

SB

306

SENATOR JIM DUNCAN
ALASKA STATE LEGISLATURE

Alaska State Senate

State Capitol • Room 119 • Juneau, Alaska 99801-1182 • (907) 465-4766 • Fax 465-4748

March 7, 1994

SPONSOR STATEMENT, SB 306

ANTITRUST EXEMPTION FOR COMMERCIAL FISHERMEN

SENATOR JIM DUNCAN

Senate Bill 306 confers state antitrust immunity on fishermen, allowing them to negotiate raw fish prices with processors in order to improve the market price of Alaska seafood. It also permits fishermen and fish processors to agree to the minimum price for which processors will sell the processed fish.

The legislation was recommended in the 1993 Alaska attorney general's report on the Bristol Bay sockeye salmon industry. The report suggests that U.S. processors have become "price takers" when dealing with the large Japanese firms that buy Alaska salmon, leaving fishermen to bear the loss. An antitrust exemption will help level the playing field for Alaska fishermen and processors when dealing with foreign trading companies, which do not observe antitrust laws.

In recent years, salmon prices have fallen dramatically. The 1993 fishing season brought some of the lowest prices on record. Alaska cannot control the price that fishermen get on the grounds, but the state can offer more support to our fishing industry, which is Alaska's largest private employer.

Fishing affects every segment of our economy, from small coastal villages to the state's general fund. Ex-vessel value of Alaska salmon declined by 67 percent between 1988 and 1993, yet salmon fishermen caught 64 percent more fish. As raw fish prices continue to drop, fishing communities and boroughs suffer from poor local economies, as well as decreased state revenue sharing from fisheries taxes. All over Alaska, fishermen are affected by critically low prices. More than 1,200 have requested loan extensions from the state's fisheries loan program over the past three years. In addition, more than 800 Alaska resident limited entry permit holders have not been able to pay their federal taxes.

more

SPONSOR STATEMENT

SB 306, Duncan

British Columbia fishermen have consistently been getting higher salmon prices than Alaska fishermen, in part because of multi-year collective bargaining agreements with processors. Under Canadian law, processors can negotiate prices with groups of fishermen. SB 306 provides for a similar system, allowing fishermen to form associations to negotiate prices with processors. Right now, Alaska fishermen and processors cannot even publicly discuss price because of U.S. antitrust laws. A state antitrust exemption is a step toward promoting stable fish prices in Alaska.

Depressed salmon prices are the result of many factors, including normal market fluctuations, competition from farmed salmon, and a lack of markets. Expanding Alaska's markets is a state priority, but new markets alone cannot produce the equilibrium in bargaining power needed between Japanese buyers, U.S. processors and Alaska fishermen. Collective bargaining between fishermen and processors will help stabilize commercial fishing prices, bolstering local and state economies. Stable raw fish prices also will promote stable consumer prices for processed seafood products, which means greater sales of Alaska seafood.

DIVISION OF LEGAL SERVICES

LEGISLATIVE AFFAIRS AGENCY STATE OF ALASKA

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 2, 1994

SUBJECT: Sectional Summary of SB 306: An Act relating to an antitrust exemption for persons engaged in the fishing industry. (Work Order No. 8-LS1305\E)

TO: Senator Jim Duncan
ATTN: Rosemarie Alexander

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a sectional summary of SB 306: An Act relating to an antitrust exemption for persons engaged in the fishing industry.

A sectional summary of a bill is not an authoritative interpretation of the bill. The bill itself is the best statement of its contents.

Section 1 of the bill repeals and reenacts AS 45.50.572(c) in order that the antitrust exemption granted to fishermen's cooperatives (associations) under state law is similar to the exemption for fishermen's cooperatives under federal antitrust laws. In addition to retaining the current exemption allowing fishermen to collectively catch, collect, or prepare aquatic products for market, the new version of AS 45.50.572(c) extends the exemption to include processing, handling, and marketing of aquatic products. The term "association" is defined to have the same meaning as it does under the federal antitrust exemption.

Section 2 of the bill adds a new subsection to AS 45.50.572 to grant an exemption from state antitrust laws so that fishermen's cooperatives could enter into agreements with fish processors regarding prices to be paid to fishermen and the minimum price that fish processors will accept for the sale of their processed products.

GU:pl
94-172.plm

SECTIONAL ANALYSIS

FISCAL NOTE

STATE OF ALASKA
1994 LEGISLATIVE SESSION

BILL NO : SB 306

Revision Date: _____

Department Affected: Labor

Title: Antitrust Exemption for Fishermen

BRU: Commissioner's Office

Sponsor: Senator Duncan

Component: Commissioner's Office

Requestor: Senate Resources

COMPONENT SERIAL NO. 340

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 95	FY 96	FY 97	FY 98	FY 99	FY 00
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE FUND SOURCE:						
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FUNDING: (Thousands of Dollars)

1002 Federal Receipts						
1003 GF Match						
1004 GF						
1005 GF/Program Receipt						
1006 GF/MHTIA						
Other						
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0

POSITIONS:

FULL-TIME						
PART-TIME						
TEMPORARY						

Estimate of current year (FY94) impact: \$ None

ANALYSIS: (Attach a separate page if necessary)

Prepared by: John Abshire, Deputy Commissioner Phone: 465-2700

Division: Commissioner's Office Date: 3/24/94

Approved by Commissioner: Charles W. Mahlen

Agency: Department of Labor Date: 3/24/94

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130 Seward Street, Suite 409
Juneau, Alaska 99801-2105

MEMORANDUM

March 16, 1994

SUBJECT: Antitrust exemption for persons engaged in the fishing industry--
SB 306 (Work Order No. 8-LS1305\E)

TO: Senator Jim Duncan
ATTN: Rosemarie Alexander

FROM: George Utermohle *GU*
Legislative Counsel

You have requested a review of the current antitrust exemption granted to fishermen's associations under AS 45.50.572(c) and of how SB 306 would change that exemption.

I. EXISTING ANTITRUST EXEMPTION FOR FISHERMEN'S ASSOCIATIONS

Under AS 45.50.572(c), fishermen are granted an exemption from the state antitrust laws (AS 45.50.562 - 45.50.596) to collectively engage in catching and collecting of aquatic products and in preparing those products for market. AS 45.50.572(c) states:

(c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen, catching or collecting aquatic products, from acting together in associations for the purpose of catching, collecting, or preparing for market their product.

In enacting AS 45.50.572(c) in 1975, the legislature intentionally declined to include marketing of aquatic products under the exemption. Thus fishermen are not authorized to collectively engage in marketing of their product. The legislature deleted marketing activities from the exemption when it amended the bill "to make it clear that [the] exemption applies only to fishermen and not to canneries or

LEGAL MEMORANDA

processors."^{1/} Committee Report on CSSSSB 5, Alaska State Legislature, Senate Journal, March 31, 1975, pp. 585 - 588, at 587.

Aside from allowing fishermen to collectively catch or collect aquatic products and to prepare their products for market (presumably meaning that fishermen may collectively engage in processing-type activities), it is not clear what incidental activities may be included under the exemption. The exemption does not expressly allow fishermen to collectively sell their catch or their prepared product. Such collective selling would seem to be the natural result of collective fishing or processing and as such implicitly included in the exemption. The alternative result would be that after collectively catching or processing fish, each fisherman would have to segregate his/her portion of the catch or product from that of other fishermen and then individually attempt to sell his/her portion. In expressly denying fishermen the authorization to collectively engage in marketing of their catch or their fish products, the legislature created confusion as to whether fishermen could collectively sell their fish or their fish products. The verb "market" is not defined for purposes of the exemption, but is generally defined to mean "to deal in a market; to buy or sell" or "to expose for sale in a market; to traffic in; to sell in a market; by extension, to sell." Webster's New International Dictionary of the English Language, Second Edition (unabridged), G & C Merriam Co., Springfield, Massachusetts, p. 1504 (1958). Given the ordinary meaning of "market," fishermen would not be permitted to collectively sell their fish or their fish products. If this is the case, then fishermen may not collectively sell or negotiate to sell their fish or their fish products without incurring the risk that they may violate the state antitrust laws.

It is important to remember that anticompetitive activities are prohibited by both state and federal antitrust laws and that anticompetitive activities could violate both state and federal law. The state antitrust laws are modelled on the federal antitrust laws. Interpretations of the federal antitrust laws are often used to interpret analogous provisions of the state law. West v. Whitney-Fildalgo Seafoods, Inc., 628 P.2d 10, 14 (Alaska 1981); Judiciary Committee Report To Accompany CSSSSB No. 5 (Judiciary), Alaska State Legislature, Senate Journal, April 1, 1975, pp. 598 - 99.

AS 45.50.572(c) is analogous to the federal exemption for fishermen's associations under 15 U.S.C. 521 - 522 (Fisheries Cooperative Marketing Act). The legislature

^{1/} The changes made by the House Commerce Committee to exclude canneries and processors from the exemption did not require that marketing activities be excluded from the exemption. The committee's stated goal was effectively achieved by limiting the exemption to "persons engaged in the fishing industry as fishermen catching or collecting aquatic products." The committee did not need to exclude marketing activities from the exemption to exclude canneries and processors. So, there exists the possibility that the committee intentionally denied fishermen the ability to collectively engage in marketing activities.

intended that the state exemption for fishermen's associations be interpreted in light of the federal provisions. Judiciary Committee Report To Accompany CSSSSB No. 5 (Judiciary), Alaska State Legislature, Senate Journal, April 1, 1975, pp. 598 - 99. The federal exemption for fishermen's associations states, in part:

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged. . . .

15 U.S.C. 521. The exemption continues on to include a definition of "aquatic products" and limitations on the structure and activities of qualifying associations. See, footnote 3.

In relation to the federal exemption, the state exemption is both under-inclusive and over-inclusive. The federal exemption expressly covers more activities (producing, processing, handling, and marketing of aquatic products) than does the state exemption; in this sense the state exemption is underinclusive. The federal exemption is more specific as to the restrictions placed on fishermen's associations and thus permits fewer organizations of fishermen to qualify for the exemption than does the state exemption; in this sense the state exemption is overinclusive. As a consequence of these incongruities in the state and federal exemptions, it is possible for certain fishermen's organizations to engage in certain activities and receive an exemption from the federal antitrust laws yet be in violation of the state antitrust laws and vice-versa.

To the extent that a fishermen's association and its activities fall within the area of overlap in the state and federal exemptions for fishermen's associations, the association is immunized from liability under both state and federal antitrust laws.^{2/}

^{2/} It is important to note that it is possible for a qualified fishermen's association to be liable for anticompetitive activities under the federal antitrust laws (and presumably under the state antitrust laws) in spite of the exemption. Anticompetitive activities outside of the scope of the exemption, such as, combining with a nonfishermen's organization to restrain trade, engaging in predatory practices designed to monopolize, using violence and coercion to fix prices, etc., would subject an otherwise qualified fishermen's association to civil and criminal liability under the antitrust laws. See, McHugh v. United States, 230 F.2d 252 (1st Cir. 1956), cert. denied 351 U.S. 966; 100 L.Ed. 1486; International Fishermen & Allied Workers v. United States, 177 F.2d (9th Cir. 1949), cert. denied 339 U.S. 947, 94 L.Ed. 1361; Hinton v. Columbia River Packers Association, 131 F.2d 38 (9th Cir. 1942). Also, if otherwise permitted activities under the exemption result in undue enhancement of the price of an aquatic product, the federal Secretary of Commerce may bring an action to stop those activities that cause the undue price increase. 15 U.S.C. 522.

In order to avoid any prospect of antitrust liability, whether state or federal, a prudent fishermen's association will comply with the strictures of both the federal and state exemptions. The prudent fishermen's association will comply with the more rigorous federal criteria controlling the structure and operations of the association while only engaging in those activities (catching, collecting, and preparing aquatic products for market) allowed under the state exemption. As a consequence, the activities of fishermen's associations are significantly constrained (relative to what is permitted under federal law) by the limited state exemption granted by AS 45.50.572(c).

II. PROPOSED ANTITRUST EXEMPTION FOR FISHERMEN'S ASSOCIATIONS

A. SB 306, Section 1:

Section 1 of SB 306 completely rewrites AS 45.50.572(c) so that it is virtually identical to its federal counterpart 15 U.S.C. 521. The new exemption for fishermen's associations would read:

- (c) AS 45.50.562 - 45.50.596 do not forbid persons engaged in the fishing industry as fishermen who catch, collect, or cultivate aquatic products from acting together in associations for the purpose of collectively catching, producing, preparing for market, processing, handling, and marketing their product. Associations may have marketing agencies in common and may make contracts and agreements necessary to achieve the purposes of this subsection. In this subsection, "association" means an association, corporate or otherwise, with or without capital stock, that
- (1) is operated for the mutual benefit of its members;
 - (2) does not deal in the aquatic products of nonmembers to an amount greater in value than the association handles for its members; and
 - (3) either
 - (A) does not allow a member of the association more than one vote because of the amount of stock or membership capital the member may own in the association; or
 - (B) does not pay dividends on stock or membership [capital] [sic] in excess of eight percent a year.^{3/}

^{3/} Compare with 15 U.S.C. 521:

Persons engaged in the fishery industry, as fishermen, catching, collecting, or cultivating aquatic products, or as planters of aquatic products on public or private beds, may act together in associations, corporate or otherwise, with or without capital stock, in collectively catching, producing, preparing for market, processing, handling, and marketing in interstate and foreign commerce, such products of said persons so engaged.

The proposed version of AS 45.50.572(c) does not define "aquatic products" but instead relies on the fact that the term will be construed in light of the comparable federal provision. Also, the proposed version of the exemption does not expressly mention "planters of aquatic products on public or private beds" but intends that they be subsumed in the class of fishermen cultivating aquatic products. Despite these variations from the text of 15 U.S.C. 521, section 1 of SB 306 intends to incorporate the complete substance of the federal exemption for fishermen's associations under 15 U.S.C. 521 into the state antitrust laws, so that the state law does not prohibit fishermen's associations from engaging in activities that are permitted under federal law.

B. SB 306, Section 2:

Section 2 of SB 306 adds a new exemption from the state antitrust laws to allow fishermen and processors to collectively agree on the price that processors will pay to fishermen for aquatic products (hereinafter, raw fish) and that processors will accept for the sale of aquatic products (hereinafter, processed fish). The goal of this exemption is to level the playing field so that fishermen are in a better position to obtain the best price for their fish by allowing the fishermen to deal with processors in order to put up a combined front against the major corporations that dominate the world markets for processed fish.

The exemption is narrowly tailored to allow fishermen and fishermen's associations to collectively agree with processors or associations of processors on the price paid to fishermen and on the price charged to purchasers of processed fish. The exemption does not authorize processors to collectively agree among themselves on the prices that they will pay for raw fish or charge for their processed fish. The

^{3/}(...continued)

The term "aquatic products" includes all commercial products of aquatic life in both fresh and salt water, as carried on in the several States, the District of Columbia, the several Territories of the United States, the insular possessions, or other places under the jurisdiction of the United States.

Such associations may have marketing agencies in common, and such associations and their members may make the necessary contracts and agreements to effect such purposes; provided, however, that such associations are operated for the mutual benefit of the members thereof, and conform to one or both of the following requirements:

First. That no member of the association is allowed more than one vote because of the amount of stock or membership capital he may own therein; or

Second. That the association does not pay dividends on stock or membership capital in excess of 8 per centum per annum.

and in any case to the following:

Third. That the association does not deal in the products of nonmembers to an amount greater in value than such as are handled by it for its members.

exemption only covers combined collective action of fishermen and a processor or an association of processors. Without this exemption, collective action by processors on prices paid for raw fish or charged for processed fish would not be allowed under the state antitrust laws.^{4/}

The exemption granted by the proposed AS 45.50.572(j) applies only to the state antitrust laws. The activities covered by the proposed state exemption would still be subject to federal antitrust laws. Without a corresponding federal exemption, the state exemption is virtually of no effect.

The best procedure for obtaining a federal antitrust exemption for the activities protected under the proposed AS 45.50.572(j) would be for the Congress to enact a similar exemption. Such an approach may require several years before the Congress considers the issue and enacts the necessary laws.

In the absence of Congressional action to enact the exemption, it is possible for the state to create an exemption from the federal antitrust laws. Under the judicially created "state action" exemption, the anticompetitive actions of the state or anticompetitive conduct fostered by the state are exempt from the application of the federal antitrust laws. Parker v. Brown, 317 U.S. 341, 87 L.Ed. 315 (1943). Through the "state action" exemption, the state may immunize the otherwise anticompetitive actions of private parties, such as fishermen and processors, from the federal antitrust laws. In order for the "state action" exemption to apply, the state must (1) have articulated a clear and affirmative policy to allow anticompetitive conduct and (2) provide active supervision of the anticompetitive conduct by the private party. California Retail Liquor Dealers Assn. V. Midcal Aluminum, Inc., 445 U.S. 97, 105, 63 L.Ed.2d 233, 243 (1980).

The requirement for articulation of a clear and affirmative policy to allow otherwise anticompetitive conduct would be satisfied by a provision such as the proposed AS 45.50.572(j). However, SB 306 does not contain a provision that would satisfy the second requirement of the "state action" exemption: active supervision. "The requirement is designed to ensure that the state action [exemption] will shelter only the particular anticompetitive acts of private parties that, in the judgment of the State, actually further state regulatory policies. To accomplish this purpose, the active supervision requirement mandates that the State exercise ultimate control over the challenged anticompetitive conduct." Patrick v. Burget, 486 U.S. 94, 100-101, 100 L.Ed.2d 83, 92 (1988); citation omitted. The active supervision requirement is satisfied when the state has exercised sufficient independent judgment and control so that the details of the rate have been established as the product of deliberate state

^{4/} On the other hand, fishermen would still be allowed to collectively bargain on the price that they would receive for their fish under AS 45.50.572(c), as amended by sec. 1 of SB 306.

Senator Jim Duncan
March 16, 1994
Page 7

intervention, not simply by agreement among private parties. It is not enough that the state has established, staffed, and funded a regulatory program; there must be a minimum level of active supervision. Federal Trade Commission v. Ticor Title Insurance Company, 504 U.S. ___, 119 L.Ed.2d 410 (1992).

Currently, there is no state agency that exercises sufficient authority over the price paid to fishermen for raw fish or charged by processors for processed fish to satisfy the "active supervision" requirement. Such authority would have to be given to an existing agency or a new agency would have to be created. Provisions that would satisfy the "active supervision" requirement can be added to SB 306, if it is decided that the state should seek a federal antitrust exemption under the "state action" exemption, instead of waiting for the Congress to act on an exemption for collective action by fishermen and processors, in regard the prices paid for raw fish and charged for processed fish.

If I may be of further assistance, please advise.

GU:pl:mi
94-206.plm

MEMORANDUM

State of Alaska Department of Law

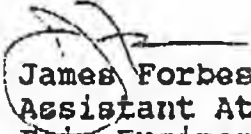
to: Hon. Jim Duncan
Alaska Senate

DATE: February 15, 1994

FILE NO.: n/a

TEL. NO.: 269-5206

SUBJECT: SB 306: Federal antitrust
immunity

FROM:  James Forbes
Assistant Attorney General
Fair Business Practices Section
Anchorage

Rosemarie Alexander of your staff has asked for legal comment on SB 306 which seeks to confer antitrust immunity on fishers and processors of aquatic products in Alaska so they can collectively negotiate in order to improve the market price of Alaska seafood. Specifically, she has asked for comment on whether the bill confers immunity from federal antitrust law and if not, what amendments could be made to accomplish that purpose. As the bill is currently written, it confers state antitrust immunity, but not federal.

Federal antitrust immunity can, of course, be granted by the U.S. Congress. But where Congress has not granted immunity, the states have certain powers under our system of federalism to regulate commerce without application of federal antitrust law.

Under various rulings of the U.S. Supreme Court, a state legislature has the power to confer federal antitrust immunity where it intentionally determines that competition in an industry should be replaced with regulation, and where it establishes a mechanism for actively supervising the price setting activity. In the seminal case of Parker v. Brown, 317 U.S. 341 (1943), the court recognized that a California program regulating production and marketing of raisins by the state's growers immunized the raisin industry from antitrust liability. The declared purpose of the law was "to conserve the agricultural wealth of the state and to prevent economic waste in the marketing of agricultural products". The program allowed for a committee consisting of growers, packers and handlers to establish output and prices, which were then confirmed (or not) by a commission, which had the power to enforce its pricing decisions.

In the cases that have followed, the court has found that antitrust immunity exists where the legislature determines that competition in an industry is more harmful than beneficial, and where the legislature puts a mechanism in place to monitor and have final authority over the prices and production policies that are set by private industry participants. The usual arrangement features a state board or commission that has power to review and either approve pricing or production policies established by private industry participants, or reject them where the commission finds the policies suggested by those private persons are not in accord with state policy.

February 15, 1994

As a general rule, federal antitrust immunity will exist where the board or commission overseeing the industry: is staffed, funded and operational; has adequate power to monitor compliance with state regulatory policies; has the power to enforce compliance in state courts; and shows a basic level of activity aimed at insuring that the private industry entities carry out the state's policies, and not simply their own policies. See: New England Motor Rate Bureau v. FTC, 908 F. 2d 1064 (1st Cir. 1990).

In the case of carrying out the objectives of SB 306, and providing federal antitrust immunity, the legislature would have to find that competition among Alaska processors is resulting in prices that are so low they are injurious to the Alaskan economy. The legislature would have to find that regulation of prices is necessary to conserve the aquatic wealth of the state. The legislature should then establish a board or commission (or give an existing board or commission new powers) to oversee the setting of minimum prices for Alaskan aquatic products. Industry participants such as fishers and processors could be given permission (as under the current draft of the bill) to meet and agree on minimum resale prices and ex-vessel prices. The board or commission must then review these suggested prices and either approve or reject them. After approval, the board or commission must have the authority to enforce the price structures -- in court, if necessary.

If prices for Alaskan seafood were set in this fashion, the price setting activities of the industry participants would be immune from both state and federal antitrust liability.

This memorandum is intended to address legal issues only. To obtain the administration's policy perspective on SB 306, please contact the Governor's Legislative Liaison or the Commissioner of Commerce.

cc: Deborah Behr, Legislative Attorney, Department of Law
Raga Elim, Governor's Office Legislative Liaison
Paul Fuhs, Commissioner of Commerce

JF/

WALTER J. HICKEL, GOVERNOR

DEPARTMENT OF COMMERCE AND
ECONOMIC DEVELOPMENT

OFFICE OF THE COMMISSIONER

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March 24, 1994

The Honorable Senator Jim Duncan
State Capitol
Juneau, Alaska 99811

Dear Senator Duncan:

I would like to take this opportunity to express my support for the timely passage of SB 306, "An Act relating to an antitrust exemption for persons engaged in the fishing industry."

This proposed legislation would provide Alaskan fishers with the ability to negotiate long term raw fish prices with the processors without incurring liability for antitrust violations. This ability for collective bargaining will provide a stability factor currently lacking in Alaskan commercial fishing prices. Currently, Alaskan fishers and processors cannot publicly discuss prices without violating U. S. antitrust laws. SB 306 provides for a state antitrust exemption.

SB 306 is of vital importance to the current economic outlook of the Alaskan fishing industry. Providing stability to commercial fishing prices will provide a mechanism for stable consumer prices for processed seafood products, thus increasing marketing potential of seafood.

SB 306 as an important step in sustaining a viable economic future for the Alaskan fishing industry.

Sincerely,



Paul Fuhs
Commissioner

LETTERS OF SUPPORT

BILL NO: Senate Bill No. 306

DATE: March 14 1994

TITLE: Antitrust Exemption for Fishermen

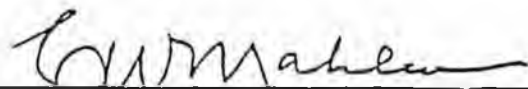
CONTACT: Arbe Williams
465-2700

Senate Bill No. 306 would allow fishers to form associations to negotiate fish prices. AS 16.20.280 provides that the Department of Labor serve as mediator of disputes between fishers and fish processors on the price to be paid for salmon. The department's experience has revealed that the inability of fishers to form such associations, due to current anti-trust laws, to negotiate with processors was a primary factor in the dispute.

This legislation would provide a mechanism to stabilize raw fish prices, thereby protecting Alaskan fishers and processors from the debilitating and extreme fluctuations in fish prices. A stable fishing industry will have a direct and positive effect on the Alaskan economy. It is only reasonable that Alaskan fishers and processors have the legal ability to protect themselves and this important resource from price setting by outside interests..

The Department of Labor supports Senate Bill No. 306.

APPROVED:



Charles W. Mahlen, Commissioner

DATE:

3/14/94

POSITION PAPER/Department of Labor



Edward E. Crane
President

2550 Denali Street, Suite 1201
Anchorage, Alaska 99503
(907) 276-2007

March 22, 1994

Via FAX 465-4748

Senator Jim Duncan
Alaska State Senate
State Capitol, Room 119
Juneau, Alaska 99801-1182

Dear Senator Duncan,

I note that Senate Bill 306 is scheduled for hearing in the Senate Resources Committee on Friday, March 25. A schedule conflict precludes my attendance at that hearing. However, SB306 serves a relevant and highly significant purpose, in my view, and I respectfully offer the following comments for distribution as you may see fit.

I have been directly or indirectly involved with individual producers of food and fiber, and with both formal and informal associations of such producers, for nearly 30 years. That includes almost continuous and intense involvement with producers and marketers of agricultural commodities of all kinds from 1965 through 1981.

As contrasted with manufacturers, an individual producer of food and fiber commodities is greatly disadvantaged by his or her isolated status within what may be a huge conformation of economic forces. The producer is further made vulnerable by the limited-life nature of most commodities and by the pressure to capture whatever value may exist on a timely basis.

There has probably been no more positive statutory force affecting commodities producers than the limited antitrust exemptions in Federal, and most state, statutes. While a superficial glance may suggest they are merely the

Senator Jim Duncan
March 22, 1994
Page 2

extension of privilege to a few, such exemptions are in actuality the cornerstones of the stability which is critical to any food production and distribution system and which provides immeasurable benefits to each of us as consumers.

Senate Bill 306 establishes and clarifies this important exemption for harvesters, producers, and marketers of Alaska's seafood resources. While it will solve no problems by itself, its enactment will provide significant opportunities for the creation of stabilizing forces which will benefit all of Alaska as well as seafood industry participants.

Although I am unable to appear at the pending hearing, I would be most interested in knowing of future opportunities to express support for Senate Bill 306.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Ed Crane".

Edward E. Crane

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UNITED FISHERMEN OF ALASKA

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March 10, 1994

The Honorable Mike Miller, Chair
and Members of the Senate
Resources Committee
The Capitol Building
Juneau, Alaska 99801

Dear Chairman Miller and Committee Members:

UFA supports SB 306 regarding Antitrust Exemption for Commercial Fishermen and we request that a hearing be scheduled in the near future.

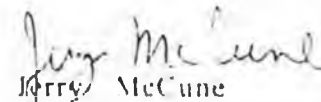
This legislation was first recommended in the 1993 Alaska Attorney General Report on the Bristol Bay salmon fishery.

Fishermen need to breathe new life in our industry. This bill is one avenue to be able to do so - it gives fishermen the ability to make collective bargaining agreements with processors.

This is only one of the first steps fishermen view as a means to stabilize salmon prices in the State of Alaska.

Again, this is a very important issue to the fishermen of Alaska and we would very much appreciate a hearing to be able to have the opportunity to discuss this important matter with you.

Sincerely,


Jerry McCune
UFA President & Lobbyist

cc: Senator Jim Duncan

MEMBER ORGANIZATIONS

Alaska Crab Coalition • Alaska Longline Fisherman's Association • Alaska Trollers Association • Area K Seiners Association
Bering Sea Fishermen's Association • Bristol Bay Driftnetters Association • Concerned Area "M" Fishermen
Cook Inlet Aquaculture Association • Cordova District Fishermen United • Kenai Peninsula Fishermen's Association
North Pacific Fisheries Association • Northern Southeast Regional Aquaculture Association • Peninsula Marketing Association
Petersburg Vessel Owners Association • Prince William Sound Aquaculture Corporation • Seafood Producers Cooperative
Southeast Alaska Seiners Association



Cordova District Fishermen United

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(907) 424-3447 FAX (907) 424-3430

March 28, 1994

Senator Jim Duncan
Alaska State Legislature
State Capital
Juneau, AK 99801-1182

Dear Senator Duncan:

On behalf of Cordova District Fishermen United (CDFU), I am pleased to write in support of Senate Bill 306—*An Act relating to an antitrust exemption for persons engaged in the fishing industry*. CDFU supports SB306 for three primary reasons:

- **SB306 serves to clarify ambiguities in existing law.**
Under current law, it is clear that fishermen may harvest, process and handle their catch or prepared product collectively but it is unclear whether they may collectively see the fruit of their labors through to the marketplace. The current law is interpreted by some to mean that after collectively catching or processing their fish, each individual fishermen has to separate his portion of the catch or product from that of other fishermen and then attempt to sell his portion individually. CDFU supports SB306 because it expressly allows fishermen to collectively sell their catch or their prepared product.
- **SB306 removes inconsistencies between state and federal laws.**
The federal exemption covers harvesting, processing, handling and marketing and is, thus, inconsistent with existing state law. This inconsistency creates an atmosphere wherein a group of fishermen may acquire an exemption from the state government and be in violation of federal law—and vice versa. Section 1 of SB306 rewrites existing law to make the state exemption virtually identical to its federal counterpart. CDFU believes this is an important improvement over existing state law.
- **SB306 levels the playing field for fishermen.**
Section 2 of SB306 places fishermen in a better position to obtain the best price for their fish by allowing them to collectively agree on the price that processors will pay to fishermen for raw fish and that processors will accept for the sale of processed fish. This will have the effect of leveling the playing field so that fishermen are in a better position to obtain the best price for their fish by allowing them to deal with processors in order to put up a united front against the major corporations that dominate the world markets for processed fish.

The nearly 250 commercial fishermen who comprise CDFU stand together with United Fishermen of Alaska and other fishing groups in support of SB306. If you have any questions or require additional information, please do not hesitate to contact me at the number above. Thank you for your consideration.

Sincerely,
CORDOVA DISTRICT FISHERMEN UNITED

Dorne Hawxhurst, Executive Director

MEMORANDUM

State of Alaska
Department of Law

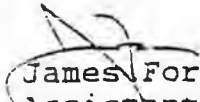
to: Charles E. Cole
Attorney General

DATE: June 7, 1993

FILE NO.: 661-91-0465

TEL. NO.: 269-5222

SUBJECT: Bristol Bay Salmon Investigation

FROM:  James Forbes
Assistant Attorney General
Fair Business Practices Section
Anchorage

This memorandum contains the report of our investigation into the Bristol Bay sockeye salmon industry. Our investigation centered on the processors in Bristol Bay, but in the course of gathering material from and about them, we also obtained some information on the business practices of the buyers of Bristol Bay salmon, who import most of the processed fish into its primary markets in Japan.

The reader should be aware that most of the conclusions we draw about the Japanese buyers is in the nature of informed conjecture, based on available information. We were not able to conduct an in-depth review of direct evidence of the business practices of the importers, such as their business records. This report should be read with that understanding. We make no claim to having conclusive evidence of price fixing, or other illegal conduct, but we do believe that the report shows how various parties had the means, opportunity, and motive to reduce Bristol Bay salmon prices in recent years.

Antitrust investigator Sue Winton and I compiled most of the information contained herein. University of Alaska Southeast economist David Reaume provided economic analysis and valuable assistance in drafting.

INTRODUCTION

This investigation began in early 1991 in response to concerns that declining ex-vessel prices for Bristol Bay sockeye salmon were brought about by collusion. We subpoenaed documents from processors; reviewed public records, press reports and previous

BRISTOL BAY SALMON INVESTIGATION

studies; and took dozens of statements, both sworn and unsworn.¹ A reduction in funding for antitrust enforcement in 1992 forced the curtailment of the investigation. The intent of this report is to pass along the information we obtained, with our interpretation, for the consideration of those who make policy affecting the Bristol Bay fishery.

We limited our investigation to the Bristol Bay fishery for several reasons: the major firms involved in the other significant Alaskan commercial fisheries do business there allowing us an opportunity to examine their business practices; the fishery is small enough that a review of the necessary business records was within our ability to manage; and the fishery had experienced dramatic swings in ex-vessel prices in just a few years providing a good opportunity to explore the reasons why.

Before getting into the body of the report, a brief summary of the primary legal principles involved is in order.

Antitrust Law

These are the federal and state laws that protect trade and commerce from unlawful restraints. This report focuses on price fixing and monopolization, two activities prohibited by antitrust laws. The basic principles of antitrust law are found in the Sherman Antitrust Act of 1890, which has been called the Magna Charta of free trade.

Monopoly

A monopoly is usually found to exist when a firm selling a product acquires the power to increase prices or exclude competition in a specific market. While it traditionally is not found to exist unless a single firm possesses the power, some courts have found that two or more firms can jointly monopolize a line of commerce and exercise shared monopoly power. To violate the law, a monopolist must usually be shown to have deliberately acquired the power. No set market share has been established, although monopoly power is usually presumed to exist when a firm's market share exceeds 70%, and usually presumed not to exist when market share drops below 40%. Courts generally consider all relevant evidence when deciding whether monopoly power exists in a given instance, and are not bound by market share calculations. A monopolist can maintain a selling price that is above the price that would prevail if the market were competitive.

Oligopoly

¹Documents we obtained under subpoena are subject to AS 45.50.592, which provides certain protection for trade secret information. Accordingly, to the extent that information in this report is based on subpoenaed documents, we have taken steps to insure that trade secrets of individual companies are not revealed.

An oligopoly is generally found to exist where a few firms account for most of the sales of a product. In some circumstances, the oligopolists can approximate the market power of a monopolist through coordination, either explicit or implicit. The hallmark of an oligopoly is that no firm will make a pricing decision without reference to the anticipated response of the other oligopolists. Oligopolists frequently maintain prices parallel to their competitors. The structure of an oligopolistic market makes it relatively easy for the firms involved to cooperate to keep prices at levels above where they would be in the presence of true competition. Highly concentrated industries -- usually found to exist where four firms control about 50% of the industry output -- where there is product homogeneity, similar cost structures, and high barriers to entry into the business are more prone to collusion, and are more likely to approximate the behavior of a collective monopoly. For these reasons, courts have found that, even where there is no evidence of an express agreement to fix prices, price fixing will be inferred in an oligopoly where the existence of enough "plus factors" are proved. These "plus factors" usually include: the opportunity of oligopolists to meet to agree on price strategy; most favored customer clauses; parallel pricing; price information sharing; and product uniformity.

Monopsony

A monopsony is the converse of a monopoly, where there are many sellers of a product, and one buyer controls so much of the acquisition side of the market that the buyer can control prices.

Oligopsony

The converse of an oligopoly.

Market power

Market power is the power of a monopolist or an oligopolist in a highly concentrated market to raise prices above competitive levels -- or the power of a monopsonist or oligopsonist to lower prices below competitive levels.

A RECENT (AND BRIEF) HISTORY OF BRISTOL BAY

The 1970s and 1980s

In the early to mid-1970s the Bristol Bay sockeye salmon run was depressed. Harvest levels in 1973 and 1974 had dipped to an average of 6 million pounds, down from over 100 million pounds in 1970. Beginning in 1975, however, Bristol Bay sockeye salmon stocks began a sustained period of recovery, reaching a modern high of 215 million pounds in 1983, and falling no lower than 85 million pounds since. The relevant data are given in Table -1.

With the advent of secular recovery in the stock of Bristol Bay sockeye came structural change. Japanese trading companies began buying large quantities of frozen Bristol Bay

sockeye salmon from Bristol bay processors in 1978.² In the process they bid up the ex-vessel price (the price received by fishers) from \$0.60 per pound in 1977 to \$0.73 per pound in 1978, and then to \$1.02 per pound in 1979. In two years the price received by Bristol Bay fishers for their catch had risen 70 percent. What is more, the 70 percent price increase from 1977 to 1979 was achieved in the face of a 387 percent increase in harvest levels. Had it not been for the fact that sockeye harvests were rising sharply just when the Japanese were increasing their purchases of frozen salmon from near zero to over 30 percent of the total sockeye harvest, the increase in ex-vessel price might have been even more spectacular. The price gains could not, however, be sustained. When the second in a series of record harvests appeared in 1980, ex-vessel prices returned to their 1977 levels. The competition for fish that had bid up prices in 1978 and 1979 had been muted by continued abundance.

The Japanese presence in Bristol Bay grew throughout the decade of the 1980s. Between 1981 and 1984 nearly half the Bristol Bay sockeye catch was frozen, up from near zero in 1977. Even so, the supply available for canning was not as yet severely restricted thanks in large part to a continuation of historically high harvest levels. The rather small weight of the canned sockeye pack in 1982 (11.3 million pounds, down from 57.5 million pounds in 1981) allowed inventories which had been built up during the previous three years to be sold off and cannot be viewed as evidence that the growing Japanese demand for frozen Bristol Bay sockeye was at that time impinging upon canners' supplies of unprocessed fish.

In 1985, however, things began to change again. In response to booming consumer demand, Japanese buyers of frozen sockeye salmon increased their Bristol Bay purchases from 67 million pounds in 1984 to 91 million pounds in 1985, and their market share from 49 percent to 68 percent. Ex-vessel prices once again rose and this time canners found themselves in the position of having to pay much higher prices in order to obtain product and, (more importantly to them in the long run), in order to retain control over the core of their fleet of fishers and boats.

BRISTOL BAY SOCKEYE SALMON

<u>YEAR</u>	<u>(000'S) POUNDS HARVESTED</u>	<u>(000'S) POUNDS FROZEN</u>	<u>(000'S) POUNDS CANNED</u>	<u>PERCENT FROZEN</u>	<u>AVG. EX VESSEL PRICE</u>
1975	26,944	102	21,319	0.4	\$ 0.40
1976	34,278	384	28,426	2.6	0.50
1977	32,672	586	27,495	1.8	0.60
1978	58,576	6,307	37,136	10.8	0.73
1979	126,429	38,032	44,350	30.1	1.02
1980	133,541	31,856	46,379	23.9	0.57
1981	158,483	49,614	57,456	31.3	0.77

² Frozen sockeye salmon is sold almost exclusively in Japan, while canned sockeye is sold almost exclusively in other markets.

1982	96,668	57,637	11,308	59.6	0.68
1983	214,389	103,432	54,571	48.1	0.64
1984	138,159	67,355	46,787	48.8	0.66
1985	134,913	91,319	23,730	67.7	0.83
1986	95,948	75,011	11,536	78.2	1.43
1987	87,450	63,798	15,191	73.0	1.40
1988	84,678	73,476	6,677	86.8	2.10
1989	163,175	109,840	32,574	67.3	1.25
1990	198,955	129,700	30,581	65.2	1.09
1991	140,221	83,059	40,607	59.2	0.70
1992					

SOURCES: POUNDS--ADF&G Bristol Bay Management Reports
PRICE-- ADF&G, Division of Commercial Fisheries, special
printout

The great Bristol Bay Price War of 1985/1988 had begun. Competition among canners and Japanese buyers of frozen fish came to a head as declining harvests coupled with a booming Japanese consumer demand for salmon drove ex-vessel prices to historic highs. In 1986, 1987, and 1988 the share of the Bristol Bay harvest which was frozen (and then largely shipped to Japan) averaged 79.3 percent. Japanese demand in these years drove the price received by fishers from \$0.83 per pound in 1985 to \$1.43 per pound in 1986, \$1.40 per pound in 1987, and then to \$2.10 per pound in 1988. By 1988 Bristol Bay canned production of sockeye had fallen to 6.7 million pounds, its lowest level since 1973 and a mere 12 percent of the poundage canned just five years earlier. For all intents and purposes, the canners were being driven out of Bristol Bay by a seemingly insatiable Japanese demand for frozen salmon. Although the harvests of 1985/1988 would have glutted the market in 1977 and 1978 when the canners were virtually the whole show in Bristol Bay, they fell far short of the levels needed to satisfy the combined 1985/1988 demand for canned and frozen sockeye at constant prices.

To find at least one reason why Japanese buyers in 1986 suddenly became willing to pay substantially higher prices for sockeye salmon one need look no farther than the yen/dollar exchange rate. From 1980 through 1985 the July average yen/dollar exchange rate never once fell below 220 yen per dollar, while in July 1985 it stood at 241 yen per dollar. In late 1985, however, the yen began to appreciate sharply relative to the dollar with the result that the yen/dollar exchange rate had fallen to 159 yen per dollar by July 1986, a twelve month plunge of 34 percent. The falling exchange rate meant that despite a near doubling in 1986 of ex-vessel prices in Bristol Bay, the price in Tokyo rose only 12.5 percent.

By July 1988, the yen/dollar exchange rate had fallen to 133 yen per dollar, enough on its own to drive ex-vessel prices from \$0.83 per pound in 1985 to over \$1.50 per pound in 1988. The fact that 1988 ex-vessel prices, in fact, averaged \$2.10 per pound requires further explanation. Speculative fervor on the part of Japanese buyers may be part of the story, but other factors may also have been at work.

Once again, however, things changed. In July 1989 Japanese wholesale prices for frozen sockeye suddenly plunged over 20 percent from the June 1989 average, despite only a modest increase in the yen/dollar exchange rate. According to data provided by Clinton Atkinson a Seattle fisheries consultant who closely monitors Japanese prices, the wholesale price for frozen sockeye in Tokyo fell from a June 1989 average of 1525 yen per kilogram to a July 1989 average of 1180 yen per kilogram, a figure close to the July 1987 price of 1193 yen per kilogram, but substantially below the July 1988 price of 1500 yen per kilogram.

In the wake of the July 1989 plunge in Japanese wholesale prices a number of the buyers of frozen Bristol Bay sockeye who had speculated in 1988 on a continuation of the boom in demand were reported to have gone out of business over the next year. For the most part the buyers who left the Bristol Bay market were relatively small as compared to the buyers who remained. The list included, but was not limited to, the following: TOKAI Trading Co., HOEI Trading Co., FUJI MARINE, the JOINT STAFF CORPORATION, and SHIN NISHOKU Ltd. A second structural change of some importance was now underway -- the market was becoming increasingly concentrated as smaller Japanese buyers relinquished their positions to larger, more heavily capitalized players such as NIPPON SUISAN, NICHIRO, MITSUI, and KYOKUYO.

Post-1989 prices continued their downward trend. The July 1990 average Tokyo wholesale price for frozen sockeye came in at 1166 yen per kilogram, while the average ex-vessel price in Bristol Bay was recorded at \$1.09 per pound. However, an increase in the yen/dollar exchange rate of 12 percent between July 1989 and July 1990 all but accounts for the drop in the Bristol Bay ex-vessel price between those two dates.

The Crash Of 1991

Both ex-vessel and Tokyo wholesale prices crashed in 1991 despite a return of the yen/dollar exchange rate to nearly the July 1988 level (138 yen per dollar in July 1991 versus 133 yen per dollar in July 1988), a factor which on its own would tend to raise, not lower, ex-vessel prices. In June, Bristol Bay processors offered as little as \$0.50 per pound to fishers, but as the run materialized finally settled on \$0.70 per pound. The crash in Bristol Bay ex-vessel prices from the highs of 1988 (\$2.10 per pound) triggered cries of price fixing. To many observers the fact that ex-vessel prices fell by a greater percentage than did wholesale prices supported the claim that buyers (either in Japan or the United States) were conspiring to save themselves at the expense of the fishers. In opposition to these voices there were others who offered the counter claim that nothing more than "supply and demand" was at work; and that the collapse in ex-vessel prices could be attributed entirely to the workings of a competitive market.

COLLUSION OR COMPETITION?

Before one can begin to untangle the reasons for the price crash of 1991, several points must first be understood. The first is that no amount of data on prices paid and quantities sold can tell us if the crash was engineered (the COLLUSION HYPOTHESIS) or came about as the result of competition/supply and demand (the SUPPLY/DEMAND HYPOTHESIS). If a standard of proof suitable to a criminal court of law is imposed (proof beyond a reasonable doubt), neither the COLLUSION HYPOTHESIS nor the SUPPLY/DEMAND HYPOTHESIS can be proven solely from economic data. An immediate implication of this fact is that whichever hypothesis is forced to bear the burden of proof is condemned to failure. In particular, someone who begins from the assumption that the international market for sockeye salmon is perfectly competitive (or at least workably competitive) will fail to be convinced of the contrary if he or she requires proof beyond a reasonable doubt as required in a criminal case.

The reason economic data alone cannot distinguish "beyond a reasonable doubt" between the competing hypotheses is that any pattern of prices and quantities can be explained simply by invoking enough special assumptions. One can, for example, argue that a particularly sharp drop in the price of a commodity reflects a particularly dramatic change in price expectations, or a change in tastes, or even the rise to prominence of hitherto unimportant cross price effects.³ Here we focus mainly on the relative plausibility of the two hypotheses, given what we know of the events leading up to the summer of 1991. Taken together, economic data and an analysis of the incentives and prior practices of the players involved in the determination of Bristol Bay salmon prices make it very difficult for an unbiased observer to escape the conclusion that the COLLUSION HYPOTHESIS is the more plausible.

A Statement Of The COLLUSION HYPOTHESIS

There are two levels of collusion considered here: collusion among Japanese buyers of Bristol Bay salmon designed to secure supplies at below competitive prices, and collusion among the major on-site processors in Bristol Bay designed to reduce the prices paid to Bristol Bay fishers.⁴ It may be that collusion among

³ A "cross-price" effect is the change in the demand for one product caused by a change in the price of a substitute or complementary product. For example, if the price of Chilean coho salmon falls, the demand for Bristol Bay sockeye can be expected to fall if all other factors remain constant because people will buy more Chilean coho and less Bristol Bay sockeye.

⁴ As we state elsewhere, and emphasize here, the majority of Bristol Bay processors are price followers who lack any semblance of the necessary market power to affect prices. This investigation found no evidence of wrongdoing on their part and they should be considered innocent bystanders. Our investigation did reveal the
(continued...)

major processors becomes more likely when the processors are themselves confronted by an oligopsonistic buyer.⁵

In our opinion the best explanation of the events of the last few years is that Bristol Bay sockeye salmon prices fell sharply in July 1989 and then crashed in June 1991 because a few of the large Japanese trading companies active in buying Alaska salmon encouraged them to. It is possible (if not likely) that during the 1989-1991 time period two or more trading companies acting together with a small number of other buyers manipulated prices in a successful attempt to establish control over the buyers' side of the Bristol Bay frozen salmon market, and that these trading companies now exercise oligopsonistic buying power in that market. Prior to 1989, for reasons discussed below, the Japanese side of the Bristol Bay market temporarily functioned in a competitive manner.

We believe that the evidence, when examined in light of the conventional practices of the large Japanese trading companies, strongly suggests that for policy purposes Alaska would be well advised to act as if the buyers' side of the Bristol Bay market were oligopsonistically controlled.⁶

⁴(...continued)

existence of oligopolistic and oligopsonistic behavior by some (but not all) of the larger processors. These large processors are, as a result of their combined market share, in a position to coordinate pricing strategy, which the smaller processors, for lack of an alternative, follow. Japanese trading companies own and directly control several Bristol Bay processors.

⁵ Witnesses have testified that, in 1991 and subsequent years, price offers made by various Japanese buyers to various processors are very nearly parallel. Additionally, according to this testimony, in the early part of the 1991 season, the Japanese buyers all withheld any written price offers to the processors for several weeks. Then, within a short period of time, they nearly all made offers. This kind of parallel behavior with respect to pricing is difficult to explain in the absence of at least tacit agreement among the buyers. Price parallelism, combined with evidence of "plus factors", such as exchange of price information, product uniformity and opportunity to meet to form anticompetitive policies has been found sufficient to support a verdict of price fixing. See: Wilcox v. First Interstate Bank of Oregon, 815 F.2d 522, 525 (9th Cir. 1987)

⁶ Although space precludes a long discussion of the conventional practices of Japanese trading companies, it is well known that they often work together when dealing in overseas markets; and that in many cases well defined areas of dominance are carved out and then maintained for long periods of time with the blessing of and under the supervision of the Ministry of International Trade and Industry (MITI). Any number of sources could be cited in support of this point. One, in particular stands
(continued...)

The possibility of collusion among major on-site domestic processors in Bristol Bay is also of interest here and is discussed in a later section of this report. First we will focus on the presentation and interpretation of the events that support the premise that a few trading companies gained oligopsonistic control of the buyers' side of the Bristol Bay market during the last four years.

Why Did Bristol Bay Sockeye Prices Rise So Sharply 1984-1988 ?

This particular question appears to have a noncontroversial answer. The average price to Bristol Bay fishers rose from \$0.66 per pound in 1984 to \$2.10 per pound in 1988 largely for three reasons: (1) the fall in the yen/dollar exchange rate, (2) booming consumer demand for salmon in Japan, coupled with speculative bidding for salmon among Japanese seafood buyers; and (3) the failure of the larger Japanese seafood buyers to exercise their latent market power.

The Japanese economy of the 1980s has been described as a "bubble." In such an atmosphere a speculative boom in Japanese wholesale and retail salmon prices is no surprise. On the contrary, it would have been surprising if Japanese salmon prices had not boomed at this time. A more interesting and difficult question is "Why did the price to fishers boom in Bristol Bay ?"

Why Did The Japanese Not Fix Bristol Bay Prices 1984-1988?

Proponents of the SUPPLY/DEMAND HYPOTHESIS bear no special burden in explaining the price increases in Bristol Bay during the 1984-1988 time period. They need simply point out that in competitive markets an increase in demand at the consumer level raises prices all down the line. No mystery here. Bristol Bay prices rose during 1984-1988 according to the SUPPLY/DEMAND HYPOTHESIS because of the increase in Japanese consumer demand and because, under that hypothesis, competition among wholesalers for raw fish supplies translates immediately into higher prices paid to fishers.

In contrast, if one is ultimately planning to argue that the price crash of 1991 may have been engineered by Japanese trading companies for well-defined reasons, one is under some burden to explain the apparent lack of collusion during the 1984-1988 time

⁶(...continued)

out because of its authorship and sponsorship: Kiyoshi Kojima and Terutomo Ozawa, JAPAN'S GENERAL TRADING COMPANIES, MERCHANTS OF ECONOMIC DEVELOPMENT, (Organization for Economic Cooperation and Development, Washington D.C.) 1984

period. After all, if market power is wielded by certain players in one context why not in another?

Although we are in no position to identify the relative importance of the different factors which we think explain the failure of Japanese buyers to restrain Bristol Bay prices in 1984-1988, we think we can at least identify what they are. The first such factor is the consent decree of 1982 signed by Toshoku, Mitsui, Nippon Suisan, Kyokuyo, and Taiyo, all of whom are active buyers in Bristol Bay. Under this decree, these companies agreed not to fix prices for Alaska crab. Set to expire in 1992, the decree carried the implication of further anti-trust action by the U.S. Department of Justice should these companies be found guilty of so much as communicating prices among themselves, regardless of whether the subject was crab or some other seafood. Given the importance of Alaska seafood supplies to the Japanese it is implausible to assume that the consent decree of 1982 did not temper the behavior of these companies. It is far more likely that, fearing sterner measures should they be taken back to court, the larger Japanese seafood buyers refrained from collusive behavior for a few years. An examination of the list of buyers of frozen sockeye in 1985 and again in 1991 supports this conclusion at least to the extent that it shows more buyers and less concentration on the buyer side in 1985 than in 1991.

The second factor that we think explains the apparent lack of collusion among Japanese buyers of Bristol Bay salmon during the 1984-1988 time period is the same booming consumer demand invoked as an explanation by supporters of the SUPPLY/DEMAND HYPOTHESIS, but with different emphasis. With Japanese consumers showing little resistance to higher prices, there would seem to have been little reason for Japanese buyers in general, and the signers of the 1982 consent decree in particular, to risk attracting the further attention of the U.S. Department of Justice by holding down Bristol Bay prices. A situation in which Bristol Bay prices rose much less rapidly than did Japanese wholesale prices may well have been viewed by the buyers as imprudently greedy.⁷

The third factor which helps explain the Bristol Bay price increases of 1984-1988 is the perceived need of the Japanese buyers to protect their market shares from an announced campaign by

⁷ As noted earlier, the fall in the yen/dollar exchange rate alone offset a rise in Bristol Bay prices from \$0.83 per pound in 1985 to over \$1.50 per pound in 1988. The remaining sixty cent per pound increase in the Bristol Bay price (to \$2.10 per pound) might easily have been viewed by wholesalers as shiftable to consumers, given retail prices in excess of \$10 per pound and given the speculative expectations of continued boom that were the order of the day in the Japan of 1988.

American processors to create an "all American industry." Evidence obtained through investigative subpoenas and interviews indicates that a meeting of American processors was at one time set for April 1985. The following paragraphs are taken from a letter that announced the organizational meeting.

"April 4, 1985 at 9:00 AM in the Meisnet Room (4th Floor) of the Washington Athletic Club to organize the United Seafood Americanization Coalition (USA Coalition)."

"The USA Coalition is being formed to raise funds and conduct a campaign to -totally Americanize the USA seafood industry. Our Industry!!"

"Over the past several years, we have continually seen our opportunity to participate in the growth of our industry frustrated. I don't know about you, but I'm tired of this and I won't take it anymore!!!"

Given the stated intention on the part of American processors to completely Americanize "our industry," it is not at all surprising that Japanese buyers aggressively bid up salmon prices in an attempt to protect their market shares and to deflate the aggression indicated in the quotation above. This is particularly so in light of the fact that CONAGRA, one of the largest food manufacturing companies in the United States, purchased Trident Seafoods in 1987, thereby lending credibility to the suggestion that Americans were preparing to gather their resources in an attempt to drive the Japanese out of the industry.³

In summary, then, the Japanese did not use their market power to hold down Bristol Bay prices during the 1984-1988 period because (a) in the aftermath of the 1982 consent decree they may have anticipated a more stringent antitrust response had prices behaved suspiciously, (b) Bristol Bay price increases were at that time relatively easy to pass on to Japanese consumers, and (c) attempts by American processors to create an "all American industry" may have signalled the need (from the Japanese point of view) to bid aggressively for product.

Why Did Prices Fall In July 1989?

According to data provided by Clinton Atkinson, a Seattle fisheries consultant, the Tokyo wholesale price of frozen sockeye averaged 1525 yen per kilogram in June 1989 and then fell abruptly to an average of only 1180 yen per kilogram in July 1989. Why? Supply and demand hardly suffices as an answer, because in this case supply and demand could just as easily (if not more easily) explain

³ It is implausible to argue either that Japanese buyers were unaware of attempts to Americanize the industry or that they did not wish to respond to them.

a sharp price increase as a price decrease. With most Prince William Sound salmon removed from the market because of the EXXON VALDEZ oil spill, one might have expected direct and cross price effects to have driven up the price of the remaining stocks. Even the fact that much of the Prince William Sound run was pink salmon would tend to have such an effect, due to substitution effects among the various species.

A somewhat strained explanation which has on occasion been offered is that Japanese consumers suddenly shied away from Bristol Bay sockeye salmon fearing contamination from the EXXON VALDEZ oilspill in Prince William Sound. An alternative explanation is that certain large Japanese trading companies seized the opportunity of the EXXON VALDEZ oilspill to bring prices back down from the speculative highs of 1988, and in the process also seized the opportunity to assert control over both the Japanese side of the Alaska market and the Japanese wholesale market itself.⁹ Their desire to assume such control is not only traditional but easy to understand. In order to make this point as clear as possible, a brief theoretical digression is necessary.

The optimal rate at which inventories of frozen salmon are sold is determined by an equation not unlike the famous Hotelling Rule for optimal extraction of an exhaustible resource.¹⁰ As long as wholesale prices are expected to rise over the holding period (the time between major harvests) at roughly the rate of interest, the wholesale market is well behaved. If, however, price expectations suddenly change and a price drop comes to be expected, inventory holders have an incentive to dump their inventories and limit their losses, or at least to greatly increase the rate at which their inventories are depleted. Of course, such actions serve to ratify the initial expectations of a price decline and even greater losses may then accrue to inventory holders. Large trading companies can limit the potential for dumping and subsequent price collapse by standing ready to support prices by withholding stocks from the market.¹¹ In return for such services, the trading company

⁹ It also appears that they might have seen an opportunity to try and discipline non-compliant American processors. One witness testified that Mitsubishi spread the rumor that Bristol Bay sockeye was tainted from the oil spill in an attempt to drive down the price and thereby to financially punish an American processor for his over aggressive behavior. A Japanese television documentary aired in August 1989 described this American processor as one who "fights against Japanese!" "Japanese cannot ignore him."

¹⁰ The Hotelling Rule states that a resource should be extracted at a rate consistent with the price of the resource rising over time at the appropriate rate of interest.

¹¹ "Large" is an understatement. The trading companies to whom we refer are among the ten largest companies in the world ranked by annual sales, and are comparable to General Motors in size.

demands certain behavioral conformities from the smaller players it shields.

Although this much is somewhat theoretical, there is evidence that by 1989 the two trading companies most active in Bristol Bay were becoming increasingly concerned with the disarray in the Alaska side of market. The following has been extracted from public records, documents and testimony obtained through our investigation.

Some of the smaller Japanese fish buyers (spot buyers) were bidding too aggressively for salmon to the dismay of the larger buyers. One such buyer, Hiranori Mitsunashi, was featured in a 1989 Japanese television documentary on the Alaska salmon industry. Portrayed as something of a gambler and maverick, he was described in the documentary in the following terms (according to a memorandum dated August 30, 1989).

- "Good buyer on a spot basis. He even tries to buy fish already booked with others."
- Mitsunashi uses guerrilla tactics to wrest fish from others for his company Shin Nihon Global (paraphrase)¹²
- "Mitsunashi arriving at Bristol Bay. He is still concerned about sluggish Japanese market but this may be time for him to start fighting. He gathers information. He visits many plants. Because his tactics is (sic) so aggressive, once he appears, all other competitors are said to get together."

It is not out of the question that the large trading companies have wished to punish Mitsunashi and other non-conformist spot buyers by driving down wholesale prices in Japan after relatively high price deals had been made in Bristol Bay. Of course, the desire to punish non-conformist spot buyers may not have been strong enough to trigger the price decline of 1989 and needs to be considered in conjunction with other events.

One particular other event which could have been of major importance in triggering the trading companies' apparent attempt to consolidate the buyers' side of the market in 1989 was Mitsubishi's sudden entry into the arena previously dominated by other large Japanese trading companies.¹³ Consider the following chronology

¹² It is worth noting that although Mitsunashi's company, Shin Nihon Global, survived the immediate effects of having "aggressively" purchased Alaska salmon in 1988 and 1989, it was reported to have gone out of business in June 1991.

¹³ Mitsui and Mitsubishi are two of nine very large Japanese trading companies. The others are C. Itoh, Marubeni, Sumitomo, (continued...)

drawn from Japanese news reports summarized in memoranda and testimony:

- (August 7, 1989) "It is widely reported that Mitsubishi booked 8,000 to 10,000 m/tons of Trident fish at \$3.25 per pound. . . . The local industry is concerned how Mitsubishi will make profit at this high price. . . . Mitsubishi had been a 'sleeping lion' for about ten years . . . but they seem to have changed their policy. They seem to have been very aggressive this season."

- (August 8, 1989) "I have confirmed information that Trident has sold 8,000 to 10,000 tons Bristol bay sockeye 1/3 to Mitsubishi and 2/3 to Shin Nishoku, at \$3.25/lb. It is believed that Shin Nishoku had insisted lower price but was forced to accept 3.25 very high price as Mitsubishi interfered. . . . This must be a gamble."

- (August 23, 1989) "As said before, Toyo Reizo, 40-50% share owned by Mitsubishi, had had no salmon business before, and seem to even ignore profit on this lot if they can handle volume to express that they will be aggressive in salmon business in future."

Subsequently, Mitsubishi backed out of its contract with Trident, leaving Trident with a large quantity of unsold frozen salmon in Japan. Eventually Trident was able to sell the fish to Kyokuyo, at a much lower price than it had originally negotiated with Mitsubishi.

An interpretation of this episode which we think merits serious consideration is that an attempt by Mitsubishi to trod on turf controlled by other trading companies was beaten back; at least in part by driving salmon prices down to the point where Mitsubishi decided to rethink its strategy. If we acknowledge that negotiations between Mitsubishi and Trident began well before the August 8 date on the first memorandum, it is clearly possible that the sharp drop in Tokyo sockeye prices registered in July 1989 was engineered by the dominant trading companies partly to discourage the intrusion by Mitsubishi into one of their markets (and to punish Mitsuhashi and other spot buyers for their aggressive and very well publicized behavior). At the very least, the timing of events is suggestive.

¹³(...continued)

Nissho-Iwai, Tohmen, Kanematsu Goshu, and Nichimen Jitsugyo. Of these nine, Mitsui, Mitsubishi, Marubeni, and C. Itoh are by far the largest.

In summary, if one is to explain the price decline of July 1989, one must choose between reciting the mantra of "supply and demand" and the possibility that after seven years of self-imposed restraint certain of the signers of the 1982 consent decree used the EXXON VALDEZ oilspill as a cover story (directed mainly at American ears) for their attempt to extend and consolidate their control over the purchase of Alaska salmon. By financially wounding or even bankrupting companies such as Shin Nihon Global, and by thwarting the entry of rival Mitsubishi, the trading companies already entrenched in Bristol Bay may have sought to bring order (a quality much prized by the Japanese) to what had become a very disorderly market.

It is also worth noting the extreme displeasure voiced by the Japanese at the passage by the United States Congress of the 1988 Omnibus Trade and Competitiveness Act. The Act amended section 301 of the 1974 Trade and Tariff Act by ordering the United States Trade Representative to compile a list of unfair trade practices alleged by American companies. Under what have come to be called the Super 301 and Special 301 provisions, Congress is authorized to retaliate within a set period of time if alleged unfair practices are not eliminated. Japan, along with Brazil and India were the first three countries cited under the Act (May 1989). After being cited under the Act, Japan's leaders were in no frame of mind to take such "Aggressive Unilateralism" lying down.¹⁴

Finally, we should note that the reported demise after 1989 of several of the (relatively) small Japanese buyers of Bristol Bay sockeye has been offered as proof that competition in the American sense of the word is the order of the day in the Japanese seafood industry. Although, in one sense that statement is not wrong, it may greatly miss the point. It is more logical to conclude from our findings that, for a period of time in the 1970s and 80s, competition did (for a variety of reasons) exist, but a few large companies have managed to greatly reduce if not eliminate the competition through the exercise of their increasing oligopsonistic, if not monopsonistic market power.

Who Bore The Burden Of The Price Crash of 1991?

With the exception of the Bristol Bay ex-vessel prices which are season averages obtained from the Alaska Department of Fish & Game, the following price and exchange rate figures have been taken from pages A-28 and A-29 of THE JAPANESE SALMON MARKET¹⁵.

¹⁴ The words "aggressive unilateralism" are taken from a collection of readings on the economic effects of the 1988 Omnibus Trade and Competitiveness Act. See AGGRESSIVE UNILATERALISM: AMERICA'S 301 TRADE POLICY AND THE WORLD TRADING SYSTEM, (J. Bhagwati & H.T. Patrick (editors) (Harvester Wheatsheaf, New York), 1990

¹⁵ Alaska Department of Commerce and Economic Development, Division of Economic Development, February 1993

TOKYO WHOLESALE PRICE
FROZEN SOCKEYE SALMON

	***** TOKYO WHOLESALE *****			B' Bay
	<u>yen/kilo.</u>	x-rate <u>yen/\$</u>	Equivalent <u>\$/round lb.</u>	ex-vessel <u>\$/l .</u>
July 1990	1166	149.04	\$2.63	\$1.)
July 1991	836	137.83	\$2.04	\$0.)
August 1990	1095	147.46	\$2.49	\$1.59
August 1991	804	136.82	\$1.97	\$0.70

Prices for frozen sockeye stated in equivalent dollars per round pound fell an average of 21.6 percent between July/August 1990 and July/August 1991. Ex-vessel prices to fishers in Bristol Bay fell 35.8 percent over the same period.¹⁶ In other words, the price to fishers in Bristol Bay fell substantially more (in percentage terms) than did the wholesale price in Tokyo.

Of an average drop of \$0.56 (year-to-year) in dollar-equivalent Tokyo wholesale prices, \$0.39 or 70 percent was ultimately passed onto fishers. Recalling that initial offers to fishers in June 1991 were \$0.50 per pound and were only raised to \$0.70 per pound after refusal to fish and considerable opposition from the Governor of Alaska, it is clear that initially the intention was to make fishers bear the entire burden of the drop in Tokyo sockeye prices. Had the fishers actually been paid \$0.50 per pound they would have suffered a \$0.59 price drop from 1990, an amount precisely equal to the July 1991/July 1990 drop in the dollar-equivalent Tokyo wholesale price. This suggests the possibility that either the Japanese buyers of Bristol Bay sockeye or the on-site Bristol Bay processors reduced the burden of the price reduction on their own bottom line by passing more than a proportionate share of the price decline onto fishers.

The definition of "market power" implies the ability of the party wielding the power to extract a disproportionate share of the profits when times are good, and to avoid a disproportionate share of the losses when times are bad. The fact that fishers were initially asked to bear 100 percent of the decline in Tokyo wholesale prices and, in fact, bore 70 percent of the decline is a strong indication that Bristol Bay fishers are lacking in market power relative to those to whom they sell.

Of course, the dollar equivalent price per round pound is not the price paid to Alaska on-site processors, and so it remains possible that the price paid to the on-site Bristol Bay processors fell as much as the price to fishers. To clarify this issue we need

¹⁶ The equivalent price per round pound equals $.74 * (\text{yen/kilo}) / 2.2046 / \text{xrate}$. This calculation assumes 2.2046 pounds per kilogram and a 26 percent weight loss in processing.

to examine the 1990/1991 change in prices paid to processors by Japanese buyers of frozen sockeye salmon.

Definitive prices received by Bristol Bay processors often include payments received several months after the date of sale. This makes it difficult to determine exactly what prices are comparable to those shown in the table above. However, an examination of sales records subpoenaed for this investigation shows the following range of prices paid to Bristol Bay processors by Japanese buyers. The prices are F.O.B. Alaska for four-six pound frozen sockeye.

July 1990 \$ 2.10 - \$ 2.30 per pound

July 1991 \$ 1.45 - \$ 1.95 per pound

In other words, the prices recorded on July sales contracts suggest that Bristol Bay processors received prices in July 1991 that were on the order of \$0.55 per pound to \$0.85 per pound lower than they had received the previous year. This in turn suggests that the market power that was being felt by Bristol Bay fishers when they were first asked to accept \$0.50 per pound and then received \$0.70 per pound emanated from the Japanese buyers. The on-site processors who were the bearers of bad tidings to the fishers may have simply been conduits through which Japanese market power was funneled.

Our investigation uncovered a document tending to support this theory. In an agenda for a December, 1990 meeting in Japan between a Japanese buyer and a processor, the buyer repeatedly advocates cooperation between buyers and processors to reduce grounds prices for the 1991 season. The agenda concludes with the buyer's confident statement that: "We are assure (sic) that (the processor) as a leader of this industry can establish reasonable FOB prices by enforcing to control the grounds prices." The document accurately described, in advance, the 1991 emphasis on quality control, and it presaged the price crash of the 1991 season. Taken together with the circumstantial evidence gathered in this investigation, a strong inference can be drawn that some concerted effort was afoot in 1991 to drive down grounds prices, and that at least some Japanese buyers discussed those efforts with some processors in advance of the season.

At least one important conclusion comes out of all of this.

EVEN IF THE 1991 DROP IN TOKYO WHOLESALE PRICES CAN BE FULLY JUSTIFIED BY "SUPPLY/DEMAND" CONSIDERATIONS, IT REMAINS TRUE THAT THE DISTRIBUTION OF THE RESULTANT LOSSES AMONG JAPANESE BUYERS, BRISTOL BAY PROCESSORS, AND ALASKA FISHERS WAS CRITICALLY DEPENDENT UPON THEIR RELATIVE BARGAINING POWER. THE EVIDENCE IS THAT ALASKA FISHERS CERTAINLY RANK LOWEST IN THIS REGARD.

Why Did Prices Crash In 1991?

Here we offer what amounts to an informed conjecture, but little hard evidence. As previously stated, this investigation gathered documents from processors, publicly available publications, and interviews with others in the industry. We were not able to obtain documents or testimony directly from the foreign companies that buy frozen Bristol Bay salmon from the processors.

We begin our analysis with a series of questions:

If, indeed, a few Japanese trading companies were nearing a position of oligopsonistic control by early 1990 why did both Japanese and Bristol Bay sockeye prices crash in 1991? Could not the dominant companies have simply withheld supplies from the Japanese market and thereby slowed the decline in prices?

The SUPPLY/DEMAND answer to this question is that a combination of rising supplies of coho salmon from Chile, an abundant high seas catch, and large carryover inventories from previous years completely accounts for the price crash of 1991. In our opinion, these factors may explain why prices fell at least somewhat in 1991, but fail to explain why they fell so far and so fast and why the prices paid to Bristol Bay processors appear to have fallen by the full amount of the decline in Tokyo wholesale prices. We think there are several factors that show that the price decline of 1991 was deliberately accelerated and deepened.

First, consolidation of the frozen sockeye market on the Japanese side may not have been complete as of early 1991. Some of the spot buyers were still active in 1990 (in particular Shin Nihon Global, the company who employed the maverick spot buyer Hiranori Mitsuhashi, and Mr. Sudo, a Japanese buyer who is credited by many for changing the way salmon was bought during the 1980s, and for bidding up the prices). It is unlikely that the few entrenched trading companies would have been pleased to have the spot buyers continue their aggressive buying behavior in Bristol Bay very much longer.

Second, a very large high seas salmon catch hit the Japanese market in early 1991. This was the last season during which the Japanese would be allowed to legally harvest high seas salmon. The large high seas catch clearly put downward pressure on all salmon prices. (The high seas salmon represent the top of the market in quality and price.) In addition to the legal catch, however, there was apparently a significant influx of illegally caught high seas salmon. One company that has reportedly gone out of business after the crash of 1991 had been suspected of illegally purchasing high seas salmon from the North Koreans and from the Peoples' Republic of China (according to a July 1991 memorandum). With the 1982 consent decree set to expire, companies subject to it with a large share of the Bristol Bay market would clearly not have been happy had it become common knowledge in the United States that Japanese seafood buyers were violating the recently signed high seas salmon accord by illegally buying high seas salmon from other

countries. Punishment of illegal traders by depressing prices would not have been unprecedented.

Third, Trident Seafoods (owned by CONAGRA, a large American food manufacturer) was continuing to protest Mitsubishi's abrogation of their 1989 sales contract, and may have been the target of price retaliation that contributed to the price crash of 1991. It appears from a series of memoranda that, after first buying the 1989 fish that Trident had originally "sold" to Mitsubishi, Kyokuyo went on to also market large quantities of Trident salmon in 1990 and 1991 and on several occasions offered the Trident fish at what observers referred to as shockingly low prices. For example (October 19, 1990):

"Assistant manager of Kyokuyo's Sapporo office . . . and told him that Kyokuyo might be able to move some Trident fish at 850 level. . . . Some customers who had bought our fish have cancelled orders today after they heard Kyokuyo's extremely low price."

Also (October 24, 1990):

"(a representative) of Kyokuyo, Tokyo firmly told him . . . that Kyokuyo is working to sell Trident's fish without any risks for Kyokuyo."

Finally (October 26, 1990):

"heard from him (the representative of Kyokuyo) that Kyokuyo . . . decided to lower offer price substantially (for Trident fish) hoping that market would bottom and to see reaction."

From the documentation that is available it seems that Kyokuyo may have been taking advantage of the fact that other Japanese buyers were reluctant to handle Trident fish in the wake of Mitsubishi's rejection of their 1989 contract with Trident. Kyokuyo apparently had the fish on consignment and simply took a brokerage fee for their services. (See the above reference to "without any risks for Kyokuyo.") Certainly, sale of the Trident fish put some additional downward pressure on market prices and reduced Trident's potential profits.

Finally, the Japanese found themselves in September 1990 with an Indonesian company operating in their wholesale salmon markets. The company, Ikamuda, had closed the deal to purchase Ocean Beauty Seafoods from SEALASKA Corporation in September 1990. Along with Ocean Beauty's U.S. operations came a Japanese marketing unit, Kabushiki Kaisha SEALASKA Japan, now Kabushiki Kaisha Ocean Beauty. Although we have seen no evidence that would indicate the attitudes of players such as the entrenched trading companies toward the entry of an Indonesian firm into their home markets, our initial assumption would have to be that they were less than pleased.

Ikamuda apparently received considerable support from the Indonesian government in its negotiations with SEALASKA.

In summary, we can then identify four reasons why a price crash of the sort that occurred in 1991 may not have been unwelcome to and may have been nudged along by the dominant trading companies: (1) a desire to punish if not eliminate spot buyers such as Shin Nihon Global for over aggressive behavior in Bristol Bay, (2) a similar desire to punish a now bankrupt company for illegal buying of high seas salmon, (3) a willingness to let Trident fish be sold at low prices in retaliation for Trident's continued protestations of Japanese practices,¹⁷ and (4) unhappiness at the entry of a government supported Indonesian firm, Ikamuda, into the Japanese wholesale salmon market.

Although these four reasons hardly account on their own for the crash, they may explain why once prices started to decline, they fell so far and so fast. Losses were certainly incurred by Japanese buyers in 1991, but the losses would not have been unmanageable to the larger companies and may have been intentionally inflicted on the smaller buyers for the reasons cited above. The above discussed agenda, wherein the buyer exhorts the processor to cooperate with the buyers to drive down grounds prices shows that an overriding objective of some buyers was to drive down the prices as far as possible, and it shows a lack of qualms about using collusion to do it.

At this point a fact noted earlier bears repetition.

EVEN IF THE 1991 DROP IN TOKYO WHOLESALE PRICES CAN BE FULLY JUSTIFIED BY "SUPPLY/DEMAND" CONSIDERATIONS, IT REMAINS TRUE THAT THE DISTRIBUTION OF THE RESULTANT LOSSES AMONG JAPANESE BUYERS, BRISTOL BAY PROCESSORS, AND ALASKA FISHERS WAS CRITICALLY DEPENDENT UPON THEIR RELATIVE BARGAINING POWER. THE EVIDENCE IS THAT ALASKA FISHERS CERTAINLY RANK LOWEST IN THIS REGARD.

ECONOMIC INDICATORS OF PRICE FIXING BY THE JAPANESE

Because our investigation focused on Bristol Bay processors, very little hard evidence showing the existence of collusion (or the lack of it) on the part of the Japanese buyers is available. This should not be taken as grounds to believe that if price fixing occurred, only domestic processors are suspected or that, to the extent it might have occurred, domestic price fixing is the more serious problem. Indeed, our investigation strongly suggests that the domestic U.S. processors are now (post-1991 in contrast to the 1985-1988 period) simply price takers when

¹⁷ In the 1989 Japanese television documentary referred to earlier Chuck Bundrant was described as "fighting against the Japanese." The program itself had as one of its reported purposes to "show you closely how the U.S. and Japanese will fight for salmon."

"bargaining" with the Japanese, and that even though they may have the upper hand when dealing with fishers, there is relatively little surplus left to extract at that point.

There is strong circumstantial evidence, as shown by economic analysis, that the Japanese used their monopsonistic power (or at least oligopsonistic market power) to lower prices and exclude competition. The fact that both the price paid to Bristol Bay processors and the prices paid to Bristol Bay fishers fell in 1991 by nearly the entire amount by which the Tokyo wholesale price fell is a powerful indicator that they were able to wield their power successfully. (See the text table on page 16, above.) In a situation in which both Japanese buyers and American sellers had equal bargaining power, one would expect that some portion of the decline in wholesale prices would be passed onto suppliers, but not the entire amount, nor even nearly the entire amount.¹⁸

We believe on the basis of established Japanese business practices that the maintained hypothesis for purposes of Alaska policy formulation in fisheries markets (the hypothesis that guides policy until it is disproved) should be that Japanese trading companies typically work together when dealing with foreign suppliers. Space does not permit an extensive treatment of this point, but the following quotation from established investigators will at least make it clear that the point is not being made for the first time in this report.

"Yet when it comes to overseas transactions, where trading companies are often confronted with a common competitive threat or want to reach the same objectives, they forego their fierce rivalry and join forces. Even information is actively shared for mutual benefit, so long as it is not directly commercial and proprietary. In fact companies go so far as to form joint ventures abroad. This need to collaborate no doubt induces trading companies to cluster together in a given location overseas."¹⁹

¹⁸ To be a little technical, the neoclassical theory of supply and demand tells us that after a drop in the price received for something it sells, a firm will attempt to pass on the entire price decline to its suppliers. In general the fraction of the price decline which is passed on will depend upon the relative price elasticities of supply and demand in the market where the firm (in this case the Japanese buyer of Alaska fish) purchases its raw product. Only if the firm's suppliers (in this case the Alaska processors) are in a weak bargaining position would one expect to see all, or almost all, of the price decline passed on.

¹⁹ By way of example, a long time observer of the Bristol Bay market told us that sharing of technical information is common
(continued...)

(Kiyoshi Kojima & Terutomo Ozawa, JAPAN'S GENERAL TRADING COMPANIES, MERCHANTS OF ECONOMIC DEVELOPMENT, OECD Development Center, Paris 1984) page 32.²⁰

A 1992 incident involving two Japanese owned Bristol Bay processors may be illustrative of this type of cooperation. According to reports and testimony, the two processors simultaneously sold their early Bristol Bay production, in Japan, at a price substantially below the then prevailing market rate. Before the sale, Bristol Bay sockeyes were selling at a relatively strong price of about 1,060 Yen per kilogram. The sale at below market rates had the effect of depressing Bristol Bay sockeye prices from 1,060 yen per kilogram to about 900. Since the Japanese owned processors were presumably selling the early production to their parent companies (presumably under orders from the parent), the parent companies did not lose money in the transaction, and presumably benefitted from the lower market price for frozen sockeyes that the dumping episode caused. As a result of these transactions, the prices at which the salmon were dumped became the new prevailing price, and Japanese buyers subsequently refused to pay Bristol Bay processors a price above that level for the rest of the season. According to testimony, this was not an isolated incident.

A brief review of certain Japanese institutions and business practices may help one to understand the mistakes that can be made by analyzing Japanese behavior in an American framework. Much of the following has been drawn from a variety of sources including but not limited to E.J. Lincoln, JAPAN'S UNEQUAL TRADE (Brookings Institution, Washington D.C., 1990), H. Patrick and H. Rosovsky, ASIA'S NEW GIANT (Brookings Institution, Washington

¹⁹(...continued)

among Japanese companies in Bristol Bay. He believes that Japanese technicians, placed in processing plants pursuant to contracts between the Japanese buyers and processors for the preparation of sujiko (salmon roe), use their presence in the plants to painstakingly compile information on how much salmon is being processed in each plant, and how it is processed -- canned or frozen (round or head off). This information is then shared among the Japanese companies, and enables them to make well informed, coordinated pricing decisions.

²⁰ The Organization For Economic Cooperation and Development (OECD) is an international organization formed by treaty to promote economic growth and development in its member countries, which are: Australia, Austria, Belgium, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Luxembourg, the Netherlands, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

D.C., 1976) and the publication by K. Kojima and T. Ozawa cited above.

The principal way the Japanese business environment differs from that in the United States is in the primacy of large business. The Japanese government tends to work closely with big business to the semi-exclusion of consumers and independent small business. This contrasts sharply with the United States where great emphasis is placed on consumer protection and the development of small business. Despite the efforts of the post World War II American occupying forces in obtaining anti-monopoly legislation, a large number of legal cartels exist in Japan. By the mid-1970s their number exceeded nine hundred, and it remains large today. Ostensibly, these cartels can be formed for only certain purposes. DEPRESSION CARTELS are allowed in those industries which are deemed to be in temporary recession. Other legal cartels which have been formed include RATIONALIZATION CARTELS, EXPORT CARTELS, IMPORT CARTELS, CARTELS UNDER MEDIUM AND SMALL ENTERPRISES ORGANIZATION ACT, CARTELS UNDER ENVIRONMENT SANITATION ACT, AND CARTELS UNDER COASTAL SHIPPING ASSOCIATION ACT.

In actual practice, implicit cartels may be more directly relevant to the problem faced by Alaska interests. Edward Lincoln reached the following conclusion in his recently published study.

"Japanese behavior patterns provide good reason to be discouraged about how fast and how far Japanese trade behavior will change. The close social bonds between established buyers and sellers, the strong sense of hierarchy (in which foreign products and firms are relegated to low priorities) explicit or implicit cartels (often with informal government approval or encouragement) and the sense that at the broadest level Japan is a group to be protected from foreign products are daunting obstacles to be overcome."

(JAPAN'S UNEQUAL TRADE, op cit, pages 99-100)

Finally, professors Kojima and Ozawa make the point as clearly as it can be stated.

"Japan's major trading companies enjoy monopsonistic positions in securing vital industrial resources and foodstuffs from overseas, partly as a result of the commercial tradition dating back to the Meiji period."

(JAPAN'S GENERAL TRADING COMPANIES, op cit, page 62)

Probably the outstanding feature of Japanese industrial structure which is of interest here is the keiretsu, or enterprise group. Successors to the pre-World War II zaibatsu, these enterprise groups consist of a large number of companies linked by

mutual stock ownership, and generally centered about a major bank. The six largest keiretsu which together with the nine largest trading companies dominate the Japanese economic landscape are Mitsui, Mitsubishi, Sumitomo, Fuyo, Sanwa, and Ikkan. Nothing like the keiretsu and their group mentality exists in the United States or, for that matter, is legal in the United States. Interlocking ownership and directorates such as that found in the keiretsu were prohibited in the United States by the Clayton Act of 1914.²¹

The point of this brief recitation of Japanese emphasis on big business, group formation, and collusive behavior is simply this: To believe that companies such as Mitsui and Marubeni somehow change their spots when buying Alaska seafood is naive and probably detrimental to the Alaskan economy. And yet this is indeed the argument put forth by many Alaska analysts, and forms at least an implicit basis for policy decisions made by governmental institutions and groups such as Alaska Seafood Marketing Institute. Based on our investigation, we suggest that for the purposes of determining an appropriate Alaska policy toward seafood markets, the operative assumption should be that our Japanese customers behave toward us in a manner which is entirely consistent with how they behave toward all of their other trading partners.

IS THERE PRICE FIXING BY BRISTOL BAY PROCESSORS?

At the outset, we wish to make it clear that we found no smoking gun evidence proving that any specific price fixing agreements have ever been made between Bristol Bay processors. But our investigation found that the processor level of the Bristol Bay market is very much an oligopoly because the same few firms consistently control 50% or more of the annual production. As discussed below, it does not take an express agreement between oligopolists to show an antitrust violation, if certain other practices exist among the oligopolists.

Since 1975, the first year of limited entry into the Bristol Bay sockeye salmon fishery, there have never been more than seventy-two fish buyers and never fewer than one thousand six hundred salmon permits fished. Between 1985 and 1990 the six largest buyers of salmon from Bristol Bay fishers accounted each year for at least 51 percent of the total pounds processed. In most of those years, four firms accounted for 50% of production, which economists generally agree amounts to an oligopoly. The text table shows the percentages of the total Bristol Bay harvest processed by these six largest processors.

²¹ For a discussion of the Japanese economy and business practices from a somewhat sympathetic analyst one should read Takatoshi Ito, *THE JAPANESE ECONOMY* (MIT Press, Cambridge Mass.) 1992. But even this author makes it very clear that collusive practices which are illegal in the United States are common in Japan.

Share of Bristol Bay Sockeye Production
(percent of total production)

<u>Processor</u>	<u>1985</u>	<u>1986</u>	<u>1987</u>	<u>1988</u>	<u>1989</u>	<u>1990</u>
A	16.4	10.3	13.6	6.4	8.9	10.1
B	9.8	8.9	10.5	6.7	7.4	7.5
C	4.3	9.7	12.0	2.2	5.8	6.9
D	16.0	10.5	9.6	11.2	13.9	NA
E	20.9	11.5	13.9	14.0	13.3	16.5
F	NA	NA	NA	17.4	9.4	15.8
TOTAL	<u>67.4</u>	<u>50.9</u>	<u>59.6</u>	<u>57.9</u>	<u>63.7</u>	<u>56.8</u>

SOURCE: Compiled from data provided by the Alaska Department of Fish & Game, Commercial Fisheries Entry Commission

The majority of the processors active in Bristol Bay purchase salmon from fishers and then either freeze for further sale to the Japanese, or can for further sale under either their own label or under that of a larger retailer. A small percentage of Bristol Bay sockeye is sold fresh or cured. With few exceptions, Japanese buyers obtain their fish from a domestic Alaska processor, some of which are wholly or partially owned by the buyers.

It is clear from the table above that a small number of processors is responsible for a large proportion of the purchases from a large number of Bristol Bay sockeye salmon permit holders. Concentration of this sort, while not in itself proof of collusion or price fixing, greatly facilitates oligopolistic or oligopsonistic coordination of prices. In particular when a small and cohesive number of buyers confronts a large and disorganized group of sellers, the temptation to wield market power by controlling prices can be very great.

It is worth emphasizing that in an oligopoly, only a few firms need to coordinate their activities for market power to exist. In this investigation, we saw no evidence of any wrongdoing, or even suspicious activity, by most of the processors. Most processors simply follow the lead when setting prices, and have neither the means nor the inclination to do otherwise.

In addition to the fact that a small number of processors buy between one-half and two-thirds of the harvest each year from a large number of sellers, a feature which enables price fixing but does not prove it, there is direct statistical evidence that prices have been manipulated by processors in the Bristol Bay ex-vessel market. The first piece of statistical evidence is the fact noted above that the initial 1991 prices offered to Bristol Bay fishers fell by the entire amount of the 1990-1991 average decline in Tokyo wholesale prices. A higher price was paid only after the Governor of Alaska intervened in negotiations.

The second is the fact that over the 1975-1991 period the within season prices paid to fishers for sockeye salmon (ex-vessel prices) almost always rose during the season regardless of the

relationship between the forecast of run size and the actual size of the run.²² In years when the actual run came in higher than the forecasted run, one would expect competitively set prices to decline as it became clear that the run was larger than anticipated. That does not happen even in years when prices on the Tokyo wholesale market did decline. The implication is that the Bristol Bay processors with market power have long used their power to control prices in a way that forces fishers to insure processors against ever finding out that they have paid too high a price for early season salmon.

The issue of always rising within season ex-vessel prices has been discussed in detail by David Reaume in a paper entitled "On The Financial Risk Borne By Bristol Bay Fishers."²³ The original version of the paper based its analysis on prices provided by only one Bristol Bay salmon buyer, and was criticized for that fact. Information obtained from Bristol Bay processors during this investigation verify that even the prices paid by the large processors rise consistently within season. This issue will be discussed in additional detail in the next section of this report. One point made there is that post-season bonuses paid sporadically to fishers since 1985 do not appear to compensate for the lower prices received by fishers in the first one-third to one-half of the season. This means that wealth is transferred from the fishers to the processors in a way that would not occur in a competitive market.

In an interesting and important contribution to our understanding of collusive behavior, Steven C. Salop has identified a number of "Practices that (Credibly) Facilitate Oligopoly Coordination."²⁴ The practices which he identifies are designed to promote (1) information exchange, and (2) incentive management so that collusive agreements can be established and enforced. He lists the following practices as "classic examples of information exchange."

- inter-seller verification of price quotations
- advance notice of price changes

²² The only exception was in 1989 the year of the July price collapse and the EXXON VALDEZ oilspill.

²³ Available upon request from the author or from the Anchorage office of the Alaska Attorney General.

²⁴ Steven C. Salop, Georgetown University Law Center, the chapter so titled appears as chapter 9 in Stiglitz, J.E. and Mathewson G. Frank, NEW DEVELOPMENTS IN THE ANALYSIS OF MARKET STRUCTURE, (MIT Press, Cambridge, Mass.) 1986 As mentioned in an earlier footnote, the 9th Circuit has recognized that many of these practices, when shown to exist together, can be sufficient proof to support a finding of an antitrust violation. Wilcox v First Interstate Bank of Oregon, 815 F2d 522, 524-5 (9th Cir. 1987).

Examples of incentive management devices include:

- most favored customer clauses
- relative value scales
- product standardization

Techniques employed in Bristol Bay which are not identified by Salop, but which are effective in maintaining oligopsonistic and oligopolistic price agreements, and which would be considered by the courts are:

- the payment of bonuses to fishers who "loyally" deliver 100 percent of their catch to a particular processor
- custom processing agreements between processors
- opportunities to meet to coordinate anticompetitive strategy

The presence of such practices suggests the possibility that some sort of collusive behavior may be occurring, but does not prove that it does beyond a reasonable doubt. Even so, from the point of view of showing that the preponderance of evidence points to concerted price coordination among some large processors as having taken place, their presence in Bristol Bay is important to this report.

In understanding the discussion below, one must distinguish between oligopoly (few sellers) and oligopsony (few buyers). There is reason to believe based on circumstantial evidence obtained in the course of the investigation that Bristol Bay processors have attempted to set prices both in the market in which they sell salmon and in the market in which they buy salmon. In particular, during the 1985-1988 time period they may have been successful both in negotiating and maintaining higher prices from Japanese buyers and in paying a lower than competitive price to fishers. In other words, during that period they may have been successful both as price controlling oligopolists and as price controlling oligopsonists. Since 1989, it appears that their ability to set prices when dealing with Japanese buyers has been significantly reduced. Indeed, it now appears that for all intents and purposes the Bristol Bay processors are simply price takers when it comes to selling their fish.²⁵ However, the ability to set prices in the Bristol Bay ex-vessel market does not appear to have changed. What is more, the incentive to reduce ex-vessel prices may

²⁵ The switch from price setter to price taker after 1988 may help to explain the sale of Ocean Beauty by SEALASKA and also the recent announcements that Wards Cove and Icicle are up for sale.

be greater now that the prices processors receive from the Japanese are much lower than they were in the mid to late 1980s.

The following practices have been used commonly by Bristol Bay processors, and are relevant to their ability to coordinate pricing strategy. We discuss each in turn.

Verification Of Price Quotations

Several processor representatives testified under oath that they routinely telephone each other in order to verify ex-vessel price changes which have either been reported by fishers, or over the local radio station. Verification of ex-vessel price changes shortens or eliminates detection lags. "Detection lag" means the time lag between an act of price cheating and its detection by other members of the group engaged in a price fixing conspiracy, if one exists. The sooner cheating is discovered, the less likely it is that the cheater will individually profit from breaking the price agreement.

The effect of this practice is to reduce the chances that a particular processor's fleet of fishers will deliver its fish to processors offering higher prices.

Advance Notice Of Price Changes

Two of the six largest Bristol Bay processors post ex-vessel price changes when they make them, which are then routinely verified by other processors within one or two hours. During the 1991 season, rumors of an increase in the offered price to fishers from \$0.50 to \$0.70 per pound were circulated for at least twenty-four hours before taking effect. As in the case of the verification of price changes, advance notice serves to shorten or eliminate detection lags. In addition, as practiced in Bristol Bay, the advanced posting of price changes may allow price leader(s) to notify the price followers that a change is forthcoming.

Most Favored Customer Clauses

Such clauses in sales contracts guarantee customers the lowest price charged to other customers. They are similar to the most favored nation clauses which appear in international bi-lateral trade agreements.

Members of a price fixing oligopoly have an incentive to offer their customers such clauses because they provide a disincentive for members of the price fixing ring to cheat by offering lower prices. In effect, the oligopoly's customers are given an incentive to police the price structure. Such clauses are found in the sales contracts negotiated between Bristol Bay processors and Japanese buyers. For example clauses such as the following commonly appear in sales contracts.

"Above minimum guaranteed prices shall be adjusted under the contract, to the major Bristol Bay

salmon processors' actual selling price to their major buyers of the equivalent quality product."

Although most favored customer clauses appeared in contracts throughout the 1985-1991 time period, their importance to Bristol Bay processors as a coordination device may have evaporated in recent years. They may exist now solely for the benefit of the Japanese buyer.¹⁶

Relative Value Scales and Product Standardization

A relative value scale assigns prices to different grades of a product in proportion to the price on a reference grade. Relative value scales increase the chances that a buyer of one grade will detect that a buyer of another grade has paid a lower price. Again, the oligopoly's customers are enlisted to police the price fixing agreement. A second effect of a relative value scale is to limit the scope for non-price competition by pre-specifying prices for all grades.

Product standardization also increases the chances that cheating will be detected and also limits the scope for non-price competition by clearly defining the grades to which different prices are to be applied.

Relative value scales and product standardization facilitate both oligopolistic and oligopsonistic price fixing.

Loyalty Bonuses

All of the major Bristol Bay processors pay a bonus per pound of salmon delivered to members of their fleet of fishers who deliver 100 percent of their catch to them. The following is a typical notification to fishers:

¹⁶ Further support for the proposition that the processors have lost bargaining power against the Japanese buyers is found in contracts in effect during the period 1985-87 where the processors were guaranteed an increase in the price paid them by the importer for each increase in the price paid by the processor to the fishers. Testimony from processors is that the Japanese buyers no longer are willing to offer these terms. There is no doubt that the processors benefited from such contracts while they were available, because they passed the risk of grounds price increases on to the buyers. Such contracts were probably an illegal restraint of trade because they typically had an additional requirement that the processor keep the price paid to fishers at a level no higher than the average price paid by several other named processors, which restrains trade by forcing price parallelism on the market, and discouraging price competition. Such clauses further illustrate the lack of bargaining power of the fishers during that era.

"--- will pay all our Bristol Bay permit holders an incentive for delivering all of your 1991 salmon to our tenders and plants."

"To be eligible to receive this incentive, we must receive all your 1991 production except for overlimit fish or fish caught in areas not regularly serviced by our tenders."

The loyalty bonus provides fishers with a disincentive to seek out higher prices from other buyers. This is particularly so in light of the fact that most fishers believe that failure to deliver all or most of one's catch to one's processor will result in having one's non-cash benefits eliminated. Non-cash benefits include but are not limited to boat storage, bunk and messhall privileges and prompt off-loading of one's catch.

Custom Processing Agreements

Bristol Bay processors routinely can and freeze the fish of other processors. The written contractual agreements specify prices to be paid and other details, and represent an ideal way in which to convey to one another information on costs of processing and on the prices received from buyers. Although we found no evidence that they have been used as such, custom processing agreements also provide a vehicle for making side payments, that is, payments from one processor to another which would enable the group of oligopolists to divide a season's profits in a pre-arranged manner.⁷⁷

Opportunities to Meet and Coordinate Anticompetitive Strategy

The final ingredient mentioned by courts is the opportunity for the companies to meet and coordinate strategy. Testimony in this investigation shows that executives from four processors whose combined market share frequently accounts for 50% of the market regularly take vacations abroad together. While there is no evidence that they discuss business strategy during those vacations (in fact, they deny doing so), the opportunity at least exists, and that fact is a "plus factor" of the type the courts consider important in proving the existence of a price coordinating oligopoly.

As with most industries, most processors belong to a trade association, the Pacific Seafood Processors Association, which has regular meetings. This association has an antitrust compliance

⁷⁷ For example, processor A may pay processor B an additional \$.05 per pound for custom processing (over and above the price that might otherwise be agreed upon) in compensation for processor B's agreement to abide by a previous collusive agreement. Again, we emphasize that no evidence that custom processing agreements have been used for this purpose has been found, but the opportunity presented by them is legally relevant.

program, and an attorney attends their meetings to warn them in the event that the discussion enters forbidden territory. But the meetings nevertheless bring processors together in a common venue, and the opportunity exists for after hours meetings among processors, when the antitrust compliance lawyer might not be present. Again, while these facts do not prove price fixing, courts have been willing to infer the existence of at least implicit price fixing agreements under similar circumstances.

Summary

There is circumstantial evidence consistent with a finding that some of the major processors in Bristol Bay sought to fix prices both in the markets in which they sell and in the market in which they buy. A few of the processors can, given their combined market share of approximately 50%, wield oligopsonistic market power, which makes it possible to influence prices without the agreement of the other processors, who have no choice but follow the market price established by those wielding the market power. Between 1985 and 1988 the few large processors appear to have been successful in maintaining and possibly even raising prices charged to Japanese buyers of frozen salmon. In so doing however, they may have stimulated two large Japanese trading companies to come together as a countervailing force that now dominates the market for frozen Alaska salmon. With regard to fixing prices paid to fishers (ex-vessel prices): there is evidence that some of the larger processors (but certainly not all of them) have engaged in conduct that courts have found sufficient to infer at least an implicit price fixing agreement. The economic data indicate that they may have been partially successful in efforts to manipulate prices to their advantage. There is evidence to believe that those efforts continue today, although given the superior market power of the Japanese buyers, there is not much extra that can be extracted from the fishers in recent years.

In the next section of this report we estimate the costs to Alaskans of price fixing behavior both by the Bristol Bay processors and by the dominant Japanese trading companies.

COST ESTIMATES

If the SUPPLY/DEMAND hypothesis is correct and there is no collusive market power being wielded in Bristol Bay by either the Japanese buyers in their dealings with processors, or by the processors in their dealings with fishers; then the cost of collusion is zero. Briefly put, where there is no collusion, there is no cost of collusion.

The assumption of no collusion and, therefore, no cost of collusion governs Alaska fisheries policy today. Under the SUPPLY/DEMAND hypothesis all of the players are equally impotent. The fishers received low prices in 1991 because, in the language of that hypothesis, the fishers' supply curve of sockeye salmon is a vertical straight line. With the fishers' supply curve a vertical straight line fishers are not only price takers as individuals, but

also collectively. The vertical supply curve is taken as a datum, as an immutable fact of life that the fishers must simply learn to live with and cannot hope to change.

In keeping with this assumption fishers are told that only if the final market demand for salmon is increased (by, say, the actions of the Alaska Seafood Marketing Institute) can they expect to receive a higher price per pound for their efforts. The policy recommendations forthcoming from the SUPPLY/DEMAND school of thought are then: (1) develop new products, (2) improve product quality, and (3) develop new markets. The SUPPLY/DEMAND school never recommends that Alaska take direct action to improve the bargaining position of fishers vis a' vis processors or processors vis a' vis their Japanese customers.

In contrast, if the Japanese buyers of Alaska salmon wield collusive market power in their dealings with processors, or if the processors do so in their dealings with fishers, then direct action to level the playing field becomes a priority. The improvement of product quality and the development of new products and new markets remain important goals but in addition two new goals are added: (1) to extract the maximum dollar return from Alaska's salmon resources by actively intervening to counterbalance Japanese market power, and (2) to eliminate practices that artificially and illegally reduce the price paid to fishers.

In this section of the report we present estimates of (a) the dollar cost to Alaska processors and fishers of their inability to negotiate higher prices for Bristol Bay sockeye from Japanese buyers, and (b) the additional dollar cost to fishers of their inability to bargain equally with Bristol Bay processors. The estimates are somewhat broadbrush and therefore should be viewed only as suggestive of the amounts involved.

A point needs to be made before proceeding. Our estimates are made within the framework of neoclassical supply and demand analysis because we wish to show that even using conventional analytical tools one can reach the conclusion that collusion may indeed matter to Alaska. We do not, however, find this a very fruitful way to proceed in general. A framework for analysis which may prove more useful than neoclassical supply and demand theory is the modern theory of bargaining as developed in the context of the theory of games. Analysis of the relative positions of Japanese buyers, Alaska processors, and Bristol Bay fishers in a bargaining framework may lead one to ask more pertinent questions than are suggested by the framework offered by neoclassical supply and demand. There is no space for an extended treatment here, but it is worth noting, for example, that analysts working within bargaining models have tended to ask how one side or the other can go about increasing its bargaining strength, and what sort of strategic

threats are credible.²⁸ These are questions that almost never occur to a supply/demand theorist operating strictly within that framework.

The Cost To Alaska Of Japanese Cohesiveness

For every ten cents per pound extra that Bristol Bay processors receive for frozen sockeye their collective net revenue from sales of frozen sockeye goes up by between \$8 million and \$12 million, depending upon the volume of sales. If this increment is distributed equally between processors and fishers, the collective revenue of each group goes up by between \$4 million and \$6 million.²⁹ Conversely, for every ten cent per round pound reduction in price the net revenue of Alaska fishers and processors from sales of frozen sockeye goes down by \$8 million to \$12 million.

Although there is no way to know for certain what Alaska processors and fishers might have been paid in 1991 and 1992 in the absence of collusion, some rough estimates can be made. We know, for example, that the wholesale price of sockeye salmon in Japan over the January 1991/October 1992 period averaged \$2.56 per pound and that its standard deviation was \$0.41 per pound.³⁰ A variation month to month of ten cents per pound represents, therefore, a change of only one-fourth of one (month-to-month) standard deviation and for that reason might reasonably be considered small and well within the bounds of random variation. If so, there is reason to believe that an improvement in bargaining strength on the Alaska side of the negotiations over salmon prices might readily yield an increase in revenue to Alaska interests of at least ten cents per pound or some \$8 million to \$12 million per year. Indeed, by this standard a gain in revenue of \$20 million to \$30 million per year is plausible.

In a market in which the buyer exercises monopsonistic or oligopsonistic power the amount paid for a good or service falls short of the price that would be paid in a fully competitive market.

²⁸ For example, a strike by fishers is not a credible threat because processors know that fishers have no financial resources to offset the loss of fishing income. This, in turn, leads one to ask how fishers might go about accumulating such resources. The supply/demand framework could encompass such considerations but it does not suggest them.

²⁹ This calculation is based on a 95 percent confidence interval for harvest levels, calculated from data for the time period 1979 through 1991, and assumes a 26 percent weight loss in processing at Bristol Bay. The mean harvest of Bristol Bay sockeye 1979-1991 was 136,424 thousand pounds with a sample standard deviation of 40,509 thousand pounds.

³⁰ calculated from data printed on page A29 of THE JAPANESE SALMON MARKET: AN INTRODUCTION FOR ALASKANS (Alaska department of Commerce & Economic Development, Juneau) February 1993

Traditional analysis of supply and demand tells us that the amount by which it falls short depends, in general, upon the price elasticity of the supply curve.³¹ In the special case where the supply curve is vertical the amount by which price falls short of the competitive price is determined solely by the monopsonist.³²

In contrast, if the market in which Alaska processors sell to Japanese buyers were really competitive, the processors' supply curve would not be vertical. Under these conditions we can calculate the amount by which the actual price falls short of the competitive price. Given a reasonable estimate of the price elasticity of the processors' supply curve in a competitive market (say between 0.1 and 10 over the range defined by the competitive price at the high end and the monopsony price at the low end), then the competitive price would be at least 10 percent higher than the monopsony price and possibly much higher.

Translating this into dollar estimates, if the monopsony price paid to processors for frozen sockeye were \$1.50 per pound, a middling figure for the 1991 Bristol Bay season, the price received by processors from sales of frozen sockeye under a competitive regime would be at least \$0.15 per pound higher and revenue at least \$12.5 million higher than under monopsony.

It would be ideal if we could be more precise about these estimates, but the information needed to make such calculations is not available. What we can say is this. It appears that the amount at stake is significant, conservatively on the order of \$10 million to \$20 million per year or more. This seems to us to be a large enough amount to justify further inquiry into the question of competitive balance in the market for Alaska salmon. In particular, to assert, as one Alaska economist has been quoted in the press as asserting, that even if the Japanese are guilty of collusion "it does not matter very much," is, in our opinion, to go too far. The estimates offered here, crude as they are, indicate that the existence or lack of existence of Japanese collusion may matter a great deal.

The Cost To Fishers Of Collusion By Processors

The following discussion has been condensed from a previous paper available upon request.³³ Under the assumption that

³¹ The equation is $CP/MP = A*(1 + 1/E)$ where CP/MP is the ratio of the competitive price to the monopsony price, A is a positive factor which tends to infinity as E tends to zero, and E is the price elasticity of the supply curve.

³² This is approximately the case in the ex-vessel market where fishers sell to processors. However, it need not remain the case if appropriate policy is devised.

³³ Reaume D.M. & Lew W., "On The Financial Risk Borne By Bristol Bay Fishers," September 1992

bargaining power is equally distributed between buyers and sellers (Assumption 1), and the further assumption that all agents negotiate in light of an unbiased forecast of the number of salmon to be harvested (Assumption 2), the ex-vessel market clearing price (price to fisher) of Bristol Bay sockeye salmon will vary inversely with the expected harvest level, if all other factors are held constant.

This is a minimal prediction of the theory of downward sloping demand. Although additional factors such as unsold stocks of salmon from previous harvests, the volume supplied from other sources, and foreign exchange rates also play a role in determining the ex-vessel price of Bristol Bay sockeye, once they have been accounted for, the graph of the partial relationship between price and expected harvest in the Bristol Bay ex-vessel market should be a downward sloping curve. Evidence which shows this relationship to be upward sloping casts doubt on the validity of either Assumption 1 or Assumption 2.

Table -2 shows our basic data. Column one and two compare (a) the forecasts of the annual run of Bristol Bay sockeye made by the Alaska Department of Fish & Game in the spring of each year; to (b) the actual run size as eventually tabulated. The actual run size is itself an estimate made by adding the number of fish commercially harvested and reported on ADF&G "fish tickets" to an estimate of the number of fish escaping into spawning streams. The prices shown in the table above are within-season prices paid to fishers by a small cash buyer, Oceanic Seafoods.²⁹

TABLE -2
RUN SIZE, RUN FORECAST, & PRICES
BRISTOL BAY SOCKEYE SALMON

	RUN, MILLIONS OF FISH		PRICES, \$ PER LB.		
	ADF&G Forecast	Actual	Open	Mid	Close
1975	12.9	24.2	NA	NA	NA
1976	12.0	11.5	NA	NA	NA
1977	8.4	9.7	NA	NA	NA
1978	11.5	19.9	NA	NA	NA
1979	22.7	39.9	NA	NA	NA
1980	54.5	62.5	0.35	0.40	0.40
1981	26.7	34.5	0.75	0.80	1.00
1982	34.6	22.2	0.60	0.60	0.80
1983	27.1	45.9	0.65	0.70	0.70
1984	31.1	41.1	0.60	0.70	0.85
1985	34.7	36.9	0.85	0.80	1.15
1986	22.0	23.7	1.00	1.30	1.65
1987	16.1	27.5	NA	1.35	1.35
1988	28.3	23.4	NA	1.75	2.25

²⁹ The tendency for within season prices to rise is the rule, not the exception. Price data obtained during this investigation shows that the same pattern obtains for the largest processors as well.

1989 30.0 44.0 1.25 1.05 1.05

DATA SOURCES: Run size & forecast: ADF&G, Division of Commercial Fisheries, special tabulation. Prices: Oceanic Seafoods (obtained by Werner Lew)

NOTE: The dates applicable to prices vary season to season and are given in Appendix Table AI of Reaume & Lew, op cit.

In eight of the ten years 1980-1989 for which thin-season price data were collected, the actual run came in greater than the ADF&G forecast. In only two of these ten years (1982 and 1988) did the actual run come in lower than the forecast. If over this period both fishers and fish buyers had accepted the ADF&G forecast as unbiased, and if fishers and fish buyers were of equal bargaining strength, one would expect a certain symmetry in the relationship between the behavior of prices during the season, on the one hand, and the level and direction of run forecasting error, on the other. In particular, one would expect that in the eight years when the run came in higher than the forecast that prices would fall in response to the information that an excess supply was developing relative to pre-season expectations. The only time this occurred was in 1989, the year of the July price collapse discussed above. ("Why Did Prices Fall In July 1989?") In the remaining seven instances wherein the ADF&G forecast subsequently proved to be too low, prices steadfastly rose during the season even though in four of these seven cases (1981, 1983, 1984, and 1987) the absolute error of forecast exceeded 20 percent.

Comparison Of Tokyo Wholesale and Bristol Bay Ex-vessel Prices

One might argue that Bristol Bay sockeye prices simply mimic seasonal trends in Japanese wholesale prices. If so, the explanation for the persistent within season increases in Bristol Bay prices would be found by examining the determinants of Japanese wholesale prices. Japanese data are relevant because the Japanese wholesale market is the primary market on which Bristol Bay frozen and fresh sockeye salmon are sold once they leave Bristol Bay.

Table -3 shows the behavior of Tokyo wholesale sockeye salmon prices during the critical months of June and July. Presented there are prices stated in yen per kilogram. These are then converted to prices stated in dollars per pound using the monthly average yen/dollar exchange rate and a volume conversion factor of 2.2046 pounds per kilogram.

Over the sixteen year 1975 through 1990 time period, the Tokyo wholesale price of frozen sockeye (converted to U.S. dollars per pound) rose seven times between June and July, fell eight times and remained unchanged once. (Recall that the Bristol Bay sockeye run begins in mid to late June and is largely over by the end of the third week in July.) The sample mean change in this price from June to July is -\$0.09 per pound. This contrasts sharply with the mean change in price of +\$0.32 per pound between the opening and closing Bristol Bay ex-vessel prices.

TABLE -3
 WHOLESAL PRICE OF FROZEN SOCKEYE SALMON
 TOKYO, JAPAN

	***** JUNE *****			***** JULY *****		
	<u>ver./kg</u>	<u>xrate</u>	<u>\$/lb.</u>	<u>ven/kg</u>	<u>xrate</u>	<u>\$/lb.</u>
1975	1161	293.45	1.79	1164	296.38	1.73
1976	1293	299.19	1.96	1226	294.64	1.89
1977	1774	272.34	2.95	1320	264.86	2.26
1978	1688	213.93	3.58	1742	199.60	3.96
1979	1710	218.58	3.55	1583	216.50	3.32
1980	1001	217.39	2.08	1160	221.08	2.38
1981	1455	224.11	2.94	1587	232.26	3.10
1982	1302	251.20	2.35	1453	255.03	2.58
1983	1149	240.03	2.17	1151	240.52	2.17
1984	1240	233.57	2.41	1414	243.07	2.64
1985	1883	248.84	3.43	1496	241.14	2.81
1986	1015	167.54	2.75	1104	158.61	3.16
1987	1300	144.55	4.08	1193	150.29	3.60
1988	1470	127.47	5.23	1500	133.02	2.10
1989	1525	143.98	4.30	1130	140.42	3.81
1990	1179	153.70	3.48	1166	149.04	3.55
1991	930	139.75	3.02	836	137.83	2.75

NOTE: Tokyo prices supplied by Clinton Atkinson, Seattle fisheries consultant. Exchange rates from the FEDERAL RESERVE BULLETIN, (Board of Governors, Federal Reserve System).

One should note also that Tokyo price fell between June and July in three of the six years when Bristol Bay prices perversely rose during the season. Early, the behavior of Tokyo wholesale prices over the course of the Bristol Bay salmon run suggests that the pronounced tendency for Bristol Bay ex-vessel prices to rise over the same period cannot be explained by simple reference to the Tokyo market.

Two possible explanations for the "perverse" behavior of Bristol Bay ex-vessel prices come to mind. The first is that the ADF&G forecast of run size is known to be negatively biased and, therefore, is not the forecast actually used in setting pre-season prices. In this case the perverse results might either disappear or lose significance if examined in light of the (unreported) actual forecasts of run size. This possibility has been examined. Replacement of the biased ADF&G forecast by an unbiased forecast does not change the results.

The second explanation is that bargaining power is not equally distributed between fishers and fish buyers, so that one should not necessarily expect to see prices and quantities behave in a competitive manner. If this is true, then one can tentatively conclude that Bristol Bay fishers insure processors against unexpectedly large runs because they lack the bargaining

power to achieve a more favorable (to them) result. It is this explanation which appears to be the more plausible.

An Estimate

Large quantities of sockeye salmon are sold by fishers early in the Bristol Bay run before the full size of the run is known with any degree of certainty. For example, the 1989 sockeye harvest is now estimated officially to have weighed 140.5 million pounds. Escapement tallies published by the Alaska Department of Fish & Game show that the 1989 run began June 21 and by July 1 approximately 25 percent of the escapement had occurred.³⁰ This is typical timing. If initial prices are set on the basis of a pre-season forecast of the size of the run, how many dollars are at risk if the pre-season forecast is in error? Although available data do not allow one to be precise, a rough estimate can be made.

A look back at Table -2, above, shows that season closing prices paid to fishers averaged \$1.12 per pound over the 1980 - 1989 period, while season opening prices averaged \$0.76 per pound and mid-season (July 2) prices averaged \$0.95 per pound. Therefore, a price increase of 20 cents per pound can reasonably said to be "typical" between the season's opening date and the point in time when (roughly) 25 percent of the escapement has occurred. Assuming that the graph of price against time is linear between the date of opening and July 1, then on average the 1980 - 1989 price paid for the first 25 percent of the harvest was 10 cents per pound below that of the mid-season price.

The average Bristol Bay sockeye catch for the 1980 - 1989 period was approximately 115 million pounds, according to the Alaska Department of Fish & Game. If 25 percent of this average was priced 10 cents per pound lower than the mid-season average price, then fishers were paid an average of 2.875 million dollars less than they would have been paid for the first 25 percent of the harvest had mid-season prices prevailed.

Clearly, there are significant dollars at stake here. Surely, if fish buyers had it within their power they would seek to insure themselves against the risk of a forecast error that resulted in their paying too high a price for early season sockeye. In particular, they might seek to depress the initial price paid to fishers below that which was consistent with a best unbiased forecast, so that the probability of their paying too much was at an acceptably low level.

Post-Season Bonuses

Contractual arrangements began to evolve in the mid-1980s which ostensibly have relieved fishers of a portion of the burden of insuring buyers against the risk of a bad forecast of run size. In

³⁰ At the time this was written the most recent data published were for 1989.

response to the late 1970s entry of Japanese buyers into Bristol Bay and the subsequent competition for fish, some of the incumbent processors began to pay a post-season "bonus" to the fishers from whom they purchase their catch, with the size of the bonus determined at least in part by the actual price received by the buyer for the fish in wholesale markets. By 1990 the eight largest buyers all paid bonuses, according to the Alaska Department of Fish & Game, Commercial Fisheries Entry Commission.³¹

The bonus is in addition to the price paid to the fishers during the season. Buyers who pay these bonuses, and the fishers from whom they buy, agree to a two part payment schedule in which the immediate (within season) payment is expected by both parties to be low enough to insure the buyer against the risk of paying too high a price during the season. Although such agreements may have been reached from time to time for a number of years, they did not begin to become widespread until 1987.

Fishers agree to deferred payment in return for assurances that they will have a buyer near at hand who will unload their catch in a timely manner. Prompt sale and offloading of catches enables fishers to increase their time on the grounds during the hectic Bristol Bay season and thereby enables them to increase their overall harvest. Some fishers also believe that the deferred payment system means higher prices for them because they view the bonuses as a net increase in the price they receive. Evidence examined in Reaume & Lew (op cit) suggests that this view may not be correct. The bonuses may, in fact, be offset by lower within season prices than would have been paid in their absence.

As far as we have been able to determine, no independent auditing has ever been conducted of the process by which buyers determine post-season bonuses. In order to find out whether or not the post-season bonuses compensate for persistently low season-opening prices, one would need data for individual fishers that revealed the size of their catch, the price paid to them during the season, the size of the post-season bonus, and finally the date on which the bonus was paid (for purposes of calculating interest on the delayed payment). To our knowledge such detailed data are to be found only in the private files of the fish buyers themselves. A thorough review of this information was not within the scope of this investigation.

CONCLUSION

Bristol Bay fishers have never had a significant amount of bargaining power in relation to their customers. In the past, the Bristol Bay processors have enjoyed a significant amount of

³¹ The very existence of such bonuses is prima facie evidence that at least some buyers in Bristol Bay seek to and are able to avoid paying more to fishers than ultimately is justified by the price they themselves receive, and ipso facto, that the risk is quantitatively important.

power, but there has been a major shift in recent years between the processors and Japanese buyers. Before 1989, the processors were able to wield market power against Japanese buyers in some respects, but that situation has been virtually reversed. The Japanese buyers now appear to simply offer prices to Bristol Bay processors on a "take it or leave it" basis, with no real opportunity for negotiation. The processors now appear to be in the position of "price takers" when dealing with their Japanese buyers, and while they still have the upper hand in their dealings with the fishers, there has been very little surplus to extract from them in the last two years. The result may be that profits from the sale of Bristol Bay salmon primarily wind up in Japan.

The risk of loss when markets are down, as they were in 1991, is borne by parties on this continent. The 1991 losses would have probably been entirely borne by the fishers but for the intervention of the Governor and his staff.

Supply and demand theorists have proposed some solutions to the problem, such as the development of new salmon products which would be sold in markets other than Japan. Such solutions would theoretically reduce the monopsonistic power that appears to be currently exercised by Japanese trading companies, and benefit the Alaskan and U.S. economies. But it is unlikely that new markets alone can reliably or quickly produce equilibrium in bargaining power between the Japanese buyers of Bristol Bay salmon and the processors and fishers, whose income is vital to the economic well being of the Alaskan communities involved.

As long as Japan is a major market for Bristol Bay salmon, Alaskans should expect the Japanese trading companies to continue doing business as described in this report. These practices are not generally subject to antitrust enforcement in Japan, and most of their activities are, for a number of reasons, beyond the reach of Alaskan antitrust enforcers. Alaskan policy makers should consider how statutes and regulations affect the relative bargaining strengths of the parties involved in Bristol Bay. The time may have come to consider an antitrust exemption for U.S. based interests when they deal with Japanese buyers. Steps could be taken to allow fishers and U.S. based processors to collectively bargain for sales of seafood products when dealing with foreign buyers, which might restore some of the bargaining power lost to Japanese buyers in recent years. Without a level playing field, a disproportionate amount of the value of Alaskan salmon will probably continue flowing out of the state and the country, where it can provide no benefit to the owners of the resource.

For obvious reasons, such steps must be taken cautiously. The Sherman Antitrust Act has, for over 100 years, effectively protected the free markets of this country. As a result, we enjoy practically the best standard of living in the world, because small business are allowed to flourish, and the efficiencies of production are passed along as savings to consumers. Consumer goods cost far less in this country than in Japan, where there is little or no antitrust enforcement or consumer protection, and where governmental

policy is designed to promote the economic interests of the large companies at the expense of small companies and individuals.

Two wrongs do not make a right, and the answer to Japan's lack of antitrust enforcement is not the abandonment or dilution of antitrust enforcement at home. Antitrust laws protect free markets, and do so effectively in this country. But where Alaskans sell resources into markets that do not have the same protection, we stand to lose the value of the resource if we do not act according to economic reality. The ideal solution would be for the Japanese government to enforce antitrust laws with all the vigor of American enforcers. But that is beyond our control, and we cannot realistically expect them to do so in the near future. Policy makers may, therefore, wish to consider whether the time has come to adopt a limited antitrust exemption for those who sell Alaskan resources to foreign markets which are not actively protected by the equivalent of our antitrust laws.

JF/bev