C-7

O. KRAFT & SON, INC. P.O. Box 1217 · Kodiak, Alaska 99615 · 486-5761

GENERAL MERCHANDISE SINCE 1909

JUN 2 1 1991

June 20, 1991

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council

Dear Mr. Lauber:

I am General Manager of a diverse retailing group in Kodiak and I need your help. When our local processors are shut down by the "Factory Fleet", economic chaos results. Sales, of course, plummet. Then we reduce hours and finally lay off. Also, a lot of charge customers forget to pay.

Please ensure that our shore based economies are given your highest consideration in next weeks meetings. Thank you.

Sincerely,

James Bruskotter

James Bruskotter
Executive Vice President

JB/bf

radar alaska

MARINE ELECTRONICS
302 Shelikof Avenue
Kodiak, Alaska 99615
Phone (907) 486-3892
FAX (907) 486-9440

JUN 2 1 1991

JUNE 21, 1991
RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

DEAR RICK,

THIS IS A LETTER OF SUPPORT FOR ANY MANAGEMENT PLAN THAT WILL BRING MORE FISH TO SHORE TO BE PROCESSED IN KODIAK. IN PARTICULAR I SUPPORT A SHORE BASED PREFERENCE IN QUOTA ALLOCATION.

RADAR ALASKA IS A MARINE ELECTRONIC SALES AND SERVICE CENTER. IN KODIAK THAT MEANS COMMERICAL FISHERMAN ARE OUR CUSTOMER BASE. OUR BUSINESS IS COMPLETELY DEPENDENT ON WHAT IS HAPPENING IN THE COMMERICAL FISHING FLEET.

WHEN FISH ARE BEING DELIVERED TO KODIAK OUR BUSINESS PICKS UP ALONG WITH MOST OTHER BUSINESSES IN TOWN. WHEN THE PROCESSORS ARE SHUT DOWN THE BOATS TIE UP AND WE SIMPLY HAVE NO BUSINESS.

THEREFORE I AM STRONGLY IN FAVOR OF A SHORE BASED PREFERENCE IN QUOTA ALLOCATION.

SINCERLY,

Michael Devers

MICHAEL DEVERS

CENTRAL BERING SEA FISHERMEN'S ASSOCIATION
PO BOX 88
ST. PAUL ISLAND, ALASKA 99660

JUNE 20, 1991

JUN 21 1991

Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue
Anchorage, Alaska 99501

Dear Mr. Lauber,

Subj: Comments on Proposed Amendments 18/23 Inshore/Offshore

These are the comments of the Central Bering Sea Fishermen's Association (CBSFA) on the Draft Supplemental Environmental Impact Statement on the Inshore/Offshore Plan Amendment 18/23.

Staff analysis and review of this issue is both comprehensive in its scope, and impressive in its volume. We believe this issue has, for the most part, been adequately reviewed and assessed for a proper action by the NPFMC. To summarize our comment, CBSFA supports Alternative Seven in combination with Alternative 3.2, as modified by our comments as set forth below. The Draft fairly states the relative contributions which Alternatives 7 and 3 would make to the Fur Seal Act goal of converting the economies of the Pribilof Islands to fishery based economies. The Draft does not address the extent to which the "BSAI Operational Area" option and CBSFA's proposal of April,1989 would contribute to that goal.

As your record indicates, Congressman Young has endorsed the CBSFA proposal. Senator Stevens is on record before the Council as supporting Community Development Quotas, and has authorized us to say here that Alternative 7 is consistent with that position.

CONTRAST OF PROPOSALS

Since the April, 1989 meeting of the NPFMC, CBSFA has been petitioning the Council to allocate, on a time limited basis, not less than eight percent of Bering Sea groundfish TAC to entities based on the Pribilof Islands. The Council, by its action in April, 1991 to consider a new Alternative 7, has moved closer to the original concept presented by CBSFA in April, 1989. As discussed at 3-111 to 3-113 of the Draft, Alternative Seven comes close to the CBSFA proposal:

CBSFA would find it difficult to understand, how, given an evaluation of public and private investments made on both Pribilof Islands, and given a recognition by the Council of the dependency

"Ten percent of the shoreside allocation [of pollock] available in the Bering Sea would be available to be delivered to shorebased plants North of 56 N and West of 164 W."

The potential effects of Alternative 7 and Alternative 3 on the community of St. Paul are fairly well covered in the Draft, as are the effects of not making an allocation at pages 4-35. "An inshore allocation will make any and all of them much more likely, and without an allocation the possibility of these development may well be close to zero." This may be inferred to apply to St. George Island as well. Alternative 3 on its own would not have the direct results of the CBSFA proposal.

The summary further concludes that "the form that an allocation takes will also be significant." (4-35). Alternative 7 differs from the CBSFA proposal in significant ways.

We have proposed that 8% of Bering Sea TAC be allocated to the Pribilof Islands alone, not (effectively) 5% to all communities N. of 56 degrees and West of 64. We have not presumed to propose for communities N of 56 and West of 64, other than St. George and St. Paul, but we believe that the justification for coastal communities obtaining allocation accrues, and is in the national interest, based on resources in proximity to those communities. CBSFA would not target pollock for an allocation were it not for the proximity of the resource to the island, a fact adequately demonstrated by the catch records in the Draft. In fairness, coastal communities from Ballard to St. Lawrence Island should not precluded from using ocean resources in reasonable proximity to their locations. Our proposal has never sought to outlaw the existence of an offshore fleet, but the consequences of preemption and localized depletions seem to be obvious socioeconomic justifications for special Council consideration under the Magnuson Act. We are told that similiar coastal protections are in place worldwide.

The effects of Alternatives 7 and 3 on both existing and future onshore receiving and processing capacity in Bering Sea coastal communities, will be generally beneficial. However, depending_ on the nature and extent of percentage resource split adopted between inshore and offshore components in the Bering Sea, and the effects of operational zones, impacts on Pribilof communities may not be tremendously significant.

NEED FOR A PRIBILOF ZONE

CBSFA would find it difficult to understand, how, given an evaluation of public and private investments made on both Pribilof Islands, and given a recognition by the Council of the dependency

of coastal communities on proximate resources, (not to mention the intent of the Fur Seal Act Amendments of 1983), some Council consideration in the form of a protected local zone would not be justified for the island communities of the Pribilofs.

CBSFA has already identified the potential for localized depletion, and sought protections for local subsistence and natural resources and longline fishing resources, through the proposal for a no bottom trawl zone around the Pribilofs. Another similiar concept is discussed in the IFQ amendment now before the Council, which contemplates exclusive coastal registration zones for some longline species. Both proposals recognize the impacts of overcapitalized offshore fleets, the potential for localized depletions, the need for binding ocean economic resources to ocean communities in close proximity, and, in CBSFA's proposal, the need for protecting habitat beneficial throughout the North Pacific fishery under Council jurisdiction. We cannot conceive that such a policy would be at odds with either the Magnuson Act or the national interest.

Thus we recommend with Alternative 7 that a Pribilof operational zone, appropriately scaled to provide both the habitat protections sought under the CBSFA no trawl proposal, and the protections from localized depletions sought in the Gulf and the BSAI Operational Zone. We are puzzled that the Council, NMFS staff, or anyone else could logically justify factory trawl closures on pollock harvest in the Gulf and BSAI Operational areas, without seeing the logic of similiar protections for the Pribilofs. To do otherwise, would have the effect of concentrating offshore fishing effort around the Pribilofs. We propose that such a zone be that area between 56 degrees and 58 degrees North, and 168 degrees to 172 degrees west.

CBSFA does not believe that a good economic argument exists for failing to define an operational zone for the Pribilofs. While we have been reminded many times that we are not presently capable of harvesting what we seek, it is clear that with the existence of a fully capitalized offshore fleet, the ability is there to quickly redistribute TAC between inshore and offshore components. This tool will be available to the Council for some time, should Pribilof communities be unable to muster appropriate developments.

Alternative 7 is also unclear regarding whether it is contemplated that by naming a 10% onshore "availability" to limit the extent of future development that may occur in affected communities. Thus, while 10% of an onshore resource allocation under Alternative 3.2 could be as much as 5% of pollock TAC, there should be no artificial limitation stated or implied that would limit the capacity of Pribilof communities, or other local based

operations to compete for resources in future years. The purpose of the allocation in the first place, from our perspective, is to provide a resource access guarantee, a guarantee from preemption, and an incentive to further investment and development in these communities that does not exist in an overcapitalized arena under derby managed open access.

We have further concerns in this repsect. It is unclear at this point whether future privatizations or IFQ programs now under consideration by the Council will impact or alter an inshore/offshore plan amendment. CBSFA's goal is to provide a resource underpinning for economic development in Pribilof communities, that have not yet come to fruition. There are many good reasons for this, as history documents, but chief among them is the time necessary to convert obsolete economies and infrastructure to modern fish and fish processing operations. Forclosing these possibilities through IFQs or other limitations, will put at risk millions of dollars of federal, State and local investments, and the existence of endangered Aleut communities as well. As the studies well indicate, the Priblof communities are well situated to argue that entry into bottomfish processing is justified, and in local, State and national interest.

Despite significant contrasts between Alternatives 7 and 3, some of which we have tried to identify here, CBSFA can support alternative 7, and failing that Alternative 3. If the Council adopts either Alternative 7 or 3.2 we recommend amendment as follows:

1. Make a direct and time graduated allocation of up to eight percent of BSAI pollock TAC to the Pribilof Islands. We think that 10 years is a reasonable timeframe for reaching this level of capacity.

2. Make such allocation to an entity comprised of Aleut Native institutions, based on the Pribilofs, not to processors.

3. Allow for the creation of a Pribilof operational zone as we have suggested above.

Finally, there is an omission in the Draft to which we must object for the administrative record. That is the failure of the analysis to recognize as applicable law for purposes of its analysis, the Fur Seal Act and its amendments. We assert that the dependence of Pribilof communities on Bering Sea resources for development of "stable, self-sufficient, enduring and diversified economies, not dependent on sealing" is a significant social factor relevant to a determination of "optimum yield" in the making of managment plans by the Council. Given the long history

and role of the Fur Seal Act in the question of resource extraction in the Bering Sea, it is inconceivable to us that Council staff or NMFS could subjectively conclude that the Fur Seal Act is not "applicable law" for analysis purposes in evaluation of fishery management plans. We continue to recommend this tool to the Council's attention.

We know that the Council has grappled with difficult issues in 18/23 for some time, and profess a readiness to cooperate in seeking a solution that is good for long term renewable natural productivity of the Bering Sea.

Sincerely,

Perfenia Pletnikoff, President
Central Bering Sea Fishermen's Association

cc. Tanadgusix Corporation
St. George Tanaq Corporation
Senator Ted Stevens
Senator Frank Murkowski
Representative Don Young

JUN 2 1 1991

Box 1585
Homer Ak 996
907-235-4189

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage Ak 99510. Fax 271-2817

Dear Management Council

As a fisherman that resides in a small community that depends on fishing as it's main stay, I want you to be aware of the Potential threat to our livihoods that the Distant Water fleet poses. These processors can harvest more fish than some entire small fleets.

The by catch of King Salmon is a prime example, With out escapement in the Kenai river the east side set netters could be shut down.

There fore when you consider the In Shore - Off Shore Allocation I ~~wish~~ wish You can Allocate large portions of the harvest to shore side processors When the catchers take their product Back and deliver, their nets will be out of the water

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To North Pacific Fishery Man Con	From Brad Chrisholm
Co. Box 103136	Co. Box 1585 Homer Ak
Dept.	Phone #

I hope that you can Eliminate these Large Catcher Processors from the Gulf of Alaska and Keep them West of Unimak Pass.

Another Issue I want to discuss is the Jones act, I will that You Would recommend to the Coast Guard that they enforce the Law, this in it self would take alot of Pressure of the fish since A lot of these Catcher Processors are foreign owed, foreign operated and not true American ships.

I closing I want to say that if You as Stewards of the Resource are not careful and Conservation Minded, the resource can not take the expanding pressure being applied.

Thank You for Your time and Consideration.

Sincerely
Bradford Chisholm

ROYAL SEAFOODS, INC.
P.O. BOX 19032 (ZIP 98109) 1226 16th AVENUE W., SEATTLE, WA 98119
TELEPHONE: (206) 285-8900 FAX: (206) 285-4515

FILE	ACTION	INFO	ROUTE TO	INT
		✓	Reg. Director	
			Deputy Director	
			Admin. Serv.	
			Plans, Coo.	
		✓	Inform. Tech. Spec.	
	✓		Fish. Biol.	
			Enforcement	
			Tech. Ind. Spr	
			PRMD	
			Oil Spill Ofc.	
			ABL	
		✓	Gen. Coun.	

June 19, 1991

Mr. Steven Pennoyer
Director of the Alaska Region
National Marine Fisheries Service, NOAA
P.O. Box 21668
Juneau, Alaska 99802-1668

RE: Inshore/Offshore Allocation
(SEIS/RIR/IRFA)

Dear Mr. Pennoyer:

This letter and its incumbent comments are respectfully submitted on behalf of Royal Seafoods, Inc. (Royal), a uniquely United States citizen-owned company which is vertically integrated and totally committed to marketing further processed pollock fillet products to the United State's market. Unlike many shorebased operations, Royal does not process nor have the economic benefit of any of the traditional species such as crab, salmon, halibut or herring, just pollock. In addition to owning two factory trawlers and managing a third, Royal owns and operates a large secondary processing plant and cold storage in Seattle, Washington. Royal Seafoods, Inc. should be considered ***the model for the Magnuson Act,*** not the focus for devastation by the North Pacific Fisheries Management Council. In spite of being a pioneering participant in 1986 and in spite of our true U.S. citizen ownership and dedicated U.S. distribution of white fish fillet products, the actions proposed by this council, if implemented as they are contemplated, will annul our hard work and render our investments worthless.

As a company we are outraged at the amount of time and the extent of the resources that this council has chosen to invest in the inshore/offshore reallocation scheme while ignoring its primary charter of fisheries conservation and management on a sustainable yield basis. I sincerely believe that the Council as a whole did not intend two years ago to move from its charter to now become primarily an apportionment board dealing with issues of a purely allocational nature. Albeit that the original intent is somewhat extraneous at this point in time as the Council must now take action on the record before it. As was stated at the

Council's meeting in Kodiak, the process has certainly come a long way since the original incident of an early closing of the fishery around Kodiak in early 1989.

In spite of all the rhetoric and obfuscation that has prevailed, I believe the Council as a whole has made a commitment to address the issue of preemption. The first major flaw I find in the supporting documentation for this proposed rule making is that no responsible examination of the issue of preemption has occurred. The record including public testimony is full of examples of the hardships all sectors experience when all the sectors discontinue fishing activities together , but the record is totally devoid of either a definition of preemption or a study of where preemption as defined has or is occurring. In fact, my reading of the problem statement and alternatives is that the Council is using two entirely different and mutually-exclusive definitions of preemption -- one for the Bering Sea and one for the Gulf of Alaska. Without a clear definition of the term and how the "preemptive" problem is addressed in each of the two management areas, it is impossible for the Council to act responsibly and in accordance with the national standards of the Magnuson Act.

If preemption is to be the defined problem, then ***Royal Seafoods, Inc. has been and continues to be preempted*** in both a real and legal sense. This fact is totally unrecognized in either the current version of the problem statement or in any element of the various analytical documents. Furthermore, there are no proposed alternatives before the Council that will grant Royal relief from this preemption. Royal's flagship, the F/T Royal Sea, the former Seafreeze Pacific, commenced processing high quality frozen-at-sea pollock fillets in mid 1986, long before even the last joint venture vessel was placed into service. Not only were we very early entrants into the fishery, but **the Royal Sea has a long pedigree of Congressional support** for the precise activity which it is currently engaged -- an activity that is at risk under the proposed amendments. This Congressional support was so direct that the Royal Sea was commissioned by the "Fishing Fleet Improvement Act FFIA) as amended in 1984" to promote at sea processing.

> "One of the main goals of the Fishing Fleet Improvement Act was to build stern trawlers equal in size and sophistication to any foreign trawlers"
> (Hearings before the subcommittee on Fisheries and Wildlife Conservation and the Environment of the House of Representatives Committee on Merchant Marine and Fisheries, 94th Congress, 1st Session (1975) (The Seafreeze Hearings)

"The outmoded vessels are competing for fisheries resources in the northwest Atlantic and northeast Pacific against large, modern vessels of Russia, Japan, Canada, and many European nations. This disparity in the age, size, and productivity of vessels which severely handicap our fishermen continues to grow worse each year with the entry of additional new modern vessels from foreign countries and the continued aging of our fleet."
(U.S.C.C.A.N., 3183 at 3184 (1984)

One of the primary goals of the FFIA was "to encourage the development of larger, more economical vessels capable of safely operating offshore and competing on the world market with vessels used by foreign fishermen (i.e., factory trawlers)."

"Many of the foreign vessels competing with them are less than five years old and range up to nearly 300 feet in length. I (Congressman William H. Bates) firmly believe that the enactment of (this) bill will enable the U.S. fishermen to construct vessels that would enable them to compete with these foreign vessels. ... On the Pacific coast fishermen are having to take small vessels designed for fishing within a few miles of the coast as much as 300 miles off shore to catch albacore. New and larger vessels would allow them to operate more safely and economically."
U.S.C.C.A.N., 3183 at 3189 (1984).

It has taken from 1969 to today for this vessel to fulfill the intent of Congress to profitably Americanize the at-sea-element. The record could not possibly be clearer that Congress encouraged and actively promoted the construction and operation of the Royal Sea and similar vessels. The North Pacific Fisheries Management Council, at the very time the Royal Sea (the ex-Seafreeze Pacific) has finally after all these years of Congressional support, become profitable under U.S. citizen ownership, is now considering regulating it into failure. Why?

I believe that a major flaw exists in the analytical data and the fundamental approach of this council as the regulatory impacts are analyzed primarily from the prospective of the costs and benefits of Alaska vs Washington and virtually ignores premises of the Magnuson Act such as "the good of the Nation as a whole" and true "Americanization of the fisheries". Nowhere are the potentially devastating market effects upon the Nation discussed. I understand how this

may have been overlooked because the pollock fishery is generally considered a Japanese surimi industry. The fact is that wedged tightly amongst the surimi producers, both ashore and afloat is a small component that is committed to the U.S. market place. (Is it possible that the truly preempted party is the United States consumer?) Where is the micro analysis of the affects on the U.S. market consistent with the voluminous analysis of Kodiak's benefits?

To the best of my knowledge, there are only three companies operating in the North Pacific pollock fishery that are totally *dedicated* to pollock production for the U.S. market. Of these three companies, two are offshore processors, one is a shore plant located in Kodiak. Of the offshore U.S. producers, Royal is by far the largest producer. Royal produces for the U.S. market regardless of the market forces/margins between the Japanese surimi price and the U.S fillet price. In addition to the *dedicated* U.S. producers, there exists both ashore and afloat operators that have the capability to produce either surimi or fillets depending strictly on the margins between the two alternatives. The Council's analysis has not addressed the U.S. consumer's plight incumbent with the virtual elimination of two-thirds of the *dedicated* U.S. producers with all remaining production for the U.S. market strictly dependant upon the market value of surimi in Japan and the current exchange rate between the U.S. dollar and the Japanese yen.

I have witnessed the long debates of the Council on this issue for nearly two years. I have watched the special interest advocates ***start with the goal*** of a disproportional allocation direct to shorebased operators and I have watched Council members with a particular interest at stake agonize over the wordsmithing of the required problem statement which would justify their contemplated reallocation. The circumstance that created the environment allowing this proposed reallocation to move as far forward as it has first arose from an unfortunate incident in the Gulf of Alaska in early 1989. At that time, several factory trawlers *legally* commenced activities in the Gulf and were accused of having prematurely suspended pollock operations for the Kodiak based pollock operators. I believe that the actual statistics indicate that the trawler's harvest shortened the Kodiak operations by mere weeks as opposed to the distorted stories being recanted today. Nonetheless, it made a point that early entrants (first come, first priority) were at risk from "preemption" by others as can be expected in any commercial activity that has become over capitalized. As stated during the Kodiak meeting, "we have come a long way from where we started". Shorebased special interests continue to do a very impressive job of confusing

the facts of where this all started, utilizing this particular incident to manipulate the system to now justify a total REALLOCATION.

As a further review of the milestones along the road of this issue, the Council convened a "blue ribbon" Economist Focus Group in Seattle on November 21, 1989. This group consisted of 28 of the most technically qualified, eminently knowledgeable and *independent* scholars of fisheries economics available in the Northwest. As a matter of procedure, the group randomly split into three discussion panels, each with the instructions of independently producing an oral report on the nature of the problem, alternatives for solving the problem, and guidelines for analysis of the alternatives. "***Upon reconvening it was clear that all three groups had reached a consensus that the nature of the problem was too many boats chasing too few fish, rather than an inshore-offshore allocation issue***". The group then went forward in detail analyzing the problem statement, putting forth a recommended solution, and recommended form of analysis. Ignoring the efforts of this group and their educated and unbiased conclusions, the North Pacific Fisheries Management Council has chosen to continue a path of total reallocation rather than addressing the issue of the moment, a preemption potential around Kodiak in the Gulf of Alaska.

In spite of being competently advised that no inshore-offshore issue per se existed, the remainder of the Council debate and actions so far have centered around "keeping the train on time" and massaging the proposed alternatives. On numerous occasions over the past two years the council has heard testimony from the public and admitted as a group that *I*ndividual *T*ransferable *Q*uotas (ITQ's) are the only viable means to address the stated problem of preemption. Ignoring what appears to be an overwhelming consensus that ITQ's are the answer, the special interest groups have been successful in keeping this alternative off the list of proposed solutions. Why?

At the most recent Council meeting in Kodiak, the Council was willing to open the floor to new alternatives; witness the addition of what has come to be referred to as the "Mid Water Trawler's Proposal". At this same time a motion was made and seconded based upon the Council's willingness to consider new options to include ITQ's as an alterative solution. During the rather informative debate that ensued from this motion, almost all Council members in one way or another articulated their opinion that ITQ's were the only logical and effective solution. The rationale for not including this viable alternative was that the "train

would get behind schedule" if the obvious and correct solution were to be included. Also for the record during this debate the reasoning of why ITQ's were originally omitted was very succinctly articulated as being ***the result of Alaskan politics rather than an issue of fisheries management for the good of the nation as a whole***.

Without having ITQ's (or any other viable alternative) included in the proposed list of alternative solutions by the Council, the Secretary of Commerce would appear to have only one viable alternative, to deny the proposed rule making in its entirety.

What may be about to become the Secretary's problem seems to me to be further complicated by the fact that it is obvious that preemption as commonly defined is occurring, but the concept of this preemption may be faulty in its assumption of who is or may preempting whom. If preemption is to be the problem, then the clock must be rolled backwards to determine who has been preempted and how. <u>One thing is certain though, shorebased plants not in operation till 1990 and 1991 have not been or will not be in any ordinary sense "preempted"</u>. I believe that all past history with fisheries issues where direct allocating measures are to be taken, the common denominator has been "historical participation" or in essence the clock has been rolled backward to measure preemption. Never has the clock been rolled forward. The first step in the analysis of this issue, should have focused on the preemption issue and the various staffs available should have developed a listing in chronological order, by individual participant, and <u>quantified</u> REAL and ACTUAL preempting by individual participant on a historical basis.

The bewitching hour has arrived and the Council must now act and either attempt to **<u>reallocate</u>** to a segment of the industry a windfall benefit that they could not achieve in a free market economy or drop the issue and return to fishery resource management issues. I urge that you all, as you contemplate this immensely important issue which will literally change thousands of lives, to remember that the playing field was level prior to 1986. All segments of the industry were acutely aware of the vast pollock resource and each participant had an equal and unrestrained opportunity to participate as they, in their individual judgement saw fit; some choose to not participate, some choose to enter through the joint venture mode fully aware of the cautions expressly highlighted in the Magnuson Act, some choose to invest in shore plants, and others choose to invest in processing at sea. The ground fish industry has been allowed to develop fully

under a free enterprise economy, totally unfettered for five years. Some made investments and took blind risks (like Royal Seafoods) as early as 1986, others are still making investments in 1991. At the end of the day, after all the rhetoric, the real issue is one of fairness. Are you as a Council going to participate in a reallocation scheme that allows one segment of the industry to have the benefit of watching five years of industry development, realize that their judgement to invest shoreside was flawed, and then seek to desecrate their successful competitors gaining through the regulatory process what they could not accomplish on a level playing field? What the shoreside processors are asking you to grant them is not altogether different than a gambler asking a casino to allow him to reposition the roulette wager after the wheel has stopped.

We respectfully suggest that the Council recognize the manipulation, obfuscation, and disinformation that has occurred, recognize the issue for its lack of merit, faulty analysis, and then vote to maintain the status quo in the Bering Sea until the process of Individual Transferrable Quotas can be implemented and actual preemption resolved. Furthermore, we believe the Council should, as originally contemplated, establish an exclusive registration zone around Kodiak setting aside the first 100,000 metric tons of pollock for vessels exclusively registered in the Gulf of Alaska.

Sincerely,
ROYAL SEAFOODS, INC.

Stuart W. Looney
President and
Chief Executive Officer

Williams, Kastner & Gibbs
LAW FIRM

John S. Dolese
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June 24, 1991

38,045.100

Steven Pennoyer
Director, Alaska Region, National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
By telecopier: (907) 586-7131

Re: Comments Regarding Amendments 18/23

Dear Mr. Pennoyer:

Our firm represents Emerald Seafoods, Inc., Emerald Resource Management, Inc., Seahawk Pacific Seafoods, Inc., Seacatcher Fisheries, Inc. and Swan Fisheries, Inc. Our clients have requested that we make the following comments regarding Amendments 18/23 in conjunction with comments which they will also submit. Our clients urge the Council to recommend to the Secretary of Commerce that he maintain the status quo in the pollock fishery in the North Pacific.

The Council has defined the issue for the purposes of analysis in Amendments 18/23 as "a resource allocation problem where one industry sector faces a risk of preemption by another." The analysis in the SEIS/RIR/IRFA[1] concludes that this potential risk is a direct result of the overcapitalization of the fishery. However, the SEIS/RIR/IRFA for Amendments 18/23 also admits that the present overcapitalization problems are not

[1]Supplemental Environmental Impact Statement and Regulatory Impact Statement and Regulatory Impact Review/Initial Regulatory Flexibility Analysis of Proposed Inshore/Offshore Allocation Alternatives to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands and in the Gulf of Alaska

resolved effectively by any of the proposed alternatives. The Council should heed this statement and maintain the status quo. It is ludicrous to adopt alternatives which do not effectively address the problem identified.

The Council has incorrectly defined the issue within the problem statement as a preemption problem. New Webster's Dictionary (1981) defines "preemption" as "the act or the right of purchasing before others; a prior assertion of ownership." The Council's use of the word "preemption" is at odds with the common ownership of the fishery.

The problem statement created by the Council assumes that there is a risk that the at-sea processors will supplant the onshore fleet. The problem statement attempts to justify an inshore preference for the GOA based upon the 1989 GOA fishery. However, the potential for future participation of the at sea fleet in the GOA has been dramatically diminished by the Secretary's adoption of quarterly allocations for the GOA.

The problem statement also attempts to use the 1989 GOA fishery to justify a onshore preference in the Bering Sea. However, contrary to the implications in the SEIS/RIR/IRFA and the rhetoric of the JV fleet, the Americanization of the pollock fishery in the Bering Sea was accomplished predominately by the participation of the at sea processor component.

The proposals set forth in Alternative 3 demonstrate that it is the inshore processing fleet which is supplanting the at-sea processors. In comparison to the harvest in 1989, the harvest of the inshore fleet will expand under variations of Alternative 3 from between 78% and 208 %.

The SEIS/RIR/IRFA attempts to buttress the onshore fleets' right to supplant the at sea fleet in the Bering Sea by including the majority of the JV fleet within the onshore sector. The JV fishery, by design, was an interim or temporary measure [2]. Moreover, it would be contrary to the Magnuson Act for the JV fleet to be given a preference over the at-sea sector. The Magnuson Act provides a preference to DAP fishery participants, not JV participants.

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[2] See, 1976 Senate Report, No 935, 95th Cong. 2nd Ses. 5 (1976)

It would also be unfair to provide a preference to the inshore processing sector which was not at the forefront of domestication of the pollock fishery in the Bering Sea. During the period when the at sea sector was making significant capital investments to domesticate the BS pollock fishery, the inshore sector in the Bering Sea concentrated on developing higher margin fisheries.

Despite the implications within the SEIS/RIR/IRFA, the at sea fleet was an expected participant in the fishery. The National Marine Fishery Service and the Secretary of Commerce encouraged the participation of the at-sea processors within the North Pacific. Investments were made based upon such encouragement. It would be inequitable for the Council now to provide a preference to the inshore sector, when it was the at sea processors, not the inshore fleet, which was at the forefront for establishing a DAP fishery.

A. Adoption of an Inshore Preference is Not Necessary to Address Biological Concerns.

The problem statement contained in the SEIS/RIR/IRFA indicates that the inshore amendment package was partially created to address biological concerns including localized depletion of stocks or other behavioral impacts to stocks, shortened seasons, increased waste and harvest which exceed the TAC. The conclusion to the SEIS/RIR/IRFA, however, indicates that the proposed alternatives will have little impact, if any, on pollock and marine mammal populations.

The biological concerns in the SEIS/RIR/IRFA's problem statement mirrored the biological concerns which the EA for Amendment 19/14 previously identified. The Secretary has already implemented regulations under Amendments 19/14 to address biological concerns identified in Amendments 19/14 [3]. Therefore, it would be unfounded for this Council to recommend to the Secretary that he provide an inshore preference based upon biological justifications.

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[3] The drafters for the EA to Amendments 19/14 were not sure the biological concerns identified even existed. See EA for Amendments 19/14, pages 18-20 23, 34-35. Furthermore, it would be duplicative to adopt additional regulations to address biological concerns which may not even exist.

B. An Inshore Allocation Would Not Comply with the National Standards of The Magnuson Act-- 16 U.S.C. § 1851.

National Standard 4 provides, in part,

> that conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fisherman; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privilege.

An inshore preference is not fair and equitable, and is not reasonable calculated to promote conservation. It would be inequitable for the Secretary to provide a preference to the onshore sector, because the at sea processor sector was the dominant force in the creation of a DAP fishery. During the time the at-sea processing sector was establishing a DAP pollock fishery, the onshore sector, especially in the Bering Sea, primarily concentrated on higher margin fisheries. Displacement of the at sea sector by the onshore sector is not appropriate to accommodate the expansion plans of the onshore processors. In contrast to the inshore processors, the at sea processors are primarily dependant on the harvest of pollock. It would be unfair to take away the livelihood of the at sea processor to accommodate the onshore processors' desire to have access to lower margin fish during slack processing times in higher margin fisheries.

An inshore allocation is also contrary to the mandate of 50 CFR 602(C)(3)(iii) which prohibits regulations that create conditions fostering inordinate control by buyers or sellers that would not otherwise exist. Under the proposed inshore/offshore analysis, the inshore processing component is given inordinate control over where fish may be delivered. Fishermen will no longer be able to sell fish to the at sea processors or the onshore processors based on the best available price. Notwithstanding the semantics of the PSPA representatives, the inshore preference is a processor preference rather than a fishing preference. Fishermen will only be allowed to sell to the processing sector in which they participate. This scenario would not exist without the creation of an onshore preference.

The processing component for both the inshore and offshore sector is considerably more discrete than the harvesting sector. Under an inshore preference, onshore processors will benefit at the expense of the fishing industry because of the limited number of processors. This is not an area which can easily be rectified. Additionally, such an allocation probably will induce additional capitalization in the processing sector capacity which is not needed or warranted.

Alternative 6, which attempts to allocate closer to the harvesting level, is also defective because it still requires the vessels to be delivered onshore. Secondly, as previously discussed, the basis for the allocation is participation of the JV fleet. Such a preference is contrary to the mandate of the Magnuson Act which favors full Americanization of the fishery over partial Americanization of the fishery. Any preference based on historical participation of the fisheries should be given to the at sea processors which were at the forefront of developing a DAP fishery.

The inshore allocation also does not comply with National Standard 5, which provides that conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources. The inshore preference will undercut the efficiency of the at sea processors and will jeopardize their viability. This is especially inappropriate because it undercuts the most efficient sector, the at sea sector, which has the best prices and the best quality of finished product. An inshore allocation will also create strong incentives for a continued excess investment in the private sector of fishing and capital and labor, which is contrary to the mandate of 50 CFR 602.15(B)(2)(II). This will increase capitalization of the onshore fleet and exacerbates, rather than alleviates, the underlying problems which the Council believe warrants consideration of a inshore preference.

D. The SEIS/RIR/IRFA For Amendments 18/23 Does not Comply with the Requirements of The National Environmental Policy Act.

The SEIS/RIR/IRFA for Amendments 18/23 does not comply with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA). NEPA requires that agencies include the following in every recommendation proposals for a major federal action: a detailed statement setting forth environmental impacts of the proposed action, any adverse environmental impacts which cannot be avoided should the proposal be implemented, and alternatives to the proposed action. 42 CFR § 4332(C).

NEPA requires that all alternatives must be analyzed which are not deemed too remote, too speculative, too fanciful or too hypothetical. Life of Land v. Brinegar, 485 F.2d 460, 472 (9th Cir. 1973), cert. denied, 416 U.S. 961, 40 L. Ed. 2d 312 , 94 S. Ct. 1979 (1974). Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519, 55 L.Ed 2d 460 551, 98 S. Ct. 1197, (1978) The purposes of NEPA are frustrated

> "when consideration of alternatives and collateral effect is unreasonably restrictive. This can result if proposed agency action are taken and analyzed in artificial isolation."

Greene County Planning Board v. Federal Power Com, 559 F.2d 1227, 1232 (2nd Cir. 1976) cert. denied, 434 U.S. 1068, 55 L. Ed. 2d 761 , 98 S. Ct. 1260 (1978).

An alternative may not be disregarded merely because it does not offer a complete solution to the problem. Natural Resources Defense Council, Inc. v. Morton, 148 U.S. App. D.C. 5, 458 F.2d 827, 836 (1972). Until an agency issues a record of decision, the agency may not limit the choice of reasonable alternatives. 42 CFR §1506.1.

Two purposes underlie the NEPA requirement that a EIS contain a discussion of proposed alternatives: "to ensure that alternatives are explored in the initial decisionmaking process and to provide an opportunity to those removed from the process also to evaluate the alternatives." Citizens Against Toxic Spray, Inc.v. Bergland, 428 F. Supp. 908, 933 (1977). Discussion of alternatives must go beyond "mere assertions to provide sufficient data and reasoning to enable a reader to evaluate the analysis and conclusions and to comment on the EIS." National Resources Defense Council, Inc. v. Calloway, 524 F.2d 79, 93 (2d Cir. 1975). A detailed and careful analysis

> of the relative merits and demerits of the proposed action and possible alternatives is of such an importance in the NEPA scheme that it has been described as the "linchpin" of the EIS.

Id at 92.

Analysis of the interpretation must be contained within the EIS. Studies or memoranda contained in administrative record, but not incorporated in any way into an EIS, may not bring the EIS in compliance with NEPA. Grazing Fields Farm v. Goldschmidt 626 F.2d 1068 (Cir. 1 1980)

The SEIS for Amendments 18/23 does not comply with NEPA requirements. It was unreasonable for the Council not to include IFQ's and moratoria as alternatives. NEPA specifically requires that all reasonable alternatives be analyzed to allow the decision maker an opportunity to make a reasoned decision. IFQs and a moratorium are reasonable alternatives and should have been included for consideration.Both options directly address the issue of overcapitalization in direct contrast to the other alternatives considered within the analysis. Failure to include these alternatives in the analysis does not provide a proper framework for reviewing the SEIS or a proper framework for decisionmaking.

The fact that IFQs or a moratoria may be considered on an independent track is not a reasonable basis for not including both alternatives within the analysis. Allowing an agency to exclude reasonable alternatives undercuts the spirit and policy of NEPA. A reasonable alternative should not be limited merely because it may be considered elsewhere. If an alternative is a potential solution to the problem, then it should be considered.

It is paradoxical that the drafters included Alternative 5, which merely restated the Roe Stripping amendments which were then in front of the Secretary for consideration. Inclusion of Alternative 5 was necessary to ensure that the decision makers considered all reasonable alternatives. By excluding both moratoria and IFQs from the analysis, the FMPC is essentially stating that the included alternatives are the only appropriate alternatives for consideration. Such an action is ludicrous when one considers the drafter's own statement in the SEIS that the alternatives analyzed do not solve the problem.

The analysis for Alternative 2 is also lacking. Drafters of the analysis state that analysis of traditional management measures was incomplete because the Council did not provide it sufficient information [4]. 40 CFR § 1502.22 specifically requires that agencies must obtain information necessary to the decision making process if the information is available at a cost which is not exorbitant. Traditional management measures should be considered before, not after, consideration of non-traditional management measures.

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[4] See SEIS/RIR/IRFA, pg.iv.

D. The Council Should Request an Extension of the Review of The SEIS, Because More than 45 days is Necessary to Adequately Review the Document.

Agencies shall not allow less than 45 days for comments on draft environmental impact statements. 40 § 1506.11(c). Upon a showing of compelling reasons of national policy, the Environmental Protection Agency may extend this period on consultation with any other federal agency. 40 § 1506.11(d). An extension of the review period is appropriate in this instance. The review period of 45 days is too short for a thorough review by the public. The document is complex, and the length of the document exceeds the suggested page limit of 300 pages for proposals of unusual scope of complexity. 40 CFR § 1502.7.

For the reasons stated above, our clients request that the Council recommend to the Secretary that he maintain the status quo in the pollock fishery in the North Pacific.

Sincerely yours,

WILLIAMS, KASTNER & GIBBS

John S. Dolese

cc: David Cottingham
James A. Wexler

To Whom it may Concern,

I am writing in Regards to the vote on June 25th by the NPFMC. If this passes, it will not solve any problems but create more. My father fishes for a shore plant and my husband fishes on a factory Trawler, the Arctic Storm. I also worked on the ship before starting my family. I realize the present split of 80-20% is not fair, especially now that there are quotas, which we agree with. I feel that if this plan passes and is implemented, it will create a strong preference for shore-based plants — namely "foreign-owned" plants. I do not think you realize what an upheaval this could create for thousands of people — financially, economically, socially, not to forget ... emotionally! There are families at stake. Can you ever imagine what will happen to the surimi (and other product) markets?

I realize there are many factors to take into account, but this "50-50 deal" is not the solution. Perhaps you should also take into account the "foreign" drift-netting problem. Jobs will not be created, they will be inadequately replaced. Many companies, investments, and lives will be destroyed. Factory Trawlers have come too far and worked to hard to be pushed aside.

I hope my feelings are more than a passing piece of paper. I have worked and lived in Dutch Harbor and Kodiak. I am a strong environmental activist. I am a college graduate who has been accepted to phycician asst. school. I am a hard-working, tax-paying, voting citizen.

Thank You,

Vera E. Greenwood

Vera Greenwood

Dear Mr. Pennoyer. Please (do) not vote to change the Magnu[s]on act of 1976. The Japanese are rapeing the high seas with their drift nets. We dont owe them any favors. I'm 74 yrs old - sportfished Puget Sound all my life. Suddenly no salmon or steelhead show up this time of year. There is plenty of herring and krill in the Sound. Few Summer kings and no pink salmon (91) a pink yr. here. I blame the deep sea drift nets. I hope we can rebuild our salmon runs and stop the ocean drift nets. Save the Bering Sea for American Fishermen (Please)

Kenneth L. Scoggin - Doretta Swain

received 6/24/91 NMFS

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WA PM 19 JUN 1991

29 USA

Mr. Steve Pennoyer
Alaska Regional Director
National Marine Fisheries Service
P.O. Box 21668
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99802-1668

C-2
AL BURCH

Trawl vessels delivering groundfish to Bering Sea In-shore processors 1991

Trident (Akutan) 1991

Vessel Name	Former JV
Columbia	Yes
Dona Liliana	Yes
Hazel Lorraine	Yes
Viking Explorer	Yes
Arcturus	Yes
Seeker	Yes
Flying Cloud	Yes
Progress	Yes
Aldebraran	Yes
Gulf Maiden	
Pacific Viking	Yes
Caitlin Ann	
Silver Chalice	Yes
Constitution	
Nordby	
Masonic	
Royal Atrlantic	Yes
U.S. Dominator	Yes
Arrow	
Dona Martita	Yes

Westward 1991

Viking	Yes
Westward I	Yes
Golden Dawn	Yes
Pacific Prince	
Hazel Lorranie	Yes
Sharon Lorranie	Yes
Caitlin Ann	
Chelsea K (Ocean Dynasty)	Yes
Forum Star	
Lone Star	

***Northern Victor* 1991**	
Pegasus	Yes
Commodor	Yes
Storm Petrel	Yes
Alaska Pride	Yes
Poseidsn (Silver Wave)	Yes
Royal Atlantic	Yes

UniSea 1991	
Aurora	Yes
Auriga	Yes
American Eagle	Yes
AlSea	Yes
Argosy	Yes
Starlite	Yes
Starfish	Yes
Starfish	Yes
Starward	Yes
Starword	Yes
Nordic Star	Yes
Gunmar	Yes
Alyeska	Yes
Sea Dawn	Yes
Lady of Good Voyage	Yes
Perserverance	Yes
Silver Chalice	Yes
Viking	Yes
Western Dawn	Yes
Tracy Anne	
Perserverance	Yes
Pacific Alliance	Yes
Pacific Challenger	Yes
Destinition	

Alyeska 1991

Destination	Yes
SeaWolf	Yes
Morning Star	Yes
Great Pacific	Yes
Royal American	Yes
Ocean Hunter	Yes
Western Dawn	Yes
Rosella	Yes
Lone Star	
Ambition	Yes
Caravelle	

Number of individual trawl vessels (counting vessels which deliver to more than one processor only once) — 64.

Number of vessels believed to be former JV vessels — 53.

JAY D. HASTINGS
ATTORNEY AT LAW

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June 24, 1991

Mr. Clarence Pautzke
Executive Director
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 98510

Re: Comments on Addendum I to the Regulatory Analysis for the Proposed Inshore/Offshore Allocation

Dear Clarence:

These comments are submitted by myself on behalf of the Japan Fisheries Association. The purpose of this comment is to address certain misunderstandings in Addendum I only. The Association and its members have taken no position on the allocation issue itself.

Market Structure Issues. Addendum I reflects serious misunderstandings of the Japanese surimi market and its structure. During the Americanization process the U.S. fishery development strategy was to simply eliminate Japanese fishing as soon as possible and force Japan to purchase surimi from the U.S. industry. Yet the burden of marketing the U.S. product in Japan was left entirely to the Japanese. Little, if any, effort was devoted to a better understanding of the Japanese market and its structure for the long term benefit of the U.S. industry.

Consequently, when problems arise in the Japanese market they are not well understood and are generally blamed upon a mistaken image of the market structure. Most of the blame is directed at the major Japanese distant-water fishing companies since these companies developed the pollock fisheries off Alaska and are most visible in the United States. But as long as the U.S. continues to labor under this mistaken image, the real problems can never be addressed and properly resolved.

The Addendum seriously misstates that 5 years ago the two major Japanese fishing companies essentially controlled all market channels for surimi through a complicated system of ownership and that all distributors and surimi manufacturers had to line up with these two companies. We have no idea of the source for this misinformation.

Five years ago in 1986 total domestic surimi production in Japan was about 358,000 tons. At sea production of pollock surimi was about 101,000 tons and shoreside production of pollock surimi was about 215,000 tons. The remaining surimi production was from other species. Imports were about 142,000 tons for a total supply on the Japanese market of 500,000 tons. We estimate that the two largest fishing companies produced about 35,000 tons of surimi each and handled about 20,000 tons each of imported product, mostly from the United States. The remaining production was handled by other Japanese at-sea and shoreside producers.

Although these two companies handled a large amount of the domestic supply in 1986, it was far from the amount required to "essentially control" all marketing channels for surimi. The other Japanese distant-water and shoreside producers developed their own distribution channels for marketing their surimi in Japan. They did not have to line up with either of the two large surimi companies because of some complicated system of ownership. Nor did the Japanese distributors and kamaboko producers have to line up with either of these two major companies to purchase surimi. The distributors handled various types of surimi from a number of sources and the kamaboko processors could purchase surimi from those distributors who handled the types of surimi suited to their individual processing needs.

This mistaken image which has been cultivated in the United States is not dissimilar from that held by other American industries who complain about the Japanese market. I would like to offer our evaluation on how this mistaken image has been cultivated over the years.

The large distant-water surimi companies produced higher grades of pollock surimi which supplied a certain segment of the Japanese kamaboko market. But the competition among the major surimi companies for this segment of the market was intense. The kamaboko processors did not have to buy their surimi from either one major company or the other. They were free to choose the surimi which met their particular individual processing needs from among the major companies. And the Japanese surimi companies competed intensely to meet the individual needs of the kamaboko processors. The loss of a fraction of one percent of market share was most painful for the company marketing personnel. A similar gain in market share was a major accomplishment.

What were some of the major characteristics in this highly competitive marketing environment which have contributed to a mistaken image of the market structure? We have

identified at least five major characteristics which are discussed below.

First, information flow. The competition for the most timely and detailed information on every aspect of the business operation from the fishing grounds through final distribution of the product was intense. Information in the greatest detail on every aspect of the management of the pollock fishery was obtained through company and association branch offices in the United States and the employment of American consultants and legal advisors. Detailed market information from various sources on the Japan side provided a company with the means to make adjustments in marketing strategy on an hourly basis. The slightest delay in obtaining and processing the most timely information, regardless of its substantive value, was viewed as providing a competitor with a marketing advantage.

Second, quality control. The particular quality needs of the surimi market dictated production on the fishing grounds. Variations in the quality of surimi supplied force a kamaboko maker to make adjustments in the whole line of kamaboko production.

Quality control on the fishing grounds was enhanced by a number of operation factors. Japanese surimi vessels were dedicated to the production of surimi only. Officers, fishing and processing personnel were hired with the assurance of lifetime employment. They were highly trained in the company standards for surimi production and would stay onboard the same company surimi vessel for several months each year. Each surimi vessel within the Japanese fleet gained its own reputation in the Japanese market for quality and the characteristics of the surimi it produced and the vessels, even those belonging to the same company, competed fiercely with each other to maintain and enhance their reputations. Consequently, the quality and characteristics of the grades of surimi produced aboard each Japanese vessel were highly consistent from lot to lot.

Furthermore, Japanese vessels did not compete for access to pollock resources because of vessel-by-vessel allocations. Competition was focused upon the market. The companies recognized that competition for the resource on the fishing grounds under an Olympic system would seriously disrupt their marketing strategies. Of course, competition among the companies within Japan for vessel allocations was intense. But once the internal allocation problem was resolved, attention was refocused upon competition in the market. The only way each vessel could ensure maximum

consistency in the quality of its production as demanded by the market was to hold its own allocation.

Third, long term planning. The marketing strategy of the Japanese fishing company was to maintain both the market and improve upon the company share in that market over the long term. During periods of depressed market prices production would not be switched to other products to take advantage of higher prices. Adjustments would be made in the surimi vessel operation and other related areas to carry the company through the depression period. Similarly, during periods of high market prices a shift in strategy to take advantage of short term profits at the risk of loss in market share was unthinkable. The slightest loss of market share to a competitor in that intensely competitive environment would be fatal. That lost share could probably never be regained.

Fourth, service to the customer. Quality is only one factor in the marketing strategy. In Japan service to the customer is also given top priority. And the Japanese surimi companies competed intensely to service and maintain their customers. Extensive time and effort was expended to understand the particular individual needs of the kamaboko processors. Equal amounts of time and effort were expended to service those needs at a moment's notice. The Japanese surimi companies were highly regarded as reliable suppliers of product and service to meet the individual needs of their customers. Through these efforts the Japanese surimi companies developed strong relationships based upon trust with their distributors and end users.

And fifth, dispute settlement regarding problems in the fishery. Internal disputes arising from conflict on the fishing grounds or management of the fishery were quickly resolved. The Japanese companies recognized that unresolved disputes divert too much time, energy and resources away from the market. Both sides of a dispute would immediately begin to work together with the assistance of the government to compromise and resolve a problem as soon as possible.

The competition among Japanese companies in the Japanese market is not easy for Americans to understand. For one attempting to look in from the outside without a sensitive feeling for the intensity of this competition, what is seen on the surface only gives the distinct impression of a Japan Inc. and market collusion. For example, when one surimi company would increase or lower its price on the market, the other companies would follow instantaneously. And the personnel in the marketing divisions of the following companies would be reprimanded for their failure to obtain

more quickly the information upon which the first company's decision was based. The outsider only sees the brevity of time between the decision of the lead and following companies and can only conclude that the price change was the result of collusion. But as long as this mistaken image persists, the Japanese market structure will never be understood and problems cannot be properly resolved.

Addendum I further misstates that under the current new situation the Japanese distributors and 3100 kamaboko makers now have more options with respect to the source of supply of surimi and have a greater control over quality and greater access to the actual surimi manufacturers so that they can order the types of surimi that meet their needs. But in fact the new situation is not better for the Japanese kamaboko makers.

It is true that there are now more sources of supply. But this does not mean the distributors and kamaboko makers who purchase imported surimi have more options. And fortunately for the Japanese kamaboko makers, not all 3100 companies have to rely upon imported surimi from the United States. We estimate that approximately 100 Japanese kamaboko makers utilize 70-80 percent of the imported U.S. surimi.

There are a number of points to discuss here which explain why the situation is not better for the kamaboko distributors and manufacturers. First, even though there are more companies producing surimi, there has been a serious shortage of surimi on the Japanese market. This shortage of supply has also caused prices to increase to unprecedented levels. Although the shortage of supply and high prices may be good for the U.S. surimi producers over the short term, certain factors contributing to the shortage which are under the control of the U.S. side are not favorable to the Japanese kamaboko makers and the Japanese market over the long term.

One factor contributing to the shortage is that when the price of surimi fell last year due to oversupply, many U.S. producers switched their production to fillets. Yet even though surimi prices have now increased to unprecedented levels on the Japanese market, many processors continue to produce fillets since the fillet market remains strong. Adding further to the shortage is the fact that many of those still processing surimi are selling to the stronger Korean market. And finally, the fact that most U.S. processors only produce the highest grades of surimi with lower recovery rates has only aggravated the situation. Many Japanese kamaboko makers dependent upon imported surimi

are now unable to find an adequate surimi supply to keep them in operation.

The Japanese fishing companies would have never permitted such a severe shortage of surimi to occur on the Japanese market due to factors under their control. Their surimi vessels were totally dedicated to the production of surimi and did not have the capability to switch production. Since Japanese fishing vessels held individual allocations they would have probably adjusted fishing operations in advance based upon company market information to help avoid an oversupply in the market and a subsequent drop in price. And during higher prices the Japanese fishing companies would never have switched their market for short term profits. The Japanese fishing companies would have adhered to their marketing strategy to continue servicing the market over the short term slump in order to regain market stability and maintain market share which would eventually translate into a profitable return over the long term.

Consequently, the current situation has caused the Japanese kamaboko manufacturers to begin questioning the reliability of the United States industry as a long term stable source of supply. We have been advised that at least 3 companies which rely upon imported surimi have given up production. The shortage of supply, loss of production and higher retail prices will predictably result in the loss of market. Japanese consumer tastes are changing. And once kamaboko products are replaced on the shelves of Japanese stores with more reliable consumer oriented substitute products, it will be most difficult to regain that shelf space. This is not good for the long term stability of the Japanese kamaboko market and will predictably have a negative effect upon the Japanese kamaboko makers and the U.S. surimi processors.

Second, the Japanese kamaboko manufacturers do not have greater control over quality and greater access to the actual surimi manufacturers so that they can order the types of surimi that meet their needs. The Japanese kamaboko manufacturing companies, with the exception of a very few, are smaller and medium sized companies and are not engaged in international business. It is quite difficult for them to be making frequent trips to the U.S. to "access" the actual surimi manufacturers. And in the past the kamaboko makers did not have to "access" their surimi manufacturers because they are the market. Rather, the Japanese distant-water fishing companies maintained constant "access" to the kamaboko manufacturers to better understand the specific individual processing needs of their customers. And the Japanese fishing companies continue to do their best to service the Japanese market for the benefit of U.S. surimi.

But still the kamaboko manufacturers encounter problems with quality over which they have no control. The Japanese kamaboko manufacturers acknowledge that within a very short period of time the U.S. industry has acquired the capability to produce the top grades of surimi. Overall quality is not a problem. Rather, the problem is the inconsistency from lot to lot in the characteristics of the surimi produced by a single processor. Consequently, the kamaboko makers have to blend more U.S. product in order to develop a consistency in characteristics so that kamaboko recipes do not have to be continually modified.

The U.S. response generally is that the Japanese market will have to adjust to this new situation. This is true, but we have to emphasize that the adjustments may not be what is expected by the U.S. industry. If the U.S. industry would have had a better understanding of the Japanese market and market structure before the Americanization process was completed, the industry may have found that it is better to adjust the developing industry to the established market rather than expect the market to adjust to a new industry.

Foreign Investment and Market Structure. This whole section seems to characterize Japanese investment as a threatening form of control over the Japanese market. As explained above, the major Japanese fishing companies did not control the market through production or some complicated system of ownership. What they did was compete among themselves and they did so most intensely for markets and market share through quality production and service to the customer. The market had choices and the market stuck with the quality control and service which best met its needs. This intense competition based upon the best information sources possible contributed to a very stable market in Japan. But markets and market share could easily be lost as the result of a few critical mistakes.

In this regard, we are unaware of the Trade Association Act for the Adjustment of Marine Products referred to in the Addendum. If the Addendum means to refer to the Export Transaction Law, there are no seafood export cartels under this law. If the Addendum means to refer to the Fishery Production Adjustment Law (unofficial translation), this law authorizes cartels only for the purpose to control the catch of fish in coastal waters. In any event, no major distant-water Japanese fishing company was ever a member of any cartel formed under the authorization of an act. Therefore, we do not understand the relevance of this discussion. The only way for a Japanese company to maintain its market share

against rival companies was by means of a better product and better service to the customer over the long term.

When these major fishing companies lost their fishery allocations, they lost the ability to compete with product from their own vessels which had gained so much credibility in the Japanese market. The market is now open to new competition. There are now between 20 and 30 Japanese importers of U.S. surimi into Japan. Many of these new importers may not have the same interest in maintaining the long term stability in the Japanese surimi market as the major Japanese fishing companies did in the past. They are brokers and they only desire to move product as quickly as possible and not hold inventory.

If the U.S. was worried about foreign control through ownership, it should have been limited or prohibited by law at the very beginning of the Americanization process. But that is not what was heard at the time. In fact, foreign investment was encouraged. And one year it was even forced upon the major companies in exchange for allocations.

It has been most discouraging to continuously hear the fears and criticisms towards foreign investment by the major Japanese fishing companies in both the offshore and onshore sectors. These companies which developed the Japanese market for Alaskan pollock surimi and competed intensely in that market were the most interested in maintaining its stability for the benefit of the U.S. product through their investments. But their intense competition has been broken and their investments have been given little encouragement by the U.S. industry and U.S. fisheries management.

The U.S. industry does not have to fear market control through foreign ownership. But what the U.S. industry must begin to worry about is maintaining the Japanese market for U.S. surimi. And this is going to take a lot more time, effort and marketing in Japan than we have seen so far.

Sincerely,

Jay D. Hastings
Japan Fisheries Association

U.S. North Pacific Factory Trawlers
Pollock Capacity in 1990

Pollock Production	Estimated Annual Pollock Capacity (Metric Tons)
Actual (1)	2,634,000
Capacity (2)	3,813,000

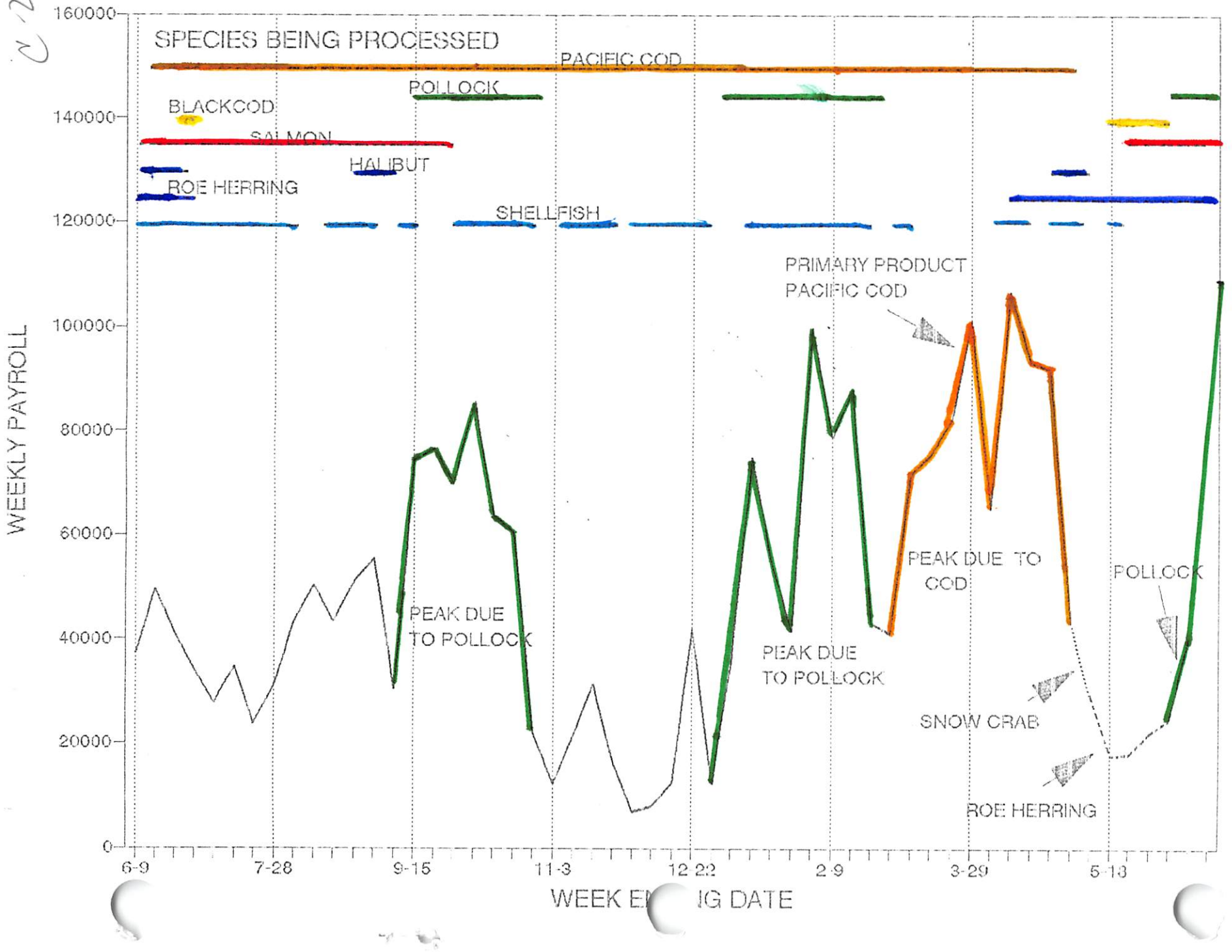
Total Factory Trawlers = 58
Total Motherships = 6
Total Factory Trawler Fleet = 64
Average Length = 238 feet

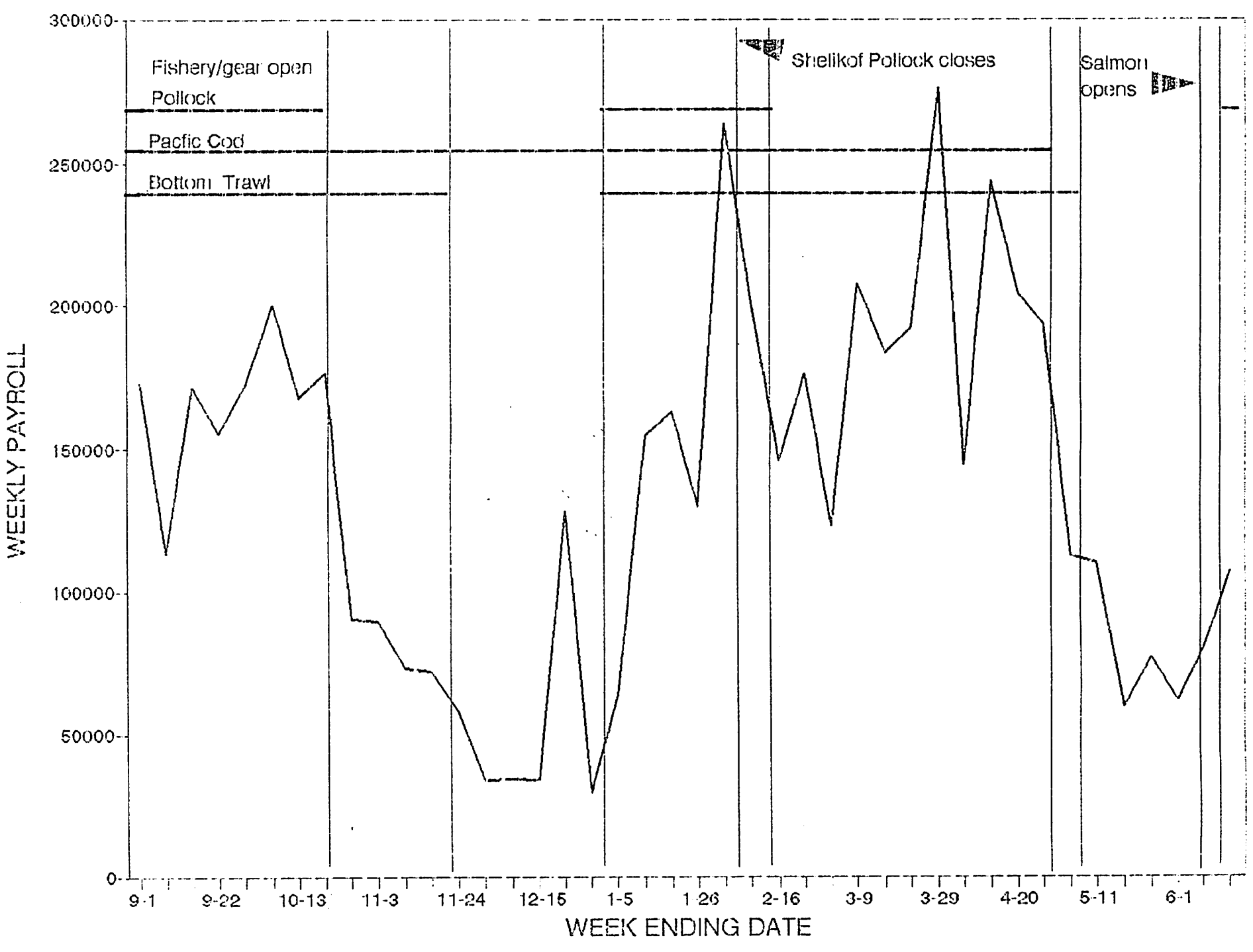
(1) 1990 actual production under 240-day fishing season.

(2) 1990 capacity assuming 300-day fishing seasion.

Source: Personal Communication with Factory Trawler Companies, "Pacific Fishing," and the American Factory Trawler Association

WESTERN ALASKA FISHERIES, INC. CONFIDENTIAL




KODIAK PROCESSORS(4) COMBINED
300000
250000
200000
150000
100000
50000
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WEEKLY PAYROLL
Fishery/gear open
Pollock
Pacfic Cod
Bottom Trawl
Shelikof Pollock closes
Salmon
opens
9-1
9-22
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6-1
WEEK ENDING DATE

Received During Public Comment JUNE 1991 C-2

	Plant	Daily Capacity	Monthly Cap.	Annual Cap.
1987	Trident	150	4,001	48,006
	Alyeska	300	8,001	96,012
	UniSea	300	8,001	96,012

Total Capacity
240,030

Total Harvest
97,985

Percent of Cap.
0.408219806

	Plant	Daily Capacity	Monthly Cap.	Annual Cap.
1988	Trident	250	6,668	80,010
	Alyeska	300	8,001	96,012
	UniSea	300	8,001	96,012

Total Capacity
272,034

Total Harvest
185,809

Percent of Cap.
0.683035944

	Plant	Daily Capacity	Monthly Cap.	Annual Cap.
1989	Trident	250	6,668	80,010
	Alyeska	400	10,668	128,016
	UniSea	300	8,001	96,012

Total Capacity
304,038

Total Harvest
190,723

Percent of Cap.
0.627299877

	Plant	Daily Capacity	Monthly Cap.	Annual Cap.
1990	Trident (To 3/30)	250	6,668	20,003
	Trident (After 4/1)	600	16,002	144,018
	Alyeska	500	13,335	160,020
	UniSea (To 9/30)	300	8,001	72,009
	UniSea (After 10/1)	1,200	32,004	96,012

Total Capacity
492,062

Total Harvest
190,723

Percent of Cap.
0.387599924

	Plant	Daily Capacity	Monthly Cap.	Annual Cap.
1991	Trident	900	24,003	288,036
	Westward (6/1)	800	21,336	256,032
	Alyeska	600	16,002	192,024
	UniSea	1,200	32,004	384,048

Total Capacity
1,120,140

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MEMBER VESSELS
AJ
ANNIHILATOR
BAY ISLANDER
BLUE FOX
CAPE KIWANDA
CARAVELLE
COHO
EXCALIBUR
EXCALIBUR II
HAZEL LORRAINE
IRENE'S WAY
JEANETTE MARRIE
LESLIE LEE
MARATHON
MISS LEONA
MUIR MILACH
NEW JANET ANN
NEW LIFE
OCEAN SPRAY
PACIFIC CHALLENGER
PACIFIC FUTURE
PATIENCE
PATSY B.
PEGASUS
PIONEER
QUEEN VICTORIA
RAVEN
ROSELLA
SEEKER
SLEEP ROBBER
SONNY BOY
VEGA
WESTERN DAWN

MEMORANDUM

DATE: June 19, 1991

TO: MTC Membership

FROM: Steve Hughes

SUBJECT: Inshore/offshore Data

After the ~~June~~ APRIL NPFMC meeting, I requested that NMFS in Juneau prepare an "official database" of Bering Sea/Aleutian Island pollock catches between defined inshore/offshore components. While NMFS was not able to break out motherships as a separate category, they did provide a useful database of DAP inshore, DAP offshore, and JVP catches for 1987-90 and DAP vs JVP only, for prior years (Attachment 1). In this four-year history of catches, motherships operating inside three miles are included in the DAP inshore, and motherships operating in federal waters (3-200 miles) are included in the DAP offshore. Also, we had hoped that 1986 would be included in the NMFS database, but it was not. Separately, OMB has reported 1986 Bering Sea/Aleutian Island pollock catches as 43,700 mt at sea and 14,200 mt shorebased with the same 835,000 mt of JVP.

Attachment 2 provides two tables using the 1986-90 catch histories and the 1987-90 catch histories, respectively. The top of each table is simply a repeat of the government catch data plus percentages which I have calculated.

The bottom four panels of the table show catches in mt and percent which are attributed to vessels that <u>catch but do not process aboard</u>. Accordingly the JVP and DAP inshore represents catcher vessel catches, except for those delivered to offshore motherships--which is not

defined. The next three panels are JVP and DAP inshore, plus 10%, then 15%, and finally 20%, of DAP offshore which is a realistic range of the missing catcher vessel component--catches delivered to offshore motherships.

Based upon 1986-90 catch histories, the data show that vessels which catch but don't process aboard have accounted for 64.5%-69.1% of Bering Sea/Aleutian Island pollock catches. Using the 1987-90 catch histories, the percentage ranges from 58.6%-63.2% for vessels that catch but don't process aboard.

This type of catch history data should be an integral part of the upcoming "Mother of all Council Meetings." See you there.

6/4/91
NMFS/AKR/Fish Management

Pacific cod and pollock catch, by FMP, processing sector, and year. Data in round metric tons (mt) for calendar years.

	DAP INSHORE	DAP OFFSHORE	DAP TOTAL	JVP	TALFF
Bering Sea/Aleutians					
Pacific cod					
1980			5,606	8,456	37,319
1981			14,137	9,159	39,113
1982			24,894	13,591	28,175
1983			41,979	14,362	41,506
1984			38,658	30,771	58,511
1985			45,823	41,272	57,177
1986			34,235	63,942	39,859
1987	21,124	23,908	45,032	58,157	54,831
1988	41,722	46,485	88,207	109,892	NONE
1989	27,932	96,931	124,863	44,617	NONE
1990	34,316	132,969	167,285	8,078	NONE
Pollock					
1980			133	10,652	1,006,130
1981			234	42,083	986,944
1982			155	54,604	959,337
1983			1,091	149,014	891,463
1984			7,313	237,008	932,989
1985			30,755	337,540	820,283
1986			57,904	835,103	352,329
1987	97,985	120,985	218,970	1,044,468	3,637
1988	185,809	347,244	533,053	826,413	NONE
1989	190,723	807,232	997,955	288,352	NONE
1990	218,650	1,172,262	1,390,912	22,397	NONE
Gulf of Alaska					
Pacific cod					
1980			na	466	34,245
1981			1,060	58	34,969
1982			2,250	193	26,936
1983			4,198	2,426	29,777
1984			3,231	4,649	15,897
1985			2,954	2,266	9,086
1986			8,045	1,357	15,211
1987	24,368	4,453	28,821	1,978	NONE
1988	26,384	4,158	30,542	1,661	NONE
1989	36,174	5,371	41,545	NONE	NONE
1990	57,745	13,027	70,772	NONE	NONE

	DAP INSHORE	DAP OFFSHORE	DAP TOTAL	JVP	TALFF
Pollock					
1980			na	1,136	112,997
1981			563	16,857	130,324
1982			2,217	73,917	92,612
1983			120	134,131	81,358
1984			1,037	207,104	99,260
1985			15,379	237,860	31,587
1986			21,328	62,591	114
1987	32,973	7,150	40,123	22,822	NONE
1988	51,854	4,780	56,634	152	NONE
1989	33,405	39,080	72,485	NONE	NONE
1990	62,903	17,673	80,576	NONE	NONE

Notes: DAP Inshore/Offshore data not available prior to 1987.
DAP data 1980-1986 from PacFIN; 1987 on are NMFS data.
All JVP/TALFF data from NWAFC Processed reports.
DAP Data include discards starting in mid-1988; JVP and TALFF data are landings.
For this table, inshore processors operate entirely within 3 miles and are not permitted as vessels by NMFS.

BS/AL Pollock 1986-90 only. Source: NMFS, OMB

Year	DAP Inshore mt	%	DAP Offshore mt	%	JVP mt	%	Total
1986	14,200	1.59	43,700	4.89	835,103	93.52	893,003
1987	97,985	7.75	120,985	9.57	1,044,468	82.67	1,263,438
1988	185,809	13.67	347,244	25.54	826,413	60.78	1,359,465
1989	190,723	14.83	807,232	62.76	288,352	22.42	1,286,307
1990	218,650	15.47	1,172,262	82.94	22,397	1.58	1,413,309
1986-90	707,367	11.38	2,491,423	40.08	3,016,733	48.54	6,215,522

JVP + DAP Inshore

Year	mt	%
1986	849,303	95.11
1987	1,142,453	90.42
1988	1,012,222	74.45
1989	479,075	37.25
1990	241,047	17.05
1986-90	3,724,100	59.92

JVP + Inshore DAP + 10% DAP Offshore

Year	mt	%
1986	853,673	95.60
1987	1,154,552	91.38
1988	1,046,946	77.00
1989	559,798	43.53
1990	358,273	25.34
1986-90	3,968,872	64.52

JVP + Inshore DAP + 15% DAP Offshore

Year	mt	%
1986	855,858	95.84
1987	1,160,601	91.86
1988	1,064,309	78.28
1989	600,160	46.66
1990	416,886	29.49
1986-90	4,091,258	66.81

JVP + Inshore DAP + 20% DAP Offshore

Year	mt	%
1986	858,043	96.09
1987	1,166,650	92.33
1988	1,081,671	79.56
1989	640,521	49.80
1990	475,499	33.64
1986-90	4,213,645	69.11

ATTACHMENT 2

BS/AL Pollock 1987-90 only

Year	DAP Inshore mt	%	DAP Offshore mt	%	JVP mt	%	Total
1987	97,985	7.75	120,985	9.57	1,044,468	82.67	1,263,438
1988	185,809	13.67	347,244	25.54	826,413	60.78	1,359,465
1989	190,723	14.83	807,232	62.76	288,352	22.42	1,286,307
1990	218,650	15.47	1,172,262	82.94	22,397	1.58	1,413,309
1987-90	693,167	13.02	2,447,723	45.99	2,181,630	40.99	5,322,519

JVP + DAP Inshore

Year	mt	%
1987	1,142,453	90.42
1988	1,012,222	74.45
1989	479,075	37.25
1990	241,047	17.05
1987-90	2,874,797	54.01

JVP + Inshore DAP + 10% DAP Offshore

Year	mt	%
1987	1,154,552	91.38
1988	1,046,946	77.00
1989	559,798	43.53
1990	358,273	25.34
1987-90	3,119,569	58.61

JVP + Inshore DAP + 15% DAP Offshore

Year	mt	%
1987	1,160,601	91.86
1988	1,064,309	78.28
1989	600,160	46.66
1990	416,886	29.49
1987-90	3,241,955	60.91

JVP + Inshore DAP + 20% DAP Offshore

Year	mt	%
1987	1,166,650	92.33
1988	1,081,671	79.56
1989	640,521	49.80
1990	475,499	33.64
1987-90	3,364,342	63.21

I/o Cmts

Ted Evans
9652 48th Ave. S.W.
Seattle, Washington 98136

June 20, 1991

1661 7 NPC

North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Mr. Steve Pennoyer
Director Alaska Region
National Marine Fisheries Service, NOAA
P.O. Box 21688
Juneau Alaska 99802-1668

Dear Members of the North Pacific Council and Mr. Pennoyer:

I am writing to address the Council's proposed inshore/offshore allocation plan. My interest in the issue stems from long-standing involvement in the Bering Sea fisheries, including seeking the first joint venture permits for foreign processors in 1979, operating a Bering Sea shore plant in Egegik, Alaska and running the offshore processors trade association for the formative years of the offshore fleet. I have been active in the successful development of the pollock market for all sectors and the successful modification of the Japanese import quota structure for pollock to foster the surimi industry for all sectors. I have worked to get Japanese and European tariffs reduced for the benefit of all sectors. Recently, I have been involved with users of the groundfish resource. From that perspective, users see the allocative dispute between primary processors being very disruptive to the ultimate distribution of groundfish as food for the world.

I believe that conservation of the resource is the highest issue for the Council's management. But conservation issues are not part of the inshore/offshore debate. The Council's mandate is to assure the full utilization of the North Pacific groundfish resources. My bias is to preserve the health groundfish fishery that has developed under the legislative ground rules for the past 15 years and to avoid a restructuring of preferences for resource access to achieve a new, planned economic order. I am writing on my own behalf.

The Council is seeking to reallocated fish from the existing offshore sector to the developing inshore sector - The obvious truth of the Council's direction is disguised in the amendment's terminology. Proponents of the amendment initially sought a "shore preference." The Council considered shore preference alternatives for many months. Then the Council found it more (politically?) correct to use "inshore/offshore allocation" to define its effort. While thinly disguised, shore preference is sought solely because of the competitive advantages of the offshore fleet. While shore processors claim a lack of mobility as their key disadvantage, they have a history of using floating processors and tenders to overcome logistical problems in all of the other fisheries in which they are engaged (salmon, crab, halibut, herring, etc.). This must be viewed as an effort to use political muscle to oust the offshore pioneers and to clear the way for less efficient operations. The offshore fishery has not, to my knowledge, requested an allocation. Were the amendment to be adopted, they would apparently get one, but it would be

only what is left after satisfying the inshore sector. I suggest that "shore preference" amendment is the correct name for the alternatives being analyzed in this proposal, as it is more indicative of the effort being undertaken..

The amendment is to reallocation, not allocate, fishing rights. The allocations to the inshore would not be *prospective,* where interested participants could then assess the business climate to evaluate whether to participate. It would impact the existing industry *retroactively,* radically changing the access rules under which the offshore investments were made. The offshore sector was capitalized at $1.3 billion under the principle of priority access. It would have to divide its residual allocation among the existing offshore processors.

Thus fishing rights are taken from offshore processors in favor of shore processors. In my opinion, this proposal attacks the very foundation of Magnuson, and attacks the people that successfully ventured into the North Pacific against extreme odds. It is a removal of the DAP first priority access guaranteed by Magnuson in favor of a new privileged class.

Background -The development of the American groundfish fishery in the North Pacific is a story of entrepreneurship stimulated by the three level priority access system established in the Magnuson Act. Armed with the Government policy that American vessels that caught and processed fish in America received the first priority access, the effort began to displace entrenched industrial fisheries of foreign nations. Individuals followed the Magnuson Act call to develop the groundfish fisheries, so that Americans could receive the benefits that our vast groundfish resources afforded. American fishermen like Konrd Uri, John Sjong, Francis Miller, Sam Hjelle, Eric Brevik, Dave Stanchfield, Henry Swason, Stan Simonsen and many more produced the necessary capital and fishing/processing skill to compete with the foreign industrial fishing establishment in the North Pacific. Ultimately, they displaced them right according to plan.

The groundfish fishery is now crowded with fishing and processing equipment. The groundfish harvesting sector has been overcapitalized since 1987, the peak period for joint ventures. At that point, the United States had the harvesting capacity to catch the entire pollock and cod resource. But U. S. catcher boats were not selling fish to American shore processors. Foreign processing vessels were much more attractive arrangements for harvesters, for they would simply follow the harvesters offshore and take the cod-end aboard as if they had dragged it themselves. American catchers were spared the trip ashore and were able to sell much higher volume than if they had to take the fish aboard and transport them to a shore plant.

While joint ventures were a valuable contribution to the American economy, the goals for full Americanization were not yet being achieved. It was well recognized that joint ventures were an interim step toward full Americanization. Without factory trawlers, the joint ventures using foreign processing vessels would have continued indefinitely. Joint venture harvesters had a self interest in the status quo as did foreign processors. Shore processors could not offer the catcher vessels a comparably attractive market. Shore processors were owned by foreign companies with processing vessels in joint ventures, and lacked motivation to try to compete with themselves. Fully amortized processing vessels from non-market countries found a resource and joint venture fishermen found a market which allowed for harvesting and delivering large volumes of groundfish without even bringing the haul aboard. Only with the development of independent factory trawler operations was there any hope of displacing foreign processors.

Factory trawlers obtained their own raw materials thus avoiding the dilemma of enticing joint venture catchers away from foreign processing operations.

Along the way, however, shore interests did try to create special preferences for themselves - fishery development zones. The premise then for special zones was that American processors had a priority access right to the fish over foreign processors. That was true according to the Magnuson Act, but NOAA was clear that the priority was only for competitive processors. While the shore processors sought to eliminate the foreign competition so that they could develop, NOAA held that American processors first had to have the capacity and intent to process the fish and had to compete in the world market with the foreign processors that they sought to displace. NOAA rejected he idea of clearing out the foreign processors in advance of the shore processors anticipated development.

While joint ventures were acknowledged as an interim step toward full Americanization, factory trawlers were not intended to be interim. U.S. factory trawlers, with other U.S. catching and processing operations have the first access to the American resource. It is the very premise for their development. The present inshore/offshore allocation proposal stems from the request of shore-based interests in Alaska to clear out the offshore industry for their anticipated development. This time, however, they are seeking to displace a fully capitalized American fleet with equal rights under the Magnuson Act. The inshore interests are seeking to preserve their access in an open access fishery at the expense of the pioneers of the DAP groundfish industry. Their concern about access is stated to be based on a fear of overcapitalization of sea processors. Simultaneously, there is tremendous capitalization of shore facilities occurring.

General Statement About the EIS/RIR - The Council's EIS/RIR purports to analyze the impacts of the variety of proposed actions. The awkward efforts by the preparers to minimize the appearance of negative impacts on the offshore fleet and to emphasize positive impacts inshore show clearly. As a result, the cursory review of the negative social and economic consequences of inshore allocations may blind the decision-makers with the positive analysis given for the coastal communities. I had hoped for a far better elaboration of the consequences to the existing fishery. A clear delineation of impacts would be a powerful dissuasion from this effort at social engineering.

The EIS/RIR does not reflect the economic and social havoc that this reallocation of fishing rights would cause. This kind of economic reallocation was done previously in the judicial opinion of United States vs. Washington. Then, Washington State salmon fishermen having the capacity to take a large percentage of the fish were limited to 50% of the allocation in favor of treaty fishermen. Whether one agrees with the opinion in that case, no one can forget the resultant social and economic disruption stemming from that reallocation. It is my belief that if this amendment is instituted, the social disruption of U.S. vs. Washington would look mild in comparison.

The Problem Statement - The Council's problem statement says the effort is to avoid the "preemption of one sector of the industry by another," those sectors being defined as inshore and offshore. While the problem statement does not say it seeks to protect the inshore segment from the offshore segment, the report's tenor and the list of alternatives make that goal obvious. The most talked-about alternative to resolve the preemption problem is by allocation of fishing rights according to some percentage of the Total Allowable Catch. Each allocation alternative reduces

the availability of raw materials to the offshore sector in favor of the inshore sector. Clearly, the problem that is communicated in the statement is the growth of the so-called offshore sector of the groundfish industry.

The definition of the inshore sector in the statement is illogical. It was crafted for the Council by a coalition of interests, all of which (curiously enough) ended up in the favored inshore sector. Oddly, many floating processors having the same mobility as factory trawlers but are owned by the shore plants are defined as "inshore." Even factory longliners that operate in entirely the same fashion as factory trawlers, but with hook and line instead of nets are "inshore." The manipulation continues in the statement's historical catch comparisons as a "base" for allocations. In specifying the division of catch between inshore and offshore in 1989, Alternative 3.1 allocates a full 80% of the joint venture offshore deliveries for that year to the inshore sector.

I am appalled at the political efforts to isolate the successful factory trawler fleet. Their success at developing fishing and processing technology, establishing markets and displacing the foreign fleets have set them up for this staged political fall. There is little rationale for a division of fishing rights by *where* the fish may be processed. There is less rationale for a government reallocation of fishing rights which serves to retire capital equipment and existing jobs for an attempted restructuring of the industry ashore. It is a very high stakes experiment causing untold economic waste and personal hardship. That, however, is given short shrift in the EIS/RIR.

A common tenet of fisheries management that was embraced in the Magnuson Act is that in time of short supply, the government should act to assure that those participating in the fishery have a reasonable chance of continued access, based upon their history of participation and investment. If preemption of a sector is indeed the concern that we are addressing, the Council must reject its own proposed regulations, for they assure the preemption of the existing offshore fishing fleet by their own terms.

The Social Analysis - The analysis by hired consultants is an outrageous piece of work which is passed off as scientific. I would recommend that it be withdrawn and submitted for scientific peer review as quickly as possible. In lock step with the rest of the document, the analysis seems to support the Council's resource redistribution in spite of the consequences.

The social analysis is largely a repetition of statement of incrimination and fears of the inshore lobbyist. Appearing as statements of "informants" of the consultants, these innuendo, hopes, and red herrings are stated as if they are fact in the report. When it comes to reporting the impact on the existing offshore industry, the tone changes. While people could get hurt, they say, the diverse economy of Seattle can more readily absorb these losses. Besides, they say, others in Seattle, i.e., those in the inshore alliance see a benefit in the reallocation. Could that be because those groups have been blessed to be part of the "inshore?""

I believe that the consultant's work reflects the attitude of their clients, the Council. What is so outrageous in this effort is the practical shift in the Council's morals. The Council has constantly defended the rights of traditional or existing fishermen when in conflict with the developing fishery for groundfish. Here, the Council has totally abandoned that principle in favor of achieving the redistribution of wealth to the less competitive shore plants. It is a double standard

depending on whether the protection of Alaskan interests is at hand. When it is "outsiders" that were there first, the principle is abandoned in favor of the economic advantages of awarding fishing privileges to the favored class, the Alaskans.

The social analysis fails to consider the social impact of an action that would derail the most significant fisheries development in the history of the United States. With the offshore fleet now capitalized at over one billion dollars through the encouragement of the Magnuson Act, the social disruption caused by a fifteen-years-later new priority system will hurt people. The hoped-for shifts by people and companies that are disadvantaged by the reallocation is naive and blind to the reality of the magnitude of this restructuring. It is one thing for the Council to specify development goals - it is another to permit them to "undevelop" a fishery that has been sanctioned by national legislation in favor of local interests and their foreign partners.

Economic impacts - The economic report is inadequate, and more than that, it is biased. The bias is often reflected in areas where hard economic conclusions cannot be drawn. The reader will most often find a statement of difficulty in the determination of an outcome, followed by an optimistic outlook for the proposed reallocation.

The bias is also reflected in the description of the model that was used to predict outcomes. Whether it reflects an attitude or naivety, the document, in defining sectors, suggests that the inshore sector is the "existing" and "senior" sector. The fact is that the offshore sector is the mature or existing sector relative to the inshore. It is offensive to see the Council suggest otherwise. The reversal of roles in the model may impact the output as well. It is not comforting to see a misstatement of this magnitude as a premise for the economic modeling.

The economic analysis is most inadequate in its failure to describe the status quo with respect to the *capital investment* and economic status of the two industry segments. That is particularly true where economic restructuring of this magnitude is proposed. The reader of the document will not understand the extent of the investment and infrastructure that was built around the offshore industry. It is without any description for the factory trawler industry, the size or nature of its operations or any other characteristics essential to an understanding of the fleet. While we know that the offshore sector has invested more than one billion in floating capital equipment, there is no effort to confirm that or compare the investment by the inshore sector. Nor is their a picture of the nature of the inshore financial commitment. The picture of the loss to individual owners, banks, creditors and others is simply not painted. As a result the decision makers are likely to make an uniformed decision.

The economic section is very short on bottom lines. Having combed the caveats and "don't knows" for useful information, I did stumble on a bottom line in the Table 3.6 analysis. No one should ignore the prediction that the 50/50 Bering Sea pollock split cost the offshore segment **8,858 existing jobs.** That telling number says that this social engineering experiment is really playing with fire. It is then projected that 7,185 FTE jobs would be created with inshore development for a net loss of 1,673 jobs. While the economists trip over themselves with caveats about the accuracy of their work, there is little emphasis in the document about the speculative nature of the jobs that would be created onshore versus the existing nature of the jobs that would be sure to be lost. The document should clarify the distinction between lost existing offshore jobs and potential new onshore jobs. The document should emphasize the net loss to the nation of this kind of reallocation.

The economic section is unrealistic for its use of 1989 as the base year for making economic projections. While I understand that it is difficult to catch up with a moving database, the major jump in capitalization in the interim period should require an extrapolation or other effort at economic results analysis.

In short, the economic bottom lines for the reallocation are buried in the EIS/RIR. By that I mean they are either not there or glossed over. The negative impact on the offshore fleet should be shouted in this document, but they are barely whispered. That is wrong. After all, the capitalization and economic impacts of the proposal are its essence.

Alternatives to Displaced Catching and Processing Operations - This attempt to find a home for those disfavored by regulatory action is fraught with fantasy. Putting aside that Magnuson's first right of access to the North Pacific groundfish fisheries was the premise upon which the offshore fleet was capitalized, the section explores a group of unworkable alternatives. Clearly, the alternatives proposed would not have allowed development of the offshore sector. What this document reflects is hope - not for the offshore fleet, but for the workers assigned responsibility for this document. They had to say something, so we are led through a litany of uses for ships. Surprisingly, they did not mention ferry routes, cruise ships or military service. What they do say is "we don't know- here is the most hopeful options - this may hurt."

Limited Access - The Council's portrayal of this problem as one of overcapitalization by the factory trawlers is misleading. The more important observation is the overcapitalization of the industry as a whole. That analysis would thwart the true objective of the amendment to implement a shore preference. The Council has stalled three times on limited access, the obvious tool for overcapitalization. Now it seems as though it wants to first install preferential rights based upon where the product is processed and then discuss limited access for those surviving the reallocation.

The "inshore/offshore" amendment reflects a concern by the Council about overcapitalization of the offshore processing capacity. While the limited access tool is provided in the Magnuson Act for harvesting overcapacity, I question whether the Act seeks to have the government determine the winners and losers in the processing sector. If so, I believe that such tools would have been provided in the Act with the same kinds of cautions about protecting the existing participants that are in the extended provisions on limited access.

As the political interest in this amendment reflects, this is an action for which the Council has the highest responsibility to the people that it manages. The Council, in its rush to develop Alaska, it must know and address the consequences of its action. The Secretary with his responsibility as the steward of the Nation's fisheries must also assess the impact. The EIS/RIR does not do so and should be redone with instructions to pay attention to the people who will face the adverse side of this economic reallocation. It is unethical for the Council members to vote away the fisheries access to the non-Alaskan factory trawler fleet simply because they do not have the favor of the Alaskan majority on the Council.

Moreover, the withdrawal of fishing rights in favor of others who lack a competitive edge must be clearly justified by facts and factual predictions. That justification is lacking in the EIS/RIR. I do not believe that it can be justified, but even the basic information for understanding any justification are simply missing at this point.

Sincerely,

Edward D. Evans

C-2

AMERICAN FACTORY TRAWLER ASSOCIATION

THIS EXECUTIVE SUMMARY IS EXCERPTED FROM THE DOCUMENT SUBMITTED BY AFTA ON AMENDMENTS 18/23. COPIES OF THE ENTIRE DOCUMENT MAY BE AVAILABLE UPON REQUEST LATER THIS WEEK, COPYING TIME PERMITTING.

June 19, 1991

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue
Anchorage, Alaska 99501

Re: Comments on Amendment 18/23 to the Fishery Management Plan for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea and Aleutian Islands

Dear Mr. Lauber:

This letter and attached comments are submitted on behalf of the American Factory Trawler Association ("AFTA") and its twenty (20) member companies, who own and operate forty-two (42) vessels which harvest and process cod and pollock in the Gulf of Alaska ("GOA") and the Bering Sea/Aleutian Islands ("BSAI").

The amendments in question contain management alternatives that would establish an allocation system for cod and pollock in the GOA and for pollock in the BSAI which preferentially favor shoreside processing interests over the interests of AFTA members and other offshore vessel operators. For a variety of reasons that will be explained more fully in the attached materials, including procedural irregularities, fundamental flaws in the analysis, inequities in the management alternatives presented, and an admitted failure of those alternatives to address the true nature of the problem facing the fishery, AFTA is opposed to the adoption of any of the shoreside preference allocation scenarios set forth in the proposed amendments and protests the further distribution of the flawed EIS.

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BACKGROUND

The shoreside preference amendments grew out of an incident that occurred in the GOA during the 1989 fishing year. In the late winter and spring of that year, some 10 to 15 at-sea processors moved from the BSAI into the GOA in search of roe-bearing pollock. Good fishing conditions, coupled with the increased harvesting and processing capacity of the mobile fleet, plus the fact that a number of operations (both onshore and offshore) conducted high-volume roe-stripping operations, resulted in the taking of the limited GOA pollock quota earlier in the year than had been expected.

By the time the 1989 GOA pollock fishing season was over, shorebased operations had accounted for 46 percent of the GOA pollock catch and at-sea operations had accounted for 54 percent. In the prior year, the first year the GOA pollock fishery had been Americanized, shorebased operations accounted for approximately 80 percent of the GOA pollock harvest (See Figure 3.5b in the draft SEIS/RIR/IRFA). Shoreside interests from Kodiak flocked to the April 1989 meeting of the Council, claiming that their pollock fishing operations had been "preempted by the offshore fleet" and demanding action to protect their operations from future incursions by the highly mobile BSAI catcher/processor fleet into the relatively small GOA pollock fishery.

In response to the Kodiak demands, the Council began the amendment process that has culminated into the draft analysis that is before us today. The only difference is that the proposals upon which we are now commenting are far more sweeping in scope than had been initially proposed by the people of Kodiak, and go well beyond any action that might be necessary to prevent a reoccurrence of what happened in the spring of 1989.

While the initial incident that gave rise to the amendment proposals involved some 20,000 metric tons of pollock in the Central GOA (the amount of offshore pollock harvest over and above what the at-sea fleet had been expected to take based on the prior year's harvest), several of the allocation options in the proposed amendments would shift hundreds of thousands of tons of fish in the Bering Sea away from the current and historical users in that area (the offshore fleet) and transfer those fish, worth billions of dollars, to new, Japanese-controlled shorebased processors. Such a massive reapportionment and transfer of resource from an established user group to a new entrant is unprecedented, and the economic devastation that would

befall the fully capitalized offshore fleet in the BSAI would be staggering.

In view of the potential consequences, it is imperative that the Council, NMFS, and the public have a clear and concise understanding of: the problem that is being addressed; the array of alternatives that are available to address that problem; the likelihood of success that each of those alternatives will have in dealing with the problem; and the costs and benefits associated with the various alternatives that have been identified. The document before us is woefully lacking in each of those areas.

THE INSHORE/OFFSHORE ANALYSIS

In its rush to judgment on the shoreside preference issue, the Council crafted a problem statement and a limited array of management alternatives that were designed to force the issue into one of inshore versus offshore allocations, rather than an objective analysis of alternatives necessary to deal with the real problem confronting the fishery and the management system--unconstrained open access to the fishery.

As a result, the analytical staff was forced to deal with a convoluted problem statement and a suite of alternatives where key terms, such as "preemption" mean one thing in the GOA and something entirely different in the BSAI; where the allocation schemes proposed create the very effect the amendments are supposedly designed to correct; where floating processors owned by certain shoreside interests are considered "shoreside" and those owned by other are "offshore"; and where the concerns that we are supposedly addressing evaporate when they inconveniently interfere with the predetermined results. For these reasons, there is a tension throughout the analysis between the Council's predetermined casting of the problem in terms of an inshore/offshore issue, and the analysts' conclusion that the real underlying course of preemption is the open access system. In effect, the analysts were required to drive "round pegs into square holes," and the resulting document shows it.

In addition, the Council established an unrealistic deadline for action on the amendments, which may involve the most significant allocation decisions ever made under the auspices of the Magnuson Act. In order to meet the Council's artificial, self-imposed deadline, the Council, its Fishery Planning Committee ("FPC"), and the analytical staff have been forced to: 1) jettison critical alternatives from the analysis (e.g.,

limited entry options); 2) severely restrict analysis of several key alternatives (e.g., options 2, 5, 6 and 7); 3) eliminate previously scheduled public comment periods to "groundtruth" the assumptions and other data which form the basis for the whole analysis (see original work schedule for the analysis); 4) abandon the simulation model that would have provided the only tool available for assessing the true impacts of a shoreside preference amendment on the major participants in the pollock and cod fisheries, and the spill-over effects that such an amendment would have in other fisheries (see page 3.66 of the analysis); and 5) ignore critical consequences of the proposed measures (e.g., market implications, effects on domestic consumers of seafood products and, most importantly, the catastrophic effect which some of the measures would have on the fully capitalized offshore fleet in the BSAI).

Repeatedly, the analytical staff has noted that "if only there was enough time, we could do this," or "look into that" and/or that the Council's deadline "precluded examination" of other critical issues. Nevertheless, and despite serious reservations expressed over the adequacy of the SEIS by the Council's Scientific and Statistical Committee and a number of Council members at the Kodiak meeting last April, the Council voted to send the analysis out for public comment in time to schedule final action on the amendments at the June meeting. As will be discussed below, the result is a process and analysis that are fundamentally flawed in a number of critical ways.

Furthermore, by delaying the availability of Addendum I and II dated May 28th, the Council has short-circuited the 45-day comment period mandated under NMFS' operational guidelines. Under the circumstances, the only appropriate way to insure that the public has had an opportunity to review the new data and to submit meaningful comments would be to suspend review of the current document, incorporate the new data and information into an integrated analysis, and then issue a revised document for public review at that time--starting the 45-day comment period over again. Although reference will be made in these comments to some of the data and information set forth in the addenda, AFTA has not had an adequate opportunity to fully evaluate the new data and information set forth in those documents and must reserve its right to insist on a full 45-day comment period.

ORGANIZATION OF COMMENTS

Our concerns with the draft SEIS analysis are organized around the following issues; each of which contains a number of sub issues.

- The problem statement references concerns with preemption while not addressing the causes of the problem, overcapitalization.
- The management alternatives actually create major preemption problems in an effort to solve a lesser localized preemption problem.
- The analysis fails to provide any substantive analysis of other viable management alternatives other than direct allocations.
- By omitting an analysis of many of the key issues, the draft SEIS does not provide the information on which to base a decision.
- Where is the regulatory impact review, benefit-cost analysis, and net benefit determination required under Executive Order 12291?
- Management alternatives which provide a preference for shoreside processors will do nothing to address the underlying causes of preemption and will result in further "overcapitalization".
- The analysis ignores changes to economic value and the benefits consumers derived from the use of the resource.

- The available evidence indicates that shoreside pollock processing in the BSAI is less efficient and therefore requires a shoreside preference or subsidies to compete.

- Mandating shoreside processing would reduce the market value of the pollock resource, adversely affect the consumer, and reduce the U.S. balance of trade.

- Most of the predicted impacts are statistically insignificant within the sampling and estimation limitations of the data.

- The selection and subsequent manipulation of a baseline distorts the results.

- Management measure requiring shoreside processing would institutionalize the anti-competitive market structure of the surimi cartel industry.

- The social impact assessment is a benefits study, and does not provide the information by which community development benefits in Alaska can be weighed against employment losses.

- The potential for biological impacts have not been fully explored and are inconsistent with the conclusions reached by the Council in preparing Amendment II.

- An expedited amendment process is being used to explain the jettisoning of major analytical tasks and limit industry involvement.

These issues are articulated in greater detail in the following comments.

Thank you for the opportunity to comment on this most important of issues and please be assured of our intention to fully cooperate in any further informational requirements you have.

Sincerely,

H.A. Larkins
Executive Director

Attachment

Response to Call for Comments on

Supplemental Environmental Impact Statement and Regulatory Impact Review/Initial Regulatory Flexibility Analysis of Proposed Inshore/Offshore Allocation Alternatives (Amendment 19/23) to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands and the Gulf of Alaska

Submitted to:

The North Pacific Fishery Management Council

Submitted by:

American Factory Trawler Association
4039 21st Avenue West
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In Consultation with:

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Kearney/Centaur Division
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Alexandria, Virginia 22314

June 20, 1991

Executive Summary

Who is Being Preempted?

The pivotal flaw which precludes the Council from solving any of the fundamental problems in the Alaska groundfish fishery through this amendment package is the problem statement. The use of an inherently prejudicial problem statement colors the resulting analysis and precludes the Council from addressing the underlying causes of the dispute, too many boats chasing too few fish. Through a careful manipulation of the problem statement, there is now a document designed to preempt the predominant domestic users of the resource over the past decade by a new sector. Over half of the so-called "preempted" sector was not even built until after the Council acted on the inshore/offshore amendment package. The failure of the problem statement to acknowledge overcapitalization, not "preemption", as the fundamental problem precludes a meaningful solution to the problems facing the industry with this document. Add to the defective problem statement, the manipulation of the Kodiak issue by Bering Sea operations and the creation of a factitious baseline, and you are left with a solution in search of a problem.

Preemption is a Smoke Screen for Reallocation

While the initial incident that gave rise to the amendment proposals involved some 20,000 metric tons of pollock in the Central GOA (the amount of offshore pollock harvest over and above what the at-sea fleet had been expected to take based on the prior year's harvest), several of the allocation options in the proposed amendments would shift hundreds of thousands of tons of fish in the Bering Sea away from the current and historical users in that area (the offshore fleet) and transfer those fish, worth billions of dollars, to new, Japanese-controlled shorebased processors. Such a massive reapportionment and transfer of resource from an established user group to a new entrant is unprecedented, and the economic devastation that would befall the fully capitalized offshore fleet in the BSAI would be staggering.

Management Measures Which Address the Problem, Rather that Symptoms Were Not Considered

In response to the requirements of the National Environmental Policy Act, the draft SEIS claims to: "Provides ... an evaluation of the major alternatives that could be used to solve the problems." Unfortunately, the draft SEIS falls grossly short of this mark by neglecting to analyze most of the workable alternatives. The net effect of these omissions has been the delivery to the Council of a carefully crafted set of alternatives, all of which would result in restructuring the groundfish fisheries at the exclusive expense of the traditional users. Many of the reallocation "solutions" would encourage a further influx of capacity, and actually exacerbate the overcapitalization problem as well as long-term fishery management.

At a minimum, a balanced consideration must be given to: super-exclusive registration areas; Individual Transferable Quotas (ITQs); Alternative 5 which reflects the current fishery; and Alternatives 6 and 7. The omission of Alternative 5 effectively denies reviewers any characterization of the "no action" alternative. Had the document given any consideration to Alternative 5, it would have been demonstrated that new pollock management measures put into effect in 1989 have been singularly successful in preventing the preemption problem that occurred in 1989.

The Existing Document is Primarily a Benefits Study

The Council staff must be commended for a robust analysis of the regional impacts resulting from reallocating resources from the traditional users to newly constructed shoreside plants. Further, the community economic development needs, as articulated in the Social Impact Assessment, are an enhancement to the fishery management process. However, the Federal rulemaking process also requires the articulation of the costs of providing this development. Unfortunately, the exhaustive examination of the distribution of impacts has been done at the expense of virtually every other input to a cost-benefit analysis. As a result of these omissions, the:

- economic information presented does not remotely meet NMFS's requirements for an SEIS;
- research objectives stated in the draft SEIS are largely unfulfilled;
- research objectives established by the Council-convened "Economic Scoping Meeting" and subsequently issued contract were not met; and
- the document does not resemble an RIR as required by Executive Order 12291.

By overlooking the fundamental information upon which to weigh the costs of reallocation against the benefits, the completion of an analysis with the available materials is precluded. An informed decisionmaking process must balance community development against potential costs, such as: increases in product prices or decreases in consumer benefits; declines in the revenue derived from the fishery; reductions in producer returns and productivity; adverse impacts on the U.S. balance of trade; effects on competition within the industry; and impacts on reasonable investment-backed decisions.

Had this been done, the results would have demonstrated that the costs to the U.S. economy, and ultimately the U.S. consumer, of using fishery allocations to support community economic development in the BSAI would be dramatic. The materials contained in "AFTA's Response to Comments" demonstrate that the costs to the U.S. economy of making fishery allocations for community development are considerable. For example, any form of mandatory shoreside processing would:

- result in a substantial reduction in economic efficiency and productivity;
- institutionalize a three-firm market structure which is known to increase the buying power of processors at the expense of the independent catcher boats;
- create a market structure that would allow Taiyo and Nippon Suisan to reestablish the global surimi cartel of the 1980s and impede U.S. firms from participating in this export market;
- shift pollock production from FA and SA grade surimi, at-sea grades of roe, and fillet block products almost exclusively into A grade surimi with a resulting drop of approximately $50 million in the value of the product;

- create a 20 percent shortfall in the domestic supply of block product in the domestic market that would translate into higher consumer prices, reduced consumption, and a decline in the net benefits derived by consumers from the product; and

- adversely affect the U.S. balance of trade as low price surimi is exported in lieu of higher value products.

The SIA Process Fails to Balance Community Stability Against Disruptions to the Existing Workforce

While there is a consistent failure to address the costs of the proposed actions throughout the draft SEIS, this imbalance is most pervasive in the Social Impact Assessment (SIA). The SIA, while a landmark effort to incorporate community economic development concerns to the fisheries management planning process, is little more that an encyclopedic review of the benefits of increased allocations to shoreside communities. For example, the SIA: declined to study the inclusion of any communities with ties to the factory trawler fleet; failed to involve the at-sea industry in the data collection; demonstrated a total disregard for the adverse effects on existing employees; and treats equally the elimination of existing jobs with highly speculative estimates of what might happen under various development scenarios. The methodology upon which the entire SIA rests reflects a predisposition for community stability relative to the need to fairly treat existing employees. Using the methodology reflected in the SIA, thousands of jobs could be lost in an urban area, but if the stability of one community with 50 employees was enhanced, a net positive benefit would be pronounced. Surely this is not the intention of fisheries management.

The Reliance on Impacts, Rather than Economic Benefits Virtually Assures that the Most Efficient and Capital-Intensive Sector will be Excluded from the Fishery

The sole reliance on an input/output (I/O) methodology has inherently limited the issues considered to the distributional effects, while entirely ignoring the more important considerations of economic value or net national benefits. Economic analysis using the framework of net national benefits, or net economic value, is the type of cost-benefit analysis that is mandated under the Magnuson Fishery Conservation and Management Act, required under Executive Order 12291 and specified in all applicable Federal guidelines. The omission of a methodologically correct economic analysis could result in the destruction of a vital industry without any assurance that the purported benefits could be maintained in a competitive world market.

If the Council endorses impacts driven by management decisions, then preferential allocations will be given to those user groups which spend more money locally, to prosecute the fishery, regardless of their relative productivity. Under the proposed methodology, a fleet of row boats would produce higher local impacts than todays fleet and thus are entitled to a preferential allocation. A further implication of this approach is to exclude capital-intensive operations, from access to the resources, since investment expenditures are excluded from the Council's I/O model. In this way, hand cleaning of fish will consistently be selected over machine-aided processing, but to the overall detriment of the nation and the consumer.

The Manipulation of the Baseline and Definitions of the Alternatives have Distorted the Results

The systematic manipulation of the baseline has resulted in a distorted analysis which bears no relationship to the fishery in 1989, or at any point in time. Examples of how the baseline has been orchestrated to misrepresent the historical role of shoreside processing in the BSAI groundfish industry include the following:

- The failure to consider Alternative 5 results in there being no examination of the existing fishery. Rather, the baseline erroneously reflects extensive Joint Venture operations, omits the existence of a quarterly allocation system, and assumes a fishery in which roe-stripping is the predominant at-sea and shoreside method of roe production.

- The inclusion of extensive Joint Venture landings in the baseline substantially understates the magnitude of the reallocation and subsequent impacts relative to the fishery which exists today.

- The redefining of 80 percent of the harvest processed on foreign factory vessels, as traditional shoreside production, was a contrived apportionment which inaccurately reflects historical catch or investment patterns.

- The defining the fleet of long-line factory vessels as shoreside processors inaccurately reflects historical catch patterns and biases the presented results.

- The rejection of NMFS's recommendations to use 1990, not 1989, as a representative year to characterization of the industry.

The net result of these spurious assumptions, coupled with the rejection of the 1990 data which had been solicited from the industry, is the creation of a series of prejudicial allocation options that are all dramatically higher than any historic catch levels. The further result of this process is the omission of any analysis of the "no action" alternative as required under NEPA.

Most of the Predicted Impacts are Insignificant Within the Sampling and Estimation Limitations of the Data

The draft SEIS appropriately provides decision makers with information regarding survey procedures, sample selection, and response rate. What the document fails to inform reviewers of is the cumulative effect of sampling and estimation errors in the inputs to the modeling exercise and to reveal that the results should be interpreted as $\pm$ 50 percent, at the 95 percent confidence level. With sample sizes of one to four, and a high variability between responses, this should come as no surprise. However, errors of this magnitude clearly raise questions as to the efficacy of basing major management decisions on unreliable data and invalidated models.

The Biological Analysis Fails to Consider CPUE, Bycatch, and Marine Mammal Implications of Totally Reconfiguring the Fishing Effort in the BSAI

The draft SEIS inappropriately concludes that all of the issues driving the reallocation debate are economic, rather than biological. However, the creation of a "BSAI Inshore Operational Area" would clearly result in a massive realignment of effort, the effects of which have been totally ignored to date. Omissions from the biological analysis have the potential to invalidate both the biological, and perhaps the economic, conclusions.

- The assumption that an extensive redeployment of vessel effort in the Bering Sea would not change Catch Per Unit Effort (CPUE) are totally unjustified. Changes in CPUE which resulted in additional effort in the BSAI area would almost certainly adversely affect bycatch management.

- To the degree that marine mammal and bird interactions are a function of fishing effort, adverse effects on these resources could also occur, yet go unconsidered.

- Changes in bycatch, which result in premature seasonal closures, or the closing of one user group's season as a result of bycatch by another user group, would totally invalidate the economic analysis and associated conclusions.

In sum, the draft amendment package contains management alternatives that would establish an allocation system for cod and pollock in the GOA and for pollock in the BSAI which preferentially favor shoreside processing interests over the interests of offshore vessel operators. The draft document in its current configuration is rife with procedural irregularities, fundamental flaws in the analysis, inequities in the management alternatives presented, the application of inappropriate methodologies, and an admitted failure of the reallocation alternatives to address the true nature of the problem facing the fishery, overcapitalization.

Arc 'n' Spark Welding Inc.

308 Shelikof Avenue
P.O. Box 2152
Kodiak, Alaska 99615
(907) 486-3652

20 June 1991

RICK LAUBER
Chairman
North Pacific Fishery Mgt. Council

Dear Rick Lauber,

It's always been thought of as honorable and noble to protect or help those who are smallest and most vulnerable. Compared to the big money interests from out of State Coastal Alaska is made almost entirely of individuals who depend entirely on their ability to harvest out of our own backyard. Please close the gate to the factory trawlers so we who have no where else to go, don't get trampled into oblivion.

Our fishermen risk their lives when its hardly worth it because we have no other choice to survive. If you don't protect us (Kodiak) from the factory Fillet you might as well line us up against the wall. Contrary to the Factory boats we have no alternative.

As owner of Arc 'N' Spark and as a welder in this community for 21 years I speak from experience. If there is no fishing there will be bankruptcies mortage foreclosures. Permanent economic damage to individuals and the community.

Sincerely,

GLENN DICK
President

NORMAN'S
On The Mall

JUN 20 1991

[redacted]

Rick Lauber, Chairman
North Pacific Fishery Management Council
FAX 271-2817

June 20, 1991

Dear Sir:

As a member of the Kodiak business community I am very concerned about the effect of the factory fleet's ability to completely shut down our communitys shore-based processing plants.

If there is any doubt in your groups minds that there is a direct effect on the City of Kodiak you need only to compare daily, monthly and yearly income with what is happening with the fisheries.

The processing plants and their employees have a tremendous impact on the success of our store - I feel is very, very unfair that Kodiak should have to compete with 'outside' and foreign processors for Alaska's fish. This springs and last falls closures resulted in a large decline in our store's income.

Very truly yours,

NORMAN'S, INC.

Nancy Sweeney

Nancy Norman Sweeney

June 19, 1991

JUN 20 1991

North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99515
Fax #271-2817

Subject: Comments regarding inshore/offshore allocation alternatives for the Gulf of Alaska and Bering Sea/Aleutian Islands.

Dear Sirs:

In reviewing the alternatives that must be decided on I support alternatives 3.2 or 3.3 on page 1-5&1-6 of the second draft on inshore/offshore allocations dated April 20, 1991.

With the recent evolution of the U.S. offshore processing fleet we have seen our fishing seasons getting shorter and the product scarcer.

Since the offshore processors are backed by big money, both foreign and domestic, and can afford one of the top U.S. lobbyist we have heard people say that the small fishermen will be closed down in a few years - please tell us that the North Pacific Fisheries Management Council feels differently!

Fishing is not only a way of life for us it is a business. We support and favor fair competition. However, when a fleet starts monopolizing an industry and is impacting the environment to the point that many more of the user groups suffer and are closed down fair competition no longer exists.

If reallocation occurs everyone wins, fishermen and nonfishermen, because inshore processors must compensate for any harvested resource by way of raw fish taxes. Their employment and safety practices are more efficiently regulated and monitored. Since many inshore processors maintain offices and hire outside of Alaska other states within the Pacific Northwest benefit as well as Alaska.

Furthermore, inshore processors have a much better history of full utilization of the harvested resource. The terrible track record of resource waste by the offshore processors alone should justify this reallocation.

If the council approves alternatives 3.2 or 3.3 the Pacific Northwest will not be faced with economic devastation since this region has a large fleet of small business people that have been attempting to participate in the federally regulated fisheries in Alaska.

Please provide economic relief for the REAL fishermen and small business people support alternatives 3.2 or 3.3.

Please feel free to contact us if you have any questions regarding our comments, thank you.

Sincerely,

Arthur & Linnea Osborne

Arthur & Linnea Osborne, F/V Mongoose

Mailing Address: F/V Mongoose
Mr& Mrs. Arthur R. Osborne
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Douglas, Alaska 99824-0925
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Randy & Laura Beason

Randy & Laura Beason, F/V Oceanaire

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June 20, 1991

Mr. Richard B. Lauber
Chairman
North Pacific Fishery
Management Council
605 West 4th Avneue
Anchorage, Alaska 99501

Dear Mr. Lauber:

This letter provides comments on behalf of the Oceantrawl group of companies on the draft Supplemental Environmental Impact Statement ("SEIS") and the proposed alternatives for the management of the North Pacific Groundfish Fishery. The comments contained in this letter address the sufficiency of the process being employed by the North Pacific Fishery Management Council ("Council") and the National Marine Fisheries Service ("NMFS"). Comments addressing the preferred alternative for various sectors of the industry will be submitted by the individual companies and Associations.

The two most important things that business requires of federal regulators are a thoughtful and well-considered decision process and certainty as to the consequences of the decision once it is made. Neither of those is likely to be satisfied by the adoption of the alternatives identified in the draft Supplemental Environmental Impact Statement. As this letter demonstrates, the SEIS will not survive a judicial challenge under the National Environmental Policy Act ("NEPA").[1] The insufficiency of these documents as presently compiled precludes the potential adoption of the proposed amendment and, therefore, presents a basis for the ultimate disapproval of any measure adopted by the Secretary of Commerce and a basis for the voiding of the action by a District Court if adopted. As such, we request that remedial action be taken and that the SEIS be amended to address the concerns raised.

[1] 42 U.S.C. 4331 et. seq.

The action proposed has already been determined to have a significant impact on the environment, resulting in the need to prepare a supplemental environmental impact statement. This determination understates the significance of this action. What is being proposed here is the most significant management measure ever proposed under the Magnuson Act--an allocation amongst the users of the largest, most valuable fishery in this country and possibly the world. The net result of this action could change dramatically the way this fishery is conducted and impact every other sector of the Alaskan and offshore West Coast fisheries. The significance of the measures proposed deserves a correspondingly significant decision process, documentation and analysis.

NEPA requires a specific process for the development and finalizing of an agency action. NOAA has incorporated the procedural requirements of NEPA into the Fishery Management Plan development process.[2] NOAA must rely to a large extent on the actions of the Council to satisfy the NEPA requirements, since the preliminary documents and the comments on those documents are largely in the control of the Council, until the adoption of the final SEIS. This, of course, in no way relieves NMFS from the responsibility to comply with all of the requirements of NEPA.[4] There are two purposes of an SEIS. The first is to ensure that the decision maker has before it all relevant information to "aid in the substantive decision whether to proceed with the project in the light of its environmental consequences",[5] and to "provide the public with information and an opportunity to participate in gathering information".[6]

NEPA requires agencies, including the Council, to "study, develop and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved

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[2]NOAA Directive Manual 02-10.

[4]The question of the agency responsible for compliance has been universally determined to be NOAA--the agency implementing the regulations.

[5]Trout Unlimited v. Morton, 509 F.2d 1276, 1282 (9th Cir. 1974).

[6] Citizens for a Better Henderson v. Hodel 768 F.2d 1051, 1056 (9th Cir. 1985), Robertson v. Methaw Valley Citizens Council, 109 S. Ct. 1835, 1845 (1989).

conflicts concerning alternative uses of available resources."[7] There is little doubt that the potential preemption of a sector of the participants in the fishery either by natural competition or regulatory fiat engages this requirement.

The Magnuson Act and NEPA provide a procedural framework for the development of fishery management plans and plan amendments. The issuance of the SEIS for Groundfish is circumscribed by those processes. At the heart of the process is the requirement that the Council and NMFS analyze all of the reasonable alternatives to address the identified problem or problems in the fishery.[8] The duties imposed on the FMP process by NEPA are essentially procedural and do not require the agency to select specific alternatives, but rather to adequately consider them. Compliance with NEPA, therefore, requires the identification of reasonable alternatives and a thorough discussion of them so that others outside the decision process can comment on them.[9]

THE SEIS FAILS TO ADEQUATELY ANALYZE AND CONSIDER KEY ISSUES

There are four specific areas that have not been adequately addressed in the SEIS.

1. The level of analysis of the so-called "no action" and "traditional" alternatives;

2. The failure to address the alternative of some form of a limited entry system including ITQs;

3. The failure to address the impact of Southeast Shipyard Association v. U.S. on the makeup of the offshore fleet; and

4. The failure to address the impact of the alternatives on marine mammals and endangered species.

THE ANALYSES OF THE "NO ACTION" AND "TRADITIONAL MEASURES" ALTERNATIVES ARE INADEQUATE

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[7]42 U.S.C. 4332 (2)(E). From the first interpretations of this language, the analysis of alternatives has been described as "the linchpin of the entire impact statement." Monroe County Conservation Council Inc. v. Volpe, 472 F.2d 693,697-698 (2d Cir. 1972).

[8]See generally 42 U.S.C. 4332(2); 16 U.S.C. 1853; the National Standard Guidelines 50 C.F.R. Part 602; and the FCMA Operations Handbook.

[9]See generally Vermont Yankee Nuclear Power Corp. v. Natural Resource Defense Council, 435 U.S. 519, 558 (1978).

The no action alternative is the one alternative in the SEIS that could be extensively analyzed in terms of the existing regulatory regime. Instead, the authors chose to write an explanation of why there needed to be a change. The three-page discussion is conclusory and leading and does not provide much information, if any, for independent analysis.

The no action alternative could well result in the same consequence as some of the alternatives discussed in the plan, namely, a distribution of the resource to efficient sectors of the industry based solely on their competitive nature. Although the Council and NMFS have the information to make this form of an analysis, they fail to provide the information or analysis in the discussion of the no action alternative. Rather, the reader is left with the authors' directed conclusion that the solution to the "problem" is to regulate the industry further. This type of cursory and conclusory analysis has been universally rejected by the courts.[10] The purpose of the no action is to analyze the effects of no federal action. It is not to be used only as a baseline to compare new regulatory proposals.

The traditional measures treatment is equally conclusory and inadequate. Although the Council initiated the amendment because of the preemptive effect on smaller vessels of large mobile factory trawlers, the document treats the measures in only a cursory fashion. The SEIS makes no attempt to analyze these options. Instead, it merely describes them in generic terms. The SEIS indicates the Council would "undertake the development of more specific measures if they determined that such a course of action is preferable to adopting one of the other alternatives presented in this document."[11] The effect of presenting this alternative is to say the Council has management tools other than the ones presented in alternatives 3 and 4, but they are not going to use them.

The extent of the analysis of the allocation alternatives is excessive in comparison to the no action and traditional measures alternative. "While quantity does not denote quality, an assessment of alternatives that is limited to two pages raises a red flag that there has not been an examination to the fullest extent possible.[12] The purpose of a draft environmental impact statement is to raise all of the reasonable alternatives and

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[10]Sierra Club v. U.S. Army Corps of Engineers, 701 F.2d 1011 (2nd Cir. 1983).

[11]Page 3-24, Draft SEIS dated April 29, 1991.

[12]Appalachian Mountain Club v. Brinegar, 394 F. Supp. 105, 118 (D.C.N.H. 1975).

discuss them in such a way that an independent source can draw a rational conclusion as to the reasons for a proposed action and comment upon them. These sections do not even come close to the standard.

FAILURE TO ALLOW THE PUBLIC TO ADDRESS THE ITQ ALTERNATIVE IS A FATAL FLAW

The SEIS does not include a discussion of limited entry or a discussion of an ITQ system despite the clear identification of alternatives that are nothing more than allocations.

The minutes of the April Council meeting reflect a discussion of how to appear to have satisfied the NEPA requirements without having actually complied with them. The Council seems to have misunderstood the purpose of public comment on the SEIS by rejecting the ITQ alternative before the public got a chance to review it. The only requirement that NEPA presents in this regard is the discussion of all reasonable alternatives and not their adoption. Whether an alternative should be discussed is governed by a rule of reason.[13] The rule only requires the agency to set forth those alternatives necessary to permit a "reasoned choice."[14] Failure to consider every reasonable alternative renders an SEIS inadequate.[15]

The CEQ regulations specifically require the analysis of the longterm and short term solutions to the problems identified.[16] The Council, in its April meeting, found that the measures proposed in this SEIS would not provide for a longterm solution. Notwithstanding that, the Council chose to exclude any discussion of limited entry or an ITQ at this time.

The Council's own discussion on the issue, if it had been incorporated in the document, might have been adequate to get informed public comment. Its exclusion, for whatever the reason, foreclosed debate and, therefore, precludes final adoption of the SEIS.

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[13]Commonwealth of Massachusetts v. Andrus, 594 F.2d 872, 884 (1st Cir. 1979).

[14]Save Lake Washington v. Frank, 641 F.2d 1330, 1334 (9th Cir. 1981).

[15]See Appalacian Mountain Club, supra.

[16]40 C.F.R. 1506.16

period between the end of the comment period and the decision on the alternatives to adequately address the comments.

Two substantial pieces of documentation will not be in the hands of reviewers for more than 21 days before the end of the comment period and the rest of the SEIS will not be in the hands of reviewers for more than 40 days before the comments are due. This is a clear violation of the CEQ regulations and the NOAA directives. The Council must extend the comment period on the complete document for the full 45 days prior to considering any further action on the proposal. Secondly, the Council is urged to provide their staff with an adequate period to address all of the comments prior to the decision meeting.

CONCLUSION

In order to withstand a successful challenge to regulations promulgated to implement the allocations considered by the Council, "the draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act. If a draft statement is so inadequate as to preclude meaningful analysis, the agency shall prepare and circulate a revised draft of the appropriate portion."[25] The SEIS does not adequately address the concerns in this letter and therefore ought to be supplemented and redistributed for comment.

Sincerely,

BOGLE & GATES

Robert G. Hayes

[25]40 C.F.R. 1502.9(a).

MEMORANDUM

TO: Council, AP and SSC Members

FROM: Clarence G. Pautzke
Executive Director

DATE: June 18, 1991

SUBJECT: Inshore-Offshore Allocation

ACTION REQUIRED

Select a preferred alternative and consider approving Amendment 23/18 for Secretarial review.

BACKGROUND

This meeting culminates a 2-year effort by the Council and its analytical team to fully develop and evaluate the inshore/offshore issue, the proposed management alternatives, and their biological, economic, and social impacts. The Council's problem statement, list of proposed alternatives and suboptions, and the associated working definitions are provided for your reference as Item C-2(a). The Council is scheduled to take final action on the inshore/offshore amendment (23/18) at this meeting.

In April, the Council approved Amendment 23/18 and its associated Supplemental Environmental Impact Statement/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (SEIS/RIR/IRFA) for public review. This analysis included an SEIS and required a 45-day public review period which commenced on May 10 and concluded on Monday, June 24. Public comments received by June 20 are included in your notebooks. All other comments received prior to the deadline are provided with your supplemental materials.

To help ensure that the Council received informed public comment, the staff held three workshops (Seattle, Newport, and Kodiak on May 7, 8, and 14, respectively) to present an overview of the issue, the alternatives, and the analyses for purposes of clarification.

Members of the analytical team also undertook preparation of two supplements to the RIR analysis intended to provided further insight on the structure of the pollock processing industry and to provide information on alternatives available to catching and processing operations. These documents were sent to all interested parties who requested a copy of the SEIS for a 30-day comment period.

Final action on Amendment 23/18 should be taken in three steps:

1. On Tuesday, following public testimony and deliberation, the Council will identify their preferred alternative.

2. Members of the analytical team, NMFS-Alaska Region, and NOAA-General Counsel will then prepare the amendment text and the implementing regulations. It may also be necessary to prepare additional materials for inclusion in the SEIS/RIR/IRFA.

3. If possible, these documents will be brought to the Council for review by the end of meeting week, and the Council can take final action on the amendment package.

The SEIS/RIR/IRFA, FMP text, and draft regulations will constitute most of the formal Amendment 23/18 package to be submitted to the Secretary. The remaining transmittal documents, preamble, etc., will be prepared as soon after the meeting as possible. The process of Secretarial review will proceed along the following target schedule:

JUNE 28	Final Council approval of Amendment 23/18
JULY 31	Submittal of final SEIS/RIR/IRFA to Secretary of Commerce for review and approval
AUGUST 5	Secretarial review begins 60 day public review begins
OCTOBER 6	Public review period ends
NOVEMBER 10	Secretarial review ends Amendments approved or disapproved
NOVEMBER 25	Final regulations filed
JANUARY 1, 1992	Amendments 23/16 implemented

Inshore/Offshore 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.

Proposed Management Alternatives

Alternative 1: Status quo with no change in regulations to address the problem (This alternative is required by law to be included in the analysis).

Alternative 2: Use traditional management tools including but not limited to: trip limits, periodic allocations, super-exclusive registration areas, and gear sizes.

Alternative 3: Allocate the Total Allowable Catch (TAC) between inshore and offshore components of the industry. Specifically this alternative would examine the Gulf of Alaska pollock and Pacific cod fisheries, and the Bering Sea pollock fishery, under various allocation percentages, and define operational areas for pollock in the Bering Sea.

Council requested the following percentages be used as parameters for analysis of Alternative 3:

Alternative 3.1 Snapshot of 1989 fisheries, with 1989 BSAI JVP catch being distributed 80/20 to inshore/offshore categories respectively.

In GOA:

	Inshore	Offshore
Pollock	46%	54%
Pacific cod	93%	7%

In BSAI:

	Inshore	Offshore
Pollock	33%	67%

Alternative 3.2 Historical inshore/offshore average with 80% of and 20% of JVP historical catch apportioned to inshore and offshore, respectively. (1986-1989; for GOA pollock, 1986-1988 will be examined as well).

In GOA:	Inshore	Offshore
Pollock	69.2% (77.4%)	30.8% (22.6%)
Pacific cod	82.9%	17.1%

In BSAI:

Pollock	59.2%	40.8%

Alternative 3.3

In GOA:	Inshore	Offshore
Pollock	100%	0%
Pacific cod	80%	20%

In BSAI:

Pollock	50%	50%

An option being considered by the Council under Alternative 3 is the designation of an inshore operational area described below:

For pollock harvesting and processing activities, an inshore operational area shall be defined as those waters inside 168 through 163 W longitude, and 56 N latitude south to the Aleutian Islands. Any pollock harvested in a directed pollock fishery in this area and delivered in the U.S. must be processed by the inshore component of the DAP industry.

For purposes of analysis and public review, the following definitions and assumptions have been prepared for proposals being considered under Alternative 3:

Inshore/Offshore Definitions
(Approved by the Council on April 26, 1990)

Offshore: The term "offshore" includes all trawl catcher/processors and all motherships and floating processing vessels, regardless of length, which process groundfish at any time during the calendar year in the Exclusive Economic Zone.

Inshore: The term "inshore" includes shorebased processing plants, all fixed gear catcher/processors, and all motherships and floating processing vessels which process groundfish at any time during the calendar year in the Territorial Sea.

Inshore/Offshore Assumptions for Analysis
(Approved by the Council on April 26, 1990)

1. Each year, prior to the commencement of groundfish processing operations, each mothership and floating processing vessel will declare whether it will operate in the inshore or offshore component of the industry. The 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 and the Bering Sea 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) 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 base line. (Note bycatch provisions will be allowed.)

   (b) A mothership or floating processing vessel which participates in the inshore component of the industry shall be allowed to conduct processing operations on pollock and Pacific cod in any inshore area.

3. On an annual basis, the NMFS will conduct a survey of the inshore and offshore components of the industry to determine the extent to which they will fully utilize their respective allocations. If the results of the survey show that one or the other will not take its entire allocation, or if during the course of the fishing year it becomes apparent that a component will not take the full amount of its allocation, the amount which will not be taken shall be released to the other component for that year via the harvesters. 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 TAC has been reached, the applicable processing operators will be closed for the remainder of the year unless a surplus reapportionment is made.

Alternative 4. Allocate TAC on basis of species (as specified in Alternative 3) and vessel length (for example, partition the BSAI TAC 50-50 between vessels over 150' and those less than 150'. A threshold for the GOA might be 125').

Alternative 5. Use a combination of the following measures: ban pollock roe-stripping everywhere, delay opening of GOA pollock season until after roe season, split pollock into roe, non-roe seasonal quotas, and divide GOA pollock area into separate districts.

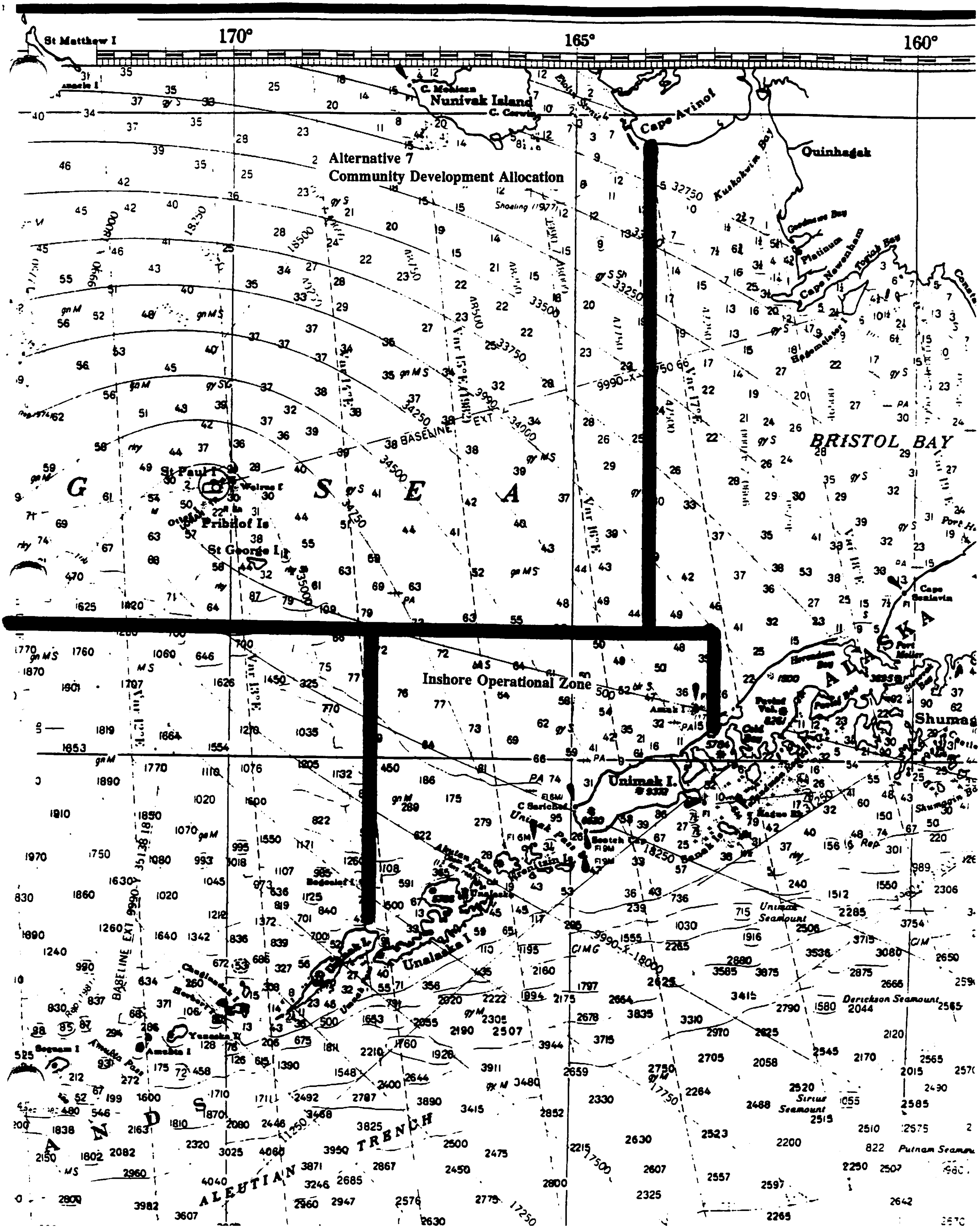
Management Alternatives 3, 4 and 5 were analyzed to determine the effects of the option with and without a moratorium. Assumption 3 also applies to Alternative 4.

At its April 23-26, 1991 meeting, the Council approved the following additional alternatives for analysis and public review:

Alternative 6. The allocation of pollock and Pacific cod will be at the vessel level, categorized by vessels that catch and process onboard, and vessels that catch and deliver at sea or to shoreside processors. A reserve is set aside with first priority for catchers that deliver shoreside.

Alternative 7. Ten percent of the shoreside allocation available in the Bering Sea would be available for delivery to shorebased plants north of 56 N. Latitude and west of 164 W. Longitude.

It should be noted that as with Alternatives 3 and 4, Assumption 3 is available as an option under Alternatives 6 and 7. Whenever the Council selects an alternative which makes a specific allocation, it is understood that regulatory flexibility will be provided to allow redistribution of any surplus amounts between industry sectors. Alternatives 6 and 7 are described and analyzed in greater detail in Section 3.3.7 of the analysis.



Alternative 7
Community Development Allocation
Inshore Operational Zone
170°
165°
160°
St Matthew I
Nunivak Island
Cape Avinof
Quinhagak
Kuskokwim Bay
Platinum
Cape Newenham
BRISTOL BAY
St Paul I
Pribilof Is
St George I
A L A S K A
Unimak I.
Unimak Pass
Akutan Pass
Unalaska I
Umnak I
Shumagin
Port Moller
Cape Seniavin
Unimak Seamount
Derickson Seamount
Sirius Seamount
ALEUTIAN TRENCH

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

AGENDA C-2
Supplemental
August 1991

August 12, 1991

TO: Richard B. Lauber, Chairman
Clarence G. Pautzke, Executive Director
North Pacific Fishery Management Council

FROM: Steven Pennoyer
Regional Director, Alaska Region

Lisa L. Lindeman
Alaska Regional Counsel

SUBJECT: Determination of Inshore/Offshore Regulation as a "Major Rule" Under E.O. 12291

Certain components of the fishing industry have questioned whether the Secretary has determined that a rule to implement an inshore/offshore allocation would be a major rule under Executive Order No. 12291.

At this time, the Secretary has made no determination that a regulation to implement the proposed action would be a major rule. As stated in our July 25, 1991, letter to you,

> due to the likelihood of significant adverse effects upon competition, employment, investment and productivity, the Secretary may determine that the regulation implementing the proposed action would be a major rule. (emphasis added)

While the Secretary could determine the implementing rule would be a major rule, he has not yet reviewed any proposed regulations and has made no such determination.

cc: William W. Fox, Jr.
Jay S. Johnson

Main Motion C-2: Inshore/Offshore (as amended)

Original motion introduced June 27, 1991; passed as amended June 28, 1991

Motion for a Comprehensive Fishery Rationalization Program for the Groundfish and Crab Resources of the Gulf of Alaska and the Bering Sea and Aleutian Islands:

I. MORATORIUM

The Council reiterates its intention to develop and implement as expeditiously as possible a moratorium including implementation by emergency action at the soonest possible date.

II. DEFINITIONS, RULES, AND ALLOCATIONS

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

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. The mothership and 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 Aleutians 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 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:

a. 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.

b. Bering Sea/Aleutian Islands

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

A phase-in period for the BSAI with an allocation of the pollock TAC in the BSAI as follows:

	Inshore	Offshore
Year 1	35%	65%
Year 2	40%	60%
Year 3	45%	55%

Bering Sea Harvesting Vessel Operational Area: For pollock harvesting and processing activities, a harvesting vessel operational area shall be defined as inside 168 degrees through 163 degrees West longitude, and 56 degrees North latitude south to the Aleutian Islands. Any pollock taken in this area in the directed pollock fishery must be taken by harvesting vessels only, with the exception that sixty-five percent of the at-sea "A" season pollock allocation available to the offshore segment may be taken by the offshore segment in the operational area.

III. WESTERN ALASKA COMMUNITY QUOTA

For a Western Alaska Community Quota, the Council instructs the NMFS Regional Director to hold 50% of the BSAI pollock reserve as identified in the BSAI FMP until the end of the third quarter annually. This held reserve shall be released 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. Any of the held reserve not released by the end of the third quarter shall be released as called for in the BSAI FMP except for pollock which shall be released according to the inshore and offshore formula established in the BSAI FMP. 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.

IV. OTHER ALTERNATIVES TO BE CONSIDERED

Commencing immediately, the Council instructs its staff and the GOA and BSAI plan teams, with the assistance of the Alaska Fisheries Science Center, the Alaska Region NMFS Office, the SSC and AP, to undertake the development of alternatives for the Council to consider to rationalize the GOA and BSAI groundfish and crab fisheries under the respective FMPs. The following alternatives shall be included but not limited to:

1. ITQs
2. License Limitation
3. Auction
4. Traditional Management Tools
   a. Trip Limits
   b. Area Registration
   c. Quarterly; Semi Annual or Tri-annual allocations
   d. Gear Quotas (hook and line, pots etc)
   e. Time and area closures
   f. Seasons
   g. Daylight only fishing
5. Continuation of inshore/offshore allocation
6. To implement Community Development Quotas
7. No Action

The Executive Director of the Council, on behalf of the Council, shall immediately solicit from the Council family and other interested parties ideas in addition to those identified above for rationalization of these fisheries. This request should ask for ideas to be submitted by September 30, 1991.

V. DURATION

If by December 31, 1995, the Secretary of Commerce has not approved the FMP amendments developed under item IV above, the inshore/offshore and Western Alaska Community Development Quotas shall cease to be a part of the FMPs and the fisheries shall revert to the Olympic System.

c. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that an agency prepare a regulatory flexibility analysis (RIA) which includes a description of the impact of an agency's rule on small entities. It requires that each initial RIA contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. 5 U.S.C. 607 provides that in complying with the requirements to prepare analyses, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

The OMB guidelines require that in order to satisfy the requirements of E.O. 12291, a regulatory impact analysis must show that:

> There is adequate information concerning the need for and consequences of the proposed action;
> The potential benefits to society outweigh the potential costs; and
> Of all the alternative approaches to the given regulatory objective, the proposed action will maximize net benefits to society.

The OMB guidance speaks of the consideration of costs and benefits of alternatives in terms of quantitative cost/benefit analysis. **The NMFS guidelines on regulatory analysis state:**

> The minimum requirements for an acceptable analysis include a complete, quantitative description of the problem; a description of the management objectives; a description of each alternative; a conceptual discussion of the expected effects of each alternative on the industry; and the presentation of a qualitative analysis of the benefits or losses. The net benefit summary is particularly important as a basis for making well reasoned management decisions.

Appendix B

Public Law 96-354
96th Congress

An Act

Sept. 19, 1980
[S. 299]

To amend title 5, United States Code, to improve Federal rulemaking by creating procedures to analyze the availability of more flexible regulatory approaches for small entities, and for other purposes.

Regulatory Flexibility Act
5 USC 601 note

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the **"Regulatory Flexibility Act"**.

FINDINGS AND PURPOSES

5 USC 601 note

SEC. 2. (a) The Congress finds and declares that—

(1) when adopting regulations to protect the health, safety and economic welfare of the Nation, Federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public;

(2) laws and regulations designed for application to large scale entities have been applied uniformly to small businesses, small organizations, and small governmental jurisdictions even though the problems that gave rise to government action may not have been caused by those smaller entities;

(3) uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources;

(4) the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity;

(5) unnecessary regulations create entry barriers in many industries and discourage potential entrepreneurs from introducing beneficial products and processes;

(6) the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation;

(7) alternative regulatory approaches which do not conflict with the stated objectives of applicable statutes may be available which minimize the significant economic impact of rules on small businesses, small organizations, and small governmental jurisdictions;

(8) the process by which Federal regulations are developed and adopted should be reformed to require agencies to solicit the ideas and comments of small businesses, small organizations, and small governmental jurisdictions to examine the impact of proposed and existing rules on such entities, and to review the continued need for existing rules.

(b) It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.

ANALYSIS OF REGULATORY FUNCTIONS

SEC. 3. (a) Title 5, United States Code, is amended by adding immediately after chapter 5 the following new chapter:

"CHAPTER 6—THE ANALYSIS OF REGULATORY FUNCTIONS

"§ 601. Definitions

5 USC 601.

"For purposes of this chapter—

"(1) the term 'agency' means an agency as defined in section 551(1) of this title;

5 USC 551.

"(2) the term 'rule' means any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of this title, or any other law, including any rule of general applicability governing Federal grants to State and local governments for which the agency provides an opportunity for notice and public comment, except that the term 'rule' does not include a rule of particular applicability relating to rates, wages, corporate or financial structures or reorganizations thereof, prices, facilities, appliances, services, or allowances therefor or to valuations, costs or accounting, or practices relating to such rates, wages, structures, prices, appliances, services, or allowances;

5 USC 553.

"(3) the term 'small business' has the same meaning as the term 'small business concern' under section 3 of the Small Business Act, unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

15 USC 632.

"(4) the term 'small organization' means any not-for-profit enterprise which is independently owned and operated and is not dominant in its field, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register;

"(5) the term 'small governmental jurisdiction' means governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand, unless an agency establishes, after opportunity for public comment, one or more definitions of such term which are appropriate to the activities of the agency and which are based on such factors as location in rural or sparsely populated areas or limited revenues due to the population of such jurisdiction, and publishes such definition(s) in the Federal Register; and

"(6) the term 'small entity' shall have the same meaning as the terms 'small business', 'small organization' and 'small governmental jurisdiction' defined in paragraphs (3), (4) and (5) of this section.

5 USC 602.

"§ 602. Regulatory agenda

Publication in Federal Register

"(a) During the months of October and April of each year, each agency shall publish in the Federal Register a regulatory flexibility agenda which shall contain—

"(1) a brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

"(2) a summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking, and

"(3) the name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

Transmittal to SBA

"(b) Each regulatory flexibility agenda shall be transmitted to the Chief Counsel for Advocacy of the Small Business Administration for comment, if any.

Notice

"(c) Each agency shall endeavor to provide notice of each regulatory flexibility agenda to small entities or their representatives through direct notification or publication of the agenda in publications likely to be obtained by such small entities and shall invite comments upon each subject area on the agenda.

"(d) Nothing in this section precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda, or requires an agency to consider or act on any matter listed in such agenda.

5 USC 603.

"§ 603. Initial regulatory flexibility analysis

Public comment 5 USC 553

"(a) Whenever an agency is required by section 553 of this title, or any other law, to publish general notice of proposed rulemaking for any proposed rule, the agency shall prepare and make available for public comment an initial regulatory flexibility analysis. Such analysis shall describe the impact of the proposed rule on small entities. The initial regulatory flexibility analysis or a summary shall be published in the Federal Register at the time of the publication of general notice of proposed rulemaking for the rule. The agency shall transmit a copy of the initial regulatory flexibility analysis to the Chief Counsel for Advocacy of the Small Business Administration.

Publication in Federal Register Transmittal to SBA

"(b) Each initial regulatory flexibility analysis required under this section shall contain—

"(1) a description of the reasons why action by the agency is being considered;

"(2) a succinct statement of the objectives of, and legal basis for, the proposed rule;

"(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

"(4) a description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

"(5) an identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.

"(c) Each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives such as—

"(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

"(2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

"(3) the use of performance rather than design standards; and

"(4) an exemption from coverage of the rule, or any part thereof, for such small entities.

"§ 604. Final regulatory flexibility analysis 5 USC 604

"(a) When an agency promulgates a final rule under section 553 of this title, after being required by that section or any other law to publish a general notice of proposed rulemaking, the agency shall prepare a final regulatory flexibility analysis. Each final regulatory flexibility analysis shall contain— 5 USC 553

"(1) a succinct statement of the need for, and the objectives of, the rule;

"(2) a summary of the issues raised by the public comments in response to the initial regulatory flexibility analysis, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments; and

"(3) a description of each of the significant alternatives to the rule consistent with the stated objectives of applicable statutes and designed to minimize any significant economic impact of the rule on small entities which was considered by the agency, and a statement of the reasons why each one of such alternatives was rejected.

Public availability; publication in Federal Register 5 USC 553

"(b) The agency shall make copies of the final regulatory flexibility analysis available to members of the public and shall publish in the Federal Register at the time of publication of the final rule under section 553 of this title a statement describing how the public may obtain such copies.

"§ 605. Avoidance of duplicative or unnecessary analyses 5 USC 605

"(a) Any Federal agency may perform the analyses required by sections 602, 603, and 604 of this title in conjunction with or as a part of any other agenda or analysis required by any other law if such other analysis satisfies the provisions of such sections.

"(b) Sections 603 and 604 of this title shall not apply to any proposed or final rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. If the head of the agency makes a certification under the preceding sentence, the agency shall publish such certification in the Federal Register, at the time of publication of general notice of proposed rulemaking for the rule or at the time of publication of the final rule, along with a succinct statement explaining the reasons for such certification, and provide such certification and statement to the Chief Counsel for Advocacy of the Small Business Administration.

Certification, publication in Federal Register and transmittal to SBA.

"(c) In order to avoid duplicative action, an agency may consider a series of closely related rules as one rule for the purposes of sections 602, 603, 604 and 610 of this title.

5 USC 606.

"§ 606. Effect on other law

"The requirements of sections 603 and 604 of this title do not alter in any manner standards otherwise applicable by law to agency action.

5 USC 607

"§ 607. Preparation of analyses

"In complying with the provisions of sections 603 and 604 of this title, an agency may provide either a quantifiable or numerical description of the effects of a proposed rule or alternatives to the proposed rule, or more general descriptive statements if quantification is not practicable or reliable.

5 USC 608.

"§ 608. Procedure for waiver or delay of completion

Publication in Federal Register.

"(a) An agency head may waive or delay the completion of some or all of the requirements of section 603 of this title by publishing in the Federal Register, not later than the date of publication of the final rule, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes compliance or timely compliance with the provisions of section 603 of this title impracticable.

Publication in Federal Register.

"(b) Except as provided in section 605(b), an agency head may not waive the requirements of section 604 of this title. An agency head may delay the completion of the requirements of section 604 of this title for a period of not more than one hundred and eighty days after the date of publication in the Federal Register of a final rule by publishing in the Federal Register, not later than such date of publication, a written finding, with reasons therefor, that the final rule is being promulgated in response to an emergency that makes timely compliance with the provisions of section 604 of this title impracticable. If the agency has not prepared a final regulatory analysis pursuant to section 604 of this title within one hundred and eighty days from the date of publication of the final rule, such rule shall lapse and have no effect. Such rule shall not be repromulgated until a final regulatory flexibility analysis has been completed by the agency.

5 USC 609.

"§ 609. Procedures for gathering comments

"When any rule is promulgated which will have a significant economic impact on a substantial number of small entities, the head of the agency promulgating the rule or the official of the agency with statutory responsibility for the promulgation of the rule shall assure that small entities have been given an opportunity to participate in the rulemaking for the rule through techniques such as—

"(1) the inclusion in an advanced notice of proposed rulemaking, if issued, of a statement that the proposed rule may have a significant economic effect on a substantial number of small entities;

"(2) the publication of general notice of proposed rulemaking in publications likely to be obtained by small entities;

"(3) the direct notification of interested small entities;

"(4) the conduct of open conferences or public hearings concerning the rule for small entities; and

"(5) the adoption or modification of agency procedural rules to reduce the cost or complexity of participation in the rulemaking by small entities.

5 USC 610

"§ 610. Periodic review of rules

Plan, publication in Federal Register.

"(a) Within one hundred and eighty days after the effective date of this chapter, each agency shall publish in the Federal Register a plan for the periodic review of the rules issued by the agency which have or will have a significant economic impact upon a substantial number of small entities. Such plan may be amended by the agency at any time by publishing the revision in the Federal Register. The purpose of the review shall be to determine whether such rules should be continued without change, or should be amended or rescinded, consistent with the stated objectives of applicable statutes, to minimize any significant economic impact of the rules upon a substantial number of such small entities. The plan shall provide for the review of all such agency rules existing on the effective date of this chapter within ten years of that date and for the review of such rules adopted after the effective date of this chapter within ten years of the publication of such rules as the final rule. If the head of the agency determines that completion of the review of existing rules is not feasible by the established date, he shall so certify in a statement published in the Federal Register and may extend the completion date by one year at a time for a total of not more than five years.

Consideration factors.

"(b) In reviewing rules to minimize any significant economic impact of the rule on a substantial number of small entities in a manner consistent with the stated objectives of applicable statutes, the agency shall consider the following factors—

"(1) the continued need for the rule;

"(2) the nature of complaints or comments received concerning the rule from the public;

"(3) the complexity of the rule;

"(4) the extent to which the rule overlaps, duplicates or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and

"(5) the length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Publication in Federal Register

"(c) Each year, each agency shall publish in the Federal Register a list of the rules which have a significant economic impact on a substantial number of small entities, which are to be reviewed pursuant to this section during the succeeding twelve months. The list shall include a brief description of each rule and the need for and legal basis of such rule and shall invite public comment upon the rule.

5 USC 611

"§ 611. Judicial review

"(a) Except as otherwise provided in subsection (b), any determination by an agency concerning the applicability of any of the provi-

sions of this chapter to any action of the agency shall not be subject to judicial review.

"(b) Any regulatory flexibility analysis prepared under sections 603 and 604 of this title and the compliance or noncompliance of the agency with the provisions of this chapter shall not be subject to judicial review. When an action for judicial review of a rule is instituted, any regulatory flexibility analysis for such rule shall constitute part of the whole record of agency action in connection with the review.

"(c) Nothing in this section bars judicial review of any other impact statement or similar analysis required by any other law if judicial review of such statement or analysis is otherwise provided by law.

Submittal to President and congressional committees. 5 USC 612.

"§ 612. Reports and intervention rights

"(a) The Chief Counsel for Advocacy of the Small Business Administration shall monitor agency compliance with this chapter and shall report at least annually thereon to the President and to the Committees on the Judiciary of the Senate and House of Representatives, the Select Committee on Small Business of the Senate, and the Committee on Small Business of the House of Representatives.

"(b) The Chief Counsel for Advocacy of the Small Business Administration is authorized to appear as amicus curiae in any action brought in a court of the United States to review a rule. In any such action, the Chief Counsel is authorized to present his views with respect to the effect of the rule on small entities.

"(c) A court of the United States shall grant the application of the Chief Counsel for Advocacy of the Small Business Administration to appear in any such action for the purposes described in subsection (b).".

EFFECTIVE DATE

5 USC 601 note.

SEC. 4. The provisions of this Act shall take effect January 1, 1981, except that the requirements of sections 603 and 604 of title 5, United States Code (as added by section 3 of this Act) shall apply only to rules for which a notice of proposed rulemaking is issued on or after January 1, 1981.

Approved September 19, 1980.

LEGISLATIVE HISTORY:

SENATE REPORT No. 96-878 (Comm. on the Judiciary).
CONGRESSIONAL RECORD, Vol. 126 (1980):
Aug. 6, considered and passed Senate.
Sept. 8, 9, considered and passed House.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 16, No. 38:
Sept. 19, Presidential statement.

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DAH—estimated domestic annual harvest.
DAP—estimated domestic annual processing.
EY—equilibrium yield.
EEZ—exclusive economic zone.
FMP—fishery management plan.
JVP—joint venture processing.
MSY—maximum sustainable yield.
OY—optimum yield.
PMP—preliminary fishery management plan.
TAC—total allowable catch.
TALFF—total allowable level of foreign fishing.

(c) *Word usage.* (1) *Must* is used to denote an obligation to act; it is used primarily when referring to requirements of the Act, the logical extension thereof, or of other applicable law.

(2) *Should* is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor reviewers will look for in evaluating an FMP.

(3) *May* is used in a permissive sense.

(4) *May not* is proscriptive; it has the same force as *must not.*

(5) *Will* is used descriptively.

(6) *Shall* is not used at all, except when quoting the statutory language of each standard. "Must" is used instead of "shall" to avoid confusion with the future tense.

(7) *Could* is used when giving examples, in a hypothetical, permissive sense.

(8) *Can* is used to mean "is able to," as distinguished from "may."

(9) *Examples* are given by way of illustration and further explanation. They are not inclusive lists; they do not limit options.

(10) *Analysis,* as a paragraph heading, signals more detailed guidance as to the type of discussion and examination an FMP should contain to demonstrate compliance with the standard in question.

(11) *Determine* is used when referring to OY.

(12) *Adjust* is used when establishing a deviation from MSY for biological reasons, such as in establishing ABC, TAC, or EY.

(13) *Modify* is used when the deviation from MSY is for the purpose of determining OY, in accord with relevant economic, social, or ecological factors.

(14) *Industry* includes recreational and commercial fishing and the harvesting, processing, and marketing sectors.

Subpart B—National Standards

§ 602.10 General.

(a) *Purpose.* (1) This subpart establishes guidelines, based on the national standards, to assist in the development and review of FMPs, amendments, and regulations prepared by the Councils and the Secretary.

(2) In developing FMPs, the Councils have the initial authority to ascertain factual circumstances, to establish management objectives, and to propose management measures that will achieve the objectives. The Secretary will determine whether the proposed management objectives and measures are consistent with the national standards, other provisions of the Act, and other applicable law. The Secretary has an obligation under section 301(b) of the Act to inform the Councils of the Secretary's interpretation of the national standards so that they will have an understanding of the basis on which FMPs will be reviewed.

(3) The national standards are statutory principles that must be followed in any FMP. The guidelines summarize Secretarial interpretations that have been and will be, applied under these principles. The guidelines are intended as aids to decisionmaking; FMPs formulated according to the guidelines will have a better chance for expeditious Secretarial review, approval, and implementation. FMPs that are in substantial compliance with the guidelines, the Act, and other applicable law must be approved.

(b) *Fishery management objectives.* (1) Each FMP, whether prepared by a Council or by the Secretary, should identify what the FMP is designed to accomplish, i.e., the management objectives to be attained in regulating the fishery under consideration. In establishing objectives, Councils balance biological constraints with human needs, reconcile present and future costs and benefits, and integrate the diversity of public and private interests. If objectives are in conflict, priorities should be established among them.

(2) How objectives are defined is important to the management process. Objectives should address the problems of a particular fishery. The objectives should be clearly stated, practicably attainable, framed in terms of definable events and measurable benefits, and based upon a comprehensive rather than a fragmentary approach to the problems addressed. An FMP should make a clear distinction between objectives and the management measures chosen to achieve them. The objectives of each FMP provide the context within which the Secretary will judge the consistency of an FMP's conservation and management measures with the national standards.

§ 602.11 National Standard 1—Optimum Yield.

(a) *Standard 1.* Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(b) *General.* The determination of OY is a decisional mechanism for resolving the Act's multiple purposes and policies, for implementing an FMP's objectives, and for balancing the various interests that comprise the national welfare. OY is based on MSY, or on MSY as it may be adjusted under paragraph (d)(3) of this section. The most important limitation on the specification of OY is that the choice of OY—and the conservation and management measures proposed to achieve it—must prevent overfishing.

(c) *Overfishing.* (1) Overfishing is a level or rate of fishing mortality that jeopardizes the long-term capacity of a stock or stock complex to produce MSY on a continuing basis. Each FMP must specify, to the maximum extent possible, an objective and measurable definition of overfishing for each stock or stock complex covered by that FMP, and provide an analysis of how the definition was determined and how it relates to reproductive potential.

(2) The definition of overfishing for a stock or stock complex may be developed or expressed in terms of a minimum level of spawning biomass ("threshold"); maximum level or rate of fishing mortality; or formula, model, or other measurable standard designed to ensure the maintenance of the stock's productive capacity. Overfishing must be defined in a way to enable the Council and the Secretary to monitor and evaluate the condition of the stock or stock complex relative to the definition.

(3) Different fishing patterns can produce a variety of effects on local and areawide abundance, availability, size, and age composition of a stock. Some of these fishing patterns have been called "growth," "localized," or "pulse" overfishing; however, these patterns are not necessarily overfishing under the national standard 1 definition, which focuses on recruitment and long-term reproductive capacity. (Also see paragraph (c)(6)(v) of this section and Appendix A to Subpart B of this part.)

(4) Overfishing definitions must be based on the best scientific information available. Councils must build into the definition appropriate consideration of risk, taking into account uncertainties i estimating domestic harvest, stock conditions, or the effects of

environmental factors (see § 602.16 of this part). In cases where scientific data are severely limited, the Councils' informed judgment must be used, and effort should be directed to identifying and gathering the needed data (see §§ 602.12 and 605.14 of this part).

(5) Secretarial approval or disapproval of the overfishing definition will be based on consideration of whether the proposal:

(i) Has sufficient scientific merit;

(ii) Is likely to result in effective Council action to prevent the stock from closely approaching or reaching an overfished status;

(iii) Provides a basis for objective measurement of the status of the stock against the definition; and

(iv) Is operationally feasible.

(6) In addition to a specific definition of overfishing for each stock or stock complex, an FMP must contain management measures necessary to prevent overfishing.

(i) If overfishing is defined in terms of a threshold biomass level, the Council must ensure that fishing effort does not cause spawning biomass to fall and remain below that threshold.

(ii) If overfishing is defined in terms of a maximum fishing mortality rate, the Council must ensure that fishing effort on that stock does not cause the maximum rate to be exceeded.

(iii) If data indicate that an overfished condition exists, a program must be established for rebuilding the stock over a period of time specified by the Council and acceptable to the Secretary.

(iv) If data indicate that a stock or stock complex is approaching an overfished condition, the Council should identify actions or combination of actions to be undertaken in response.

(v) Depending on the objectives of a particular FMP and the specific definition of overfishing established for the stock or stock complex under management, a Council may recommend measures to prevent or permit pulse, localized, or growth overfishing. (See Appendix A to Subpart B of this part for explanatory material.)

(7) Significant adverse alterations in environment/habitat conditions increase the possibility that fishing effort will contribute to a stock collapse. Care should be taken to identify the cause of any downward trends in spawning stock sizes or average annual recruitment. (See Appendix A to Subpart B of this part for discussion of indicators of existing or impending overfishing.)

(i) Whether these trends are caused by environmental changes or by fishing effort, the only direct control provided by the Act is to reduce fishing mortality.

(ii) Unless the Council asserts, as supported by appropriate evidence, that reduced fishing effort would not alleviate the problem, the FMP must include measures to reduce fishing mortality regardless of the cause of the low population level.

(iii) If man-made environmental changes are contributing to the downward trends, in addition to controlling effort Councils should recommend restoration of habitat and other ameliorative programs, to the extent possible, and consider whether to take action under section 302(i) of the Act.

(8) There are certain limited exceptions to the requirement of preventing overfishing. Harvesting the major component of a mixed fishery at its optimum level may result in the overfishing of a minor (smaller or less valuable) stock component in the fishery. A Council may decide to permit this type of overfishing if it is demonstrated by analysis (paragraph (f)(5) of this section) that it will result in net benefits to the Nation, and if the Council's action will not cause any stock to require protection under the Endangered Species Act (ESA).

(9) After February 25, 1991, all new and existing FMPs should contain a definition of overfishing for the stock or stock complex managed under the affected FMP.

(i) An FMP or amendment being developed and not yet adopted as final by the Councils at the time these guidelines become effective should contain a definition of overfishing when submitted for approval by the Secretary.

(ii) On or before November 21, 1989, Councils should examine each existing FMP as amended and notify the Regional Director if, in the opinion of the Council, the FMP is currently consistent with the provisions of § 602.11(c) without amendment. Within 90 days of notification, the Secretary will review any such FMP for consistency with § 602.11(c), and notify the Council of concurrence or disagreement.

(iii) On or before November 23, 1990, an amendment should be prepared and submitted to the Secretary for all existing FMPs not approved under paragraph (b)(9)(ii) of this section to add a definition of overfishing for the stock or stock complex managed under the affected FMP.

(d) *MSY.* (1) MSY is the largest average annual catch or yield that can be taken over a significant period of time from each stock under prevailing ecological and environmental conditions.

(2) MSY may be presented as a range of values. One MSY may be specified for a related group of species in a mixed-species fishery. Since MSY is a long-term average, it need not be specified annually, but must be based on the best scientific information available.

(3) MSY may be only the starting point in providing a realistic biological description of allowable fishery removals. MSY may need to be adjusted because of environmental factors, stock peculiarities, or other biological variables, prior to the determination of OY. An example of such an adjustment is determination of ABC.

(e) *ABC.* (1) ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery.

(2) When ABC is used, its specification constitutes the first step in deriving OY from MSY. Unless the best scientific information available indicates otherwise (see § 602.12 of this part), ABC should be no higher than the product of the stock's natural mortality rate and the biomass of the exploitable stock. If a threshold has been specified for the stock, ABC must equal zero when the stock is at or below that threshold (see paragraph (c)(2) of this section). ABC may be expressed in numeric or nonnumeric terms.

(f) *OY*—(1) *Definition.* The term "optimum" with respect to the yield from a fishery, means the amount of fish which will provide the greatest overall benefit to the Nation, with particular reference to food production and recreational opportunities; and which is prescribed as such on the basis of the maximum sustainable yield from each fishery, as modified by any relevant economic, social, or ecological factors (section 3(18)(b) of the Act).

(2) *Values in determination.* In determining the greatest benefit to the Nation, two values that should be weighed are food production and recreational opportunities (section 3(18)(a) of the Act). They should receive serious attention as measures of benefit when considering the economic, ecological, or social factors used in modifying MSY to obtain OY.

(i) "Food production" encompasses the goals of providing seafood to consumers, maintaining an economically viable fishery, and utilizing the capacity of U.S. fishery resources to meet nutritional needs.

(ii) "Recreational opportunities" includes recognition of the importance of the quality of the recreational fishing

experience, and of the contribution of recreational fishing to the national, regional, and local economies and food supplies.

(3) *Factors relevant to OY.* The Act's definition of OY identifies three categories of factors to be used in modifying MSY to arrive at OY: economic, social, and ecological (section 3(18)(b) of the Act). Not every factor will be relevant in every fishery. For some fisheries, insufficient information may be available with respect to some factors to provide a basis for corresponding modifications to MSY.

(i) *Economic factors.* Examples are promotion of domestic fishing, development of unutilized or underutilized fisheries, satisfaction of consumer and recreational needs, and encouragement of domestic and export markets for U.S.-harvested fish. Some other factors that may be considered are the value of fisheries, the level of capitalization, operating costs of vessels, alternate employment opportunities, and economies of coastal areas.

(ii) *Social factors.* Examples are enjoyment gained from recreational fishing, avoidance of gear conflicts and resulting disputes, preservation of a way of life for fishermen and their families, and dependence of local communities on a fishery. Among other factors that may be considered are the cultural place of subsistence fishing, obligations under Indian treaties, and world-wide nutritional needs.

(iii) *Ecological factors.* Examples are the vulnerability of incidental or unregulated species in a mixed-species fishery, predator-prey or competitive interactions, and dependence of marine mammals and birds or endangered species on a stock of fish. Equally important are environmental conditions that stress marine organisms, such as natural and man-made changes in wetlands or nursery grounds, and effects of pollutants on habitat and stocks.

(4) *Specification.* (i) The "amount of fish" that constitutes the OY need not be expressed in terms of numbers or weight of fish. The economic, social, or ecological modifications to MSY may be expressed by describing fish having common characteristics, the harvest of which provides the greatest overall benefit to the Nation. For instance, OY may be expressed as a formula that converts periodic stock assessments into quotas or guideline harvest levels for recreational, commercial, and other fishing. OY may be defined in terms of an annual harvest of fish or shellfish having a minimum weight, length, or other measurement. OY may also be expressed as an amount of fish taken only in certain areas, or in certain seasons, or with particular gear, or by a specified amount of fishing effort. In the case of a mixed-species fishery, the incidental-species OY may be a function of the directed catch, or absorbed into an OY for related species.

(ii) If a numerical OY is chosen, a range or average may be specified.

(iii) In a fishery where there is a significant discard component, the OY may either include or exclude discards, consistent with the other yield determinations.

(iv) The OY specification can be converted into an annual numerical estimate to establish any TALFF and to analyze impacts of the management regime. There should be a mechanism in an FMP for periodic reassessment of the OY specification, so that it is responsive to changing circumstances in the fishery. (See § 602.12(e).)

(v) The determination of OY requires a specification of MSY. However, even where sufficient scientific data as to the biological characteristics of the stock do not exist, or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, or where frequent large-scale fluctuations in stock size make this concept of limited value, the OY should be based on the best scientific information available.

(5) *Analysis.* An FMP must contain an analysis of how its OY specification was determined (section 303(a)(3) of the Act). It should relate the explanation of overfishing in paragraph (c) of this section to conditions in the particular fishery, and explain how its choice of OY and conservation and management measures will prevent overfishing in that fishery. If overfishing is permitted under paragraph (c)(8) of this section, the analysis must contain a justification in terms of overall benefits and an assessment of the risk of the species or stock component reaching a "threatened" or "endangered" status. A Council must identify those economic, social, and ecological factors relevant to management of a particular fishery, then evaluate them to arrive at the modification (if any) of MSY. The choice of a particular OY must be carefully defined and documented to show that the OY selected will produce the greatest benefit to the Nation.

(g) *OY as a target.* (1) The specification of OY in an FMP is not automatically a quota or ceiling, although quotas may be derived from the OY where appropriate. OY is a target or goal; an FMP must contain conservation and management measures, and provisions for information collection, that are designed to achieve OY. These measures should allow for practical and effective implementation and enforcement of the management regime, so that the harvest is allowed to reach but not to exceed OY by a substantial amount. The Secretary has an obligation to implement and enforce the FMP so that OY is achieved. If management measures prove unenforceable—or too restrictive or not rigorous enough to realize OY—they should be modified; an alternative is to reexamine the adequacy of the OY specification.

(2) Exceeding OY does not necessarily constitute overfishing, although they might coincide. Even if no overfishing resulted, continual harvest at a level above a fixed-value OY would violate national standard 1 because OY was exceeded (not achieved) on a continuing basis.

(3) Part of the OY may be held as a reserve to allow for uncertainties in estimates of stock size and of DAH or to solve operational problems in achieving (but not exceeding) OY. If an OY reserve is established, an adequate mechanism should be included in the FMP to permit timely release of the reserve to domestic or foreign fishermen, if necessary.

(h) *OY and foreign fishing.* Section 201(d) of the Act provides that fishing by foreign nations is limited to that portion of the OY that will not be harvested by vessels of the United States.

(1) *DAH.* Councils must consider the capacity of, and the extent to which, U.S. vessels will harvest the OY on an annual basis. Estimating the amount that U.S. fishing vessels will actually harvest is required to determine the surplus.

(2) *DAP.* Each FMP must identify the capacity of U.S. processors. It must also identify the amount of DAP, which is the sum of two estimates:

(i) The amount of U.S. harvest that domestic processors will process. This estimate may be based on historical performance and on surveys of the expressed intention of manufacturers to process, supported by evidence of contracts, plant expansion, or other relevant information; and

(ii) The amount of fish that will be harvested by domestic vessels, but not processed (*e.g.*, marketed as fresh whole fish, used for private consumption, or used for bait).

(3) *JVP.* When DAH exceeds DAP, the surplus is available for JVP. JVP is derived from DAH.

§ 602.12 National Standard 2—Scientific Information.

(a) *Standard 2.* Conservation and management measures shall be based upon the best scientific information available.

(b) *FMP development.* The fact that scientific information concerning a fishery is incomplete does not prevent the preparation and implementation of an FMP (see related §§ 602.13(d)(2) and 602.17(b)).

(1) Scientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature. Successful fishery management depends, in part, on the timely availability, quality, and quantity of scientific information, as well as on the thorough analysis of this information, and the extent to which the information is applied. If there are conflicting facts or opinions relevant to a particular point, a Council may choose among them, but should justify the choice.

(2) FMPs must take into account the best scientific information available at the time of preparation. Between the initial drafting of an FMP and its submission for final review, new information often becomes available. This new information should be incorporated into the final FMP where practicable; but it is unnecessary to start the FMP process over again unless the information indicates that drastic changes have occurred in the fishery that might require revision of the management objectives or measures.

(c) *FMP implementation.* (1) An FMP must specify whatever information fishermen and processors will be required or requested to submit to the Secretary. Information about harvest within State boundaries, as well as in the EEZ, may be collected if it is needed for proper implementation of the FMP and cannot be obtained otherwise. The FMP should explain the practical utility of the information specified in monitoring the fishery, in facilitating inseason management decisions, and in judging the performance of the management regime; it should also consider the effort, cost, or social impact of obtaining it.

(2) An FMP should identify scientific information needed from other sources to improve understanding and management of the resource and the fishery.

(3) The information submitted by various data suppliers about the stocks(s) throughout its range or about the fishery should be comparable and compatible, to the maximum extent possible.

(d) *FMP amendment.* FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures.

(e) *Stock Assessment and Fishery Evaluation (SAFE) Report.* (1) The SAFE report is a document or set of documents that provides Councils with a summary of the most recent biological condition of species in the fishery management unit (FMU), and the social and economic condition of the recreational and commercial fishing interests and the fish processing industries. It summarizes, on a periodic basis, the best available scientific information concerning the past, present, and possible future condition of the stocks and fisheries being managed under Federal regulation.

(i) The Secretary has the responsibility to assure that a SAFE report or similar document is prepared, reviewed annually, and changed as necessary for each FMP. The Secretary or Councils may utilize any combination of talent from Council, State, Federal, university, or other sources to acquire and analyze data and produce the SAFE report.

(ii) The SAFE report provides information to the Councils for determining annual harvest levels from each stock, documenting significant trends or changes in the resource and fishery over time, and assessing the relative success of existing State and Federal fishery management programs. In addition, the SAFE report may be used to update or expand previous environmental and regulatory impact documents, and ecosystem and habitat descriptions.

(iii) Each SAFE report must be scientifically based, and cite data sources and interpretations.

(2) Each SAFE report should contain information on which to base harvest specifications (see Appendix A to Subpart B of this part for examples).

(3) Each SAFE report should contain information on which to assess the social and economic condition of the persons and businesses that rely on the use of fish resources, including fish processing industries (see Appendix A to Subpart B of this part for examples).

(4) Each SAFE report may contain additional economic, social, and ecological information pertinent to the success of management or the achievement of objectives of each FMP (see Appendix A to Subpart B of this part for examples).

§ 602.13 National Standard 3—Management Units.

(a) *Standard 3.* To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(b) *General.* The purpose of this standard is to induce a comprehensive approach to fishery management. The geographic scope of the fishery, for planning purposes, should cover the entire range of the stocks(s) of fish, and not be overly constrained by political boundaries. Wherever practicable, an FMP should seek to manage interrelated stocks of fish.

(c) *Unity of management.* Cooperation and understanding among entities concerned with the fishery (e.g., Councils, States, Federal government, international commissions, foreign nations) are vital to effective management. Where management of a fishery involves multiple jurisdictions, coordination among the several entities should be sought in the development of an FMP. Where a range overlaps Council areas, one FMP to cover the entire range is preferred. The Secretary designates which Council or Councils will prepare the FMP, under section 304(f) of the Act.

(d) *Management unit.* The term "management unit" means a fishery or that portion of a fishery identified in an FMP as relevant to the FMP's management objectives.

(1) *Basis.* The choice of a management unit depends on the focus of the FMP's objectives, and may be organized around biological, geographic, economic, technical, social, or ecological perspectives. For example:

(i) *Biological*—could be based on a stock(s) throughout its range.

(ii) *Geographic*—could be an area.

(iii) *Economic*—could be based on a fishery supplying specific product forms.

(iv) *Technical*—could be based on a fishery utilizing a specific gear type or similar fishing practices.

(v) *Social*—could be based on fishermen as the unifying element, such as when the fishermen pursue different species in a regular pattern throughout the year.

(vi) *Ecological*—could be based on species that are associated in the ecosystem or are dependent on a particular habitat.

(2) *Conservation and management measures.* FMPs should include conservation and management measures for that part of the management unit within U.S. waters, although the Secretary can ordinarily implement

em only within the EEZ. The measures ed not be identical for each ographic area within the management nit, if the FMP justifies the differences. A management unit may contain, in addition to regulated species, stocks of fish for which there is not enough information available to specify MSY and OY or to establish management measures, so that data on these species may be collected under the FMP.

(e) *Analysis.* To document that an FMP is as comprehensive as practicable, it should include discussions of the following:

(1) The range and distribution of the stocks, as well as the patterns of fishing effort and harvest.

(2) Alternative management units and reasons for selecting a particular one. A less-than-comprehensive management unit may be justified if, for example, complementary management exits or is planned for a separate geographic area or for a distinct use of the stocks, or if the unmanaged portion of the resource is immaterial to proper management.

(3) Management activities and habitat programs of adjacent States and their effects on the FMP's objectives and management measures. Where State action is necessary to implement measures within State waters to achieve MP objectives, the FMP should identify at State action is necessary, discuss e consequences of State inaction or contrary action, and make appropriate recommendations. The FMP should also discuss the impact that Federal regulations will have on State management activities.

(4) Management activities of other countries having an impact on the fishery, and how the FMP's management measures are designed to take into account these impacts. International boundaries may be dealt with in several ways. For example:

(i) By limiting the management unit's scope to that portion of the stock found in U.S. waters;

(ii) By estimating MSY for the entire stock and then basing the determination of OY for the U.S. fishery on the portion of the stock within U.S. waters; or

(iii) By referring to treaties or cooperative agreements.

§ 602.14 National Standard 4—Allocations.

(a) *Standard 4.* Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, ch allocation shall be: (1) Fair and itable to all such fishermen; (2) sonably calculated to promote nservation; and (3) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(b) *Discrimination among residents of different States.* An FMP may not differentiate among U.S. citizens, nationals, resident aliens, or corporations on the basis of their State of residence. An FMP may not incorporate or rely on a State statute or regulation that discriminates against residents of another State. Conservation and management measures that have different effects on persons in various geographic locations are permissible, if they satisfy the other guidelines under standard 4. Examples of these precepts are:

(1) An FMP that restricted fishing in the EEZ to those holding a permit from State X would violate standard 4 if State X issued permits only to its own citizens.

(2) An FMP that closed a spawning ground might disadvantage fishermen living in the State closest to it, because they would have to travel farther to an open area, but the closure could be justified under standard 4 as a conservation measure with no discriminatory intent.

(c) *Allocation of fishing privileges.* An FMP may contain management measures that allocate fishing privileges if such measures are necessary or helpful in furthering legitimate objectives or in achieving the OY, and if the measures conform with paragraphs (c)(3) (i) through (iii) of this section.

(1) *Definition.* An "allocation" or "assignment" of fishing privileges is a direct and deliberate distribution of the opportunity to participate in a fishery among identifiable, discrete user groups or individuals. Any management measure (or lack of management) has incidental allocative effects, but only those measures that result in direct distributions of fishing privileges will be judged against the allocation requirements of standard 4. Adoption of an FMP that merely perpetuates existing fishing practices may result in an allocation, if those practices directly distribute the opportunity to participate in the fishery. Allocations of fishing privileges include, for example, per-vessel catch limits, quotas by vessel class and gear type, different quotas or fishing seasons for recreational and commercial fishermen, assignment of ocean areas to different gear users, and limitation of permits to a certain number of vessels or fishermen.

(2) *Analysis of allocations.* Each FMP should contain a description and analysis of the allocations existing in the fishery and of those made in the FMP. The effects of eliminating an existing allocation system should be examined. Allocation schemes considered but rejected by the Council should be included in the discussion. The analysis should relate the recommended allocations to the FMP's objectives and OY specification, and discuss the factors listed in paragraph (c)(3) of this section.

(3) *Factors in making allocations.* An allocation of fishing privileges must be fair and equitable, must be reasonably calculated to promote conservation, and must avoid excessive shares. These tests are explained in paragraphs (c)(3) (i) through (iii) of this section:

(i) *Fairness and equity.* (A) An allocation of fishing privileges should be rationally connected with the achievement of OY or with the furtherance of a legitimate FMP objective. Inherent in an allocation is the advantaging of one group to the detriment of another. The motive for making a particular allocation should be justified in terms of the objectives of the FMP; otherwise, the disadvantaged user groups or individuals would suffer without cause. For instance, an FMP objective to preserve the economic status quo cannot be achieved by excluding a group of long-time participants in the fishery. On the other hand, there is a rational connection between an objective of harvesting shrimp at their maximum size and closing a nursery area to trawling.

(B) An allocation of fishing privileges may impose a hardship on one group if it is outweighed by the total benefits received by another group or groups. An allocation need not preserve the status quo in the fishery to qualify as "fair and equitable," if a restructuring of fishing privileges would maximize overall benefits. The Council should make an initial estimate of the relative benefits and hardships imposed by the allocation, and compare its consequences with those of alternative allocation schemes, including the status quo. Where relevant, judicial guidance and government policy concerning the rights of treaty Indians and aboriginal Americans must be considered in determining whether an allocation is fair and equitable.

(ii) *Promotion of conservation.* Numerous methods of allocating fishing privileges are considered "conservation and management measures" under section 303 of the Act. An allocation scheme may promote conservation by encouraging a rational, more easily managed use of the resource. Or it may promote conservation (in the sense of wise use) by optimizing the yield, in terms of size, value, market mix, price,

or economic or social benefit of the product.

(iii) *Avoidance of excessive shares.* An allocation scheme must be designed to deter any person or other entity from acquiring an excessive share of fishing privileges, and to avoid creating conditions fostering inordinate control, by buyers or sellers, that would not otherwise exist.

(iv) *Other factors.* In designing an allocation scheme, a Council should consider other factors relevant to the FMP's objectives. Examples are economic and social consequences of the scheme, food production, consumer interest, dependence on the fishery by present participants and coastal communities, efficiency of various types of gear used in the fishery, transferability of effort to and impact on other fisheries, opportunity for new participants to enter the fishery, and enhancement of opportunities for recreational fishing.

§ 602.15 National Standard 5—Efficiency.

(a) *Standard 5.* Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(b) *Efficiency in the utilization of resources*—(1) *General.* The term "utilization" encompasses harvesting, processing, and marketing, since management decisions affect all three sectors of the industry. The goal of promoting efficient utilization of fishery resources may conflict with other legitimate social or biological objectives of fishery management. In encouraging efficient utilization of fishery resources, this standard highlights one way that a fishery can contribute to the Nation's benefit with the least cost to society: given a set of objectives for the fishery, an FMP should contain management measures that result in as efficient a fishery as is practicable or desirable.

(2) *Efficiency.* In theory, an efficient fishery would harvest the OY with the minimum use of economic inputs such as labor, capital, interest, and fuel. Efficiency in terms of aggregate costs then becomes a conservation objective, where "conservation" constitutes wise use of all resources involved in the fishery, not just fish stocks.

(i) In an FMP, management measures may be proposed that allocate fish among different groups of individuals or establish a system of property rights. Alternative measures examined in searching for an efficient outcome will result in different distributions of gains and burdens among identifiable user groups. An FMP should demonstrate that management measures aimed at efficiency do not simply redistribute gains and burdens without an increase in efficiency.

(ii) Management regimes that allow a fishery to operate at the lowest possible cost (e.g. fishing effort, administration, and enforcement) for a particular level of catch and initial stock size are considered efficient. Restrictive measures that unnecessarily raise any of those costs move the regime toward inefficiency. Unless the use of inefficient techniques or the creation of redundant fishing capacity contributes to the attainment of other social or biological objectives, an FMP may not contain management measures that impede the use of cost-effective techniques of harvesting, processing, or marketing, and should avoid creating strong incentives for excessive investment in private sector fishing capital and labor.

(c) *Limited access.* A "system for limiting access," which is an optional measure under section 303(b) of the Act, is a type of allocation of fishing privileges that may be used to promote economic efficiency or conservation. For example, limited access may be used to combat overfishing, overcrowding, or overcapitalization in a fishery to achieve OY. In an unutilized or underutilized fishery, it may be used to reduce the chance that these conditions will adversely affect the fishery in the future, or to provide adequate economic return to pioneers in a new fishery. In some cases, limited entry is a useful ingredient of a conservation scheme, because it facilitates application and enforcement of other management measures.

(1) *Definition.* Limited access (or limited entry) is a management technique that attempts to limit units of effort in a fishery, usually for the purpose of reducing economic waste, improving net economic return to the fishermen, or capturing economic rent for the benefit of the taxpayer or the consumer. Common forms of limited access are licensing of vessels, gear, or fishermen to reduce the number of units of effort, and dividing the total allowable catch into fishermen's quotas (a stock-certificate system). Two forms (i.e., Federal fees for licenses or permits in excess of administrative costs, and taxation) are not permitted under the Act.

(2) *Factors to consider.* The Act ties the use of limited access to the achievement of optimum yield. An FMP that proposes a limited access system must consider the factors listed in section 303(b)(6) of the Act and in § 602.14(c)(3) of these guidelines. In addition, it should consider the criteria for qualifying for a permit, the nature of the interest created, whether to make the permit transferable, and the Act's limitation on returning economic rent to the public under section 304(d)(1). The FMP should also discuss the costs of achieving an appropriate distribution of fishing privileges.

(d) *Analysis.* An FMP should discuss the extent to which overcapitalization, congestion, economic waste, and inefficient techniques in the fishery reduce the net benefits derived from the management unit and prevent the attainment and appropriate allocation of OY. It should also explain in terms of the FMP's objectives any restriction placed on the use of efficient techniques of harvesting, processing, or marketing. If during FMP development the Council considered imposing a limited-entry system, the FMP should analyze the Council's decision to recommend or reject limited access as a technique to achieve efficient utilization of the resources of the fishing industry.

(e) *Economic allocation.* This standard prohibits only those measures that distribute fishery resources among fishermen on the basis of economic factors alone, and that have economic allocation as their only purpose. Where conservation and management measures are recommended that would change the economic structure of the industry or the economic conditions under which the industry operates, the need for such measures must be justified in light of the biological, ecological, and social objectives of the FMP as well as the economic objectives.

§ 602.16 National Standard 6—Variations and Contingencies.

(a) *Standard 6.* Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(b) *Conservation and management.* Each fishery exhibits unique uncertainties. The phrase "conservation and management" implies the wise use of fishery resources through a management regime that includes some protection against these uncertainties. The particular regime chosen must be flexible enough to allow timely response to resource, industry, and other national and regional needs. Continual data acquisition and analysis will help the development of management measures to compensate for variations and to reduce the need for substantial buffers. Flexibility in the management regime and the regulatory process will aid in responding to contingencies.

(c) *Variations.* (1) In fishery management terms, variations arise from biological, social, and economic occurences, as well as from fishing practices. Biological uncertainties and lack of knowledge can hamper attempts to estimate stock size and strength, stock location in time and space, environmental/habitat changes, and ecological interactions. Economic uncertainty may involve changes in foreign or domestic market conditions, changes in operating costs, drifts toward overcapitalization, and economic perturbations caused by changed fishing patterns. Changes in fishing practices, such as the introduction of new gear, rapid increases or decreases in harvest effort, new fishing strategies, and the effects of new management techniques, may also create uncertainties. Social changes could involve increases or decreases in recreational fishing, or the movement of people into or out of fishing activities due to such factors as age or educational opportunities.

(2) Every effort should be made to develop FMPs that discuss and take into account these vicissitudes. To the extent practicable, FMPs should provide a suitable buffer in favor of conservation. Allowances for uncertainties should be factored into the various elements of an FMP. Examples are:

(i) *Reduce OY.* Lack of scientific knowledge about the condition of a stock(s) could be reason to reduce OY.

(ii) *Establish a reserve.* Creation of a reserve may compensate for uncertainties in estimating domestic harvest, stock conditions, or environmental factors.

(iii) *Adjust management techniques.* In the absence of adequate data to predict the effect of a new regime, and to avoid creating unwanted variations, a Council could guard against producing drastic changes in fishing patterns, allocations, or practices.

(iv) *Highlight habitat conditions.* FMPs may address the impact of pollution and the effects of wetland and estuarine degradation on the stocks of fish; identify causes of pollution and habitat degradation and the authorities having jurisdiction to regulate or influence such activities; propose recommendations that the Secretary will convey to those authorities to alleviate such problems; and state the views of the Council on unresolved or anticipated issues.

(d) *Contingencies.* Unpredictable events—such as unexpected resource surges or failures, fishing effort greater than anticipated, disruptive gear conflicts, climatic conditions, or environmental catastrophes—are best handled by establishing a flexible management regime that contains a range of management options through which it is possible to act quickly without amending the FMP or even its regulations.

(1) The FMP should describe the management options and their consequences in the necessary detail to guide the Secretary in responding to changed circumstances, so that the Council preserves its role as policy-setter for the fishery. The description enable the public to understand what may happen under the flexible regime, and to comment on the options.

(2) FMPs should include criteria for the selection of management measures, directions for their application, and mechanisms for timely adjustment of management measures comprising the regime. For example, an FMP could include criteria that allow the Secretary to open and close seasons, close fishing grounds, or make other adjustments in management measures.

(3) Amendment of a flexible FMP would be necessary when circumstances in the fishery change substantially, or when a Council adopts a different management philosophy and objectives.

§ 602.17 National Standard 7—Costs and Benefits.

(a) *Standard 7.* Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

(b) *Necessity of Federal management—(1) General.* The principle that not every fishery needs regulation is implicit in this standard. The Act does not require Councils to prepare FMPs for each and every fishery—only for those where regulation would serve some useful purpose and where the present or future benefits of regulation would justify the costs. For example, the need to collect data about a fishery is not, by itself, adequate justification for preparation of an FMP, since there are less costly ways to gather the data (see § 602.13(d)(2)). In some cases, the FMP preparation process itself, even if it does not culminate in a document approved by the Secretary, can be useful in supplying a basis for management by one or more coastal States.

(2) *Criteria.* In deciding whether a fishery needs management through regulations implementing an FMP, the following general factors should be considered, among others:

(i) The importance of the fishery to the Nation and to the regional economy.

(ii) The condition of the stock or stocks of fish and whether an FMP can improve or maintain that condition.

(iii) The extent to which the fishery could be or is already adequately managed by States, by State/Federal programs, by Federal regulations pursuant to FMPs or international commissions, or by industry self-regulation, consistent with the policies and standards of the Act.

(iv) The need to resolve competing interests and conflicts among user groups and whether an FMP can further that resolution.

(v) The economic condition of a fishery and whether an FMP can produce more efficient utilization.

(vi) The needs of a developing fishery, and whether an FMP can foster orderly growth.

(vii) The costs associated with an FMP, balanced against the benefits (see paragraph (d) of this section as a guide).

(c) *Alternative management measures.* Management measures should not impose unnecessary burdens on the economy, on individuals, on private or public organizations, or on Federal, State, or local governments. Factors such as fuel costs, enforcement costs, or the burdens of collecting data may well suggest a preferred alternative.

(d) *Analysis.* The supporting analyses for FMPs should demonstrate that the benefits of fishery regulation are real and substantial relative to the added research, administrative, and enforcement costs, as well as costs to the industry of compliance. In determining the benefits and costs of management measures, each management strategy considered and its impacts on different user groups in the fishery should be evaluated. This requirement need not produce an elaborate, formalistic cost/benefit analysis. Rather, an evaluation of effects and costs, especially of differences among workable alternatives including the status quo, is adequate. If quantitative estimates are not possible, qualitative estimates will suffice.

(1) *Burdens.* Management measures should be designed to give fishermen the greatest possible freedom of action in conducting business and pursuing recreational opportunities that are consistent with ensuring wise use of the resources and reducing conflict in the fishery. The type and level of burden placed on user groups by the regulations need to be identified. Such an examination should include, for example: capital outlays; operating and maintenance costs; reporting costs; administrative, enforcement, and information costs; and prices to consumers. Management measures may shift costs from one level of government to another, from one part of the private sector to another, or from the government to the private sector.

Redistribution of costs through regulations is likely to generate controversy. A discussion of these and any other burdens placed on the public through FMP regulations should be a part of the FMP's supporting analyses.

(2) *Gains.* The relative distribution of gains may change as a result of instituting different sets of alternatives, as may the specific type of gain. The analysis of benefits should focus on the specific gains produced by each alternative set of management measures, including the status quo. The benefits to society that result from the alternative management measures should be identified, and the level of gain assessed.

Appendix A to Subpart B—Explanatory Material

Purpose of Appendix

The purpose of the Appendix is to preserve, as codified reference, useful explanatory material and supplementary policy rationale originally published as preamble to the various editions of the proposed and final 50 CFR Part 602 rules.

Overview of Approach

The guidelines are designed to allow for innovative policy evolution in response to new biological, social, economic, or ecological circumstances, and set out the benchmarks of current fishery management policy under the Act. NOAA believes the guidelines should supply the Councils, as fishery management planners, a means to assess their work in developing and documenting their decisions. To that end, certain sections of the guidelines specifically address requirements and options for contents of an FMP, supplementing and drawing into relevant focus provisions of Phase II, *Operational Guidelines for the Fishery Management Process*, February 1988 revision. These sections are usually indicated by the paragraph heading "analysis," within which is given more detailed guidance as to the kind of discussion and examination that an FMP should contain to demonstrate consistency with the standard in question. Words within these sections were carefully chosen to convey levels of effort and information commensurate with need (*e.g.*, "consider," "take into account," "explain," "discuss," "examine," "analyze," "identify.")

Fishery management decisions affect the users of fish resources, the government, and the individual taxpayer/consumer. Members of user groups, those responsible for implementing a fishery management regime, and the general citizenry need to know the reasons for decisions that affect them. Thus, it is important that certain issues (particularly those that are controversial) undergo enough examination and discussion to illuminate the options, demonstrate the rationales, and justify the final choice of management regime. This implicit democratic principle of accountability in government underlies and reinforces the Secretary's statutory responsibility to make informed judgments regarding an FMP's consistency with the national standards. The principle is reflected in the philosophies of the National Environmental Policy Act (NEPA), the Regulatory Flexibility Act (RFA), the Paperwork Reduction Act (PRA), and Executive Order (E.O.) 12291—all of which seek accountability in regulatory action.

The guidelines contain a style guide, which explains the use of specific words to distinguish the advisory, explanatory, or obligatory nature of the guideline language, and presents other words within the precise context of the guidelines. The guidelines seek as much precision as possible in the use of the words "should" and "must". "Must" is used to denote an obligation to act and is used primarily when referring to requirements of the Act, the logical extension thereof, or other applicable law. "Should" is used to indicate that an action or consideration is strongly recommended to fulfill the Secretary's interpretation of the Act, and is a factor that reviewers will look for in evaluating an FMP.

The guidelines seek to provide options rather than establish requirements. Lists are not intended to be exclusive; they provide examples or illustrations of the kind of information, discussion, or examination/analysis useful in demonstrating consistency with the standard in question. The guidelines also seek to avoid universal application of a specific provision, except as required by law, so that the maximum accommodation to regional or individual fishery characteristics can be achieved within the standards.

The guidelines make clear that FMPs in substantial compliance with the guidelines, the Act, and other applicable law must be approved. The guidelines are meant as a protection for everyone in the FMP system. Their acceptance and use are a matter of practical utility for the Councils and of public commitment of the agency to consistent application of the policies stated. As an aggregation of policies developed through creative Council responses to regional fishery management problems, they are a way of sharing the empirical knowledge gained over the life of the Act. In summary, the guidelines are intended as an aid to decisionmaking, with responsible conservation and management of a valued national resource as the goal.

Overview of the 1989 Revision

Changes made in the guidelines since they were issued in 1983 address national standards 1 and 2 only, and were motivated largely by the need, articulated by the 1986 Fishery Management Study and others, for a conservation standard. Consequently, changes in the guidelines emphasize the resource, not its allocation, and focus on overfishing, not on optimum yield (OY). Importantly, the guidelines do not change the relationship between the two as implied in the Act: While overfishing necessarily violates the Act's requirement to achieve (OY), exceeding OY does not necessarily violate the Act's prohibition of overfishing. If a stock is in good condition, the specification of OY may serve various goals besides prevention of overfishing. Exceeding the OY may interfere with achievement of those goals but not affect the reproductive potential of the stock. On the other hand, if OY is the amount of fish that can safely be removed from the stock, exceeding OY may well constitute overfishing.

The revised guidelines for standard 1 set forth a comprehensive overfishing concept within which each Council must establish a specific, measurable definition of overfishing for each stock or stock complex covered by an FMP. That concept is based on the premise that irreversible damage to a resource's availability to recover in a reasonable period of time is unacceptable, and that fishing on a stock at a level that severely compromises that stock's future productivity is counter to the goals of the Magnuson Act. Councils are provided with the flexibility needed to develop a definition of overfishing appropriate to individual stocks or species, as long as it is defined in a way that allows the Councils and the Secretary to evaluate the condition of the stock relative to the definition. General criteria are set forth as a basis for Secretarial review of the definition; these criteria address the overfishing definition specifically and do not change the Secretary's obligation to review FMPs/amendments for consistency with all the national standards, the Act, and other applicable law.

The revised guidelines for standard 2 describe a Stock Assessment and Fishery Evaluation (SAFE) document or set of documents prepared or aggregated periodically, whereby Councils can obtain an objective overview of the status of stocks and fisheries under management. The SAFE document would ideally include all the types of data necessary for the determination of OY, as well as provide the basis for a Council's treatment of the overfishing/OY relationship. While the Secretary has the responsibility for assuring that the SAFE report is produced, it is not intended to be exclusively authored by NOAA. The report can be produced by any combination of talent from academic, government, or other sources. The report should be reviewed annually, but is not required to be revised annually except as there have been new developments or significant changes in a fishery. The itemized examples of data listed in this Appendix are not mandatory, but—as appropriate to the fishery, taking into consideration the need to establish priorities within budget constraints—the best available data must be addressed. Several Councils currently produce such fishery reviews, which generally provide the kinds of information suggested in this Appendix under Standard 2.

The SAFE report does not necessarily call for new information or new procedures; the intent is to provide, in one reference, an aggregation or a summary of the best biological, social, economic, and ecological information available to a Council when needed: (a) To determine annual harvest levels or OYs for species in each fishery management unit (FMU), and (b) to evaluate the effectiveness of its management in preventing overfishing as defined by the Council. Such a report can provide a useful tracking tool for assessing the relative achievement of FMP objectives by

Because only measures that meet the definition will be judged against the standard, this is a critical and sensitive differentiation.

Many management measures may have an *incidental* effect on the fishing privileges enjoyed by different groups of U.S. fishermen. Any quota has a distributive effect on present and future users through its impact on stock maintenance or rebuilding. Area closures may cause practical difficulties for smaller vessels or those located far from open areas. Seasonal quotas create difficulties for those whose economics of operation do not permit a long period of inactivity.

Direct allocations, by contrast, have been made by the several Councils in a variety of FMPs in the past: Quotas by classes of vessels (Atlantic groundfish), quotas for commercial and recreational fishermen (Atlantic mackerel), different fishing seasons for recreational and commercial fishermen (salmon), assignment of ocean areas to different gears (stone crab), and limiting permits to present users (surf clam). These direct allocations were approved under standard 4 because the Councils complied with the three statutory criteria of the standard in constructing their allocation schemes.

The guideline's definition is an attempted middle ground between all measures affecting fishing practices and measures designated as allocations in an FMP. The distribution must be direct and deliberate, but a Council could not disclaim an intent to allocate through a measure that had obvious and inevitable allocative effects.

NOAA believes that the required analysis of allocations and alternative schemes considered—including the status quo—will help to focus attention on the existing distribution of privileges and the alteration of that distribution which Federal management will impose. Each FMP should contain the Council's judgment on fairness and equity, conservation promotion, and possible monopolistic or oligopolistic effects of the proposed allocations.

The guidelines link "fairness" with FMP objectives and OY and acknowledge that fishing rights of treaty Indians and aboriginal Americans should be factored into Council judgments. Rational use of the resource is suggested as one way an allocation scheme may promote conservation. A more visible conservation purpose is illustrated by the moratorium on entry of new vessels into the surf clam fishery, initiated to mitigate a resource crisis in a stock.

Standard 5

NOAA believes that, for purposes of standard 5, efficiency can be defined as the ability to produce a desired effect or product (or achieve an objective) with a minimum of effort, costs, or misuse of valuable biological and economic resources. In other words, Councils should choose management measures that achieve the FMP's objectives with minimum cost and burdens on society. NOAA believes that particular care should be taken when considering management of common property resources—where intensive individual market actions risk the "tragedy of the commons," a concept that comprises damage not only to the individual fisherman, but to the very resource on which he depends. Where there are no property rights, the role of government takes on the dimension of stewardship. NOAA also believes that managing at least cost to society and managing at least cost to the fisherman are not mutually exclusive. NOAA reads standards 5 and 7 together; to minimize costs of regulating also means to minimize costs to the industry of compliance.

The guidelines also recognize the difficulty inherent in reconciling particular economic and social needs of industry participants and consumers with this goal of efficiency. For example, maximizing employment opportunities by allowing continued overcapitalization instead of reducing effort might be considered inefficient in terms of an economic goal, but not necessarily in terms of a social goal. Or, when it is necessary to preserve a subsistence way of life or enjoyment of recreational fishing, application of the efficiency standard may not be appropriate. Councils thus may have to choose between—or rank—competing objectives.

NOAA believes that an FMP should not restrict the use of productive and cost-effective techniques of harvesting, processing or marketing, unless such restriction is necessary to achieve the conservation or social objectives of the FMP. For example, the Pacific salmon FMP provides for use of a barbless hook to decrease mortality of sublegal coho and chinook. The high seas salmon FMP requires heads on" landing for fin-clipped coho and chinook to insure recovery of coded wire tags used to establish a needed distribution data base. In both cases, reduction in efficiency was outweighed by the conservation benefit.

Administrative efficiency can be a factor in choosing between management regime alternatives, as well. The Gulf of Mexico shrimp FMP's cooperative Texas closure, for example, increased the effectiveness and efficiency of enforcement.

NOAA chose to address the questions surrounding "limited access" in the context of standard 5 rather than in standard 4, even though limited access, by its nature, is an allocative measure. In fact, the guidelines caution that any limited access system must be consistent with section 303(b)(6) of the Act and the standard 4 guidelines. NOAA believes that placement within standard 5 puts the emphasis more appropriately on concepts of economic efficiency in achieving OY rather than on the contentious issues of right of entry, or limit on effort, per se. The placing of limited access within the standard 5 context does not imply, however, that efficiency is always attained by limited access, nor that limited access is the most desirable method of attaining efficiency, nor that efficiency is the only purpose for limited access, nor that limited entry has always resulted in the benefits listed in the guidelines.

Standard 6

NOAA recognizes that each fishery exhibits unique uncertainties, and that the unpredictable nature of the fishery resource caused by vulnerability to changing conditions and unforeseeable events makes long-term planning difficult. Long-term objectives are more easily attainable in the more stable fisheries. The guidelines clarify that it is possible to compensate for variations by establishing buffers; protection against contingencies is urged through use of flexibility in the regulatory process.

Standard 7

The principles of standard 7 coincide with many earnest and recently intense efforts of NOAA and the Councils to streamline the FMP process. As more FMPs have come on line, the costs of enforcement and of collecting data for monitoring, while reduced per FMP, have increased in total. The rising costs of fishing, due in part to dependence on petroleum-based products, has intensified the need to consider the impact of potentially burdensome regulations. Thus, it has become necessary to be more precise in evaluating the costs to industry and to government, to support comprehensive management, and to work toward a flexible regulatory structure.

NOAA believes that the requirements of E.O. 12291 and other regulatory reform legislation quite appropriately focus attention on the threshold question of the actual need for management through regulation. Even when a Council believes there is an advantage to managing a fishery, growing public concern over excessive Federal regulation of private activities and over the need to reduce the cost of government emphasizes the responsibility to ensure that FMPs are developed only for those fisheries where the need for Federal regulation can be clearly demonstrated. For these reasons, the guidelines propose criteria to assist in making these threshold decisions.

NOAA recognizes that the wide diversity of fisheries and of management objectives increases the difficulties of devising a quantitative cost/benefit analysis for fishery management measures. However, under the guidelines, the types of analyses suggested under standards 4 and 5 would be the first steps in evaluating relative distribution of gains and burdens produced by each alternative set of management measures. While weight of intangibles such as recreational enjoyment, habitat protection, or social dislocation often cannot be expressed in dollar terms, NOAA believes they should be considered and described as explicitly as possible.

[FR Doc. 89-17017 Filed 7-21-89; 8:45 am]

Editorial Note: This reprint incorporates corrections published in the **Federal Register** of Monday, July 31, 1989.

BILLING CODE 3510-22-M

☆U.S. Government Printing Office : 1989 - 244-577/00527

MTC / AHSFA / PSPA / AGDB / PMA / ADA
Industry proposal

The allocation of pollock and cod will be at the vessel level

BS/AI

The Allocation for the BS/AI pollock shall be allocated as follows:

1. Thirty to thirty-five percent to vessels that catch and process aboard.

2. Twenty to twenty-five percent to vessels that catch and deliver at sea.

3. Forty-five percent to vessels that catch and deliver inshore.

The inshore operational area defined in alternative three shall be adopted and shall be revised to provide that pollock harvested in any directed fishery in this area must be harvested by vessels that do not process.

Gulf of Alaska

For the Gulf of Alaska the pollock shall be allocated as follows:

1. One hundred percent to vessels that catch and deliver inshore.

For the Gulf of Alaska the Pacific cod shall be allocated as follows:

1. Ninety percent to vessels that catch and deliver inshore.

2. Ten percent to vessels that catch and deliver off-shore

NMFS will survey inshore processors quarterly to verify intent and capability to process the respective quota available to them. On the event NMFS should determine that inshore processors are not likely to process the quota available to them, then the excess shall be reallocated to vessels that catch and deliver at sea.

We want to reiterate our support for a moratorium on entry new vessels.

RECEIVED JUN 2 4 1991

C-2

STATE OF ALASKA

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE & ECONOMIC DEVELOPMENT

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DIVISION OF ECONOMIC DEVELOPMENT

Comments on Amendment Package 18/23 SEIS
Before the North Pacific Fishery Management Council
by
Paul Fuhs, Director

Perspective

Central and Western Gulf of Alaska and Bering Sea/Aleutian communities are extremely dependent on the resources in question. In this region there are *no* economic alternatives to the seafood industry. While the SEIS discusses the fact that negative economic impacts are much more easily absorbed in Puget Sound, it does not provide a sense of perspective. The *only* basic industrial sectors of any significance in southwest Alaska are seafood harvesting and processing, and government, (primarily the defense department, the Coast Guard, federal resource management agencies, and various state agencies). Nearly all the remaining direct employment is in service to these sectors. As demonstrated in the SEIS, the large majority of employment is associated with the inshore segment.

Seafood harvesting and processing accounts for 40% of the total direct employment and income in the Kodiak (including the Alaska Peninsula) and Aleutian/Bering Sea regions of the state, and about 60% of direct private sector employment. Obviously, groundfish is not the only seafood used, but the dependence of the Kodiak and Aleutians economies on groundfish is dramatic. Compared to the economies of Ballard, Bellingham, and the state of Washington, these communities are exceptionally vulnerable. Preemption or failure of the resource will repeat the effects of the king crab crash.

Area	Direct Emp. (Thousands)	%
Alaska 1987[1] total employment	244.0	
Seafood Industry as to AK total	19.2	8
Kodiak as to AK	6.8	3
Seafood Industry as to Kodiak	2.6	38
Government as to Kodiak	2.1	31
Aleutians as to AK	8.3	3
Seafood Industry as to Aleutians	3.0	36
Government as to Aleutians	4.2	51
Washington 1988[2]	1,911.5	
Aircraft Manufacture as % of WA	93.8	5
King County as to WA	824.7	43
Aircraft manufacture in King County (estimated to be 1/3 of by WA DOL)	31.3	4
Factory Trawlers[3] 1990	7.5	1

The seafood industry is 50% more important to Alaska's economy overall than aircraft manufacturing is to Washington. Seafood is ten times as important to Kodiak and the Aleutians as Boeing is to King County. If King County was 40% dependent on seafood processing, nearly 330,000 people would be directly employed, *equivalent to over three times Boeing's total statewide employment!* The impact to Puget Sound's economy if all Boeing employees were laid off for the fourth quarter is equivalent in magnitude to Kodiak's experience in 1989.

By comparison, even if all factory trawl employees lived in King County, which they don't, that sector would represent less than 1% of county direct employment. The SEIS was not able to document significant dependence in Bellingham or Ballard on the factory trawl fleet because the economies of these communities are well integrated into the overall Puget Sound economy, with many options and links for their residents. That is a total contrast with the affected Alaskan communities.

Technical Comments

Lower recoveries and higher rates of economic discards in the offshore fleet result in less fish available to the consumer and lower utilization rate from a finite resource. Higher rates of cod and pollock allocation to the inshore industry should provide a larger market basket of products and greater return to the nation for its resources.

Surimi recovery, for example, is shown at 14% for offshore producers and 18% for onshore. Offshore surimi processors would make 56,000 tons of surimi from 400,000 tons of pollock, while onshore surimi processors would get 72,000 tons, resulting in an additional 16,000 tons of product. Yields on fillets and other products are likewise higher for shorebased processors due to their ability to use more labor, to process more types of products, and to the fact that they have more invested in the raw materials.

The economic analysis focuses primarily on profitability at the firm level and wages and income generated for the nation. However, "efficient utilization of the resource" needs to take into account the amount of edible protein recovered as well. Accounting for waste and discards would clearly show that shoreplants utilize the resource more efficiently.

The SEIS assumes that $26,000 represents one full time seafood processing job in Alaska, which is high by DCED estimates. If the input/output model bases employment estimates on dollars spent by each processing sector, (which it apparently does), then the model underestimates the employment impacts to Alaska. The Alaska Department of Labor[4] gives the following average wages for food processing (nearly all seafood processing, and including supervisory personnel not likely to be impacted by the proposals).

Area and Period	Average Monthly Wage	Annual Wage
Jan-Dec 1989 Alaska	$1,834	$22,003
Kodiak	1,616	19,394
Jan-June 1990 Alaska	1,707	20,484
Kodiak	1,419	17,029

Costs to the state are significant, as demonstrated by the attached table and graphs of unemployment (UI) payments compared to seafood processing workers, compared to seafood processing employment, in the Kodiak census area. The large blip in late 1989 was caused by lack of pollock to process. It cost the state an additional $350,000 in unemployment claims for Kodiak's largely resident winter workforce compared to the last quarter of 1988.

Preemption in Dutch Harbor/Unalaska is more likely to harm Pacific Northwest processing workers, as that workforce is largely nonresident. Statewide, 53% of the inshore processing and harvesting workforce is non-resident[5], primarily from the Pacific Northwest. Charges that this issue represents discrimination between residents of different states are clearly a gross oversimplification. Residents of Seattle and the Northwest stand to lose a great deal if the US distant water fleet is allowed to preempt coastal communities' access to the groundfish resource.

Conclusion

No other country in the world has allowed construction of a distant water fleet to harvest inshore resources. There is no debate that the small boat fleet and inshore processors can economically harvest a major piece of the resource, nor that the harvesting capacity and most of the processing capacity predates entry of that portion of the offshore fleet that is causing the overcapitalization problem. It is unconscionable that the federal government would allow this to happen to the existing harvesters and communities who have no alternative economies. That it is aided and abetted by the capital construction fund, which shore based processors cannot use, by foreign shipyard subsidies and bogus reflagging regulations further distorts the rational development of this fishery.

Unless the preemption threat is eliminated, any benefits to Alaska from Americanization of the 200 mile zone off its shores will be wiped out. That clearly was not the intent of the MFCMA, where the findings speaks directly to the "damage massive foreign fleets fishing in (adjacent) waters" have wrought on the economies of coastal communities. The Council and Secretary must take action to ensure that a massive US distant water fleet doesn't simply replace the foreigners.

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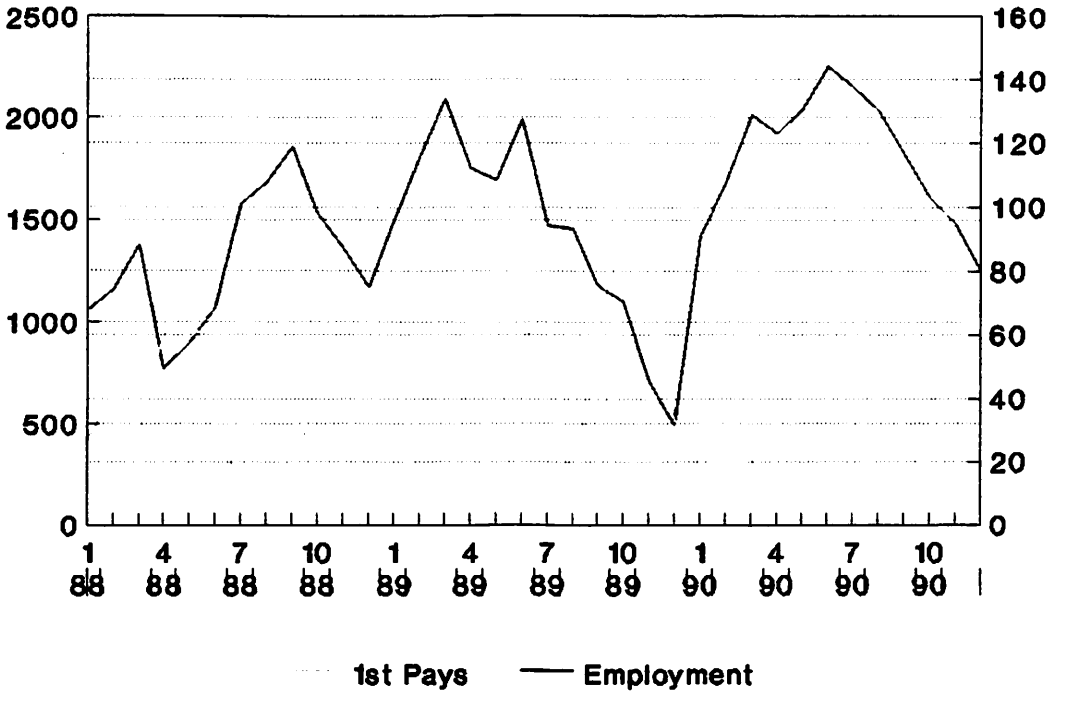
[1] Alaska Seafood Industry Study, A Technical Report, McDowell Group, 1989. Pg. 12.
[2] Jeff Caldwell, Research and Analysis Division, Washington Department of Labor, personal communication, 6/20/91.
[3] Economic Impacts of the North Pacific Factory Trawler Fleet, Coopers and Lybrand, 1990, pg. 3.
[4] G. Terry Elder, Research and Analysis Section, Alaska Department of Labor, personal communication, 6/14/91.
[5] Alaska Seafood Industry Study, A Technical Report, McDowell Group, 1989, Pg. 41.

Kodiak (Area Code 74)
For Regular Claims – Manufacturing

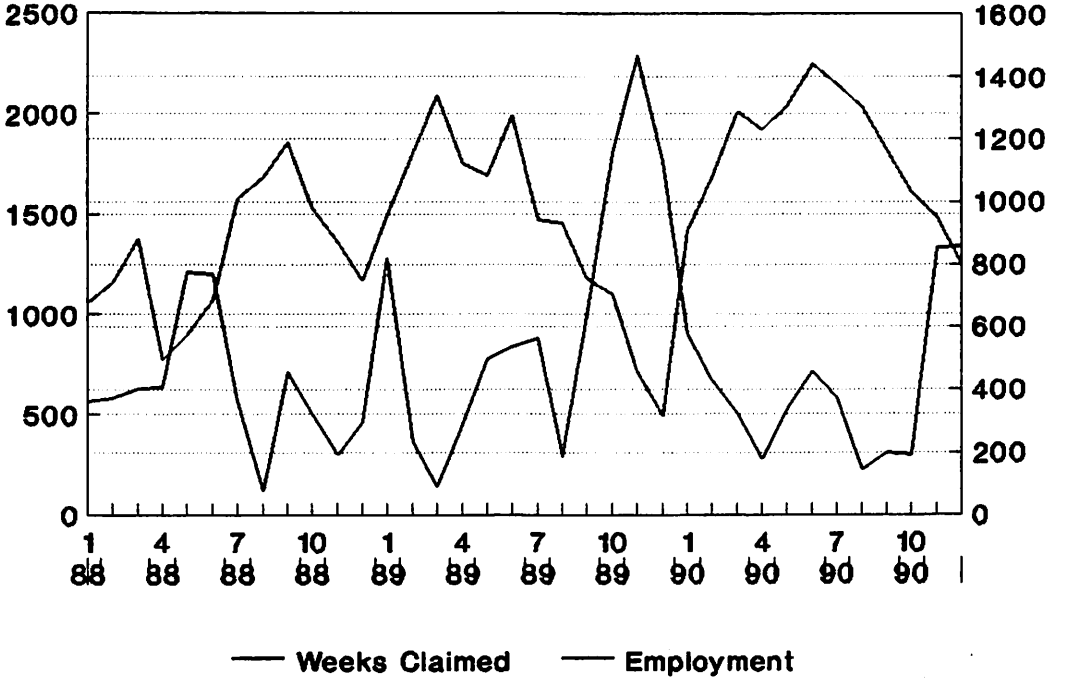
Date	# Weeks	$ Amount	1st Pays	Employment
Jan 1988	361	40,325	27	1,056
Feb 1988	373	36,986	42	1,160
Mar 1988	401	43,228	31	1,375
Apr 1988	405	44,944	60	770
May 1988	775	89,724	75	891
Jun 1988	768	85,160	31	1,069
Jul 1988	361	31,444	12	1,575
Aug 1988	76	5,411	4	1,682
Sep 1988	455	49,022	26	1,859
Oct 1988	320	30,484	31	1,529
Nov 1988	193	20,929	20	1,358
Dec 1988	293	38,654	54	1,167
Jan 1989	818	110,710	54	1,492
Feb 1989	234	28,487	9	1,805
Mar 1989	90	11,416	5	2,089
Apr 1989	291	38,348	52	1,750
May 1989	496	61,966	58	1,693
Jun 1989	534	63,834	57	1,991
Jul 1989	563	63,378	71	1,473
Aug 1989	186	17,098	6	1,455
Sep 1989	634	72,225	63	1,180
Oct 1989	1,156	151,242	98	1,099
Nov 1989	1,468	219,312	88	714
Dec 1989	1,128	166,365	33	492
Jan 1990	575	80,926	17	1,418
Feb 1990	428	58,731	39	1,681
Mar 1990	322	40,099	20	2,012
Apr 1990	179	18,826	8	1,924
May 1990	334	37,691	52	2,036
Jun 1990	458	55,311	50	2,250
Jul 1990	373	38,842	32	2,150
Aug 1990	146	14,915	6	2,031
Sep 1990	199	24,234	21	1,819
Oct 1990	191	23,979	20	1,610

Kodiak Census Area



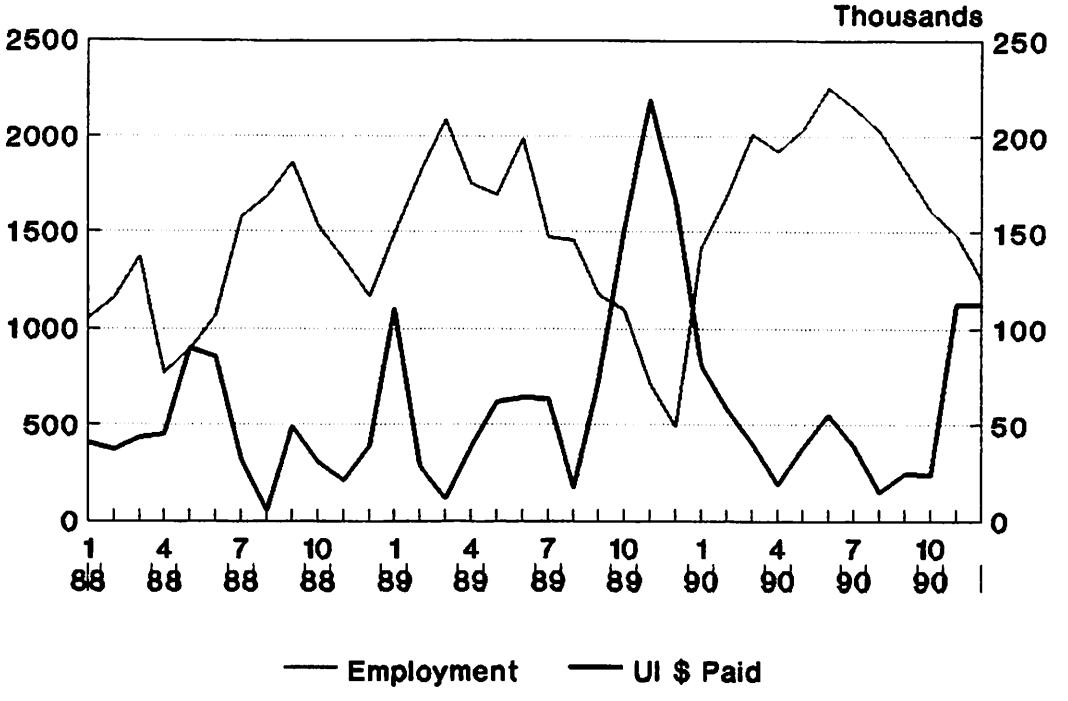
Ak. Dept. of Labor, Research & Analysis

Kodiak Census Area



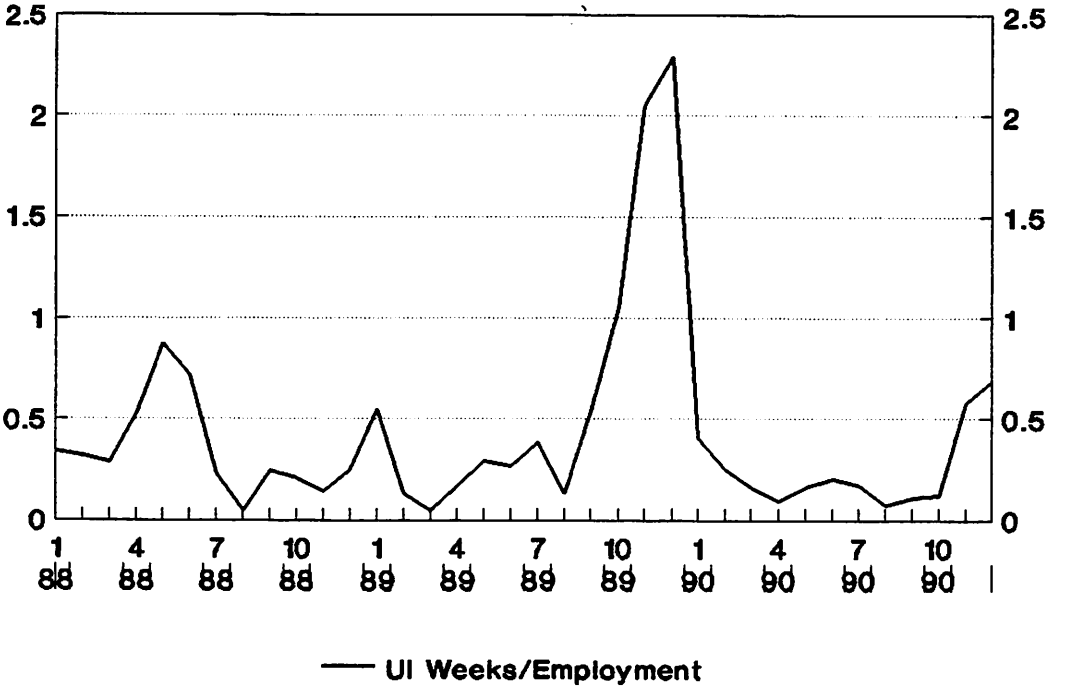
Ak. Dept. of Labor, Research & Analysis

Kodiak Census Area



Ak. Dept. of Labor, Research & Analysis

Kodiak Census Area



Ak. Dept. of Labor, Research & Analysis

Ross Lemire
3215 Magnolia Blvd. W.
Seattle, WA 98199

Dear Editor,

As I was reading many of Wednesdays letters regarding fishing rights and abuses, I found it strange there were no letters regarding the issue which was a full page add on the back side of those letters. On June 25th the North Pacific Fishery Management Council will decide whether to allocate 50% of the pollack resource in Alaska to the shoreside processing plants which currently account for less than 25% of total production. It looks now as if politics is going to push this unfair barrier to free competition through. The add on Wednesday from the North Pacific Seafood Coalition suggests that the (NPFMC) has done a commendable job of managing this fisheries. My personal experience shows the opposite. When I started working on a catcher processor two and a half years ago this same council had a chance to put a moratorium on the building of new ships and shoreside plants. It caved in to the political pressure which has produced the current strain on the resource and overcapitalization of the market. It is also responsible for the current summer opening which allows fishing during the time which is notorious for the taking of thousands of tons of immature fish.

The passage of this allocation will mean the end of many well paying processing jobs on factory trawlers to be replaced by $4.50 an hour processing jobs in shoreside plants. The majority of the profits from these plants will be going back to Japan. The foreign developers of these new shoreside plants knew years ago that there wasn't enough fish to accommodate all their expansion. But they went ahead anyway in hopes of rallying the Alaskan communities they built in to to pressure a council that was already controlled by Alaskans. This allocation will effectively create a monopoly of the groundfish resource controlled by two of the largest Japanese fishing companies known to man.

I realize that we of the catcher precessor fleet shouldn't throw stones when it comes to foreign ownership but at least we aren't asking for favoritism.

Ross H. Lemire

Ross Lemire
Seattle

AMERICAN FACTORY TRAWLER ASSOCIATION

JUN 2 0

Fax Cover Sheet

TO Clarence Pautzke FAX NO. 907-271-2817

FROM Bruce Buls

DATE 6-20-91 TOTAL NUMBER OF PAGES (including cover) 2

MESSAGE/COMMENTS

Clarence - Can this letter be included in the written comments submitted to the council?

Thanks — See you next week.

— Bruce

4039 21st Ave West, Suite 400, Seattle, WA 98199

Dear Secretary Mosbacher,

Please don't take my dream job away! I was a waitress with no college education scraping by to support three children, sinking lower and lower.

To find this job as house-keeper on the F/T Ocean Rover has changed my family's lives. The boats are good for our self-discipline, we are alcohol and drug free. We have the opportunity to meet and grow with people of all races. Americans working hard together as a sort of family to feed the world. Please don't take this away from us.

Sincerely,

Sandy Silk

F. W. BRYCE, INC.
8 POND ROAD, P.O. BOX 339
GLOUCESTER, MASS. 01930, U.S.A.
Telephone (508) 283-7080
Telex: 94-0323 Cables: "Nordeaster" Telefax # (508) 283-7647

June 20, 1991

Mr. Rick Lauber
Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, AK 99510

Dear Mr. Chairman:

We would like to introduce our company, F.W. Bryce, Inc. to the Council as a marketer of frozen seafood products since the industry's inception in the mid 1950's, with annual sales of $40 million. Principly our business involves the supply of frozen seafood block and fillets to secondary processors, multiple unit chain restaurants, and food service distributors. Bryce has been supplying domestic and international markets with products harvested from the Bering Sea since 1988.

At this time we would like to comment on the allocation of the Bering Sea and Gulf of Alaska groundfish quota to shoreside processors, and express our opinion as to this decision's market consequence.

The Alaskian factory freezer trawler fleet deserves full credit for pioneering the commercial fishing effort for Alaskian pollock and cod in the Bering Sea.

This fleet has demonstrated that a consistent supply of high quality frozen fish blocks and fillets can be delivered to our domestic markets. Frozen-at-sea production has developed a superior reputation and is preferred by users over shore plant production. There is no substitute for the freshness which the frozen-at-sea production offers our customers. This unique quality characteristic elevates this products relative market position. Depriving this fishing effort of available quota will in return deprive the United States market of the product it demands.

Our industry experience leads us to conclude that additional quantities of Alaskian pollock directed to shore based processors will be used to supply to foreign surimi operations. This event would seriously undermine the Alaskian fishing industry's ability to demonstrate that it is a reliable and consistant source of frozen seafood products. The discussion alone of allocating quota to shore based plants has forced many large program buyers to source their requirements from twice frozen operations in the Far East. Twice frozen block is clearly inferior in quality to sea frozen production, however, program buyers must never be placed in a position where the source of their future requirements are doubtful.

In summary, a reallocation of groundfish quota from the Factory Freezer Trawler fleet to the shore base processing plants will in our estimation compromise the future of the Alaskian Fisheries Industry. The at-sea processors have built this industry and have demonstrated a commitment to support the United States seafood markets with superior frozen products. Weakening the trawler fleet with the proposed quota reallocation will gravely undermine this markets ability to depend on Alaska for its seafood products. F.W. Bryce, Inc. along with many other members form our domestic industry hope the Council will fairly and favorably consider the Factory Freezer Trawler Fleet.

Respectfully submitted,

Keith Moores

Williams, Kastner & Gibbs

LAW FIRM

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June 20, 1991

36,045.100

Richard Lauber, Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Comments Regarding Amendments 18/23

Dear Mr. Lauber:

Our firm represents Emerald Seafoods, Inc., Emerald Resource Management, Inc., Seahawk Pacific Seafoods, Inc., Seacatcher Fisheries, Inc. and Swan Fisheries, Inc. Our clients have requested that we make the following comments regarding Amendments 18/23 in conjunction with comments which they will also submit. Our clients urge the Council to recommend to the Secretary of Commerce that he maintain the status quo in the pollock fishery in the North Pacific.

The Council has defined the issue for the purposes of analysis in Amendments 18/23 as "a resource allocation problem where one industry sector faces a risk of preemption by another." The analysis in the SEIS/RIR/IRFA[1] concludes that this potential risk is a

[1]Supplemental Environmental Impact Statement and Regulatory Impact Statement and Regulatory Impact Review/Initial Regulatory Flexibility Analysis of Proposed Inshore/Offshore Allocation Alternatives to the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands and in the Gulf of Alaska

direct result of the overcapitalization of the fishery. However, the SEIS/RIR/IRFA for Amendments 18/23 also admits that the present overcapitalization problems are not resolved effectively by any of the proposed alternatives. The Council should heed this statement and maintain the status quo. It is ludicrous to adopt alternatives which do not effectively address the problem identified.

The Council has incorrectly defined the issue within the problem statement as a preemption problem. New Webster's Dictionary (1981) defines "preemption" as "the act or the right of purchasing before others; a prior assertion of ownership." The Council's use of the word "preemption" is at odds with the common ownership of the fishery.

The problem statement created by the Council assumes that there is a risk that the at-sea processors will supplant the onshore fleet. The problem statement attempts to justify an inshore preference for the GOA based upon the 1989 GOA fishery. However, the potential for future participation of the at sea fleet in the GOA has been dramatically diminished by the Secretary's adoption of quarterly allocations for the GOA.

The problem statement also attempts to use the 1989 GOA fishery to justify a onshore preference in the Bering Sea. However, contrary to the implications in the SEIS/RIR/IRFA and the rhetoric of the JV fleet, the Americanization of the pollock fishery in the Bering Sea was accomplished predominately by the participation of the at sea processor component.

The proposals set forth in Alternative 3 demonstrate that it is the inshore processing fleet which is supplanting the at-sea processors. In comparison to the harvest in 1989, the harvest of the inshore fleet will expand under variations of Alternative 3 from between 78% and 208 %.

The SEIS/RIR/IRFA attempts to buttress the onshore fleets' right to supplant the at sea fleet in the Bering Sea by including the majority of the JV fleet within the onshore sector. The JV fishery, by design, was an interim or temporary measure [2]. Moreover, it would be contrary to the Magnuson Act for the JV fleet to be given a preference over the at-sea sector. The Magnuson Act provides a preference to DAP fishery participants, not JV participants.

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[2] See, 1978 Senate Report, No 935, 95th Cong. 2nd Ses. 5 (1978)

It would also be unfair to provide a preference to the inshore processing sector which was not at the forefront of domestication of the pollock fishery in the Bering Sea. During the period when the at sea sector was making significant capital investments to domesticate the BS pollock fishery, the inshore sector in the Bering Sea concentrated on developing higher margin fisheries.

Despite the implications within the SEIS/RIR/IRFA, the at sea fleet was an expected participant in the fishery. The National Marine Fishery Service and the Secretary of Commerce encouraged the participation of the at-sea processors within the North Pacific. Investments were made based upon such encouragement. It would be inequitable for the Council now to provide a preference to the inshore sector, when it was the at sea processors, not the inshore fleet, which was at the forefront for establishing a DAP fishery.

A. Adoption of an Inshore Preference is Not Necessary to Address Biological Concerns.

The problem statement contained in the SEIS/RIR/IRFA indicates that the inshore amendment package was partially created to address biological concerns including localized depletion of stocks or other behavioral impacts to stocks, shortened seasons, increased waste and harvest which exceed the TAC. The conclusion to the SEIS/RIR/IRFA, however, indicates that the proposed alternatives will have little impact, if any, on pollock and marine mammal populations.

The biological concerns in the SEIS/RIR/IRFA's problem statement mirrored the biological concerns which the EA for Amendment 19/14 previously identified. The Secretary has already implemented regulations under Amendments 19/14 to address biological concerns identified in Amendments 19/14 [3]. Therefore, it would be unfounded for this Council to recommend to the Secretary that he provide an inshore preference based upon biological justifications.

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[3] The drafters for the EA to Amendments 19/14 were not sure the biological concerns identified even existed. See EA for Amendments 19/14, pages 18-20 23, 34-35. Furthermore, it would be duplicative to adopt additional regulations to address biological concerns which may not even exist.

B. An Inshore Allocation Would Not Comply with the National Standards of The Magnuson Act-- 16 U.S.C. § 1851.

National Standard 4 provides, in part,

> that conservation and management measures shall not discriminate between residents of different states. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fisherman; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation or other entity acquires an excessive share of such privilege.

An inshore preference is not fair and equitable, and is not reasonable calculated to promote conservation. It would be inequitable for the Secretary to provide a preference to the onshore sector, because the at sea processor sector was the dominant force in the creation of a DAP fishery. During the time the at-sea processing sector was establishing a DAP pollock fishery, the onshore sector, especially in the Bering Sea, primarily concentrated on higher margin fisheries. Displacement of the at sea sector by the onshore sector is not appropriate to accommodate the expansion plans of the onshore processors. In contrast to the inshore processors, the at sea processors are primarily dependant on the harvest of pollock. It would be unfair to take away the livelihood of the at sea processor to accommodate the onshore processors' desire to have access to lower margin fish during slack processing times in higher margin fisheries.

An inshore allocation is also contrary to the mandate of 50 CFR 602(C)(3)(iii) which prohibits regulations that create conditions fostering inordinate control by buyers or sellers that would not otherwise exist. Under the proposed inshore/offshore analysis, the inshore processing component is given inordinate control over where fish may be delivered. Fishermen will no longer be able to sell fish to the at sea processors or the onshore processors based on the best available price. Notwithstanding the semantics of the PSPA representatives, the inshore preference is a processor preference rather than a fishing preference. Fishermen will only be allowed to sell to the processing sector in which they participate. This scenario would not exist without the creation of an onshore preference.

The processing component for both the inshore and offshore sector is considerably more discrete than the harvesting sector. Under an inshore preference, onshore processors will benefit at the expense of the fishing industry because of the limited number of processors. This is not an area which can easily be rectified. Additionally, such an allocation probably will induce additional capitalization in the processing sector capacity which is not needed or warranted.

Alternative 6, which attempts to allocate closer to the harvesting level, is also defective because it still requires the vessels to be delivered onshore. Secondly, as previously discussed, the basis for the allocation is participation of the JV fleet. Such a preference is contrary to the mandate of the Magnuson Act which favors full Americanization of the fishery over partial Americanization of the fishery. Any preference based on historical participation of the fisheries should be given to the at sea processors which were at the forefront of developing a DAP fishery.

The inshore allocation also does not comply with National Standard 5, which provides that conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources. The inshore preference will undercut the efficiency of the at sea processors and will jeopardize their viability. This is especially inappropriate because it undercuts the most efficient sector, the at sea sector, which has the best prices and the best quality of finished product. An inshore allocation will also create strong incentives for a continued excess investment in the private sector of fishing and capital and labor, which is contrary to the mandate of 50 CFR 602.15(B)(2)(ii). This will increase capitalization of the onshore fleet and exacerbates, rather than alleviates, the underlying problems which the Council believe warrants consideration of a inshore preference.

D. The SEIS/RIR/IRFA For Amendments 18/23 Does not Comply with the Requirements of The National Environmental Policy Act.

The SEIS/RIR/IRFA for Amendments 18/23 does not comply with the requirements of the National Environmental Policy Act, 42 U.S.C. § 4321 et seq. (NEPA). NEPA requires that agencies include the following in every recommendation proposals for a major federal action: a detailed statement setting forth environmental impacts of the proposed action, any adverse environmental impacts which cannot be avoided should the proposal be implemented, and alternatives to the proposed action. 42 CFR § 4332(C).

NEPA requires that all alternatives must be analyzed which are not deemed too remote, too speculative, too fanciful or too hypothetical. Life of Land v. Brinegar, 485 F.2d 460, 472 (9th Cir. 1973), cert. denied, 416 U.S. 961, 40 L. Ed. 2d 312 , 94 S. Ct. 1979 (1974). Vermont Yankee Nuclear Power Corp. v. N.R.D.C., 435 U.S. 519, 55 L.Ed 2d 460 551, 98 S. Ct. 1197, (1978) The purposes of NEPA are frustrated

> "when consideration of alternatives and collateral effect is unreasonably restrictive. This can result if proposed agency action are taken and analyzed in artificial isolation."

Greene County Planning Board v. Federal Power Com. 559 F.2d 1227, 1232 (2nd Cir. 1976) cert. denied, 434 U.S. 1068, 55 L. Ed. 2d 761 , 98 S. Ct. 1280 (1978).

An alternative may not be disregarded merely because it does not offer a complete solution to the problem. Natural Resources Defense Council, Inc. v. Morton, 148 U.S. App. D.C. 5, 458 F.2d 827, 836 (1972). Until an agency issues a record of decision, the agency may not limit the choice of reasonable alternatives. 42 CFR §1506.1.

Two purposes underlie the NEPA requirement that a EIS contain a discussion of proposed alternatives: "to ensure that alternatives are explored in the initial decisionmaking process and to provide an opportunity to those removed from the process also to evaluate the alternatives." Citizens Against Toxic Spray, Inc.v. Bergland, 428 F. Supp. 908, 933 (1977). Discussion of alternatives must go beyond "mere assertions to provide sufficient data and reasoning to enable a reader to evaluate the analysis and conclusions and to comment on the EIS." National Resources Defense Council, Inc. v. Callaway, 524 F.2d 79, 93 (2d Cir. 1975). A detailed and careful analysis

> of the relative merits and demerits of the proposed action and possible alternatives is of such an importance in the NEPA scheme that it has been described as the "linchpin" of the EIS.

Id at 92.

Analysis of the interpretation must be contained within the EIS. Studies or memoranda contained in administrative record, but not incorporated in any way into an EIS, may not bring the EIS in compliance with NEPA. Grazing Fields Farm v. Goldschmidt 626 F.2d 1068 (Cir. 1 1980)

The SEIS for Amendments 18/23 does not comply with NEPA requirements. It was unreasonable for the Council not to include IFQ's and moratoria as alternatives. NEPA specifically requires that all reasonable alternatives be analyzed to allow the decision maker an opportunity to make a reasoned decision. IFQs and a moratorium are reasonable alternatives and should have been included for consideration.Both options directly address the issue of overcapitalization in direct contrast to the other alternatives considered within the analysis. Failure to include these alternatives in the analysis does not provide a proper framework for reviewing the SEIS or a proper framework for decisionmaking.

The fact that IFQs or a moratoria may be considered on an independent track is not a reasonable basis for not including both alternatives within the analysis. Allowing an agency to exclude reasonable alternatives undercuts the spirit and policy of NEPA. A reasonable alternative should not be limited merely because it may be considered elsewhere. If an alternative is a potential solution to the problem, then it should be considered.

It is paradoxical that the drafters included Alternative 5, which merely restated the Roe Stripping amendments which were then in front of the Secretary for consideration. Inclusion of Alternative 5 was necessary to ensure that the decision makers considered all reasonable alternatives. By excluding both moratoria and IFQs from the analysis, the FMPC is essentially stating that the included alternatives are the only appropriate alternatives for consideration. Such an action is ludicrous when one considers the drafter's own statement in the SEIS that the alternatives analyzed do not solve the problem.

The analysis for Alternative 2 is also lacking. Drafters of the analysis state that analysis of traditional management measures was incomplete because the Council did not provide it sufficient information [4]. 40 CFR § 1502.22 specifically requires that agencies must obtain information necessary to the decision making process if the information is available at a cost which is not exorbitant. Traditional management measures should be considered before, not after, consideration of non-traditional management measures.

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[4] See SEIS/RIR/IRFA, pg.iv.

Agencies shall not allow less than 45 days for comments on draft environmental impact statements. 40 § 1506.11(c). Upon a showing of compelling reasons of national policy, the Environmental Protection Agency may extend this period on consultation with any other federal agency. 40 § 1506.11(d). An extension of the review period is appropriate in this instance. The review period of 45 days is too short for a thorough review by the public. The document is complex, and the length of the document exceeds the suggested page limit of 300 pages for proposals of unusual scope of complexity. 40 CFR § 1502.7.

For the reasons stated above, our clients request that the Council recommend to the Secretary that he maintain the status quo in the pollock fishery in the North Pacific.

Sincerely yours,

WILLIAMS, KASTNER & GIBBS

John S. Dolese

John S. Dolese

ROYAL
SEAFOODS,
INC.
P.O. BOX 19032 (ZIP 98109) 1226 16th AVENUE W., SEATTLE, WA 98119
TELEPHONE: (206) 285-8900 FAX: (206) 285-4515

JUN 2 0 91

June 19, 1991

VIA AIRBORNE EXPRESS MAIL

Mr. Clarence Pautzke
Executive Director
North Pacific Fisheries Management Council
602 W. Fourth Avenue, Room 306
Anchorage, AK 99510

Dear Mr. Pautzke:

Enclosed is an advance copy of the letter from Mr. Stuart Looney of Royal Seafoods, Inc. to be included in NPFMC member's briefing books for the June meeting in Anchorage.

Sincerely,

ROYAL SEAFOODS, INC.

Carol Stockton
Executive Secretary

enclosure

ROYAL
SEAFOODS,
INC.
P.O. BOX 19032 (ZIP 98109) 1226 16th AVENUE W., SEATTLE, WA 98119
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June 19, 1991

Mr. Steven Pennoyer
Director of the Alaska Region
National Marine Fisheries Service, NOAA
P.O. Box 21668
Juneau, Alaska 99802-1668

RE: Inshore/Offshore Allocation
(SEIS/RIR/IRFA)

Dear Mr. Pennoyer:

This letter and its incumbent comments are respectfully submitted on behalf of Royal Seafoods, Inc. (Royal), a uniquely United States citizen-owned company which is vertically integrated and totally committed to marketing further processed pollock fillet products to the United State's market. Unlike many shorebased operations, Royal does not process nor have the economic benefit of any of the traditional species such as crab, salmon, halibut or herring, just pollock. In addition to owning two factory trawlers and managing a third, Royal owns and operates a large secondary processing plant and cold storage in Seattle, Washington. Royal Seafoods, Inc. should be considered ***the model for the Magnuson Act,*** not the focus for devastation by the North Pacific Fisheries Management Council. In spite of being a pioneering participant in 1986 and in spite of our true U.S. citizen ownership and dedicated U.S. distribution of white fish fillet products, the actions proposed by this council, if implemented as they are contemplated, will annul our hard work and render our investments worthless.

As a company we are outraged at the amount of time and the extent of the resources that this council has chosen to invest in the inshore/offshore reallocation scheme while ignoring its primary charter of fisheries conservation and management on a sustainable yield basis. I sincerely believe that the Council as a whole did not intend two years ago to move from its charter to now become primarily an apportionment board dealing with issues of a purely allocational nature. Albeit that the original intent is somewhat extraneous at this point in time as the Council must now take action on the record before it. As was stated at the

Council's meeting in Kodiak, the process has certainly come a long way since the original incident of an early closing of the fishery around Kodiak in early 1989.

In spite of all the rhetoric and obfuscation that has prevailed, I believe the Council as a whole has made a commitment to address the issue of preemption. The first major flaw I find in the supporting documentation for this proposed rule making is that no responsible examination of the issue of preemption has occurred. The record including public testimony is full of examples of the hardships all sectors experience when all the sectors discontinue fishing activities together , but the record is totally devoid of either a definition of preemption or a study of where preemption as defined has or is occurring. In fact, my reading of the problem statement and alternatives is that the Council is using two entirely different and mutually-exclusive definitions of preemption -- one for the Bering Sea and one for the Gulf of Alaska. Without a clear definition of the term and how the "preemptive" problem is addressed in each of the two management areas, it is impossible for the Council to act responsibly and in accordance with the national standards of the Magnuson Act.

If preemption is to be the defined problem, then ***Royal Seafoods, Inc. has been and continues to be preempted*** in both a real and legal sense. This fact is totally unrecognized in either the current version of the problem statement or in any element of the various analytical documents. Furthermore, there are no proposed alternatives before the Council that will grant Royal relief from this preemption. Royal's flagship, the F/T Royal Sea, the former Seafreeze Pacific, commenced processing high quality frozen-at-sea pollock fillets in mid 1986, long before even the last joint venture vessel was placed into service. Not only were we very early entrants into the fishery, but **the Royal Sea, has a long pedigree of Congressional support** for the precise activity which it is currently engaged -- an activity that is at risk under the proposed amendments. This Congressional support was so direct that the Royal Sea was commissioned by the "Fishing Fleet Improvement Act FFIA) as amended in 1964" to promote at sea processing.

> "One of the main goals of the Fishing Fleet Improvement Act was to build stern trawlers equal in size and sophistication to any foreign trawlers"
> **(Hearings before the subcommittee on Fisheries and Wildlife Conservation and the Environment of the House of Representatives Committee on Merchant Marine and Fisheries, 94th Congress, 1st Session (1975) (The Seafreeze Hearings)**

> "The outmoded vessels are competing for fisheries resources in the northwest Atlantic and northeast Pacific against large, modern vessels of Russia, Japan, Canada, and many European nations. This disparity in the age, size, and productivity of vessels which severely handicap our fishermen continues to grow worse each year with the entry of additional new modern vessels from foreign countries and the continued aging of our fleet."
> (U.S.C.C.A.N., 3183 at 3184 (1964)

> One of the primary goals of the FFIA was "to encourage the development of larger, more economical vessels capable of safely operating offshore and competing on the world market with vessels used by foreign fishermen (i.e., factory trawlers)."

> "Many of the foreign vessels competing with them are less than five years old and range up to nearly 300 feet in length. I (Congressman William H. Bates) firmly believe that the enactment of (this) bill will enable the U.S. fishermen to construct vessels that would enable them to compete with these foreign vessels. ... On the Pacific coast fishermen are having to take small vessels designed for fishing within a few miles of the coast as much as 300 miles off shore to catch albacore. New and larger vessels would allow them to operate more safely and economically."
> U.S.C.C.A.N., 3183 at 3189 (1964).

It has taken from 1969 to today for this vessel to fulfill the intent of Congress to profitably Americanize the at-sea-element. The record could not possibly be clearer that Congress encouraged and actively promoted the construction and operation of the Royal Sea and similar vessels. The North Pacific Fisheries Management Council, at the very time the Royal Sea (the ex-Seafreeze Pacific) has finally after all these years of Congressional support, become profitable under U.S. citizen ownership, is now considering regulating it into failure. Why?

I believe that a **major flaw** exists in the analytical data and the fundamental approach of this council as the regulatory impacts are analyzed primarily from the prospective of the costs and benefits of Alaska vs Washington and virtually ignores premises of the Magnuson Act such as "the good of the Nation as a whole" and true "Americanization of the fisheries". Nowhere are the potentially devastating market effects upon the Nation discussed. I understand how this

may have been overlooked because the pollock fishery is generally considered a Japanese surimi industry. The fact is that wedged tightly amongst the surimi producers, both ashore and afloat is a small component that is committed to the U.S. market place. (Is it possible that the truly preempted party is the United States consumer?) Where is the micro analysis of the affects on the U.S. market consistent with the voluminous analysis of Kodiak's benefits?

To the best of my knowledge, there are only three companies operating in the North Pacific pollock fishery that are totally *dedicated* to pollock production for the U.S. market. Of these three companies, two are offshore processors, one is a shore plant located in Kodiak. Of the offshore U.S. producers, Royal is by far the largest producer. Royal produces for the U.S. market regardless of the market forces/margins between the Japanese surimi price and the U.S fillet price. In addition to the *dedicated* U.S. producers, there exists both ashore and afloat operators that have the capability to produce either surimi or fillets depending strictly on the margins between the two alternatives. The Council's analysis has not addressed the U.S. consumer's plight incumbent with the virtual elimination of two-thirds of the *dedicated* U.S. producers with all remaining production for the U.S. market strictly dependant upon the market value of surimi in Japan and the current exchange rate between the U.S. dollar and the Japanese yen.

I have witnessed the long debates of the Council on this issue for nearly two years. I have watched the special interest advocates ***start with the goal*** of a disproportional allocation direct to shorebased operators and I have watched Council members with a particular interest at stake agonize over the wordsmithing of the required problem statement which would justify their contemplated reallocation. The circumstance that created the environment allowing this proposed reallocation to move as far forward as it has first arose from an unfortunate incident in the Gulf of Alaska in early 1989. At that time, several factory trawlers *legally* commenced activities in the Gulf and were accused of having prematurely suspended pollock operations for the Kodiak based pollock operators. I believe that the actual statistics indicate that the trawler's harvest shortened the Kodiak operations by mere weeks as opposed to the distorted stories being recanted today. Nonetheless, it made a point that early entrants (first come, first priority) were at risk from "preemption" by others as can be expected in any commercial activity that has become over capitalized. As stated during the Kodiak meeting, "we have come a long way from where we started". Shorebased special interests continue to do a very impressive job of confusing

the facts of where this all started, utilizing this particular incident to manipulate the system to now justify a total REALLOCATION.

As a further review of the milestones along the road of this issue, the Council convened a "blue ribbon" Economist Focus Group in Seattle on November 21, 1989. This group consisted of 28 of the most technically qualified, eminently knowledgeable and ***independent*** scholars of fisheries economics available in the Northwest. As a matter of procedure, the group randomly split into three discussion panels, each with the instructions of independently producing an oral report on the nature of the problem, alternatives for solving the problem, and guidelines for analysis of the alternatives. "***Upon reconvening it was clear that all three groups had reached a consensus that the nature of the problem was too many boats chasing too few fish, rather than an inshore-offshore allocation issue***". The group then went forward in detail analyzing the problem statement, putting forth a recommended solution, and recommended form of analysis. Ignoring the efforts of this group and their educated and unbiased conclusions, the North Pacific Fisheries Management Council has chosen to continue a path of total reallocation rather than addressing the issue of the moment, a preemption potential around Kodiak in the Gulf of Alaska.

In spite of being competently advised that no inshore-offshore issue per se existed, the remainder of the Council debate and actions so far have centered around "keeping the train on time" and massaging the proposed alternatives. On numerous occasions over the past two years the council has heard testimony from the public and admitted as a group that ***I***ndividual ***T***ransferable ***Q***uotas (ITQ's) are the only viable means to address the stated problem of preemption. Ignoring what appears to be an overwhelming consensus that ITQ's are the answer, the special interest groups have been successful in keeping this alternative off the list of proposed solutions. Why?

At the most recent Council meeting in Kodiak, the Council was willing to open the floor to new alternatives; witness the addition of what has come to be referred to as the "Mid Water Trawler's Proposal". At this same time a motion was made and seconded based upon the Council's willingness to consider new options to include ITQ's as an alterative solution. During the rather informative debate that ensued from this motion, almost all Council members in one way or another articulated their opinion that ITQ's were the only logical and effective solution. The rationale for not including this viable alternative was that the "train

would get behind schedule" if the obvious and correct solution were to be included. Also for the record during this debate the reasoning of why ITQ's were originally omitted was very succinctly articulated as being ***the result of Alaskan politics rather than an issue of fisheries management for the good of the nation as a whole.***

Without having ITQ's (or any other viable alternative) included in the proposed list of alternative solutions by the Council, the Secretary of Commerce would appear to have only one viable alternative, to deny the proposed rule making in its entirety.

What may be about to become the Secretary's problem seems to me to be further complicated by the fact that it is obvious that preemption as commonly defined is occurring, but the concept of this preemption may be faulty in its assumption of who is or may preempting whom. If preemption is to be the problem, then the clock must be rolled backwards to determine who has been preempted and how. <u>One thing is certain though, shorebased plants not in operation till 1990 and 1991 have not been or will not be in any ordinary sense "preempted"</u>. I believe that all past history with fisheries issues where direct allocating measures are to be taken, the common denominator has been "historical participation" or in essence the clock has been rolled backward to measure preemption. Never has the clock been rolled forward. The first step in the analysis of this issue, should have focused on the preemption issue and the various staffs available should have developed a listing in chronological order, by individual participant, and <u>quantified</u> REAL and ACTUAL preempting by individual participant on a historical basis.

The bewitching hour has arrived and the Council must now act and either attempt to **<u>reallocate</u>** to a segment of the industry a windfall benefit that they could not achieve in a free market economy or drop the issue and return to fishery resource management issues. I urge that you all, as you contemplate this immensely important issue which will literally change thousands of lives, to remember that the playing field was level prior to 1986. All segments of the industry were acutely aware of the vast pollock resource and each participant had an equal and unrestrained opportunity to participate as they, in their individual judgement saw fit; some choose to not participate, some choose to enter through the joint venture mode fully aware of the cautions expressly highlighted in the Magnuson Act, some choose to invest in shore plants, and others choose to invest in processing at sea. The ground fish industry has been allowed to develop fully

under a free enterprise economy, totally unfettered for five years. Some made investments and took blind risks (like Royal Seafoods) as early as 1986, others are still making investments in 1991. At the end of the day, after all the rhetoric, the real issue is one of fairness. Are you as a Council going to participate in a reallocation scheme that allows one segment of the industry to have the benefit of watching five years of industry development, realize that their judgement to invest shoreside was flawed, and then seek to desecrate their successful competitors gaining through the regulatory process what they could not accomplish on a level playing field? What the shoreside processors are asking you to grant them is not altogether different than a gambler asking a casino to allow him to reposition the roulette wager after the wheel has stopped.

We respectfully suggest that the Council recognize the manipulation, obfuscation, and disinformation that has occurred, recognize the issue for its lack of merit, faulty analysis, and then vote to maintain the status quo in the Bering Sea until the process of Individual Transferrable Quotas can be implemented and actual preemption resolved. Furthermore, we believe the Council should, as originally contemplated, establish an exclusive registration zone around Kodiak setting aside the first 100,000 metric tons of pollock for vessels exclusively registered in the Gulf of Alaska.

Sincerely,
ROYAL SEAFOODS, INC.

Stuart W. Looney
President and
Chief Executive Officer

ProFish International, Inc.

PROFISH

JUN 20 1991

Richard Lauber - Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Dear Chairman Lauber:

We are enclosing our comments in relation to the Councils deliberations on Proposed Inshore/Offshore Allocation Alternatives; Amendments 18/23 to GOA and BSAI FMPs.

With all due respect to the dedicated efforts of many professionals who have toiled to produce the required materials and analyses, what has resulted is a process and a record which is an abomination. We believe that the Council, despite its earnest efforts to "do something" has veered sharply off the path.

SIGHT OF THE FOREST HAS BEEN LOST THROUGH THE TREES

I would like to briefly review the recent hisory of the Inshore/Offshore proposal for the record:

1987-1988 the first moratorium proposal came to the Council from industry visionaries. The Council and the general industry didn't perceive the problem of overcapacity was reallly upon us, therefore the moratorium subject was tabled.

In 1989 there was another industry attempt to establish a moratorium. Concurrently factory trawler presence in the Gulf of Alaska accelerated use of the pollock TAC and in May the Kodiak Industry drafted a "Shorebased Preference Proposal". Soon, the Bering Sea shoreplants cried "me too" and jumped on the bandwagon.

During 1990 the moratorium issue received considerable attention. However, efforts were hampered by sentiments that since "the cows are already out of the barn" not much action could be effective. Finally in August of 1990 the Council adopted moratorium language.

In late 1990 and thru 1991 to date, the Council has needed to amend each relevant Fishery Management Plan with language to implement the moratorium. However the Council has balked at this action as the Inshore/Offshore issue has gained momentum and the Council has prioritized staff time towards the Inshore/Offshore Amendment and away from moratorium work.

Today our situation is as follows:

1. Inshore-Offshore has buried Moratorium implementation.
2. Inshore-Offshore study lumps Gulf of Alaska and Bering Sea/ Aleutian Islands together when the most appropriate actions could be quite different for each area.
3. Inshore-Offshore identifies an INCOMPLETE set of alternatives
4. Inshore-Offshore analyzes only a few of those alternatives.
5. Inshore-Offshore concludes that none of the analyzed alternatives solve the stated problem.

The problem is not "pre-emption", it is competition among various sectors of an industry trying to capture a limited public resource in an open access system. None of the sectors is about to disappear. All of the sectors have increased their capacity relative to 1989 and 1990 and everybody is pre-empting everybody else. Despite your dedication, and all these studies, you cannot really fathom the profound changes and disruptions to businesses, real peopies's lives, and the long term health and competitive abilities of this industry following ill conceived quick fixes.

Taking the above into consideration, we recommend the following Council actions this week:

A. We believe the industry and the management process will be best served by immediately reviving and fast tracking the BS/AI and GOA Groundfish Plan Amendments to implement the MORATORIUM.

B. Take the necessary time and marshall the necessary resources to expand the Inshore-Offshore study to include an analysis of traditional management measures, ITQ/IFQ options, Public Resource Corporation concepts, and all other conceiveable management options.

I am certain that the industry is ready to move with you to the next step in this crucial process.

Sincerely,

Michael G. Stevens
Vice-President

OCEAN PHOENIX

JUN 2 0 1991

PHOENIX PROCESSOR LIMITED PARTNERSHIP

June 19, 1991

Richard Lauber - Chairman
North Pacific Fishery Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Re: Proposed Inshore/Offshore Allocation Alternatives
Amendments 18/23 to GOA and BSAI Groundfish FMP

Dear Chairman Lauber:

The Ocean Phoenix Partnership is comprised primarily of the owner-operators of small trawlers which form the harvesting fleet for our pollock surimi and fishmeal processing mothership S.S. Ocean Phoenix. These catcher boats include the Oceanic, Margaret Lynn, Vesteraalen, Mark I, MarGun, Nordic Fury and Pacific Fury.

This group has helped pioneer many West coast fisheries, the latest being the Americanization of the cod and pollock fisheries. We have seen competitors and compatriots come and go over the years as the business has changed. As INDEPENDENT FISHERMEN it has long been important to us that market conditions and COMPETITIVE ADVANTAGE, not regulatory intervention, govern decisions about resource utilization and access.

In the late 1980's our joint venture markets with foreign processors began a rapid decline as the factory trawler sector blossomed and shoreplants in Dutch Harbor finally decided to enter the pollock business. Factory Trawlers do not need independent catchers and the extremely limited shore plant markets (only three companies) require bigger boats with large storage capacity to haul the fish inshore. Our decision to create our own offshore market was the ULTIMATE STEP IN THE AMERICANIZATION PROCESS FOR THE SMALL INDEPENDENT TRAWLERS. We followed the law and developed our business format consistent with Council policy. We were encouraged by the Council to expand into the DAP sector. We intend to remain as long term participants in the groundfish fisheries. The Ocean Phoenix investment represents our commitment to the industry.

The Inshore sector complains about PRE-EMPTION ! WHAT A HOAX !!! Please refer to the enclosed set of data. The Inshore tonnage and percentage of catch has increased every year. On the other hand, it is easy to see how dramatically the independent small trawler's market opportunity has diminished over the past

few years. If any sector has a legitimate basis to scream "pre-emption" it is the small independent trawlers who do not process their catch and do not fit the format to tender fish ashore. THE PLAYING FIELD IS LEVEL. Let us compete freely!

By and large the good shoreplant development sites are taken up now. A rich and powerful EXCLUSIVE CLUB, of three companies will be created by granting an inshore allocation priority. Inshore allocation priority will institutionalize an OLIGOPOLY. Much of this so called "pre-empted" inshore capacity just came online. They are the very latest of the "johnny-come-latelys". When we were pioneering the domestic efforts on pollock in the early eighties, where were these shoreplants?

We urge the Council to take the following actions:

1. Finish the job you started and fast track the MORATORIUM amendments and work with Alaskan authorities to apply moratorium shoreside as well.

2. Do not disenfranchise the small catcher-trawler boats by putting them into an allocation box that squeezes them from the factory trawler side or restricts them regarding where they can sell their catch.

3. Expand the study which was begun with the Inshore-Offshore issue to include a legitimate analysis of all of the alternative management options so that the best decisions for the future can be made.

Sincerely,

David W. Galloway
President

DWG/dmf

Enclosure

HISTORICAL DOMESTIC ACTIVITY ON BS/AI POLLOCK

	DAP INSHORE	DOMESTIC CATCH & PROCESS (OFFSHORE)	DOMESTIC CATCH & SELL (OFFSHORE)	TOTALS
1986				
mt	14,200 mt	3,700 mt	875,103 mt	893,003
%	1.6%	.4%	98.08%	
1987				
mt	97,985 mt	55,985 mt	1,109,486 mt	1,263,438
%	7.8%	4.4%	87.8%	
1988				
mt	188,809 mt	282,244 mt	891,413 mt	1,362,466
%	13.9%	20.7%	65.4%	
1989				
mt	190,732 mt	767,000 mt	328,584 mt	1,286,307
%	14.8%	59.6%	25.6%	
1990				
mt	218,650 mt	962,262 mt	210,000 mt	1,390,912
%	15.7%	69.2%	15.0%	

Data from National Marine Fisheries Service and other industry sources.

ALYESKA OCEAN, INC.

Anacortes Marina Building - 2415 T Avenue
P.O. Box 190 - Anacortes, Washington 98221
Tel (206) 293-4677 Fax (206) 293-4241

June 18, 1991

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99501

Re: Opposition to Inshore/Offshore Amendment 23/18

Dear Mr. Lauber,

As an "inshore" and "offshore" participant, ALYESKA OCEAN, INC. opposes any plan to give special preference to inshore processing or harvesting and favors status quo.

ALYESKA OCEAN, INC. has for over twenty years owned and managed fishing vessels which operate in the Bering Sea and North Pacific. Two of our 200 foot class vessels deliver a significant share of round pollock to Dutch Harbor inshore processing. Another of our vessel's is one of the largest surimi factory trawlers operating in the pollock fishery.

We have an obvious long term interest in the future of the pollock industry and endeavor to make good business decisions which rely on stable regulations that are not adjusted for special interests and ill founded investments.

Special preference for inshore operations would be a possible short term gain to our two inshore vessels but any gain would soon be diminished by over investment in that group.

Special preference for inshore operations would have a substantial negative impact on our factory trawler operation and may eliminate the fleet's ability to fish in areas out of range by the inshore fleet.

Sincerely yours,

Jeff Hendricks
President

Long John Silver's, Inc.
A SUBSIDIARY OF JERRICO, INC.
101 Jerrico Drive P. O. Box 11988 Lexington, Kentucky 40579 (606) 2[illegible]000

June 19, 1991

Mr. Steve Pennoyer
Director, Alaska Region
National Marine Fishery Service
P.O. Box 21668
Juneau, AK 99802-1668

Dear Steve:

Subject: Agenda Item C-2

I have reviewed the document and overview of the pollock processing industry by Dr. Steve Freese. It is a well-done document that points out many of the concerns that our Company has concerning the management of fish resources in the North Pacific.

As a restaurant company specializing in fish and seafood entrees, we are concerned about a consistent, reliable and reasonably priced seafood resource from this region.

We are currently sourcing fish from many sections of the world, and we are very concerned about the decreasing supply of fish available to our Company from the North Pacific region. We strongly believe that American resources should be managed with the best interest of the American consumer first and foremost. I would urge the Council, in considering any resource allocation by quota system, to take into consideration the long-range effect it could have, not only on the American consumer, but on the American fishing industry in the North Pacific.

I will attend the Council meeting next week and will speak further on this issue.

Sincerely,

Bruce C. Cotton
Senior Vice President, Public Affairs

BCC:khb

cc: Clarence Pautzke

Ted Evans
9652 48th Ave. S.W.
Seattle, Washington 98136

June 20, 1991

North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Alaska 99510

Mr. Steve Pennoyer
Director Alaska Region
National Marine Fisheries Service, NOAA
P.O. Box 21688
Juneau Alaska 99802-1668

Dear Members of the North Pacific Council and Mr. Pennoyer:

I am writing to address the Council's proposed inshore/offshore allocation plan. My interest in the issue stems from long-standing involvement in the Bering Sea fisheries, including seeking the first joint venture permits for foreign processors in 1979, operating a Bering Sea shore plant in Egegik, Alaska and running the offshore processors trade association for the formative years of the offshore fleet. I have been active in the successful development of the pollock market for all sectors and the successful modification of the Japanese import quota structure for pollock to foster the surimi industry for all sectors. I have worked to get Japanese and European tariffs reduced for the benefit of all sectors. Recently, I have been involved with users of the groundfish resource. From that perspective, users see the allocative dispute between primary processors being very disruptive to the ultimate distribution of groundfish as food for the world.

I believe that conservation of the resource is the highest issue for the Council's management. But conservation issues are not part of the inshore/offshore debate. The Council's mandate is to assure the full utilization of the North Pacific groundfish resources. My bias is to preserve the health groundfish fishery that has developed under the legislative ground rules for the past 15 years and to avoid a restructuring of preferences for resource access to achieve a new, planned economic order. I am writing on my own behalf.

The Council is seeking to reallocated fish from the existing offshore sector to the developing inshore sector - The obvious truth of the Council's direction is disguised in the amendment's terminology. Proponents of the amendment initially sought a "shore preference." The Council considered shore preference alternatives for many months. Then the Council found it more (politically?) correct to use "inshore/offshore allocation" to define its effort. While thinly disguised, shore preference is sought solely because of the competitive advantages of the offshore fleet. While shore processors claim a lack of mobility as their key disadvantage, they have a history of using floating processors and tenders to overcome logistical problems in all of the other fisheries in which they are engaged (salmon, crab, halibut, herring, etc.). This must be viewed as an effort to use political muscle to oust the offshore pioneers and to clear the way for less efficient operations. The offshore fishery has not, to my knowledge, requested an allocation. Were the amendment to be adopted, they would apparently get one, but it would be

only what is left after satisfying the inshore sector. I suggest that "shore preference" amendment is the correct name for the alternatives being analyzed in this proposal, as it is more indicative of the effort being undertaken..

The amendment is to reallocation, not allocate, fishing rights. The allocations to the inshore would not be *prospective,* where interested participants could then assess the business climate to evaluate whether to participate. It would impact the existing industry *retroactively,* radically changing the access rules under which the offshore investments were made. The offshore sector was capitalized at $1.3 billion under the principle of priority access. It would have to divide its residual allocation among the existing offshore processors.

Thus fishing rights are taken from offshore processors in favor of shore processors. In my opinion, this proposal attacks the very foundation of Magnuson, and attacks the people that successfully ventured into the North Pacific against extreme odds. It is a removal of the DAP first priority access guaranteed by Magnuson in favor of a new privileged class.

Background -The development of the American groundfish fishery in the North Pacific is a story of entrepreneurship stimulated by the three level priority access system established in the Magnuson Act. Armed with the Government policy that American vessels that caught and processed fish in America received the first priority access, the effort began to displace entrenched industrial fisheries of foreign nations. Individuals followed the Magnuson Act call to develop the groundfish fisheries, so that Americans could receive the benefits that our vast groundfish resources afforded. American fishermen like Konrd Uri, John Sjong, Francis Miller, Sam Hjelle, Eric Brevik, Dave Stanchfield, Henry Swason, Stan Simonsen and many more produced the necessary capital and fishing/processing skill to compete with the foreign industrial fishing establishment in the North Pacific. Ultimately, they displaced them right according to plan.

The groundfish fishery is now crowded with fishing and processing equipment. The groundfish harvesting sector has been overcapitalized since 1987, the peak period for joint ventures. At that point, the United States had the harvesting capacity to catch the entire pollock and cod resource. But U. S. catcher boats were not selling fish to American shore processors. Foreign processing vessels were much more attractive arrangements for harvesters, for they would simply follow the harvesters offshore and take the cod-end aboard as if they had dragged it themselves. American catchers were spared the trip ashore and were able to sell much higher volume than if they had to take the fish aboard and transport them to a shore plant.

While joint ventures were a valuable contribution to the American economy, the goals for full Americanization were not yet being achieved. It was well recognized that joint ventures were an interim step toward full Americanization. Without factory trawlers, the joint ventures using foreign processing vessels would have continued indefinitely. Joint venture harvesters had a self interest in the status quo as did foreign processors. Shore processors could not offer the catcher vessels a comparably attractive market. Shore processors were owned by foreign companies with processing vessels in joint ventures, and lacked motivation to try to compete with themselves. Fully amortized processing vessels from non-market countries found a resource and joint venture fishermen found a market which allowed for harvesting and delivering large volumes of groundfish without even bringing the haul aboard. Only with the development of independent factory trawler operations was there any hope of displacing foreign processors.

Factory trawlers obtained their own raw materials thus avoiding the dilemma of enticing joint venture catchers away from foreign processing operations.

Along the way, however, shore interests did try to create special preferences for themselves - fishery development zones. The premise then for special zones was that American processors had a priority access right to the fish over foreign processors. That was true according to the Magnuson Act, but NOAA was clear that the priority was only for competitive processors. While the shore processors sought to eliminate the foreign competition so that they could develop, NOAA held that American processors first had to have the capacity and intent to process the fish and had to compete in the world market with the foreign processors that they sought to displace. NOAA rejected he idea of clearing out the foreign processors in advance of the shore processors anticipated development.

While joint ventures were acknowledged as an interim step toward full Americanization, factory trawlers were not intended to be interim. U.S. factory trawlers, with other U.S. catching and processing operations have the first access to the American resource. It is the very premise for their development. The present inshore/offshore allocation proposal stems from the request of shore-based interests in Alaska to clear out the offshore industry for their anticipated development. This time, however, they are seeking to displace a fully capitalized American fleet with equal rights under the Magnuson Act. The inshore interests are seeking to preserve their access in an open access fishery at the expense of the pioneers of the DAP groundfish industry. Their concern about access is stated to be based on a fear of overcapitalization of sea processors. Simultaneously, there is tremendous capitalization of shore facilities occurring.

General Statement About the EIS/RIR - The Council's EIS/RIR purports to analyze the impacts of the variety of proposed actions. The awkward efforts by the preparers to minimize the appearance of negative impacts on the offshore fleet and to emphasize positive impacts inshore show clearly. As a result, the cursory review of the negative social and economic consequences of inshore allocations may blind the decision-makers with the positive analysis given for the coastal communities. I had hoped for a far better elaboration of the consequences to the existing fishery. A clear delineation of impacts would be a powerful dissuasion from this effort at social engineering.

The EIS/RIR does not reflect the economic and social havoc that this reallocation of fishing rights would cause. This kind of economic reallocation was done previously in the judicial opinion of United States vs. Washington. Then, Washington State salmon fishermen having the capacity to take a large percentage of the fish were limited to 50% of the allocation in favor of treaty fishermen. Whether one agrees with the opinion in that case, no one can forget the resultant social and economic disruption stemming from that reallocation. It is my belief that if this amendment is instituted, the social disruption of U.S. vs. Washington would look mild in comparison.

The Problem Statement - The Council's problem statement says the effort is to avoid the "preemption of one sector of the industry by another," those sectors being defined as inshore and offshore. While the problem statement does not say it seeks to protect the inshore segment from the offshore segment, the report's tenor and the list of alternatives make that goal obvious. The most talked-about alternative to resolve the preemption problem is by allocation of fishing rights according to some percentage of the Total Allowable Catch. Each allocation alternative reduces

the availability of raw materials to the offshore sector in favor of the inshore sector. Clearly, the problem that is communicated in the statement is the growth of the so-called offshore sector of the groundfish industry.

The definition of the inshore sector in the statement is illogical. It was crafted for the Council by a coalition of interests, all of which (curiously enough) ended up in the favored inshore sector. Oddly, many floating processors having the same mobility as factory trawlers but are owned by the shore plants are defined as "inshore." Even factory longliners that operate in entirely the same fashion as factory trawlers, but with hook and line instead of nets are "inshore." The manipulation continues in the statement's historical catch comparisons as a "base" for allocations. In specifying the division of catch between inshore and offshore in 1989, Alternative 3.1 allocates a full 80% of the joint venture offshore deliveries for that year to the inshore sector.

I am appalled at the political efforts to isolate the successful factory trawler fleet. Their success at developing fishing and processing technology, establishing markets and displacing the foreign fleets have set them up for this staged political fall. There is little rationale for a division of fishing rights by *where* the fish may be processed. There is less rationale for a government reallocation of fishing rights which serves to retire capital equipment and existing jobs for an attempted restructuring of the industry ashore. It is a very high stakes experiment causing untold economic waste and personal hardship. That, however, is given short shrift in the EIS/RIR.

A common tenet of fisheries management that was embraced in the Magnuson Act is that in time of short supply, the government should act to assure that those participating in the fishery have a reasonable chance of continued access, based upon their history of participation and investment. If preemption of a sector is indeed the concern that we are addressing, the Council must reject its own proposed regulations, for they assure the preemption of the existing offshore fishing fleet by their own terms.

The Social Analysis - The analysis by hired consultants is an outrageous piece of work which is passed off as scientific. I would recommend that it be withdrawn and submitted for scientific peer review as quickly as possible. In lock step with the rest of the document, the analysis seems to support the Council's resource redistribution in spite of the consequences.

The social analysis is largely a repetition of statement of incrimination and fears of the inshore lobbyist. Appearing as statements of "informants" of the consultants, these innuendo, hopes, and red herrings are stated as if they are fact in the report. When it comes to reporting the impact on the existing offshore industry, the tone changes. While people could get hurt, they say, the diverse economy of Seattle can more readily absorb these losses. Besides, they say, others in Seattle, i.e., those in the inshore alliance see a benefit in the reallocation. Could that be because those groups have been blessed to be part of the "inshore?""

I believe that the consultant's work reflects the attitude of their clients, the Council. What is so outrageous in this effort is the practical shift in the Council's morals. The Council has constantly defended the rights of traditional or existing fishermen when in conflict with the developing fishery for groundfish. Here, the Council has totally abandoned that principle in favor of achieving the redistribution of wealth to the less competitive shore plants. It is a double standard

depending on whether the protection of Alaskan interests is at hand. When it is "outsiders" that were there first, the principle is abandoned in favor of the economic advantages of awarding fishing privileges to the favored class, the Alaskans.

The social analysis fails to consider the social impact of an action that would derail the most significant fisheries development in the history of the United States. With the offshore fleet now capitalized at over one billion dollars through the encouragement of the Magnuson Act, the social disruption caused by a fifteen-years-later new priority system will hurt people. The hoped-for shifts by people and companies that are disadvantaged by the reallocation is naive and blind to the reality of the magnitude of this restructuring. It is one thing for the Council to specify development goals - it is another to permit them to "undevelop" a fishery that has been sanctioned by national legislation in favor of local interests and their foreign partners.

Economic Impacts - The economic report is inadequate, and more than that, it is biased. The bias is often reflected in areas where hard economic conclusions cannot be drawn. The reader will most often find a statement of difficulty in the determination of an outcome, followed by an optimistic outlook for the proposed reallocation.

The bias is also reflected in the description of the model that was used to predict outcomes. Whether it reflects an attitude or naivety, the document, in defining sectors, suggests that the inshore sector is the "existing" and "senior" sector. The fact is that the offshore sector is the mature or existing sector relative to the inshore. It is offensive to see the Council suggest otherwise. The reversal of roles in the model may impact the output as well. It is not comforting to see a misstatement of this magnitude as a premise for the economic modeling.

The economic analysis is most inadequate in its failure to describe the status quo with respect to the *capital investment* and economic status of the two industry segments. That is particularly true.where economic restructuring of this magnitude is proposed. The reader of the document will not understand the extent of the investment and infrastructure that was built around the offshore industry. It is without any description for the factory trawler industry, the size or nature of its operations or any other characteristics essential to an understanding of the fleet. While we know that the offshore sector has invested more than one billion in floating capital equipment, there is no effort to confirm that or compare the investment by the inshore sector. Nor is their a picture of the nature of the inshore financial commitment. The picture of the loss to individual owners, banks, creditors and others is simply not painted. As a result the decision makers are likely to make an uniformed decision.

The economic section is very short on bottom lines. Having combed the caveats and "don't knows" for useful information, I did stumble on a bottom line in the Table 3.6 analysis. No one should ignore the prediction that the 50/50 Bering Sea pollock split cost the offshore segment **8,858 existing jobs.** That telling number says that this social engineering experiment is really playing with fire. It is then projected that 7,185 FTE jobs would be created with inshore development for a net loss of 1,673 jobs. While the economists trip over themselves with caveats about the accuracy of their work, there is little emphasis in the document about the speculative nature of the jobs that would be created onshore versus the existing nature of the jobs that would be sure to be lost. The document should clarify the distinction between lost existing offshore jobs and potential new onshore jobs. The document should emphasize the net loss to the nation of this kind of reallocation.

The economic section is unrealistic for its use of 1989 as the base year for making economic projections. While I understand that it is difficult to catch up with a moving database, the major jump in capitalization in the interim period should require an extrapolation or other effort at economic results analysis.

In short, the economic bottom lines for the reallocation are buried in the EIS/RIR. By that I mean they are either not there or glossed over. The negative impact on the offshore fleet should be shouted in this document, but they are barely whispered. That is wrong. After all, the capitalization and economic impacts of the proposal are its essence.

Alternatives to Displaced Catching and Processing Operations - This attempt to find a home for those disfavored by regulatory action is fraught with fantasy. Putting aside that Magnuson's first right of access to the North Pacific groundfish fisheries was the premise upon which the offshore fleet was capitalized, the section explores a group of unworkable alternatives. Clearly, the alternatives proposed would not have allowed development of the offshore sector. What this document reflects is hope - not for the offshore fleet, but for the workers assigned responsibility for this document. They had to say something, so we are led through a litany of uses for ships. Surprisingly, they did not mention ferry routes, cruise ships or military service. What they do say is "we don't know- here is the most hopeful options - this may hurt."

Limited Access - The Council's portrayal of this problem as one of overcapitalization by the factory trawlers is misleading. The more important observation is the overcapitalization of the industry as a whole. That analysis would thwart the true objective of the amendment to implement a shore preference. The Council has stalled three times on limited access, the obvious tool for overcapitalization. Now it seems as though it wants to first install preferential rights based upon where the product is processed and then discuss limited access for those surviving the reallocation.

The "inshore/offshore" amendment reflects a concern by the Council about overcapitalization of the offshore processing capacity. While the limited access tool is provided in the Magnuson Act for harvesting overcapacity, I question whether the Act seeks to have the government determine the winners and losers in the processing sector. If so, I believe that such tools would have been provided in the Act with the same kinds of cautions about protecting the existing participants that are in the extended provisions on limited access.

As the political interest in this amendment reflects, this is an action for which the Council has the highest responsibility to the people that it manages. The Council, in its rush to develop Alaska, it must know and address the consequences of its action. The Secretary with his responsibility as the steward of the Nation's fisheries must also assess the impact. The EIS/RIR does not do so and should be redone with instructions to pay attention to the people who will face the adverse side of this economic reallocation. It is unethical for the Council members to vote away the fisheries access to the non-Alaskan factory trawler fleet simply because they do not have the favor of the Alaskan majority on the Council.

Moreover, the withdrawal of fishing rights in favor of others who lack a competitive edge must be clearly justified by facts and factual predictions. That justification is lacking in the EIS/RIR. I do not believe that it can be justified, but even the basic information for understanding any justification are simply missing at this point.

Sincerely,

Edward D. Evans

FISHERMEN FOR
ECONOMIC FREEDOM

JUN 2 0 1991

Chairman Richard Lauber
North Pacific Fisheries Management Council
P.O. Box 103136
Anchorage, Alaska 99510

June 20, 1991

Dear Mr. Chairman:

Recently an ad hoc group of fishermen came together for a single purpose; to oppose a system of groundfish allocation that splits the allocation between on shore and off shore processors. I am writing to you on their behalf, and expressing their opposition to this proposed allocation scheme.

While the number of organizers of Fishermen for Economic Freedom was small, they were convinced that a great number of other independent fishermen shared their views in this matter. My firm was commissioned to produce and mail an informational brochure about this issue to other Alaska fishermen. The response has been gratifying. To date, nearly 300 fishermen have signed a card asking to add their names to this letter. What they are all asking for is a stay in adoption of this allocation system until one can be devised that takes independent fishermen into account.

This organization believes that a 50/50 or 60/40 split between on shore and off shore processors will put the independent fishermen at a tremendous disadvantage in the future. They are convinced that on shore processors will simply develop their own catcher fleets and independent fishermen will become "bus drivers" for vertically-intergrated, foreign-owned processing interests.

While this group fully recognizes the difficultly of postponing a groundfish allocation decision, they implore you to not adopt an allocation system that has the clear potential of turning "independent fishermen" into "dependent fishermen."

Attached are the names of the individuals that returned signed cards and their addresses where available. The originals are being sent to you under separate cover. Thank you.

Sincerely,

Kevin K. Bruce
on behalf of
Fishermen for Economic Freedom

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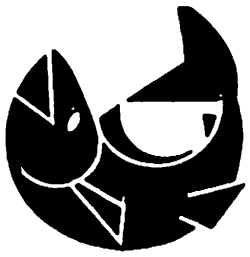

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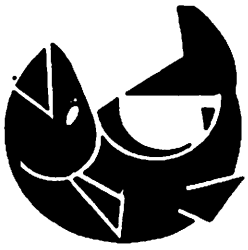

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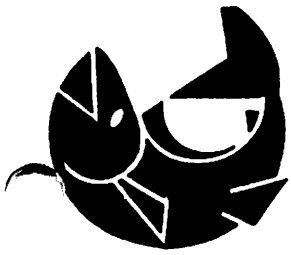

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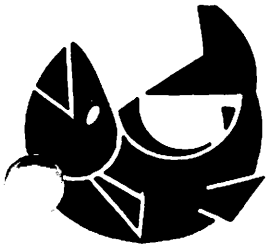

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The North Pacific Fisheries Management Council is proposing to give processors control over where fishermen sell their catch.

Unbelievable as it sounds, the NPFMC is proposing to adopt regulations that give groundfish allocations to processors -- not to fishermen. Under one proposal, up to 60% of Alaska's groundfish would be allocated to on shore processors and 40% to off shore processors. That means that Alaska's catcher boat fleet could soon get directions from the processors on where to deliver their fish. That's not right. Fishermen deserve the freedom to sell to the processor of their choice, and to get the best price possible for their catch.

And Alaska's fishermen could go down with the vote.

The vast majority of groundfish processed on shore is controlled by two large Japanese corporations. Why set up a system that favors these companies over independent Alaska fishermen? These same processors are currently building their own fleet of catcher boats, and independent fishermen are in danger of being put out of business altogether. Some members of the NPFMC have stated that this allocation system is going to be the wave of the future. Please help defeat this proposal now - before it hits your fishery.

Make Waves - Act Today!

First, call your local fishing association and register your concerns. Then sign and send in the enclosed card today. We'll add your name to the growing list of Alaskan fishermen who are concerned that this regulation simply puts too much control into the hands of processors.

And call Alaska's delegation.

Alaska's congressional delegation can help stop this proposal. Let them know that the North Pacific Fisheries Management Council's plan is all wet.

Senator Stevens	D.C. Office	**(202) 224-3004**
	Alaska	**(907) 271-5915**
Senator Murkowski	D.C. Office	**(202) 224-6665**
	Alaska	**(907) 271-3735**
Congressman Young	D.C. Office	**(202) 225-5765**
	Alaska	**(907) 271-5978**

Yes! Add my name to a telegram to Alaska's Congressional delegation and the North Pacific Fisheries Management Council asking for a stay in this regulation.

Signature _____

Printed Name _____

ON JUNE 25, 1991
ELEVEN PEOPLE ARE GOING
TO TELL FISHERMEN
WHERE TO GO.

Fishermen for Economic Freedom
P.O. Box 103361
Anchorage, Alaska 99510-3361

BULK RATE
U.S. POSTAGE
PAID
PERMIT NO.
ANCHORAGE

Place
Stamp
Here

Fishermen for Economic Freedom
P.O. Box 103361
Anchorage, Alaska 99510-3361

City of Sand Point

P.O. Box 249
Sand Point, Alaska 99661
(907) 383-2696

June 19, 1991

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

Re: SEIS/RIR/IRFA for Inshore/Offshore Alternatives

Dear Mr. Lauber:

In response to the North Pacific Fishery Management Council's desire to hear from fishing communities about this important proposal, the City of Sand Point reviewed the above referenced document and has the following comments to make.

The status quo is not an acceptable alternative. Continuing the status quo from an economic perspective will allow over capitalization of both components of the processing sector to continue. Whether shore based or floating, each component can now harvest and process the entire quota of the BSAI and GOA. Continuation of the status quo will result in disastrous economic consequences. It is fair to state, based upon numerous past boom and bust cycles in the fishery, that both components will suffer severe economic hardship with the failure of many business ventures. The fundamental decision before the North Pacific Fishery Management Council is whether it will allow this to happen or whether the North Pacific Fishery Management Council will act responsibly to limit the economic and social upheaval which will result from continuation of the status quo.

Before discussing the preferred management alternatives which make the most sense to the City of Sand Point, I feel it is necessary to discuss the 1991 groundfish fishery in Sand Point. The study concluded that Sand Point, based upon the study year, would neither gain nor lose by any of the proposals. However, the study continues that this conclusion is counterintuitive. During the fiscal year ending June 30, 1991, Pacific cod will have accounted for a minimum of 35% of the exvessel value of the fish landed in Sand Point. The 1991 season also saw a vast improvement in the market with the price rising 33% and the presence of five processors operating within the City's boundaries--Trident Seafoods, New West Fishery, Pan Pacific Seafoods, Palisades Fishery and North Coast Processors. The 1991 season also ended, for all practical purposes, on March 31st. The early closing results from increased local catch efforts, but more importantly, from factory trawlers operating in the Western Gulf. In fact, many small boats that invested in automated gigging gear never had the opportunity to fish during the season because they were preempted by factory trawlers.

The SEIS/RIR/IRFA stated that none of the management alternatives would affect the biology of the BSAI and GOA. Rather, the study concluded that the observer program would enhance the data available for the management of the resources. The report also stated that a decision in favor of an inshore/offshore allocation program would benefit the Alaskan communities in the study. However, the report stated that only Seattle would suffer as a result of this decision. (Bellingham was vertically integrated into the Alaskan fishery and no direct negative impact could be attributed to Newport). Finally, the report concludes that socio-economic impacts resulting from acceptance of the inshore/offshore allocation could be best borne by Seattle.

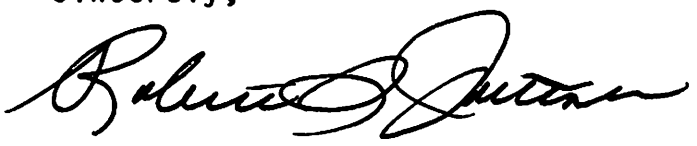
Unsurprisingly, the City of Sand Point endorses Alternative 3.3. The split of 80% of the Pacific cod quota and 100% of the pollock quota to inshore plants in the GOA would do much to stabilize conditions in Sand Point. The SEIS/RIR/IRFA mentioned the need for economic stability in Sand Point for both Trident Seafoods and New West Fishery. A year round fishery is essential to the economic viability of these processors. In fact, this lack of stability has caused New West Fishery to place its plant construction on hold until after the North Pacific Fishery Management Council's June meeting. Finally, the study concluded with the possibility of pollock processing developing in Sand Point if the inshore allocation is apporoved. Both New West and Trident would do pollock in January 1992 in Sand Point if the situation is stabilized by the adoption of an inshore allocation.

Alternative 3.3 also provides stability for the City's tax base. The City of Sand Point gathers the majority of its income from a general sales and fish tax of 2%. (As a point of order, I should reiterate the fact that the sales tax is paid by the fishermen and only collected by the processors.) This fiscal year, the City will collect slightly more than $600,000 from its sales tax. Approximately 65% or $390,000 is directly derived from the fish tax. The majority of the remainder comes from fuel sales, primarily to fishing boats, and the local marine support businesses. Stability in the fishery will allow Sand Point to provide essential community services.

The City of Sand Point also recommends that Alternative 2 should be used in conjunction with Alternative 3.3. Specifically, superexclusive registration areas should be implemented. Sand Point feels that this level of protection is needed to protect its small boat home fleet. Limited entry seiners and the smaller fishing vessels have limited range and are dependent upon good weather for safe, productive catches.

I want to conclude my remarks by thanking the individual members of the North Pacific Fishery Management Council and the staff for the production and inclusion of the SEIS/RIR/IRFA in the decision making process.

Sincerely,



Robert S. Juettner
City Administrator
1007 W. 3rd - Suite 201
Anchorage, AK 99501
907-274-7555

RSJ:emn