SJR

14

Alaska State Legislature

SENATOR
ARLISS STURGULEWSKI
Chairman, Senate Community and Regional Affairs Committee
Vice-Chairman, Senate Judiciary Committee
Member, Senate Resources Committee

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Senate

MEMORANDUM February 24, 1987

TO: Senator Jack Coghill, Chairman
Senate Resources Committee

FROM: Senator Arliss Sturgulewski
Senate District F

RE: SJR 14 "Relating to the documentation and crews of United States documented fish processing vessels."

SJR 14 "Relating to the documentation and crews of United States Documented fish processing vessels," is offered in response to a "loophole" in the Magnuson Act that allows foreign built vessels to be "reflagged" as U.S. vessels and engage in fish processing activities detrimental to the U.S. fishing industry.

The Magnuson Act has a three-tier process in determining the allocation of fish within an established conservation quota.

Tier One:
Grants preferential allocation to the domestic industry to harvest and process fish to the maximum extent possible.

Tier Two:
Grants allocation to foreign processing vessels which receive fish from U.S. harvesting vessels if there is a surplus.

Tier Three:
Grants allocation to foreign harvesting fleets if any surplus from Tiers One and Two.

A vessel must be documented under U.S. laws to qualify under Tier One allocations. "Reflagged" foreign vessels are considered to be U.S. documented vessels and could benefit from this processor preference. Widespread use of this "loophole" would put the U.S. and Alaska fishing industry at a competitive disadvantage due to lower construction and labor costs of foreign built vessels.

In addition, this resolution would require that fish processing laborers and crew members on U.S. documented vessels be U.S. citizens.

It is extremely important that we show support for these changes to the Magnuson Act for the benefit of the Alaska fishing industry. Passage of this legislation will help to strengthen and enhance the growing domestic industry now operating in the U.S. Exclusive Economic Zone.

Alaska State Legislature

Senate Resources Committee

Sen. John B. (Jack) Coghill, Chairman
Sen. Paul Fischer, Vice-Chairman
Sen. Lloyd Jones
Sen. Arliss Sturgulewski
Sen. Jim Duncan
Sen. Fred Zharoff
Sen. Dick Eliason

Box V
Juneau, Alaska 99811
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TO: SENATE RESOURCES COMMITTEE

FROM: COMMITTEE STAFF

DATE: FEBRUARY 25, 1987

RE: SJR 14 "Reflagging"

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Alaska State Legislature

Senate Resources Committee

Box V
Juneau, Alaska 99811
(907) 465-4907

TO: SENATE RESOURCES COMMITTEE

FROM: COMMITTEE STAFF

DATE: FEBRUARY 25, 1987

RE: SJR 14 "Reflagging"

Senate Joint Resolution 14 requests Congress to prohibit the use of reflagged foreign-built vessels for fish processing until at least January 1, 1997, and to require that 100 percent of the crew members of vessels documented as United States processing vessels be U.S. citizens.

The fish industry has urged a solution to the problem of the reflagging of foreign vessels as soon as possible.

STATE OF ALASKA 1987 LEGISLATIVE SESSION
FISCAL NOTE

Bill Version : SJR 14
Publish Date :

REQUEST:

Revision Date:
Title : Fish Processing Vessels

Agency Affected : Comm. & Econ. Dev.
BRU :

Sponsor : Sturgulewski
Requestor :

Components :

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 87	FY 88	FY 89	FY 90	FY 91	FY 92
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	-0-	-0-	-0-	-0-	-0-	-0-
CAPITAL	-0-	-0-	-0-	-0-	-0-	-0-
REVENUE	-0-	-0-	-0-	-0-	-0-	-0-

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	-0-	-0-	-0-	-0-	-0-	-0-

POSITIONS:

FULL-TIME	-0-	-0-	-0-	-0-	-0-	-0-
PART-TIME						
TEMPORARY						

ANALYSIS : (Attach a separate page if necessary)

Prepared by : Paul Peyton, Director
Division : Office of Commercial Fisheries Development
Phone : 465-2162
Date :

Approved by Commissioner : J. Anthony Smith, Commissioner
Agency : Department of Commerce and Economic Development
Date :

Distribution (by preparer):
Legislative Finance
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Requestor
Office of Management and Budget
Impacted Agency(ies)
Senate Secretary

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Sen. Ted introduces legislation to stop reflagging of foreign fishing vessels

Journal of Commerce 2/2/87

In response to growing concern in the North Pacific fishing industry, Alaska Sen. Ted Stevens Jan. 22 introduced legislation which would eliminate the ability of re-flagged vessels to process fish.

The measure would correct an apparent loophole in the vessel documentation laws which erode the domestic processor preference embodied in the Magnuson Fishery Conservation & Management Act (MFCMA), Stevens said.

The loophole would allow foreign fishing companies to document foreign-built fish processing vessels under U.S. law. Such reflaqqing could result in foreign vessels being considered as U.S. fish processors, allowing them to be eligible for processor preference intended in the MFCMA only for the U.S. domestic fishing industry, he explained.

"The foreign fishing companies, using foreign-built vessels, might thereby benefit from a preference that was never intended to be granted to them," Stevens said.

"The preference could also put the U.S. fishing industry at a competitive disadvantage, due to lower vessel construction and labor costs," the senator said.

"This so-called 'processor preference' has come increasingly important and valuable as our domestic capacity to harvest and process fish grows," Stevens said in a statement on the Senate floor. "At the same time the amount of 'surplus' fish from our zone, available for foreigners, declines."

The legislation would apply to foreign-built vessels documented after Jan. 1, 1987. "I know of no such vessels documented after Jan. 1," Stevens said, "and I believe it is fair and equitable to close the loophole as of that date."

"I want to put both foreign and domestic companies on notice that a race to re-flag vessels during the time period of the Congressional review process will not be tolerated," he said. "Any companies which re-flag vessels after Jan. 1, in anticipation of a different effective date, do so at their own peril."

The loophole, which the proposed legislation is designed to close, hinders any meaningful attempt on the part of federal fishery managers to develop a management regime which would encourage the continued development of domestic processing capacity, Stevens said.

"This bill is designed to establish a level playing field for all domestic operators, without impeding the free flow of investment capital necessary for development of the fishing industry," he said.

Sen. Frank Murkowski is a co-sponsor of the legislation.

REFLAGGING THE FLEET

Freedom, or foul play?

Is the U.S. bottomfish processing industry in danger of giving away its future? Or are a few entrepreneurs just trying to hold onto a solid investment opportunity?

These and other questions have been sparked by a controversial issue known as reflagging. The controversy centers around a law which allows foreign-built processing vessels to be given U.S. documentation and a U.S. flag, and operate in U.S. waters enjoying unrestricted priority access to the fisheries resources.

As explained by Sen. Frank Murkowski (R-Alaska) in the Congressional Record, "It is possible for foreign companies to retain access to U.S. fishing resources through a quirk in our vessel documentation laws. Under present law, a foreign-owned company can simply re-flag its foreign-built processing vessel....As long as such a vessel only conducts processing activities, it would be considered a domestic operation and would thereby receive priority access to U.S. fishery resources, even though it may be wholly foreign-owned."

The possibility of reflagging has enraged some members of the industry and encouraged others. Some maintain that the opportunity to invest in a foreign-built processor at a lower cost than a U.S.-built ship would encourage domestic investment in the Alaskan seafood industry.

Others believe that foreign processors, facing decreasing allocations, will use the reflagging opportunity to set up U.S.-based "front" companies to acquire fully amortized vessels, man them with foreign crews, and operate at a distinct advantage over domestic-owned processors, while control and profits remain in Seoul or Tokyo.

Are there really sharks in our waters? Or is the young domestic industry just teething on a new development opportunity? The issue is as complex as it is controversial. Some say that as long as a corporation is at least 51% U.S.-owned, it should be allowed to invest its money wherever its board of directors may choose. Others say that foreign ownership is not the problem—many shore-based pro-

Continued next page...

these lower-cost foreign processing vessels rolled over under the U.S. flag. Preventing this paper Americanization of our fisheries now will go a long way toward maintaining the present positive investment climate which is fostering true Americanization of our fisheries..."

In an attached letter to the Congressional delegates, NPFMC chairman Jim Campbell said that foreign-owned U.S. flag processing ships will contribute nothing to Alaska's coastal communities "because the processing jobs will be offshore and the foreign-owned ships will not purchase supplies ashore."

The letter continues: "U.S. companies with processing vessels built or in the planning stages may either see their vessels devalued or their margins drastically reduced by being forced to compete against foreign-built, lower-cost operations. U.S. shoreside plants already processing or planning to process groundfish may also face this unfair competition from foreign-built, U.S. flag factoryships." The Council voted unanimously to support a reflagging ban.

The City of Kodiak introduced a resolution at the November Alaska Municipal League conference urging Congress to ban reflagging because "reflagging...would be extremely detrimental to American processors and their efforts to proceed toward our national goal of full utilization of groundfish resources."

In response to strong urging by fishermen and processors this fall, Murkowski introduced a bill amending the Magnuson Act to clarify the definition of "vessels of the U.S." as vessels built in and documented in the U.S. The law, if passed, would be effective October 1, 1986.

A.D. Chandler, government liaison for NFI, said that at a time when President Reagan is trying to encourage foreign investment in U.S. industries, he will not likely support a move to restrict U.S. investments. Chandler said that Murkowski's bill "would restrict investments in fishing vessels to 51% U.S.-owned companies. It would eliminate foreign ownership even in the parent corporation." That's not exactly veto-proof legislation, he said.

Chandler said that many believe Japanese ownership of the shoreside industry helped keep it alive. "If the industry gets its money for development from Japan, or from National Bank of Alaska, what's the difference? These are the arguments we've been hearing, and there's a lot of skepticism," he said.

Make manning laws equitable

One argument maintains that no matter who owns the majority shares of the corporation, if all processing vessels are required to abide by U.S. manning, safety and labor laws—that is, to hire primarily U.S. crews, pay scale wages, and uphold the health and

If the controversy can't be solved by lighter manning requirements, or by requiring a majority U.S. ownership in corporations involved in the industry, is the answer to ban reflagging altogether, and require U.S. vessels to be U.S. built?

Just a shipbuilder's issue?

Ralph Anselmi of Tampa Shipyards testified before the NPFMC in September, urging the council toward its resolution to ban reflagging. Anselmi said his company plans to invest more than $35 million in the next few years in a series of surimi trawlers geared for operation in Alaskan waters. "If reflagging is not banned, and it looks like we will have to compete with (reflagged) vessels of this kind, Tampa Ship probably will not make the investment in the industry," Anselmi said. A council member asked him, "Do you mean to say that if reflagging is not banned, your company will not get into the surimi business at all?" Anselmi answered, "No, we will not under those circumstances."

Some put stock in Anselmi's words because Tampa Shipyards plans to be one of the biggest investors in the U.S. seafood industry to date. Others say Anselmi's testimony is a thinly-veiled campaign for Tampa Ship, a subsidiary of American Shipbuilding Co.

Brad Gilman, fisheries aide for Sen. Ted Stevens (R-Alaska), said Stevens does not endorse U.S.-built requirements for U.S.-flagged vessels. "We're not concerned about whether they're U.S.-built or foreign-built," Gilman said. "That's something the shipyards are concerned about. But our fishermen haven't asked us to look at it from that angle. We're looking at this from a processor's point of view, and from the Alaskan perspective. We're not here to work for the shipbuilding industry, or for anyone in the Lower 48."

[illegible] are really just paper transactions."

Baker said that reflagging has been legal for a long time. "If it was that cost efficient, people would have done more of it during the boom of the crab fishery. We looked at reflagging a foreign vessel when we were first getting started, and we found it just wasn't that economical. We didn't want to have nightmares over downtime on foreign equipment. I think if people explore it as an option, they'll find it just isn't that economical."

However, a foreign processor hiring foreign crew can save thousands of dollars a year in wages alone. The *Alaska Fisherman's Journal* reports that yearly labor costs for a U.S. crewman are $30,000/year; wages for a Korean crewman are about $4,000/year.

Issue requires more input

There are, of course, many other viewpoints that have not been represented here, and many questions that have yet to be asked. How can the industry ensure that future reflagging efforts will bring true benefit to the U.S., as the reflagged German trawler, The Golden Alaska, did?

How can anti-reflagging legislation be written to allow domestic operators to expand their business unobstructed? Are the domestic processors who oppose reflagging simply afraid of competition? Does the seafood industry want to give up its only exemption to the Jones Act?

Three solutions seem to come into focus: 1)ban all reflagging, and require all ships that fly U.S. flags to be built in the U.S.; 2)allow reflagging only by corporations under majority control of U.S. citizens; or 3)allow reflagging but strengthen requirements on manning, labor, and safety laws so everyone plays by the same rules.

REFLAGGING THE FLEET: *continued*

cessing plants are foreign-owned—but that requiring all processors to purchase U.S.-built vessels would put them all, foreign and domestic alike, on equal footing.

Widespread support for total ban

The reflagging issue has attracted attention in many arenas in the past several months, including the North Pacific Fishery Management Council (NPFMC), the Alaska Municipal League, the Resource Development Council, the National Fisheries Institute (NFI), a number of fishing and processing organizations, and the Alaskan congressional delegation.

The reflagging controversy appeared publicly at the September NPFMC meeting, where 14 representatives of fishing and processing associations released a letter urging Congress to support legislation that would: 1)prohibit any foreign-built vessel from being documented as a vessel of the U.S.; 2)require that any U.S. documented fishing or processing vessel be majority-owned and controlled by U.S. citizens; and 3)establish September 24, 1986 as the effective date for such regulations.

The letter states: "True Americanization of our fishery resources will be abruptly halted and our hard-earned gains set back severely if this activity (reflagging) is not halted immediately. The American fishing industry will have great difficulty competing with these lower-cost foreign processing vessels rolled over under the U.S. flag. Preventing this paper Americanization of our fisheries now will go a long way toward maintaining the present positive investment climate which is fostering true Americanization of our fisheries..."

In an attached letter to the Congress

Murkowski's bill came too late in the session to be acted upon; it will be re-introduced in the 100th Congress, according to his fisheries aide, Doug Humes.

Don't restrict U.S. investments

But will such legislation be perceived by the Reagan administration as protectionist, and therefore be subject to veto? Does a law requiring U.S. processors to buy U.S.-built vessels restrict more than encourage industry development?

"I want to be able to buy a piece of equipment anywhere in the world just like any other industry or any other consumer," said Thorne Tasker, chairman of Alaskan Joint Venture Fisheries, Inc. "If I want to buy a Norwegian vessel, that's not necessarily beneficial to the U.S. shipbuilding industry, but it is beneficial to the U.S. seafood industry." Tasker, who owns four joint venture fishing vessels, said he also is afraid of the paper transfer of control of the industry, but he doesn't want such fears to shut the door on real development opportunities for the U.S. industry. He suggests a partial solution that would place restrictions on vessels actively involved in processing, but would allow processors to build boats in other countries, or convert other vessels to processing ships. "I have the same fears as everyone has, but I'd like for hulls to be available for real U.S. investment," he said.

Just a shipbuilder's issue?

Ralph Anselmi of Tampa Shipyards safety standards required of U.S. corporations—that equitable competition would be guaranteed. If the ships are built to U.S. specifications, and manned by U.S. crews, what's the problem?

Paul Fuhs, mayor of Dutch Harbor and president of the Southwest Alaska Municipal Conference, believes continued reflagging of foreign vessels would give foreign companies the chance to enter domestic fisheries with such an advantage over domestic companies that the foreigners soon would control the industry.

"A few foreign companies are making over $625 million in annual profits from U.S. cod and pollock resources, and they spend very little in our communities," Fuhs said. "Right now they're looking at decreased access to our resources as domestic activity increases. Reflagging presents them with a perfect opportunity to enter the domestic side of the industry with fully amortized vessels, gain domestic priority allocations, and under current laws they can man their vessels with 40% foreign crew. This does nothing to help Alaska's coastal communities, to employ its residents, or to accelerate Americanization of the industry. It's just another way the foreign interests can maintain control of the U.S. fishery industry, and I feel very strongly that changing ownership requirements or manning laws isn't going to solve the problem."

If the controversy can't be solved by tighter manning requirements, or by requiring a majority U.S. ownership in corporations involved in the industry, is the answer to ban reflagging altogether, and require U.S. vessels to be U.S. built?

"And we're looking at it from the foreign point of view, as it relates to Alaska. We may hear from the joint ventures that banning reflagging would hurt their markets," he said. Stevens has sponsored an investigatio of the issue which will analyze the legal aspects of reflagging, manning, and ownership of reflagged vessels. Gilman said the senator would not take a stand on the issue until the analysis is complete and hearings wit the industry have been held.

But some members of the industry have indicated concern for U.S.-built requirements. The letter signed by 14 fishermen and processors at the NPFMC stipulated that no foreign-built ship be documented as a U.S. vessel. Legislation introduced by both Murkowski and U.S. Rep. Don Young (R-Alaska) specifically calls for U.S. vessels to be built in the U.S.

Stop paper transactions

One surimi processing ship owner said banning reflagging of foreign-built ships would stem his fears of unfair competition. "I'm not so concerned about the present equipment out there. What worries me is the flood of new boats being built in Korea," said Terry Baker, president of Arctic Alaska Seafoods. "No one argues that if foreign companies are required to play by the same rules we are, it would at least be fair competition. But I think the real concern is that some of the deals that have been contemplated are really just paper transactions."

Baker said that reflagging has been legal for a long time. "If it was that cost efficient, people would have done more of it during the boom of the crab fishery. We looked at reflagging a foreign vessel when we were first getting started, and we found it just wasn't

Dear Editor,

I am writing to clarify the position of the Southwest Alaska Municipal Conference on the issue of reflagging foreign processing vessels into the United States fleet.

The Southwest Alaska Municipal Conference is a coalition of the communities in Kodiak, Bristol Bay, the Alaska Peninsula, the Aleutian chain and the Pribilofs. Our main emphasis is on fisheries development issues. We have been meeting with the Southeast Alaska Conference...and with (Anchorage) Mayor Knowles and his staff to explore areas of cooperation in fisheries development.

With oil revenues declining drastically, Alaskan communities are working to put this state back together again and put the "Bush vs. Anchorage" syndrome behind us. But we have to have something economically real to work with. Potential for expansion of the fisheries industry in Alaska is great, especially with development potential of fisheries in the 200 mile limit.

This is why we are so deeply concerned over the reflagging of foreign vessels into the United States fleet. These foreign vessels have operated near our Southwest communities for many years and contribute little or nothing to our economy. The only time we see them is when a crewman is hurt and they need our services such as ambulance, clinic, etc. They avoid purchasing anything in our communities even when we are competitive in price, because they want to give the business to another subsidiary of their parent corporation.

To have this fleet reflagged into the U.S. fleet at a time when we are finally seeing some actual results of "Americanization" would be devastating.

Once they are reflagged, they could also process salmon, crab, shrimp, or anything else any American corporation is allowed to process. This is a direct threat to all coastal Alaskan communities that depend on shore-based fish processing for our economic base. There would also be no more "fish and chips" negotiations, as these reflagged vessels would have domestic access priority to the fish resource, even over the joint venture operations.

It is no secret that our communities prefer shore-based processing. We have worked hard to provide incentives for fish processors to locate on shore through tax policies, infrastructure development, lowering electric rates, etc. Realistically, we know there will still be some floating processing operations. We are prepared to do our best and then let the chips fall where they may.

At least with the U.S. bottoms we are playing on the same ballfield. There is no way we could compete with reflagged vessels—fully amortized, cheaper construction costs, cheaper capital costs, able to use 25% foreign labor at as low as 45 cents an hour.

Unfortunately, there are those who would put their own short term greed ahead of the future of our Alaskan communities and the Americanization of fisheries within the 200 mile limit. These people, who would be the front groups for the foreign owners of those reflagged vessels, will try to complicate this issue with "ownership" schemes which we know can be easily manipulated; or they may argue that we just need to "fix" U.S. labor laws; or they say it is just a shipyard issue.

All these arguments obscure the fact that if we allow the reflagging of the foreign fleet under U.S. flags, we can kiss away shore based processing in Alaska, and with it our local economies.

I cannot stress enough the importance we attach to this issue. Our perception is that when exposed to the full light of day, it will be clear who stands for Alaska and who stands for continued foreign domination of our fisheries.

Paul Fuhs
President,
Southwest Alaska
Municipal Conference

standards to increase product reliability, product identity, and buyer confidence, thereby assisting efforts to gain a greater share of the world's protein market?

Will the U.S. seafood industry provide adequate leadership and cooperation to marshall industry resources and federal programs to compete effectively?

These and other questions were raised in a U.S. General Accounting Office report to Sen. Ted Stevens (R-AK) entitled, "Seafood Marketing: Opportunities to Improve the U.S. Position," issued in October.

The report targeted some problems, and here are a few:

The U.S. seafood industry generally is more concerned about production than marketing, and is made up of many independent firms with little industry integration or cooperation.

Some competitors—namely foreign industries, and even domestic protein interests such as poultry—far surpass the U.S. seafood industry in their use of marketing techniques and their ability to provide consistent, high-quality products.

The report suggests several ways the federal government could help the industry better market its products. It examined the current roles of the National Marine Fisheries Service (NMFS), U.S. and Foreign Commercial Service (US&FCS), and the Foreign Agricultural Service (FAS). These agencies complement each other in covering most market development areas, and because they are funded by user fees or import tariffs they minimize federal costs.

However, the current programs do not cover all the areas that need attention (e.g., product quality), and they are designed so that the industry will assume most of the responsibility for developing new markets. But the seafood industry itself suffers from little cooperation or organization, and this

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S. Res. 31. Resolution to direct the Senate Legal Counsel to represent the chief clerks of the Committee on Foreign Relations and the Select Committee on Intelligence in the case of *United States* v. *Morales*, et al; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BINGAMAN (for himself, Mr. BYRD, Mr. LEVIN, Mr. ROCKEFELLER, Mr. CHILES, Mr. KERRY, Mr. BAUCUS, Mr. MATSUNAGA, Mr. LAUTENBERG, Mr. SASSER, Mr. BURDICK, and Mr. MOYNIHAN):

S. 374. A bill to promote economic competitiveness in the United States, and for other purposes; to the Committee on Governmental Affairs.

(The remarks of Mr. BINGAMAN and the text of the legislation appear earlier in today's RECORD.)

By Mr. EXON:

S. 375. A bill to amend title 10, United States Code, to permit the President to order to active duty units and members of the Army National Guard of the United States and the Air National Guard of the United States in cases in which the Governor of a State or other appropriate authority withholds consent; to the Committee on Armed Services.

(The remarks of Mr. EXON and the text of the legislation appear earlier in today's RECORD.)

By Mr. ROTH:

S. 376. A bill to amend the Tax Reform Act of 1986 to restore the full deductibility of IRA contributions; to the Committee on Finance.

DEDUCTIBILITY OF IRA CONTRIBUTIONS

● Mr. ROTH. Mr. President, today I rise to introduce legislation amending the Tax Reform Act of 1986.

This legislation is intended to correct a serious shortcoming in the tax bill passed last year. Despite the positive steps taken in the bill such as reduction of marginal rates and institution of a minimum tax for corporations, the bill took a giant step backwards in encouraging people to save money.

The restrictions placed on individual retirement accounts last year strike at the heart of middle-income families who are trying to earn a decent living, educate their children and save for their retirement years. While I am pleased to have helped preserve IRA's for a great portion of taxpayers, I am disappointed that millions of others have been cut off. These are working couples, in many cases, whose combined salaries push them over the income limit for fully deductible IRA's. Or, they are young workers—the young professionals in our society—whose ambition keeps our country moving forward in a fast changing world.

Mr. President, in my judgement, there is no issue of more critical importance to the American people and this Nation than the issue of savings. We simply cannot meet the challenge of becoming competitive in the emerging world economy without addressing the need to increase our national savings rate. That is what we attempted to do when, in 1981, Congress voted to promote an individual retirement program for the American people. The idea was that each working individual could save up to $2,000 a year tax free, and that money would help citizens meet their needs for retirement.

There has been much debate on the effectiveness of the program. In 5 years, 28 million families made a commitment to create an IRA for their future. Those individual decisions resulted in savings of $250 billion, including a tremendous amount of new income for long-term capital investment.

Until this year, the IRA was the best available savings program for the middle class, working individuals of this country. Roughly 80 percent of those who have IRA's have incomes of $50,000 or less; 65 percent have incomes of $40,000 or less. With such statistics, it is difficult for me to understand how this savings program could ever be misapprehended as a rich person's tax break.

Under the new law, an individual who has earnings of $25,000 or less continues to enjoy a tax deduction for his IRA. A married person with up to $40,000 of earned income can have the same. But unfortunately, from that point on the benefits are phased out. It makes little sense to provide a tax deduction to encourage a young man or woman earning $25,000 or less to save, and then to send them the signal that it is less important that they save when they start to earn a little more.

The same is true of two wageearners who make $40,000 or more. As long as a married couple is earning $40,000 or less they can deduct their IRA. But if their joint earnings are in excess of that figure, the deduction is phased out, and at $50,000 it is eliminated. The current law penalizes those who are ambitious who are working hard, and who are succeeding. It penalizes those who are preparing for a secure and comfortable retirement with an IRA.

Under the new law, people who are not covered by a pension plan where they work can continue to deduct their IRA. However, this ignores the fact that many workers see their IRA not as a substitute for their private pension plan, but as a reliable supplement to that plan. With a deductible IRA to fall back on, workers would have the peace of mind of knowing their retirement security would not be completely dependent upon employer pension plans which may later be corporate takeovers or bankruptcy.

I can tell you there many families in my State of Delaware, with two wage earners, who don't think there is anything fair about what the tax bill did to their IRA. Take a young autoworker at a Chrysler plant in my State earning $33,000 with overtime. The spouse can be working, perhaps as a schoolteacher. Before long they are over the $50,000 limit, and their deductible IRA is eliminated. Making the inequity even more apparent is another chilling aspect of the new law: If one spouse is an active participant in a qualified pension plan, no deduction for an IRA is allowed.

In closing Mr. President, I introduce this legislation today with a reminder to my colleagues. Much will be said in the upcoming days of this session about the need to preserve American jobs and expanding competitiveness of American manufacturers abroad. To that end we will try to determine how to reduce the cost of capital in this country relative to our trading partners. One place to start is to expand the tax incentives for savings, rather than reducing or eliminating them as was done by the Tax Reform Act of 1986.●

By Mr. STEVENS (for himself and Mr. MURKOWSKI):

S. 377. A bill to impose a moratorium on the ability of foreign-built vessels to qualify for certain benefits under the Magnuson Fishery Conservation and Management Act, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MORATORIUM ON BENEFITS FOR FOREIGN-BUILT VESSELS

Mr. STEVENS. Mr. President, I would like to bring to the attention of the Senate an immediate and potentially devastating threat to the development of the U.S. fishing industry in the North Pacific. The threat is being caused by various interpretations of the vessel documentation laws and Magnuson Fishery Conservation and Management Act [MFCMA] which, if carried to extremes, would permit foreign fish processing companies to receive preferential treatment that Congress intended to reserve for the U.S. fishing industry.

The MFCMA has a three-tier process used in determining allocations of fish within an established conservation quota. Section 204 grants the domestic industry the preferential right to harvest and process fish to the maximum extent of its capacity.

The second tier involves an allocation to foreign fish processing vessels which receive fish at sea from U.S. harvesting vessels, but this allocation is permitted only if there is a surplus of fish left after the capacity of the domestic sector has been reached.

The third tier is established in section 201 of the MFCMA. It is lowest in priority and provides foreign harvesting fleets an allocation of any fish remaining after the first two allocations have been made.

In order to benefit from the preference reserved for the domestic industry, a fish processing vessel operating offshore within our Exclusive Econom-

Zone must be documented under the laws of the United States so as to be a United States fish processor under the statute. Those processing vessels not so documented under the laws of the United States are foreign fishing vessels under the MFCMA and cannot qualify for a processor preference.

This so-called processor preference has become increasingly important and valuable as our domestic capacity to harvest and process fish grows and the amount of surplus fish from our zone available for foreigners declines. This is precisely what the Congress intended—the domestic industry is growing and the fishery resources of the United States are becoming Americanized.

The problem is caused by an apparent loophole in the law that could allow foreign fishing companies to document foreign-built fish processing vessels under the laws of the United States. These re-flagged vessels could then be considered United States fish processors and fall within the scope of the processor preference category outlined in section 204.

The foreign fishing companies, using foreign-built vessels, might thereby benefit from a preference that was never intended to be granted them and also put the U.S. fishing industry at a competitive disadvantage due to lower vessel construction and labor costs.

Title 46 of the United States Code governs the documentation of vessels. Any vessel of at least 5 net tons may be documented if it is owned by a U.S citizen, partnership, association, or corporation, 46 U.S.C. 12102.

It is possible for a corporation to be foreign-owned and still operate a vessel eligible for U.S. documentation. The law requires that the corporation must be established under U.S. law, and that the president and chairman of the board be U.S. citizens.

In addition, the law requires the number of a corporation's board of directors who are noncitizens be no more than a minority of the number of directors necessary to constitute a quorum. There is no requirement that the corporation be owned by U.S. citizens in whole or in part.

Title 46 prohibits the use of foreign-built, U.S.-flag vessels as fish harvesting vessel, 46 U.S.C. 12108. There is no prohibition on the use of such vessels as fish processors.

The domestic processing industry in Alaska has also raised concerns about the ability to use foreign labor on both reflagged and domestic fish processing vessels.

The law currently requires 75 percent of all seamen employed on a U.S. vessel which departs from a U.S. port to be citizens of the United States, 46 U.S.C. 8103(b). This applies to fish processing workers as well as the crew.

However, the Coast Guard has informed me that this labor requirement is not applicable if the vessel departs from a foreign port.

Therefore, a foreign fish processing company is legally capable of establishing a corporate subsidiary with U.S. management to document foreign-built processing vessels under the laws of the United States. By doing so, these vessels could be entitled to the domestic processor preference embodied in section 204 of the MFCMA. In addition, both foreign and domestic processing vessels may avoid the U.S. labor requirements if the vessels are based in foreign ports.

These loopholes in the law hinder any meaningful attempt on the part of Federal fishery managers to develop a management regime which encourages the continued development of domestic processing capacity.

Widespread reflagging would impose a competitive disadvantage on legitimate domestic operations which have made substantial investments in onshore processing equipment and U.S.-built vessels. Unless something is done, foreign companies will have the ability to claim the domestic preference, and compete with the domestic industry at greatly reduced capital costs.

There is also the potential for reflagging to create a competitive disadvantage within the domestic sector. The ability to reflag foreign-built vessels received little attention in the North Pacific until recently.

Domestic processors are now concerned that a decision to build vessels in U.S. shipyards in anticipation of the domestic preference could be turned into a costly mistake by the reflagging loophole.

In response to the growing concern of the North Pacific fishing industry, I am introducing legislation which will eliminate the ability of reflagged vessels to process fish.

This bill is designed to establish a level playing field for all domestic operators without impeding the free flow of investment capital necessary for the development of the fishing industry.

Section 1 imposes a 10-year moratorium on the ability of foreign-built vessels to engage in fish processing under the U.S. flag. The moratorium applies to foreign-built vessels documented after January 1, 1987. I know of no such vessels documented after January 1, and believe it is fair and equitable to close the loophole as of that date.

I want to put forth foreign and domestic companies on notice that a race to reflag vessels during the pendency of the congressional review process will not be tolerated. Any companies which reflag vessels after January 1 in anticipation of a different effective date do so at their peril.

Section 3 imposes a permanent requirement that all seamen employed on fish processing vessels documented under the laws of the United States be U.S. citizens, irrespective of the port from which such vessels may depart.

Section 3 addresses an issue which is related to another aspect of activities by foreign fish processors. It has come to my attention that the law permits U.S. cargo vessels to deliver fish into U.S. ports from foreign fish processors, even though direct delivery by the foreign processor itself is prohibited.

The Federal Government has very little information about the actual extent of such transhipment of fish products. This section grants the Secretary of Commerce the authority to issue regulations requiring U.S. cargo vessels engaged in transhipment to provide information on the extent to which this activity is taking place. It also requires the Secretary to submit a report within 6 months on the potential impact of such transhipment on the development of the U.S. fishing industry, and to provide recommendations on how to best regulate this practice, if necessary.

Section 4 provides for the termination of the provisions of this act at the end of a 10-year period. This sunset provision is necessary to ensure that the provisions of this legislation did in fact assist in the continuing americanization of the U.S. fishing industry.

The fishermen and processors of Alaska have convinced me of the urgency of addressing these issues so that investments in the domestic fishing industry can continue apace. I urge the Senate to review this issue as quickly as possible.

Mr. President, I ask unanimous consent that the bill be printed in the Record.

There being no objection, the bill was ordered to be printed in the Record, as follows:

S. 375

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That, notwithstanding any other provision of law, it shall be unlawful for any foreign-built vessel documented under the laws of the United States after January 1, 1987, to engage in the processing of fish for commercial use or consumption.

Sec. 2. Section 8103(b) of title 46, United States Code, is amended—

(1) by striking "or yacht" and inserting in lieu thereof ", yacht, or foreign-built fish processing vessel"; and

(2) by adding immediately after the first sentence the following: "All of the seamen employed on a fish processing vessel documented under the laws of the United States shall be citizens of the United States.".

Sec. 3. Section 4311(a) of the Revised Statutes of the United States (46 App. U.S.C. 241(a)) is amended by adding at the end the following: "The Secretary of Commerce may issue such regulations as the Secretary considers necessary to obtain information on the transportation of fish products by vessels of the United States from foreign fish processing vessels to points in the United States. The Secretary shall submit a report to the Senate Committee on Commerce, Science and Transportation, and to the House Committee on Merchant Marine and Fisheries—

(1) setting forth, within six months of the date of enactment of this Act—

(A) an evaluation of the potential impact of such transportation of fish products on

the development of the domestic United States fishing industry; and

(B) recommendations, if any, for legislation or other action to regulate such transportation of fish products in a manner most beneficial to the future development of the domestic United States fishing industry; and

(2) at such other times as the Secretary of Commerce determines that legislation is needed to assure the full development of the domestic United States fishing industry.

SEC. 4. The provisions of this Act shall be effective until June 1, 1997.

Mr. MURKOWSKI. Mr. President, it is a pleasure to join my colleague, Senator STEVENS, in introducing this legislation of vital importance to the development of a strong U.S. fish processing industry.

This legislation would remove a loophole caused by various interpretations of the vessel documentation laws and the Magnuson Fisheries and Conservation Management Act. It would impose a 10-year prohibition on the use of reflagged foreign vessels for the purposes of fish processing.

Documentation does not require that a vessel be built in the United States or that corporations seeking to document a vessel have U.S. shareholders. The law does restrict the use of reflagged vessels in the coastwise trade and as fish harvesting vessels. However, there is no restriction on the use of reflagged vessels as fish processing vessels.

This loophole, if not closed, could result in a situation in which a foreign processing company can, by merely establishing a U.S. subsidiary and employing minimal U.S. management, document a foreign vessel as a "vessel of the United States" and thereby receive access to prime fishing areas reserved for the domestic industry. The fish processed on such a vessel could then be directly delivered to markets in the United States.

In order to encourage the development of a strong domestic fish processing industry, the MFCMA grants the authority to reserve access to prime U.S. fishing resources for the domestic fishing industry. Under U.S. law, a vessel is considered "a vessel of the United States" if it is documented under U.S. law.

Because U.S. law does not require "vessels of the United States" which embark from foreign ports to employ U.S. labor other than the master and chief of this ship, vessels could enjoy this access while employing predominantly foreign seamen.

The law it currently stands has put U.S. built and manned offshore processors and onshore processors at a competitive disadvantage in relation to reflagged processors. While the bill would grandfather in the rights of existing reflagged processing vessels, a 100 percent U.S. citizenship requirement would be imposed for crews working on these vessels. This requirement, and the 10-year prohibition on the use of reflagged vessels for fish processing would serve to level the playing field for all fish processors.

Finally, let me note the importance of additional provisions of this legislation requiring the Secretary of Commerce to investigate the extent to which transshipment, the practice by which foreign processors transfer processed fish to U.S. cargo vessels for delivery to the U.S. market, may impair the continuing effort to fully develop the U.S. fishing industry.

In the closing days of the 99th Congress, I introduced similar legislation to call to my colleagues' attention the need to address this serious problem. I am pleased to join my colleague, the senior Senator from Alaska in once again addressing this issue and I urge my colleagues to join us in supporting this legislation.

By Mr. THURMOND:

S. 378. A bill to amend the Tariff Schedules of the United States to continue the suspension of duty on menthol feedstocks; to the Committee on Finance.

SUSPENSION OF DUTY ON MENTHOL FEEDSTOCKS

● Mr. THURMOND. Mr. President, today I am introducing a bill that was introduced by me in the 99th Congress which would further extend the temporary suspension of the duty on certain menthol feedstocks. These feedstocks are utilized by domestic manufacturers to produce synthetic menthol. A duty is imposed on these chemicals when they are imported into the United States from West Germany. Since there are no domestic industries that produce these particular feedstocks, this duty affords no protection to any chemical manufacturer in the United States. To the contrary, it imposes an unnecessary financial burden on the U.S. menthol industry by increasing production costs.

To relieve this unnecessary burden, I introduced a bill in 1983 to temporarily suspend the duty on menthol feedstocks. That legislation was ultimately incorporated into the Miscellaneous Tariff Act of 1984 which became law in October 1984. It provided for the suspension of this duty until December 31, 1987.

Unfortunately, the situation facing our domestic menthol industry has worsened since 1984. There are still no American producers of menthol feedstocks. The American menthol industry must import these vital feedstocks to produce menthol products. The American menthol industry is then forced to compete against foreign, cheaply produced menthol products in domestic and international markets. In 1984, the market price for the finished menthol product was $10.70 per pound. Since that time, the market price has steadily declined. The decline in market prices is due to foreign countries which subsidize and protect their menthol producers. This decline in prices has had a severe impact on our domestic industry. The United States has only one domestic manufacturer of menthol. This producer has suffered a 40-percent drop in operating profits from 1985-1986. Despite eroding profits, this company has managed to maintain its market share over the past few years. However, if the suspension of this duty is not extended, the future of domestic menthol production looks bleak.

This bill would simply extend the suspension of the duty on menthol feedstocks for 5 more years, until December 31, 1992. It would permit the continued receipt of the particular feedstocks necessary to produce menthol without paying a duty.

Mr. President, I realize this bill will not solve all the numerous trade difficulties faced by our domestic menthol industry. However, it would assist one domestic business in its competition against foreign manufacturers. It will help preserve the American menthol industry and many American jobs. For these reasons, I urge the prompt passage of this important legislation.●

By Mr. THURMOND:

S. 379. A bill to amend the Tariff Schedules of the United States with respect to extracorporeal shock wave lithotripters; to the Committee on Finance.

EXTRACORPOREAL SHOCK-WAVE LITHOTRIPTERS

● Mr. THURMOND. Mr. President, today I am introducing legislation which is designed to remedy an existing inequity in the Tariff Schedules of the United States concerning the classification of extracorporeal shock wave lithotripters.

The extracorporeal shock wave lithotripter is a new invention which generates a shock wave to disintegrate kidney stones without invasive surgery. At present, the only lithotripter manufacturer which has received Food and Drug Administration approval for use in the United States is Dornier Medical Systems, which is based in West Germany. There are no domestic manufacturers presently producing a lithotripter approved by our Government.

The lithotripter enables patients to avoid surgery. It reduces pain and suffering, inpatient hospitalization, and the cost of kidney stone treatment. In fact, many lithotripter procedures can be performed on an outpatient basis.

Under the present tariff schedule, lithotripters fall under the "electromedical apparatus" category. Within this category there are two different duty schedules. A duty of 3.7 percent is imposed on an "electrosurgical apparatus." All other items in this category carry a 4.4-percent duty. Whether the procedure is surgical or nonsurgical is apparently a determining factor in regards to the amount of the duty. The duty on a surgical apparatus is over twice the duty on any other electromedical apparatus, and represents a great deal of money on costly items like lithotripters. Specifically, the difference in duties when applied to the present price of the lithotripter is approximately $100,000.