permitted, and it would not appear that we would have any special difficulties under the proposed new policy. Indeed, we regard the writing down of criteria for classification of "serious" violations as useful and likely to prevent some of the misclassifications of enforcement actions that have occurred in the past.

We urge that the council seek the assistance of the NOAA legal authorities in order to clarify the drafting of the three guidelines offered by the draft proposed policy for the definition of "serious violations" and bring them into accordance with the technical provisions of American law and practice. The guidelines should state that they apply to penalties paid: (1) after a final judgement following a hearing, (2) or as the result of an

assessment made after the foreign vessel owners have ignored a "notice of violation," (3) or as the result of an agreed settlement in which the foreign vessel admits guilt. The word "assessed" in the guidelines presumably does not refer to the amount asked by the U.S. Government in the "notice of violation and assessment," since this assessment is made before the foreign vessels has an opportunity to present evidence as to whether the violation occurred or, if it did, whether the penalty payment requested is appropriate.

Enforcement cases are sometimes settled for the convenience of the U.S. Government and the foreign vessel owner without an admission of guilt by the foreign vessel. In our opinion, such case should be excluded from the purview of the guidelines defining "serious" violations.

Similarly, the word "seizures" in the guideline would need to be given a legal definition. The Korean fleet has had vessels "seized," brought to port and unloaded and then released with apologies and a statement of error on the part of the American authorities. Once again, it would be the payment of penalties as the result of a legal and administrative finding of guilt which should be made the governing consideration. In the Council's meeting of last December, a lengthy discussion in the permit review committee appeared to conclude that the Committee and the Council should indeed observe the basic principle of all just systems of law and administrative procedure that the accused is innocent until held guilty in a process which permits him to offer evidence.

There is already an element of "double jeopardy" in the system for review of foreign vessel permitting as established in the Magnuson Act. The U.S. Government has been very assiduous in collecting fines and other penalties from foreign vessels operating. In the North Pacific when found in violation of the American rules and regulations, the level of penalties collected has been much higher in the area covered by the Council's jurisdiction than on the Atlantic coast. The Korean fleet proposes that the guidelines not cover enforcement cases dating back beyond one year from the time of permit request. Most systems of justice have provisions stating that malefactors who have paid their penalties are left in peace as long as there has been good conduct during the interim prior to their petition for some benefit. The Korean fleet hopes that the permitting procedure will eliminate the retrospective feature and thus not further diverge from normal principles of common justice.

COMMENT OF DRAFT PROPOSED POLICY ON JOINT VENTURES  
AND ALLOCATIONS

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The Korean fleet wishes to respond to the Council's invitation to comment upon the Council Workgroup's draft of a proposed policy on joint ventures and allocations as well.

As the foreign fleet with the highest proportion of joint ventures to direct fisheries allocations and a fleet with many other programs of ongoing cooperation with American fishermen and processors, we recognize the necessity for the development of criteria for the allocation among competing joint ventures of underutilized species in short supply and are confident that our joint venture partners will do quite well in the allocations of scarce species under any fair and equitable system of criteria. Indeed, we are anxious that a fair and workable system be established in time for use next year, and we are concerned by several features of the workgroup's proposals which seem to us unwieldy and even unworkable.

In the first place, we believe that the Council should review joint ventures and rank their desirability in country terms. From our experience of Council meetings, it seems unlikely that company-by-company appraisals can be effected in the time available. The Korean fleet has six joint venture partners in 1984, and may have more in 1985. Moreover, an individual Korean company is not competent to explain the background of National Policy which could qualify his venture under many of the criteria; certainly, we suppose, the Council would not expect each foreign firm to have its own program for the import of American products, etc.

We recommend that the Council review country performance, recommend the appropriate division of species in short supply by country, and let the authorities of that fishing nation divide the allocation among their national joint ventures.


We would agree that most of the actual criteria developed by the workgroup are in line with existing American government policies and objectives. It will, however, be necessary to correct the drafting of at least the criteria related to employment; we assume that it is not proposed to appraise joint venture partners by the number of fishermen they send aboard their boats.

We have serious problems with only one of the criteria; "destination and final marketing of products and competition with U.S. products." This criterion seems at variance with the fundamental principles of the American economy's legal and market structure.

We believe it would in all probability be illegal restraint of competition under American law for American processors to seek through the joint venture or allocations process to prevent sales of Korean product derived from American-caught fish bought in joint ventures (or product derived from direct allocations, for that matter) in U.S. or third country markets. If this criteria remains in the final council document, we would not expect to provide information on exports in cooperation with such an attempted restraint of trade.

The rigid and inflexible procedures proposed by the workgroup will, we assume, be modified by the Council during its review of the proposals. As currently written, the procedures would tend to discourage joint ventures and would certainly make in-year adjustment and increases difficult. The Korean fleet has the impression that many more American fishermen than are currently involved wish to sell fish to foreign processors at sea. These fishermen are represented on the Council, and we assume that they will be successful in having the awkward and cumbersome procedures envisioned by the workgroup simplified and made workable.

Sincerely yours,

  
Adm. Chong Yon Hwang (Ret)  
President






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September 14, 1984  
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penalties considered to be serious have been assessed. In most of these cases there have been circumstances unknown to the enforcement personnel which have either mitigated the seriousness of the violation or demonstrated that no violation was committed. If a sanction recommended by the Permit Review Committee had been imposed during the pending review of any one of these cases, a serious and irreversible injustice could have resulted.

We have one additional comment of major importance. We would like to recommend the appointment of an Interim Action Committee to review permit applications submitted during the course of the fishing season which may require action prior to the next regularly scheduled Council meeting. Our major concern arises from an extended recess between the regularly scheduled Council meetings.

I will be available for questions during the September Council meeting. At that time I also intend to comment in further detail on this issue. Thank you.

Sincerely,



Jay D. Hastings



foreign partner markets the product. Marketing is a business decision. If the joint venture partners believe marketing by the foreign partner is in the best interest of a successful operation, then the permit should not be jeopardized by a policy which has predetermined the merits of a business decision.

2. Review criteria. Criteria for the review of permit applications should not be classified by order of priority and should be limited to those which focus upon the nationality of the vessel to be permitted and the history of the vessel's or vessel owner's participation in the joint venture fishery. The proposed multitude of review criteria and their classification by order of priority complicate the review process thereby adding further uncertainty to the stability of joint venture operations.

This additional measure of uncertainty results from the purely subjective exercise of classifying these criteria by order of priority. There are no objective standards against which these criteria can be measured for comparative value. The importance of each criterion used to evaluate a permit application will vary depending upon the nature of the joint venture operation. Technology transfer for the success of one type of joint venture operation may be of the highest priority whereas for another type of operation it may be of lesser importance.

Furthermore, it would be quite impractical and virtually impossible for an individual Japanese company to describe in writing how its operation meets certain criteria as proposed in the draft policy. Criteria such as efforts to lower or remove foreign trade barriers, the ratio of a nation's total joint venture request to the total anticipated directed fishing allocation, and foreign participation in fisheries research off Alaska are directly related to governmental policy considerations and the overall directed allocation to a foreign nation. Individual business ventures have no relationship to these criteria.

The proposal for written support from the applicant additionally gives the false impression that Japanese companies will compete for joint venture fisheries. This is not true. Japanese companies have participated in joint venture fishery operations in exchange for their national allocations.

It must be remembered that the Japanese companies have increased their joint venture commitments through annual negotiations with the U.S. industry. These industry-to-industry negotiations have been conducted pursuant to the U.S. policy of "fish and chips". In exchange for their joint venture commitments on a national basis prior to the beginning of the fishing year, the Japanese expect assurance from the U.S. of a stable national allocation for their directed fisheries. Without the assurance of

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a stable and adequate national allocation for their directed fisheries, the individual Japanese companies may not be able to economically continue their participation in the joint venture fisheries. A reasonable balance must exist between directed and joint venture fisheries to maintain overall stability in a fishery operation.

Stability in joint venture fishery operations is therefore most important with respect to long term benefits to the U.S. fishing industry. We strongly recommend the Council to tighten up the proposed policy by establishing a set of criteria to evaluate permit applications based upon the nationality of the vessel and the history of the vessel's or vessel operator's participation in the joint venture fishery for which the permit application has been submitted. The multitude of review criteria and classification by order of priority will only confuse the planning and review process resulting in fruitless efforts by both the Council and foreign fishing nations.

3. Joint venture allocation requests. The proposed policy states that joint ventures are expected to make realistic requests for allocations that lie within their capability to perform. The draft policy statement submitted to the Council during the May meeting stated that the Council would not approve allocation requests at levels significantly in excess of past performance levels. We would suggest this policy be retained and applied when no more than 80 percent of the total joint venture allocation requested on a national basis for the prior season has been attained.

We sincerely appreciate the opportunity to comment upon the draft Council policy. I shall be available during the September Council meeting to comment further and respond to any questions from the Council.

Sincerely,



Jay D. Hastings

