

HJR

45

STATE OF ALASKA

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BRIEFING MEMO -- HJR45 and SJR51

SUPPORT SERVICES PRIORITY FOR FISHERY OPERATIONS IN THE EEZ

The Southwest Alaska Municipal Conference submitted a proposal in October 1987 to the North Pacific Management Council to "establish a linkage between the issuance of permits to foreign fish processing vessels and their use of U.S. transport and bulk fuel carriers. Permits to foreign processing vessels would be issued only upon the condition of existing contracts for the purchase of specific volumes of the services of U.S. cargo and bulk fuel carriers for their at sea operations. The volume required by the contract would equal U.S. capacity to provide those services."

The Department of Commerce and Economic Development (DCED) supports this proposal and the intent of the resolutions before the Legislature. The idea clearly has merit and support service development has great potential to spur economic growth in Alaska. The proposed support services preference should provide U.S. suppliers of at-sea services with needed market access to the foreign fleets, and is likely to generate spinoff business on-shore. It is unlikely that such access will be achieved through other developments such as market forces or Americanization of the processing and fishing sectors.

The department has not conducted an in-depth legal review of the proposal, however, there are several options for the council to consider for implementation. The resolutions may be overly specific in calling for an amendment to the Fishery Management Plan. As the council and NOAA review the legal framework and ramifications, DCED will elaborate on its position.

COUNCIL ACTIONS TO DATE

At its January meeting, the NPFMC set up a work group to study the proposal. There was general support on the council for the amendment, but there was concern about legal aspects and the staff workload from this and several other major proposals pending in the amendment process. This proposal could have sweeping implications and members felt that adequate staff work at this stage was essential.

To date, NOAA general counsel has not advised the council on the legality of the proposal. The council reserved the right to put the proposal in the amendment cycle following issuance of the legal opinion (due March 1) and work group report. This would likely occur at the April meeting. The amendment could be adopted at the September meeting and be in force by December.

THE LEGAL ASPECTS

The Magnuson Act provisions cited below appear to be specific to U.S. vessels that service the fishing fleet. Under the proposal, these support vessels could obtain a preference over foreign providers. The Act is mute on shore-based service suppliers and there is nothing in the law that would require U.S. fishing and processing vessels to buy domestic services.

A legal opinion prepared for American President Lines found that:

The Magnuson Act can be read to justify an FMP giving preferential treatment for U.S. support services: Under the act, "fishing" includes "any operations at sea in support of, or in preparation for" catching, taking or harvesting or other activities reasonably expected to result in these activities. Similarly, the Act defines "fishing vessel" to include "any vessel . . . which is normally used for . . . aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including . . . transportation."

NMFS currently requires foreign-flag transport vessels to obtain activity code 3 (support) permits in recognition of this provision of the FCMA.

MAGNITUDE OF PROPOSAL

In 1985, there were 359 foreign flag vessels operating in the Bering Sea, and 99 of them were freighters and tankers. Almost no goods or services are procured by foreign fleets from U.S. firms or from U.S. coastal communities. The Russian fleet of approximately 40 vessels does buy some fuel and provides shore leave in Dutch Harbor.

Supporters estimate current foreign fleet fuel consumption at 160 million gallons annually. DCED estimated 144 million gallon consumption in 1985. Using an average of 150 million gallons at \$.60/gal yields about \$90 million in potential fuel sales. Dutch Harbor vendors sold approximately 56 million gallons to all customers in 1986.

SWAMC materials state that

"In 1986, more than 5,000 vessel-to-vessel at-sea transshipments were made of frozen fish and meal products by foreign vessels. This amounted to 1,200,000 metric tons . . . in contrast to the total estimated shipment of fish on U.S. bottoms of 50,000 to 75,000 metric tons."

That total of 1.2 million metric tons equals 2.6 billion pounds, and freight related tariffs are estimated to be in the range of \$350 million.

The Jones Act prohibits shipping between American ports on foreign bottoms and the Nicholson Act prohibits landing fish on foreign bottoms. Therefore, U.S. vessels are needed to transport products to U.S. ports and markets. With joint venture operations rapidly dwindling, there will soon (perhaps by 1990) not be enough domestic vessels and cargo handling facilities to move the volume of products required by the growing U.S. market. Without additional capacity, seafood products from the Bering Sea will have to be first shipped overseas on foreign vessels.

TECHNICAL ASPECTS OF NPFMC ACTION ALTERNATIVES

Lawyers for supporters indicate that linking foreign processing allocations to the use of U.S. support services in the Fishery Management Plan (FMP) would be legally permissible, only if the action was not based solely on economic considerations. Biological justifications might include improved enforcement which would follow from more accurate foreign catch reporting through monitoring of shipping records on domestic carriers.

As an alternative to FMP amendments, the council could recommend permit restrictions on foreign processing permits, requesting that NOAA impose conditions linked to the use of U.S. support services. If the council offered the permit restriction as a "recommendation" rather than as a part of a formal FMP, NOAA would have more latitude to impose conditions which reflect commercial considerations, but would also be less compelled to act on the recommendation.

EFFECT ON DOMESTIC SERVICE PROVIDERS

The DCED has been encouraging the development of support services for some time, as roughly two-thirds of the processing capacity for North Pacific groundfish is expected to develop off-shore due to the location of the resource relative to good harbors and the relative economics of at-sea processing. That was the conclusion of the North Pacific Fisheries Delphi study conducted by DCED in 1985.

A Support Services Survey, released last year, was undertaken by DCED to determine the supply patterns of the existing American fleet and to examine the potential for development of support services. The conclusion was that there is significant potential, especially in the Pribilof Islands and for at-sea fuel and supply services. However, lack of adequate infrastructure was identified as a critical bottleneck. Another problem has been the degree of vertical integration in the foreign fishing operations, and the reluctance to break established supply patterns even if the U.S. alternative is less expensive.

Development of harbors in the Pribilofs and transportation infrastructure there and in the regional transshipment centers at Dutch Harbor and Kodiak must go hand-in-hand with initiatives such as this if the state is to realize its full potential for development from the North Pacific fisheries resources.

The DCED has been investigating the possibility of public/private partnerships in infrastructure development for the region with some success. Cargo carriers and fuel suppliers are poised to move, and have been following events in the Bering Sea very closely. Those approached have expressed considerable interest in the public/private infrastructure development concept. Clearly, the financial markets would be much more receptive if there were a federal policy giving domestic carriers priority in the Bering Sea.

The SWAMC proposal was supported in testimony before the NPFMC permit review committee by: Western Pioneer, Crowley Maritime, Sea Land, Total Ocean Trailer Express, American President Line, Foss Maritime, Petro Marine, Coastal Transportation and American Waterway Operators.

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