

ALLOCATION DEBATE: ONSHORE VS. OFFSHORE

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THE IN-SHORE/OFF-SHORE DISPUTE:
IMPACT OF FACTORY TRAWLERS ON FISHERIES IN THE
NORTH PACIFIC AND PROPOSALS TO REGULATE THE FLEET

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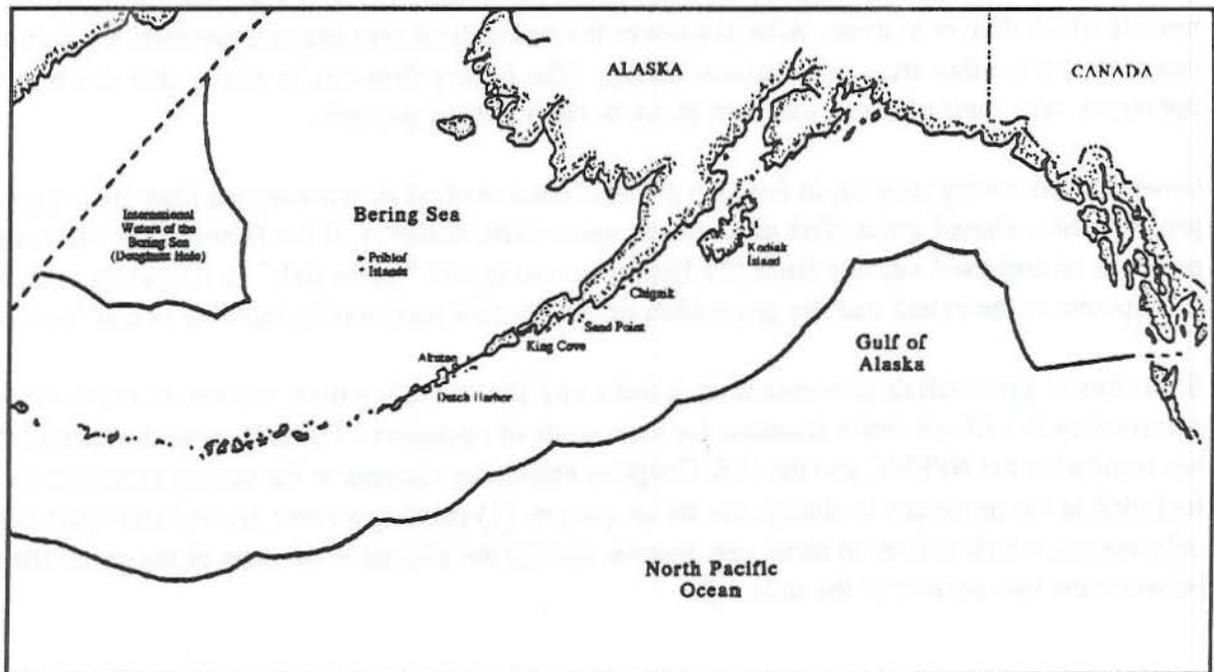
IMPACT OF FACTORY TRAWLERS ON FISHERIES IN THE NORTH PACIFIC AND PROPOSALS TO REGULATE THE FLEET

I. INTRODUCTION

The fact that almost seventy percent of the fish caught off the coasts of the United States is taken by foreign fishermen is not in and of itself the most disturbing factor. Rather, it is the fact that foreign fishermen are highly efficient and mobile and can move to other parts of the world if they overfish United States waters. With the use of huge factory vessels and large fleets of smaller fishing boats that deliver their catch to the processing vessels, the foreigners have been virtually vacuuming the seas of precious life and economic value.

— Senator Warren G. Magnuson¹

The waters off Alaska are rich in fishery resources. Coastal stocks, such as salmon, herring and crab, are managed by the State of Alaska through the Alaska Department of Fish and Game. The National Marine Fisheries Service ("NMFS") of the Department of Commerce manages the fishery resources found predominantly in the area three to 200 miles from shore, in conjunction with the North Pacific Fishery Management Council ("NPFMC" or "Council"). Groundfish stocks such as Alaska pollock, Pacific cod, sablefish, yellowfin sole and various species of rockfish are especially prevalent in this 200-mile exclusive economic zone ("EEZ"). (See chart below showing the waters under the jurisdiction of the NPFMC.)



Factory trawling vessels were developed in the 1950's to take fish off of distant foreign fishing grounds. The number of foreign factory vessels operating within 200 miles of Alaska grew rapidly during the 1960's and early 1970's. Prior to the passage of the Magnuson Fishery Conservation and Management Act² ("Magnuson Act" or "Act") in 1976, foreign factory fleets harvested most of the groundfish in the North Pacific. After the United States undertook the management of fishery stocks out to 200 miles, foreign fishing within these waters was permitted only if the fishery resources were surplus to the requirements of the domestic seafood industry. Foreign fishing in the North Pacific became strictly regulated to prevent overfishing and to promote development of the United States industry. Included in these regulations were methods to ensure that foreign factory trawlers did not preempt grounds where U.S. fishermen were prevalent and management measures to ensure that foreign fleets did not target stocks around shorebased processing facilities.

The United States factory fleet operating in the waters off of Alaska has expanded dramatically during the past three years, and is continuing to grow at an alarming rate.³ Promoted by foreign shipyards, which have subsidized the building of many of these vessels, the new factory fleet is having the same impact as did foreign fishing prior to passage of the Magnuson Act. The factory fleet is targeting its fishing efforts in the area around shoreplants in the Bering Sea, thereby preempting smaller vessels which deliver to shorebased processors. The concentrated factory fleet's fishing effort is causing localized depletion of groundfish stocks in areas where smaller in-shore fishing vessels must operate because of their lack of harvesting range. The huge factory fleet will soon also have the ability to take twice the available groundfish quotas in the waters off of Alaska. Once the quota is taken, these vessels have the option of fishing in other areas; however, shorebased processors, and the vessels which deliver to them, will not have the same opportunity.

Representatives of the factory trawler industry contend that any change in the current management system is nothing more than government protectionism for the in-shore industry. The current groundfish fishery management plans for Bering Sea/Aleutian Islands and Gulf of Alaska, however, give a preference to United States factory trawlers operating in the EEZ over stationary shoreplants and the vessels which deliver to them. After the stocks in one localized area become depleted, the factory vessel can move on to other areas and continue fishing. The factory fleet can, in effect, shut down shorebased operators, take their markets, and then move to other fishing grounds.

On-shore processing may be, in fact, the most efficient method of processing a high quality groundfish product. Shorebased groundfish processing cannot exist, however, if the factory fleet can consciously preempt shorebased vessels from the fishing grounds and "pulse fish" in the waters surrounding shoreplants to the extent that the groundfish stocks become temporarily depleted in that localized area.

Shorebased groundfish processors in Alaska and the vessels which deliver to them believe this controversy is a life-or-death situation for their mode of operation. The gravity of the current dilemma has resulted in the NPFMC and the U.S. Congress examining changes to the current management regime. Included in the proposals to change the status quo are: (1) creating an area around shoreplants in which only vessels which deliver to shore can operate, and (2) the allocation of some of the groundfish quotas between the two sectors of the industry.

The purpose of this paper is to review the background of the growth of the United States groundfish industry operating in the North Pacific and to suggest that an allocation to vessels which deliver to on-shore processors and an exclusive in-shore harvesting area are appropriate for the equitable management of the groundfish resources of the North Pacific.

II. DEVELOPMENT OF THE WORLD FACTORY TRAWLING FLEET

Factory trawler vessels were first developed in Europe during the 1950's. These vessels were built to take advantage of the fishery resources off foreign nations' shores, where it was impractical to bring the harvest back to a domestic shoreplant for processing.

The idea for a factory trawling vessel took shape in the United Kingdom. The British coined the term "distant water fishing" and their fishermen had long sought out new and far-away fishing grounds. As early as the 1890's, the British steam powered fishing fleet was harvesting fishery resources offshore Iceland. By the 1900's British vessels were fishing north of the Arctic Circle, to Norway and the Barents Sea. After World War II trips from England to the west of Greenland—a round-trip distance of 4,500 miles—were not uncommon. These fish were delivered "fresh" back to the British market by being held in ice during the voyage. Because of the increased distances the fleet traveled to get its fish, however, it became difficult to bring marketable product back to port.⁴

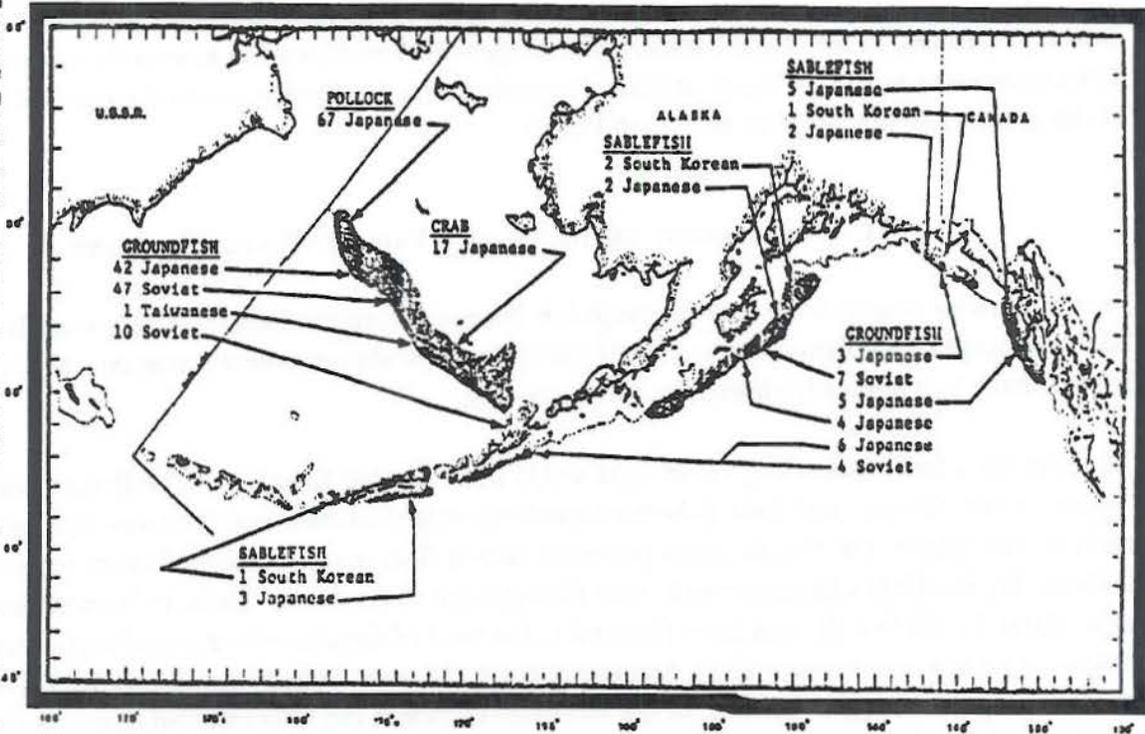
The first factory trawling ship was built by a Scottish whaling corporation that was concerned about diminished whaling stocks.⁵ In 1954 the company launched the first factory trawler, the *Fairtry*, with an overall length of 280 feet.⁶ The *Fairtry* operated successfully off the Grand Banks of Newfoundland, and by 1956 the Soviet Union launched the *Pushkin*, literally an identical copy of the *Fairtry*,⁷ to take advantage of the then rich fishing grounds of the Northwest Atlantic. The *Pushkin* was followed later that same summer by another Soviet factory trawler, the *Sverdlovsk*. By 1959, the Soviets had thirty-five factory trawlers fishing off of the shores of Canada and the U.S.. The Soviet factory trawler fleet, now operating year-round from Greenland to Georges Bank, grew to 106 vessels by 1965.⁸ In early 1966 Russian fishermen began exploiting fishery resources off of the coasts of Alaska, Washington state, Oregon and California.⁹ By 1974, the Soviet Union had over 760 factory trawlers operating throughout the world.¹⁰

Other European fishing nations also followed the British initiative. By the end of the 1960's, East and West Germany, Poland, Spain, Portugal, France, Norway, Italy and Iceland all had factory trawler fleets fishing primarily in the Northwest Atlantic and North Pacific oceans.¹¹

The first Japanese-built factory trawler was the *Umitaka Maru*, launched in 1955 by Tokyo's University of Fisheries.¹² In 1957 the first Japanese commercial factory trawl vessel, the *Taiyo Maru No. 51*, was launched to harvest fishery resources off of foreign shores in the Pacific ocean, especially the bountiful fishing grounds off the coast of Alaska.¹³ These two ships obtained successful results and led to a rush of building in Japanese yards. By the early 1970's, Alaska pollock had become the most important species by volume being caught by the Japanese seafood industry.¹⁴

As an example of the extent of foreign fishing in the North Pacific ocean, the following chart shows the foreign vessels off of Alaska during April of 1975.¹⁵

Figure 7. Foreign fishing off Alaska in April 1975, by country, number of vessels.
 Source: National Marine Fisheries Service, NOAA, Department of Commerce.



Prior to 1976, the United States had no comprehensive marine fishery management to regulate this foreign fishing effort. Generally, under the Bartlett Act,¹⁶ United States jurisdiction over domestic fishery resources extended only twelve miles from its coast. There were, in addition, various international agreements that the United States negotiated to regulate fishing off its shores. They included the International Convention for the Northwest Atlantic Fisheries¹⁷ and the International Convention for the High Seas Fisheries of the North Pacific Ocean.¹⁸ These agreements, however, were generally viewed as ineffective in preventing excessive exploitation of fishery resources by foreign factory fleets.¹⁹

III. PASSAGE OF THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

The growth of the world factory trawler fleet had an obvious impact on the conservation and management of U.S. fishery resources. Unregulated factory vessels were accused of depleting stocks relied upon by coastal fishermen across the nation. Increasingly during the early 1970's, fishermen in the United States became irate at the presence of foreign factory fleets off of domestic shores.

Senator Ted Stevens of Alaska proposed the first major expansion of U.S. fishery jurisdiction beyond twelve miles in January of 1971 with the introduction of legislation that would create a fishery zone of at least 200 nautical miles.²⁰ By 1974 both the Senate Commerce Committee and House Merchant Marine and Fisheries Committee conducted extensive hearings across the country on various proposals to extend fishery jurisdiction.²¹

The concern expressed by many domestic fishermen was not limited to the overfishing by foreign fleets, but also included pulse fishing by factory trawlers which caused localized depletion of nearshore stocks

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and the preemption of U.S. fishermen from the in-shore fishing grounds. As noted by Congressman Gerry Studds of Massachusetts as he commented on the proposed reduction in the harvest of yellowtail flounder, "[i]f they were to cut back by fifty percent, most of the fleet, for example, in New Bedford could no longer make a go of it. Certainly the small boats are not equipped to make the trip to Georges Bank." The Congressman further remarked that "[i]t seems to me it is cruelly unfair for us to sit by and allow the highly subsidized foreign fleets to move in, to use pulse fishing methods that Senator Stevens was referring to and others, to decimate a whole region of the world's oceans and then to move somewhere else. Our fishermen cannot move on."²²

Legislation creating a 200-mile fisheries zone was not successful in passing both Houses during the 94th Congress.²³ In 1975, however, both Senator Magnuson of Washington state and Congressman Studds again introduced legislation extending domestic fisheries jurisdiction.

While Congress was deliberating on the legislation, foreign factory trawling continued to be an unrelenting plight for domestic fishermen and there was growing pressure in Congress to finally extend U.S. fishery jurisdiction. Noted Congressman William Cohen of Maine:

Many of the foreign vessels involved in this harvest actually contain facilities in which the catch can be processed and packaged for the foreign, or American, marketplace. These vessels, often owned and operated by foreign governments, move together in fleets and concentrate on small ocean areas in which stocks are found to be plentiful. In the darkness of night, these fleets appear as huge cities of light. In contrast to the larger ships which make up these fleets, Maine trawlers and gill-netters appear like tugboats beside ocean liners.²⁴

Despite strong Administration opposition due to perceived foreign policy and national defense considerations,²⁵ and opposition from legislators who were concerned about the United States violating international law by unilaterally extending fisheries jurisdiction,²⁶ the so-called "200-mile bill" received broad-based political support in the 94th Congress. The legislation passed the House on October 9, 1975, by a vote of 208 to 128.²⁷ An amended version was adopted by the Senate on January 28, 1976, by a vote of 77 to 19.²⁸ The Committee of Conference reported the final version of the Act in March of 1976.²⁹ With passage of this legislation the adverse impact of foreign factory trawling in United States waters was expected to be resolved.

IV. DEVELOPMENT OF THE UNITED STATES GROUND FISH INDUSTRY IN THE NORTH PACIFIC

A. Regulation of Foreign Fishing in the North Pacific

The Magnuson Act was signed into law in April of 1976 and implemented in March of the following year. At the time the law was enacted, it was widely believed that the Magnuson Act would "kick out" foreign fishermen from our nation's 200-mile waters.³⁰ The Act instead established exclusive U.S. management jurisdiction over all fishery resources,³¹ except tuna,³² within 200 miles of domestic shores. Eight regional

fishery management councils were formed to manage the fishery resources within the 200-mile EEZ³³ in cooperation with the Department of Commerce.³⁴ An "optimum yield" calculation became required for each fishery under management.³⁵ Foreign fishermen are permitted to harvest allocations of the "Total Allowable Level of Foreign Fishing" ("TALFF")—that portion of the optimum yield which will not be harvested by United States fishermen³⁶—if that country has entered into a Governing International Fishery Agreement with the United States.³⁷

Allocations of TALFF to each foreign nation are determined by the Secretary of State, in cooperation with the Secretary of Commerce.³⁸ As first enacted, the Magnuson Act provided that foreign allocations of TALFF were to be based on only four criteria: (1) traditional fishing by vessels of that nation,³⁹ (2) cooperation in fishery research,⁴⁰ (3) cooperation in fishery enforcement,⁴¹ and (4) any other matters that are deemed appropriate (the so-called "basket clause").⁴²

With the framework established to give the United States seafood industry complete preferential access to domestic fishery resources, expectations were high for prompt Americanization of the fisheries in the EEZ. The overall performance of the industry, however, was disappointing. In 1979, two years after implementation of the Act, U.S. displacement of foreign fishing, by volume of fish harvested in the EEZ, had been only one percent per year⁴³ and no significant domestic groundfish processing operations had been established.⁴⁴

The lack of progress was largely attributed to continued foreign fishing in the EEZ. For example, Congressman James Weaver of Oregon introduced legislation in 1980 that would prohibit all foreign fishing within forty miles of U.S. shores so that the destructive ability of large factory vessels to preempt in-shore fisheries would be eliminated.⁴⁵ Congress noted that the development of the United States industry could not take place when subsidized foreign fleets continued to harvest domestic fishery resources.⁴⁶

The Government's policy towards allocations of TALFF during the first years of the Magnuson Act emphasized traditional fishing by foreign fleets, thereby preserving the foreign presence in the EEZ. In 1979 NMFS announced a new "fish and chips" policy, whereby allocations to foreign nations would be based to a much greater degree on a foreign nation's efforts to assist development of the United States seafood industry.

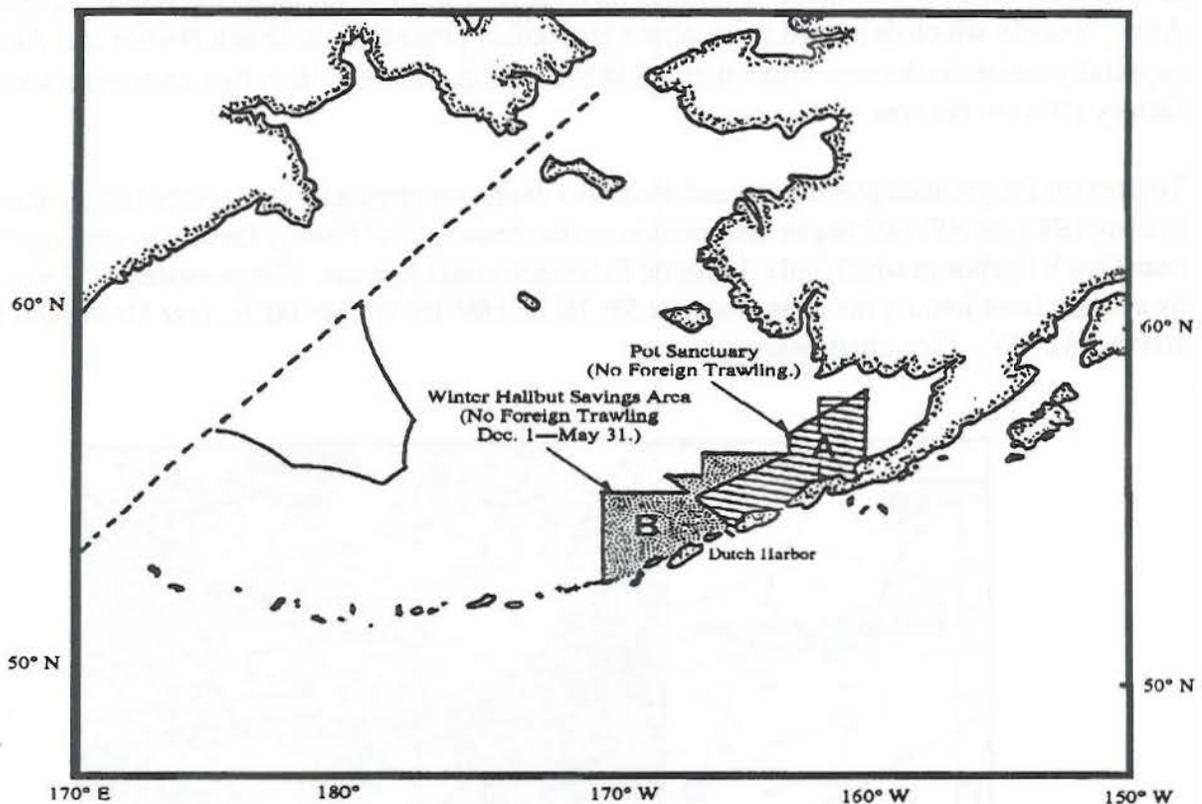
In 1980 Congress passed the American Fisheries Promotion Act ("AFPA")⁴⁷ which, among other things, amended the Magnuson Act to codify the "fish and chips" policy by providing four new criteria that the Secretary of State must consider when making allocations of TALFF. These new allocation criteria focused on efforts by foreign nations to promote the development of the United States industry and included: (1) the foreign nation's trade barriers to U.S. fishery products,⁴⁸ (2) purchase of fish products from the United States,⁴⁹ (3) whether the foreign nation's harvest in the EEZ is being used for its own domestic consumption and not exported to the United States,⁵⁰ and (4) other contributions to the U.S. seafood industry.⁵¹

The AFPA also contained provisions establishing a complicated TALFF phase-out formula that allowed the regional fishery management councils to mechanically reduce TALFF by either fifteen, ten or five percent annually, depending on the percentage of the previous year's level of foreign fishing that was

harvested by domestic fishermen.²² This phase-out schedule was never adopted by the NPFMC. Foreign factory trawling in the North Pacific, however, was strictly regulated off Alaska to help promote development of the U.S. industry.

1. Winter Halibut Savings/Pot Sanctuary Areas

The first groundfish fishery management plan adopted by the NPFMC for the Bering Sea/Aleutian Islands reflected the desire to regulate foreign trawling efforts while promoting development of the domestic industry. As part of the plan, a king crab pot sanctuary was implemented in Bristol Bay in which all foreign trawling was prohibited on a year-round basis.²³ A Winter Halibut Savings Area around Dutch Harbor was also incorporated into the plan. No foreign trawling was permitted in the Winter Halibut Savings Area for six months of the year — from December 1 through May 31.²⁴ (See chart below.)



The prohibition on foreign trawling in these areas was for two purposes: (1) to conserve juvenile halibut stocks, and (2) to prevent gear conflicts between U.S. and foreign fishermen.²⁵ As a result of the Winter Halibut Savings Area and Crab Pot Sanctuary, foreign trawling was prohibited around the Dutch Harbor area for a large portion of the year. This allowed domestic fishermen to operate without preemption by foreign factory fleets.

There were other restrictions on foreign trawling. Farther down the Aleutian Islands chain, to protect against possible gear conflicts between foreign and U.S. fishermen, foreign trawling was prohibited at all times between 172° W. longitude and 178° 30' W. longitude south of approximately 53° 14' N. latitude,²⁶ and foreign trawling was prohibited January 1 through June 30 in an area known as the Petrel Banks, which is East of 178° 30'.²⁷

In addition to the restrictions on foreign trawling in the Bering Sea, the Gulf of Alaska Groundfish Fishery Management Plan also prohibited all foreign fishing in the area between 132° 40' W. longitude and 140° W. longitude (Southeast Alaska)⁵⁸ and south of Akutan Island between 163° 04' W. longitude and 166° W. longitude north of 53° N. latitude (Davidson Bank).⁵⁹ There were further restrictions on all foreign trawling around Kodiak Island.⁶⁰

2. Fishery Development Zone.

As the United States began to develop a groundfish industry, domestic fishermen delivering to U.S. shorebased markets and foreign joint venture processors complained of gear conflicts, grounds preemption and localized depletion caused by foreign factory trawlers, which operated in the areas around Dutch Harbor despite the restriction on foreign trawling imposed by the Winter Halibut Savings Area. Vessels which delivered to on-shore groundfish processors in Dutch Harbor and Akutan were especially limited in the area where they could harvest fish and were, therefore, concerned about foreign factory effort in the area.⁶¹

To prevent the grounds preemption and localized depletion caused by the foreign factory trawler fleet, in early 1982 the NPFMC began deliberation on the creation of a "Fishery Development Zone" ("FDZ") near Dutch Harbor in which only domestic fishermen could operate. The proposed FDZ was bounded by straight lines joining the coordinates at 55° 16' N, 166° 10' W; 54° 00' N, 166° 10' W; and 54° 36' N, 164° 55' 42" W. (See chart below.)

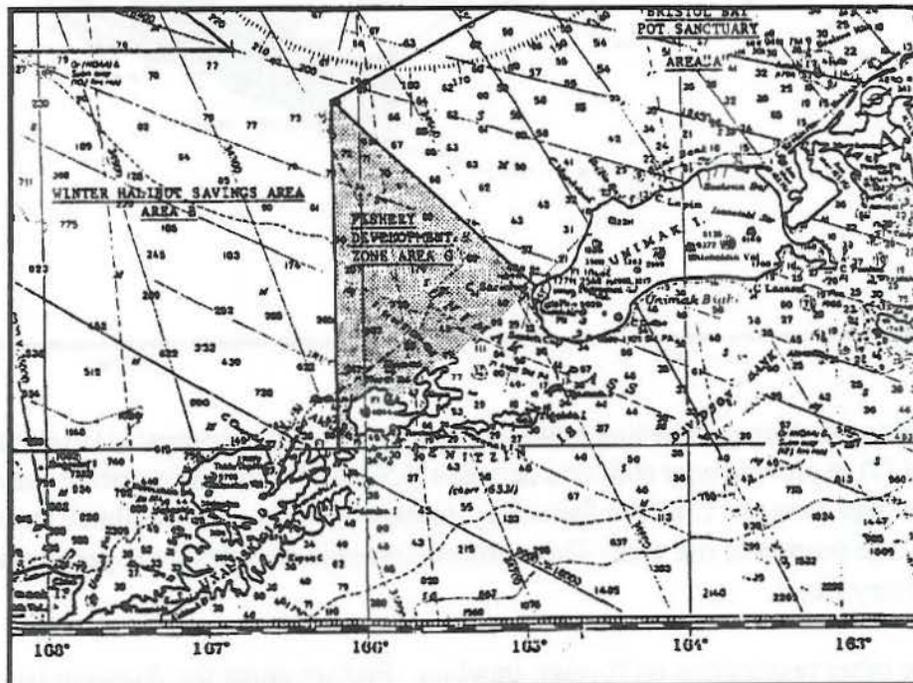


FIGURE 1. Location of the U.S. Fishery Development Zone

The Regulatory Impact Review/Final Regulatory Flexibility Analysis ("RIR") statement accompanying the proposed amendment noted that "[i]n the past, American skippers have voiced concern about foreign fleets moving onto the richest grounds and effectively preempting them, forcing domestic vessels to handle their gear more frequently and occasionally displacing them from the grounds."⁵² The document goes on to state that "[t]here is ample, though conflicting, testimony about the existence of the gear conflict problem. American fishermen have maintained that there is a significant problem, while foreign fishing interests argue that there is no problem."⁵³ After analyzing the number of foreign factory trawlers the RIR determined that "*clearly, given the mobility of these trawlers and their effects on localized concentrations of pollock (they have been likened to gigantic vacuum cleaners), these represent high densities of foreign trawlers, which could effectively preclude domestic interest in utilizing the area.*"⁵⁴

It is worth noting that the foreign factory trawling effort (which was sufficient to cause localized depletion and grounds preemption) in the area around Dutch Harbor during the early 1980's was considerably less than that of the current U.S. factory fleet. The Winter Halibut Savings Area closed most of the in-shore area in the Bering Sea to all foreign trawling from December 1 through May 31. The estimated total foreign groundfish catch, moreover, in the proposed FDZ was less than 75,000 mt during 1979, 65,000 metric tons in 1980 and less than 84,000 metric tons during 1981.⁵⁵ The Japanese fleet harvested over two-thirds of the fish taken from the FDZ; however, the actual number of vessels in the area was relatively small. The number of Japanese vessels operating within the FDZ for at least twenty days in a month (during the months when foreign trawling was not precluded by the Winter Halibut Savings Area closure) ranged from a low of three to a maximum of only twenty-five.⁵⁶

In concluding that the the FDZ will help promote growth of the U.S. groundfish industry, the RIR noted that "[t]here may be some significant beneficial consequences for the Dutch Harbor area which is outside, but very close to, the FDZ. Year-round operations in Dutch Harbor in the bottomfish industry will create a more stable employment outlook than the seasonal (and currently dismal) king and tanner crab fisheries. *In addition, fishermen currently working in the FDZ have reported conflicts with foreign trawlers which disrupted the supplies of fish to the shore-side plants.* If the FDZ is in effect, this part of the supply problem should be solved."⁵⁷

The analysis also determined that closing fishing to foreign trawlers in the FDZ would not significantly curtail foreign fishing efforts. "The evidence available from the foreign fishery does not appear to support the assertion that catch rates have historically been higher in the FDZ than elsewhere, even though some stock surveys have indicated greater relative abundances. (Neither, of course, is the assertion that catch rates are lower supported.) Yet, the area encompassed by the FDZ is the most logical choice for such a zone since it is the part of the historically rich grounds closest to shore-side processing and support services."⁵⁸

"To test whether catch rates in the FDZ differ significantly from those in surrounding waters, catch rates from Smith et al. (1981) for the most productive tows of the foreign fleet in 1979 and 1980 were compared by location and season. Mean catch rates for pollock varied seasonally but were not significantly different by location. Pacific cod catch rates also varied seasonally but were not significantly different inside the FDZ compared to surrounding waters."⁵⁹

The FDZ was adopted by the NPFMC during its September 1982 meeting as Amendment #6 to the Bering

Sea/Aleutian Islands Groundfish Fishery Management Plan. The Council reaffirmed its adoption of the FDZ during its July 1983 meeting. In the letter disapproving the plan, the Assistant Administrator for Fisheries of NMFS expressed support for the concept of the amendment; however, found procedural problems which required its disapproval.⁷ The NPFMC tabled further consideration of the amendment because foreign fishing fleets committed to voluntarily refrain from trawling inside the FDZ.⁷ The FDZ, thereafter, became a de facto domestic fishing area in which foreign factory trawling was precluded.

B. Development of the United States Joint Venture Fleet

* In 1978 the first "joint ventures," whereby U.S. fishermen would deliver their harvests of groundfish to foreign processors, were proposed. In February of 1978, NMFS declared an interim policy that would allow these joint ventures only if domestic processors had neither the "capacity" nor the "intent" to buy fish which were being utilized by the foreign processor. This joint venture policy, however, was overturned in April of 1978 when a National Oceanic and Atmospheric Administration General Counsel's legal opinion ruled that the Secretary of Commerce did not have authority under the Magnuson Act to deny foreign processing vessels permits for buying U.S. harvested fish, regardless of whether U.S. processors also had the capacity and intent to utilize the same resource.⁷

Faced with this unexpected⁷ turn of events whereby the foreign processor could legally take U.S. fish away from domestic processors, Congress enacted the "joint venture amendments" in August of 1978.⁷ The amendments created a preference system for management of fishery resources that gave first preference to fish harvested and processed by the U.S. industry.⁷ Second preference was given to fish harvested by U.S. fishermen and processed by foreign fleets.⁸ Any remaining surplus could be designated as TALFF and allocated for foreign fishermen.⁷

In a joint venture operation, U.S. vessels deliver the entire trawl net to foreign processing vessels and, therefore, are not required to handle the fish. This was a profitable method for U.S. vessels — requiring crews of only four or less. The first joint ventures of 1979 and 1980 demonstrated the U.S. fisherman's ability to supply necessary quantities of fish to foreign processors.

With the collapse of the crab stocks off Alaska forcing many domestic vessels to seek alternative fisheries, and the passage of the fish and chips criteria to the foreign TALFF allocation process, joint venture operations began to expand in the early 1980's. In 1982 the United States went so far as to delay allocations to Japan until its fishing industry expanded its commitment to purchase groundfish from U.S. harvesters.⁸ Beginning in 1983 a group of U.S. harvesters and processors operating in the North Pacific formed the Alaska Pacific Seafood Industry Coalition ("APSIC") for the purpose of negotiating "industry-to-industry" agreements with their Japanese counterparts. In return for Japanese cooperation in buying U.S. harvested (and later processed) fish, the APSIC delegation supported the full and timely release of allocations to Japan.

During the early 1980's there was enormous pressure from the domestic seafood industry, the United States Congress, and the U.S. Departments of Commerce and State, on foreign nations to participate in joint ventures in exchange for allocations of TALFF. Joint ventures also became part of the foreign effort to retain access to the groundfish resources of the United States within the context of the U.S. fish and chips policy. As a result, there was a phenomenal growth in domestic harvesting of resources in the North

Pacific for foreign processing operations. Joint venture harvests expanded from less than 8,000 metric tons in 1979^a to more than 1.3 million metric tons by 1987. (See chart below.)

Joint Ventures Off Alaska 1981—87^a

(Metric Tons)

Species	1981	1982	1983	1984	1985	1986	1987
Pollock	58,940	128,521	283,145	444,112	615,400	897,684	1,057,316
Flounders	22,051	26,649	36,999	53,620	175,193	217,815	224,250
Pacific cod	9,217	13,784	16,788	35,420	43,538	65,299	59,521
Atka Mackerel	1,633	12,475	11,302	36,528	39,705	31,988	30,031
Others	3,660	1,586	4,791	7,486	9,201	8,822	7,646
Totals	95,501	183,015	353,025	577,166	883,037	1,221,618	1,378,764

This increased joint venture harvest created the demand for many domestic trawl vessels. Below is a list of those joint venture vessels permitted to operate in 1988.

Alaska Groundfish Joint Venture Vessels — 1988^a

Name	Length	Tonnage	First Year in JV
Alaska Pride	85	199	1985
Alaskan Star	125	131	1986
Aldebaran	132	135	1983
Aleutian Challenge	86	126	1983
Almighty	87	99	1987
Aloma	76	68	1987
Alea	125	126	1986
Alyeska	125	131	1981
Amalaska I	165	134	1987
Amalaska II	160	334	1987
Amber Dawn	91	116	1983
Ambition	95	136	1980
American Beauty	123	135	1984
Anita J	110	135	1985
Anna Marie	78	120	1985
Arcturus	132	135	1982
Argosy	105	135	1985
Auriga	193	—	1987
Barbara Lee	108	181	1982
Bering I	146	109	1986
Bon-Sur-Mar	90	126	1985
California Horizon	90	181	1981
Cape Kiwanda	76	72	1986
Clear Water Heron	92	198	1987
Coho	66	61	1984
Collier Brothers	80	105	1987

Name	Length	Tonnage	First Year in JV
Columbia	122	198	1984
Commodore	108	140	1986
Dawn	86	115	1982
Distant Water	106	137	1986
Don Genova	123	148	1981
Dona Liliana	165	193	1987
Dona Martita	151	193	1986
Dona Paulita	165	193	1987
Dusk	86	99	1982
Elizabeth F	91	145	1983
Emerald Sea	86	71	1984
Endurance	98	144	1984
Excalibur	60	63	1979
Excalibur II	78	81	1981
Flying Cloud	124	134	1984
Gold Rush	93	91	1987
Golden Dawn	123	135	1984
Golden Fleece	104	128	1980
Golden Pisces	81	154	1982
Golden Venture	85	112	1984
Grand Dutchess	110	143	1986
Great Pacific	135	132	1981
Gunner	135	132	1981
Half Moon Bay	108	133	1980
Hazel Lorraine	75	83	1982
Hazel Lorraine	110	129	1984
Hickory Wind	75	100	1983
Irene's Way	78	108	1987
Lady Louise	110	66	1987
Lady of Good Voyage	86	126	1982
Leslie Lee	119	146	1986
Let's Go	119	146	1986
Little Bear	90	98	1982
Marcy J	97	114	1987
Mar Gun	110	130	1983
Mar Pacifico	96	117	1985
Margaret Lyn	98	128	1980
Mark 1	88	138	1984
Ms Amy	90	73	1987
Miss Leona	77	93	1986
Morning Star	123	128	1980
Muirmalach	84	126	1980
Neahkahnie	98	133	1979
Nordic Fury	110	137	1983
Nordic Star	108	199	1985
Norpac I	166	130	1987
Norpac II	162	130	1987
Ocean Dynasty	125	199	1981
Ocean Harvester	108	199	1981
Ocean Hope 1	92	195	1985
Ocean Hope 2	89	192	1984
Ocean Hunter	88	109	1985

Name	Length	Tonnage	First Year in JV
Ocean Leader	103	131	1983
Ocean Mariner	92	110	1986
Ocean Spray	94	134	1983
Oceanic	122	134	1982
Oceanida One	190	238	1986
Orion	86	149	1984
Pacific Alliance	89	131	1983
Pacific Challenger	86	111	1983
Pacific Fury	110	137	1982
Pacific Viking	108	137	1985
Paragon II	110	133	1979
Pat San Marie	101	77	1983
Pegasus	67	95	1984
Peggy Jo	99	134	1983
Pelagos	131	126	1979
Perseverance	85	124	1986
Progress	100	137	1982
Queen Victoria	90	110	1985
Raven	75	72	1984
Rosella	94	98	1981
Royal American	105	151	1982
Royal Atlantic	108	139	1983
Sea Dawn	—	—	1986
Seeker	90	184	1987
Sharon Lorraine	110	129	1982
Silver Chalice	85	139	1979
Silver Sea	117	197	1983
Sisu	83	70	1986
Sleep Robber	78	111	1979
Sonny Boy	94	120	1986
Star Fish	109	199	1983
Starlite	122	199	1985
Starward	123	199	1981
Sunset Bay	108	147	1981
Topaz	80	98	1982
Tracy Anne	96	189	1987
Tremont	133	311	1986
Uyak I	173	133	1987
U.S. Dominator	124	136	1982
Vaerdal	124	135	1986
Vanguard	86	144	1980
Vega	90	108	1979
Vesteraalen	125	198	1982
Viking	120	138	1982
Viking Explorer	123	131	1983
Voyager	94	121	1983
Walter N	72	83	1987
Western Dawn	97	130	1983
Westward One	135	125	1985

Total Number of Vessels =	127	
Entered Joint Ventures:	1979	7
	1980	7
	1981	11
	1982	17
	1983	19
	1984	14
	1985	13
	1986	19
	1987	20
Length of Vessels:	60 feet <	1
	70—61	2
	80—71	13
	90—81	27
	100—91	20
	110—101	24
	120—111	4
	130—121	17
	140—131	7
	141 feet >	11

C. Shorebased Groundfish Processing in the North Pacific

Shorebased processing of groundfish (mostly sablefish, halibut and Pacific cod) throughout Alaska preceded the Magnuson Act. In some cases, groundfish processing was quite extensive. The processing plant at Sand Point, Alaska had been the world's largest processor of cod during the 1930's. In the early 1970's Icicle Seafoods Corporation developed an experimental pollock processing operation in Petersburg, Alaska. This project, however, was unsuccessful and later abandoned. In 1979, after passage of the Magnuson Act, Icicle Seafoods moored a barge in the Unimak Pass area of the Bering Sea to begin bottomfish processing for the 1980 season. The barge was intended to become a permanently fixed location for the purpose of processing Pacific cod and pollock.

Major shorebased processing of groundfish in the Bering Sea began in 1982 when Trident Seafoods Corporation, Universal Seafoods, Inc., Johansen Sea-Pro and Jangaard Alaskan Fisheries began processing groundfish in the Dutch Harbor area.² Trident processed over 40 million pounds of groundfish until its Akutan plant was destroyed by fire in the spring of 1983. The plant was rebuilt and immediately began to process groundfish again, including pollock fillets, for the United States market.

In 1984 the Alaska Fisheries Development Foundation ("AFDF") began a pilot surimi processing project at the Alaska Pacific Seafoods plant on Kodiak Island. Surimi is a protein paste made from the flesh of pollock. (Surimi can then be re-manufactured into various food products, such as artificial crab legs, shrimp, scallops, etc..) A large percentage of Japanese factory trawler production of U.S. pollock resources had gone into the making of surimi, and the United States was eager to learn the technology. Because fresh fish is essential to making a top quality surimi product, it had been questioned whether surimi could be produced on-shore. The AFDF project, however, definitively established that the highest

quality surimi can be produced by shorebased processors.

1. Investment as Part of the United States "Fish and Chips" Policy

During the mid-1980's there was increasing pressure from the United States for Japan to assist in the development of the United States groundfish processing industry.⁸⁵ The 1984 amendments to the Magnuson Act modified the allocation criteria by emphasizing that the Secretary of State should make allocations of TALFF based on a nation's purchase of fishery products for which that nation has requested an allocation.⁸⁶ To increase the "fish and chips" leverage from allocations of TALFF, the 1984 amendment also clarified that the United States was not required to allocate its surplus fishery resources to foreign nations.⁸⁵

As part of the "industry-to-industry" negotiations between Japanese fishing industry representatives and their American counterparts of APSIC, in December of 1984 the Japanese agreed to purchase 35,000 metric tons (round weight) of processed pollock from U.S. processors during 1985. (The Japanese industry also committed to purchase increased quantities of joint venture harvested fish.)⁸⁶

Because there were no U.S. operators producing surimi, the Japanese industry did not fulfill its obligation under the agreement. As a result of the dissatisfaction expressed by many in the United States (including industry, Administration and Congressional representatives) over the failure of the Japanese to purchase U.S. product per the 1985 agreement, two Japanese companies were pressured to invest in surimi processing plants in Dutch Harbor. UniSea's parent company, Nippon Suisan Kaisha, Ltd., agreed to build a major surimi processing facility, as did Alyeska Seafoods Corporation, which was formed from a joint venture of Wards Cove Packing Company, Taiyo Fisheries and Marubeni. The UniSea plant began producing surimi during 1985 and the Alyeska plant by 1986.⁸⁷ In exchange, as part of the "fish and chips" policy of the Magnuson Act, the Japanese expected support for full and timely releases of Japanese allocations of TALFF.

The two Dutch Harbor plants, along with the pilot AFDF project in Kodiak, were the first U.S. processors of surimi in the North Pacific.

2. 100-Mile Circle Amendment

The development of shorebased processing of groundfish in the Bering Sea was ironically handcuffed by the unavailability of harvesting vessels to deliver product ashore. In 1986 there were approximately 130 U.S. trawlers operating in the Bering Sea. Of these an estimated 120 delivered their catch to foreign processing vessels in joint venture operations.⁸⁸ A substantial proportion of the joint venture fleet did not have the capacity to hold fish on board, but instead were designed only to deliver cod-end trawl nets to foreign factory ships.⁸⁹ Further, those trawl vessels which had the hold capacity and refrigerated sea water for delivery of product to on-shore processors found it far more convenient and profitable⁹⁰ to simply deliver a net to a foreign factory ship instead of running the product to shore.⁹¹ Even though on-shore processors were generally paying more per pound than foreign operations,⁹² the lost fishing time caused by bringing the fish onboard and delivering it to shore led almost all harvesters in the Bering Sea

to deliver to foreign factory ships instead of to domestic on-shore processors.

In an attempt to solve this problem, in December of 1986 the mayors of the cities of Unalaska (Dutch Harbor) and Akutan proposed that a 100-mile circle around Dutch Harbor be created wherein fish could be harvested only if they were processed by the domestic industry." (See chart below.)

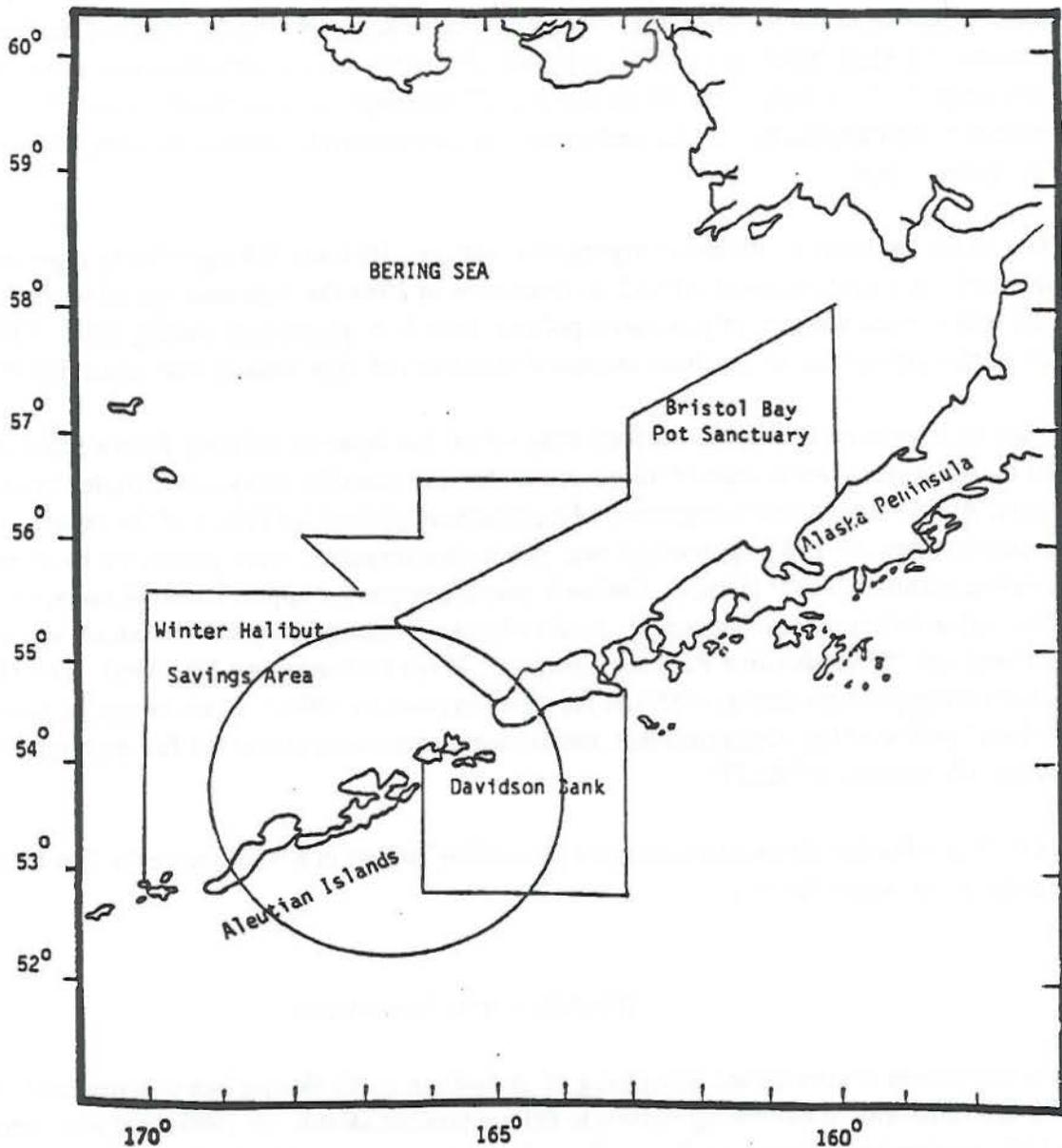
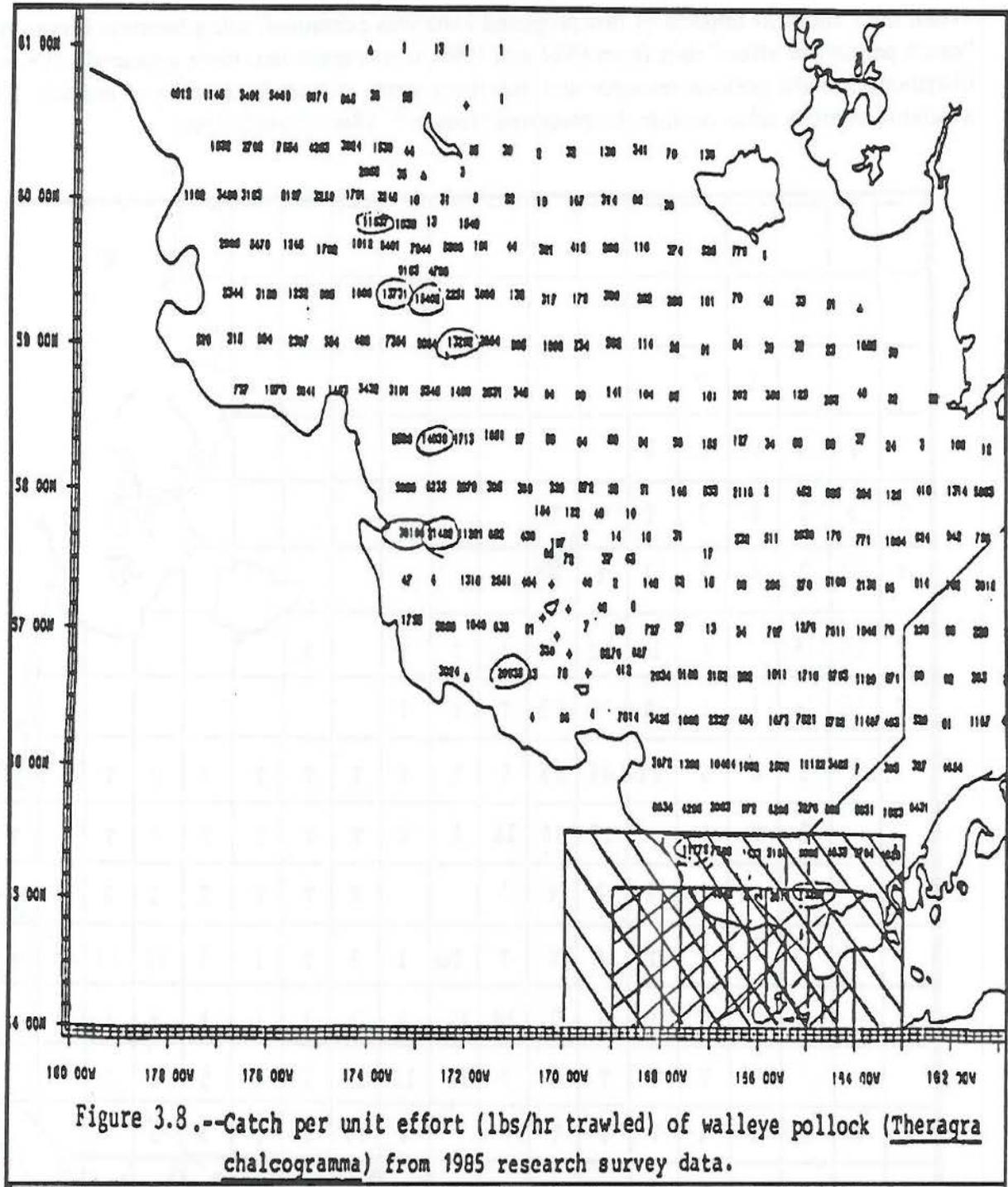


Figure 3.2. Alaska Peninsula/Aleutian Islands: Foreign closures currently in effect (Bristol Bay Pot Sanctuary, Winter Halibut Savings Area, and Davidson Bank) and proposed closed zone.



At the June 1987 Council meeting there was growing concern by shorebased processors, and by many joint venture harvesters, regarding the practice of pollock roe stripping—the removal of roe from female pollock and the discarding of the carcass of the female and the entire harvest of male pollock—by foreign processing vessels. Shorebased processors and a coalition of joint venture harvesters proposed to the Council that instead of the closed circle around Dutch Harbor, a limitation on the amount of pollock harvested by joint venture fishermen during spawning season be imposed. The Council adopted an amendment to the Bering Sea/Aleutian Island groundfish fishery management plan which limited the

amount of pollock taken by joint venture fishermen during the spawning season (January 15 through April 1) to forty percent of the total joint venture quota. This compromise also had the effect of creating a void in the period of time joint venture vessels were fishing for foreign processors, thereby allowing domestic processors to find vessels willing to deliver to shoreplants.

3. Current Status

In the spring of 1987 Trident Seafoods began an expansion of its Akutan plant to process surimi. In the following year UniSea, Alyeska and Westward Seafoods began projects to increase surimi processing in Dutch Harbor. Construction in the remote Aleutian Islands area is generally difficult; however, these projects should be completed during the 1990 fishing season.

These plants are using substantial portions of the former joint venture fleet to make deliveries of groundfish to their plants. Because pollock are highly perishable and must be processed soon after harvest, the range where the in-shore harvesting fleet can operate is extremely limited. Fortunately, the ocean waters around Dutch Harbor contain productive fishing grounds.

In the Gulf of Alaska, shorebased groundfish processing has greatly expanded in the communities of Kodiak, Chignik, Sand Point and King Cove, Alaska. An example of the impact of factory fleets was seen during the 1989 season when the entire Gulf of Alaska pollock quota was taken in a six week period by a number of factory trawler vessels which entered the Gulf of Alaska from the Bering Sea. Shorebased processors on Kodiak Island had anticipated that the pollock quota would be sufficient for the entire year. Many of the factory vessels which operated around Kodiak during 1989 stripped roe from the pollock—removing the roe from the female fish while throwing away the carcass of both the female and male fish. Roe stripping allows for a processor to maximize production of high valued roe without having to “waste time” processing the flesh from the fish. After the Gulf of Alaska pollock quota was gone, the factory vessels returned to the Bering Sea to continue processing from the larger Bering Sea quota. The shorebased plants in Kodiak, however, obviously lack the ability to move their operations to the Bering Sea. These plants that had anticipated a sufficient pollock quota for most of 1989 were instead closed six weeks into the season.

The groundfish processing plants in the Gulf of Alaska and Bering Sea currently supply markets for over one hundred harvesting vessels. Many of these vessels are owned and operated by resident fishermen who have converted their small boats for trawling. Others are former joint venture vessels which now have shorebased markets.

The following are the trawl vessels delivering groundfish to the Alaska shorebased plants which are listed on page 22.

**Trawl Vessels Delivering Groundfish to
Major Shorebased Markets in 1990**

Vessel	Length
Aldebaran	132 ft.
Aleutian Belle	58 ft.
Alaska Lady	58 ft.
Allsea	122 ft.
Alyeska Ocean	120 ft.
American Eagle	120 ft.
Anita J	110 ft.
Annette	70 ft.
Arcturus	132 ft.
Argosy	112 ft.
Aurora	205 ft.
Auriga	205 ft.
Buck N Ann	58 ft.
Cameron	58 ft.
Champion	58 ft.
Collier Bros.	80 ft.
Columbia	108 ft.
Dirty Sally	?
Decision	58 ft.
Defiant	80 ft.
Destination	180 ft.
Dominion	58 ft.
Dona Genovena	123 ft.
Dona Lilliana	167 ft.
Donna Martina	167 ft.
Dona Paulita	167 ft.
Eagle	80 ft.
Elizabeth F	91 ft.
Endurance	98 ft.
Enterprise	80 ft.
Eskimo Princess	58 ft.
Exodus	75 ft.
Exceller	58 ft.
Flying Cloud	124 ft.
Gold Rush	80 ft.
Golden Dawn	147 ft.
Green Hope	80 ft.
Gun Mar	135 ft.
Half Moon Bay	108 ft.
Hazel Lorraine I	110 ft.
Hickory Wind	75 ft.
Karen Evich	58 ft.
Lady Louise	110 ft.
Loanstar	90 ft.
Lucky Lady	58 ft.
Mar Del Norte	80 ft.
Mar Pacifico	96 ft.
Marcy J	97 ft.
Malachi	56 ft.
Micarta K	58 ft.

Vessel	Length
Milky Way	70 ft.
Miss Amy	90 ft.
Miss Berdie	75 ft.
Miss Donna	80 ft.
Morning Star	124 ft.
Ms Ingrid	58 ft.
New Oregon	54 ft.
Nightwatch	70 ft.
Nordic Star	120 ft.
Ocean Harvester	108 ft.
Ocean Hunter	100 ft.
One Ocean	80 ft.
Peggy Jo	99 ft.
Pacific Alliance	115 ft.
Pacific Maid	58 ft.
Pacific Quest	58 ft.
Pacific Viking	108 ft.
Pacific Star	80 ft.
Pamela Kay	58 ft.
Patience	52 ft.
Pelagos	131 ft.
Pisces	85 ft.
Raven	54 ft.
Royal American	105 ft.
Royal Baron	80 ft.
Sea King	58 ft.
Seabarb	58 ft.
Seadawn	—
Sea Wolf	144 ft.
Sheron N	54 ft.
Sharon Lorraine	110 ft.
Silver Sea	117 ft.
Sisu	80 ft.
St. Janet	80 ft.
Starfish	120 ft.
Star Lite	123 ft.
Starward	123 ft.
Storm Petrel	123 ft.
Sunset Bay	108 ft.
Tassinge	80 ft.
Temptation	58 ft.
Terrigail	58 ft.
Tern	58 ft.
Tonquin	58 ft.
Topaz	80 ft.
Traveller	80 ft.
Tradewind	58 ft.
Troika	58 ft.
Vanguard	86 ft.
Viking	144 ft.
Viking Explorer	123 ft.
Walter N.	70 ft.
Windjammer	80 ft.
Western Dawn	97 ft.

Vessel	Length
Western Star	80 ft.
Westward I	135 ft.

TOTAL = 106 Vessels

Note: This list includes only trawl vessels and does not include the large number of longline and pot vessels which also deliver groundfish to shoreplants. In addition, it does not include some trawl vessels which are in the process of finalizing negotiations with shorebased markets.

Each year the NMFS surveys the U.S. seafood industry to determine its groundfish needs for the upcoming year. NMFS received requests from shorebased processors for 625,785 metric tons of pollock during 1990 in the Bering Sea. Shorebased processors in the Gulf of Alaska requested 96,810 metric tons of pollock for the 1990 season.⁸

Below is a list of the current shoreplants processing groundfish in the Kodiak and western Alaskan area.

Major Shorebased Groundfish Processors Operating in 1990

(Note: This list does not include shorebased groundfish processors in Southcentral and Southeast Alaska.)

Company	Location	Products	First Year GF	Est. Capacity
Alaska Fresh Seafoods	Kodiak	Fillets/Blocks/Meal	(?)	5,000 mt
Alaska Pacific Seafoods	Kodiak	Fillets/Blocks/Surimi/Meal	1984	35,000 mt
Alcod Seafoods	Kodiak	Fillets/Blocks/H&G/Meal	(?)	7,500 mt
Aleutian Dragon	Chignik	Fillets/H&G	(?)	15,000 mt
All Alaskan Seafoods	Kodiak	Fillets/Blocks/Meal	1974	30,000 mt
Alyeska Seafoods	Dutch Harbor	Surimi/Blocks/Meal	1986	140,000 mt
Cook Inlet Processors	Kodiak	Fillets/Blocks/Meal	(?)	5,000 mt
East Point Seafoods	Kodiak	Fillets/Blocks/Meal	(?)	5,000 mt
International Seafoods	Kodiak	Fillets/Blocks/H&G/Meal	1983	5,000 mt
King Crab, Inc.	Kodiak	Fillets/Blocks/Meal	1979	15,000 mt
Peter Pan Seafoods	King Cove	Fillets/Blocks/H&G	1986	15,000 mt
Pribilof Island Seafoods	St. Paul	Fillets/H&G	1989	(?)
Trident Seafoods	Akutan	Fillets/Blocks/H&G/Surimi/Meal	1982	150,000 mt
Trident Seafoods	Sand Point	H&G/Fillets/Blocks	1930	15,000 mt
Ursin Seafoods	Kodiak	Fillets/Blocks/Meal	(?)	5,000 mt
UniSea	Dutch Harbor	Surimi/Meal	1985	180,000 mt
Western Alaska Fisheries	Kodiak	H&G/Fillets/Blocks/Surimi/Meal	(?)	35,000 mt
Wards Cove Packing Co.	Port Bailey	Fillets/H&G	1990	5,000 mt
Westward Fisheries Inc.	Dutch Harbor	Surimi/Meal	1990 (?)	180,000 mt

Estimated Bering Sea Processing Capacity: = 650,000 mt

Estimated Gulf of Alaska Processing Capacity: = 202,500 mt

D. Domestic Factory Trawler Fleet in the North Pacific

Initial growth of the U. S. factory trawler fleet was slow. The first United States factory trawler to operate in the Bering Sea was the *Arctic Trawler*, which processed 900 metric tons of cod in 1980. The vessel *Northwest Enterprise* began fishing in the Bering Sea in 1982 and the *American No. 1* started small-scale cod heading and gutting operations in 1983.⁸

A combination of high cod stock levels off Alaska in conjunction with their lower availability in the North Atlantic encouraged development of the factory trawler fleet.⁹⁷ Initially this was for higher valued groundfish species such as sablefish and Pacific cod; however, pollock became increasingly more significant in the fleet's harvest. The U.S. factory fleet still processed less than 45,000 mt of pollock during 1986, a substantial portion from the Gulf of Alaska,⁹⁸ and in 1987 there were only twenty U.S. factory vessels operating in the entire North Pacific.⁹⁹

1. Anti-Reflagging Act

a. *Passage of the Act*

In September of 1986 it was brought to the attention of members of the seafood industry that a loophole in existing law threatened the domestic investment that had been made in the North Pacific seafood industry.¹⁰⁰ In summary, the Magnuson Act gives first priority to the resource to U.S. fishing vessels over foreign vessels; however, the Vessel Documentation Act provided that a foreign-owned company could document (or "reflag") its foreign-built processing vessel as a "vessel of the United States" and thereby receive first priority to U.S. fishery resources under the Magnuson Act.¹⁰¹ (These reflagged vessels, however, would not be permitted to fish, only to process fish delivered by U.S. catcher vessels.)¹⁰² Foreign processing vessels being "phased-out" of the U.S. fishery with the growth of the domestic industry in the North Pacific could, therefore, merely "reflag" their vessels as vessels of the United States and receive first priority to the resource along with bona fide American operators.

A coalition of seafood processing and shipbuilding industry representatives petitioned Congress to amend the existing law to prevent foreign processing ships from being reflagged as vessels of the United States.

American shipyards expressed concern about Norwegian shipyards providing subsidized financing, as well as direct subsidies, for conversion of oil supply vessels into factory trawlers.¹⁰³ During testimony by the Shipbuilders Council of America, it was reported that despite the Reagan Administration's drive to rebuild the U.S. Navy, "since October of 1982, there has been a 33 percent decrease in the number of shipyards and 24 percent reduction in the private shipyard base. Absent a dramatic turnaround the Council fully expects this decline to continue. Moreover, there are at least eight shipyards nationally operating under the protection from creditors afforded by Chapter 11 of the Federal Bankruptcy Code."¹⁰⁴

Under the law as it existed in 1987, it was required that all fishing vessels be built in the United States, including factory trawlers (but processing-only vessels could be foreign-built).¹⁰⁵ *Rebuilding* of a factory trawler vessel, however, was permissible in a foreign shipyard.¹⁰⁶ The distinction between "rebuilt" and "built" therefore became important to determine whether the fishing vessel must be constructed in a U.S. shipyard.

The Coast Guard interprets a vessel to be "rebuilt" unless its hull and superstructures are constructed *entirely* of new materials.¹⁰⁷ As a result of the Coast Guard's interpretation of the distinction between the building and rebuilding of factory vessels, many factory trawlers were converted in foreign shipyards using extremely small portions of the original vessel. These vessels maintained their status as "U.S.-

built" vessels, despite allegations that they were, in fact, new vessels built in foreign shipyards. (See material below, which was circulated during the Congressional debate over the Anti-Reflagging Act.)

SUPPORT LEGISLATION BANNING REFLAGGING & RECONSTRUCTION ABROAD EFFECTIVE JULY 29, 1987 WITHOUT ANY LOOPHOLES

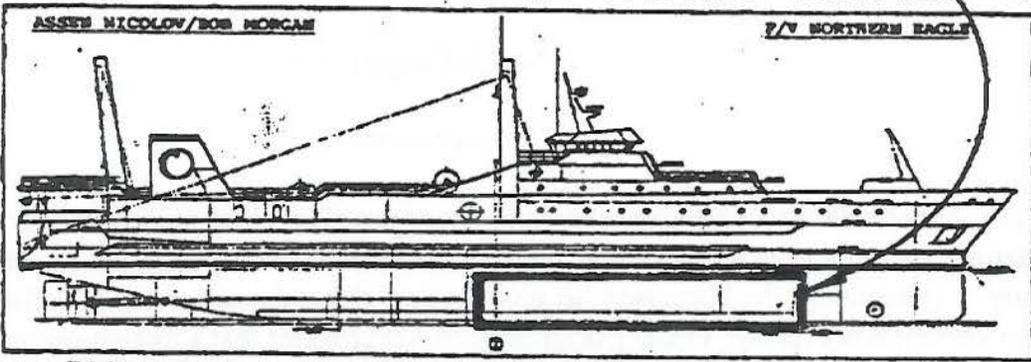
HR2598
Without
Bob Morgan's
Window

STOP THIS SHIP

THIS IS ALL THAT REMAINS OF THE AMERICAN BUILT HULL
.....AND STILL CALLED "BUILT IN THE USA"

Fishing News International — February 1987

HR2598
Without
Bob Morgan's
Window



This is how the American surimi factory trawler will look when she emerges from the Ulstein Harloe yard.

US surimi ship job for Norway

THE Ulstein Harloe shipyard in Norway has won a contract worth about £25 million to convert a 105 metre long American container cargo vessel into a factory trawler to catch and process Alaska pollock into surimi.

Reporting the order, the Norwegian fishing newspaper *Fiskeren* says it was gained in keen competition with several other Norwegian and foreign yards.

"This is the largest contract our yard has ever obtained," said sales manager Erik Haakonsholm. "It is also the first one with an American owner.

This ship's two main engines will develop a total of 8600 hp. She will have a speed of 14 knots and will be able to accommodate a crew of 84.

Under the Jones Act in the United States, fish may not be caught and landed from a foreign hull. But this

will be an American hull even though drastically altered for its new role among the pollock resources in the North Pacific and Bering Sea.

The yard expects the factory trawler to be ready in March 1988.

Ulstein Harloe has been interested for some time in work on factory vessels for surimi and other products. It has plans for further projects in Norway.

At the time the Reflagging Act was first being considered by Congress, most conversions of factory trawlers had occurred in U.S. shipyards. It was noted by the American Waterways Shipyard Conference, however, that:

Within the past few months, several of these conversion jobs have been undertaken by Norwegian shipyards. When we first became aware of this, we were astounded that it could conceivably be cost effective to move these surplus supply vessels from the United States to Norway to do the conversion work. Based on our analysis and information, on an unsubsidized basis, the U.S. shipyards which have traditionally been involved in this work are very competitive with, if not cheaper than, yards who do the same work in Europe, particularly Scandinavia. This is especially true with the devaluation of the U.S. dollar and the strengthening of foreign currencies. In addition, the cost of conversion is increased by the cost of moving the vessels from the United States to shipyards in Europe and back, a cost which on a per vessel basis is estimated to be approximately 150,000 dollars.

When we became aware of the fact that we were losing this conversion work to foreign shipyards in Europe, we investigated to determine how it could possibly be. The

NR-29

information that we have developed indicates to us that the shipyards doing this work in Norway are offering significant subsidies, both direct subsidies for reconstruction work and subsidized financing. In fact, we are aware of one circumstance where a vessel owner interested in doing conversion of a supply boat to a fishing/fish processing vessel was approached by representatives of a Norwegian shipyard and offered a significant subsidy to do the work in their shipyard.¹⁰⁸

After much debate, Congress passed the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 ("Anti-Reflagging Act").¹⁰⁹ The Anti-Reflagging Act mandated that all fish processing vessels be built in the United States,¹¹⁰ thereby preventing foreign-built processing vessels from entering the U.S. fisheries. To promote the domestic shipbuilding industry, the rebuilding of any U.S. fishing vessel in foreign shipyards was also prohibited.¹¹¹ In addition, the Anti-Reflagging Act required that the controlling interest (as measured by a majority of voting shares) in a corporation that owns a fishing vessel be owned by U.S. citizens.¹¹² Finally, to prevent factory vessels from hiring entirely foreign processing crews, the Anti-Reflagging Act mandated that seventy-five percent of the unlicensed seamen on a factory vessel be U.S. citizens.¹¹³

b. Anti-Reflagging Act's Grandfather Provisions

To take into account those who had relied on existing laws when purchasing and rebuilding factory trawlers, the Anti-Reflagging Act contained "grandfather" provisions to its U.S. ownership and rebuilding requirements.

Section 7(b) of the Anti-Reflagging Act provides that a corporation owning U.S. factory trawlers need not follow the foreign ownership restrictions in the act if the vessel was (1) documented and operating as a fishing or fish processing vessel before July 28, 1987, or (2) contracted to be purchased as a fish processing vessel in the United States before July 28, 1987.¹¹⁴

The intent of this grandfather provision was clearly to accommodate those foreign-owned factory vessels which were already in the fisheries¹¹⁵ and instances where foreign-owned entities had already purchased factory vessels for the purpose of operating them in the fisheries.¹¹⁶ The House Committee on Merchant Marine and Fisheries report on the legislation clarified that the grandfather clause was for those who had made investments in reliance upon existing law, and would not apply to entities which purchased vessels after July 28, 1987.

The savings clause in subsection (b) does not apply in the event the ownership or operational control of a vessel protected under the provisions of subsection (b) changes in whole or in part. In such an instance, the controlling interest provisions of subsection (a) [requiring majority ownership by U.S. citizens] would apply.¹¹⁷

Senator Frank Murkowski of Alaska introduced ownership language identical to the previously passed House version when the Anti-Reflagging Act was under consideration on the Senate floor. The purpose of Senator Murkowski introducing the U.S.-ownership requirement was, in large part, to slow down the investment in the factory trawler industry off Alaska. "Most of the rest of the industry is either already

fully capitalized, or is growing at a slower, sensible pace. But the pace in the at-sea industry is frantic, hectic, explosive.”¹¹⁸ Senator Murkowski again emphasized that the grandfather provisions of the U.S. ownership requirements should apply to those who had relied on existing law and not to those who would later purchase existing vessels.

This provision will not remove the privilege of fishing from any person or company that is presently operating or that can demonstrate that it already has undertaken to purchase a vessel for use in the fishery. It simply ensures that *future entrants* are controlled by interests of the United States, rather than those of other nations.¹¹⁹

The U.S.-rebuilding requirements of the Anti-Reflagging Act also contained grandfather provisions that allowed rebuilding of U.S. vessels to occur in foreign shipyards only if the owners of the vessel had relied upon the prior law and made certain identifiable commitments toward rebuilding in a foreign shipyard. Generally, the grandfather provisions allowed foreign rebuilding only if (1) the vessel was purchased before July 28, 1987, with the intent that the vessel be used in the fisheries and, (2) it was rebuilt in a foreign shipyard under a contract entered into before July 12, 1988.¹²⁰

c. Implementation of the Anti-Reflagging Act's Grandfather Provisions

After the Anti-Reflagging Act was passed, the United States Coast Guard adopted rulings on various applications that were made to the agency from foreign-owned companies which sought to rebuild abroad and own U.S. factory vessels. In summary, the Coast Guard consistently ruled that the grandfather provisions to the U.S. ownership requirements “run with the vessel” and not with the entity which owns the vessel. This has provided an enormous loophole through which factory vessels can be operated by foreign-owned companies.

Despite the clear legislative history demonstrating the intent that any corporation which purchased a factory vessel after July 27, 1987, be owned by a majority of U.S. citizens, the Coast Guard has taken the position that all vessels documented and operating in the fisheries before July 27, 1987, are exempt from the U.S. ownership requirements. Since there were approximately 30,000 vessels¹²¹ in the United States licensed in the fisheries as of the grandfather date, the U.S. ownership requirements of the Anti-Reflagging Act have been rendered virtually meaningless. Under the Coast Guard's interpretation, a foreign-owned corporation could, for example, purchase any available ex-joint venture trawler and rebuild that vessel into a factory trawler without concern for the Anti-Reflagging Act's U.S. ownership requirements.

The Southeast Shipyard Association and Arctic Alaska Fisheries Corporation, among others, have filed suit alleging that the Coast Guard has interpreted the grandfather provisions incorrectly.¹²² The complaint specifically mentions two vessels, the *Gulf Fleet No. 10* and the *Gulf Fleet No. 14*. These two vessels were purchased on July 27, 1987, the date of the grandfather cut-off, by a *conditional* sales contract. There was obviously no reliance upon existing law by the buyers as the contract to purchase the vessels was void if the Coast Guard did not rule in their favor. A contract to rebuild the vessels was entered into on July 7, 1988, five days before the Anti-Reflagging Act required a contract to rebuild. The contract provided for the *Gulf Fleet No. 10* to be rebuilt into a 273-foot factory trawler and the *Gulf Fleet No. 14*

into 236-foot factory trawler. Both of the conversions were to take place in Norwegian shipyards.

The vessels were later sold to a foreign-owned company and the rebuilding plans were dramatically altered. The vessels are now being rebuilt in a Japanese, instead of Norwegian, shipyard. Further, specifications of the conversions underwent a metamorphosis from the original contract to rebuild. For example, the final rebuilt size of the *Gulf Fleet 10* was reduced from 272 feet to 223 feet. Despite the transfer to foreign ownership and the change in rebuilding plans (both in terms of specifications of the rebuilt vessel and shipyard which would perform the work), the Coast Guard ruled that the *Gulf Fleet No. 10* and the *Gulf Fleet No. 14* are grandfathered under the Anti-Reflagging Act.¹²³

2. Explosion of Foreign Conversions

During 1987 and 1988 there were increasing reports of foreign banks offering 120 percent loans on the cost of rebuilding factory trawler vessels in subsidized foreign shipyards. On June 8, 1989, the Shipbuilders Council of America, Inc., filed a petition for relief under Section 301 of the Trade Act of 1974 in response to subsidized foreign shipyard activity.¹²⁴ The petition noted that the Norwegian government subsidized shipbuilding activity by price supports directly to shipyards, financing interest subsidies (where interest rates on shipbuilding loans were as low as two percent), direct grants to vessel owners who do work in Norwegian yards, customs refunds, export credit schemes and various other subsidies.¹²⁵ Japan, Korea and West Germany are also referred to in the petition. The U.S. Shipbuilders' petition was supported in letters signed by 50 United States Senators and 180 members of the House of Representatives.¹²⁶ These letters noted that the foreign shipyard subsidies "have allowed such countries to build and repair commercial vessels at prices that are often below the costs of production. As a result, U.S. shipyards have lost several billion dollars of domestic and export business."¹²⁷

In response to this petition by the Shipbuilders Council of America, the United States Trade Representative announced that the United States was seeking multilateral agreements to discipline shipbuilding subsidies through negotiations with U.S. trading partners. As part of this strategy, the Shipbuilders Council of America suspended its petition; however, the Trade Representative stated:

I will review our progress toward a multilateral agreement by March 31, 1990. If I believe, in consultation with the industry, that insufficient progress is being made in our negotiations, I will invite the Shipbuilders to re-submit their petition and I will initiate a section 302 investigation and dispute settlement proceedings under GATT Subsidies Code.¹²⁸

Despite the Anti-Reflagging Act's prohibitions on foreign rebuilding of fishing industry vessels, there are an unfathomed number of vessels entering the fisheries which have been rebuilt in foreign shipyards. The Alaska Factory Trawler Association has estimated that investments in U.S. factory trawler operations are "approaching" one billion dollars.¹²⁹ Just since 1987, however, the work performed rebuilding U.S. fishing vessels in foreign shipyards is estimated to be valued at *over* \$750 million.¹³⁰

Seeking to enforce the grandfather provisions of the Anti-Reflagging Act, the complaint filed by the

Southeast Shipyard Association and Arctic Alaska Fisheries Corporation requests a judgment requiring the Coast Guard to revoke the fishing licenses of all vessels owned by corporations controlled by aliens who did not own the vessels prior to July 28, 1987. In addition, the complaint asks the court to require the Coast Guard to revoke the fishing licenses of all vessels that were rebuilt in a foreign shipyard if it cannot be shown that the shipyard and owner were party to a contract to rebuild the vessel prior to July 12, 1988.

It is difficult to say precisely how a ruling in favor of the plaintiffs would affect each factory vessel now operating in the North Pacific. If, however, the court reads the Anti-Reflagging Act's grandfather provisions as they were interpreted by the House Merchant Marine and Fisheries Committee and rules for the plaintiffs, it can be roughly¹³¹ estimated that approximately twenty-eight factory trawlers representing over 1,100,000 metric tons of annual processing capacity could be in jeopardy of losing their fishing licenses.¹³² Although it is impossible to know whether a vessel falls outside of the Anti-Reflagging Act's grandfather provisions without closely examining the contracts to purchase and rebuild, it is worth noting that if these vessels are removed from the fishery, it would allow for an equal division of the groundfish quotas in the North Pacific to be made between in-shore and off-shore components of the industry whereunder both sectors would be provided with nearly a year-round fishery.

3. Current Status

Past fears over the frantic growth of the factory trawler fleet have now been realized. The new factory vessels that have come on-line during the past two years have greatly overcapitalized the groundfish fisheries of the North Pacific. The NPFMC set the Total Allowable Catch ("TAC") for pollock in the Bering Sea at 1.28 million metric tons for the 1990 season. The factory fleet has requested 2,278,866 metric tons of pollock from the Bering Sea during 1990.¹³³ The factory fleet, in summary, has requested one million metric tons more pollock than is available to be harvested. (This compares with the total shorebased processors request of 635,785 metric tons.) As an example of the runaway expansion of the factory trawler industry, over 800,000 metric tons of the factory fleet's pollock request in the Bering Sea for 1990 is from vessels that were not operational during 1989.¹³⁴ More pollock was requested for 1990 in the Bering Sea by factory trawlers that were not in existence during 1989 (and will be in operation for only a portion of 1990) than was requested by the *entire* shorebased industry.

The overcapitalization in the industry is not only a result of the number of new factory trawlers (from twenty in 1987—to at least¹³⁵ seventy in 1990), but also the enormous increase of both harvesting and processing capacity of the newer vessels. The new factory trawler drags a trawl net with an opening larger than a football field. The immense opening of this giant factory trawler net is over 64,000 square feet, or approximately one and one-half acres.¹³⁶

The factory fleet chose to continue to strip pollock roe during the 1990 fishing season, disregarding overcapitalization in the industry and the fact that the NPFMC voted to make the practice illegal at its December 1989 meeting.¹³⁷ Roe stripping allows factory trawlers to handle larger volumes of pollock roe because they don't have to utilize the time, labor, or the vessel's freezing capacity and storage space to process the flesh from the fish. Roe stripping by the factory fleet will, therefore, shorten the pollock season during 1990 even further. In addition, it has resulted in the discarding of millions of pounds of

highly valuable edible protein. Finally, shorebased trawlers are increasingly concerned about the grounds spoilage caused by the discarding of thousands of metric tons of pollock flesh in areas where shorebased harvesters must operate. Many also question the conservation impacts of concentrated roe stripping by the factory trawler fleet. In summary, the factory fleet again sacrificed the long-term economic health of the groundfish industry for a short-term increase in revenues.

At its December 1989 meeting, the NPFMC recommended to the Secretary of Commerce that the Gulf of Alaska pollock quota be allocated on a quarterly basis with twenty-five percent of the pollock TAC being allocated to each quarter. The fishery would be closed once the quarterly apportionment was reached. The purpose of this proposal was to spread the harvest of the relatively small (70,000 metric tons) Gulf of Alaska pollock TAC throughout the year. This would allow for reduced fishing during the spawning season and provide for better monitoring of the catch to prevent overfishing of the quota. (During 1989 the tremendous influx of the factory fleet pulse fishing in the Gulf of Alaska resulted in an overharvest of the target pollock TAC by approximately ten percent before the season could be closed by NMFS.) In response to this conservation measure, Emerald Seafoods Incorporated, a factory trawler company, has sued the Secretary of Commerce.¹³⁸ In supporting the suit, a representative of the Alaska Factory Trawler Association commented, "[t]he gulf allocation is small to begin with. If you cut it into even smaller portions by using quarterly releases, it's not practically effective for the factory trawler fleet to move in there, catch a very small amount of fish, and then go all the way back to the Bering Sea."¹³⁹

Below is a list of factory vessels which will be in operation during 1990.

Factory Vessels Operating In 1990¹⁴⁰

Vessel	Length	Owner/ Manager	Built/ Converted	Est. Annual Capacity*
Acona	?	Fletcher Fishing	Spain	100,000 mt
Alaska I	220 ft.	Fishing Co. of Alaska	United States	5,385 mt
Alaska Command	184 ft.	Command Processors	United States	10,000 mt
Alaska Hero	218 ft.	AKC Corporation	Japan	6,000 mt
Alaska Ranger	200 ft.	Fishing Co. of Alaska	United States	10,000 mt
Alaska Voyager	220 ft.	Fishing Co. of Alaska	Japan	11,077 mt
Alaskan Trawler	160 ft.	Seaboard Management	Norway	9,100 mt
Alyeska Ocean	380 ft.	Alyeska Ocean, Inc.	Norway	84,000 mt
Aleutian Enterprise	162 ft.	Arctic Alaska Corp.	United States	10,000 mt
Aleutian Speedwell	204 ft.	Morning Star, Inc.	United States	30,500 mt
Alexandra	340 ft.	Emerald Seafoods	Norway	100,000 mt
Amfish	219 ft.	?	United States	5,335 mt
American Dynasty	280 ft.	American Seafoods Co.	Norway	100,000 mt
American Empress	306 ft.	American Seafoods Co.	Norway	52,000 mt
American Enterprise	210 ft.	Arctic Alaska Corp.	United States	35,000 mt
American No. 1	160 ft.	North Pacific Fishing Inc.	United States	5,500 mt
Arctic Enterprise	338 ft.	Arctic Alaska Corp.	United States	34,000 mt
Arctic Storm	343 ft.	Arctic Storm, Inc.	Korea/U.S.	52,000 mt
Arctic Trawler	296 ft.	Arctic King Fisheries	Korea (Modified)	16,000 mt

Vessel	Length	Owner/ Manager	Built/ Converted	Est. Annual Capacity*
Arica	184 ft.	Arica Fishing Co.	United States	10,000 mt
Bering Enterprise	184 ft.	Arctic Alaska Co.	United States	7,700 mt
Bering 1	160 ft.	Bering Fishing Corp.	Korea	10,000 mt
Bering Trader	350 ft.	Kemp Pacific	United States	52,000 mt
Bristol Enterprise	185 ft.	Arctic Alaska Corp.	United States	31,300 mt
Brown's Point	197 ft.	Brown's Point/Golden Age	United States	20,000 mt
Claymore Sea	244 ft.	Emerald Seafoods	Norway	60,000 mt
Continuity	136 ft.	Sea Master, Inc.	United States	5,000 mt
Crystal Clipper	236 ft.	Crystal Star, Inc.	Norway	12,000 mt
Crystal Viking	200 ft.	Crystal Star, Inc.	United States	10,000 mt
Endurance	278 ft.	Alaska Trawl Fisheries, Inc.	Korea	36,500 mt
Golden Alaska	302 ft.	Golden Alaska Seafoods, Inc.	W. Germany	18,000 mt
Gulf Fleet 10	218 ft.	AKC Corporation	Japan	10,000 mt
Gulf Fleet 14	218 ft.	AKC Corporation	Japan	10,000 mt
Harvester Enterprise	188 ft.	Arctic Alaska Corp.	United States	20,000 mt
Heather Sea	292 ft.	Emerald Seafoods	Norway	60,000 mt
Island Enterprise	304 ft.	Arctic Alaska Corp.	United States	52,000 mt
Kodiak Enterprise	275 ft.	Arctic Alaska Corp.	United States	36,000 mt
Michelle Irene	275 ft.	Golden Age Fisheries	Norway	60,000 mt
Northern Eagle	340 ft.	Oceanrawl, Inc.	Norway	52,000 mt
Northern Enterprise	?	Northern Fisheries, Inc.	United States	19,575 mt
Northern Glacier	201 ft.	Glacier Fish Co. Ltd.	United States	20,000 mt
Northern Jaeger	340 ft.	Oceanrawl, Inc.	W. Germany	52,000 mt
Northern Hawk	340 ft.	Oceanrawl, Inc.	Norway	52,000 mt
Northern Aurora	160 ft.	Ocean Resources	United States	6,100 mt
Northwest Enterprise	162 ft.	Arctic Alaska Corp.	United States	20,000 mt
Ocean Enterprise	155 ft.	Arctic Alaska Corp.	United States	9,100 mt
Ocean Phoenix	680 ft.	ProFish	Norway (Modified)	250,000 mt
Ocean Rover	230 ft.	Birting Fisheries	Norway	150,000 mt
Pacific Enterprise	155 ft.	Arctic Alaska Corp.	United States	9,100 mt
Pacific Glacier	275 ft.	Glacier Fish Co.	Norway	60,000 mt
Pacific Trawler	132 ft.	Deep Sea Fisheries	?	4,000 mt
Polar Star	?	Alaska Joint Venture Seafoods	Norway	100,000 mt
Predator	132 ft.	Pac. Bounty Fisheries Ltd.	United States	5,000 mt
Progress	204 ft.	Pac. Bounty Fisheries Ltd.	?	10,000 mt
Rebecca Irene	143 ft.	Golden Age Fisheries	United States	5,385 mt
Resolute	245 ft.	Pacific King Fisheries	United States	32,000 mt
Royal King	217 ft.	Royal King Fisheries, Inc.	Norway	28,636 mt
Royal Princess	217 ft.	Royal King Fisheries, Inc.	Norway	28,000 mt
Royal Prince	217 ft.	Golden Age Fisheries	Norway	28,636 mt
Royal Sea	296 ft.	Royal Sea Trawlers, Inc.	Norway	28,636 mt

Vessel	Length	Owner/ Manager	Built/ Converted	Est. Annual Capacity*
Savage	218 ft.	Keoysui (?)	Japan	10,000 mt
Seattle Enterprise	270 ft.	Arctic Alaska Corp.	United States	36,000 mt
Seawolf	150 ft.	?	United States	5,000 mt
Snow King	221 ft.	Snow King Fisheries, Inc.	Norway	28,636 mt
Star Bound	240 ft.	Aleutian Spray Fisheries	United States	37,800 mt
Tremont	131 ft.	New Wave Fisheries	United States	4,000 mt
Unimak Enterprise	184 ft.	Arctic Alaska Corp.	United States	10,000 mt
U.S. Enterprise	224 ft.	Arctic Alaska Corp.	United States	32,000 mt
Vaerdal	124 ft.	Jubilee Fisheries, Inc.	?	4,000 mt
Wakkanai	217 ft.	Silver Eye Co.	?	10,000 mt

* This assumes that roe stripping becomes illegal and that the prohibition is effectively enforced.

Total Number of Factory Vessels = 70

Total Estimated Groundfish Capacity = 2,336,001 metric tons annually

E. Competitive Comparison of Shorebased and At-Sea Processing

It is difficult to make economic generalizations about on-shore processing and at-sea factory production. Each operation has differing economic circumstances and generic comparisons between the two sectors of the industry are not able to take particular situations into account. Shorebased processors, however, strongly believe and have shown that they can produce a top quality product at costs comparable to, if not lower than, the factory fleet.

1. Production Costs

A definitive costs comparison between each sector of the industry has not been undertaken since Americanization of the groundfish fisheries of the North Pacific. A competitive costs analysis, however, was put forward under a study sponsored by the National Oceanic and Atmospheric Administration's Saltonstall-Kennedy program in 1985.¹⁴¹ In general, the 1985 study demonstrates that the costs of producing groundfish products for each sector of the industry should be similar. The report indicates that shorebased processors generally can produce pollock fillets for less cost than a factory trawler vessel. (See following chart.)

Costs Per Pound of Processing Pollock Fillets

(skinless, boneless, shatterpack fillets)

Cost Element	American Factory Trawler	Shorebased Plant
Fish	—	.27
Labor	.28	.19
Fuel and Lube/Energy	.13	.02
Packaging	.03	.03
Maintenance and Depreciation	.10	.06
Insurance	.05	.01
G&A	.02	.04
Unloading/Unloading Freight to Seattle	.02	.07
<u>Return at 18%</u>	<u>.19</u>	<u>.10</u>
TOTAL PER POUND	.82	.72

For processing of surimi, the report suggested that production costs on shore might be slightly higher than production at sea. (See chart below.)

A Comparison of Shorebased Versus Seabased Surimi Processing Operations*

(cents/lb)

Cost Element	Shorebased Plant	At Sea Mothership*	Factory Trawler
Fish	26-33	18-20	—
Other Materials	4	4	4
Labor (all components)	17	23	27
Fuel/Energy	2	4	5
Packaging	1	1	1
Insurance	.5	1	2
Maintenance	.5	1	2
Depreciation	4	2	6
Freight	7	7	7
Other	2	2	2
<u>Return on Capital</u>	<u>10</u>	<u>5</u>	<u>16</u>
TOTAL	74-79	68-70	72

Assumptions

Annual Production Volume (millions of pounds)	23	63	24
Initial Capital Costs (millions of dollars)	\$13	\$18	\$22

* The low cost of the American mothership is due principally to the low purchase price of an old vessel, leading to low insurance, depreciation and profit expatriations.

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There are legitimate questions with regard to the accuracy of these production cost comparisons. The assumed annual production volume, for example, has proven incorrect. The major surimi-producing shoreplants can produce well above the anticipated volume. The purpose of presenting these charts, however, is to demonstrate the general proposition held by most in the seafood industry that whitefish products can be processed on-shore at costs at least as low as can be achieved at-sea.

2. Product Forms/Full Utilization

A competitive advantage that shorebased operators enjoy over at-sea producers is the ability to process a full range of products from all sizes of groundfish that are delivered to the plant. Shorebased processors have the space necessary for work crews and machinery to process, for example, fillets (individually quick frozen, shatter packs and blocks), surimi, and mince. This allows for the maximum recovery from the flesh of the fish. Moreover, major shoreplants are required by the Environmental Protection Agency to operate fish meal plants to eliminate all discharges of solid fish protein. Virtually every part of the fish is processed into a marketable finished product.

Often factory trawlers do not have the berthing, processing, freezing or storage space to have the same flexibility as shoreplants. Generally, a factory trawler's complement of products is, therefore, more restricted. In addition, because it is not efficient for a factory trawler to utilize unusually small or large fish, and because the factory trawler does not directly pay for its raw material, these odd-sized fish are simply discarded overboard without processing. Finally, only a handful of factory trawlers have meal plants. The vast majority of the fleet does not produce meal.¹⁴² Those factory trawlers which do have meal plants usually undersize the meal plant's capacity so that it cannot process the full waste production of the vessel. Therefore, during times of peak processing, even those vessels with meal plants discharge a significant portion of their waste overboard.

Because it is generally easier to operate and fine-tune highly sophisticated processing machinery on-shore as opposed to on a vessel operating on the Bering Sea, shorebased processors also usually achieve a significantly higher finished product recovery rate on groundfish when compared with at-sea processors. This allows for a greater percentage of the meat of the fish to be made into an edible product for human consumption.

3. Quality

The quality of groundfish products is based on the freshness of the raw material and the care used in processing (filleting, candling and freezing) the fish. Both at-sea and on-shore groundfish operators produce a high quality finished product.

Generally, factory trawlers process an extremely fresh product; however, both factory vessels and shoreplants can have problems with freshness. Some factory trawler vessels overfish their processing capacity, requiring the vessel to store the excess fish on deck or in holding tanks for a lengthy period of time. This results in lower quality finished product. Similarly, for a top quality product, shoreplants rely

on the harvesting fleet delivering pollock within an absolute maximum of forty-eight hours after it is first placed in the refrigerated sea water hold of the vessel. Because it may take over a day for a shorebased vessel to fill its hold, and it must return to port within two days after the first tow is made, the concern for product freshness greatly reduces the operating range of shorebased vessels. Given adequate fishing opportunity in the waters near shoreplants, however, they can produce finished products of the same choice freshness as any at-sea operator.

Shoreplants generally have an advantage processing the raw product into a prime quality finished product once it is delivered to the production facility. Processing machinery is typically easier to operate at capacity on a stable shorebased location. Shoreplants have the bunk space to assure that the necessary crew is available for full production. This allows for more careful candling and handling of the product. Further, if there are mechanical problems they are frequently easier to repair on-shore.

It is clear, however, that both shorebased and at-sea operations can produce an equally high quality product. In general, at-sea processors have an easier time receiving fresh product to their factories and on-shore processors have an easier time processing the product into a top quality finished product. Individual operators emphasize quality to differing degrees and there have been several instances where on-shore processors have replaced at-sea product in the U.S. market because of alleged product quality problems with the at-sea production. In practice, however, both sectors of the industry should be able to produce an extremely high quality product for the world market.

F. Regulatory Advantages of Factory Trawlers

1. Current Management System

Every fishery conservation measure has a corresponding allocative impact. As an example of a management plan that may have an allocative impact, the Gulf of Alaska quarterly allocation policy for pollock lengthens the fishing season, reduces harvests of spawning pollock, reduces the potential for harvesting whole substocks of pollock and allows NMFS to effectively monitor the harvest to prevent overfishing. Emerald Seafoods, a factory trawler company, has sued the Secretary of Commerce over the adoption of this policy. The primary allegation in its complaint is that dividing the total quota into quarterly allocations makes it less economically efficient (but not illegal) for the factory trawler fleet to come into the Gulf, pulse fish the Gulf pollock quota, and return to the Bering Sea.¹⁴³ Emerald Seafoods is claiming it is adversely affected by the allocative impacts of a conservation regime that results in smaller pollock quotas in the Gulf of Alaska.

The current groundfish management regime in the North Pacific gives a dominant preference to the factory trawler fleet in that they can deplete the stocks in one localized area, move elsewhere, and continue to operate. Shorebased fishermen are complaining that fishable stocks are extremely difficult to find after fishing by the factory trawler fleet. When a shorebased trawler does encounter schools of pollock, the factory vessels observe the harvest and then go into the area and clean up any remaining fish. Because of the enormous size of many of the factory trawlers, they also effectively preempt the fishing grounds from the small shorebased boats.

Every nation in the world which has a developed at-sea and in-shore processing sector, except the United States, has undertaken management measures to prevent the destructive nature of large factory ships from eliminating in-shore fisheries. With the explosion of the factory trawler fleet, if the United States does not also modify its current groundfish management practice in the North Pacific, major groundfish processing on-shore will not continue.

2. Taxes and Industry Assessments

a. State and Local Taxes

One of the most significant competitive advantages that the factory trawler has in comparison to on-shore operators is tax avoidance involving local communities and the state of Alaska. In-shore processors must pay a raw fish tax to the state of Alaska. For in-shore operators processing groundfish, the state's raw fish tax varies from one percent of the value of the purchased fish (in the case of developing species) to three percent for developed species.¹⁴⁴ Fifty percent of the raw fish tax collected by the state is returned to the community which generated the tax.¹⁴⁵

In addition to the state, there are various local raw fish taxes. The cities of Sand Point, King Cove and Dutch Harbor have adopted a two percent sales tax on the purchase of all fish products by shorebased processors. Akutan has a one-half percent sales tax on the purchase of fish products. Further, the Aleutians East Borough (covering the peninsula area of Alaska from outside Kodiak to Akutan and back to the edge of Bristol Bay on the Bering Sea side) also imposes a one and one-half percent sales tax on all purchases of raw fish within the Borough's jurisdiction. In addition, there are significant property taxes levied against shorebased seafood processors in the towns of Kodiak and Dutch Harbor.

Approximately seven percent of the costs of the raw groundfish product to in-shore processors is paid in raw fish taxes (depending on the location of the shorebased processor). Considering a general recovery rate of twenty percent on converting raw material to primary finished product (excluding meal), a significant portion of the finished product's costs is paid in taxes by the in-shore—both harvesters and processors—industry. These revenues, however, are usually the primary, and often only, tax base of the local communities where the shoreplant is located. The raw fish taxes provide funds for schools; medical services; police and fire protection; transportation facilities such as docks, airports, and boat harbors; and various other government functions that help make these rural areas of Alaska growing communities.

Shorebased processors reside in these towns and, although no entity enjoys being taxed, the in-shore industry recognizes the obligation to contribute to the community. The factory fleet also uses many of the services provided by the local governments in this area of Alaska. Crews of the factory fleet use the airports, roads, medical and police services which are necessary for the operation of the vessel. Factory trawler vessels, however, process their harvest outside of the state of Alaska's three mile jurisdiction and, therefore, pay *absolutely* no raw fish taxes to the state or local communities.

In addition to raw fish taxes, Alaska requires companies which operate within the state to pay a state corporate income tax.¹⁴⁶ Shorebased processors are clearly subject to this tax as part of the obligation of doing business within Alaska. Again, because the factory fleet is not subject to the state's taxing

jurisdiction, they completely avoid paying a corporate income tax for their groundfish processing operations.

b. Capital Construction Fund

The Capital Construction Fund in Title VI of the Merchant Marine Act of 1936 authorizes fishing vessel owners to establish a fund with the Secretary of Commerce in which can be placed the profits from operation or sale of the owner's fishing vessel.¹⁴⁷ The profits placed in the fund are not subject to federal income tax while in the fund.¹⁴⁸ Further, the earnings from the reinvestment of amounts held in the fund are not taxable.¹⁴⁹ The money in the fund can be later withdrawn for the acquisition, construction or reconstruction of another fishing vessel without being subject to federal income taxes.¹⁵⁰ In this manner U.S. taxpayers have also subsidized the building and conversion of a significant portion of the factory trawler fleet.

c. Alaska Seafood Marketing Institute Assessment

The State of Alaska, in cooperation with industry, has statutorily created the Alaska Seafood Marketing Institute ("ASMI") to promote the sale of seafood harvested and processed within the state. Under ASMI, each processor who purchases at least \$50,000 or more of seafood products in Alaska is required to pay a seafood marketing assessment of one to four tenths of a percent of the value paid for its seafood, depending upon a vote of the affected companies.¹⁵¹ The seafood companies operating in Alaska have voted to assess themselves two tenths of a percent of the value of the seafood they purchase in the state to help the promotion of Alaskan seafood products.¹⁵²

A significant portion of ASMI's budget has gone towards the promotion of groundfish products in the domestic and world market; however, because the factory trawler fleet operates outside of the state's jurisdiction, they are not subject to the industry assessment and they do not contribute to the ASMI program.¹⁵³ The ASMI program has proven to be extremely successful. Factory trawlers reap the benefits because they sell seafood in the same markets which have been developed by ASMI. Still, it is another expense borne by the on-shore industry which is not shared by at-sea operators.

3. Occupational Safety and Health Act

Congress enacted the Occupational Safety and Health Act of 1970 ("OSH Act")¹⁵⁴ to "assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."¹⁵⁵ Under regulations promulgated by the Department of Labor under the OSH Act, various detailed health and safety requirements are placed on U.S. employers to protect their workers. These regulations, of course, apply to shorebased processors operating in Alaska.¹⁵⁶

Jurisdiction of the Department of Labor under the OSH Act, however, is confined only to workplaces in the state and extends at-sea no more than three miles seaward from the coast.¹⁵⁷ Work activities occurring beyond the three-mile territorial sea are outside of the coverage of the OSH Act. When engaged in the catching and processing of fish, factory trawlers are located more than three miles from shore,

outside of the jurisdiction of the OSH Act. A factory trawler will typically make a port call only once every six weeks, and when it does the vessel is not involved in processing and the processing lines are not in operation.¹⁵⁸ In essence, therefore, processing crews aboard factory trawlers are not protected by OSH Act's regulations covering hazards to which they are exposed when the vessel is processing at-sea.¹⁵⁹

4. Wage and Hour Act

The Fair Labor Standards Act ("FLSA") sets minimum pay and overtime requirements.¹⁶⁰ Thus, shorebased processors must pay an hourly minimum wage and overtime for all hours worked over eight hours per day or forty hours per week.¹⁶¹ The FLSA, however, has an exemption to its minimum wage and overtime requirements for employees who process fish "at sea as an incident to... fishing operations."¹⁶² Factory trawlers are therefore exempt from paying their processing workers the FLSA federal minimum wages or overtime, no matter how many hours are worked or how little amount of money they are paid.

The factory trawler fleet typically pays its processing workers a "crew share" based on the net revenues of the product the vessel produces *after* deductions are taken for fuel, groceries, packaging and other production costs. The crew share equates to a reasonable hourly wage at peak production; however, during times of slightly sluggish fishing—or falling market prices for the finished product—the crews are paid amounts that fall below federal minimums. Further, there are no overtime wages paid to the processing workers. The risk of a vessel's fishing operation being unprofitable, therefore, is borne to a significant degree by the workers who process below deck. If the market price for surimi falls, for example, the processing workers on a surimi processing factory trawler suffer a corresponding reduction in pay.

5. Seafood Inspection

The state of Alaska maintains one of the most progressive seafood inspection programs in the country. Under the state's Food Drug and Cosmetic Act, the Alaska Department of Environmental Conservation strictly regulates the processing of seafood to help ensure product wholesomeness.¹⁶³ Included within this program is the regulation of items such as processing personnel (including clothing and protective equipment),¹⁶⁴ sanitary facilities,¹⁶⁵ waste disposal,¹⁶⁶ water supply,¹⁶⁷ raw material,¹⁶⁸ processing procedures,¹⁶⁹ and processing equipment.¹⁷⁰ The program also includes mandatory state inspections of in-shore processing facilities.¹⁷¹

Alaska's seafood inspection program has been effective in maintaining the sterling reputation of the state's seafood products. It does, of course, place a cost on the industry to comply with the myriad of regulations that are imposed. Because the factory trawler fleet operates outside of the state's jurisdiction, however, they are not subject to the Alaska seafood inspection program and do not have to follow its regulations. As there is currently no mandatory federal seafood inspection program, the factory trawler fleet operates to a significant degree without government inspection for product wholesomeness, resulting in another cost savings for the at-sea processor.

6. Environmental Discharge Requirements

Under regulations promulgated under the National Environmental Policy Act,¹⁷² large shorebased processing plants are required to operate fish meal plants as well as comply with state of Alaska water quality standards.¹⁷³ Factory trawlers are required only to grind their seafood waste before discharging it into the sea.¹⁷⁴

Fish meal plants are only marginally economical to operate. The requirement that shorebased processors discharge no solid groundfish wastes into the in-shore receiving waters greatly increases the shoreplants capital and operational costs. In addition, the meal plant often becomes the limiting factor of the plant's production. Factory trawlers, even those few with meal plants, can simply discharge their waste overboard if the vessel's primary production is greater than the meal plant's capacity.

G. Investment in North Pacific Groundfish Industry

1. Ownership

Foreign investment in the development of the U.S. seafood industry, especially development of shorebased surimi processing capacity, has been strongly encouraged by the U.S. Government.¹⁷⁵ Foreign investment in U.S. factory trawlers has not been as actively promoted by our Government, and the Anti-Reflagging Act was intended to limit the amount of foreign ownership in the at-sea industry.¹⁷⁶ One of the issues raised by factory trawler representatives during debates on the in-shore/off-shore dispute, however, is the extent of foreign investment in the in-shore industry.¹⁷⁷

There is obviously significant foreign ownership in both the in-shore and off-shore sectors of the North Pacific seafood industry. It appears likely, however, that the foreign investment is as large, if not greater (both in terms of absolute dollars and percentage of processing capacity), in the off-shore component of the industry as in the in-shore industry.

The full extent of foreign ownership in the industry is candidly difficult to calculate. Beyond the question of ownership, there remains the issue of who controls the corporations which operate in the North Pacific (many of the factory vessels have mortgages which provide foreign investors with ultimate control over the vessel). Senator Robert Packwood of Oregon has requested that the General Accounting Office ("GAO") examine foreign ownership of the factory trawler fleet in light of the restrictions imposed by the Anti-Reflagging Act. Further, Senator Murkowski has asked the GAO to undertake a similar investigation of foreign ownership in the entire industry. This section of the paper is intended to give a brief overview of foreign ownership in the industry and is not meant to be a detailed analysis of ownership in each company.

Trident Seafoods, one of the largest shorebased groundfish processors, with plants in Akutan and Sand Point, Alaska and secondary processing plants at Anacortes and Bellingham, Washington, is one-hundred percent U.S.-owned. Icicle Seafoods, a large shorebased processor operating in southcentral and southeast Alaska and with secondary surimi processing operations in Washington state, is similarly

one-hundred percent U.S.-owned. The King Crab Inc. plant in Kodiak processes pollock and is a wholly-owned subsidiary of an Alaska native corporation. Wards Cove Packing Company is a family-owned processing company with groundfish plants in both southeast Alaska and on Kodiak Island. All Alaskan Seafoods, with a large groundfish processing plant in Kodiak, has Alaskan residents holding a large majority of its shares, with a Canadian company having a minority interest.

There is, in addition, well known foreign investment in shorebased processing companies. The parent companies of UniSea, Westward, Alaska Pacific Seafoods, Western Alaska and Peter Pan Seafoods are Japanese. In addition, Alyeska Seafoods is a joint venture between two Japanese companies and Wards Cove.

Most factory trawler companies also have substantial foreign investment and ownership. In addition to being the parent to UniSea, Nippon Suisan Kaisha, Ltd., has invested heavily in Arctic Alaska Corporation, the largest factory trawler company. Japanese companies control or have significantly invested in Command Processors, AKC Corporation, Alyeska Ocean, Inc., Crystal Star, Inc., Golden Alaska Fisheries, Pacific King Fisheries, Arctic King Fisheries, Arica Fishing Company, Sea Master, Inc., Pacific Bounty Fisheries, Ltd., New Wave Fisheries, and the *MV Savage*, in likely addition to others. Moreover, there is substantial Norwegian ownership or control of a large number of factory trawler companies including those operated by Emerald Seafoods, Seaboard Management, Oceantrawl, Inc., Birting Fisheries, and Royal King Fisheries, Inc.; again, in addition to others. Korean companies also own or control factory trawler operations, most notably Alaska Trawl Fisheries, Inc., and Arctic Storm Inc.. It is even rumored that Fletcher Fishing Company of New Zealand has purchased a U.S. flag factory trawler to be used in the Bering Sea while the quota is available and then for operations within the New Zealand EEZ.

2. Impacts on Foreign Markets

It is alleged that foreign ownership is an issue in the in-shore/off-shore debate because the shorebased surimi producers which are Japanese-owned will "control the Japanese surimi market" if the pollock is allocated equally between the in-shore and off-shore components of the industry.¹⁷⁸ This argument ignores the fact that the Japanese also control large amounts of at-sea surimi production. Moreover, Japanese companies cannot control the surimi market in their country as a result of U.S. shorebased surimi production.

In 1989 the Japanese demand for surimi was 407,972 metric tons of finished product.¹⁷⁹ Maximum production of surimi by U.S. shoreplants with Japanese ownership is about 64,600 metric tons¹⁸⁰ or approximately fifteen percent of the overall Japanese market. Allowing shorebased processing of groundfish to survive in Alaska will not provide Japanese companies with sufficient surimi to allow them to control the market. Moreover, a significant portion of the in-shore surimi production goes to the U.S. market. UniSea's primary surimi production, for example, helps supply its large secondary surimi processing facility in Redmond, Washington.

3. Construction Activities

Foreign investment has assisted in the development of U.S. groundfish processing and the corresponding

industries which rely on the seafood industry. Because such a large number of factory trawlers were converted overseas, it is likely that the amount of money spent *in the United States* developing the in-shore industry is also larger than that which has been spent on the factory fleet. This is especially true if the harvesting vessels which deliver to in-shore processors are included in the calculations.¹⁰¹

Nearly half of the current factory trawler fleet (and a substantial majority of the latest factory trawlers to enter the fisheries) have had significant rebuilding work performed overseas at subsidized shipyards. Every shoreplant in Alaska, however, is built using U.S. steel, concrete, welders, pipefitters, construction contractors, and so forth. Because much of this construction and expansion activity takes place in rural areas of Alaska, its economic contribution to these areas is of even greater significance to the region's overall economy.

It is worth noting that despite the fact the factory fleet can use more than three times the groundfish resources used by shorebased processors, total expenditures in the United States for development of the in-shore component may be greater. (See photograph below of construction of the UniSea plant in Dutch Harbor, Alaska, August 1989.)



V. CONSERVATION CONCERNS WITH UNREGULATED FACTORY FLEET

Despite the exemplary efforts by the Alaska Factory Trawler Association to document illegal foreign fishing in U.S. waters,¹⁰² there is general skepticism with respect to the fishery conservation impacts of the large U.S. factory trawler fleet. This apprehension is based on a number of suspicions which give cause for concern over the general conservation effects of the factory fleet.¹⁰³

For example, at recent hearings conducted by the National Ocean Policy Study of the Senate Committee on Commerce, Science and Transportation, film was shown of an unnamed factory trawler harvesting and routinely storing (presumably for later processing) halibut—a high-valued species which is prohibited by law for trawlers to retain.¹⁸⁴ Clearly this type of illegal activity cannot be attributed to every factory trawler; however, because fisheries enforcement is tremendously difficult on the high seas (and much of the factory trawlers' product is shipped via tramper, so that it is never landed in the U.S.), the opportunity for illegal harvesting of prohibited species by some factory trawlers remains troubling. The recently approved industry-funded domestic observer program should, however, control much illegal fishing if it is properly implemented and is continued on the factory fleet beyond the 1990 season.

The Alaska Factory Trawler Association has publicly taken a position in opposition to roe stripping;¹⁸⁵ however, the factory fleet continued to strip large amounts of roe during 1990¹⁸⁶ even though the NPFMC voted to request the Secretary of Commerce to prohibit such activity on an emergency basis. Figures are not available for 1990, and data for prior years are only estimates, but in 1989 the factory fleet may have discarded overboard more than 55 million pounds of edible pollock from roe stripping operations.¹⁸⁷ Many factory trawler vessels have mechanical roe extractors on board which, when used, make it extremely difficult to utilize the carcass of the fish for an edible product.¹⁸⁸ Numerous vessels have their processing factories set up purposely for roe stripping.¹⁸⁹

Harvesting of groundfish resources in the Bering Sea is limited to two million metric tons by the current fishery management plan, regardless of the total acceptable biological catch ("ABC") of each individual species within the groundfish complex.¹⁹⁰ The purpose of this two-million metric ton cap is to prevent overfishing of the groundfish complex, recognizing that the sum of the overall groundfish harvest should not be as large as the sum of each individual groundfish species' ABC. The two-million metric ton cap has been extremely effective in preventing overfishing of the groundfish stocks in the Bering Sea management area. The Alaska Factory Trawler Association, recognizing that overcapitalization has occurred in its sector of the industry, is the only processing group to support raising the two-million metric ton cap.¹⁹¹ They have proposed that the cap be increased by ten percent annually, up to a total amount of twenty-five percent (discounting the pollock resource until the "doughnut hole" issue is resolved). Shorebased processors, however, have consistently maintained that the two-million metric ton cap should be kept.¹⁹²

Further, there are suspicions of large bycatches of non-target and prohibited species in the huge trawl nets used by the factory trawlers.¹⁹³ There have also been rumors of the factory fleet dumping fish carcasses without grinding and throwing overboard the vessel's garbage (including fifty-five gallon drums and conveyor belts¹⁹⁴). Because most of the new factory trawler operators do not have a long tenure in the fisheries off Alaska, and because of the fierce competition in the existing groundfish industry, there is general discomfort that some factory vessels might not have full appreciation for conservation of fishery resources in the North Pacific.

A major conservation concern with the factory trawler fleet is that after they deplete the resource in one area, they move elsewhere. Much of the factory trawler fleet that operates in the Bering Sea fishes near the Dutch Harbor area, even though foreign fishing fleets were precluded from fishing in that same location under the Winter Halibut Savings Area and Fishery Development Zone closures. In-shore

harvesting vessels have no choice but to fish in this area. Factory trawling vessels can go elsewhere and, in fact, foreign fishing fleets found highly productive pollock fishing grounds well outside the Dutch Harbor region of the Bering Sea.

The concentrated factory trawler effort around the area where in-shore vessels must operate is causing the stocks that shoreplants rely on to become depleted. As noted by one in-shore fishermen, "[t]he factory fleet moves into an area with 20-30, 5,000-10,000 horse power units and takes everything alive, leaving only gurry and skins. Before the 200-mile limit, foreign fleets fished Alaskan waters, but unlike the new-breed of 'American' ships, these were real fishermen and they spread out and fished in their own areas, leaving areas where small fish and high bycatch were present."¹⁹⁵

Former joint venture fishermen who now have shorebased markets further report that "[w]hen I first came to the Aleutians in 1979, Pollock were so plentiful, it was hard to stay away from them. [Now] we, (the Shore Based Fleet) are having a real hard time getting enough fish. The bottom is sour and trash and plastic is unbelievable and what few Pollock are there, are so scattered that our small nets find only 1-2 mt per hour. Factory Fleets have wiped out stocks in europe and small Boat Fleets are becoming a thing of the past. Something must be done if the Shore Based Plants are to survive."¹⁹⁶

In addition to localized depletion of pollock stocks near shoreplants, grounds preemption is a serious problem with the expanding factory trawler fleet. The large factory trawler vessels can merely push aside the relatively small shorebased harvesters, effectively keeping them from fishing. There are even reports of factory trawler vessels monitoring the fishing of the shorebased fleet. When the in-shore fisherman locates productive fishing grounds, the factory fleet moves into the area and takes the resource. Again, one in-shore fishermen has complained that "Factory Trawlers; with their sophisticated electronics, can sit in their wheel house and look at their Radar Plotters and tell our speed, direction, depth, plot our wake, only to move in on us, because we (the Shore Boats) are the most experienced and they know that when we are going at a certain speed we are dragging our net and since we only have 36 to 48 hours fishing time before we deliver, we must be on fish and here they come."¹⁹⁷

VI. SOCIAL AND ECONOMIC CONCERNS WITH THE UNREGULATED FACTORY FLEET

A. Importance of In-Shore Fishing Industry to Coastal Communities in Alaska

1. Employment

The seafood industry is Alaska's largest private employer. Nearly one-sixth of all Alaska basic industry employment and payroll is in the seafood industry.¹⁹⁸ The companies which process groundfish on-shore in Alaska hire approximately 8,900 full and part time personnel to work in their plants.¹⁹⁹ These companies also paid over four and one half million dollars in unemployment taxes for their operations in Alaska.²⁰⁰

Thousands of jobs are also created in Alaska's service and supply sector in support of seafood industry activities. For example, the seafood industry indirectly generates jobs in Alaska's transportation industry, which handles nearly two billion dollars in seafood products annually. In coastal communities, employment benefits are created by marine hardware stores, shipyards, fuel supplies, construction, equipment repair and service business, and in many other sectors of the economy.

The industry is especially important in the Kodiak and Aleutian regions where there is no other basic employment. Because crab stocks in the Gulf of Alaska have all but vanished and crab stocks in the Bering Sea are being harvested ever farther west, the communities now depend on groundfish processing for their survival.

2. Tax Base

The seafood industry is also the second largest revenue generator in the state of Alaska. The industry paid over twenty-seven million dollars in state raw fish taxes during 1987.²⁰¹ The state of Alaska's raw fish tax statutes also provide that fifty percent of the amount of tax that is collected by the state is returned back to the communities from where it was generated.²⁰² So, for example, for 1988, the city of Unalaska had \$802,995.29 remitted to it from the state of Alaska for collection of state raw fish taxes from the area. Akutan's share was \$509,088.92; King Cove's, \$667,935.49; Kodiak's, \$906,924.38; Sand Point's, \$239,288.70; and Chignik's \$387,148.14. The Kodiak Island Borough received a \$1,704,394.77 return from the state and the newly formed Aleutians East Borough received \$1,080,521.85²⁰³

This local tax base does not include the raw fish taxes collected by the individual cities and Aleutians East Borough. In 1990, shorebased groundfish processors paid over three million dollars in Borough taxes.²⁰⁴ In addition, groundfish are going to be an increasingly important tax base for the communities in this area of Alaska. If, for example, the pollock and Pacific cod resources off Alaska were processed in-shore, the tax benefits to the state and local communities would be approximately \$18 million annually.²⁰⁵

B. Importance of In-Shore Fishing Industry to the Puget Sound Region

The in-shore industry is also extremely important to the economy of the Pacific Northwest. Of the former joint venture fleet, an estimated 72 were based in Washington state,²⁰⁶ and of course, many of the crews are from the states of Washington and Oregon. These vessels are finding markets with shorebased processing plants, adding millions of dollars to the area's economy.

Moreover, the companies which process groundfish in-shore are based in the Puget Sound region. A significant number of the employees for the in-shore processors are residents of the Pacific Northwest. Further, many of the shorebased seafood processors have secondary processing facilities in the Pacific Northwest which are supplied, and rely upon, the primary on-shore production in Alaska. For example, Trident Seafoods operates large secondary processing facilities in both Bellingham and Anacortes, Washington, which collectively employ over 700 Washington residents. These plants would not

continue without the primary product from Trident's shorebased operations in Sand Point and Akutan, Alaska. UniSea has built a surimi analog processing plant in Redmond, Washington, which is dependant upon surimi produced at its plant in Dutch Harbor. Peter Pan has a secondary processing plant at Auburn, Washington, and Icicle Seafoods operates a secondary processing plant in Bellingham, Washington. These plants in total employ thousands of personnel in Washington state.

Finally, in-shore processors utilize millions of dollars of support services from companies located in the Pacific Northwest. In 1989 alone, in-shore processors used over \$100 million of construction industry services from companies based in the northwest, and paid over \$75 million in freight and shipping services. For miscellaneous supplies such as office eqyument, professional fees and banking services, the in-shore industry spent more that \$50 million in the Puget Sound during 1989.

VII. SUGGESTED PROPOSALS

A. Bering Sea

1. Delayed Pollock Season Starting Date

Shorebased processors in the Bering Sea have proposed starting the pollock harvesting season on a date no earlier than April 1 and no later than on June 1. This delayed pollock season starting date will eliminate the concentrated harvest of roe pollock during the spawning season (approximately January 15 through March 15.)

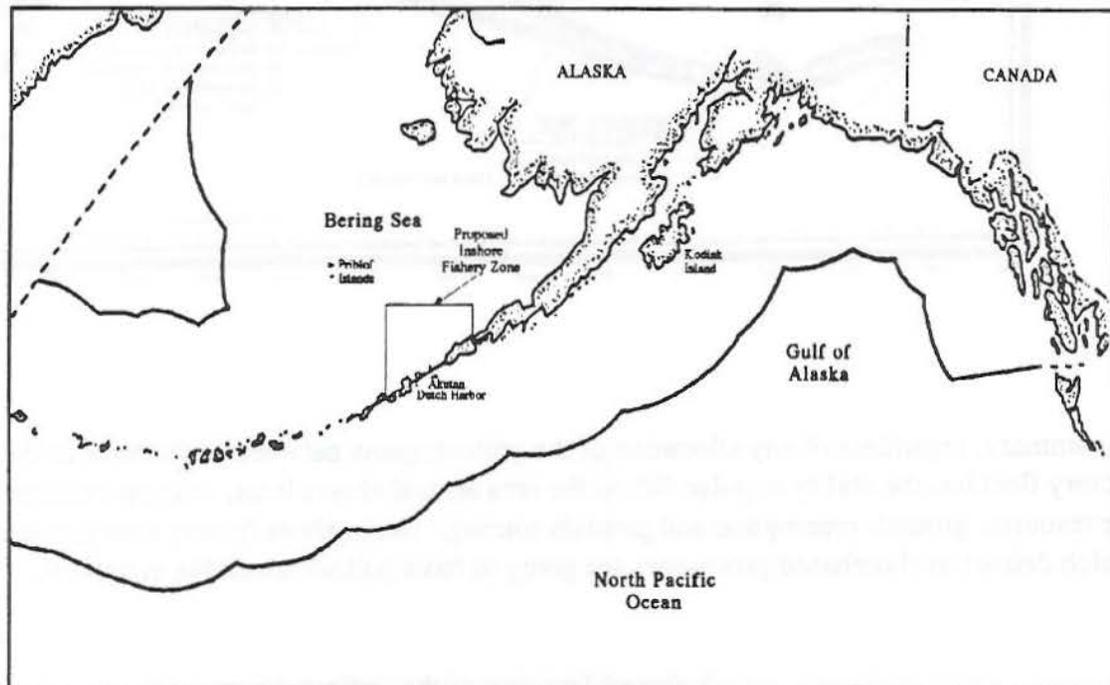
Roe has been an extremely valuable product for both in-shore processors and the factory fleet. (Shorebased processors in the Bering Sea process pollock roe only as a byproduct of the primary finished product while factory trawlers have continued the practice of roe stripping.) Shorebased processors have asked that the season starting date be delayed because of concern for the biological impacts of concentrated harvesting of spawning schools of pollock.

Although the Scientific and Statistical Committee of the NPFMC has found no evidence of adverse biological impact from harvesting of spawning pollock, shorebased processors have three major conservation concerns with the practice. First, when factory trawlers pulse fish on spawning concentrations of pollock they discharge enormous amounts of processing waste overboard (even if they do not engage in roe stripping). The fishing grounds become soured with rotting fish. Oxygen, necessary for survival of pollock, is removed from the water. Secondly, the dragging of trawl nets through spawning schools of pollock may have adverse impacts on the spawning behavior of the pollock. Fishing on spawning concentrations may, for example, break up the schools and significantly reduce the number of juvenile pollock that result from the spawn. Finally, there is considerable information we still do not know about the pollock resource in the North Pacific ocean. Concentrated fishing on spawning pollock is a relatively new phenomenon. In the Gulf of Alaska the reduction of the pollock quota from 500,000 metric tons a year to less than 70,000 metric tons corresponded with concentrated fishing during the spawning season. The pollock resource in the Bering Sea is too valuable to gamble with by encouraging heavy fishing during spawning.

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2. In-shore Fishing Zone

The proposal would create an in-shore fishery area around Dutch Harbor in which only vessels that deliver to in-shore processors, if they deliver anywhere in the United States, can operate. The proposed in-shore fishery zone is the area inside of 168° through 163° West longitude, and 56° North latitude south to the Aleutian Islands chain. (See chart below.)

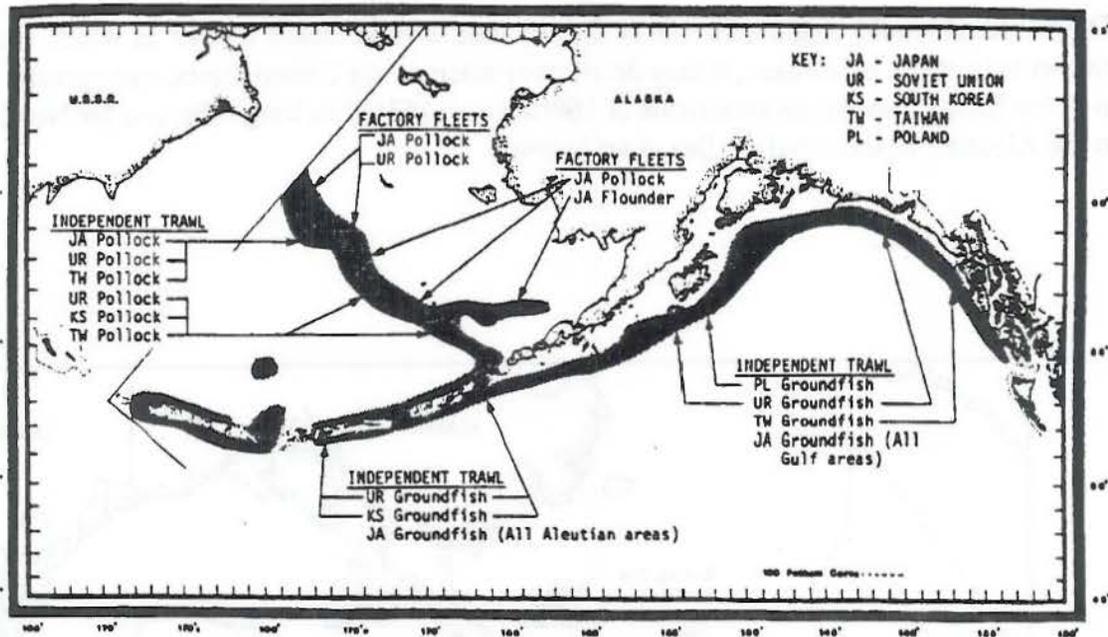


Scale of Proposed Inshore Fishery Zone in Comparison to U.S. EEZ

This will prevent the factory trawler fleet from removing all the pollock from the in-shore industrie's backyard. In addition, it would help prevent conflicts between factory trawlers and in-shore fishing vessels and prevent grounds souring of fishing areas necessary for in-shore operators.

Although the in-shore area may be convenient for the factory fleet because it is close to Dutch Harbor where occasional crew changes are made, a typical factory vessel makes a call to Dutch Harbor only once every six weeks for the purpose of rotating crews.²⁰⁷ Moreover, data from the proposed 100-mile circle amendment and the Fishery Development Zone indicate there are ample pollock supplies outside of the in-shore area. Foreign fleets fished productively outside of the in-shore area without difficulty. (See the following chart for examples of areas where foreign fleets harvested pollock during 1977.²⁰⁸)

Figure 1
 Alaska Fishing Areas for All Nations Landing Groundfish - 1977



In summary, regardless of any allocation of the pollock quota between each sector of the industry, the factory fleet has the ability to pulse fish in the area around shoreplants, causing localized depletion of the resource, grounds preemption and grounds souring. The in-shore fishery zone is essential if vessels which deliver to shorebased processors are going to have pollock available to harvest.

3. Equal Division of the Pollock Quota

The proposal would also divide the total Bering Sea/Aleutian Islands pollock TAC equally between factory trawlers and *harvesting only vessels* which, if they deliver their catch in the United States, would deliver to in-shore processors. This would allow for each sector of the industry to survive and takes into account the historical participation in the pollock fishery.

Three sectors of the industry are impacted by the groundfish fishery: in-shore processors, harvesting only vessels (former joint venture vessels) and factory vessels. The frantic expansion of the factory trawler fleet, to a large degree, has displaced the harvesting only trawl fleet because the factory trawler fleet has the ability to catch and process its own harvest. Shorebased processors, on the other hand, utilize harvesting only vessels exclusively for deliveries of fish.

Below is a chart of the evolution of the industry in the North Pacific during the past four years.

**Pollock Harvesting and Processing
in the North Pacific 1986-1989²⁰**

Year	Shorebased Processors	Joint Venture Harvesters	Factory Vessels
1986	23,133 mt	897,684 mt	31,080 mt
1987	111,625 mt	1,057,316 mt	146,900 mt
1988	203,609 mt	826,564 mt	385,867 mt
1989	242,278 mt	277,186 mt	846,278 mt
TOTAL	580,645 mt	2,058,750 mt	1,410,125 mt
% OF CATCH	14%	51%	35%

Some former joint venture harvesting vessels deliver to factory vessels.²⁰ A far greater number of former joint venture harvesters, however, have found markets with shorebased processors. The 1990 shorebased processing capacity throughout Alaska is approximately 750,000 metric tons of groundfish, one-third of the factory trawler's capacity. The shorebased processing industry, however, uses over 100 trawl vessels to deliver this catch—almost as many vessels that were used during the height of the joint venture deliveries.

An allocation made in the in-shore/off-shore dispute based on each sector of the industry's historical participation would provide in-shore harvesting vessels with an allocation of sixty-five percent of the pollock TAC and factory trawlers with an allocation of thirty-five percent. The division of fifty percent to each sector, however, allows both factory trawlers and the in-shore industry (both harvesting vessels and processing facilities) the opportunity to reasonably participate in the pollock fishery. Just as important, the coastal communities that have grown to rely upon the in-shore industry will survive the rapid influx of foreign-subsidized factory trawlers and the resulting overcapitalization of the fleet.

B. Gulf of Alaska

The Gulf of Alaska groundfish quota is much smaller than that available in the Bering Sea. For 1990, the NPFMC recommended that the TAC for pollock be only 73,400 metric tons and the Pacific cod quota was set at 90,000 metric tons.²¹ Processors in the Gulf can easily utilize the entire pollock and Pacific cod quotas currently available. Further, excluding 1989 when portions of the factory trawler fleet move into the Gulf of Alaska to strip roe from pollock, the shorebased processing sector on Kodiak has processed the large majority of the pollock and Pacific cod resource. In 1987, shorebased processors utilized over eighty percent of the pollock resource and over seventy-five percent of the Pacific cod taken

in the Gulf of Alaska. In 1988 the in-shore industry utilized almost eighty-five percent of the pollock and over eighty-five percent of the Pacific cod taken by the U.S. seafood industry.

The proposal calls for all of the relatively small Gulf of Alaska pollock quota to be allocated to in-shore harvesting vessels and eighty percent of the Pacific cod resource in the Gulf of Alaska to be allocated to in-shore vessels.

VIII. LOBBYING EFFORT BY FACTORY TRAWLERS

Representatives of the factory trawler fleet have, of course, recognized the significance of the in-shore/off-shore dispute to their industry. Although there are other areas in the world where many of these vessels can operate (some factory trawlers are intending to process elsewhere for portions of the year regardless of the outcome of this issue)²¹² they want to have the entire groundfish resource off Alaska available to them. Every other country in the world with a developed in-shore industry and factory trawler fleet has managed its factory fleet to prevent dislocation of in-shore operators. Factory trawler representatives have, therefore, spent a great deal of time and money on the in-shore/off-shore dispute trying to prevent similar regulations in the U.S. North Pacific.²¹³

It is highly appropriate for all interests to have their side of the story heard. Some of the allegations presented by representatives of the factory trawlers, however, have been inaccurate. Because they have been often repeated, some of these claims need to be briefly refuted in this paper.

A. Employment of Aliens

A factory trawler representative contended on a recent television broadcast in Seattle, Washington, that "[m]ost of the employees at those shoreplants are not Americans. They come from the Philippines, Japan, Korea. They are visaed employees. Less than five percent are Americans."²¹⁴ This statement is completely false. It wouldn't warrant a response except that it has apparently been believed by people who are not knowledgeable about the industry.

In Kodiak, for example, most of the entire crews that work at the plants are long-time residents of the city. They include many individuals of Philippine ancestry who are also respected United States citizens. Because they were without significant work for most of the winter of 1989, these people and their families were especially hurt by the factory trawlers coming into the Gulf of Alaska, pulse fishing the pollock quota and moving back to the Bering Sea.

Both factory trawlers and shoreplants use foreign technicians to help operate surimi and meal processing equipment. Shoreplants use relatively few foreign technicians. One recently opened shorebased surimi plant with a total of 350 employees, for example, will have only *eighteen* Japanese surimi technicians at the plant for twenty-four hour-a-day processing operations. As U.S. employees are trained to run the sophisticated surimi processing equipment, this plant intends to phase out the Japanese technicians from their operations.

Factory trawlers and shoreplants also employ resident aliens—individuals who are residents of the United States and will become U.S. citizens after the statutory residency requirement. Our forefathers were all similarly classified at one time and these individuals have as much right to work in the United States as any other resident. For the record, however, a quick survey found that shorebased processors employ *ten percent or less* resident alien workers.²⁵

The assertion that shorebased processors employ “less than five percent Americans” or even that factory trawlers employ a greater percentage of Americans is, at best, grossly inaccurate. Anecdotally, although U.S. law requires U.S. flag vessels to be skippered by Americans, at least one U.S. fisherman of Norwegian descent has publicly complained that his traditional fishing grounds are crisscrossed by factory trawlers full of crews speaking to each other over the radio in Norwegian. This fisherman asked, “[h]ow can they call this Americanization of the industry?”²⁶

B. Building of a New Harvesting Fleet/Monopolizing Fish Prices

Representatives of factory trawlers have claimed that shoreplants are intending to build an entirely new harvesting fleet to replace the former joint venture trawl fleet or, as an alternative, if groundfish allocations are divided equally between factory trawlers and harvesting vessels which deliver to in-shore processors, the in-shore processors will “fix” prices to the fishermen. These charges, however, misrepresent the truth.

One shorebased pollock processor has acquired two vessels and may convert them into harvesting vessels. These are two former oil supply vessels, one of which was previously owned by Kemp Pacific Fisheries; however, when Kemp suffered financial trouble, its creditors recommended that the company sell its vessels. If the shorebased company converts these two vessels into harvesting boats, they will be only two of eleven trawl vessels to deliver to its shoreplant. In addition, they will employ former joint venture crews and skippers. The company involved has no plans to construct further trawl vessels. It is worth noting that two of Kemp’s other oil supply vessels, the *FV Savage* and the *FV Resolute*, were purchased by foreign-owned corporations and have recently been rebuilt into factory trawlers.

More importantly, it takes highly qualified individuals to harvest groundfish, bring a fresh product back to the shoreplant, keep a safe working environment and care and maintain the vessel. It is worth noting that the average skipper of a Bering Sea shorebased pollock harvesting vessel earns more than the average skipper for a factory trawler. Even with an equal allocation in the Bering Sea between factory trawlers and harvesting only vessels which deliver to in-shore operators, there will remain fierce competition within the in-shore sector of the industry. Further, the quota available for the in-shore harvesting fleet will remain too **small** for a casual year-round fishery and demand will always remain for safe, productive, and professional fishermen.

C. School Lunch Program

It has been seriously alleged by a representative of the factory trawler fleet that if there is an equal division of the pollock quota between in-shore and off-shore components of the industry it will somehow threaten pollock that is currently being supplied to the nation's school lunch program.²⁷

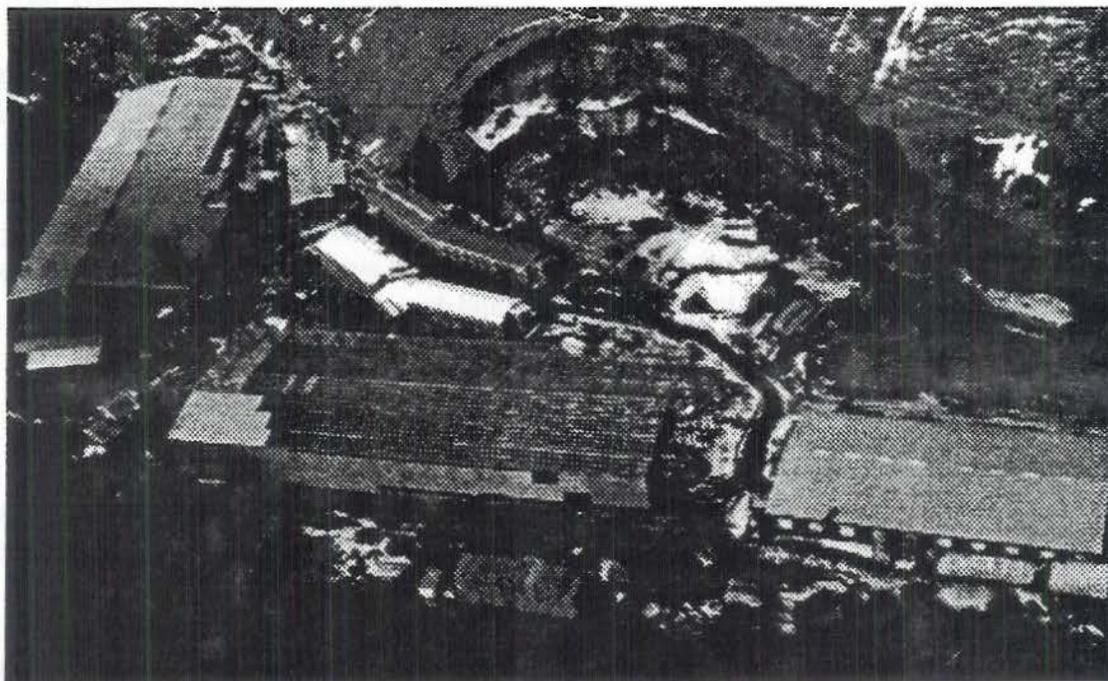
The formula and label for product provided to the school lunch program must be United States

Department of Agriculture ("USDA") approved. There are at least three fish breeders in the United States that have USDA approval to supply pollock nuggets to the school lunch program. (Trident Seafoods' secondary processing plant in Anacortes is also seeking USDA approval to supply the school lunch program with pollock nuggets.) These breeders purchase pollock block that meet the required specifications from various producers, *including shorebased processors*. In fact, shorebased processors are one of the largest suppliers of pollock for the school lunch program. An equal allocation of pollock between the in-shore sector and the factory trawler fleet will have no impact on the nation's supply of pollock for its school lunch program.

D. Shoreplants Process Traditional Species and Don't Need Groundfish

Factory trawler representatives assert that shorebased processors utilize higher valued traditional species, such as crab and salmon, and are processing groundfish only to supplement their current operations.²¹⁸ This suggestion is wrong and misrepresents how the fisheries of the North Pacific have evolved. First, there are factory trawler companies which also process large volumes of traditional species, especially crab. Secondly, shoreplants in Kodiak, Dutch Harbor, Akutan, King Cove, Sand Point and Chignik area have no choice but to survive on groundfish.

In the Dutch Harbor area, the major investments in the shorebased facilities have been made to process pollock and the equipment cannot be used for processing other species of fish. Further, the crab resource is diminishing and the remaining crab biomass is moving farther west—out past the Pribilof Islands. There is also very little salmon, halibut, sablefish or herring processing in Dutch Harbor and Akutan; not sufficient amounts to justify even a moderately sized processing facility. Salmon must be tendered from Bristol Bay to Dutch Harbor, which is both inefficient and uneconomical. Sablefish is now a bycatch only species for trawlers the Bering Sea. The bait herring fishery has been extremely small and is being reduced further during 1990 to approximately 1,000 tons. In summary, if shorebased processing is to survive in this region, it will depend upon the processing of pollock. (Below is a photograph of Trident's Akutan plant showing the capital investment in pollock processing.)



In-shore processors in the Gulf of Alaska have the same concerns. Crab stocks have been depleted since the early 1980's and the crab resource has been replaced by groundfish as the staple of in-shore processing plants. The salmon season lasts only a matter of weeks and these facilities have invested in equipment which is designed to process only groundfish. To claim that shoreplants process groundfish only incidentally to traditional species is inaccurate and ignores the growing dependence of shoreplants on groundfish processing. If these shoreplants are going to survive into the 1990's, regulations will need to be established that eliminate the ability of the factory fleet to pulse fish around in-shore processing facilities and an equitable division of the groundfish quotas will be required.

E. In-Shore Processors Operate Floating Processing Vessels for Traditional Species

The factory trawlers have commented that some of those companies which support efforts to regulate the factory trawler fleet also operate "floating, mobile processors for higher valued species" and that these processors support regulations that "would allow floating processors to continue working crab, salmon and herring, but would curtail mobile operations dedicated to groundfish."²⁹ This commentary does not consider the tremendous differences in these traditional fisheries from the groundfish fishery.

Floating processors which operate in the salmon fishery take deliveries only from a highly regulated, small boat fleet limited in number by the state of Alaska. There is no problem with floating processors causing localized depletion of the salmon resource. Salmon return to a river system to spawn and then are gone for the year. The fishery will last in any one area for a matter of only a few weeks each year. Herring is an even more intensive fishery, lasting a matter of hours in any one area. In some instances, floating processors is the only way to effectively have processing capacity in the area where the fish are located. Further, floating processors operate within the state's jurisdiction and are subject to the OSH Act, minimum wage and overtime requirements, EPA and the Alaska Department of Environmental Conservation discharge regulations, state and local taxes, ASMI assessments, and state seafood inspection programs.

The crab resources are found throughout the waters of the Bering Sea and Gulf of Alaska. Crab, however, are delivered alive to the processing facility—whether that plant is at-sea or on-shore. A crab catcher processor is unable to pulse fish crab so as to preclude a shorebased processor from receiving the resource. Further, crab are harvested by pot gear, so the ability to vacuum a particular area of the ocean is further diminished. Crab can be harvested, kept alive in circulated sea water, and delivered live to any shoreplant in Alaska.

E. Investments Made in Reliance on the Status Quo

The factory trawlers have also lamented that they had made investments based on the *status quo*, and that any change would somehow be a "breach of contract entered into by the federal government and the industry in 1976."³⁰ This is an ironic comment given the level of capital investment made in the factory trawler industry by those intending to fall under potential grandfather provisions of the Anti-Reflagging Act. If these vessels were to be converted in foreign shipyards today, they would not be allowed to operate under the existing restrictions of the Anti-Reflagging Act.

More importantly, every fishery conservation plan has an allocative impact. The existing management system has the previously unintended effect of allocating most of the pollock and Pacific cod resource to factory trawlers and eliminating in-shore fishermen and processors. As the U.S. industry in the North Pacific becomes fully Americanized, it is appropriate for fishery policy makers to closely examine the allocative impacts of the current groundfish conservation regime.

The in-shore industry is not attempting to put factory trawlers out of business. The factory fleet, however, has the ability to preempt in-shore harvesters from the groundfish fishery and put shoreplants and harvesting vessels out of business. Not because the in-shore industry is less economically efficient, but because the factory fleets is able to pulse fish the resources in the area around where in-shore harvesting vessels need to operate.

Any change in the current fishery conservation regime, such as prohibiting roe stripping, a vessel moratorium, observers, limited entry, a reduction in fishing quotas, a quarterly allocation of the quotas, and so on, will have a corresponding effect on who is allocated the resource. To say that an allocation between industry sectors violates a contract made with the industry in 1976 does not accurately represent the allocative impact of fishery conservation and management decisions.

Allocations among industry sectors have been made in fishery management throughout history. Salmon trollers, gillnetters and seiners have allocations so that one gear group does not eliminate the other. Crab were once harvested by trawlers until the management regulations were changed, permitting only pot fishermen to retain crab. Halibut and sablefish are taken by trawl vessels, yet our fishery management plans allocates this resource primarily to longline fishermen. The current proposal, likewise, more equitably allocates the pollock resource between in-shore fishermen and the factory fleet.

IX. CONCLUSION

The factory trawler fleet processed 31,000 metric tons of pollock in the North Pacific in 1986. Four years later it has requested over 2,200,000 metric tons of pollock. This newly created fleet is causing the same conservation, social, and economic impacts as the foreign factory fleet did before passage of the Magnuson Act. Factory trawlers will completely preempt the in-shore industry unless management measures are taken to regulate the fleet.

In response to the concerns over the factory trawler fleets' impact on the in-shore seafood industry, Senators Stevens and Murkowski have introduced legislation that would close the Gulf of Alaska to factory trawlers and divide the allocations of groundfish between shorebased processors and factory vessels in the Bering Sea as well as provide instructions for the Secretary of Commerce to amend the Bering Sea groundfish management plan to ensure that in-shore vessels do not suffer localized depletion and grounds preemption from fishing by the factory trawler fleet. When introducing this legislation Senator Stevens noted that

In 1976 Congress passed the Magnuson Act in order to manage and conserve our fisheries, and in part, to halt overfishing by foreign factory trawlers. I feel today that we must once again take action to ensure proper management and conservation of the fisheries off our shores. It is time to bring these factory trawlers in control once and forever.²¹

The NPFMC is also examining potential amendments to the groundfish management plans in the North Pacific.

Both sides of the in-shore/off-shore dispute will make numerous arguments. The factory trawlers urge that the status quo be maintained so that they can continue to harvest groundfish from all areas of the Bering Sea and Gulf of Alaska. If the resources in one area becomes depleted, they want the ability to move their operations to any other location. The in-shore industry does not have the ability to move to different areas. This sector of the industry is encouraging a limitation on the factory trawlers ability pulse fish in areas where in-shore vessels must operate.

If in-shore harvesting and significant shorebased processing of groundfish are to continue, however, a change in the current management plan will be required. There are seemingly compelling reasons to equally divide the resource between the two sectors of the industry. Many in-shore harvesters help pioneer the U.S. groundfish industry and have a long track record of historical participation in the fishery. These vessels are being preempted by the new factory trawler fleet. Shorebased processors are as economically efficient as factory trawlers in producing a high quality groundfish product and in-shore processors utilize one hundred percent of the edible fish protein that is delivered to their plants. This avoids the wasting of the resource and the grounds souring that occurs with the factory fleet. Coastal communities in Alaska rely upon the in-shore industry and the Puget Sound region receives much of the economic contribution from these operations, including the large secondary processing facilities which are dependant upon the supply of product from Alaska.

Those who support an equitable allocation of the groundfish resources in the North Pacific between the in-shore and off-shore sectors are looking toward the policy makers in Washington, D.C., and the NPFMC to closely examine the allocative impacts of the current management regime. This paper is presented to give a background of the issue to these decision makers. A thoughtful determination should be made as to whether it is appropriate for the groundfish of the North Pacific to be allocated to factory trawlers or whether an equal division of the resource be made between the traditional in-shore industry and the factory fleet, allowing both sectors of the industry the opportunity to survive.

¹ Magnuson, *The Fishery Conservation and Management Act of 1976: First Step Toward Improved Management of Marine Fisheries*, 52 WASH. L. REV. 428, 431-432 (July 1977) [hereafter, Magnuson].

² Pub. L. No. 94-265, 90 Stat. 331 (1976), codified at 16 USC §§1801-1882. The official title of the Act was changed from the "Fishery Conservation and Management Act of 1976" to the "Magnuson Fishery Conservation and Management Act" in 1980. Pub. L. 96-561, §238, 94 Stat. 3275 (1980).

³ The expansion of new effort in the North Pacific region has led the North Pacific Fishery Management Council to twice call for consideration of a moratorium on new harvesting effort for groundfish in the waters under its jurisdiction; the first time during its January 1989 meeting and again during the January 1990 NPFMC meeting.

⁴ See, WILLIAM W. WARNER, *DISTANT WATER*, (1978) for an excellent description of the growth of the world's factory trawler fleet. [hereafter, *DISTANT WATER*.]

⁵ *DISTANT WATER*, 33.

⁶ *DISTANT WATER*, 37.

⁷ The Soviet government received copies of the plans for the *Fairtry* by entering into negotiations to construct twenty-four factory trawlers of the same design with the shipyard which was building the vessel. The Soviets insisted that the plans for the *Fairtry* be sent in advance so that negotiations could be finalized. Once the plans were sent to the Soviet Union, however, negotiations between the shipyard and the Soviet government stopped. *DISTANT WATER*, 50-51.

⁸ *DISTANT WATER*, 50.

⁹ Swygard, *Politics of the North Pacific Fisheries—With Special Reference to the Twelve-Mile Bill*, 43 Wash. L. Rev. 269, 272 (Oct. 1967).

¹⁰ SENATE COMM. ON COMMERCE, SCIENCE AND TRANSPORTATION, *SOVIET OCEANS DEVELOPMENT*, 94th Cong. 2d Sess., 420 (Oct. 1976). Note, however, that many, if not most, of the Soviet fleet's factory ships did not process fish, but instead froze fish in the round for later processing ashore or for delivery to the consumer in the round. Hjul, *STERN-DECK TRAWLERS BUILT SINCE 1963*, Hjul, *THE STERN TRAWLER*, 206 (1972). [Hereafter, *TRAWLERS BUILT SINCE 1963*.]

¹¹ See, *TRAWLERS BUILT SINCE 1963*.

¹² *TRAWLERS BUILT SINCE 1963*, 160.

¹³ *TRAWLERS BUILT SINCE 1963*, 160.

¹⁴ *TRAWLERS BUILT SINCE 1963*, 161.

¹⁵ Note: The month of April includes the period of time when pollock are spawning. Reprinted from Report on the Marine Fisheries Conservation Act of 1975, August 20, 1975, Report 94-445, (reprinted in *A LEGISLATIVE HISTORY OF THE FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976*, 94th Cong. 2d Sess., 1092 (Oct. 1976) [hereafter, *LEGISLATIVE HISTORY*].

¹⁶ Act of May 20, 1964, Pub. L. No. 88-308, 78 Stat. 194, as amended by Act of Oct. 27, 1970, Pub. L. No. 91-514, 84 Stat. 1296 (codified at 16 U.S.C. §§ 1081-1086 (1970) (repealed 1976).

80 Stat. 908 (1966). The Bartlett Act read, in part:

Sec. 1. There is established a fishery zone contiguous to the territorial sea of the United States. The United States will exercise the same exclusive rights in respect to fisheries in the zone as it has in its territorial sea, subject to the continuation of traditional fishing by foreign states within the zone as may be recognized by

the United States.

Sec 2. The fisheries zone has as its inner boundary the outer limits of the territorial sea and as its seaward boundary a line drawn so that each point on the line is nine nautical miles from the nearest point in the inner boundary.

¹⁷ June 25, 1956, [1957] 10 U.S.T. 59, T.I.A.S. No. 4170.

¹⁸ May 9, 1952, [1953] 4 U.S.T. 380, T.I.A.S. No. 2786.

¹⁹ Magnuson, 443.

²⁰ S. 46, 92nd Cong. 1st Sess. 117 CONG. REC. 351-352 (Jan. 25, 1971). Note: Senator Stevens proposed the contiguous fishery jurisdiction of the United States be a distance of 200 nautical miles from U.S. shores or any area less than 550 meters in depth, whichever was further from shore. In addition, in the North Pacific ocean off of Alaska, the outward boundary of the contiguous fishery zone would have extended to the international date line.

²¹ See, *Interim Fisheries Zone Extension and Management Act of 1973, Before the Subcommittee on Oceans and Atmosphere of the Committee on Commerce*, 93th Cong., 1st and 2d Sess. (1973 and 1974) and *Fishery Jurisdiction Hearings before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries*, 93th Cong., 2d Sess. (1974).

²² *Interim Fisheries Zone Extension and Management Act of 1973, Before the Subcommittee on Oceans and Atmosphere of the Committee on Commerce*, 93th Cong., 2d Sess., 886 (May 14, 1974) (statement of Gerry E. Studds, Representative from Massachusetts).

²³ Note, the Senate did pass S. 1988, creating a 200-miles fisheries zone.

²⁴ *Fisheries Jurisdiction, Hearings before the subcommittee on Fisheries and Wildlife Conservation and the Environment, Committee on Merchant Marine and Fisheries*, 94th Cong., 1st Sess., 54-55 (Mar. 1975) (statement of the Honorable William S. Cohen, Representative in Congress from the State of Maine).

²⁵ See, President Ford's statement to Congress upon signing H.R. 200 into law, LEGISLATIVE HISTORY, 34-35.

²⁶ Despite being an original cosponsor of the legislation, Senator Mike Gravel of Alaska became one of the bill's primary opponents because he believed that unilaterally extending fishery jurisdiction out to 200-miles violated principals of international law. "[I]f the Senate acts again, transforming the House bill into law, we will have charted our course toward unilateralism, undermining the [Law of the Sea] Conference, undermining a real solution to our fisheries problem and undermining any real hope of world sovereignty." *Special Oversight Hearing on the Potential Impact of the Proposed 200-mile Fishing Zone on U.S. Foreign Relations Before the Committee on International Relations of the House of Representatives*, 94th Cong., 1st Sess., 8 (Sept. 24, 1975) (statement of Senator Mike Gravel of Alaska).

²⁷ LEGISLATIVE HISTORY, 1011-1012.

²⁸ LEGISLATIVE HISTORY, 270. During the debate on the Senate floor, one of the bill's opponents, Senator Alan Cranston of California, withdrew an amendment which would gut the jurisdictional aspects of the Act, stating "having recognized defeat when it has been sustained; having learned anew of the great strength of the Senator from Washington, the Senator from Maine, and their allies; and having suffered through my worst vote count in my time in the Senate; and in the interest of saving fifteen minutes for the Senate at a very busy moment, I ask unanimous consent that I may withdraw my amendment so we do not have to vote on it." LEGISLATIVE HISTORY, 253.

²⁹ LEGISLATIVE HISTORY, 37.

³⁰ See, Two Hundred-Mile Coastal Limit Is In Sight, The Eugene Register Guard, Jan. 12, 13, and 14, 1976. reprinted in LEGISLATIVE HISTORY, 223-228.

³¹ 16 U.S.C. § 1812.

³² 16 U.S.C. § 1813.

³³ 16 U.S.C. § 1852.

³⁴ 16 U.S.C. § 1854.

³⁵ 16 U.S.C. § 1802(18).

³⁶ 16 U.S.C. § 1821(d).

³⁷ 16 U.S.C. § 1821(c).

³⁸ 16 U.S.C. § 1821 (e)(1)(A) (amending 16 U.S.C. § 1821(e)).

³⁹ 16 U.S.C. § 1821(e)(1)(E)(vi) (amending 16 U.S.C. § 1821(e)(1)).

⁴⁰ 16 U.S.C. § 1821(e)(1)(E)(vii) (amending 16 U.S.C. § 1821(e)(2)).

⁴¹ 16 U.S.C. § 1821(e)(1)(E)(iii) (amending 16 U.S.C. § 1821(e)(3)).

⁴² 16 U.S.C. § 1821(e)(1)(E)(viii) (amending 16 U.S.C. § 1821(e)(4)).

⁴³ H.R. REP. No. 1138, Part 1, 96th Cong., 2nd Sess. (1980), at 17.

⁴⁴ Natural Resources Consultants, *Americanization of the U.S. Fishery Conservation Zone: A Discussion Paper*, (1985), note 8, p. 4.

⁴⁵ See, *American Fisheries Promotion: Hearings on H.R. 7039 before the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the Committee on Merchant Marine and Fisheries*, 96th Cong. 2d Sess. (1980) 43 (statement of James Weaver, Representative from Oregon).

⁴⁶ H.R. REP. No.1138, note 32, at 28.

⁴⁷ Pub. L. No. 96-561, 94 Stat. 3275 (1980).

⁴⁸ 16 U.S.C. § 1821 (e)(1)(E)(i).

⁴⁹ 16 U.S.C. § 1821 (e)(1)(E)(ii).

⁵⁰ 16 U.S.C. § 1821 (e)(1)(E)(iv).

⁵¹ 16 U.S.C. § 1821 (e)(1)(E)(v).

⁵² 16 U.S.C. § 1821 (d)(1).

⁵³ 50 C.F.R. § 611.93(c)(2)(ii)(A).

⁵⁴ 50 C.F.R. § 611.93(c)(2)(ii)(C).

⁵⁵ Draft Fishery Management Plan and Draft Environmental Impact Statement for the Groundfish Fishery in the Bering Sea/ Aleutian Islands Area, July 27, 1978, Vol. 1, NPFMC, 88.

⁵⁶ 50 C.F.R. § 611.93(c)(2)(ii)(B).

⁵⁷ 50 C.F.R. § 611.93(c)(2)(ii)(D).

⁵⁸ 50 C.F.R. § 611.92(e)(1)(i).

⁵⁹ 50 C.F.R. § 611.92(e)(1)(ii).

⁶⁰ 50 C.F.R. § 611.92(e)(2)(ii).

⁶¹ The Alaska Department of Fish and Game reported that as of December 31, 1982, thirty-seven U.S. harvesting vessels made over 347 landings of groundfish to shorebased processing plants on Akutan and at Dutch Harbor, with the greatest share being landed at the Trident Seafoods Corporation plant on Akutan. Groundfish were also being processed on shore by Universal Seafoods, Johansen Sea-Pro and Jangaard Alaskan Fisheries. Regulatory Impact Review/Final Regulatory Flexibility Analysis, Bering Sea/Aleutian Islands Groundfish Fishery Management Plan on Amendment #6. Adopted by the North Pacific Fishery Management Council Sept. 1982. (Nov. 1983), 7.

⁶² Amendment 6 to the Fishery Management Plan for the Groundfish of the Bering Sea/Aleutian Islands, Environmental Impact Statement/Regulatory Impact Review, 14. [hereafter, Amend. 6].

⁶³ Amend. 6, 19.

⁶⁴ Amend. 6, 22. (emphasis added).

⁶⁵ Amend. 6, 22-26.

⁶⁶ Amend. 6, 21. See table below from Amend. 6, 21.

Estimated Numbers of Japanese Vessels Fishing in FDZ Waters by Month, 1979—1981.

	Number of Vessel-Days by Japanese Fleet	Estimated Number of Japanese Vessels if:			
		<u>Days/Month=20</u>	<u>Days/Month=25</u>	<u>Days/Month=31</u>	
1979	J	43	3	2	2
	J	152	8	7	5
	A	301	16	13	10
	S	343	18	14	12
	O	410	21	17	14
	N	212	11	9	7
1980	J	47	3	2	2
	J	73	4	3	3
	A	212	11	9	7
	S	339	17	14	11
	O	270	14	11	9
	N	286	15	12	10
1981	J	42	3	2	2
	J	137	7	6	5
	A	365	19	15	12
	S	353	18	15	12
	O	393	20	16	13
	N	499	25	20	17

3-year	J	44	3	2	2
mean	J	121	7	5	4
	A	293	15	12	10
	S	345	18	14	12
	O	358	18	15	12
	N	332	17	14	11

⁶⁷ Amend. 6, 57 (emphasis added).

⁶⁸ Amend. 6, A2-1.

⁶⁹ Amend. 6, A2-1. See Tables below from the RIR pages A2-5 and A2-6.

Foreign Catch Rates for Pollock in 1979 and 1980 for Inside and Outside the FDZ.

<u>Period</u>	<u>Statistic</u>	<u>Catch Rate (mt/hr trawled)</u>	
		<u>Inside FDZ</u>	<u>Outside FDZ</u>
Jan. 1 — March 31*	mean	*	2.05
	standard deviation	*	2.60
	number of trawls	*	218
April 1 — June 30*	mean	7.53	8.85
	standard deviation	4.05	6.48
	number of trawls	27	243
July 1 — Sept. 30	mean	22.61	23.09
	standard deviation	12.72	10.65
	number of trawls	105	165
Oct. 1 — Dec. 31*	mean	15.05	14.3
	standard deviation	13.39	9.18
	number of trawls	94	176

* NOTE: The FDZ is part of the Winter Halibut Savings Area which is closed to foreign trawling December 1 — May 31. There is no foreign harvest in the zone in the first quarter, it occurs only in June in the second quarter, and only in October and November in the fourth quarter.

Foreign Catch Rates for Pacific cod in 1979 and 1980 for Inside and Outside the FDZ.

<u>Period</u>	<u>Statistic</u>	<u>Catch Rate (mt/hr trawled)</u>	
		<u>Inside FDZ</u>	<u>Outside FDZ</u>
Jan. 1 — March 31*	mean	*	0.55
	standard deviation	*	0.642
	number of trawls	*	115
April 1 — June 30*	mean	0.74	0.57
	standard deviation	0.70	0.48
	number of trawls	38	195

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<u>Period</u>	<u>Statistic</u>	<u>Catch Rate (mt/hr trawled)</u>	
		<u>Inside FDZ</u>	<u>Outside FDZ</u>
July 1 — Sept. 30	mean	1.08	0.89
	standard deviation	0.80	0.88
	number of trawls	101	169
Oct. 1 — Dec. 31*	mean	0.83	0.71
	standard deviation	0.53	0.97
	number of trawls	78	192

* NOTE: The FDZ is part of the Winter Halibut Savings Area which is closed to foreign trawling December 1 — May 31. There is no foreign harvest in the zone in the first quarter, it occurs only in June in the second quarter, and only in October and November in the fourth quarter.

⁷⁰ Letter from William G. Gordon, Assistant Administrator for Fisheries, to Mr. James O. Campbell, Chairman of the North Pacific Fishery Management Council, Dec. 8, 1983.

⁷¹ Letter from James O. Campbell, Chairman, North Pacific Fishery Management Council, to William G. Gordon, Assistant Administrator for Fisheries, National Marine Fisheries Service, Feb. 9, 1984.

⁷² Permits by Foreign Vessels for Purchasing or Receiving U.S. Harvested Fish in the Fishery Conservation Zone, Op. NOAA Gen. Counsel, No. 61. (1978).

⁷³ "This amendment will address a situation which has recently arisen and which was not originally contemplated by Congress when it enacted the Fishery Conservation and Management Act of 1976, commonly known as the 200-mile limit law. What has happened is that several foreign fishing interests have proposed to engage in what are called joint ventures with American fishermen." CONG. REC. S17589 (July 14, 1978) (statement of Senator Warren Magnuson of Washington).

⁷⁴ Pub. L. No. 95-354, 92 Stat. 519 (1978).

⁷⁵ 16 U.S.C §1824 (b)(6)(B)(ii).

⁷⁶ See, 16 U.S.C §1824 (b)(6)(B)(ii).

⁷⁷ 16 U.S.C. § 1821(d)(2)(A) (amending 16 U.S.C. § 1821(d)).

⁷⁸ The author believes that this was the only time in the history of the Magnuson Act that allocations of TALFF were delayed to promote the development of the U.S. groundfish industry. The "basket clause" was used to reduce allocations during the Soviet Union's invasion of Afghanistan, during Poland's imposition of martial law, and the Japanese harvest of whales in excess of the quota established by the International Whaling Commission. (*Fishery Conservation and Management Act Reauthorization Hearing on H.R. 1533 Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 99th Cong., 1st Sess. 41 (1985) (statement of Edward E. Wolfe, Jr., Deputy Assistant Secretary of State for Oceans and Fisheries Affairs.) In addition, allocations to Japan were delayed during negotiations between the United States and Japan to reduce Japanese interceptions of U.S.-origin salmon in 1986. Allocations of TALFF, however, were not otherwise postponed or withheld to develop the U.S. groundfish industry.

⁷⁹ [TECHNICAL REPORT] A STRATEGY FOR THE AMERICANIZATION OF THE GROUND FISH FISHERIES OF THE NORTHEAST PACIFIC, at 35 (1985). [hereafter, AMERICANIZATION TECHNICAL REPORT.]

⁸⁰ Report to President of the Senate and Speaker of the House of Representatives from Secretary of Commerce Robert A. Mosbacher, April 19, 1989. Table 4.

- ⁸¹ Report to President of the Senate and Speaker of the House of Representatives from Secretary of Commerce Robert A. Mosbacher, Secretary of Commerce, April 19, 1989. Note: "First Year in JV" fisheries column is based on listed "Years in Fleet" column as presented in the report. If a vessel was in and out of the JV fleet, it is possible its first year in the fishery could precede the date listed in this paper.
- ⁸² In 1982 these plants received 14,594 mt of Pacific cod, 129 mt of pollock, plus traces of flounders, Pacific ocean perch and rockfish. See, Amend 6, 7.
- ⁸³ See, for example, CONG. REC. S14233 (Oct. 11, 1984) (statement of Senator Frank H. Murkowski of Alaska).
- ⁸⁴ Pub. L. 98-623, Sec 404, 98 Stat. 3408 (1984) codified at 16 U.S.C. §1821(e)(1)(E)(i).
- ⁸⁵ Pub. L. 98-623, Sec 404, 98 Stat. 3408 (1984) codified at 16 U.S.C. §1821(e)(A).
- ⁸⁶ Letter from Mr. Fumio Imanaga, Japanese Spokesman to Mr. Ronald R. Jensen, Dr. Dayton L. Alverson and Mr. Robert F. Morgan (Mar. 6, 1985).
- ⁸⁷ Letter from Mr. Fumio Imanaga, Japanese Spokesman to Mr. Ronald R. Jensen, Dr. Dayton L. Alverson, Mr. Robert F. Morgan, Dr. Walter T. Pereyra and Mr. David Harville (June 6, 1986).
- ⁸⁸ Draft Environmental Assessment/Regulatory Impact Review document for Amendment 11 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea/Aleutian Islands, 2. Staff, NPFMC and NMFS-AKR. [hereafter, Amend 11].
- ⁸⁹ Amend 11, 3.
- ⁹⁰ Alaska Fisherman's Journal, Vol. 10, No. 4, Apr. 1987, at 8. For example, the *Golden Dawn* was reported to have earned \$900,000 in nineteen days in a Korean joint venture.
- ⁹¹ Amend 11, 3.
- ⁹² Amend 11, 3. Note: for reasons of product quality, pollock may likely not be able to be effectively tendered from at-sea operations to shorebased processing plants. Amend 11, 4.
- ⁹³ Amend 11, 2.
- ⁹⁴ Amend 11, 12.
- ⁹⁵ NMFS, Industry Survey for 1990, (NPFMC Agenda Item D-2 (a-b), December 1989).
- ⁹⁶ Amend. 6, 6.
- ⁹⁷ AMERICANIZATION TECHNICAL REPORT, 34-35.
- ⁹⁸ Letter from Jessie Gharrett, NMFS, to Joseph Plesha (Feb. 5, 1990).
- ⁹⁹ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 319 (April 29, 1987) (statement of Edward D. Evans, Executive Director, Alaska Factory Trawler Association.)
- ¹⁰⁰ Letter from industry representatives to Senators Gorton, Stevens, Murkowski and Congressmen Young, Lowry, Miller, Biaggi and Breaux (Sept. 24, 1986) (Reprinted in, *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 327-328. (April

29, 1987))

¹⁰¹ Foreign vessels are allowed access to fish that will not be utilized by United States fishing vessels. The definition of "vessel of the United States" is, therefore, critical for distinguishing who will receive priority access to the fishery resources within U.S. waters. The Magnuson Act defined vessel of the United States as "any vessel documented under the laws of the United States..." 16 U.S.C. § 1802 (27). The Vessel Documentation Act, however, allowed for any vessel to be documented as a vessel of the United States if it was over five net tons and owned by a corporation established under the laws of the United States or any state. 46 U.S.C. §12102. Under the documentation laws, a "vessel of the United States" can be entirely owned by foreign nationals as long as they incorporate in the United States or any state, and the president is a citizen of the United States and no more of its directors are noncitizens than a minority of the number necessary to constitute a quorum. 46 U.S.C. §12102.

¹⁰² For a vessel to engage in fishing, 46 U.S.C. § 12108 required that it be built in the United States or condemned as prize of war. Fish processing, however, was not included within the definition of fishing under 46 U.S.C. § 12101(6) of the Vessel Documentation Act. A foreign-built vessel, therefore, could process our domestic fishery resources if it were reflagged as a "vessel of the United States," but it could not fish.

¹⁰³ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 189 (Apr. 29, 1987) (statement of Delmar R. Smith, Chairman, American Waterways Shipyard Conference and Director of Marketing, Bender Shipbuilding & Repair Co. Inc.)

¹⁰⁴ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 262 (Apr. 29, 1987) (statement of W. Patrick Morris, Vice President and General Counsel, Shipbuilders Council of America.)

¹⁰⁵ 46 U.S.C. § 12108.

¹⁰⁶ 46 U.S.C. § 883.

¹⁰⁷ 46 C.F.R. § 67.27-1.

¹⁰⁸ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 265-266 (Apr. 29, 1987) (statement of Delmar R. Smith, Chairman, American Waterways Shipyard Conference and Director of Marketing, Bender Shipbuilding & Repair Co. Inc.)

¹⁰⁹ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988.

¹¹⁰ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 3

¹¹¹ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 3

¹¹² 46 U.S.C. §12102(b).

¹¹³ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 5.

¹¹⁴ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 7(b)(1), amending 46 U.S.C. § 12102(b).

¹¹⁵ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 296-297 (Apr. 29, 1987) (letter of Robert Breskovich, President of Golden Alaska Seafoods.) The *MV Golden Alaska*, for example, was operating in the

North Pacific as a factory vessel at the time of Congressional debate on the Anti-Reflagging Act, and was substantially owned by foreign interests.

¹¹⁶ *Fish Processing Vessel Reflagging—H.R. 438, H.R. 1956 Joint Hearing Before the Subcommittee on Coast Guard and Navigation, and the Subcommittee on Fisheries Wildlife Conservation and the Environment and the Merchant Marine Subcommittee of the Committee on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 329-331 (Apr. 29, 1987) (Record statement of Robert F. Morgan, President, Oceanrawl, Inc.) The *MV Northern Eagle*, for example, was being rebuilt as a factory trawler at the time of Congressional debate on the Anti-Reflagging Act and had substantial ownership by foreign interests.

¹¹⁷ H. REP. 243, 100th Cong., 1st Sess., at 17 (1987). (emphasis added.)

¹¹⁸ CONG. REC. S18335 (daily ed. December 17, 1987) (statement of Sen. Murkowski).

¹¹⁹ CONG. REC. S18335-S18336 (daily ed. December 17, 1987) (statement of Sen. Murkowski) (emphasis added).

¹²⁰ Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 4(a)(1). (Note, there are additional grandfather provisions which were adopted specifically for one company, which allowed that company to rebuild two vessels purchased after July 27, 1987, because those vessels were part of a specific business plan under which the company was operating. (See, Pub. L. 100-239, 101 Stat. 1778, Jan. 11, 1988. Sec. 4(a)(4)(b)(ii).)

¹²¹ *Southeast Shipyard Assoc. v. United States of America, et al.*, Plaintiffs' Memorandum in Opposition to Defendant's Motion to Dismiss or in the Alternative for Summary Judgment (D. of Col. No. 89-2328, argued Jan. 22, 1990), 9.

¹²² See, *Southeast Shipyard Association, et al, v. Samuel K. Skinner, and Admiral Paul A. Yost Jr.*, Civ. Action No 89-2328 (Dist. of Col. August 18, 1989).

¹²³ Letter from Thomas L. Willis, Chief, Vessel Documentation Branch, United States Coast Guard, to William N. Myhre, Esq. (June 13, 1989).

¹²⁴ Shipbuilders Council of America, Inc., Petition for Relief Under Section 301 of the Trade Act of 1974, as amended, June 8, 1989. [hereafter, 301 Petition].

¹²⁵ 301 Petition, 113-115.

¹²⁶ Letter from various U.S. Senators to Carla A. Hills, United States Trade Representative, May 10, 1989, letter from Senator Alan Cranston of California, to Carla A. Hills, United States Trade Representative, June 14, 1989, and letter from various members of Congress to Carla A. Hills, United States Trade Representative, July 14, 1989.

¹²⁷ Letter from various Senators to Carla A. Hills, United States Trade Representative, May 10, 1989, 1.

¹²⁸ Press Release, Office of the United States Trade Representative, July 21, 1989.

¹²⁹ *Magnuson Fishery Conservation and Management Act of 1976, Reauthorization—Part II—H.R. 2061, Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment*, 101st Cong., 1st Sess. 169 (Aug. 8, 1989) (statement of Edward D. Evans, Executive Director of the Alaska Factory Trawler Association.)

¹³⁰ Note: This list includes vessels which may not enter the fishery by 1990. In addition, some of these vessels are trawlers, not necessarily factory trawlers.

Vessel	Year	Country	Description of Work Performed	Estimated Value
Alaskan Hero	1987	Japan	Conversion of tuna vessel to factory trawler.	\$8,000,000
Summar Sky	1987	Korea	Replacement of 90% of hull and superstructure.	\$4,000,000
Snow King	1987	Norway	Tuna seiner rebuilt to a factory trawler.	\$14,000,000
Northern Eagle	1987	Norway	Ex freighter rebuilt and repowered to factory trawler.	\$37,000,000
Royal King	1987	Norway	Offshore supply vessel rebuilt to factory trawler.	\$20,000,000
Royal Princess	1987	Norway	Offshore supply vessel rebuilt to factory trawler.	\$20,000,000
Royal Prince	1987	Norway	Offshore supply vessel rebuilt to factory trawler.	\$20,000,000
Arctic Storm	1987	Korea	Ex military vessel. 80% hull & superstructure subassemblies.	\$10,000,000
Arctic Trawler	1987	Korea	U.S. subsidized vessel, rebuilt and upgraded.	\$10,000,000
Bering I	1987	Korea	Offshore supply vessel rebuilt to factory trawler.	\$3,000,000
Amalaska I	1987	Korea	Offshore supply vessel - to trawler. (No processing.)	\$3,000,000
Amalaska II	1987	Korea	Offshore supply vessel - to trawler. (No processing.)	\$3,000,000
Norpac I	1987	Korea	Offshore supply vessel - to trawler. (No processing.)	\$3,000,000
Norpac II	1987	Korea	Offshore supply vessel - to trawler. (No processing.)	\$3,000,000
Norpac III	1987	Korea	Offshore supply vessel - to trawler. (No processing.)	\$3,000,000
Pacific Glacier	1987	Norway	Offshore supply vessel rebuilt to factory trawler.	\$24,000,000
American Empress	1988	Norway	Offshore supply vessel rebuilt to factory trawler.	\$38,000,000
Endurance	1988	Korea	Offshore supply vessel rebuilt to factory trawler.	\$35,000,000
Crystal Viking	1988	Norway	Offshore supply vessel rebuilt to factory trawler.	\$20,000,000
Terminator	1988	Singapore	Offshore supply vessel rebuilt to crabber.	\$1,000,000
Winddance	1988	Singapore	Offshore supply vessel rebuilt to factory trawler.	\$1,000,000
Northern Hawk	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$37,000,000
American Dynasty	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$44,000,000
Heather Sea	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$24,000,000
Claymore Sea	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$24,000,000
Michelle Irene	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$24,000,000
Alexandre	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$44,000,000
Diomedes	1989	Singapore	Offshore supply vessel rebuilt to crab catcher-processor.	\$1,000,000
Crystal Clipper	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$20,000,000
Ocean Phoenix	1989	Norway	Container ship converted to a mothership.	\$30,000,000
Alyeska Ocean	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$52,000,000
Ocean Rover	1989	Norway	Offshore supply vessel rebuilt to factory trawler.	\$44,000,000
Northern Jaeger	1990	Norway	Offshore supply vessel rebuilt to factory trawler.	\$37,000,000
Gulf Fleet 10	1990	Japan	Offshore supply vessel rebuilt to factory trawler.	\$10,000,000
Gulf Fleet 14	1990	Japan	Offshore supply vessel rebuilt to factory trawler.	\$10,000,000
Savage	1990	Japan	Offshore supply vessel rebuilt to factory trawler.	\$10,000,000
Acona	1990	Spain	Small research vessel rebuilt to factory trawler.	\$35,000,000
Polar Star	1990	Norway	Conversion to a factory trawler	\$40,000,000

¹³¹ To make an accurate assessment, it would be necessary to review the contracts to purchase and rebuild each vessel involved. This estimate was made with the assistance of other individuals who are familiar with the ownership and rebuilding work of the factory fleet. It is the author's honest effort to assess the potential ramifications of the legal challenge to the Coast Guard's interpretation of the Anti-Reflagging Act. The list, however, is merely an estimate and should be considered as such.

¹³² Many of these vessels would likely be allowed to regain their fishery licenses if they divested themselves of sufficient foreign ownership.

¹³³ NMFS, Industry Survey for 1990, (NPFMC Agenda Item D-2 (a-b), Dec. 1989).

¹³⁴ NMFS, Industry Survey for 1990, (NPFMC Agenda Item D-2 (a-b), Dec. 1989).

¹³⁵ There are other factory trawler vessels rumored to be coming on line, include two factory trawlers being rebuilt in Spain from the hull of the *MV Alaska Star*, and one reflagged foreign vessel which has Congressional approval.

¹³⁶ Alaska Commercial Fisherman, June 30, 1989, at 24.

¹³⁷ Seattle Post-Intelligencer, Feb. 16, 1990, at C-6.

¹³⁸ Emerald Seafoods, Inc. *et al*, v. Robert A. Mosbacher, No. C90-224 (W.D. Wash. Feb. 12, 1990). The Complaint alleges, among other things, that:

The Secretary's quarterly allocation violates the policies of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, P.L. 100-239, designed to promote United States ownership, control, and operation of vessels fishing in the United States waters, by causing severe economic loss to U.S. vessels built in response to Magnuson Act policies and protected by the Anti-Reflagging Act. (p. 23)

This allegation is especially ironic as the corporation which owns the factory vessels managed by the plaintiff is controlled by Norwegian citizens and the vessels were all rebuilt in Norway.

¹³⁹ Anchorage Times, Feb. 21, 1990, at A-8.

¹⁴⁰ This is compiled from lists provided to the author from NMFS, seafood industry representatives, and seafood industry trade journals. It represents an effort to be as accurate as possible; however, in the case of year entering the fishery, estimated annual capacity, and in some cases the country where the vessel was built/converted, the author is not personally knowledgeable nor does he claim definitive information as to the listed material.

¹⁴¹ See, AMERICANIZATION TECHNICAL REPORT.

¹⁴² Factory vessels known to be currently operating meal plants:

Vessel	Meal Plant Capacity	Est. Processing Capacity
Arctic Storm	125 mt/day	175+ mt/day
Northern Eagle	125 mt/day	175+ mt/day
Golden Alaska	50 mt/day	60+ mt/day
Heather Sea	125 mt/day	175 mt/day
American Dynasty	300 mt/day	333+ mt/day
Ocean Phoenix	300 mt/day	1,000 mt/day
Ocean Rover	350 mt/day	500+ mt/day
Northern Jaeger	125 mt/day	175+ mt/day
Norther Hawk	125 mt/day	175+ mt/day
Alexandra	300 mt/day	333+ mt/day

¹⁴³ See, Emerald Seafoods, Inc. *et al*, v. Robert A. Mosbacher, No. C90-224 (W.D. Wash. Feb. 12, 1990) and quote of Bruce

Buls, Anchorage Times, Feb. 21, 1990, at A-8.

¹⁴⁴ ALASKA STAT. § 43.75.015. Note: The Alaska Department of Revenue determined that pollock is to remain a "developing species" for 1990 and therefore the raw fish tax will be one percent on pollock processing for shorebased processors. It is likely that pollock will be considered a "developed species" for 1991 and the state raw fish tax will increase to three percent of the purchase price for the fish.

¹⁴⁵ ALASKA STAT. § 43.75.130.

¹⁴⁶ ALASKA STAT. § 43.20.011.

¹⁴⁷ 46 U.S.C. §§ 1177(a) and 1177(b).

¹⁴⁸ 46 U.S.C. § 1177(d)(1)(A).

¹⁴⁹ 29 U.S.C. § 1177(d)(1)(c).

¹⁵⁰ 46 U.S.C. § (f)(1) and (g).

¹⁵¹ ALASKA STAT. § 16.51.120.

¹⁵² ALASKA ADMIN. CODE tit. 15, §116.600(a).

¹⁵³ Prior to the in-shore/off-shore dispute, various factory trawler companies were asked by shorebased processors to pay a voluntary assessment to help pay for the marketing of groundfish products. These companies declined.

¹⁵⁴ 29 U.S.C. § 651 *et seq.*

¹⁵⁵ 29 U.S.C. § 652(b).

¹⁵⁶ These are applied through the Alaska Occupational Health and Safety Administration of the Alaska Department of Labor. ALASKA STAT. § 18.60.075.

¹⁵⁷ 29 U.S.C. § 653(a).

¹⁵⁸ *See*, Elizabeth Dole v. Alaska Trawl Fisheries, Inc., OSHRC Docket No. 89-1192, affidavit of William Thornton Smith.

¹⁵⁹ In addition, two factory trawlers were recently cited for violations of OSH Act regulations when they were in port at Dutch Harbor. The two vessels argued that the OSH Act does not apply to factory trawlers even when they are inside of three-miles (unloading product) because the Coast Guard's fishing vessel safety regulations preempted the OSH Act. The Occupational Safety and Health Review Commission denied the factory trawler's motion to dismiss the charges. *See*, Secretary of Labor v. Alaska Trawl Fisheries & Golden Age Fisheries, OSHRC Docket No. 89-1017 and No. 89-1192, Order On Respondents' Motion to Dismiss, Nov. 29, 1989.

In response to this case, there has been an effort to have all fishing, fish tendering and fish processing vessels statutorily exempted from the OSH Act, whether operating inside of three miles or not. The House Merchant Marine and Fisheries Committee reported 1989 Magnuson Fishery Conservation and Management Act amendments contained explicit language exempting these vessels from the OSH Act, regardless of whether the Coast Guard had safety regulations covering the same activity. (H.R. Rep. No 101-393, 101st Cong., 1st Sess., 14 (Dec. 15, 1989)). Shorebased processors, however, would remain covered at all times by the OSH Act.

¹⁶⁰ 29 U.S.C. §213(a)(5).

¹⁶¹ 29 U.S.C. § 213(a)(5).

¹⁶² 29 U.S.C. § 213 (a)(5).

- ¹⁶³ ALASKA ADMIN. CODE tit. 18, §34.010.
- ¹⁶⁴ ALASKA ADMIN. CODE tit. 18, §34.0710.
- ¹⁶⁵ ALASKA ADMIN. CODE tit. 18, §34.060.
- ¹⁶⁶ ALASKA ADMIN. CODE tit. 18, §34.120.
- ¹⁶⁷ ALASKA ADMIN. CODE tit. 18, §34.080.
- ¹⁶⁸ ALASKA ADMIN. CODE tit. 18, §34.090.
- ¹⁶⁹ ALASKA ADMIN. CODE tit. 18, §34.100.
- ¹⁷⁰ ALASKA ADMIN. CODE tit. 18, §34.040.
- ¹⁷¹ ALASKA ADMIN. CODE tit. 18, §34.130.
- ¹⁷² Pub. L. No. 91-180, 83 Stat. 852, 42 U.S.C. §§ 4331 *et seq.*
- ¹⁷³ ALASKA ADMIN. CODE tit. 18, §70.033.
- ¹⁷⁴ *See*, National Pollutant Discharge Elimination System General Permit No. Ak-G-52-0000.
- ¹⁷⁵ *See*, page 15, above.
- ¹⁷⁶ The Anti-Reflagging Act limits foreign ownership in factory trawler vessels to forty-nine percent. 46 U.S.C. § 12102 (b)(1).
- ¹⁷⁷ *See*, Viewpoint, KOMO television debate between Eric Silbersteen and John Iani, Jan. 27, 1990, Seattle, Washington. (Note: A copy of a video tape of this broadcast is located in the offices of the Pacific Seafood Processors Assoc.)
- ¹⁷⁸ Viewpoint, KOMO television debate between Eric Silberstein and John Iani, Jan. 27, 1990, Seattle, Washington (statement of Eric Silberstein).
- ¹⁷⁹ *See*, Bill Atkinson's News Report, Mar. 7, 1990, 4.
- ¹⁸⁰ Estimates are as follows:

<u>Plant</u>	<u>Finished Product</u>
Alyeska Seafoods	18,000 mt/year
Westward Seafoods	20,000 mt/year
Western Alaska Fisheries	3,000 mt/year
Alaska Pacific Seafoods	3,600 mt/ year
<u>UniSea</u>	<u>20,000 mt/year</u>
Total	64,600 mt/year

¹⁸¹ As much as \$250 million will be spent building the shoreplants in the Dutch Harbor/Akutan area alone. Large amounts have also been spent in King Cove, Sand Point, Chignik and Kodiak refitting the plants for groundfish processing. If you include the costs of the more than one hundred fishing vessels which are necessary for these in-shore facilities to receive raw product, investments in the United States for development of the in-shore industry may exceed \$400 million.

¹⁸² During the winter of 1988, representatives of the Alaska Factory Trawler Assoc. participated in an overflight of the Bering Sea which documented illegal foreign fishing in U.S. waters of the North Pacific. See, New York Times, Jan 21, 1988, at A-1. In addition, the Alaska Factory Trawler Assoc. publicized an article published in a Japanese newspaper describing illegal fishing by the Japanese fleet in the U.S. EEZ. Press Release, Alaska Factory Trawler Assoc., Aug. 17, 1988.

¹⁸³ The Alaska Factory Trawler Assoc. is staffed and represented by qualified and respected individuals. Not every factory trawler operating in the North Pacific, however, is a member of the association and, unfortunately, the association cannot always control the actions of its members.

¹⁸⁴ Unpublished hearings of the National Ocean Policy Study of the Committee on Commerce, Science, and Transportation, July 7, 1989. Note: a copy of this video tape can be available for viewing at the offices of the Pacific Seafood Processors Association.

¹⁸⁵ Press Release, Alaska Factory Trawler Assoc., Nov. 15, 1989.

¹⁸⁶ See, Seattle Post-Intelligencer, Feb. 16, 1990, at C-6.

¹⁸⁷ DRAFT ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW/INITIAL REGULATORY FLEXIBILITY ANALYSIS FOR AMENDMENT 19 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH OF THE GULF OF ALASKA AND AMENDMENT 14 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUND FISH OF THE BERING SEA/ALEUTIAN ISLANDS, Aug. 14, 1989, 9. The document estimates that as much as 330,600,000 pounds of pollock was taken by roe stripping operations during the 1989 roe season (mid-January through March). Given a general recovery rate of eighteen percent for pollock products, 59,508,000 pounds of edible protein may have been discharged by roe stripping operations in 1989.

¹⁸⁸ It is estimated that there are twenty-seven Toyo roe extractors operating in the North Pacific and from twenty to thirty Fillistar roe extractors. Each machine has the ability to extract roe from about seventy-five fish per minute. (Personal conversation with roe extractor suppliers.) A human laborer can extract the roe from approximately five fish per minute. Roe extractors remove the head from the pollock and it is extremely difficult to run de-headed pollock through the filleting machines. Further, if the processor sets the filleting machines to accept de-headed fish, it cannot process the male pollock (which have not had roe extracted). Therefore, for maximum capacity, a dual delivery system is necessary, one delivering de-headed female pollock to one filleting machine and another delivering head-on male pollock to another filleting machine.

¹⁸⁹ Because most all factory trawlers lack the space for a dual delivery system, it is far easier to simply discard the edible meat from the fish.

¹⁹⁰ 50 C.F.R. § 675.20(a)(1).

¹⁹¹ Testimony of Edward D. Evans, Executive Director, Alaska Factory Trawlers Assoc., before the NPFMC, June 22, 1988.

¹⁹² Testimony of Barry D. Collier, President, Pacific Seafood Processors Assoc., before the NPFMC, June 22, 1988. Note: The NPFMC voted on the proposal to increase the two-million metric ton cap on June 23, 1988. A proposal to increase the cap five percent per year up to a total of 2.205 million metric tons failed by a seven to four vote. The motion to retain the two million metric ton cap then passed nine to two. The vote was interesting because the two NPFMC members who supported complete elimination of any harvest cap voted against the compromise to increase the cap by only five percent per year. Had they voted for the compromise when it was first considered by the Council, the two-million metric ton cap would have been broken.

¹⁹³ Many factory trawlers continue to fish with "on-bottom" trawls when harvesting pollock. These nets scrape the ocean's floor and result in enormous bycatches of non-target species (especially halibut and crab). Virtually every shorebased harvester, however, fishes for pollock using only "mid-water" trawl gear. This type net does not scrape the bottom of the ocean and produces almost no bycatch of prohibited species. It is uncertain why factory trawlers continue to use on-bottom trawls,

except that on-bottom gear is generally a more effective fishing method and the skippers of the factory trawler vessels are typically far less experienced than skippers of the shorebased harvesting fleet. In general, it indicates a lack of concern for fishery conservation to harvest pollock with on-bottom trawl nets.

¹⁹⁴ See, letter from Robert J. Davidson, mate, *FV Columbia*, to Don W. Collinsworth, Chairman NPFMC, Jan. 11, 1990.

¹⁹⁵ Letter from Randy Ackermann, Captain, *FV Viking Explorer*, to Joe Plesha.

¹⁹⁶ Letter from Randy Ackermann, Captain, *FV Viking Explorer*, to Don W. Collinsworth, Chairman, NPFMC.

¹⁹⁷ Letter from Randy Ackermann, Captain, *FV Viking Explorer*, to Don W. Collinsworth, Chairman, NPFMC.

¹⁹⁸ THE MCDOWELL GROUP, ALASKA SEAFOOD INDUSTRY, A SUMMARY, Mar. 1989, 15. [hereafter, ALASKA SEAFOOD INDUSTRY.]

¹⁹⁹ Private poll conducted by the Pacific Seafood Processors Assoc.

²⁰⁰ Private poll conducted by the Pacific Seafood Processors Assoc.

²⁰¹ ALASKA SEAFOOD INDUSTRY, 2.

²⁰² ALASKA Stat. § 43.75.130.

²⁰³ Alaska Commercial Fishermen, Nov. 17, 1989, 11.

²⁰⁴ Private poll conducted by the Pacific Seafood Processors Assoc.

²⁰⁵ This assumes that pollock is removed for the underdeveloped species list and is taxed at three percent. Below is a chart estimating the raw fish taxes from pollock and Pacific cod in Alaska.

Pollock—Bering Sea/Aleutian Islands Region

Quota (in pounds) =	3,041,520,000
Price Paid for Fish =	\$243,321,000.00
State Raw Fish Tax =	\$7,229,648.00
City/Aleutians East Borough Tax =	\$4,866,432.00

Pollock—Gulf of Alaska

Quota (in pounds) =	159,790,000
Price Paid for Fish =	\$12,783,200.00
State Raw Fish Tax =	\$383,496.00

Pacific cod—Bering Sea/Aleutian Islands Region

Quota (in pounds) =	500,308,000
Price Paid for Fish =	\$80,049,280.00
State Raw Fish Tax =	\$2,401,478.00
City/Aleutians East Borough Tax =	\$1,600,985.00

Pacific cod—Western Gulf of Alaska

Quota (in pounds) =	65,018,000
Price Paid for Fish =	\$10,402,880.00
State Raw Fish Tax =	\$312,086.40
City/Aleutians East Borough Tax =	\$364,100.80

Pacific cod—Central Gulf of Alaska

Quota (in pounds) =	131,138,000
Price Paid for Fish =	\$20,982,080.00
State Raw Fish Tax =	\$629,462.40

Total State Raw Fish Tax =	\$11,026,171.20
Total City and Borough Tax =	\$6,831,578.40

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- ²⁰⁶ Natural Resources Consultants, Commercial Fishing and the State of Washington, A Brief Overview of Recent and Future Growth in the Washington Seafood Industry, 1988, 9.
- ²⁰⁷ See, Elizabeth Dole v. Alaska Trawl Fisheries, Inc., OSHRC Docket No. 89-1192, affidavit of William Thornton Smith.
- ²⁰⁸ National Oceanic and Atmospheric Administration, NMFS, Law Enforcement Branch, Summary of Foreign and Domestic Fisheries Surveillance and Enforcement Activities in Alaskan Waters—1977, 15.
- ²⁰⁹ Letter from Jessie Gharrett, NMFS Juneau, to Joseph Plesha, Feb. 5, 1990.
- ²¹⁰ Most notably the *MV Phoenix*, which is paritally owned by seven former joint venture vessel owners.
- ²¹¹ North Pacific Fishery Management Council Newsletter, Dec. 19, 1989, 8.
- ²¹² Because of the enormous capitalization of the industry, the groundfish quotas will be taken before the end of the calendar year. It has been mentioned that some factory trawlers operating off Alaska at least one is intending to operate off of New Zealand and another off of the west coast of Africa.
- ²¹³ Included in this effort has been a retainer, plus expenses, for a lawyer, the hiring of public relations firms, an accounting firm and a press agent for the Alaska Factory Trawler Assoc..
- ²¹⁴ Viewpoint, KOMO television debate between Eric Silberstein and John Iani, Jan. 27, 1990, Seattle, Washington (statement of Eric Silberstein) (emphasis added).
- ²¹⁵ Personal conversation with Mike Ryan, Personnel Director, Trident Seafoods Corporation.
- ²¹⁶ Seattle Post-Intelligencer, Oct. 2, 1989, B-1.
- ²¹⁷ Viewpoint, KOMO television debate between Eric Silberstein and John Iani, Jan. 27, 1990, Seattle, Washington (statement of Eric Silberstein).
- ²¹⁸ *Magnuson Fishery Conservation and Management Act of 1976, Reauthorization—Part II—H.R. 2061*, Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 101st Cong., 1st Sess. 169 at 178 (Aug. 8, 1989) (statement of Edward D. Evans, Executive Director of the Alaska Factory Trawler Association.)
- ²¹⁹ AFTA Thoughts, Vol. 1, No. 1, Jan. 1, 1990, 1.

²²⁰ *Magnuson Fishery Conservation and Management Act of 1976, Reauthorization—Part II—H.R. 2061, Before the Subcommittee on Fisheries and Wildlife Conservation and the Environment, 101st Cong., 1st Sess. 169 at 177 (Aug. 8, 1989, (statement of Edward D. Evans, Executive Director of the Alaska Factory Trawler Association.)*

²²¹ CONG. REC. S16027 and S16028 (daily ed. Nov. 17, 1989) (statement of Senator Stevens).

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