Public Testimony Sign-Up Sheet
Agenda Item C-7 AFA Permit Application

	NAME (PLEASE PRINT)	AFFILIATION
1 ✓	Roger Rowland	Unalaska City Council
2 ✓	Frank Kelty	City of Unalaska
3 ✓	JOE PLESHA	TRIDENT SEAFOODS
4 ✓	TERRY LEITZELL	ICICLE SEAFOODS
5 ✓	dave Fraser	Adak Fisheries
6 ✓	BRENT PAINE	UCB
7 ✓	Kjetil Solberg	ADAK
8 ✓	GLENN REED	PSPA
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person " to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.

AGENDA C-7
DECEMBER 2007

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver
Executive Director

ESTIMATED TIME
2 HOURS

DATE: November 30, 2007

SUBJECT: AFA Permit Application

ACTION REQUIRED

Consider request for approval of unrestricted AFA processing permit

BACKGROUND

In October the Council was requested by Adak Fisheries LLC to review an application for an unrestricted AFA processor permit (Item C-7(a)). The relevant statutory provision and regulations outlining this process are included as Item C-7(b). In essence, NMFS may grant such a permit application only upon recommendation by the Council to do so. The Council may only make such recommendation when the combined BSAI TAC for pollock, in any year, exceeds 1,274,900 mt, or upon the actual total or constructive loss of an existing AFA processor, and after providing an opportunity for public comment. The regulations also allow the Council to establish additional procedures for review and approval of such permit requests.

While the upcoming ABC for pollock appears at this time to fall below the threshold, the literal wording of the regulations allow the Council to consider a request "*at any time prior to or during a fishing year*" in which the TAC exceeds the threshold (as it does in 2007). The regulations go on to specify that the Council will establish the duration of the permit, which "*may be for any duration.....or the Council could recommend that a permit issued under this paragraph remain valid as long as the TAC remains above the threshold (for example)*".

In summary, this means that the Council could recommend issuance of a permit at this meeting, even though the TAC for the coming fishing year would appear at this time to be well below the threshold referenced in regulation. The regulations do not specify what the Council must consider before making a recommendation, only that the Council provide opportunity for public comment. The Council may wish to have some kind of analysis before it considers such a permit request, but that is the prerogative of the Council. NMFS however will need to have an appropriate analysis (such as a NEPA document) before approving any Council recommendation for a permit, as that would constitute a federal action.

There also appear to be serious implementation aspects, in terms of timing of such a permit approval relative to cooperative contracts already in place, but these have not been fully assessed by staff. The Council could choose to discuss these issues at this meeting, including the process for reviewing such requests in the future, including establishment of any additional procedures which the Council has the authority to establish under the regulations. Or the Council could request that a more detailed discussion paper be prepared to better flesh out

these issues for future reference. If the Council were to recommend that a permit be approved, it is likely that NOAA Fisheries would have to flesh out many of these details before considering whether to approve the permit. Item C-7(c) is a letter from NOAA Fisheries with further explanation of the process and issues.

Corporate Offices
800 E. Dimond Blvd., Suite 3-400
Anchorage, AK 99515-2043
Ph: 907-561-3400
Fx: 907-561-3401

November 28th 2007

Chris Oliver, Executive Director
Eric Olson, Chairman
North Pacific Fishery Management Council
605 W 4th Ave Suite 306
Anchorage, Alaska 99501

Re: C-7 Application for AFA Processor Status

Dear Chairman Olson,

Adak Fisheries submitted attached application to NMFS for an AFA processor permit pursuant to CFR 679.4(l)(5)(v)(1-5).

We thank the Council for providing an opportunity for public comment at the December Council meeting. We will be available at the meeting, if there are any questions you wish us to address please let us know.

Relative to the "Required elements in Council recommendation" our request is as follows:

1- Identification of inshore processor:
Adak Fisheries, LLC.

2- Type of AFA inshore processor permit:
Unrestricted

3- Duration of permit:
Our first preference is that the permit would be for the duration of the AFA, but it should at least remain in effect at least until implementation of any actions taken on modification of SSL mitigation measures and changes to the A/B split on WAG crab.

Sincerely,

Matt Tisher, CFO
Adak Fisheries

Rev: 10/2/03

OMB Control No. 0648-0393 Exp: 6/30/09

Application for
AMERICAN FISHERIES ACT (AFA)
INSHORE PROCESSOR PERMIT

United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service, Alaska Region
P.O. Box 21668
Juneau, Alaska 9980

BLOCK A – AFA INSHORE PROCESSOR INFORMATION

Are you applying for a cooperative processing endorsement on the AFA inshore processor permit? [ ] YES [X] NO
If YES, complete Block E.

Indicate type of permit requested: [ ] Restricted processor [X] Unrestricted processor

BLOCK B – STATIONARY FLOATING PROCESSOR INFORMATION

1. Stationary Floating Processor Name		
2. ADF&G Processor Code	3. U.S. Coast Guard Documentation Number	4. Federal Processor Permit Number
5. Gross Tons	6. Shaft Horsepower	7. Registered Length (Feet)
8. Onboard Business Telephone Number	9. Onboard Business FAX Number	10. Onboard Business E-mail Address

BLOCK C – SHORESIDE PROCESSOR INFORMATION

1. Shoreside Processor Name **Adak Fisheries LLC**		
2. ADF&G Processor Code **F5072**	3. Federal Processor Permit Number **27101**	
4. Business Telephone Number **907-561-3400**	5. Business FAX Number **907-561-3401**	6. Business E-mail Address **mtisher@adakfisheries.com**

BLOCK D - OWNERSHIP INFORMATION

1. Owner Name(s) and Signature(s) Adak Fisheries – [signature], CFO	2. SSN (voluntary) or Tax ID Number 92-017804

PRIVACY ACT STATEMENT: Your social security number is confidential and is protected under the Privacy Act. Disclosure of your Social Security Number (SSN) is voluntary. The primary purpose for soliciting the social security number is to provide a unique identifier to verify the identity of the applicant(s) for issuance of a federal fishery permit and to avoid inappropriate release of confidential records related to federal commercial fishery permits. In the event it is not provided, NMFS will assign a unique code that will identify your records.

3. Business Mailing Address (Street or box, city, state, zip code) **Adak Fisheries LLC 800 East Dimond Blvd., Suite 3-400, Anchorage AK 99515**		
4. Business Telephone Number **907-561-3400**	5. Business FAX Number **907-561-3401**	6. Business E-mail Address **mtisher@adakfisheries.com**
7. Managing Company, if any **Adak Fisheries LLC**		

BLOCK E - AFA CRAB FACILITY OWNERSHIP INFORMATION
Attach additional sheets, if necessary, to list all entities and facilities.

Complete this block if you are applying for a cooperative pollock processing endorsement. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA inshore processor that receives pollock harvested by a cooperative.

Note: if any of the information in Block E changes, submit an amended application to NMFS, RAM within 30 days of the date of the change.

1. Facility Name	2. ADF&G Processor Code (F___)

3. Type of Facility

☐ Shoreside processor ☐ Mothership ☐ Other operation (Describe)
☐ Stationary floating processor ☐ Catcher/processor

4. List the percentage of ownership or control and describe the nature of the interest in each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA inshore processor;

CERTIFICATION
I authorize public release of the 1995, 1996, 1997, and 1998 total processing history of each BSAI king and Tanner crab species.

Printed Name & Signature:

Complete this block if you are applying for a cooperative pollock processing endorsement. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA inshore processor that receives pollock harvested by a cooperative.

Note: if any of the information in Block E changes, submit an amended application to NMFS, RAM within 30 days of the date of the change.

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3. Type of Facility

☐ Shoreside processor ☐ Mothership ☐ Other operation (Describe)
☐ Stationary floating processor ☐ Catcher/processor

4. List the percentage of ownership or control and describe the nature of the interest in each AFA crab facility that is affiliated with the AFA entity that owns or controls the AFA inshore processor;

CERTIFICATION
I authorize public release of the 1995, 1996, 1997, and 1998 total processing history of each BSAI king and Tanner crab species.

Printed Name & Signature:

processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year.

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that—

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

67 FR 79692 12/30/02

permit. However, the owner of a mothership wishing to process pollock harvested by a fishery cooperative also must apply for and receive a cooperative processing endorsement on its AFA mothership permit. This requirement is necessary because NMFS must identify and issue crab processing restrictions to any AFA entity that owns or controls an AFA mothership or an AFA inshore processor that receives pollock harvested by a cooperative.

Subparagraph 211(c)(2)(A) of the AFA imposes crab processing restrictions on the owners of AFA mothership and AFA inshore processors that receive pollock from a fishery cooperative. Under the AFA, these processing limits extend not only to the AFA processing facility itself, but also to any entity that directly or indirectly owns or controls a 10–percent or greater interest in the AFA mothership or in the AFA inshore processor. To implement the crab processing restrictions contained in subparagraph 211(c)(2)(A) of the AFA, NMFS requires that applicants for AFA mothership and AFA inshore processor permits disclose on their permit applications all entities directly or indirectly owning or controlling a 10–percent or greater interest in the AFA mothership or AFA inshore processor and the names of BSAI crab processors in which such entities directly or indirectly own or control a 10–percent or greater interest. An applicant for an AFA mothership or an AFA inshore processor permit who did not disclose this crab processor ownership information could still receive an AFA mothership permit or an AFA inshore processor permit but will be denied an endorsement authorizing the processor to receive and process pollock harvested by a fishery cooperative.

AFA Inshore Processor Permits

Under the AFA, shoreside processors and stationary floating processors (collectively known as inshore processors) may be authorized to receive and process BSAI pollock harvested in the directed fishery, based on their levels of processing in both 1996 and 1997. An inshore processor is eligible for an unrestricted AFA inshore processing permit if the facility annually processed more than 2,000 mt round weight of pollock harvested in the BSAI inshore directed pollock fishery in both 1996 and 1997. An inshore processor is eligible for a restricted AFA inshore processor permit if the facility processed pollock harvested in the inshore directed pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round weight of pollock in both 1996 and 1997. A restricted AFA inshore processor permit prohibits the inshore processing facility from processing more than 2,000 mt round weight of BSAI pollock harvested in the directed fishery in any one calendar year.

The owner of an AFA inshore processor wishing to process pollock harvested by a fishery cooperative must have a cooperative processing endorsement on the AFA inshore processing permit. The requirements for an AFA inshore processor cooperative processing endorsement are the same as those listed for AFA motherships above.

Finally, AFA inshore processors are restricted to processing BSAI pollock in a single geographic location in state waters during a fishing year. The purpose of this restriction is to implement subparagraph 208(f)(1)(A) of the AFA, which includes in the category of AFA inshore processors, vessels that operate in a single geographic location in state waters. Under the final rule, shoreside (land-based) processors are restricted to operating in the physical location in which the facility first processed pollock during a fishing year. Stationary floating processors are restricted to receiving and processing BSAI pollock in a location within Alaska state waters that is within 5 nautical miles (nm) of the position in which the stationary floating processor first processed BSAI pollock during a fishing year. NMFS believes that 5 nm is an appropriate distance for this requirement because it allows the operator of a floating processor some flexibility in choosing an appropriate anchorage, but it still requires that the processor be located in the same body of water for the duration of a fishing year while receiving and processing BSAI pollock.

Approval of Additional AFA Inshore Processors

Paragraph 208(f)(2) of the AFA provides that:

> Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

To implement this provision of the AFA, the final rule provides a mechanism for the Council to recommend that NMFS issue AFA inshore processor permits to inshore processors that are otherwise ineligible under the AFA. In the event that the BSAI pollock TAC exceeds 1,274,900 mt (10 percent above the 1997 combined BSAI TAC of 1,159,000 mt), or in the event of the actual total loss or constructive loss of an AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits. The Council's recommendation to NMFS must identify (1) the processor (or processors) that would be issued AFA inshore processing permits, (2) the type of AFA inshore processing permit(s) to be issued (restricted or unrestricted), and the duration of any such permit(s). The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that led to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

Replacement Vessels

This final rule provides that, in the event of the actual total loss or constructive total loss of an AFA catcher vessel, AFA mothership, or AFA catcher/processor, the owner of such vessel may designate a replacement vessel that will be eligible in the same manner as the original vessel after submission of an application for an AFA replacement vessel that is subsequently approved by NMFS. The AFA contains specific restrictions on replacement vessels that are set out in detail in the final rule regulatory text at § 679.4(l)(7). Paragraph 208(g)(5) of the AFA states that a vessel may be used as a replacement vessel if:

> the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel;

NMFS believes that Congress intended this clause to apply to eligible vessels with engines incapable of producing more than 3,000 shaft horsepower rather than engines incapable of producing less than 3,000 shaft horsepower. No catcher vessel operating in Alaska has engines incapable of producing less than 3,000 shaft horsepower, and construing this clause literally would make this provision a nullity. Any vessel engine regardless of size is capable of

(i) Qualifying criteria

(A) Unrestricted processors. NMFS will issue an unrestricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the processor facility processed annually more than 2,000 mt round-weight of pollock harvested in the inshore component of the directed BSAI pollock fishery during each of 1996 and 1997.

(B) Restricted processors. NMFS will issue a restricted AFA inshore processor permit to a shoreside processor or stationary floating processor if the Regional Administrator determines that the facility processed pollock harvested in the inshore component of the directed BSAI pollock fishery during 1996 or 1997, but did not process annually more than 2,000 mt round-weight of BSAI pollock during each of 1996 and 1997.

(ii) *[reserved]*

(iii) Single geographic location requirement. An AFA inshore processor permit authorizes the processing of pollock harvested in the BS directed pollock fishery only in a single geographic location during a fishing year. For the purpose of this paragraph, single geographic location means:

(A) Shoreside processors. The physical location at which the land-based shoreside processor first processed pollock harvested in the BS subarea directed pollock fishery during a fishing year;

(B) Stationary floating processors. A location within Alaska state waters that is within 5 nm of the position in which the stationary floating processor first processed pollock harvested in the BS subarea directed pollock fishery during a fishing year.

(iv) Application for permit. A completed application for an AFA inshore processor permit must contain:

(A) Type of permit requested. Type of processor, whether requesting an AFA cooperative endorsement, and amount of BSAI pollock processed in 1996 and 1997;

(B) Stationary floating processor information. The vessel name, ADF&G processor code, USCG documentation number, Federal processor permit number, gross tons, shaft horsepower, registered length (in feet), and business telephone number, business FAX number, and business e-mail address used on board the vessel.

(C) Shoreside processor information. The processor name, Federal processor permit number, ADF&G processor code, business street address: business telephone and FAX numbers, and business e-mail address.

(D) Ownership information. The managing owner name(s), tax ID number(s), signature(s), business mailing address(es), business telephone number(s), business fax number(s), business e-mail address(es), and managing company (if any);

(v) Authorization of new AFA inshore processors. If the Council recommends and NMFS approves a combined BSAI pollock TAC that exceeds 1,274,900 mt for any fishing year, or in the event of the actual total loss or constructive loss of an existing AFA inshore processor, the Council may recommend that an additional inshore processor (or processors) be issued AFA inshore processing permits.

(A) Timing of Council action. At any time prior to or during a fishing year in which the combined BSAI pollock TAC exceeds 1,274,900 mt, or at any time after the actual total loss or constructive total loss of an existing AFA inshore processor, the Council may, after opportunity for public comment, recommend that an additional inshore processor (or processors) be issued AFA inshore processor permits.

(B) Required elements in Council recommendation. Any recommendation from the Council to add an additional inshore processor (or processors) must include the following information:

(1) Identification of inshore processor(s). The Council recommendation must identify by name the inshore processor(s) to which AFA inshore processor permits would be issued;

(2) Type of AFA inshore processor permit(s). The Council recommendation must specify whether the identified inshore processor(s) should be issued a restricted or unrestricted AFA inshore processor permit.

(3) Duration of permit. The Council recommendation must specify the recommended duration of the permit. Permit duration may be for any duration from a single fishing season to the duration of section 208 of the AFA. Alternatively, the Council may recommend that the permit be valid as long as the conditions that led to the permit remain in effect. For example, the Council could recommend that a permit issued under this paragraph remain valid as long as the combined annual BSAI pollock TAC remains above 1,274,900 mt. or a lost AFA inshore processor is not reconstructed.

(4) Council procedures. The Council may establish additional procedures for the review and approval of requests to authorize additional AFA inshore processors. However, such procedures must be consistent with the Magnuson-Stevens Act, the national standards, and other applicable law.

(5) Action by NMFS. Upon receipt of a recommendation from the Council to authorize additional AFA inshore processors, NMFS may issue an AFA inshore processor permit to the identified inshore processor(s) of the type and duration recommended by the Council, provided the Council has met the requirements identified in paragraphs (l)(5)(v)(B)(1) through (4) of this section, and the owner(s) of the identified inshore processor has submitted a completed application for an AFA inshore processor permit that is subsequently approved.

(6) Inshore cooperative fishing permits

(i) General. NMFS will issue to an inshore catcher vessel cooperative formed pursuant to 15 U.S.C. 521 for the purpose of cooperatively managing directed fishing for pollock for processing by an AFA inshore processor an AFA inshore cooperative fishing permit upon receipt and approval of a completed application.

(ii) Application for permit. A completed application for an inshore cooperative fishing permit must contain the following information:

(A) Cooperative contact information. Name of cooperative; name of cooperative representative; and business mailing address, business telephone number, business fax number, and business e-mail address of the cooperative;

(B) Designated cooperative processor. The name and physical location of an AFA inshore processor that is designated in the cooperative contract as the processor to whom the cooperative has agreed to deliver at least 90 percent of its BS pollock catch;

(C) Cooperative contract information. A copy of the cooperative contract and a written certification that:

(1) The contract was signed by the owners of at least 80 percent of the qualified catcher vessels;

(2) The cooperative contract requires that the cooperative deliver at least 90 percent of its BS pollock catch to its designated AFA processor; and

(3) Each catcher vessel in the cooperative is a qualified catcher vessel and is otherwise eligible to fish for groundfish in the BSAI, has an AFA catcher vessel permit with an inshore endorsement, and has no permit sanctions or other type of sanctions against it that would prevent it from fishing for groundfish in the BSAI;

(D) Qualified catcher vessels. For the purpose of this paragraph, a catcher vessel is a qualified catcher vessel if it meets the following permit and landing requirements:

(1) Permit requirements

(i) AFA permit. The vessel must have a valid AFA catcher vessel permit with an inshore endorsement;

(ii) LLP permit. The vessel must be named on a valid LLP permit authorizing the vessel to engage in trawling for pollock in the Bering Sea subarea. If the vessel is more than 60 feet (18.3 m) LOA, the vessel must be named on a valid LLP permit endorsed for the AI to engage in trawling for pollock in the AI; and

(iii) Permit sanctions. The vessel has no permit sanctions that otherwise make it ineligible to engage in fishing for pollock in the BSAI.

(2) Landing requirements.

(i) Active vessels. The vessel delivered more pollock harvested in the BS inshore directed pollock fishery to the AFA inshore processor designated under paragraph (l)(6)(ii)(B) of this section than to any other

AGENDA C-7(c)
DECEMBER 2007

UNITED STATES DEPARTMENT OF
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

November 29, 2007

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue #306
Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

At its October meeting, the Council received a letter from Adak Fisheries LLC requesting that the Council consider Adak Fisheries' application to NMFS for an unrestricted American Fisheries Act (AFA) inshore processor permit. In turn, the Council requested NMFS to clarify the procedures which apply to the request by Adak Fisheries. This letter provides that guidance and was prepared in consultation with NOAA General Counsel.

Section 679.4(l)(5)(v) implements section 208(f)(2) of the AFA. It provides a procedure for the Council to recommend that the Secretary issue a new AFA permit to inshore processors that are otherwise ineligible under the AFA. The Secretary cannot consider an application for an inshore processor permit unless the Council recommends that the permit be issued. The Council's decision whether or not to recommend a permit and the Secretary's decision to approve a permit are wholly discretionary. The only pre-conditions on the Council's authority to recommend a new permit are that the combined BSAI pollock TAC must exceed 1,274,900 mt for the fishing year in which the recommendation is made or an existing AFA inshore processor must be totally or constructively lost and the Council must hold a public hearing. The issue before the Council deals with the TAC pre-condition.

The preamble to the final rule (67 Fed. Reg. 79695, December 30, 2002), which explains the agency's interpretation of the regulations, states with respect to section 679.4(1) (5) (v):

> The Council may recommend any length of duration for permits issued under this provision, from a single fishing season to the duration of the AFA. Or the Council may recommend that any such permits remain valid as long as the criteria that led to their issuance remain in effect (i.e., TAC remains above 1,274,900 mt).

Therefore, in a fishing year during which the combined BSAI pollock TAC exceeds 1,274,900 mt, the Council could exercise discretion to recommend that the Secretary issue a new AFA inshore processor permit. The latter sentence indicates the Council could choose to recommend any duration for a permit as long as the year in which the Council makes its recommendation has a pollock TAC that exceeds 1,274,900 mt. The recommendation may or may not be contingent on a pollock TAC that exceeds 1,274,900 mt for any given year of the permit.

The regulations do not specify what the Council must consider in terms of an analysis before making a recommendation. It is a judgment call on the part of the Council as to how much, if any, analysis the Council determines is necessary before making a decision. The Secretary, however, will need to provide a rational decision that is compliant with NEPA and supported with an appropriate analysis before approving any Council recommendation for a new permit. On a case by case basis, we would first need to determine whether a NEPA document is required to maintain compliance with this law. If so, what type of NEPA document is necessary? Issues that the Council and NMFS may want to consider in any analysis include:

1. The practicality of permitting a new inshore processor for a year when AFA qualified catcher vessels are limited in the amount of pollock they can deliver to an inshore processor other than the one they have designated in their cooperative contract. This issue is aggravated by the fact that inshore cooperative fishing permit applications are due by December 1 prior to the year in which the inshore cooperative fishing permit will be in effect;
2. Impact of one or more new inshore processors on existing inter coop agreements that address issues such as harvest of sideboard amounts or bycatch reduction or avoidance; or
3. Impact on AFA qualified catcher vessels, cooperatives, and inshore processors.

Although the statute and the implementing regulations give both the Council and the Secretary full discretion in making/approving recommendations pursuant to section 208 (f)(2), they should be informed by the legislative history in exercising their discretion.

Section 208 of the Act designates those catcher vessels, catcher processors, motherships, and onshore processors that can continue to participate in the Bering Sea pollock fishery. Subsection (f) addresses eligible shoreside processors. Subsection (f)(1) sets the general eligibility requirements. Subsection (f)(2) provides a mechanism for the designation of additional shoreside processors to participate in the pollock fishery that do not otherwise qualify under subsection (f)(1). Subsection (f)(1) may be viewed, therefore, as the general rule established by the statute for shoreside processors, whereas subsection (f)(2) can be characterized as a "proviso' or "exception" to that general rule. The rules of statutory construction provide that such provisos or exceptions are to be strictly construed. Singer, *Statutes and Statutory Construction (Sixth Ed.)*, Sections 47:08, 47:11.

The following legislative history of the statute also gives guidance as to the purpose of subsection (f).

> Replacement of the capacity represented by these removed vessels is prevented by statutorily establishing either through explicit listing of the vessels or specific criteria for participation, the factory trawlers, motherships, catcher boats, and **onshore processors** that can continue to participate in the North Pacific pollock fishery. This listing of the eligible fishery participants is essential to preventing recapitalization of the fishery and ensuring that steps toward rationalizing the fishery can proceed. It has not been done without controversy, however. There has been a great deal of concern among the fishing industry in Washington state

and Alaska about the exclusive listing of onshore processors. Many fishery participants have made a distinction between addressing overcapitalization on the water and on the land. **Many have argued that the exclusive listing of onshore processors will deny fishermen competitive markets for their fish.** Others are concerned that it locks in substantial foreign investment in the processing sector of the fishery while at the same time the bill seeks to further Americanize the harvesting of fish in the U.S. EEZ. I share these concerns. However, the need to rationalize this fishery necessitates action. **In the absence of this provision, the ability to proceed with the formation of fishery cooperatives as a means to end the race for fish could not be successful.** In the end, I feel the potential benefits such rationalization could provide for both the resource and the industry dependent upon it justify this action. **Nonetheless, I think it imperative that** both **the Council** and the Congress **closely monitor the impacts of this provision to ensure it achieves our goal of improving the situation for fishermen**....(Emphasis added).

144 Cong. Rec. S12708 (daily ed. Oct. 20, 1998) (Statement of Senator Murray).

The emphasized statements, above, by one of the sponsors of the AFA, as well as the language of subsection (f)(2) itself, make clear that the purpose of subsection (f) is to ensure onshore processor capacity for the benefit of catcher vessels/cooperatives, not simply to benefit shoreside processors that do not qualify under subsection (f)(1) of the Act. This statement of Congressional intent should inform the Council and the Secretary in the exercise of their discretion in this process. Per the legislative history of section 208(f), in reviewing the application, the Council and the Secretary should consider the purpose of the application and whether a new inshore processor would provide fishermen a competitive market for their fish or otherwise improve their situation.

Finally, as mentioned above, Council recommendations for or Secretarial approval of any application for a new AFA inshore processor permit are discretionary actions. Case law supports Secretarial determinations on discretionary actions as final with no right of appeal by the applicant. Thus, if the Council should recommend that a permit for a new inshore processor be issued, the Secretary's decision on whether or not to issue that permit will be final agency action.

We hope this information provides useful guidance to the Council. NOAA General Counsel and NMFS staff will be available to address further questions the Council may have.

Sincerely,

Robert D. Mecum Acting RA

for Dr. James W. Balsiger
Administrator, Alaska Region

AGENDA C-7(d)
DECEMBER 2007
Supplemental

CITY OF UNALASKA
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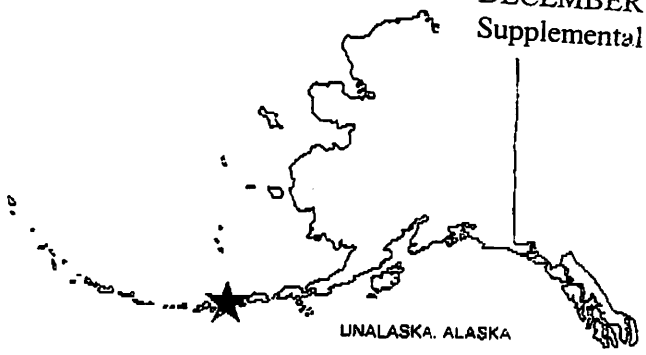

North Pacific Fisheries Management Council
605 W. 4th Ave., Suite 306
Anchorage, Alaska 99501

November 27, 2007
Re: Adak's request to be added as an AFA Inshore Pollock Processor

Dear Chairman Olson and members of the NPFMC:

On behalf of the Unalaska City Council, I am writing this letter to express our concern that the decision-making process followed in fisheries management be conducted on a level playing field and to ask for your assurance that an open, transparent and analytical process continues to be followed in the decisions that affect the different fisheries dependant communities in our region.

Four years ago, I attended a conference in Washington, DC that included members of the various National fisheries management councils, industry, environmental groups, and the public. The professional stature and accomplishments of the NPFMC stood head and shoulders above the other management councils for two very important reasons. One was the NPFMC's dependence on science over politics for reasonable and prudent fisheries management. The other was the respect that our regional council had earned from the whole range of participants by creating policy in an open and analytical way that did not arbitrarily favor groups or sectors.

At this December meeting, there will be a final vote whether or not to support Adak Seafoods request for a permit to become an AFA inshore pollock processor. As it stands today, this decision will by made without the gathering of information and data, without staff analysis, and without public participation during the deliberation of the above. This is of great concern as there are clear rules of engagement in responsible fisheries management that the NPFMC operates by for a very good reason: unintentional negative consequences affecting another group, region or regulation are common when decision-making is pushed through without the proper analysis.

We fail to see any justification for the implementation of the regulation in the AFA that provides for an additional inshore processor permit to be issued under certain circumstances. There is sufficient inshore processing capacity in the region, and the TAC for pollock is expected to be lowered to 1,000,000 tons for 2008 and 2009.

For these reasons Unalaska is strongly opposed to the proposal to make Adak Seafoods a new AFA inshore processor. As a fishery-dependant community, we can certainly appreciate the desire of Adak to bring more fish to their seafood plant. However, the continued economic health of our region depends on the sound, transparent analysis of a recognized problem for science based and prudent fisheries decisions. We believe that this request meets none of those standards, and should not be supported.

Respectfully,

Mayor Shirley Marquardt
City of Unalaska, Alaska

CC: Governor Sarah Palin
Unalaska City Council Members
City Manager, Chris Hladick
Resource Manager Frank Kelty

Dear Chairman, Council members

My name is Kjetil Solberg, I came to Adak in early 1998, at that time there was No fish plant in Adak and No support for any type of fisherman.

However, based on my own resource, I did believe there were tremendous resources of fish in the area

I learned from the Aleut Corporation and from NMFS that if I opened up a plant in Adak I would have no restriction on buying either cod, crab, Pollock or ANY other specie at all.

So I made a commitment and promised the Aleuts I would open a plant within 12 months. This resulted in the Adak land transfer proceeding ahead. Even the military and the federal government encouraged me to do this so that Adak could survive by its own means and not be a huge money pit in way of a super site cleanup site and environmental liability to the American taxpayers.

As we where just completing the plant in December 1998 I was suddenly told that someone called Trevor McCabe was leading a closed meeting for specially invited people in DC, which would exclude Adak from any participation in the Aleutian Island Pollock Fishery.

This was the first major blow towards a community in Adak, however we switched focus from Pollock to Cod and Crab, two species which at that time was considered the trash fish and the trash crab in Alaska.

As the years went by we became the largest single processor of brown king crab and cod in Alaska, then the crab rationalization plan set in and it was and is totally devastating to Adak as it resulted in us losing both cod and crab at the same time.

Adak went from 2mill lbs of crab to 64000 lbs.
Before 1998 the Brown King Crab Fishery in the western AI had NEVER been utilized, the quota was far from being reached any previous season to Adak opening up.

From 1998 until 2005 this fishery was in perfect balance, it lasted more than half a year and a number of boats made good living and happy crew members shopped and lived in Adak the entire year.

Never have production of brown king crab been higher and never have the price to the fishermen been higher actually significantly higher than during those years.

Then in late 2005 the crab rationalization set in:

The Adak crab was forced to Dutch Harbor, the boats was being forced from as far away as Attu back to Dutch Harbor, 400 nautical miles to the east of a safe haven in Adak, pasts Seguam straight, forced to fish in January and February, easy to figure this resulted in higher dead loss, less quality, it did definitely not improve safety of the life at sea as the plan so nicely states, the fishery once again became underutilized with as much as 25-30%, even more than before Adak opened up, the supply to the market went down, and believe it or not when the supply went down, the price paid to the fishermen went down to its lowest level in 10 years.

Harvesting and floating processing capacity was freed up and have later flooded into our areas and grabbed significant amount of our last life ring, our last ability to survive, the cod fishery in the Aleutians,

This, dear chairman and council members, are the reason why we try so many different ways to get access to fish, the reason for the problem which we are trying to solve is your responsibility as it is all done by you. You have told us directly that you will not give us access to the so called paper Pollock which Adak was given as a subsidy for its loss of crab. You where the ones who supported that all Adak's crab should be forced to Dutch harbor, and you are the ones to ignore Adak's requests for sideboards against harvesting and processing capacity freed up as a result of your rationalization plans that YOU have implemented for other fisheries. You are the ones who are ignoring and filibustering Adak's request for a split in management of the BS and the AI which would have secured us stability at least for cod.

We are being forced away from home as our fish and crab has been given to Dutch Harbor by YOUR actions. Our fight for survival has forced us into another man's backyard where we do not want to be at all, but we have no

choice as we have no protection whatsoever in our own waters and our own back yards, even the state water fishery which was requested and pushed through by Adak to help make up for some of our losses is being grabbed by American Seafoods which is processing our in the bays of Adak, then brings it all to Dutch harbor. All we wish and all we dream about is to be able to stay in Adak and harvest home, have access to our own fish and our own resources, bring them to shore, create jobs and support a good quality of life and living for the people of Adak,

I indeed ask you to not give us a wishy washy filibustering answer once again. You have a tendency to table and drag out and even just simply ignore as you did with our sideboard request last meeting. If no support then pls give us a second best answer which will always be a straight no. I do not know how many of you have been in Adak, have visited the community, the children at school, gone to our church at Sundays, visited us in the V and in our boats, I am afraid none of you have but I certainly wish you would. It is a community you are ignoring, a community of people in hope who really believe they will be given access to their resources one day, it is children at school, playing in the streets, growing up, families being created and established, people are growing their homes in adak, this is their home, and if your intent is not for this community to survive then tell us today, so that we can all leave and find new beliefs and a new future for our little ones and our families somewhere else.

As for a human being, a sudden death by a bullet is always better than being forced through years of cancer.

Thanks

Kjetil Solberg

ADAK Fisheries LLC

Corporate Offices
800 E. Dimond Blvd., Suite 3-400
Anchorage, AK 99515-2043
Phone: 907-561-3400
Fax: 907-561-3401

December 1st, 2007

Eric Olson, Chair
North Pacific Fishery Management Council
605 W 4th Ave Suite 306
Anchorage, Alaska 99501

Re: C-7 AFA Inshore Processor Permit

Dear Chairman Olson,

The purpose of this letter is to respond to the issues raised in the NMFS C-7 memo dated November 29th.

As the memo makes clear the Council does have the legal ability to make a recommendation at this meeting if you chose to do so.

It is also clear, that delaying a decision has the same net effect as a negative recommendation, since the Council will not be able to consider making a recommendation in 2008.

The Council will hear arguments in public comment that this issue is not "ripe" at this time. We believe it is as "ripe" as it will ever be, and ask you to make an up or down recommendation at this meeting.

Procedural Issues

The AFA was enacted in 1998, and implemented by emergency rule which did not contain provisions implementing section 208(f)(2). The Council did an EIS and NMFS published a proposed rule December 17th 2001. The proposed rule specified the application process detailed at CFR 679.4 (l)(5)(v), and initiated a public comment period on all aspects of the proposed rule.

NMFS received no public comment objecting to the application process for an additional AFA inshore processor permit. On December 30th 2002 NMFS published a final rule. Section 679.4 (l)(5)(v)(B)(4) states "The Council may establish additional procedures for the review and approval of requests to authorize additional AFA inshore processors."

Six years have elapsed since the publication of the proposed rule, and in that time no one has objected to the application process as specified in regulations or asked the Council to establish "additional procedures for review."

Those who object to issuing Adak Fisheries an AFA permit should state their substantive reasons for doing so. It is inappropriate to suddenly find fault with the application process laid out in regulations only when someone actually applies.

NEPA Issues to Consider

NMFS memo makes it clear that the burden for preparing a NEPA document rests with the Secretary of Commerce before acting on a recommendation by the Council to issue an additional AFA inshore processor permit. (It is ironic that there is no NEPA analysis required if a new processor wishes to enter the Aleutian Island cod fishery.)

The memo lists three issues the Council may want to consider. The Council might also want to discuss impacts on marine mammals, salmon and EFH, though there is at best a tenuous linkage between issuing a processor permit and the direct impacts of harvesting vessels that have been analyzed elsewhere, and will occur whether or not an additional AFA inshore processing permit is issued.

1- Practicality

Adak Fisheries recognizes that all AFA inshore catcher vessels have already joined cooperatives for 2008 and that there is no possibility of a cooperative affiliation between AFA CVs and Adak Fisheries in 2008, nor will there be any open access BS pollock available in 2008.

The only BS pollock available for delivery to Adak Fisheries in 2008, would be the 10% that coops are allowed to deliver to any AFA processor. Thus no cooperative structures will be impacted in 2008 by granting Adak Fisheries an AFA permit.

Our request is not for a one year duration permit, but rather for an extended duration. To qualify for a cooperative affiliation in the 2009, AFA inshore CVs would have to work within the constraints of the coop's 10% allocation to deliver the majority of their catch to Adak Fisheries during 2008. This would be challenging. So, practically, a CV that desired to form a cooperative affiliation with Adak Fisheries would have to wait until 2009 to go through an open access year and then form a cooperative affiliation in 2010.

2 - Impact on cooperative agreements

Cooperative agreements and inter-cooperative agreements are agreements among harvesters, not processors. Thus there would be no direct impacts by granting an additional AFA inshore processor permit.

There is no possibility of a new cooperative for 2008, and likely not before 2010 even if vessels did chose to make deliveries of the 10%. All vessels are currently in

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Email Adak@adakfisheries.com

cooperatives, thus they remain bound by the cooperative rules and agreements, even if they deliver some of the 10% to Adak Fisheries. If a cooperative were to form that affiliated with Adak Fisheries in the future, NMFS would publish sideboard tables that reflect the sideboard history of the vessels in the cooperative.

In order for an AFA CV to protect its allocation, cooperative membership is mandatory. Inter-cooperative membership is not mandatory, and the inter-cooperative depends upon consensus for its existence. There is nothing to stop a vessel that is passing through an open access year (whether to move to Adak Fisheries or to any other existing AFA inshore processor) from signing onto the inter-cooperative agreement.

The need to pass through an open access year to move between processors is inherent to the AFA inshore structure, and would not have any different impacts whether it is to move to Adak Fisheries or an existing AFA processor. In any case, Adak Fisheries is not affiliated with any AFA inshore CV, thus it has no role to play in the inter-cooperative process.

3- Impacts on CVs, Cooperatives and Inshore Processors

CVs - Adak Fisheries has no ability to compel deliveries of BS pollock if granted an AFA inshore permit. Deliveries would only occur on a "willing seller, willing buyer" basis, presumably only if Adak Fisheries offered a better price or delivery conditions than any other AFA inshore processor. This strongly suggests any impact on AFA inshore CVs would be positive.

Cooperatives - see the discussion under #2 above.

Inshore Processors - Existing AFA inshore processors could lose deliveries if Adak Fisheries could provide a better price and/or delivery conditions to vessels than any other existing AFA inshore processor. In 2008 the maximum possible reduction in deliveries to any one processor would be the 10% of the affiliate cooperative's allocation (less the amount that processor owned/controlled CVs represent of that 10%).

Existing AFA processors have had several years to amortize their capital costs. A new processor would have to be extremely efficient to be able to provide a more attractive market to an AFA inshore CV than an existing AFA inshore processor. However, if the constraints on competition under the AFA are such that the benefits of competition are not reflected in the prices currently being offered to CVs it is theoretically possible that a new processor could offer a better price and still deal with higher capital costs.

4- Other NEPA Considerations - Marine Mammals, Salmon, EFH

Existing analyses contemplated potential movement between markets by catcher vessels within the limits of AFA restriction for inshore sector CVs. It is unlikely that the choice of markets would have any impact on the choice of fishing grounds by catcher vessels. Thus, there is no reason to expect any impacts on marine mammals, salmon bycatch or EFH impacts as a result of issuing an additional AFA inshore processor permit.

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Existing analyses contemplated potential movement between markets by catcher vessels within the limits of AFA restriction for inshore sector CVs.

The one caveat is if a new market were located in the Pribilof Islands. A market located in the central Bering Sea would facilitate vessels fishing further north where the bulk of the pollock biomass appears to be shifting for the B season the Bering Sea warms. This could be viewed as potentially positive for sea lions to the extent it shifts effort further from Critical Habitat for Steller sea lions and results in fishing more in proportion to the distribution of the pollock biomass. However, the potential exists for an existing AFA inshore processor to relocate to the Pribilof Islands, so this issue has been contemplated in prior analyses.

Legislative History

The C-7 memo quotes Senator Murray's concern that the AFA may have locked in "substantial foreign investment" and may "deny fishermen competitive markets for their fish."

Based on the legislative history, the memo states the Council should consider whether a new inshore processor would provide fishermen a competitive market for their fish or otherwise improve their situation.

The degree to which existing AFA inshore processors oppose the entry of a new processor could suggest either that existing AFA inshore processors are inefficient or that the structure of the AFA allows them to pay a less than competitive price. If Adak Fisheries is granted an AFA inshore permit and never buys a pound of pollock, it could stimulate efficiency by existing processors and improve the price for fishermen.

Why Adak Fisheries Applied

Adak Fisheries is an Aleutian Islands processor, located in the heart of the Aleutian Islands management area surrounded by a rich resource base. Buying Bering Sea pollock was not Adak Fisheries first choice.

However we have been denied access to the resources in our own backyard and denied protection for cod, the one fishery upon which our survival rests.

Adak's investment in crab processing made the Western AI brown crab fishery viable for catcher vessels, and allowed the fishery to be fully utilized.

Crab Rationalization stripped away our access to Aleutian Island King Crab. We hope that will change in the future, but when?

The allocation of AI pollock to the Aleut Corporation has been little more than "paper pollock" as a result of Steller sea lion measures closing 100% of Critical Habitat. We were told at the SSLMC that we can't anticipate any changes before 2011, if then.

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CV cod is the last derby fishery in the BSAI. There no processing sideboards to protect our primary fishery from every other rationalized processing sector.

If we have access to your backyard, and you have access to our backyard, that's fair.

If we have protection in our backyard, and you have protection in your backyard, that's fair.

When we don't have access to most of what is in our own back yard, and AFA processors do have access to the cod we are totally dependent on in our backyard, plus protection in their backyard, that is not fair.

We have the worst of both worlds - no protection, no access.

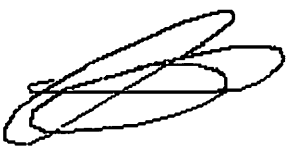
Our application for AFA status is one way of leveling the playing field.

Sideboard protections from processors in rationalized fisheries would be another way to level the playing field.

Our first choice would be to have the same level of access and protection in the Aleutians that shorebased processors have in the Bering Sea. Until that happens, there is no good reason not to grant Adak Fisheries AFA inshore processor status in the Bering Sea.

Thank you for considering our comments.

Sincerely,



dave fraser
Adak Fisheries

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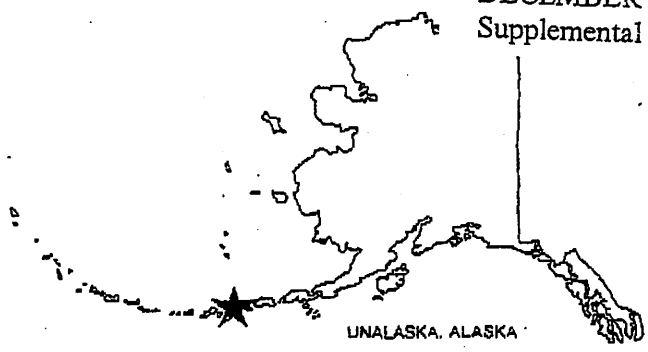

North Pacific Fisheries Management Council
605 W. 4th Ave., Suite 306
Anchorage, Alaska 99501

November 27, 2007
Re: Adak's request to be added as an AFA Inshore Pollock Processor

Dear Chairman Olson and members of the NPFMC:

On behalf of the Unalaska City Council, I am writing this letter to express our concern that the decision-making process followed in fisheries management be conducted on a level playing field and to ask for your assurance that an open, transparent and analytical process continues to be followed in the decisions that affect the different fisheries dependant communities in our region.

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Respectfully,

Mayor Shirley Marquardt
City of Unalaska, Alaska

CC: Governor Sarah Palin
Unalaska City Council Members
City Manager, Chris Hladick
Resource Manager Frank Kelty

ALEUTIANS EAST BOROUGH

SERVING THE COMMUNITIES OF
■ KING COVE ■ SAND POINT ■ AKUTAN ■ COLD BAY ■ FALSE PASS ■ NELSON LAGOON

December 6, 2007

Eric Olson, Chairman
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

Dear Chairman Olson,

On the behalf of the Aleutians East Borough Assembly, I am transmitting Resolution 08-10, Requesting the NPFMC to Take No Action on the Adak Fisheries, LLC Proposal Until Such Time That a Full Economic and Environmental Review is Completed. The Assembly weighed the comments of Dr. Balsiger and Dave Fraser. It concluded that there were too many unanswered questions at this time. What would be the impacts upon the existing AFA communities if another community were added? Why should Adak and not some other Aleutian Island communities be deemed eligible at this time? Why the rush to get this done in December, if according to comments of Dr. Balsiger and Mr. Fraser the cooperatives are already formed and in place for 2008?

The Aleutians East Borough sincerely hopes that the NPFMC will consider its resolution and adopt a process and a timeline that is realistic to this major decision that is now before it.

Sincerely,

Robert S. Juettner
Administrator

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(907) 383-3496 FAX

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ALEUTIANS EAST BOROUGH

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RESOLUTION 08-10

Requesting the NPFMC to Take No Action on the Adak Fisheries, LLC, Proposal Until Such Time That A Full Economic and Environmental Analysis Is Completed.

Whereas, the American Fisheries Act was enacted by the Congress of the United States in 1998 with the purpose of rationalizing all sectors of the Bering Sea/Aleutian Islands pollock industry, including the inshore harvesting and processing sectors; and

Whereas, all sectors of the Bering Sea pollock industry have increased their economic efficiencies under the American Fisheries Act; and

Whereas, it is inequitable to destabilize one of the sectors rationalized by the American Fisheries Act while allowing the other sectors to remain rationalized; and

Whereas, the American Fisheries Act inshore processors have demonstrated the capacity to process a Bering Sea/Aleutian Islands pollock Total Allowable Catch in excess of one and one-half million metric tons; and

Whereas Adak Fisheries LLC applied to the NPFMC for inclusion as an AFA processor when the pollock TAC was above the 1.274 million metric tons; and,

Whereas, the Bering Sea/Aleutian Islands pollock Total Allowable Catch will be well below one and one-half million metric tons in 2008; and

Whereas, the pollock Total Allowable Catch in 2008 will also be well below the threshold level at which the North Pacific Fishery Management Council is authorized to consider recommending any additional American Fisheries Act eligible processors; and

Whereas, in October of 2007, Adak Fisheries, LLC, has asked the North Pacific Fishery Management Council to recommend that it be eligible to become an American Fisheries Act eligible processor; and

NOW THEREFORE BE IT RESOLVED that without the benefit of a full economic and environmental analysis, the North Pacific Fishery Management Council is requested not to take a final vote on Adak Fisheries, LLC, proposal at its December 2007 meeting;

PASSED and ADOPTED by a quorum of the Aleutians East Borough this 3rd day of December, 2007

❑ CLERK/PLANNER
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PASSED and ADOPTED by a quorum of the Aleutians East Borough this 3 day of December, 2007

Mayor

ATTEST

Clerk