

Appeal to the Washington and Oregon Congressional Delegations,

Governors and State Legislators:

Level the Fisheries Playing Field with Alaska

Summary

The fishing industry in Washington and Oregon has arrived at a fateful crossroads. Unless its elected Members of Congress secure reform of the North Pacific Fishery Management Council, to counteract the automatic voting majority for Alaska, and unless they and the Washington and Oregon Governors and State Legislatures provide financial incentives and other support programs approximating those provided by the State of Alaska, major sectors of the industry will leave its traditional homeports in the south, forever. In the absence of decisive action, thousands of jobs will be lost in Washington and Oregon, as assets and new investments continue to flow to Alaska.

While Washington and Oregon have stood idly by, Alaskan politicians, at the State, local, and national levels have been enormously effective. Alaskans will fight hard to preserve and extend their gains. Elected representatives of

Washington and Oregon will have to show real political courage and determination, in confronting this challenge.

The Nature and Scope of the Problem

Accordingly to a report in 2011 by Dr. Hans Radtke, a prominent economist and former Chairman of the Pacific Fishery management Council, local and distant water fisheries fleets based at the Port of Seattle's Fishermen's Terminal, Maritime Industrial Center, and Pier 91 account for \$814 million in annual local spending and 14,972 jobs, and a total multiplier economic contribution of \$3.48 billion, all of which are at risk of being lost.

Washington and Oregon already are suffering from dramatic economic losses from exiting by heavy industries.

When Washington's Senator Warren Magnuson led the way to enactment of the Magnuson-Stevens Fishery Conservation and Management Act, his objective was to ensure conservation of the federal fishery resources within the 200-mile zone, for the benefit of the American fishing industry, coastal communities, and the national economy. When he agreed to the Alaskan majority on the North Pacific Council, he certainly did not anticipate a strategic campaign to deprive his State of the very industry he sought to promote. Discrimination against Washington and Oregon on the federal Council would have seemed impossible under the United States Constitution

and the mandatory National Standards of management in the Act. Indeed, all the coastal states including Alaska agreed to a national standard on non-discrimination of fishermen from different states. This has been ignored by the North Pacific Fishery Management Council.

The last foreign fleets departed the U.S. 200-mile zone, in 1988. During the following two decades, Alaskans on the Council, with the strong support of their representatives in Congress, their Governor and State Legislature, and the Board of Fisheries and the Alaska Department of Fish and Game, methodically employed the federal fishery management system to effect massive transfers of wealth from Washington and Oregon. This was accomplished through onerous conditions and restrictions imposed on vessels home ported in Washington and Oregon, and through unique fishing-related privileges bestowed upon Alaskan communities, and was supplemented by generous State support programs. These actions have intensified in the most recent several years.

Fishermen's News, the most widely circulated fishing trade publication on the West Coast, reported the following, in May 2011:

The largest seafood company based in Alaska is planning to shift the homeport for its 24-vessel fleet from Seattle to the City of Seward on the Kenai Peninsula. Permanent relocation of the Coastal Villages Region Fund fleet, which now spends upward of \$25 million annually for mooring and maintenance in Seattle, could begin moving as soon

as 2014, city and CVRF officials told the House Community & Regional Affairs Committee, March 31 (Juneau). Seward is asking the legislature for \$500,000 to pay for preconstruction work for port and support infrastructure expansion needed to accommodate the move. The Alaska House was preparing to adopt a resolution supporting the funding request.

CVRF is one of six community development quota (CDQ) organizations created by the North Pacific Fishery Management Council in 1992 to promote economic development in Bering Sea coastal communities. Each of the CDQ groups received a share of the annual quota of pollock and later other Groundfish and crab stocks. The groups at first leased their quotas to Seattle fishing companies but have been using their growing revenues to buy and build ships, processing companies and for other seafood industry investments. The six groups invested more than \$118 million in various projects in 2009.

'It is inevitable that our recently acquired fleet will gravitate north to its owner for the same reason that many of the vessels still go south to their Seattle owners and for the same reason that, before the Americanization of our fisheries,' wrote John Marks, CVRF president, in Feb. 7 letter to Seward Mayor Willard Dunham.

'It is conceivable that the move of CVRF to Alaska would encourage the other five CDQ groups to relocate their home ports to Alaska as well,' Marks added in his letter. If the other groups follow CVRF's lead, more than 200 blue water vessels could relocate from Seattle and other Pacific Northwest ports to Alaska.

CVRF may be the most successful CDQ group. A report on 2009 operations released last month by the CDQ association showed \$12.79 million in wages and fisheries payments and projected seafood sales of \$100 million in 2012.

The Magnuson-Stevens Fishery Conservation and Management Act ("MSA") provides for 11 Council members on the North Pacific Fishery Management Council ("Council"). There are six Alaskan at-large seats, including the Director of Fisheries from Alaska, plus the Regional Director of the National

Marine Fisheries Service ("NMFS"), who is based in Juneau. There are three voting representatives from Washington and one from Oregon. In the early years, this unbalanced voting structure presented no risk of Alaska using its power to win industry away from Washington and Oregon, because removing the foreign fleets was a common goal for all three States. However, as the foreigners were phased out, and as most fish stocks were restored to sustainable levels, it became clear that further, major growth in the Alaskan fishing could only be achieved by moving industry from the South to the North. Sometimes won over by Alaska's pleas for help in improving economic conditions in remote coastal villages, other times compelled by Alaska's political giants, Washington and Oregon agreed to many of the federal statutory and regulatory machinations that would prove so costly to the South.

Community Development Quotas ("CDQs") were established by the Council in 1992, to stimulate fishery opportunities in certain Alaskan coastal areas, and were subsequently enshrined and extended in the MSA. This seemed, at the times that the Council and the Congress acted, to do no more than address disadvantages that impeded greater enjoyment of federal fisheries resources by Alaskans, particularly in rural communities that were economically and socially hard-pressed. After all, so the argument went, the economic benefits of individual fishing quotas ("IFQs") and fishing

cooperatives were overwhelmingly enjoyed by the industry in Washington and Oregon. At the outset, and for some time, thereafter, this was true. However, as the Alaskans exercised their power in Congress and on the Council, with the aggressive support of the State Government, the economic benefits of federal fisheries flowed away from the South, to the North.

In 1992, the Council set up a quota share program for halibut and sablefish, with harvest rights valued, then and now, at approximately \$1.5 billion. In 1998, Congress established pollock cooperatives, the functional equivalent of quotas, valued at about \$6 billion. CDQs were applied, and remain, at 10 percent in those several fisheries. The Council established programs for cod and flounder in the Bering Sea valued at \$1.4 billion in fishing rights, again subject to ten percent CDQs. Congress and the Council developed individual fishing and processing quotas for King crab and tanner crab, valued at \$1.4 billion. There, again, ten percent of the resources were committed to selected Alaskan communities. As had formerly been the case, all crab landings had to be made in Alaska.

The family history that pioneered the federal fishery resources in Bering Sea was over 90% from Washington and Oregon. The cost to them of receiving individual quotas and coops was a perpetual 10% allocation of all Bering Sea species to coastal Alaska. CDQs for communities outside Alaska were not

allowed, and these quotas were a minimum reserve, not a cap on what Alaska community groups could acquire later. The Council and Congress set up CDQs with the intent that the residents would be able to learn the operation of fishing vessels. However, instead, CDQs have evolved into quota share holding companies that lease back fishing opportunities, with little direct fishing involvement by communities and large management fees for a select few individuals based in Alaska.

CDQs were set up as tax-exempt corporations, and the effect of this status was, over time, to allow the CDQs to establish huge financial war chests for expansion of control over vast federal fisheries resources. Of course, tax exempt status was not enjoyed by other participants in the fisheries, resulting in a tremendous competitive disadvantage.

Due to conservation-based limits on fishing, the allocation of economic benefits became essentially a zero-sum game. What the North won, the South lost.

CDQs now own and control 40-45% of the pollock factory trawl fleet moored in Seattle, much of the Pacific cod freezer longline fleet, and increasing amounts of Bering Sea crab quotas. A CDQ group has acquired 50% of Ocean Beauty Seafoods, a company representing \$500,000,000 in annual

sales, with concomitant economic benefits flowing to Alaskans. With the advantage of their tax-exempt status, CDQ organizations have become predatory in acquiring fishing opportunities and segments of the industry.

The CDQ groups have also exploited the structural features of fisheries management. For example, fifteen percent of the sablefish program is set up as at-sea processor quota, called "A" shares. These can be used by all vessel size categories and are available to all investors. The CDQs have used their tax-exempt status to push prices of "A" share sablefish beyond the reach of tax-paying fishing families. Fishing families must pay both sides of Social Security taxes, withholding taxes, Alaskan state landing fees (called Bureau Taxes) of 3%, and the federal 3% IFQ use fee. Originally, by design aimed at preserving the historical character of the fishery, eighty-five percent of the fishing privileges in the Bering Sea went to fishing families in Washington. The tax-exempt CDQ corporations are picking off those fishing rights and the employment that goes with them. At risk, according to Paul Sommers, Ph.D., Seattle University, is more than \$1.1 billion.

Predatory purchasing of Bering Sea crab has also taken place. The Council set a 1% ownership cap on the American crab fishing families. By contrast, each CDQ community can purchase up to 5% of the crab quota. When crab

quotas were established, 80% were earned by non-Alaskan fishing families, mostly from Washington and Oregon. American fishing families, mostly non-Alaskans, developed the federal crab fishery, pushing the foreign fleets out, but have been subordinated to the tax exempt CDQ groups designed by Alaska to shift the ownership to the North.

Recently, the Council voted to take steps so that the private holders of crab quota would readjust their quota lease fees, so crews would get more of the revenues. A similar approach to CDQs was not made, yet they charge as much as 70% lease fees to catch their red king crab harvest quotas. This will leave CDQ groups with a larger profit margin than that of the private family holders, most of whom are in the South, further enabling a shift of economic benefits to the North. The current advantage of CDQ groups is shifting 30% to 40% of privately owned crab quota to the Alaskan CDQ holding companies, which lease it back and charge excessive rates, harming both vessel owners and crews.

Another economic advantage given to Alaskan crab CDQs is that they are exempt from paying back the Bering Sea crab vessel "buyback" loan made by the Federal Government. This federal loan of \$100,000,000 to the Bering Sea crab fleet helped buy down the fleet size, so all participants that remained benefited. The CDQs benefited proportionately to everyone else,

but do not have to pay back any of the loan. American fishing families, mostly non-Alaskans, are left with the burden of repayment, while Alaskan CDQ groups, not so burdened benefit from increased competitiveness.

In order to provide an additional advantage to Alaskan communities in the Gulf of Alaska, under the Halibut/Sablefish IFQ Program, the Council established Community Quota Entities (CQEs), which are non-profit organizations incorporated under the laws of the State, or tribal regulations in the case of one of the communities, to represent eligible communities. These tax exempt organizations acquire and lease quota to fishery participants, gaining economic benefits for Alaska. Initially there were forty-two CQEs, but there are now 45. Non-Alaskan CQEs are not permitted. In order to participate as a fisherman in an Alaskan CQE, a person must: (1) Be a citizen of the United States; (2) Maintain a domicile in a rural community listed in Table 21 (all of which are Alaskan communities) to this part for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another community, state, territory, or country, except that residents of the Village of Seldovia shall be considered to be eligible community residents of the City of Seldovia for the purposes of eligibility to lease IFQ from a CQE; and (3) Is an IFQ crew member. [*Federal Register.*]

The Council voted to allow Alaskan tax exempt CQEs to purchase up to 20% of all the halibut and sablefish quota shares in the Gulf of Alaska and lease it back to fishing families. The Council also voted to restrict initial recipients of halibut/sablefish quota shares from buying any more, unless the quota is put in an individual's name and that person fishes on the vessel. Many original quota share recipients were family-operated partnerships and/or corporations. CQEs are not similarly restricted. This change has been made ostensibly to provide more purchasing opportunities for the crews and new entrant fishermen. The theory offered is that, if the original quota share recipients are removed from the marketplace, they will not out-compete crews. The reality is the crews will not be able to outbid tax-exempt CQE corporations, which the Alaska State Legislature is planning to strengthen, by providing \$1,000,000 in interest-free loans for the purchase of halibut/sablefish quota shares. This change is intended to divert quota into Alaskan CQEs, which are designed to provide exclusively Alaskans fishing access of federal resources, while denying original fishing families the ability to bid for quota shares.

In addition, when the halibut charter limited entry program was developed, the Council granted each of the 21 CQEs in Southeast Alaska four charter licensing endorsements for six angler endorsements. Similarly, the 21 western Gulf of Alaska CQEs were awarded 7 permits each, each with 6

angler endorsements. The CQEs did not have to meet any performance conditions that charter boat fishing families had to meet. These permits are effectively subsidized by the working fishing families.

In short, CQEs and CDQs are becoming for-profit quota and fishing rights lease holding companies. There is very little that resembles a not-for-profit operation. Notably, public documents indicate their CEOs are paid \$500,000 to \$800,000 (Council reports). It is all about charging maximum use fees off the backs of fishing families and guaranteeing Alaskans fishing opportunities otherwise enjoyed by non-Alaskans. Alaskan politicians do not mind their own fishing families being out-bid by CQEs or CDQs, as long as the quota migrates to Alaska. Washington and Oregon elected officials need to recognize that the income opportunities for non-Alaskans are being marginalized.

According to Deckboss.com, Alaska Senators Murkowski and Begich have proposed federal legislation that would make business purchases by the CDQs exempt from federal taxes. If CDQs were to buy a for-profit company, the profits of the new acquisition would be tax-exempt, as well. No family or for-profit corporation in Alaska or outside Alaska could compete in such an environment. The Joint Committee on Taxation estimates the Federal Government would lose \$92 million-\$124 million, through 2019, if such a bill

were enacted. The advantage won by Alaska would be at the cost of increasing the negative side of the federal budgetary ledger, at a time when the federal deficit and the national debt must, as a top priority, be dramatically reduced.

The pattern is clear. The CDQ groups are winning economic benefits that non-Alaskan fishing participants do not enjoy, while at the same time, those groups are spared economic costs imposed on non-Alaskans.

National Standard 4 of the MSA, states, "Conservation and management measures shall not discriminate between residents of different states." It is impossible to reconcile the intent of this provision with actions of the Council that impose economic burdens on fishermen from the South, while providing advantages to communities in the North. The National Marine Fisheries Service, which no doubt has to worry about the powerful Alaska Congressional Delegation, when it comes to annual budgets and program authorizations, has been completely absent with regard to protecting the rights of fishing families from Washington and Oregon. The Obama Administration be encouraged by the Washington and Oregon Congressional Delegations and Governors to take decisive steps to address this situation.

The Solution

Amend the MSA to Reform the Council


- Add two at-large votes for Washington and an additional vote for Oregon, thereby providing those States equal voting with Alaska.
- Alternatively, when developing an amendment for quota shares or other limited entry programs, require a super majority vote of 8 out of 11, and require all three state fisheries directors to vote affirmatively.

Mobilize Financial Incentives in Washington and Oregon

- In Washington, where a new Governor and a Senator will be up for reelection, in 2012, elevate the discriminatory and damaging treatment of the State's fishing industry to the status of a major political issue.
- Establish Governors' task forces and conduct public hearings in the Washington and Oregon Legislatures, as the basis for legislation aimed at stopping the flow North of fishing jobs and investments and preventing the further the loss of fisheries-related infrastructure.
- Based on the findings of the task forces and legislative hearings, establish incentives for Washington and Oregon fishing families and companies to remain in those States.
- Expand tax-exempt CDQs and CQE opportunities to Washington and Oregon. Limit the time CQEs and CDQs may operate as tax-exempt corporations.


Support Industry-Initiated Litigation


- The Governors of Washington and Oregon should provide support for litigation undertaken by their industry residents to defeat discriminatory and damaging Council actions.


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