

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: December 2, 1994

SUBJECT: Inshore-Offshore

ESTIMATED TIME
2 HOURS

ACTION REQUIRED

Review potential scope of analysis and give further direction as necessary.

BACKGROUND

In September the Council discussed the proposed rollover of the inshore/offshore amendment which is scheduled to expire at the end of 1995 and directed staff to complete an analysis which examines: (1) no rollover - let the program expire, and (2) rollover the program as is for an additional three years. There was initial discussion of the scope of the analysis required for the proposed rollover, including recommendations from both the AP and the SSC. At that time Council staff indicated that a more fully developed game-plan would be presented to the Council at the December meeting. This is provided below. Item C-6a contains the problem statement and a summary of the provisions of the original amendment. To ensure we have a firm footing in development of the overall record for what I anticipate could be a very controversial amendment, the Council should spend some time discussing the following issues:

1. What problem is the Council trying to resolve? Is the problem still preemption? Are there added dimensions this time such as sectoral stability while we work on more comprehensive, longer term solutions?
2. Are there any reasonable alternatives other than extension or termination of the program?
3. Why does the Council want to continue the CDQ program? Was the original program a success in providing opportunities for certain western Alaskan communities? Have all the projects come to fruition? Can more progress be made?
4. Why are the original allocation percentages still reasonable?
5. How long should the program be effective? Why is an extension of 3 years reasonable?

Analytical Approach - Scope and Content

The economic analysis of the original inshore-offshore allocation used models which were driven by estimates of cost, revenues, and potential harvests of pollock and Pacific cod under the various alternatives. A similar economic analysis of a rollover would use essentially the same models and therefore the same set of parameters (i.e. cost/mt, revenue/mt, and potential harvests). Changes in the estimated values of the various parameters in large part will determine the difference in the model results. If the estimated values have not changed since the

original analysis, then the expected value of the rollover analysis will be identical to the original. Therefore it is useful to examine the parameters in terms of what we know now and how they may be different from what we estimated them to be in the past.

Cost parameters: The original analysis estimated fixed and variable cost parameters based on information gathered in the OMB survey. These estimates were supplemented by industry comments. Since then some additional information has been collected (e.g. for the Pacific cod allocation), but for the vast majority of harvesters and processors in the pollock fleet, no new information is available. Therefore, the best and most complete set of cost information available is the original information. The accuracy of that information was questioned repeatedly by industry, particularly the estimates of cost parameters. To account for the uncertainty in the cost information the original analysis tested the results for sensitivity to changes to the parameters. If those same cost values are used again now, three years later, their uncertainty has unarguably increased.

Revenue Parameters: The original analysis was very sensitive to revenue parameters, which included ex-vessel prices, processed product prices, and product recovery rates. Fortunately, new price data are collected regularly. Ex-vessel prices are collected by the State of Alaska for shore-based deliveries, and product prices are collected by NMFS and ADFG from processors. Product prices are perhaps of somewhat higher quality now because there is more effort to verify that prices are F.O.B. Alaska. Currently product prices are available through 1993. In addition to the prices mentioned above, NMFS Office of International Trade is collecting more and better information on prices in Japan and export prices.

This is not to say that product prices are without weaknesses. There is still very little information available on prices of various grades of surimi or roe, or whether inshore or offshore sectors receive more for a given grade. We still know very little about markets and the ability of vertically integrated firms to set F.O.B. prices to their advantage. Additionally, little is known with respect to the new markets for deep skin fillets.

According to NMFS, information on product recovery rates is in general superior to that available in 1991 and, for the recently implemented regulation, was not controversial. An exception to this may be surimi. Currently the regulations use the same P.R.R. for both inshore and offshore,. This was based on analysis of observer estimates of round weight and industry reports of product weight. In these studies the distributions of inshore and offshore recovery rates for surimi did not justify using different figures. It was also noted that surimi recovery rates are market driven and that a given processor could produce at one rate one day and at another rate on a different day in response to different market demands. NMFS studies did show a seasonal difference in surimi rates, 16% for the 'A' season and 17% for the 'B' season.

In summary, available revenue information is at least as good as it was at the time of the original analysis, and there is no reason to believe that the uncertainty around this information is much greater.

Potential Harvests: In the original analysis the "no allocation case" assumed that harvests by sector from the most recent complete year of available data would apply unchanged to each of the years from 1992 through 1995. This was a very significant simplifying assumption, but one which becomes less certain with each passing year. For the "no allocation case" in an analysis of a rollover, the most recent unconstrained year on which to base potential harvests is 1991. If that year is used as a predictor of potential harvests under the "no allocation case", then our level of uncertainty with respect to those potential harvests is greater than our level of uncertainty in the original analysis.

It may be argued that using the most recent year of unconstrained harvests (1991) to represent the "no allocation case" is inappropriate, because things have changed in the last three years under inshore-offshore. If that argument is made, then another method to predict harvests under the "no allocation case" must be found. Other

methods to predict potential harvests by sector under the "no allocation case" might include the use of average weekly harvests or maximum weekly harvests by sector during 1994. These methodologies will be developed further and discussed with the SSC prior to their use in the analysis.

Summary: Given the economic information currently available it is clear that in general we are less certain of the accuracy of our data now than we were in the original analysis. This has direct implications on our ability to perform a reasonable quantitative analysis. The situation may be summarized with the following figures. Figure 1 summarizes the discussion above.

In the original analysis we made estimates of variable costs and revenue and the difference in total catch with and without the allocation. This information was combined to estimate the differences in net revenue with and without the allocation for each sector which resulted in an estimate of the net revenue difference for the industry. This was a proxy for producer surplus which constituted a large part of our net benefits assessment. For each of the parameters estimated, there was a level of uncertainty. This is represented by the grey areas around the boxes which represent the parameters. For each combination of parameters the grey area grows geometrically, resulting in a significant amount of uncertainty in our final estimates.

In the rollover analysis the level of uncertainty around cost and catch parameters is greater than it was in the original assessment as discussed above. Our estimates of revenue do not appear to contain more uncertainty than in the original analysis. Because of the overall greater amount of uncertainty in the parameters, the estimates of net revenue and therefore net benefits have more inherent uncertainty than in the original analysis. The ramifications of this are shown in Figures 2a and 2b.

Figure 2a is a representation of the results of the risk analysis used to estimate producer surplus on pages 2-17 and 2-18 of the Draft for Secretarial Review of the Supplementary Analysis of the Proposed Amendment 18, which was published on September 3, 1992. These probability density graphs were produced using a type of Monte Carlo simulation of the parameter estimates. These show that under the original analysis it was estimated that there was a 10-15% probability that, given the uncertainty in the parameters, the inshore-offshore allocation would result in positive producer surpluses. In Figure 2a this probability of a positive result is represented by the shaded area.

Figure 2b adds a hypothetical probability distribution (the bell curve labeled 'B') of the results of a rollover analysis. This curve assumes that the same parameters used in the original analysis were used except that estimates of cost and potential harvests contain a greater amount of uncertainty. The areas under both curves are the same, but because there is more uncertainty in curve B, there is a greater probability of the actual result falling in either of the tails. In other words, the probability that the results of the rollover will be positive, or neutral, with respect to net benefits has increased. On the other hand, the probability of a very large decrease in net benefits has also increased.

In summary, our ability to predict the net benefits of the allocation is less now than it was at the time of the original analysis. Therefore the Council staff is recommending that the economic analysis of the rollover focus on an examination of directional changes of the parameters. In other words is there evidence that the parameters have changed to a degree which might change the overall results of the producer surplus estimates? If so, then we could run quantitative scenarios which would provide an indication of the sensitivity of the results to changes in these parameters. At a minimum, the analysis would discuss the likelihood and magnitude of changes which might alter the results from what we saw in the original analysis.

Other aspects of the rollover analysis

Surrounding the basic analytical approach described above would be the following:

- * A description of the current 'base case' as reference information - this would paint a picture of what is going on now, and would include, for example, a description of the harvesting and processing operations from 1994, along with ex-vessel and product price information.
- * Qualitative discussion which frames the alternatives in the context of the current situation in the fisheries. For example, qualitative analyses will be provided concerning such factors as: new onshore plants operating which were not there in 1991; effects of the 'A' and 'B' season delays for pollock in the BSAI; changes in the numbers and/or nature of processing entities participating currently.
- * A detailed look at the CVOA including a re-examination of catch and bycatch rates experienced inside and outside of the CVOA from 1992-1994. This could then be compared to the information presented in Chapter 4 of the Supplementary Analysis for Amendment 18. Additionally, the analysis will discuss the designation of areas within the CVOA as 'Critical Habitat' for marine mammals.
- * A qualitative assessment of the distributional effects - this would summarize the income distribution findings of the original analysis (i.e. between Alaska and the Northwest) and, to the extent possible, describe expected changes in those distributions under the current proposal. The analysis could look into the possibility that infrastructure developments have occurred in Alaskan ports. This might indicate that expenditure patterns between Alaska and the Pacific Northwest have changed.

Other issues

Two issues which we specifically discussed in September were the CDQ program and social impact assessment. The CDQ program for pollock is scheduled to expire with inshore-offshore, but is included as part of the overall proposed rollover package by the Council. A primary reason for consideration of the rollover is the fact that a comprehensive management program (CRP) has taken longer than expected to develop, and the Council will need an additional three years to get to resolution of that program. The Council expressed the intent that CDQs be part of an eventual CRP program, in some form or another. CDQs for species other than pollock are currently being considered within the overall CRP development. Because the Council's intent appears to be that the current pollock CDQ program expire only when encompassed within the CRP program, it seems that permanent resolution rests within that program, and the three-year proposed rollover is simply a holding place, much as the processing allocation itself.

Our intent with the analysis is to provide a descriptive summary of the program as it has developed over the past three years, noting the benefits of the program to the participants and communities involved, as well as the costs to the remaining industry in the form of foregone harvests and processing activities. Sources for this information include various CDQ progress reports submitted by the CDQ organizations, as well as independent evaluations such as that currently in progress by UAF. The analysis would also examine the impacts of halting that program at the end of 1995 from the perspective of the economic and human resource investments which have developed under the current program.

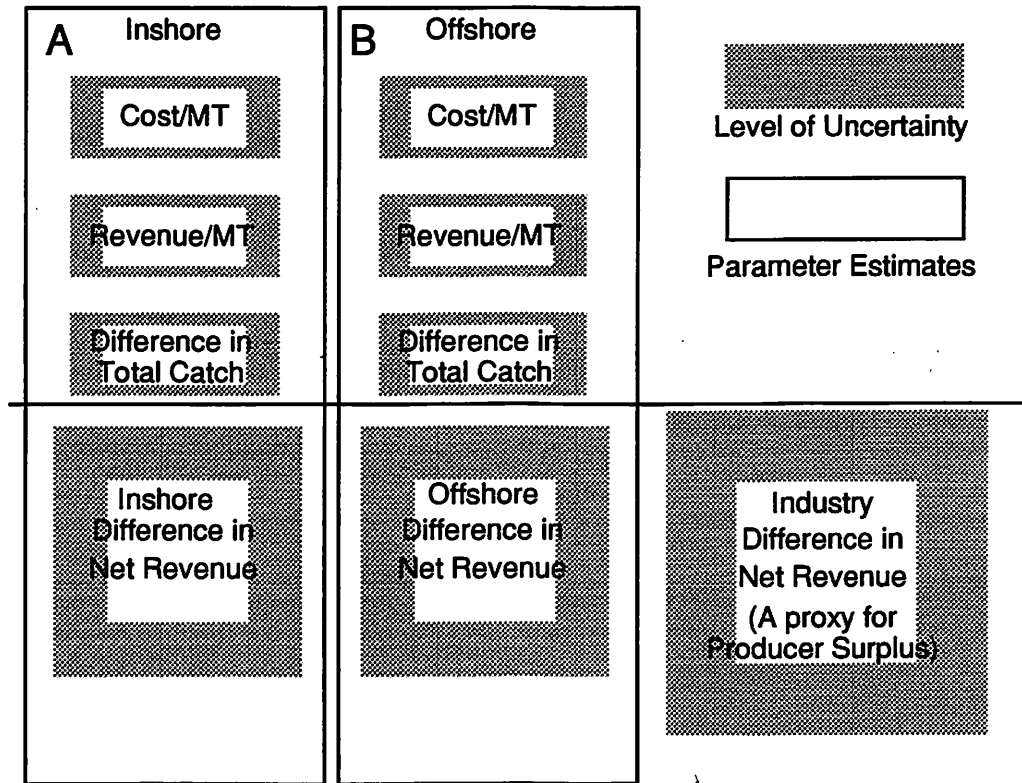
With regard to social impact assessment, the impacts rest largely on the distributional effects of an inshore/offshore allocation on the regions and communities most closely tied to the processing sectors in question (for example, Seattle, Kodiak, Sand Point, Dutch Harbor, and a few others). The original community profiles and impact assessment are expected to be relevant today as they were three years ago, with impacts depending largely on the distributional analyses, which are not expected to have changed significantly. We can update this re-analysis in a qualitative fashion which would attempt to capture any recent developments in the fisheries or communities involved. An additional step which we could take, depending on available funding and the perceived benefit, would be to utilize the baseline industry sector profiles developed under contract to Impact Assessment,

Inc. for the analysis of the Comprehensive Rationalization Program, as the basis for an updated SIA chapter. The recently completed sector profiles will be incorporated by reference in any event.

Conclusion

Overall, the proposed rollover of inshore/offshore is likely to result in impacts very similar to those which have occurred in the last two and a half years. A critical question seems to be whether those impacts which have occurred can be identified, and whether they differ from what was predicted. As noted earlier, our analysis will examine the base case (what is happening under the allocation) to the best of our ability, and examine changes to the parameters upon which the original analysis was based. The estimation of net impacts is extremely difficult, and covers a wide range of possibility. Because we cannot reasonably expect that a wholesale re-analysis will provide us any better information than what we currently have, we have outlined above a more limited, qualitative approach to the issue this time around.

Figure 1 Uncertainty in the Original Inshore Offshore Analysis



Uncertainty in the Inshore Offshore Rollover Analysis

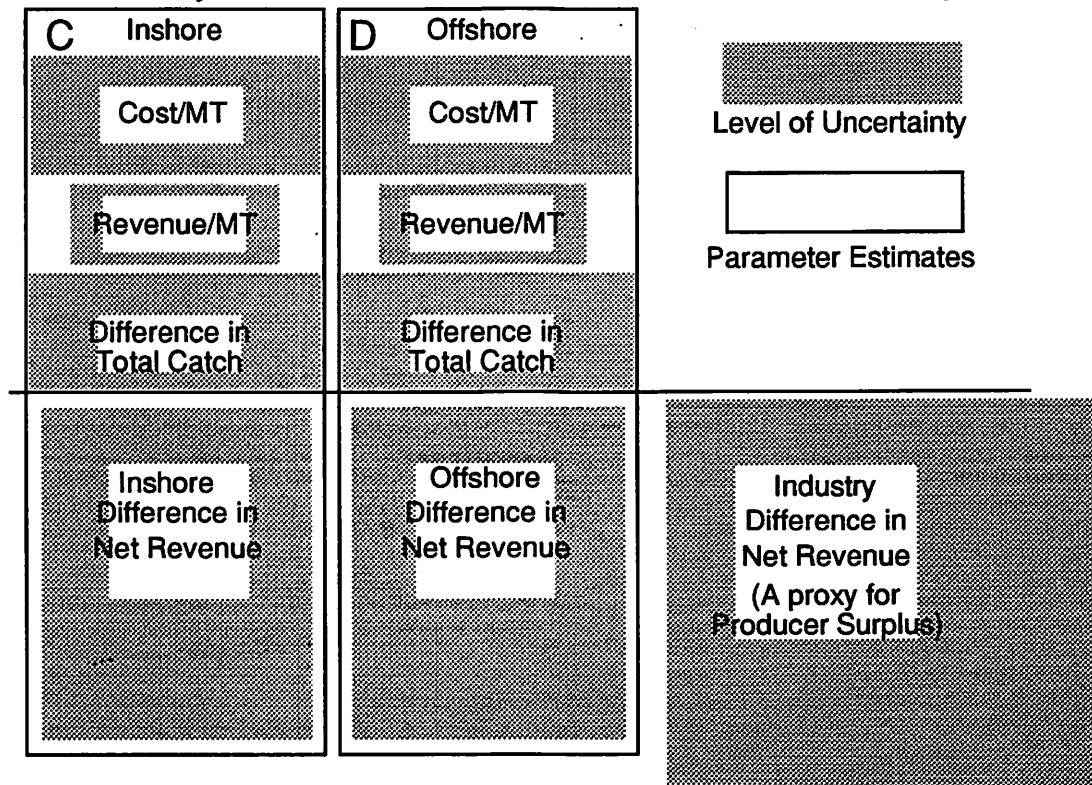


Figure 2a

Results of Original Analysis

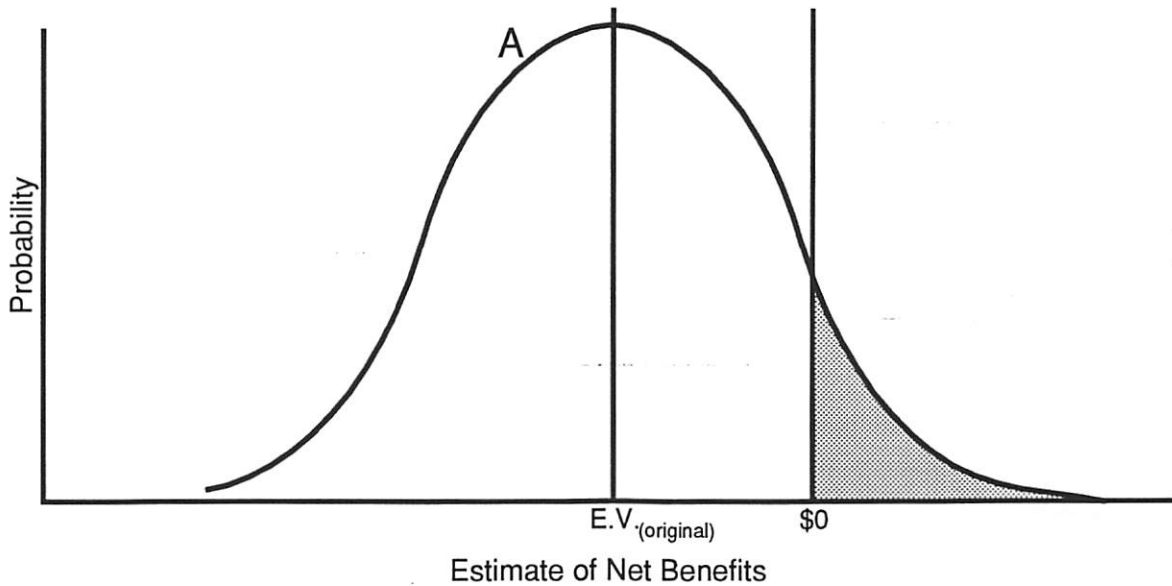


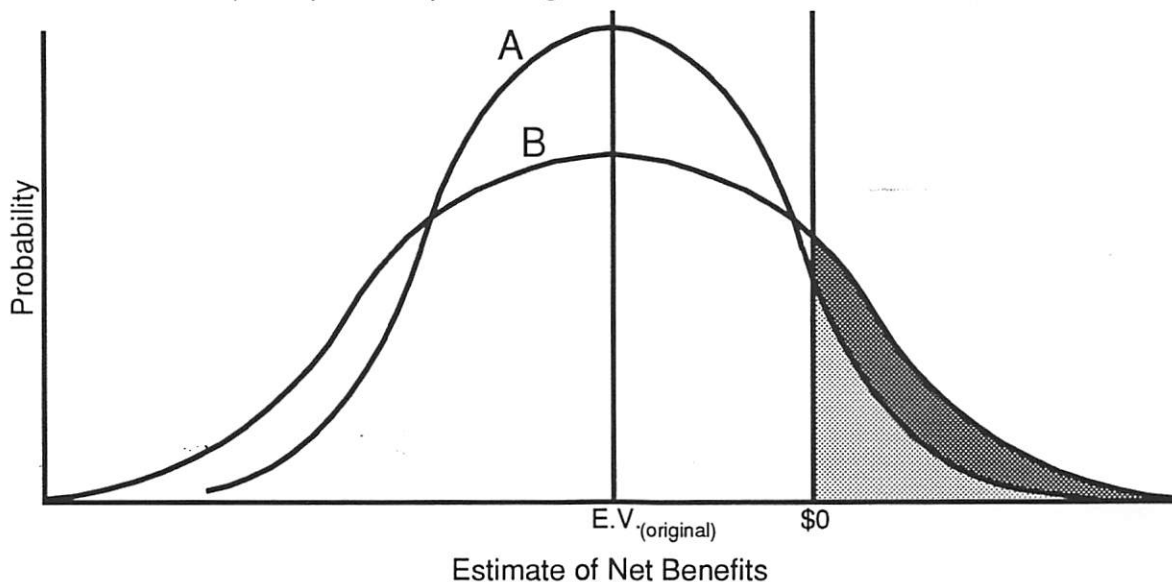
Figure 2b

Effects of Increasing Uncertainty While Using The Same Parameters

A = Distribution of "Monte Carlo" results in the original analysis.

B = Hypothetical distribution of "Monte Carlo" results of a rollover using the same parameters with greater uncertainty.

- 1) Expected Value (E.V) of the allocation will be unchanged.
- 2) The probability of a result in either of the tails increases.
- 3) The probability that the allocation is "net benefit neutral" increases.
- 4) The probability of a large decrease in net benefits also increases.



The Problem Statement of the original amendment.

Problem Statement

The finite availability of fishery resources, combined with current and projected levels of harvesting and processing capacity and the differing capabilities of the inshore and offshore components of the industry, has generated concern for the future ecological, social and economic health of the resource and the industry. These concerns include, but are not limited to, localized depletion of stocks or other behavioral impacts to stocks, shortened seasons, increased waste, harvests which exceed the TAC, and possible pre-emption of one industry component by another with the attendant social and economic disruption.

Domestic harvesting and processing capacity currently exceeds available fish for all species in the Gulf of Alaska and most species in the Bering Sea. The seafood industry is composed of different geographic, social, and economic components which have differing needs and capabilities, including but not limited to the inshore and offshore components of the industry.

The Council defines the problem as a resource allocation problem where one industry sector faces the risk of preemption by another. The analysis will evaluate each of the alternatives as to their ability to solve the problem within the context of harvesting/ processing capacity exceeding available resources.

The Council will address these problems through the adoption of appropriate management measures to advance the conservation needs of the fishery resources in the North Pacific and to further the economic and social goals of the Act.

Summary of Current Inshore - Offshore Allocation Effective Through December 31, 1995

(1) Definitions, Rules, and Allocation.

Relative to definitions, rules and allocations for inshore and offshore components of the Gulf of Alaska (GOA) pollock and Pacific cod fisheries and the Bering Sea and Aleutian Islands (BSAI) pollock fisheries:

A. Definitions

The following definitions shall apply:

Offshore: The term "offshore" includes all catcher/processors not included in the inshore processing category and all motherships and floating processing vessels which process groundfish [pollock in the BSAI or pollock and/or Pacific cod in the GOA] at any time during the calendar year in the Exclusive Economic Zone.

Inshore: The term "inshore" includes all shorebased processing plants, all trawl catcher/processors and fixed gear catcher/processors whose product is the equivalent of less than 18 metric tons round weight per day, and are less than 125 feet in length, and all motherships and floating processing vessels, which process pollock in the BSAI or pollock and/or Pacific cod in the GOA at any time during the calendar year in the territorial sea of Alaska.

Trawl Catcher/Processor: The term "trawl catcher/processor" includes any trawl vessel which has the capability to both harvest and process its catch, regardless of whether the vessel engages in both activities or not.

Mothership/Floating Processing Vessel: The term "mothership" or "floating processing vessel" includes any vessel which engages in the processing of groundfish, but which does not exercise the physical capability to harvest groundfish.

Harvesting Vessel: The term "harvesting vessel" includes any vessel which has the capability to harvest, but does not exercise the capability to process, its catch on a calendar year basis.

Groundfish: The term "groundfish" means pollock and/or Pacific cod in the GOA and pollock in the BSAI.

B. Rules

The following rules shall apply to both the Gulf of Alaska, and the Bering Sea and Aleutian Islands:

1. Each year, prior to the commencement of groundfish processing operations, each mothership, floating processing vessel, and catcher-processor vessel will declare whether it will operate in the inshore or offshore component of the industry. A mothership or floating processing vessel may not participate in both, and once processing operations have commenced, may not switch for the remainder of the calendar year. For the purpose of this rule, the Gulf of Alaska, the Bering Sea and the Aleutian Islands are viewed as one area, and groundfish applies to all of the species combined which have been allocated to one component or the other.

2. A mothership or floating processing vessel which participates in the inshore component of the industry shall be limited to conducting processing operations on pollock and Pacific cod, respectively, to one location inside the territorial sea, but shall be allowed to process other species at locations of their choice.
3. If during the course of the fishing year it becomes apparent that a component will not process the entire amount, the amount which will not be processed shall be released to the other components for that year. This shall have no impact upon the allocation formula.
4. Harvesting vessels can choose to deliver their catch to either or both markets (e.g. inshore and offshore processors); however, once an allocation of the total allowable catch (TAC) has been reached, the applicable processing operations will be closed for the remainder of the year unless a surplus reapportionment is made.
5. Allocations between the inshore and offshore components of the industry shall not impact the United States obligations under the General Agreement on Tariffs and Trade.
6. Processing of reasonable amounts of bycatch shall be allowed.
7. The Secretary of Commerce would be authorized to suspend the definitions of catcher/processor and shoreside to allow for full implementation of the Community Development Quota program as outlined in the main motion.

C. Allocations

The following allocations shall apply:

1. Gulf of Alaska

Pollock: One hundred percent of the pollock TAC is allocated to harvesting vessels which deliver their catch to the inshore component. Trawl catcher/processors will be able to take pollock incidentally as bycatch.

Pacific cod: Ninety percent of the TAC is allocated to harvesting vessels which deliver to the inshore component and to inshore catcher/processors; the remaining ten percent is allocated to offshore catcher/processors and harvesting vessels which deliver to the offshore component. The percentage allocations are made subarea by subarea.

2. Bering Sea/Aleutian Islands

Pollock: The Bering Sea/Aleutian Islands pollock TAC shall be allocated as follows:

<u>Years</u>	<u>Inshore</u>	<u>Offshore</u>
1993-1995	35.0%	65.0%

These percentage allocations apply to the TAC after subtracting 7.5 percent of the TAC for the Western Alaska Community Development Quota program, previously approved by the Secretary for 1992-1995.

3. Unused Allocations

If during the fishing year it becomes apparent that either the inshore or offshore sector cannot fully harvest its allocation, the excess shall be released to the other component, without affecting the allocation formula in future periods.

(2) Catcher Vessel Operational Area

A Catcher Vessel Operational Area is defined for pollock harvesting and processing during the pollock "B" season (starting on June 1 unless changed), encompassing the area between 168 and 163 degrees W. longitude, and 56 degrees N. latitude south to the Aleutian Islands. The following operational rules apply to the CVOA:

- A. Shore-based catcher vessels delivering pollock from a directed fishery to inshore plants or inshore motherships may operate in the CVOA if an inshore allocation remains unharvested.
- B. Offshore motherships and their associated catcher vessels also may operate in the CVOA if an offshore-allocation remains unharvested.
- C. Offshore catcher-processors cannot target on pollock in the CVOA during the "B" season.
- D. Access to the CVOA is unrestricted during the pollock "A" season.

(3) Western Alaska Pollock Community Development Quota Program.

For a Western Alaska Pollock Community Development Quota, the Council instructs the NMFS Regional Director to hold 50% of the BSAI pollock reserve as identified in the BSAI Groundfish Fishery Management Plan (FMP) for release to communities on the Bering Sea Coast who submit a plan, approved by the Governor of Alaska, for the wise and appropriate use of the released reserve. Criteria for Community Development Plans shall be submitted to the Secretary of Commerce for approval as recommended by the State of Alaska after review by the NPFMC.

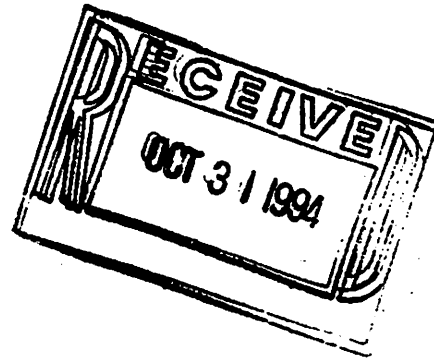
The Western Alaska Community Quota program will be structured such that the Governor of Alaska is authorized to recommend to the Secretary that a Bering Sea Rim community be designated as an eligible fishing community to receive a portion of the reserve. To be eligible a community must meet the specified criteria and have developed a fisheries development plan approved by the Governor of the requesting State. The Governor shall develop such recommendations in consultation with the NPFMC. The Governor shall forward any such recommendations to the Secretary, following consultation with the NPFMC. Upon receipt of such recommendations, the Secretary may designate a community as an eligible fishing community and, under the plan, may release appropriate portions of the reserve.

(4) Duration.

If by December 31, 1995, the Secretary of Commerce has not approved the FMP amendments developed under a Comprehensive Rationalization Program, the inshore/offshore and Western Alaska Community Development Quotas shall cease to be a part of the FMPs.

October 25, 1994

Mr. Rick Lauber, Chairman
Dr. Clarence Pautzke, Executive Director
North Pacific Fishery Management Council
Post Office Box 103136
Anchorage, Alaska 99510



Re: Amendment 18 Revisited

Dear Clarence,

By its failure to work on a market based solution to the allocation of fish, the NPFMC has painted itself into a corner where it is moving to extend the Inshore/Offshore allocation for another three years. We as catcher vessel owners believe that only an ITQ system will address the root causes of overcapitalization. However, if the council is to pursue a second phase of Inshore/Offshore we don't want to be swept aside again in a scheme that is based on the allocation of processing priveleges. That is exactly what happened at the last Council meeting, when the Council declined to include a harvesting based allocation alternative in the upcoming analysis package.

The catcher fleet in the trawl fishery has no representation on the NPFMC, and no voice in its debates. We do expect however, that the Council is bound by law to give serious consideration to reasonable alternatives addressing the problem statement it has drafted. We have written the attached letter, requesting NMFS and NOAA-GC direct the Council to include a harvesting based alternative at its next meeting before proceeding with the analysis.

We request that at the upcoming teleconference the Council review its action to limit the alternatives, and to at least discuss whether it finds a harvesting based alternative to be unreasonable and why. We find it ironic to see more than a hundred thousand alternatives in the licence limitation analysis, but only two in "Inshore/Offshore". One might almost conclude there is an intent to drag out the CRP process as long as possible, to provide an excuse to perpetuate an allocation to on-shore processors.

Please distribute the attached letter to Council members for their review and consideration before the teleconference. Than you.

Sincerely yours,

david fraser
F/V Muir Milach
P.O. Box 771

Port Townsend, Washington

Oct. 25, 1994

Lisa Lindeman, NOAA-GC -
Steven Pennoyer, Regional Director
Alaska Region, NMFS
Juneau, Alaska 99802

Re: Amendment 18 revisited

Dear Lisa and Steve,

At the Sept./Oct. Council meeting in oral testimony to the NPFMC David Fraser requested that consideration be given to adopting a harvesting based allocation of BSAI pollock to replace the processing based allocation upon the expiration of Amendment 18.

Despite specific advice from NOAA-GC Lisa Lindeman that the Council has an ongoing obligation under NEPA and other law to consider all reasonable alternatives, there was absolutely no discussion by the Council as to whether the Harvester Alternative was or was not reasonable.

The purpose of this letter is to:

1. Demonstrate that the Harvester Alternative is reasonable.
2. Suggest that the Processor Alternative has legal problems.
3. Demonstrate that the analysis will be deficient if a qualitatively different alternative is not included for contrast.
4. Request NOAA-GC and NMFS insist that the Council comply with NEPA and MFCMA requirements.

I. Is the Harvester Alternative Reasonable?

The Harvester Alternative is conceptually similar to Alternative 6 from the original Amendment 18 analysis. It would divide BSAI pollock TACs between vessels that both catch and process, and those which only catch. Based both upon the average historic production and upon maintaining the status quo proportions of the two harvesting sectors a Harvester Alternative would state:

1. Catcher/Processors harvest share should be capped at no more than 50% of the pollock TAC.
2. Catchers who do not process pollock would be allowed to harvest at least 50% of the pollock TAC.

(A sub-option could be included stating:

- a. Catchers delivering shoreside would be guaranteed the opportunity to harvest 25% of the pollock TAC.
- b. The remaining 25% of the pollock TAC could be sold to any DAP processor, shore plant, catcher/processor, or mothership.

Another sub-option might divide the catcher portion of the TAC between vessel greater than 125' and less than 125' addressing the shift that has occurred amongst catcher vessels under Amendment 18.)

The problem statement in the original analysis of Amendment 18 stated "*the underlying problem in the proposed amendment is one of resource allocation, where one industry sector faces preemption by another*". It is self-evident that to be responsive to the problem the preferred alternative should make an allocation to the sector that has experienced the preemption.

The Harvester Alternative is not only a valid option, it is the only alternative proposed to the Council that directly addresses the underlying preemption problem.

The *only* sector which was preempted in the BSAI pollack fishery from a position of historic participation, has been the catcher vessel sector. In July of 1992 graphic documentation was submitted to the Council on behalf of AIF showing that the catcher vessels' share of the pollack harvest was eroded from over 90% in 1987 down to less than 40% in 1991 as the result of the influx of factory trawlers. A second graph showed the steadily escalating growth of shoreside processing during the same period. Clearly it was the harvest sector, not the processing sector which was preempted.

The Harvester Alternative could include a sub-option of a guaranteed sub-allocation to those vessels delivering to shore plants. While harvesters would prefer to have full access to all US buyers in a competitive market, we recognize the political pressure upon the Council to give shorebased processors some level of guaranteed production, and that the Council believes such authority exists. Whether or not such authority exists (the basis for questioning this authority is detailed below), we maintain that it is not good policy. If the Council is determined to 'protect' shore based processors, it is possible (though perhaps not legal) to do so within the context of a harvester based allocation that at least leaves all buyers competing in a functioning market for some of the fish.

II. Is the Processor Alternative Legal?

Even with Judge Rothstein's summary judgment we believe there are continuing unresolved legal questions about the Secretary's authority to allocate to processors under the MFCMA and other law .

This is underscored in the recent memorandum from Aurthur Watson to Lisa Lindeman dated Sept. 7, 1994. On page ten it states:

"On-shore processors can be distinguished from vessels and vessel owners, principally through their activities. They do not harvest fish and their operations have no direct impact on the resources of the EEZ. There is a tenuous link -- at best -- between measures that merely affect the subsequent on-shore transfer or processing of those resources."

The same paragraph comments upon the difficulty in justifying a system which would:
"result in the U.S. government dictating to foreign-controlled on-shore processors which customers they could or could not do business with, possibly with major financial implications."

One would hope the law embodies a similar concern for the freedom of U.S. harvesters to choose to which processors they sell their catch.

Another recent memorandum provided to the Council Sept. 20, 1993 by NOAA-GC Lisa Lindeman on "Magnuson Act authority to allocate fishing and processing privileges to processors" also seems relevant to Inshore/Offshore discussions though it was written in the context of IPQ proposals. On page 8 it states:

"On-shore processing does not constitute "fishing" as that term is defined by the Magnuson Act."

Continuing on pages 8 & 9 it states categorically that:

The Councils and the Secretary do not have the authority to create and allocate on-shore processing privileges.

The opinion continues by responding to the possible argument that subsection 303(b) (10) of the MFCMA would provide such authority where it allows the Council to -

"prescribe such other measures...or ...restrictions....necessary and appropriate for conservation and management of the fishery."

Since these same arguments have been used to justify an On-shore allocation under Amendment 18 -

"Establishing an IPQ (substitute On-shore allocation - d.f.) would achieve the Magnuson Act's economic and social goals because on-shore processors would be at a competitive disadvantage and possibly driven out of business as the at-sea processing sector drove up the price of fish. An IPQ (substitute On-shore allocation - d.f.) system would balance the playing field so that on-shore processors and the communities that benefit economically, socially and culturally from the existence of an on-shore processor would be protected.

the response in the final paragraph on page 9 seems instructive.

"This argument fails to withstand scrutiny on two grounds. First, subsection 303(b) (10) was not included by Congress as a means for the Councils and the Secretary to circumvent any limits on their authority contained in other sections of the Magnuson Act. Subsection 303(b) (10) provides the Councils and the Secretary with the discretionary ability to develop measures not enumerated in subsection 303(a) or (b). To interpret 303(b) (10) in such a sweeping manner would swallow up the other provisions of the Act. Second, there is nothing within the subsection to expand the definition of fishing."

While the opinion goes on to say that the defacto creation of an on-shore quota by an action taken to limit at-sea processing may be acceptable as an indirect consequence of such action, one has to wonder if in the case of Inshore/Offshore, this is an incidental by-product, or whether the goal is to circumvent the Act.

In light of the requirements of the National Standards which explicitly states that the "*allocation of fishing priveleges must be fair and equitable to fishermen.*", one wonders why such a legally questionable processor based approach to allocation is being pursued, while a harvesting based allocation is not even given the curtesy of disscussion by the Council.

If indeed a stop gap allocation measure has merit as a necessary detour on the road to CRP, it would be unfortunate if the Council boxed itself in by rejecting viable options out of hand, only to find itself with a choice between a wide open derby and a legally flawed allocation to on-shore processors.

III. The Need for Contrastng Alterntives in the Analysis

If one considers a wide open derby the worst of all possible worlds, the Council can justify any action if that is the only alternative to which it contrasts a proposed action. Ask someone whether they want their head or their arm chopped off and they will generally choose surrendering their arm. Add a third choice of being given a candy bar and they will generally chose the candy bar, thank you very much. The analysis will suffer if a qualitatively different alternative is not included to provide contrast.

After the initial rejection of Amendment 18 in 1992, a number of catcher vessel owners made claims that they would be made worse off relative to the status quo ante while on-shore processors would be made better off by adoption of a processing based alloction (then Alt. 3). In arguing for the continued consideration of the harvesting based alternative (then Alt. 6) it was stated that under a processing based allocation several things would occur, including:

1. A tendency toward vertical integration as processors aquired control/ownership of catchers.
2. Harvesters' ability to negotiate price would be affected under a processing based allocation.
3. The profit center would shift from the harvesting sector to the processing sector.
4. Less rent would be captured by US citizens due to profit taking in the foreign end of vertically integrated operations.

It could be argued that the Council dismissed the Harvester Alternative after the initial rejection of the processor based allocation by the Secretary because they felt the Amendment 18 analysis had sufficiently examined those assertions from a theoretical standpoint. We now have three seasons of real world experiance with a processor based allocation and the analysis should re-examine these assertions in light of that experiance, before dismissing an alternative approach to the preemption issue.

IV. Request for Policy Enforcement by NMFS/NOAA-GC

It would have been our preference that the Council had moved expeditiously toward an ITQ management system, which in our opinion is the only approach to truly deal

with the root problems inherent in the Olympic system. Recognizing the Council has not done so, we desire the inclusion of the Harvester Alternative in what is called the Inshore/Offshore package.

We believe the Harvester Alternative begins to rectify the underlying preemption of the catcher sector by the catcher/processor sector at the harvest level, while leaving the allocation of processing rights to a functioning market. As such, it complies more closely with the guidance given the Council in Dr. Knauss' letter.

We believe the Harvester Alternative is a more legitimate alternative from both a policy and legal standpoint, than the processor based alternative. Whether the Council agrees with us or not is their choice to make after the analysis, not before it. These issues can only be decided if the Council debates them on their merits. At a minimum the Council is required to state why they are not considering an option that has been brought before them in public testimony. The fact that the harvest sector of the pollack fishery has no representative sitting on the Council does not relieve the Council of the obligation to seriously evaluate alternatives proposed by harvestors.

We request that you require the Council to either include the Harvester Alternative, or explicitly state why it is not a reasonable alternative.

Thank you.

david fraser

co-signed

Robert T. Gearty
[Handwritten signatures]

cc: Rollic Schmitten
Richard Lauber
Governor Mike Lowry
Senator Patty Murray
Senator Slade Gorton
Rep. Maria Cantwell
Rep. Jolene Unsoeld

**INDUSTRY LETTER
INSHORE/OFFSHORE and POLLOCK CDQ**

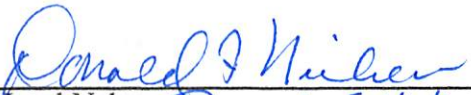
ANALYSIS

The undersigned members of the North Pacific fishing industry respectively request the Council to expeditiously take action to extend the current inshore/offshore allocation and the pollock CDQ program while a comprehensive rationalization plan is developed.

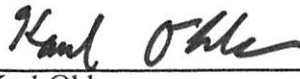
The North Pacific fishing industry believes extending the inshore/offshore allocation and the pollock CDQ program will preserve stability in the groundfish industry during the period required for the Council to develop a CRP system. Inshore/offshore and pollock CDQs were passed to serve as a bridge to comprehensive rationalization. It has taken longer to accomplish this objective than the Council anticipated when it passed inshore/offshore and pollock CDQs.

To accomplish the extension, the industry requests that the Council focus analysis on the benefits of reauthorizing an interim inshore/offshore allocation and CDQ pollock program to maintain stability in the industry during the CRP development process, compared to the consequences of not continuing the present allocation and program. These alternatives are appropriate as they address the original problem of maintaining stability until comprehensive rationalization is reached. Therefore, we ask that the analysis to be completed during the next few months be focused on assisting the Council to:

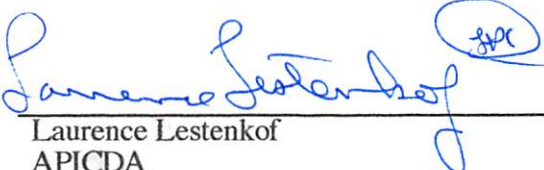
- 1.) Identify which alternative — an extension of the current interim management measures, or a revision to pre-inshore/offshore and pollock CDQ management — is least likely to cause economic dislocation and instability, and thereby allow the Council to accomplish its long term objectives through CRP in a predictable fishery management environment.
- 2.) Conduct a qualitative assessment of the impacts which might occur if the status quo is disrupted by a reversion to pre-inshore/offshore and pollock CDQ management.



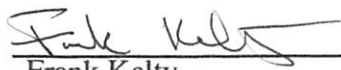
~~Hazel Nelson~~ Donald F. Nielsen
Bristol Bay Economic Development Corp.




Karl Ohls
Western Alaska Fisheries Development
Association



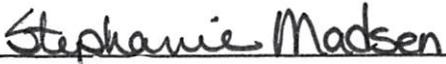
Laurence Lestenkof
APICDA



Frank Kelty
City of Unalaska




JAY E. STINSON
ALASKA DRAGGERS ASSOC.

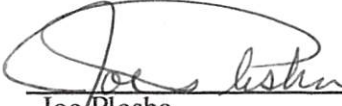



Stephanie Madsen
Aleutian Seafood Processors Association



HENRY MITCHELL
Bering Sea Fishermen Assoc.


Chris Blackburn
Alaska Groundfish Data Bank



Greg Baker
Westward Seafoods

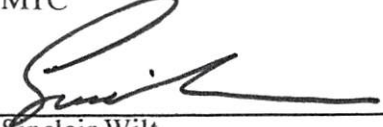

Joe Plesha
Trident Seafoods, Inc.

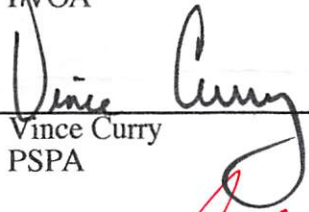

John Iani
UniSea, Inc.

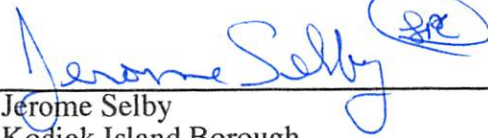

Barbara Wilson
Peninsula MARKETING Association


Fred Yeck
MTC



Bob Alverson
FVOA


Sinclair Wilt
Alyeska Seafoods, Inc.


Vince Curry
PSPA

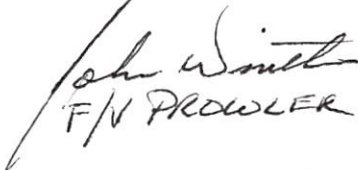

Jerome Selby
Kodiak Island Borough


~~Dorothy Lloyd~~ ROBERT S. JETTNER
Aleutians East Borough



Emil Berikoff
Unalaska Native Fishermen's Assoc.


Linda Kozok
KLUCA

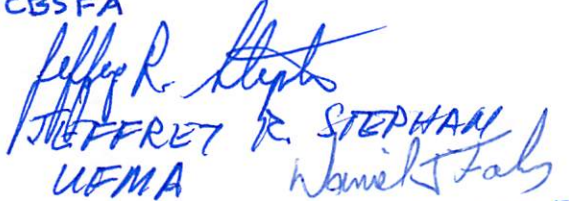

BRAD A. RESNICK
ALEUTIAN DRAGON FISHERIES

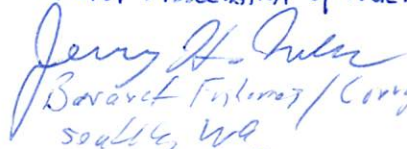

John W. Smith
F/V PROWLER

May Standant
F/V Judi B
AK. Sablefish, Inc.


AARON KULIKOFF
CBSFA


Brian Beegh
Halibut Association of North America

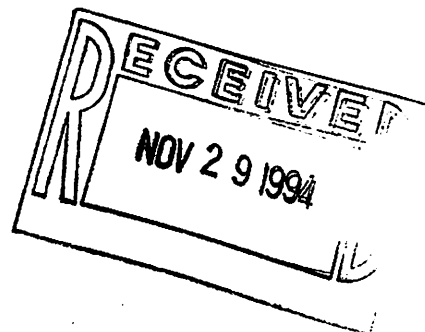

JEFFREY R. STEPHAN
WFMA
Wamiel's Fish
ALASKA LONGLINE FISHERMENS ASSN.


Jerry H. Puler
Barents Fisheries / (Compass) Seafoods
Seattle, WA



ALASKA OCEAN SEAFOOD

LIMITED PARTNERSHIP



November 30, 1994

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
PO Box 103136
Anchorage, AK 99510

Re: Agenda item C-6 Inshore-Offshore (CVOA)

Dear Mr. Lauber:

Alaska Ocean Seafood Limited Partnership files these comments in opposition to the CVOA. The Alaska Ocean partnership owns the vessel ALASKA OCEAN, which is the largest and one of the most modern surimi trawlers in the U.S. fisheries.

I am general manager of the partnership and principal captain of the ALASKA OCEAN. I have been involved in the Alaska crab and groundfish fisheries for some 25 years, and have owned and operated vessels engaged in the pollock fisheries since 1982. My partners and I committed to the ALASKA OCEAN project in 1987; following intensive design and shipyard work, the ALASKA OCEAN entered the BSAI pollock fishery in 1990.

Alaska Ocean has opposed the CVOA since the concept was first proposed, continues to oppose it, and strongly urges the Council not to continue the CVOA beyond its existing 1995 sunset date. Having listened to the testimony and Council discussions of the CVOA, and having reviewed the documents promulgating the CVOA, we remain at a loss as to what possible justification there could be for establishing this area.

Implementation of the CVOA has had the effect of excluding the ALASKA OCEAN from an area that was once the source of a substantial amount of her catch. The supposed rationale for this is a perceived potential for factory trawlers to preempt coastal communities (i.e., shoreside processors) from access to the fishery resources in the area. The supposed justification for excluding factory trawlers from access to the resource is an assumption that factory trawlers can simply migrate to other fishing areas. Alaska Ocean believes that these perceptions and assumptions are erroneous and that a program based upon them violates the purpose of the Magnuson Act and the National Standards of that Act.

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To understand Alaska Ocean's position of the CVOA, it is first necessary to understand the realities, rather than the assumptions, of the CVOA program. The Secretary of Commerce noted in his final approval of the CVOA that "[t]ime was insufficient to access the true [alternative] opportunity cost to the at-sea sector ..." Lacking that assessment, the Council simply adopted a plan based on the assumption of a cost-free migration to fishery resources located north and west of the CVOA. In actuality, this migration has proved to be anything but cost-free.

Among the costs to the ALASKA OCEAN are:

- Loss of access to a substantial portion of her traditional resource.
- The need to transit the CVOA to access her permitted fishing grounds, a transit which incurs all standard vessel operating costs and generates absolutely no revenue.
- Loss of production from time by more than doubling the transit time to offload and re-supply in Dutch Harbor.
- A decrease in efficiency with respect to recovery ratio, speed of production, and quality and nature of product resulting from the need to fish to the far northwest of the CVOA where fish stocks have proved to be smaller in size than in the CVOA.
- Increase in crab and longline gear conflicts in the areas where the ALASKA OCEAN must fish.
- Decreased flexibility to adjust operations to accommodate concerns about bycatch and other concerns of a similar nature.

Alaska Ocean cannot accept the notion that these effects are in anyway offset by a presumption that a possible effect on onshore facilities might be avoided. Nor do we believe that such effects are permissible under the Magnuson Act.

I. THE CVOA IS CONTRARY TO THE PURPOSES OF THE MAGNUSON ACT.

By its very title and terms, the Magnuson Act is aimed at conservation of fishery resources. The CVOA has absolutely nothing to do with conservation and neither the Council nor the Secretary have ever even bothered to argue that it does. On the contrary, the CVOA was established without analysis of the nature and migratory patterns of the stock in the area, especially vis-a-vis the relationship of that stock and stocks occurring in non-CVOA areas. One result of this lack of attention to conservation has already been noted - factory trawlers are being forced to harvest stocks that are smaller in size than those occurring in the CVOA.

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II. THE CVOA VIOLATES THE NATIONAL STANDARDS OF THE MAGNUSON ACT.

- A. National Standard 1. This Standard requires conservation and management measures to achieve optimum yield from each fishery. As described above, the CVOA actually diminishes yield by reducing, for a major segment of the industry, the value of the product resulting from its fishing efforts.
- B. National Standard 2. This Standard requires that conservation and management measures be based on the "best scientific information available." But the CVOA program was implemented on the basis of virtually no scientific analysis of the stocks at all. Indeed, the only scientific data readily available on the record is the Secretary's observation that harvesting methods are identical for catcher vessels and factory trawlers - an observation which obviously provides absolutely no basis for distinguishing between the two groups.
- C. National Standard 3. Standard 3 requires that fish stocks be managed throughout their range. A program in which there was no analysis of the migratory patterns of the involved stock can scarcely be viewed as conforming to this Standard.
- D. National Standard 4. This Standard, which deals with allocation of fishing privileges among U.S. fishermen, requires such allocations to be fair and equitable to all fishermen; to be reasonably calculated to promote conservation; and to avoid acquisition of excessive shares. Alaska Ocean believes that the CVOA fails under this Standard for several reasons.
- (1) The CVOA is neither fair nor equitable. It places a significant portion of the groundfish resource outside the reach of a large segment of the industry, at significant cost to that industry, and does so to prevent effects that might otherwise happen.

It is interesting to note that, on at least two prior occasions, the Secretary has rejected Council proposals to exclude foreign fishermen from certain fishing areas. Yet, without basis or justification, the Secretary acceded to the CVOA, which excludes U.S. fishermen. Under the Magnuson Act Standards, allocations among U.S. fishermen are subject to a much higher degree of scrutiny, scrutiny which the CVOA does not pass.

- (2) The CVOA is also unfair because it discriminates among segments of the industry on a basis that is over-inclusive. Specifically, the CVOA is built on the assumption that factory trawlers have wide-ranging mobility while catchers serving inshore processors do not. This is an unverified assumption

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which results in according CVOA privileges to some catcher vessels that are every bit as mobile as factory trawlers. In addition, because the final adoption of the CVOA allows large mother ships into the area, large mobile catcher vessels that traditionally have supplied those ships can also access the CVOA.

- (3) As discussed above, the CVOA is not reasonably calculated to promote conservation; in fact, it is not calculated to achieve conservation at all.
- (4) The CVOA is actually designed to create rather than avoid excessive shares, because it takes from one segment of the industry a resource that the segment has been using, and awards it to another segment that has not been using it.

E. National Standard 5. National Standard 5 requires conservation and management measures to promote efficiency and prohibits measures that have economic allocation as their sole purpose. We have already described the inefficiencies imposed on the ALASKA OCEAN by reason of the CVOA. It only remains to be said that the CVOA is patently an economic allocation and nothing but an economic allocation. In promulgating the CVOA regulations, the Secretary candidly admitted:

Although the supplemental analysis for this amendment projects future losses for the offshore fleet and gains for the inshore sector, the 35/65 allocation coupled with the CVOA is justified based on the resulting stability and prevention of potential preemption on behalf of the inshore sector and the likelihood of benefits that would accrue to Alaska coastal communities.

(Emphasis added.)

In other words, the CVOA gives an allocation of resources to the inshore sector at the expense of the factory trawler fleet in an effort to realize hoped-for economic benefits for Alaska coastal communities. (Ironically, the program then potentially diminishes even those benefits by granting CVOA access to catcher boats and their large, mobile mother ships, vessels that have no necessary connection to Alaska coastal communities.)

F. National Standard 6. This Standard effectively requires the Council to recognize and account for the fact that fishermen fish where the fish are. The CVOA program blatantly ignores this requirement by ousting the factory trawler fleet from one of its traditional and most productive fishing areas and forcing it to relocate, at considerable cost, to other fishing grounds.

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- G. National Standard 7. Standard 7 requires conservation and management measures to minimize costs and avoid unnecessary duplication. The CVOA is an unnecessary management measure that does not promote conservation and is aimed solely at achieving hoped-for economic benefits for some Alaskan communities. As such, it is a prime example of a management measure that increases rather than decreases costs and that, accordingly, violates this Standard. The CVOA further violates this Standard because it encourages inshore facilities to develop more processing capacity to realize on the CVOA allocation, capacity that already exists in the offshore fleet.

For all of the above reasons, Alaska Ocean urges the Council to discontinue the CVOA on its 1995 sunset date, if not sooner.

We appreciate your consideration of our views.

Sincerely,

ALASKA OCEAN SEAFOOD, LP


Jeff Hendricks
General Manager