

SCOMM

102:20

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In the 1997 Bering Sea bottom-fish harvests, a fleet of 89 factory trawlers caught and/or discarded:

 Pollock 598,054 metric tons	 Yellowfin sole 163,198 metric tons
 Atka mackerel 65,684 metric tons	 Rocksole 54,384 metric tons
 Pacific cod 48,090 metric tons	69,449 metric tons of more than 20 other bottom-fish species

The factory trawler fleet's total take was: 1,007,858 metric tons.
Another 726,813 metric tons was taken by other vessels.



"We want an Americanized fleet that's subject to our control, our discipline, our laws."

— Alaska Sen. Ted Stevens



 Pacific Ocean perch 6,882 metric tons	 Rox sole 2,300 metric tons	 Pacific cod 2,103 metric tons
 Northern rockfish 2,026 metric tons	 Pollock 1,498 metric tons	17,807 metric tons of more than 25 other bottom-fish species

The factory trawler fleet's total take was 32,896 metric tons. Another 168,043 metric tons was taken by other vessels.

Battle for the Bering Sea

Stevens says bill would protect fishery, American interests

By DAVID WHITNEY
Daily News Washington Bureau

WASHINGTON — On Sept. 2, the Russian flag was lowered from the mast of the 195-foot factory ship Magadan and replaced with the U.S. flag as the vessel was rechristened the U.S. Enterprise.

Unable to make enough money fishing on the Russian side of the Bering Sea, the vessel's owner, Tyson Seafoods Group, decided to put her back to work in U.S. waters off Alaska.

Tyson's timing could not have been better, as the move positions the company to increase its stake in a U.S. fishery where each percentage point of the market is worth an estimated \$5 million a year.

Rarely three weeks after the reflagging, Alaska Sen. Ted Stevens introduced legislation in Congress that could throw the industry into a major upheaval. Particularly punished would be Tyson rival American Seafoods Co., a Norwegian-backed business that has eclipsed Tyson in recent years to become the biggest player fishing off Alaska.

The bill would boost requirements for American ownership of the fishing boats to a minimum of 75 percent from 50 percent and would bar new ships longer than 165 feet from coming into U.S. waters.

The Bering Sea bottom-fish harvest is one of the largest in the world, promising great returns for the companies that produce it into fake seafood or flash-



The Seattle-based catcher-processor Pacific Glacier lies up at the Delta Western fuel dock in Unalaska, Alaska. Sen. Stevens has proposed a bill that would increase the percentage of American-owned fishing boats in the Bering Sea to at least 75 percent.

"I feel very strongly that this is another tool for a fish grab."

— Bernt Bodal, the Norwegian-born chief executive of American Seafoods

Please see Page C-4, TRAWLERS

Season provides chance to light the way in your neighbor

TRAWLERS: Stevens' bill would bar new ships longer than 165 feet from U.S. waters

Continued from Page C-1

It's also one of the most competitive fisheries. There are so many ships vying for the annual catch of the big money fish pinkie, that this year's quota of 1.1 million metric tons is taken in about two months.

Stevens' legislation would reshuffle the winners and losers among the factory trawler fleet, which is based in Seattle and is the major employer for many in the state.

At its core, Stevens' bill would help phase out the largest factory ships and smaller boats that dominate the bottom-fish catch.

"The bill is first and foremost in everyone's minds now," said Tyson's Dave Benson, who acknowledged that the bill is good medicine for his company.

"The stakes are very high," he said. "Companies affected by this legislation are going to spend lots of money (lobbying) as this bill moves through Congress."

If Stevens' bill becomes law, American Seafoods would be forced to restructure and, in so doing, it could lose the right to operate six of its biggest and most efficient factory ships.

Industry estimates are that those ships catch 20 to 25 percent of the bottom fish harvested off the Alaska coast — fish that then would be caught by the company's competitors.

"I feel very strongly that this is another tool for a fish grab," said Bert Bodal, the Norwegian-born chief executive of American Seafoods.

Stevens' legislation is the latest chapter in his 25-year effort to get Americans in charge of catching and processing fish from American waters, a goal that has proven to be elusive.

The Bering Sea fishery, arguably the richest in the world, was dominated by foreign fleets until Congress passed the 1976 Magnuson

Fishery Conservation and Management Act. That law eventually booted out the foreign ships, stimulating a race among start-up domestic companies to build bigger and better factory ships and catcher boats, whose combined catching capacity largely overtook the supply of fish.

As more ships were launched, profits turned to losses and many of the companies were taken over by others with high performance foreign ownership. That overshadowing the Magnuson Act's goal of Americanizing the fishery in the early 1990s, American Seafoods, a subsidiary of a Norwegian industrial conglomerate, was the leading growth company.

The most controversial feature of Stevens' bill would stop new ships longer than 165 feet from entering U.S. waters no matter who owns them and eliminate as many as 11 of the 55 factory ships that now dominate the bottom-fish harvest.

While half the ships targeted for elimination belong to American Seafoods, aides to Stevens said the measure is not intended to target the company for its aggressive expansion over the last five years.

"This bill is about going back to the goals of the Magnuson Act to give true U.S. vessels primacy to fish," said Stevens' fisheries aide Trevor McCabe. "But Sen. Stevens does have real concerns about consolidation of control of the bottom fish industry. If a U.S. entity controlled 25 percent of that industry, he'd have the same concerns."

But critics regard Stevens' legislation as an attempt to help Tyson Seafoods at American Seafoods' expense, adding that the bill is almost certain to turn the market for factory ships on its head.

The legislation requires that to keep any of the affected 11 ships operating a vessel of equal or greater size would have to be scrapped.



The only way American Seafoods could keep its ships would be to buy other ships and scrap them.

— Jim Gilmore, At-Sea Processors Association

Jim Gilmore of the At-Sea Processors Association, a trade group for some factory ship operators, including American Seafoods, said the company would either have to scrap its targeted ships or dump them at "fire sale" prices.

"The only way American Seafoods could keep its ships, Gilmore said, would be to buy other ships and scrap them. Prices under those circumstances are certain to be inflated, Gilmore added.

In either case, Gilmore said, Tyson stands to gain.

With 15 ships of its own, Tyson could unload its least profitable vessels for American Seafood to scrap. Or, Gilmore said, it could buy American Seafoods' more efficient boats, scrap some of its own and in doing so gain market share in the Bering Sea by virtue of its competitor's partial liquidation.

Benson said Tyson has an intention of buying or selling ships, adding that under Stevens' bill the company will be well positioned to keep its fleet afloat well into the 21st century.

"We believe through proper repair and maintenance we can keep our fleet in operation for quite a long time," Benson said.

In the last five years, American Seafoods has eclipsed Tyson as the big player in the North Pacific. Its game was to buy up struggling companies that owned the biggest and most efficient factory ships that Stevens has targeted.

Driving Stevens is his outrage over how the Coast Guard interpreted a 1987 law aimed at stopping fishing

companies from bringing into the United States ships that were rebuilt around a complete hull, or so-called "hull-jobs" or so-called "hull-jobs" that are being rebuilt at the time.

About 10 of those ships changed ownership before the rebuilds were complete. Under Stevens' bill if any of those are owned by companies that have to be restructured to meet a new 75-percent American ownership standard, the only way they can remain in business is for a vessel of equal or larger size to be retired.

Bodal's company owns nine of the 14 ships, three of which are in Russia. He said the ships affected by the bill are among the most efficient on the water.

Unlike many factory ships that toss overboard large numbers of fish because they are the wrong size or sex to be processed on board, Bodal said, these ships are among the least wasteful of the fleet.

Stevens is unsympathetic. In a recent interview, he said wholly owned American companies should have a priority to American fish.

"We want an Americanized fleet that's subject to our control, our discipline, our laws," he said. Only then, Stevens said, will the federal government have the leverage to protect the fishery from being fished to extinction.

When Stevens introduced his bill Sept. 25, he said the days of the big fishing boats are over. No new ships longer than 165 feet would be allowed into any fishery, and only those larger ships that

meet the ownership standards could continue fishing. "Gradually, the useful lives of these large fishing vessels will end, however, and a smaller fleet will replace them," Stevens said.

His legislation has spawned an unusual alliance between the Republican lawmaker and the environmental group Greenpeace because both believe the trawlers' huge catching capacity are a threat to the health of the Bering Sea, containing oil supported in federal fisheries scientist.

Since Stevens introduced the bill, fishing organizations have begun organizing protests and have lined up with Stevens because they see his bill as a way of eliminating a sizable percentage of the ships that make the Bering Sea one of the most overcapitalized fishing holes in the world.

Among those endorsing the bill are organizations whose clients compete head on with American Seafoods, such as United Catcher Boats. Catcher boats can exceed the harvesting capacity of the factory ships, but rather than processing the meat on board they sell it to the highest bidder, including shore-based processing plants and floating processor ships. Some catcher boats also are targeted by Stevens' bill.

The Groundfish Forum, a competing arm of the factory-trawl industry, remains neutral on Stevens' bill, although executive director John Gauvin said most of its members would benefit from fewer ships on the water.

But many worry that while Stevens is citing environmental reasons as a justification for phasing out factory ships, the purpose of the bill is to eliminate the biggest ships so that there will be more fish to allocate among smaller operators.

According to the National Marine Fisheries Service,

there is no evidence that factory ships are more wasteful or more environmentally destructive than any other kind of fishing boat.

"It's true that the biggest boats are factory trawlers," said Jim Bahinger, head of the agency's Alaska Research Laboratory in Seattle. "But the biological point is that, as long as fish populations are healthy, it doesn't matter if it's taken in one big net or a smaller net."

Bahinger said the service's research shows that the fish stocks to reproduce in the next years.

Concern about what a federal bill's legislation has done since Stevens' bill was introduced.

Dorothy Childers, executive director of the Alaska Marine Conservation Council in Alaska, said her group has not decided whether Stevens' bill is about helping fish or controlling who gets to catch them.

"We're looking at how the bill can serve conservation," Childers said. "So many issues are not black and white."

For his part, Stevens is convinced that phasing out the factory ships will be a good start at protecting the ocean's health. To him, starting with a company that's heavily owned by Norwegians is icing on the cake.

"What do you think they'd do (if an American company) went into the 200-mile limit off Norway?" Stevens said of American Seafoods. "We've been very tolerant with this international fleet."

"They definitely found loopholes to get around our original intent," Stevens said. "There's going to be a lot of screaming, but this bill will pass."

Hearings before the Senate Commerce Committee could begin as early as February. Stevens is a senior Republican on the committee and among those backing his bill are three top committee Democrats.

P. 06

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OUR YEARLY AUCTION OF FINE QUALITY MUSEUM REPRODUCTIONS

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NOTICE OF PUBLIC MEETING

Attention Homeowners Only! CONSOLIDATE!

down one of his team Sunday afternoon during a rest in Shaktoolik. Right, King arrives in Elim about midday Monday. He rested just 35 minutes before pushing on to Golovin.

ON THE WEB: For more on the Iditarod, check the Daily News web site at www.adn.com/Iditarod/1998/cov-erage.html.



King arrived in White Mountain at exactly 9:30 p.m. — eight days and 10½ hours into the race. It was the second-earliest White Mountain arrival in race history.

As King's headlight rounded a wooded point on Fish River, the bell on the village Covenant church rang out in the cold night air. People and snowmachines began converging on the river.

With Red and Jenna in the lead, King's eight dogs trotted in. "It was a long trip," King told Howard Lincoln, an elder and long-time checker.

King's dogs reached the bank with their tails up, and several rolled on their backs and began rubbing themselves on the snow. They

rowe's sled fishtailed on the glare ice. The impact shattered several wood supports. **C-1**

NOTEBOOK: Elim gears up for four-legged visitors and their drivers. **C-4**

Please see Page A-7, **KING**

Stevens' factory ship bill sets off lobbying frenzy

By **DAVID WHITNEY**
Daily News Washington Bureau

WASHINGTON — When Alaska Sen. Ted Stevens introduced legislation to eliminate about 16 of the biggest factory ships from the North Pacific fishery, he ignited a battle like Capitol Hill hasn't seen in two decades.

Not since Congress moved to "Americanize" the off-

shore fishery with passage of the Magnuson Fishery Management and Conservation Act in 1976 have so many lobbyists been enlisted in a war over fish.

Former congressmen and congressional aides, former federal fisheries managers, lawyers and professional gadflies — just about anyone who gets paid to open doors

on Capitol Hill — have been retained to promote or defeat Stevens' bill.

Even the senator's brother-in-law, Anchorage lawyer William Bittner, has been scooped up — in his case by the target of Stevens' measure, Seattle-based American Seafoods Co.

"I've never seen a fisheries issue generate this kind

of (lobbying) money," said Trident Seafoods lobbyist Brad Gilman, a former Stevens staffer. "I think we'll see between \$1 million and \$2 million spent in Washington, D.C., this year, and that doesn't count all the advertising," he said.

Stevens' bill, introduced six months ago and scheduled for opening hearings in

two weeks, is a broad attack on the 35 or so factory ships that take about half the 1.2 million tons of bottom fish caught annually from the North Pacific Ocean. He asserts in the bill that the ships are responsible for staggering waste.

Please see Back Page, **STEVENS**

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Child-rearing guru Dr. Spock, 94, dies

By **MICHELLE KOIDIN**
The Associated Press

SAN DIEGO — When a whole generation of kids started growing their hair, having sex, protesting the war and questioning authority back in the '60s, one man alone was held accountable by some: Dr. Benjamin Spock.



NEWSLINE UPDATE: Call 277-1500,



STEVENS: A lobbying frenzy

Continued from Page A-1

While Stevens' bill eventually will eliminate all factory ships longer than 165 feet, the immediate target of the bill is big ships owned by American Seafoods, the largest player in the factory-ship business.

American Seafoods is wholly owned by a Norwegian industrial conglomerate, making it the focus of the bill's "Americanization" pitch. The company's 15 or 16 largest and most efficient ships were built overseas and brought into the United States under a loophole in a 1987 law Congress passed to try to stop new foreign ships entering the fishery. For American Seafoods, Stevens' bill would be a double hit. It would force the company to restructure to meet a new 75-percent American ownership standard, if it wants to fish U.S. waters. It also demands that any company restructuring under this requirement sell any ships that were brought into the United States by exploiting loopholes in the 1987 law.

Any company buying those ships would have to retire the same number of its own vessels of equal or greater size.

In a fishery with too many boats to assure profits, it would quickly eliminate about 25 percent of the catching capacity. And it could mean that the boats American Seafoods is forced to sell would end up in the hands of one of its competitors, Tyson Seafood Group, a subsidiary of Arkansas-based Tyson Foods. Tyson, in turn, would scrap its own less efficient boats.

With such a large part of the fishing industry at stake, lobbying is fierce. The most active player, as expected, is American Seafoods.

In addition to Bitter, the company has hired the Washington, D.C., lobbying firm of Tom Downey and Rod Chandler, two former congressmen with ties to Democrats and Republicans. American Seafoods also is the dominant member of a trade group, the At-Sea Processors Association, that has its own lobbyists fighting the bill.

American Seafoods' Norwegian-born chief executive, Bernt Bodal, concedes that the company is trying to hire all the political muscle it can. Still, he added, "It's a minor amount of money compared to the hundreds of millions of dollars we've invested in Alaska."

Bodal says everyone seems to be ganging up on him.

"I think the industry is doing a big disfavor with this big in-house fight," he said. "We didn't start it."

The lobbying blitz seems to have emboldened Stevens, who has long complained that the Seattle-based factory fleet is skimming Alaska resources from federal waters.

"If American Seafoods used the money they've spent hiring lobbyists to invest in Alaska, or buy shore-side processing plants in Alaska, it wouldn't need lobbyists," he declared.

The lobbying reached a frenzy last

week when the At-Sea Processors Association had three days of private meetings at the Hyatt Regency hotel on Capitol Hill.

The environmental group Greenpeace rented room at the same hotel to dispense what it called "the facts about the over-fishing crisis and the role of the factory trawlers in the destruction of fisheries."

About the time the At-Sea executives were arriving in Washington, a new group calling itself the American Fisheries Act Coalition ran a big advertisement in *The Hill*, a widely read Capitol newspaper. Like Stevens' bill, the advertisement attacked American Seafoods without actually naming it.

"Of the hundreds of vessels in this Alaska fishery, about 15 large vessels owned and controlled by one foreign company take 42 percent of the harvest," it said. "They're taking our fish, but Americans can't fish in their waters."

The coalition's principal members are Tyson Seafood Group and Trident Seafood Corp., an American-owned shore-based processing company, which could be the big winners from the legislation.

The coalition members claim Stevens' bill rights the wrong done when foreign boats got into the fishery by getting around the 1987 law. "These are people who cheated," said Trident lobbyist Brad Gilman.

Another coalition spokesman, Terry Leitzel of Victor Seafoods, should know. A decade ago he helped a factory trawler company exploit the 1987 law and bring a foreign-built ship into the North Pacific. The company, Oceanrawl, has since been taken over by American Seafoods, and now Leitzel is lobbying to force it to liquidate the ship.

"At the time I was an attorney working for a client," Leitzel said of his born-again conversion. "I've come full circle."

Norton Sound Seafoods, a Native-owned business that gets a share of the pollock catch set aside under federal law for Western Alaska communities, is worried the bill may jeopardize its partnerships with factory ship companies. The company has hired attorney Don Mitchell, who last year worked for Stevens on the Indian country case before the U.S. Supreme Court.

Mitchell said Norton Sound is worried Stevens' bill paints factory trawlers as demons when there's no evidence that the ships are causing environmental problems.

At the Hyatt Regency meeting, California Rep. George Miller, senior Democrat on the House Resources Committee that oversees commercial fishing, warned American Seafoods and the At-Sea Processors Association against complacency.

He said afterward that he told the companies, "I thought Sen. Stevens was very serious about this and that he's a man that when he gets focused on an issue, you ought to pay attention."



COLIN BOGUCHI / Special to the Daily News

fakeo Okamoto of Girdwood and Junichi the Carvers' Choice and the People's ge International Ice Carving Competition ures, in the shadow of the downtown per- antled Monday.

Alaska State Legislature

REPRESENTATIVE
BEN GRUSSENDORF
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House of Representatives

SPONSOR STATEMENT HJR 48, American Fisheries Act

I introduced HJR 48 as a companion resolution to Senator Jerry Mackie's SJR 33. It puts the State of Alaska on record in support of an important Congressional initiative to preserve American control of the commercial fisheries in our nation's 200 mile economic zone and improve the conservation of those resources. This initiative is S. 1221, the "American Fisheries Act," sponsored by Senator Stevens along with Senators Murkowski, Breaux, and Hollings. The act would increase the U. S. ownership standard for vessels fishing in U. S. waters and close a loophole in the commercial fishing reflagging prohibitions that allowed at least 14 additional large factory trawlers in waters off Alaska. The bill would also phase out all large factory trawler ships whose size and harvesting power threaten conservation management goals and responsibilities.

Alaskan fishermen and onshore processors have struggled to gain a foothold in these new and valuable fisheries off our own shores. The state has directly assisted in this development through loans and tax incentives. It is estimated that at least \$80 million was spent in bottomfish facilities alone in the 1986 to 1991 period of the state's tax incentive program. In addition to allowing expanded harvesting opportunities to Alaskan fishermen, this development has extended the processing season in many communities so that year round jobs have replaced the seasonal, migrant worker prone jobs. The year round operations of Alaska's seafood industry has further stabilized the economies of Alaska's major transshipment and commercial centers.

The growth and presence of large, foreign controlled fishing fleets in U.S. waters contradicts the very purpose and intention of the original Magnuson-Stevens Act to control and Americanize the harvest of offshore fish resources and to protect them from depletion. The current overcapitalization of the offshore harvesting capacity threatens both the resources and our Alaskan economic stake in its continued health. I believe that the success of Senator Stevens in the passage of S. 1221 is of foremost importance to the economic interests of the state and its citizens. Moreover, it is critical to the long term vitality and sustainability of our offshore marine resources.

TED STEVENS, ALASKA, CHAIRMAN

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United States Senate
 COMMITTEE ON APPROPRIATIONS
 WASHINGTON, DC 20510-0025

January 27, 1998

The Honorable Jerry Mackie
 Alaska State Senate
 State Capitol
 Juneau, Alaska 99801

Dear Sen. Mackie:

Thank you for introducing S.J.Res. 33 in support of S. 1221, the American Fisheries Act, the bill Senator Murkowski and I introduced last September. Our bill has three primary purposes: (1) to implement a meaningful U.S.-ownership standard for U.S. fishing vessels; (2) to correct for misinterpretations of the 1987 Anti-Reflagging Act; and (3) to impose a permanent moratorium on the entry of any more of the massive fishing vessels that have caused significant conservation and economic problems in our fisheries. As you move forward with the resolution, I thought it might be useful to explain some of the history behind S. 1221.

In 1976, Congress extended U.S. jurisdiction over fisheries to 200 miles through the Fishery Conservation and Management Act (what is now called the Magnuson-Stevens Act, or "MSA"). In addition to the goal of conserving the nation's fishery resources, the MSA gave U.S.-flag fishing vessels a priority over foreign vessels in the harvest of U.S. fishery resources. In 1986, Alaska fishing communities brought to the attention of Congress a loophole which allowed foreign investors to simply re-register their vessels to fly the U.S.-flag and receive the priority to our fish. Congress acted quickly through the 1987 Commercial Fishing Industry Anti-Reflagging Act to try to close this. Under the Anti-Reflagging Act, a fishing vessel must meet a 51 percent U.S. ownership standard to qualify for the Coast Guard fishery endorsement that allows vessels to get the U.S. priority. Congress also attempted through the Anti-Reflagging Act to close a loophole which at the time allowed foreign-built vessels to qualify for U.S. fisheries using pieces of steel from former U.S. vessels and calling themselves "rebuilt." Unfortunately both the ownership and rebuild provisions of the Anti-Reflagging Act were significantly misinterpreted by the Coast Guard and the court system. These misinterpretations were among the reasons that I, Senator Murkowski, and Senators from New England, Southeast, and Gulf of Mexico states proposed S.1221.

Without a clear distinction between U.S.-controlled vessels and foreign-controlled vessels, there is no way to provide the U.S. priority required by federal law. In 1992, the D.C. Court of Appeals let stand an interpretation of the Anti-Reflagging Act that gave *all* vessels already in the U.S. fisheries by 1987, or "rebuilt" overseas by 1990, a permanent exemption to the U.S. ownership requirement. Congress had intended for a limited exemption in the Act to allow *existing* foreign owners to continue to operate vessels under U.S.-flag until they sold those

January 27, 1998
Hon. Jerry Mackie

vessels, but not for the vessels to be permanently exempted. S. 1221 would correct this by eliminating all exceptions to U.S. ownership and by requiring all U.S.-flag fishing vessels to comply within 18 months of enactment. The bill would also raise the ownership standard to 75 percent, the same standard used for other types of U.S.-flag vessels operated commercially in U.S. waters.

This type of domestic harvest priority is embodied in Article 62 of the United Nations Conference on the Law of the Sea and is the recognized international law in the waters of every nation of the world. Both Japan and Norway, for instance have laws which provide a priority for their citizens in the fisheries off their shores. Consistent with the requirements of the Law of the Sea, our federal law requires that foreign vessels be allowed to harvest any portion of the allowable catch which U.S. vessels cannot harvest. In almost all U.S. fisheries, however, there are enough vessels above the 75 percent U.S.-ownership standard to harvest the entire catch.

The limited exception to the foreign rebuild prohibition in the Anti-Reflagging Act was also badly misinterpreted. When the Act passed, Congress exempted from the prohibition any vessel for which a contract had already been signed, provided that the same person or entity who then held the contract also received delivery of the rebuilt vessel by 1990. Congress did not want to fuel speculative investment in U.S. hulls, or create transferable value in option contracts for U.S. hulls that could qualify to be "rebuilt" overseas into massive trawlers many times bigger than the original vessel. Congress intended for the exemption to apply only to about a half dozen vessels for which investments were known to already have been made. Under the Coast Guard's interpretation of the Act, however, an additional 18 vessels were allowed to be "rebuilt" into massive factory trawlers in foreign yards. All 18 of these vessels have been able to operate in the U.S. fisheries off Alaska - not subject to even the existing U.S. ownership requirement.

S. 1221 would put the burden of solving the overcapitalization problems created by these 18 vessels on the foreign owners of these vessels. The bill specifies that any of the 18 vessels that were not U.S.-owned as of September 25, 1997 can only remain in the fisheries (as U.S. fishing vessels) if they become 75 percent U.S. owned, and if the fishery license for a vessel of equal or greater size is retired. This is less extreme than simply kicking them out of the fisheries - it gives them a chance to sell stock or otherwise cure their foreign ownership and remain in the fisheries if another vessel in the fisheries, which might include another of the 18 vessels, surrenders its fisheries license.

Opponents have suggested that S. 1221 will kick all factory trawlers out of the U.S. fisheries. This is not true. The bill will allow any factory trawler that entered the fisheries other than through the foreign rebuild misinterpretation to remain in the fisheries if it complies with the 75 percent U.S. ownership standard within 18 months. The practical effect will be a

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reduction in the factory trawler fleet of between 5 and 10 vessels, with the remaining 50 or so factory trawlers allowed to stay in the fisheries for the useful life of the vessel. No new vessels above 165 feet, 3,000 shaft horsepower, or 750 tons would be allowed to enter the fisheries.

Certain opponents of S. 1221 have tried to argue that factory trawlers and other fishing vessels above the size thresholds in S. 1221 are clean fishing operations. Factory trawler operators in the mid-water pollock fishery, for instance, point to their discard rates of 4.3 percent in 1996 (the most recent year for which National Marine Fisheries Service statistics are available). They correctly argue that this is a relatively low rate compared to other fisheries (due primarily to the fact that mid-water pollock do not tend to co-mingle with other species). However, their rate is still more than *three times* the rate of smaller vessels in that *same* fishery -- the catcher vessels in the mid-water pollock fishery (most of which are below the size thresholds of S. 1221) had a discard rate of only 1.4 percent in 1996! It's also important to note that: (1) even at a discard rate of 4.3 percent, mid-water pollock factory trawlers discarded 41.8 million pounds of usable fish in 1996; (2) that these same vessels operate in other fisheries where their inherently high discard rates have even greater negative effects; and (3) their recovery rate for human-consumption quality seafood is a third less than the recovery rate for the same pollock processed on shore. Even as factory trawlers begin making fish meal under the North Pacific "full retention" plan, less benefit is being derived by Alaska and the nation than if those pollock were processed on shore into seafood that could be eaten by people.

It was an eye-opener for many Alaskans recently when some Seattle-based factory trawler operators finally changed tactics after they failed in 1996 to stop our federal amendments to protect fishing communities, reduce bycatch and waste, and create a permanent fishery allocation for western Alaska villages. The Seattle-based companies finally dropped their law suit against the State's landing taxes and began to try to expand shared benefits with Alaska. We believe Alaska should *demand* that kind of partnership, and we see no reason why the owners of the 50 factory trawlers that will remain in the fisheries after S. 1221 is enacted should behave differently.

Thanks again for your efforts in the State Legislature to express support for this bill that is so important to Alaska.

With best wishes,

Cordially,



TED STEVENS

Ted Stevens

United States Senator For Alaska

September 25, 1997
FOR IMMEDIATE RELEASE



Contact: Press Office
(202) 224-6208

STEVENS' BILL CALLS FOR FURTHER AMERICANIZATION OF FISHERIES AND PHASE-OUT OF FACTORY TRAWLERS

Foreign-controlled fishing vessels would be prohibited from operating in U.S. fisheries and factory trawlers fishing in U.S. waters would be phased out, under legislation introduced today by Senator Stevens.

The measure requires 75 percent American ownership of fishing vessels, similar to the existing standard for vessels operating under the Jones Act, and up from 51 percent. It would prohibit fishing vessels over 165 feet and 750 gross registered tons, or with engines that produce more than 3,000 shaft horsepower from entering U.S. fisheries.

Vessels which exceed these limits, but which have valid fishery endorsements as of the date of the introduction of the legislation, would be grandfathered into the fisheries, but could not be replaced once their useful lives expire, Senator Stevens said. Under certain conditions, a vessel that sank could qualify for replacement.

The bill would also prohibit federal loan guarantees for vessels of the same or greater measurements. In addition, vessels of the same large sizes that have gone to Russia, would be prevented from coming back into the U.S. zone.

"Last year, we enacted major revisions to the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of the fishery resources," Stevens said. "The other primary goal of that Act when we originally passed in 1976 was to Americanize the fisheries. We tried to complete that process through the Anti-Reflagging Act in 1987, which Senator Murkowski introduced, but due to exemptions in the Act and misinterpretations by the Coast Guard, the Act has not been effective."

"When the Senate passed my conservation bill last year, I said I would seek a ban on factory trawlers if those measures did not work. It is too early to tell whether those measures will be sufficient. We propose today to phase out — not ban — factory trawlers and other fishing vessels that exceed the length, tonnage and horsepower thresholds," Stevens said.

more.

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2 9/25/97 fisheries

According to 1995 statistics from the Alaska Department of Fish and Game, the 55 factory trawlers in the Bering Sea threw overboard 483 million pounds of groundfish wasted, and unused, Stevens said. "That is more fish than the target fisheries for the New England lobster, Atlantic mackerel, Gulf of Mexico shrimp, and Pacific Northwest salmon fisheries combined."

Stevens went on to say, "I reserve the option to propose an immediate ban on factory trawlers if the management and conservation measures enacted last year in the Sustainable Fisheries Act are not effective."

Bills to ban factory trawlers off of New England have been passed in the House and introduced in the Senate this year. Russian factory trawlers are believed to have caused the collapse of the New England groundfish stocks in the 1960s. Senator Stevens' bill incorporates a provision from the New England measure, since a particular factory trawler of concern would not be stopped by the control date in the national bill.

"The House has passed a bill to stop one factory trawler from coming into New England," Stevens said. "Because of the misinterpretation by the Coast Guard of the 1987 Anti-Reflagging Act, we got stuck with at least 14 factory trawlers off Alaska that should never have been allowed into our fisheries."

Senator Murkowski in 1986 first introduced legislation, the Commercial Fishing Vessel Anti-Reflagging Act, intended to control the then-anticipated influx of foreign fishing vessels, by prohibiting them from reflagging as U.S. vessels, and requiring 51 percent ownership. The bill was not implemented as intended, since the Coast Guard permitted all vessels with U.S. documentation to continue fishing, regardless of existing or new ownership.

"In Alaska, some of the foreign participants are doing what they can to patch up their relationship with Alaska and Alaskans, but I question their long-term commitment," Senator Stevens said. "The North Pacific Council is reviewing the inshore/offshore pollock allocation right now, which will substantially impact them. They have been good partners this year in anticipation of this Council debate - but where were they last year?" Stevens questioned. "They were here in Washington, D.C., lobbying against our bill to protect fishing communities."

"By increasing U.S. ownership to 75 percent, this measure closes the loophole that has allowed these large vessels to decimate our fisheries," Stevens said.

Senators Murkowski, Hollings and Breaux are co-sponsors of the measure.

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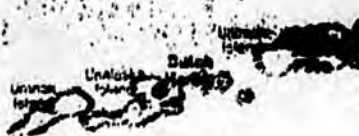
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In the 1997 Bering Sea bottom-fish harvests, a fleet of 88 factory trawlers caught and/or discarded:

 Pollock 598,054 metric tons	 Yellowfin sole 162,198 metric tons
 Atka mackerel 65,684 metric tons	 Rocksole 58,384 metric tons
 Pacific cod 48,090 metric tons	69,449 metric tons of more than 20 other bottom-fish species

The factory trawler fleet's total take was: 1,007,059 metric tons.

Another 726,813 metric tons was taken by other vessels.



Source: National Marine Fisheries Service



'We want an Americanized fleet that's subject to our control, our discipline, our laws.'

— Alaska Sen. Ted Stevens

In the 1997 fleet of Alaska bottom-fish trawlers, a fleet of 27 factory trawlers caught and/or discarded:

 Pacific Ocean perch 6,882 metric tons	 Rox sole 2,308 metric tons	 Pacific cod 2,103 metric tons
 Northern rockfish 2,026 metric tons	 Pollock 1,495 metric tons	17,807 metric tons of more than 25 other bottom-fish species

The factory trawler fleet's total take was 32,695 metric tons. Another 168,043 metric tons was taken by other vessels.

AP Wire Photos / Washington Daily News file photo

Battle for the Bering Sea

Stevens says bill would protect fishery, American interests

By DAVID WHITNEY
Daily News Washington bureau

WASHINGTON — On Sept. 2, the Russian flag was lowered from the mast of the 195-foot factory ship *Magedan* and replaced with the U.S. flag as the vessel was rechristened the U.S. *Enterprise*.

Unable to make enough money fishing on the Russian side of the Bering Sea, the vessel's owner, Tyson Seafoods Group, decided to put her back to work in U.S. waters off Alaska.

Tyson's timing could not have been better, as the move positions the company to increase its stake in a U.S. fishery where each percentage point of the market is worth an estimated \$5 million a year.

Rarely three weeks after the reflagging, Alaska Sen. Ted Stevens introduced legislation in Congress that could throw the industry into a major upheaval. Particularly punished would be Tyson rival American Seafoods Co., a Norwegian-backed business that has eclipsed Tyson in recent years to become the biggest player fishing off Alaska.

The bill would boost requirements for American ownership of the fishing boats to a minimum of 75 percent from 50 percent and would bar new ships longer than 165 feet from coming into U.S. waters.

The Bering Sea bottom-fish harvest is one of the largest in the world, promising great returns for the companies that produce it into fake seafood or flash-



The Seattle-based catcher-processor *Pacific Glacier* ties up at the Delta Western fuel dock in Unalaska. Alaska Sen. Ted Stevens has proposed a bill that would increase the percentage of American-owned fishing boats in the Bering Sea to at least 75 percent.

'I feel very strongly that this is another tool for a fish grab.'

— Bernt Bedal, the Norwegian-born chief executive of American Seafoods

Please see Page C-4, TRAWLERS

Season provides chance to light the way in your neighbor

TRAWLERS: Stevens' bill would bar new ships longer than 165 feet from U.S. waters

Continued from Page C-1

It's also one of the most competitive fisheries. There are so many ships vying for the annual catch of the big money fish product that this year's quota of 1.1 million metric tons was taken in about two months.

Stevens' legislation would reshuffle the winners and losers among the factory trawler fleet, which is based in Seattle and is the major transporter for marine life of Alaska.

At the core, Stevens' bill would help phase out the largest factory ships and catcher boats that dominate the bottom fish catch.

"This bill is first and foremost," said Tyson's Dave Benson, who acknowledges that the bill is good medicine for his company.

"The stakes are very high," he said. "Companies affected by this legislation are going to spend lots of money (lobbying) as this bill moves through Congress."

If Stevens' bill becomes law, American Seafoods would be forced to restructure and, in so doing, it could lose the right to operate six of its biggest and most efficient factory ships.

Industry estimates are that those ships catch 20 to 25 percent of the bottom fish harvested off the Alaska coast — fish that then would be caught by the company's competitors.

"I feel very strongly that this is another tool for a fish grab," said Bert Bodal, the Norwegian-born chief executive of American Seafoods.

Stevens' legislation is the latest chapter in his 25-year effort to put Americans in charge of catching and processing fish from American waters, a goal that has proven to be elusive.

The Bering Sea fishery, arguably the richest in the world, was dominated by foreign fleets until Congress passed the 1976 Magnuson

Fishery Conservation and Management Act. That law eventually booted out the foreign ships, stimulating a race among start-up domestic companies to build bigger and better factory ships and catcher boats, whose combined catching capacity would overtake the supply of fish.

As more ships were launched, profits tumbled to losses and jobs disappeared. The industry which met by the late 1980s high percentages of foreign ownership that undercut the Magnuson bill goal of Americanizing the fishery. In the early 1980s, American Seafoods, a subsidiary of a Norwegian industrial conglomerate, was the leading growth company.

The most controversial features of Stevens' bill would stop new ships longer than 165 feet from entering U.S. waters no matter who owns them and eliminate as many as 11 of the 55 factory ships that now dominate the bottom fish harvest.

While half the ships targeted for elimination belong to American Seafoods, aides to Stevens said the measure is not intended to target the company for its aggressive expansion over the last five years.

"This bill is about going back to the goals of the Magnuson Act to give true U.S. vessels primacy to fish," said Stevens' fisheries aide Trevor McCabe. "But Sen. Stevens does have real concerns about consolidation of control of the bottom fish industry. If a U.S. entity controlled 25 percent of that industry, he'd have the same concerns."

But critics regard Stevens' legislation as an attempt to help Tyson Seafoods as American Seafoods' expense, adding that the bill is almost certain to turn the market for factory ships on its head.

The legislation requires that to keep any of the affected 11 ships operating, a vessel of equal or greater size would have to be scrapped.



The only way American Seafoods could keep its ships would be to buy other ships and scrap them.

— Jim Gilmore, Alaska Sea Processors Association

Jim Gilmore of the Alaska Processors Association, a trade group for some factory ship operators, including American Seafoods, said the company would either have to scrap its targeted ships or dump them at "fire sale" prices.

The only way American Seafoods could keep its ships, Gilmore said, would be to buy other ships and scrap them. Prices under those circumstances are certain to be inflated, Gilmore added.

In either case, Gilmore said, Tyson stands to gain.

With 15 ships of its own, Tyson could unload its least profitable vessels for American Seafood to scrap. Or, Gilmore said, it could buy American Seafoods' more efficient boats, scrap some of its own and in doing so gain market share in the Bering Sea by virtue of its competitor's partial liquidation.

Benson said that Tyson has no intention of buying or selling ships, adding that under Stevens' bill the company will be well positioned to keep its fleet afloat well into the 21st century.

"We believe through proper repair and maintenance we can keep our fleet in operation for quite a long time," Benson said.

In the last five years, American Seafoods has eclipsed Tyson as the big player in the North Pacific. Its game was to buy up struggling companies that owned the biggest and most efficient factory ships that Stevens has targeted.

Driving Stevens is his outrage over how the Coast Guard interpreted a 1987 law aimed at stopping fishing

companies from bringing into the United States ships that were rebuilt overseas. Under Stevens' bill if any of those are owned by companies that have to be restructured to meet a new 75-percent American ownership standard, the only way they can remain in business is for a vessel of equal or larger size to be retired.

Bodal's company owns nine of the 14 ships, three of which are in Russia. He said the ships affected by the bill are among the most efficient on the water. Unlike many factory ships that lose overboard large numbers of fish because they are the wrong size or sex to be processed on board, Bodal said, these ships are among the least wasteful of the fleet.

Stevens is unsympathetic. In a recent interview, he said wholly owned American companies should have a priority to American fish.

"We want an Americanized fleet that's subject to our control, our discipline, our laws," he said. Only then, Stevens said, will the federal government have the leverage to protect the fishery from being fished to extinction.

When Stevens introduced his bill Sept. 25, he said the days of the big fishing boats are over. No new ships longer than 165 feet would be allowed into any fishery, and only those larger ships that

meet the ownership standards could continue fishing.

"Gradually, the useful lives of these large fishing vessels will end, however, and a smaller fleet will replace them," Stevens said.

His legislation has spawned an unusual alliance between the Republican lawmaker and the conservative group Greenpeace because both believe the trawlers' huge catching capacity and constant processing techniques are threatening the health of the Bering Sea. Conservationist supported by federal fishery scientists.

Since Stevens introduced his bill, fishing organizations have begun organizing. Some have lined up with Stevens because they see his bill as a way of eliminating a sizeable percentage of the ships that make the Bering Sea one of the most overcapitalized fishing fleets in the world.

Among those endorsing the bill are organizations whose clients compete head on with American Seafoods, such as United Catcher Boats. Catcher boats can exceed the harvesting capacity of the factory ships, but rather than processing the most on board they sell it to the highest bidders, including shore-based processing plants and floating processor ships. Some catcher boats also are targeted by Stevens' bill.

The Groundfish Forum, a competing arm of the factory-trawl industry, remains neutral on Stevens' bill, although executive director John Gaurin said most of its members would benefit from fewer ships on the water.

But many worry that while Stevens is citing environmental reasons as a justification for phasing out factory ships, the purpose of the bill is to eliminate the biggest ships so that there will be more fish to allocate among smaller operators.

According to the National Marine Fisheries Service,

there is no evidence that factory ships are more wasteful or more environmentally destructive than any other kind of fishing boat.

"It's true that the biggest boats are factory trawlers," said Jim Bahagser, head of the agency's Alaska research laboratory in Seattle. "From the biological point of view, as long as fish quotas are properly managed, it makes no sense to take in the big net or a smaller net."

Bahagser said the agency will continue to study the effects of regulations on the fishery.

Concern about what to do about the legislation has caused some environmental groups to watch Stevens' sidesteps.

Dorothy Childers, executive director of the Alaska Marine Conservation Council in Alaska, said her group has not decided whether Stevens' bill is about helping fish or controlling who gets to catch them.

"We're looking at how the bill can serve conservation," Childers said. "So many issues are not black and white."

For his part, Stevens is convinced that phasing out the factory ships will be a good start at protecting the ocean's health. To him, starting with a company that's heavily owned by Norwegians is icing on the cake.

"What do you think they'd do (if an American company) went into the 200-mile limit off Norway?" Stevens said of American Seafoods. "We've been very tolerant with this international fleet."

"They definitely found loopholes to get around our original intent," Stevens said. "There's going to be a lot of screaming, but this bill will pass."

Hearings before the Senate Commerce Committee could begin as early as February. Stevens is a senior Republican on the committee and among those backing his bill are three top committee Democrats.

P. 06
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**Statement by Senator Stevens
Introduction of the American Fisheries Act
September 25, 1997**

The bill I am introducing today would: (1) raise the U.S. ownership standard for U.S.-flag fishing vessels operating in U.S. waters; (2) eliminate the exemptions and loopholes interpreted into the existing ownership and control standard; and (3) phase out large fishing vessels that are destructive to U.S. fishery resources because of their size and power. The bill is called the "American Fisheries Act." Senators Breaux, Murkowski, and Hollings join me as original cosponsors.

Last year, we enacted major revisions to the Magnuson-Stevens Fishery Conservation and Management Act to improve the conservation of the fishery resources. The other primary goal of the original Fishery Conservation and Management Act in 1976 was to Americanize the fisheries. We tried to complete that process through the Commercial Fishing Industry Anti-Reflagging Act (Pub. L. 100-239) in 1987. Due to exemptions in the Act and to misinterpretations by the Coast Guard, this Act has not been effective. The bill we introduce today would correct the basic controlling interest and foreign rebuilding requirements for U.S.-flag vessels that participate in our fisheries.

Closing the Loopholes

The bill would require at least 75 percent of the controlling interest of all vessels that fly the U.S. flag and engage in the fisheries in the navigable waters and exclusive economic zone to be owned by citizens of the United States. The Commercial Fishing Industry Anti-Reflagging Act (Pub. L. 100-239) imposed a 50 percent controlling interest standard, which has become meaningless because of exceptions in the bill and misinterpretations by the Coast Guard. The Coast Guard's interpretation of one provision of that Act allowed at least 14 massive factory trawlers to enter the fisheries off Alaska.

As you may know, the House of Representatives recently passed a bill to keep one factory trawler out of the Atlantic herring and mackerel fisheries. Similar bills have been introduced in the Senate. In Alaska, we got stuck with at least 14 factory trawlers that should never have been allowed into our fisheries! Talk about loopholes you can drive a truck through — these factory trawlers make trucks look like tiny little bugs. And they waste fish. According to Alaska Department of Fish and Game statistics for 1995 (the most recent year for which data is available), the 55 factory trawlers in the Bering Sea threw overboard 483 million pounds of groundfish wasted, and unused. That is more fish than the target fisheries for New England lobster, Atlantic mackerel, Gulf of Mexico shrimp, and Pacific Northwest salmon fisheries combined.

The bill we introduce today draws heavily from the controlling interest standard in the Jones Act for vessels operating in the coastwise trade. Under our bill, vessel owners would have 18 months from the date of enactment to comply with the new 75 percent controlling interest standard. For vessels above 100 gross registered tons — which are more likely to have multiple owners or layers of ownership — the bill would require the Maritime Administration to closely scrutinize who actually controls the vessel before the vessel receives or can renew a fishery

endorsement. The Maritime Administration already reviews the controlling interest of entities applying for title XI loan guarantees and maritime security program payments. MarAd has the best expertise among federal agencies to do the thorough job we intend. The Secretary of Transportation would be required to revoke the fishery endorsement of any vessel above 100 gross tons that MarAd determines does not meet the new standard for controlling interest.

The bill gives the Secretary of Transportation flexibility in establishing the requirements for the owners of vessels equal to or less than 100 gross registered tons to show compliance with the new standard. Vessels of this size generally do not exceed 75 feet in length, are owner-operated, and are less likely to have multiple layers of ownership that must be scrutinized. If the Secretary decides that compliance with the new 75 percent standard can be demonstrated by vessels 100 tons or less using the existing process through the Coast Guard, the Secretary could continue to use this process for those vessels.

As the findings point out, international law -- including Article 62 of the U.N. Convention on the Law of the Sea -- gives coastal nations the clear sovereign right to harvest and process the entire allowable catch of fishery resources in their exclusive economic zone (EEZ) if their citizens have the harvesting capacity to do so. International law requires that other nations be given access if the coastal nation cannot harvest and process the entire allowable catch in its EEZ.

In the United States, we have established a framework that fulfills these two basic principles. Through the Magnuson-Stevens Act, we gave U.S. fishermen first priority in the harvesting and processing of our fishery resources. Foreign fishing is allowed under that Act, however, if U.S. vessels cannot harvest the entire allowable catch. For obvious reasons, the priority works only if U.S.-owned vessels can be distinguished from foreign-owned vessels in the fisheries. I am sad to report that our current law -- and the way it has been interpreted -- fails to allow for this differentiation.

In the nation's largest fishery by volume (Bering Sea pollock) Norwegian and Japanese companies control the vessels that take over half the allowable catch. There is not enough fish to support the existing harvesting capacity in this and other fisheries, yet the line to differentiate true U.S.-controlled vessels from foreign-controlled vessels is not adequate to protect the first priority for U.S. citizens. The American Fisheries Act will clear up this blurred line and give U.S. fishermen the top priority to harvest fishery resources, consistent with the historical intent of our laws.

Phase Out of Large Vessels

When the Senate passed my bill last year to strengthen the conservation measures of the Magnuson-Stevens Act, I said on the Senate floor that I would seek a ban on factory trawlers if those measures did not work. It is too early to tell whether those measures will be sufficient. We propose today a phase out -- not a ban -- of factory trawlers and other fishing vessels that are longer than 165 feet, greater than 750 tons, or that have greater than 3,000 shaft horsepower. By fishing vessel, we mean factory trawlers and other vessels that harvest fish.

Existing fishing vessels above these thresholds are grandfathered -- and can stay in the fisheries for their useful lives, provided the 75 percent controlling interest standard is met, and the vessel does not surrender its fishery endorsement at any time. Gradually, the useful lives of

these large fishing vessels will end, however, and a smaller fleet -- more able to avoid bycatch and waste and more likely to be owner-operated -- will replace them.

I reserve the option to accelerate this process through an immediate ban on factory trawlers if the management and conservation measures enacted last year in the Sustainable Fisheries Act are not effective.

The phase out of large fishing vessels does not apply to vessels that fish exclusively for highly migratory fish species primarily outside U.S. navigable waters and the exclusive economic zone. Earlier this year -- we enacted comprehensive legislation to achieve conservation under the International Dolphin Conservation Program -- in part with the hope that some of the eastern tropical tuna fishing vessels would re-flag to the United States. These vessels are subject to stringent international conservation measures, and are able to harvest tuna in a way safer for the overall ecosystem than smaller vessels. These vessels were dealt with differently in some ways under the Anti-Reflagging Act as well.

Foreign Rebuilds

The bill specifically addresses the foreign rebuilding provision of the Anti-Reflagging Act that was misinterpreted by the Coast Guard and abused by speculators who did exactly what Congress tried to avoid with this Act. This misinterpretation and abuse resulted in at least 14 factory trawlers entering the fisheries off Alaska that should have been prohibited by the Anti-Reflagging Act. Section 4(a)(4)(A) of the Act was meant to protect a specific group of owners who relied on pre-existing law in planning to convert U.S.-built fishing vessels abroad for use in the U.S. fisheries. This provision was not intended to protect speculators who entered contingent contracts to purchase vessels with the intent to profit by the coming change in the law.

To avoid this, Congress specifically required under section 4(a)(4)(A) and section 4(b) that the owner had to: (1) have purchased or contracted to purchase a vessel by July 28, 1987; (2) have demonstrated his/her/its specific intent to enter the U.S. fisheries through the purchase of the contract itself or a Coast Guard letter ruling; and (3) have accepted delivery of the vessel by July 28, 1990 and entered it into service. Under the Act, all three conditions had to be met by the same owner before a fishery license could be issued to the vessel. The Coast Guard erroneously allowed the vessel to be redelivered to any owner by July 28, 1990, and created freely transferable and valuable "rights" to enter the fishery that Congress specifically intended to avoid.

The American Fisheries Act would correct this problem by putting the burden on those who benefitted from the ⁽¹⁹⁹⁷⁾ to help with the reduction in the overcapacity that resulted. Specifically, from the date of the introduction of this Act -- September 25, 1997 -- if the controlling interest a vessel that used this loophole materially changes, another active vessel of equal or greater length, tonnage, and horsepower in the same region will have to permanently surrender its fishery endorsement.

The capacity in the Bering Sea would be reduced on the backs of those who caused the problem and who argued for and benefitted from an interpretation clearly contrary to Congressional intent.

Federal Loan Guarantees

The bill would permanently prohibit federal loan guarantees for any vessel that is intended for use as a fishing vessel, and that will be greater than 165 registered feet, 750 gross registered tons, or 3,000 shaft horsepower when the construction or rebuilding is completed.

We mean to prevent the federal government from subsidizing or assisting in any way in the: (1) construction of vessels above these thresholds; (2) extension of the useful life of vessels above these thresholds; or (3) expansion of vessels so that they exceed these threshold -- where the vessel will be used as a fishing vessel. For the purposes of this measure, fishing vessel has the same definition as under section 2101 of title 46, United States Code, meaning a vessel that engages in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking or harvesting of fish. This obviously includes factory trawlers and other fishing vessels above the thresholds listed above.

Summary

With the American Fisheries Act, we will clean up the mess caused by the exceptions and misinterpretation of the Anti-Reflagging Act. We will also serve notice that entities that do not meet the 75 controlling interest standard will not likely receive individual fishing quotas (IFQs) or other limited access permits under the Magnuson-Stevens Act.

The Sustainable Fisheries Act (Pub. L. 104-297) requires the National Academy of Sciences to study how to prohibit entities that don't meet the standard from owning IFQs. We will analyze the Academy's report during the reauthorization of the Magnuson-Stevens Act in 1999. I do not want any foreign-controlled entities to be surprised when that process begins.

Non-U.S. citizens simply should not be given what, for all practical purposes, are permanent access privileges to U.S. marine resource when there are U.S. citizens that can harvest these fish. The Magnuson-Stevens Act allows these foreign-controlled entities to harvest the portion of the allowable catch that U.S. citizens cannot.

In Alaska, some of the foreign participants are doing what they can to patch up their relationship with Alaska and Alaskans -- but I question their long-term commitment. The North Pacific Council is reviewing the inshore/offshore pollock allocation right now -- which will substantially impact them. They have been good partners this year in anticipation of this Council debate -- but where were they last year? They were here in Washington, D.C., lobbying against our bill to protect fishing communities, reduce bycatch, and prevent foreign entities from receiving a windfall giveaway through IFQs. If Congress or the North Pacific Council gives away permanent access to our fisheries, I believe these entities will go back to their tactics of the last 10 years. Flannery O'Connor explained this well in her short story "A Good Man Is Hard to Find."

In that story, the "Misfit" says of another character that "She would of been a good woman, if [there] had been somebody there to shoot her every minute of her life." The foreign-controlled factory trawlers have the inshore/ offshore gun to their head right now, and are being "good." But their track record without this gun has been poor, both with respect to the conservation and to protecting fishing communities. In the Bering Sea pollock, specifically, I am concerned that a single Norwegian entity controls an excessive share of the harvest in violation of National Standard Four of the Magnuson-Stevens Act. I am also concerned about the

expansion of the ownership of catcher vessels and factory trawlers by Japanese entities. Will we have the strength in the Congress or at the Council level to prevent a giveaway of IFQs to foreign-controlled entities in 2000 or beyond if they are the only ones left in the fishery?

The time has come to put Americanization back on the track as we first envisioned when we extended U.S. jurisdiction over the fisheries out to 200 miles. Thank you.

American Fisheries Act (S. 1221 --Stevens, Breaux, Murkowski, Hollings)

U.S. Ownership: The bill would raise the ownership standard for a fishery endorsement (which a vessel must have to be employed in the fisheries in the United States) to 75 percent, similar to the standard for Jones Act vessels. The existing standard for a fisheries endorsement is 50 percent. The bill would repeal provisions of the Anti-Reflagging Act which have allowed, or been interpreted to allow, entities that do not meet even the existing 50 percent standard to own and control United States flag fishing vessels. Consistent with international law and with the Magnuson-Stevens Act, the bill does not overturn existing mechanisms which allow foreign vessels to harvest fishery resources in the United States when bona fide U.S. fishing vessels do not have sufficient capacity to harvest the entire allowable catch in a fishery.

Phase Out of Large Fishing Vessels: The bill would prohibit additional large fishing vessels (vessels of more than 165 registered feet, 750 gross registered tons, or with engines that produce more than 3,000 shaft horsepower) from entering the fisheries in the United States. Vessels which exceed these limits but which have valid fishery endorsements on September 25, 1997 (the date of introduction) would be grandfathered into the fisheries for the useful life of the vessel. If a grandfathered vessel is lost by some cause other than the willful misconduct of the owner, the owner would be able to receive a fishery endorsement for a vessel of similar (but not greater) size, provided the owner obtains the replacement vessel and receives the new fishery endorsement within 18 months. The bill would also prohibit federal loan guarantees from being made for vessels greater in length than 165 feet, greater than 750 gross registered tons, or with engines that produce more than 3,000 horsepower intended for use in the fisheries.

Foreign Rebuilt Vessels: The bill would close a loophole created by the Coast Guard's misinterpretation of a provision in the 1987 Anti-Reflagging Act that allowed at least 14 more factory trawlers that were rebuilt in foreign shipyards to enter the U.S. fisheries than were intended by Congress. Rather than outright banning these vessels from the fisheries, the bill would allow the vessels to remain so long as their ownership is not materially changed. If the ownership of a vessel that used the loophole is materially changed after September 25, 1997, the fishery endorsement of a vessel of equal or greater size in a fishery in the same region would have to be surrendered in order for the loophole vessel to continue to qualify for a fishery endorsement. This would force the owners of those vessels that used the loophole to help in addressing the overcapacity problems that resulted from their entry into the fisheries.

New England Situation: The provision in the American Fisheries Act to phase out large fishing vessels would apply only to vessels which do not have a valid fishery endorsement on September 25, 1997. The ATLANTIC STAR, a factory trawler which has caused concern in New England by seeking to enter the Atlantic herring and mackerel fisheries, has already been issued a fishery endorsement, though it has not yet entered those fisheries. The bill therefore contains a New England-specific provision to prevent this vessel from entering the fisheries unless the appropriate fishery management council specifically allows it to enter. This approach is consistent with a bill introduced by Senators Snowe, Kerry and Kennedy, a bill introduced by Senators Chafee, Reed, Torricelli and Lautenberg, and a bill passed earlier this summer in the House, and is needed because of the control date in the national legislation.

II

105TH CONGRESS
1ST SESSION**S. 1221**

To amend title 46 of the United States Code to prevent foreign ownership and control of United States flag vessels employed in the fisheries in the navigable waters and exclusive economic zone of the United States, to prevent the issuance of fishery endorsements to certain vessels, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 25, 1997

Mr. STEVENS (for himself, Mr. BREAUX, Mr. MURKOWSKI, and Mr. HOLLINGS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To amend title 46 of the United States Code to prevent foreign ownership and control of United States flag vessels employed in the fisheries in the navigable waters and exclusive economic zone of the United States, to prevent the issuance of fishery endorsements to certain vessels, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 "American Fisheries Act".

1 (b) TABLE OF CONTENTS.—The table of contents for
2 this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—STANDARD OF OWNERSHIP

Sec. 101. Findings and purposes.

Sec. 102. Standard of ownership.

Sec. 103. Enforcement of standard.

TITLE II—ANTI-REFLAGGING ACT EXCEPTIONS

Sec. 201. Restrictions on build and rebuild savings clause.

Sec. 202. Repeal of ownership savings clause.

TITLE III—PHASE OUT OF CERTAIN VESSELS

Sec. 301. Restriction on fishery endorsements.

Sec. 302. Restriction on loan guarantees.

3 **TITLE I—STANDARD OF OWNERSHIP**

4 **SEC. 101. FINDINGS AND PURPOSES.**

5 (a) FINDINGS.—The Congress finds that—

6 (1) non-United States citizens own and control
7 many United States flag fishing vessels and are har-
8 vesting significant amounts of fishery resources in
9 the navigable waters and exclusive economic zone of
10 the United States that could otherwise be harvested
11 by citizens of the United States;

12 (2) in the largest fishery in the exclusive eco-
13 nomic zone of the United States (the Bering Sea
14 pollock fishery), Norwegian and Japanese entities
15 control a substantial majority of the harvesting and
16 processing through the ownership and control of
17 United States-flag fishing vessels, including factory
18 trawlers and large trawlers;

1 (3) these levels of ownership and control of
2 United States flag fishing vessels by non-United
3 States citizens are inconsistent with the intent and
4 requirements of the Commercial Fishing Industry
5 Vessel Anti-Reflagging Act of 1987 (Public Law
6 100-239);

7 (4) the foreign rebuilding requirements of sec-
8 tion 4(a)(4) of such Act were misinterpreted in a
9 manner that rewarded the very speculation Congress
10 sought to prevent with the passage of that Act, re-
11 sulting in a far greater number of foreign-rebuilt
12 vessels entering the fisheries off Alaska than Con-
13 gress intended to allow;

14 (5) under customary international law, includ-
15 ing the United Nations Convention on the Law of
16 the Sea, a coastal state has sovereign rights for the
17 purpose of exploiting, conserving, and managing the
18 living marine resources in its navigable waters and
19 exclusive economic zone, including the sovereign
20 right for its citizens to harvest and process the en-
21 tire allowable catch within its exclusive economic
22 zone if they have sufficient capacity;

23 (6) the United States must have a meaningful
24 and enforceable standard of ownership and control
25 for United States flag vessels employed in the fish-

1 eries of the United States in order to ensure that
2 citizens of the United States are given first priority
3 in the harvesting and processing of the allowable
4 catch in the exclusive economic zone of the United
5 States;

6 (7) consistent with customary international law,
7 the Magnuson-Stevens Fishery Conservation and
8 Management Act allows fishing vessels of other na-
9 tions to harvest or process the portion of the allow-
10 able catch within the exclusive economic zone of the
11 United States that United States flag fishing vessels
12 do not have the capacity to harvest or process; and

13 (8) fishing vessels greater than 165 feet in reg-
14 istered length, of more than 750 gross registered
15 tons, or that have engines capable of producing a
16 total of more than 3,000 shaft horsepower, including
17 factory trawlers and other trawlers that exceed these
18 measurements—

19 (A) are less likely than smaller, less power-
20 ful vessels with smaller gear to avoid bycatch
21 and minimize the mortality of bycatch that can-
22 not be avoided;

23 (B) have been a cause of overfishing in
24 fisheries both within the navigable waters and

1 exclusive economic zone of the United States
2 and elsewhere throughout the world; and

3 (C) are more likely to be owned by inves-
4 tors and under pressure to produce profits at
5 the expense of the long-term health of fishery
6 resources;

7 (b) PURPOSES.—The purposes of this Act are to—

8 (1) establish a meaningful and enforceable
9 standard of United States citizen ownership and
10 control for United States flag vessels employed in
11 the fisheries in the navigable water and exclusive
12 economic zone of the United States;

13 (2) revoke existing fishery endorsements within
14 a reasonable period of time and prohibit the issuance
15 of new fishery endorsements for United States flag
16 vessels that do not meet this standard;

17 (3) begin to phase out the use of fishing vessels
18 greater than 165 feet in registered length, of more
19 than 750 gross registered tons, or that have engines
20 capable of producing a total of more than 3,000
21 shaft horsepower in the navigable waters and exclu-
22 sive economic zone of the United States by prohibit-
23 ing the issuance of new fishery endorsements to ves-
24 sels which exceed these limits;

1 (4) place a capacity reduction burden on the
2 fishing vessels that came through the loophole cre-
3 ated by the misinterpretation of section 4(a)(4) of
4 the Commercial Fishing Vessel Anti-Reflagging Act;
5 and

6 (5) prohibit Federal loan guarantees for the
7 construction of new fishing vessels greater than 165
8 feet in registered length, of more than 750 gross
9 registered tons, or that have engines capable of pro-
10 ducing a total of more than 3,000 shaft horsepower,
11 or for the rebuilding or improvement of existing ves-
12 sels which would result in a fishing vessel which ex-
13 ceeds these limits.

14 **SEC. 102. STANDARD OF OWNERSHIP.**

15 (a) **CLARIFICATION OF DOCUMENTATION STAND-**
16 **ARD.**—Section 12102(a) of title 46, United States Code,
17 is amended in paragraph (4) by striking “president or
18 other chief executive officer” and inserting in lieu thereof
19 “chief executive officer, by whatever title.”

20 (b) **STANDARD FOR FISHERY ENDORSEMENTS.**—Sec-
21 tion 12102(c) of title 46, United States Code, is amended
22 to read as follows—

23 “(c)(1) A vessel owned by a corporation, partnership,
24 association, trust, joint venture, or other entity is not eligi-
25 ble for a fishery endorsement under section 12108 of this

1 title unless at least 75 per centum of the controlling inter-
2 est in such entity, in the aggregate, is owned by citizens
3 of the United States.

4 “(2) The Secretary shall apply section 2(c) of the
5 Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determin-
6 ing under this subsection whether at least 75 per centum
7 of the controlling interest in an entity is owned by citizens
8 of the United States.”.

9 (c) EFFECTIVE DATE FOR VESSELS WHICH MEET
10 CURRENT STANDARD.—A vessel owned by an entity which
11 satisfies the controlling interest requirements of section
12 12102(c) of title 46, United States Code, as that section
13 was in effect prior to the amendments made by this Act,
14 and for which a fishery endorsement was in effect on Sep-
15 tember 25, 1997, shall not be required to comply with
16 paragraphs (1) and (2) of section 12102(c) of title 46,
17 United States Code, as amended by this Act, until the date
18 that is eighteen months from the date of the enactment
19 of this Act, provided such entity does not, prior to such
20 compliance date, fail to satisfy the controlling interest re-
21 quirements of section 12102(c) of title 46, United States
22 Code, as that section was in effect prior to the amend-
23 ments made by this Act.

1 SEC. 103. ENFORCEMENT OF STANDARD.

2 (a) MARITIME ADMINISTRATION.—(1) To dem-
3 onstrate compliance with section 12102(c) of title 46,
4 United States Code, as amended by this Act, with respect
5 to vessels of more than 100 gross registered tons, an affi-
6 davit of United States citizenship setting forth all relevant
7 facts regarding vessel ownership and control by citizens
8 of the United States shall be filed with the Administrator
9 of the Maritime Administration on an annual basis. Regu-
10 lations to implement this paragraph shall conform to the
11 extent practicable with the regulations establishing the
12 form of citizenship affidavit set forth in part 355 of title
13 46, Code of Federal Regulations, as in effect on Septem-
14 ber 25, 1997.

15 (2) Transfers of ownership and control shall be rigor-
16 ously scrutinized by the Administrator, with particular at-
17 tention given to leases, charters, mortgages, financing, or
18 other arrangements involving other than the purchase over
19 extended periods of time of all, or substantially all, of the
20 living marine resources harvested by a fishing vessel. Reg-
21 ulations to implement this paragraph shall prohibit imper-
22 missible transfers of ownership or control.

23 (3) The Administrator, on a regular basis, shall pro-
24 vide the Commandant of the United States Coast Guard
25 with a list of, and relevant information about, all vessels
26 that the Administrator determines meet the requirements

1 of section 12102(c) of title 46, United States Code, as
2 amended by this Act.

3 (b) COAST GUARD.—The Secretary of Transpor-
4 tation shall establish such requirements as are reasonable
5 and necessary to demonstrate compliance with section
6 12102(c) of title 46, United States Code, as amended by
7 this Act, with respect to vessels of less than or equal to
8 100 gross registered tons.

9 (c) ENDORSEMENTS REVOKED.—The Secretary of
10 Transportation shall revoke the fishery endorsement of—

11 (1) any vessel of less than or equal to 100 gross
12 registered tons that does not demonstrate compli-
13 ance under subsection (b) with section 12102(c) of
14 title 46, United States Code; and

15 (2) any vessel of more than 100 gross reg-
16 istered tons that is not identified on the list provided
17 by the Administrator under subsection (a)(4) as
18 meeting the requirements of section 12102(c) of title
19 46, United States Code.

20 (d) REGULATIONS.—Regulations to implement this
21 section shall be promulgated within 6 months of the date
22 of the enactment of this Act.

23 (e) AUTHORIZATION OF APPROPRIATIONS.—There
24 are authorized to be appropriated such sums as may be
25 necessary to carry out the provisions of this Act.

1 (f) PENALTY.—Section 12122 of title 46, United
2 States Code, is amended by inserting at the end the follow-
3 ing new subsection:

4 “(c) In addition to penalties under subsections (a)
5 and (b), the owner of a documented vessel for which a
6 fishery endorsement has been issued is liable to the United
7 States Government for a civil penalty of up to \$100,000
8 for each day in which such vessel has engaged in fishing
9 (as such term is defined in section 3 of the Magnuson-
10 Stevens Fishery Conservation and Management Act (16
11 U.S.C. 1802)) within the navigable waters or exclusive
12 economic zone of the United States, if the owner or the
13 representative or agent of the owner knowingly falsified
14 or concealed a material fact, or knowingly make a false
15 statement or representation with respect to the eligibility
16 of the vessel under section 12102(c) in applying for such
17 fishery endorsement.”.

18 (g) REVIEW OF TRANSFERS.—Section 9(c)(1) of the
19 Shipping Act, 1916 (46 U.S.C. 808(c)(1)) is amended by
20 striking “in a vessel that has been operated only as a fish-
21 ing vessel, fish processing vessel, or fish tender vessel (as
22 defined in section 2101 of title 46, United States Code)
23 or”.

1 **TITLE II—ANTI-REFLAGGING ACT**
2 **EXCEPTIONS**

3 **SEC. 201. RESTRICTIONS ON BUILD AND REBUILD SAVINGS**
4 **CLAUSE.**

5 (a) **REPEAL.**—Notwithstanding section 4 of the Com-
6 mercial Fishing Industry Vessel Anti-Reflagging Act of
7 1987 (Public Law 100-239; 46 U.S.C. 12108 note), a cer-
8 tificate of documentation may not be endorsed with a fish-
9 ery endorsement for a vessel which does not meet the re-
10 quirements of paragraphs (2) and (3) of section 12108(a)
11 of title 46, United States Code, unless the certificate of
12 documentation for such vessel was endorsed with a fishery
13 endorsement that was effective on September 25, 1997,
14 and the vessel otherwise qualifies for a fishery endorse-
15 ment, including under sections 12102(c) and 12108(e) of
16 title 46, United States Code, as amended by this Act.

17 (b) **RESTRICTION.**—Notwithstanding subsection (a)
18 or any other provision of law, any fishing vessel (as de-
19 fined in section 2101 of title 46, United States Code)
20 which—

21 (1) had a fishery endorsement in effect on Sep-
22 tember 25, 1997;

23 (2) is greater than 165 feet in registered
24 length, of more than 750 gross registered tons, or

1 has an engine or engines capable of producing a
2 total of more than 3,000 shaft horsepower; and

3 (3) was built in the United States and was—

4 (A) purchased or contracted for purchase
5 prior to July 29, 1987 for use in the fisheries
6 of the United States;

7 (B) rebuilt in a foreign shipyard under a
8 contract entered into prior to June 12, 1988;

9 (C) delivered after such rebuilding and is-
10 sued a fishery endorsement prior to July 29,
11 1990; and

12 (d) not owned or controlled by the same
13 entity during the occurrence of each of the
14 events described in subparagraphs (A) through
15 (C);

16 shall be ineligible for a fishery endorsement under section
17 12108 of title 46, United States Code, if the controlling
18 interest in the entity that owns the fishing vessel on Sep-
19 tember 25, 1997 is materially changed after such date,
20 unless a fishery endorsement for another fishing vessel of
21 the same or greater registered length, gross registered
22 tons, and shaft horsepower, which actively harvested fish-
23 ery resources in the fisheries under the authority of the
24 same Regional Fishery Management Council during the

1 year prior to such material change, is permanently surren-
2 dered.

3 **SEC. 202. REPEAL OF OWNERSHIP SAVINGS CLAUSE.**

4 (a) **REPEAL.**—Section 7(b) of the Commercial Fish-
5 ing Industry Anti-Reflagging Act of 1987 (Public Law
6 100-239; 46 U.S.C. 12102 note) is hereby repealed.

7 (b) **EFFECTIVE DATE.**—Subsection (a) shall take ef-
8 fect eighteen months after the date of the enactment of
9 this Act.

10 **TITLE III—PHASE OUT OF CERTAIN**
11 **FISHING VESSELS**

12 **SEC. 301. RESTRICTION ON FISHERY ENDORSEMENTS.**

13 (a) **GENERAL PROHIBITION.**—Section 12108 of title
14 46, United States Code, is amended by adding at the end
15 the following new subsection:

16 “(e) A certificate of documentation may not be en-
17 dorsed with a fishery endorsement for a fishing vessel that
18 is greater than 165 feet in registered length, of more than
19 750 gross registered tons, or that has an engine or engines
20 capable of producing a total of more than 3,000 shaft
21 horsepower unless—

22 “(1) the certificate of documentation for such
23 vessel was endorsed with a fishery endorsement that
24 was effective on September 25, 1997 and has not
25 been surrendered at any time thereafter; and

1 “(2) the registered length, gross registered
2 tons, and shaft horsepower do not exceed the length,
3 tonnage, and horsepower of such vessel on such
4 date.”.

5 (b) NEW ENGLAND FISHERIES.—(1) Notwithstand-
6 ing any other provision of law, the Secretary of Commerce
7 may not authorize or permit fishing vessels (as defined
8 in section 2101 of title 46, United States Code) greater
9 than 165 feet in registered length, of more than 750 gross
10 registered tons, or that have an engine or engines capable
11 of producing a total of more than 3,000 shaft horsepower
12 to engage in directed fishing for Atlantic mackerel or At-
13 lantic herring unless the participation of such vessels is
14 specifically allowed in fishery management plans developed
15 and implemented for those fisheries under the Magnuson-
16 Stevens Fishery Conservation and Management Act (16
17 U.S.C. 1801 et seq.).

18 (2) Within 5 days after the date of the enactment
19 of this Act, the Secretary of Commerce shall revoke any
20 permit issued before that date to any vessel described in
21 subsection (a) which would permit such vessel to engage
22 in directed fishing for Atlantic mackerel or Atlantic her-
23 ring.

24 (c) REPLACEMENT OF LOST VESSELS.—Notwith-
25 standing section 12108(e) of title 46, United States Code

1 as added by this Act, the owner of an existing vessel great-
2 er than 165 feet in registered length, of more than 750
3 gross registered tons, or that has an engine or engines
4 capable of producing a total of more than 3,000 shaft
5 horsepower, and that had a valid fishery endorsement on
6 September 25, 1997, may obtain a fishery endorsement
7 for a replacement vessel in the event of the actual total
8 loss or constructive total loss after September 25, 1997,
9 of such existing vessel, provided that: (1) such loss was
10 caused by an act of God, an act of war, a collision, an
11 act or omission of a party other than the owner or agent
12 of the vessel, or any other event not caused by the willful
13 misconduct of the owner or agent; (2) the existing vessel
14 actively harvested fishery resources in the exclusive eco-
15 nomic zone of the United States during the year prior to
16 such loss; (3) the replacement vessel is of the same or less-
17 er registered length, gross registered tons, and shaft
18 horsepower that the existing vessel; (4) the fishery en-
19 dorsement for the new vessel is issued within 18 months
20 of the loss of the existing vessel; and (5) the replacement
21 vessel otherwise qualifies under laws of the United States
22 for a fishery endorsement.

23 (d) FISHING VESSELS OPERATING BEYOND THE EX-
24 CLUSIVE ECONOMIC ZONE.—Section 12108(e) of title 46,
25 United States Code, as amended by this Act, shall not

1 apply to a fishing vessel engaged in fishing exclusively for
2 highly migratory species (as that term is defined in section
3 3 of the Magnuson-Stevens Fishery Conservation and
4 Management Act (16 U.S.C. 1802)) primarily outside of
5 the navigable waters and exclusive economic zone of the
6. United States.

7 **SEC. 302. RESTRICTION ON LOAN GUARANTEES.**

8 Section 302(b) of the Fisheries Financing Act (46
9 U.S.C. 1274 note) is amended—

10 (1) by inserting “(1)” before “Until October 1,
11 2001”; and

12 (2) by inserting at the end the following new
13 paragraph:

14 “(2) No loans may be guaranteed by the Fed-
15 eral Government for the construction or rebuilding
16 of a vessel intended for use as a fishing vessel (as
17 defined in section 2101 of title 46, United States
18 Code), if such vessel will be greater than 165 feet
19 in registered length, of more than 750 gross reg-
20 istered tons, or have an engine or engines capable of
21 producing a total of more than 3,000 shaft horse-
22 power, after such construction or rebuilding is com-
23 pleted.”.

○



AT-SEA PROCESSORS ASSOCIATION

Partners for Healthy Fisheries

PROPOSED PHASE OUT OF LARGE FISHING VESSELS HARMS U.S. FISHERS AND IMPACTS COMPETITIVENESS

On September 25, 1997 Senator Ted Stevens introduced S. 1221, a bill that phases out fishing vessels longer than 165 feet and increases U.S. citizenship requirements for fishing industry vessels. Also, the legislation repeals a grandfather provision for certain U.S.-built fishing vessels that were rebuilt overseas. Under this provision, certain vessels, which have operated in U.S. fisheries since 1990 or before, could lose their fishing privileges.

APA position on elements of S. 1221:

- **The fisheries in which U.S.-flag at-sea fish processing vessels participate are healthy. The National Marine Fisheries Service's (NMFS') recent report on the status of U.S. fisheries confirms that no overfishing is occurring in fisheries conducted by the at-sea processing fleet.**
- **APA members participate primarily in the Bering Sea pollock fishery and the Pacific whiting fishery. Landings from these two fisheries account for over 25 percent of all fish landed at U.S. ports. These are two of the cleanest fisheries in the world with bycatch rates of less than 3 percent. The bill's finding that at-sea processors have higher bycatch than smaller vessels is incorrect.**
- **To accommodate fish processing equipment and processing personnel, catcher/processor vessels are generally longer than 165 feet. Their harvesting capacity is often times less than that of smaller vessels that only catch fish. To allow fishers to employ technology that adds value to their catch, and to afford western Alaska fishing communities access to remote fishing grounds, APA opposes a phase out of large fishing vessels.**
- **APA agrees that Congress should review national policy relating to foreign ownership of fishing industry vessels, including revoking the ownership "grandfather" under which most existing fishing vessels operate. Congress should also consider the control over fishery resources exerted by foreign-owned onshore processors, particularly Nippon Suisan's and Maruha's dominance of the onshore Bering Sea pollock processing sector.**
- **APA opposes eliminating thousands of jobs and threatening hundreds of millions of dollars in investment by revoking fishing privileges for vessels lawfully engaged in the fisheries since the 1980s. Tyson Foods is one of the principal advocates promoting a provision to eliminate competitors from the at-sea sector, competitors who were engaged in the fisheries before Tyson Foods made its first investment in the fishery.**



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Discussion of Issues Relating to S. 1221

1. Conservation, Not Vessel Size Limitation, is the Key to Sustainable Fisheries.

a. Sustainable fishing is best achieved by promoting sound fishery conservation and management practices.

The bill proposes to phase out all fishing vessels over 165 feet. S. 1221 contends wrongly that a Congressionally mandated limit on fishing vessel size promotes conservation, but vessel size is not necessarily a relevant factor in instituting a sound fishery conservation regime. A review of the status of U.S. fisheries reveals that about one-third of all U.S. fisheries are overfished, and smaller fishing vessels are prevalent in these fisheries. Perhaps the most dramatic example is the New England groundfish fishery, which has been heavily overfished by small boat fleets.

On the other hand, NMFS reports that the North Pacific groundfish fisheries and the Pacific whiting fishery, the fisheries in which at-sea fish processors over 165 feet participate, are healthy. These Pacific groundfish fisheries are healthy because, unlike in New England, the regional fishery councils that manage these fisheries, set conservative harvest levels and carefully monitor the catch. When the allotted harvest quota is taken, the fishery shuts down. At-sea processing vessels report their catch on a weekly (and even daily) basis as conditions warrant, ensuring that quotas are not exceeded. All fish harvested, whether retained for processing or discarded, counts against the quota.

b. Waste in fisheries is not related to the size of the fishing vessel.

At-sea pollock processing vessels, which can measure over 300 feet in length, have a bycatch rate of less than three percent, that is, less than 3 percent of the catch is comprised of species not sought by the fisher. The U.N. Food and Agricultural Organization (FAO) reports that the Bering Sea pollock fishery is among the "cleanest" fisheries in the world. Furthermore, NMFS statistics show comparable bycatch rates between small and large pollock vessels fishing in the Bering Sea.

How do large pollock catcher/processors compare with other fishing vessels? FAO figures indicate that worldwide, bycatch comprises about 30 percent of the catch reported by fishers. That rate is ten times higher than pollock processing fleet's bycatch rate. One of the dirtiest fisheries is the small boat U.S. shrimp fleet, which has a bycatch rate in excess of 500 percent!

c. The size of a fishing vessel does not necessarily reflect its fishing capacity.

It should also be understood that the size of a vessel is not always indicative of its fishing capacity. In the Bering Sea pollock fishery, 150-foot long catcher vessels are capable of harvesting as much fish in one tow as 300-foot long catcher/processors. The size of a catcher/processor reflects its function, that is, the harvesting and processing of

fish. A 300-foot catcher/processor reflects the need to accommodate on board a fish processing factory, living quarters for a 100-person crew, galley, cold storage hold, and other facilities not related to harvesting capacity.

d. Fisheries monitoring, enforcement and data collection can be enhanced in large vessel fisheries.

Having fewer, larger vessels in the fisheries makes monitoring and enforcement of fisheries regulations easier. In the North Pacific fisheries, the fishers fund a program to provide federal fishery observer coverage. Qualified federal fishery observers are stationed on board *all* at-sea fish processors. Observers monitor harvest levels and collect scientific information. In the Pacific whiting fishery, at-sea processors *voluntarily* carry federal observers on board. In this fishery, vessels as large as 300 feet in length have consistently recorded salmon bycatch rates half that of 100-foot long vessels.

2. APA agrees that the U.S. ownership standard for fishing industry vessels should be revised.

Historically, U.S. fishing vessels that were owned by U.S.-registered corporations could have 100 percent of the shares of the corporations owned by foreign nationals. Under the Anti-Relicensing Act of 1987, U.S. citizens were required to own or control 51 percent of vessels engaged in fisheries activities. However, many existing vessels are "grandfathered" under the law, that is, the ownership provision of the Anti-Relicensing Act does not apply to them. S. 1221 eliminates the "grandfather" for all vessels, and raises the U.S. ownership requirement to 75 percent. If a vessel is not in compliance with the new ownership standard within 18 months, the vessel loses its fishery endorsement, a Coast Guard-issued document certifying a vessel's eligibility to participate in U.S. fisheries.

APA agrees that the "grandfather" rights that now apply to most fishing industry vessels should be eliminated and a scheduled phase-in of U.S. ownership of fishing vessels, at or above 51 percent, should occur. In developing a new U.S. ownership standard, APA urges Congress to recognize that it is often necessary for fishing companies to look to international markets for financing and marketing arrangements. It will be important to develop meaningful ownership and control standards that still allow U.S. fishers to be competitive in world markets.

Also, it should be recognized that neither current law, nor S. 1221, imposes U.S. ownership requirements on onshore processors. Nippon Suisan and Maruha, two multi-billion dollar Japanese fishing companies, own or control about 75 percent of the onshore pollock processing capacity in Alaska. These two multinationals also control a substantial portion of the Japanese *surimi* market. *Surimi* is a fish paste that is one of the principal food products produced in the 2.3 billion pound U.S. pollock fishery. Congress and the executive branch should carefully consider any federal legislative or regulatory policies allocating additional Bering Sea pollock to the onshore processing sector.

Shoreside preference allocations increase Nippon Suisan's and Maruha's control over the pollock resource, the largest U.S. fishery resource.

3. A proposed retroactive change in the law affecting U.S.-built fishing vessels that were rebuilt overseas would result in losses of more than 1,500 American jobs and \$400 million in investment.

About two dozen U.S.-flag, and U.S.-built, at-sea fish processing vessels were rebuilt overseas prior to 1990, in accordance with then-existing law and consistent with Coast Guard rulings. The U.S. fishing companies operating these vessels employ thousands of workers, including more than 1,500 on the affected vessels.

Tyson Seafoods Group, a subsidiary of Tyson Foods, is one of the principal advocates, and an apparent beneficiary, of a special interest provision in S. 1221 that could force fishers to sell their vessels to Tyson's fishing company. The affected vessels were lawfully engaged in U.S. fisheries long before Tyson Foods first bought into the fishing industry. Tyson now supports a provision in S. 1221 to revoke fishing privileges for many of these vessels, if the vessels do not already meet the new, 75 percent U.S. citizenship requirement proposed in this measure, or if any other change in ownership occurs.

Under S. 1221, an affected, U.S. vessel rebuilt overseas can retain its fishery endorsement only by retiring a vessel of equal or greater size from the fishery. Tyson is well positioned to buy out its competitors. Tyson, which entered the at-sea processing sector in the early 1990s by purchasing a large fishing company, has both capital and surplus vessels that can be retired from the fishery. By forcing the sale of the largest, most efficient vessels operated by its competitors, Tyson can control virtually all of the pollock harvested by the at-sea sector. A provision granting Tyson access to the lion's share of the largest U.S. fishery resource would help the company recoup from its declared loss of \$230 million for its foundering fishing company.

October 22, 1997



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January 23, 1998

The Honorable Ted Stevens
522 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Stevens:

Through the Freedom of Information Act I have recently received a 1988 written opinion from the Coast Guard's legal department which clearly concludes that the American ownership provisions to the Anti-Reflagging Act apply to the new owner whenever a vessel in the fishing industry is sold or transferred. Despite this written legal opinion, the agency's vessel documentation office continued to issue letter rulings allowing foreign-owned corporations to purchase fishing vessels.


As you are aware, in 1987 virtually all of the groundfish resources in the North Pacific were harvested by bona fide U.S.-owned fishing vessels. However, foreign-owned and controlled fishing fleets now dominate the harvesting and processing of United States resources to an extent not seen since prior to passage of the Magnuson-Stevens Act in 1976. One single foreign-owned company now claims to harvest forty-two percent of the most valuable fishery in the United States—the offshore pollock quota in the waters off Alaska! This enormous increase in foreign fishing effort in our Nation's waters was a result of the Coast Guard's implementation of the Anti-Reflagging Act, a law which ironically was intended to prevent foreign controlled companies from circumventing the Americanization policy of the Magnuson-Stevens Act.

In summary, when the Anti-Reflagging Act was signed into law in January of 1988, it prohibited foreign-controlled corporations from owning U.S. fishing vessels. The Act contained a limited grandfather provision for the few foreign-owned corporations that already owned a specific fishing vessel or had already undertaken substantial financial investments in building a particular fishing vessel. The Congress was clear that if a grandfathered vessel was later sold, it must be purchased by a bona fide American-controlled entity.

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The House Merchant Marine and Fisheries Committee report accompanying the Anti-Reflagging Act stated:

The savings clause in subsection (b) does not apply in the event that the ownership or operational control of a vessel protected under the provisions of subsection (b) changes in whole or in part. In such an instance, the controlling interest provisions of subsection (a) [the U.S. ownership requirement] would apply.¹

For reasons that have never been fully examined, soon after the Anti-Reflagging Act was passed the Coast Guard's vessel documentation branch began issuing ad hoc ruling letters which allowed fishing industry vessels owned by U.S. citizens to be transferred to foreign-owned corporations. These ad hoc ruling letters were issued prior to any formal rule making by the Coast Guard. The rulings opened the flood gates for foreign interests to dominate our Nation's fishing industry.²

¹ House Comm. on Merchant Marine and Fisheries, H.R. Rep. No. 100-423, 100th Cong., 1st Sess. 17, (1987).

² The ruling letters from the Coast Guard's Vessel Documentation Branch stating that foreign-owned corporations were allowed to purchase fishing vessels include the following:

1988

(Note: Anti-Reflagging Act was signed into law on January 11, 1988.)

Letter from Thomas L. Willis to Michael D. Walker (Mar. 16, 1988).

Letter from Thomas L. Willis to Phyllis D. Carnilla (Mar. 29, 1988).

Letter from Thomas L. Willis to William N. Myhre (Mar. 31, 1988).

Letter from Thomas L. Willis to William N. Myhre (Mar. 31, 1988).

Letter from Thomas L. Willis to William N. Myhre (Apr. 10, 1988).

Letter from Thomas L. Willis to William N. Myhre (Jun. 22, 1988).

Letter from Thomas L. Willis to William N. Myhre (Jun. 29, 1988).

Letter from Thomas L. Willis to William N. Myhre (Jul. 1, 1988).

Letter from Thomas L. Willis to William N. Myhre (Jul. 5, 1988).

Letter from Thomas L. Willis to William N. Myhre (Jul. 12, 1988).

Letter from Thomas L. Willis to Robert F. Morgan (Jul. 26, 1988).

(Note: On October 20, 1988, the Coast Guard publishes Notice of Proposed Rulemaking regarding the Anti-Reflagging Act's grandfather provisions.)

Letter from Thomas L. Willis to Michael J. Hyde (Nov. 30, 1988).

(Note: On December 18, 1988, the Coast Guard's Maritime & Internal Law Division issues its written legal opinion stating that the U.S.-ownership provision of the Anti-Reflagging Act would apply to any vessel that is sold or transferred.)

1989

Letter from Thomas L. Willis to William N. Myhre (Jan. 27, 1989).

Letter from Thomas L. Willis to Michael J. Hyde (Jan. 19, 1989).

On October 20, 1988, well after ruling letters allowing foreign-owned corporations to purchase fishing industry vessels had already been issued, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) regarding the American ownership requirements of the Anti-Reflagging Act. The NPRM, however, made no mention of whether the grandfather provision to the Act's U.S. ownership requirements ran with the vessel.

The Coast Guard received comments to the NPRM expressing the view that the savings clause should be read to permanently grandfather every vessel currently in the fisheries. In response to those comments, the Coast Guard Maritime and International Law Division—the legal department in the Coast Guard with responsibility for this matter—issued a formal written opinion on December 19, 1988. The opinion noted that,

The basic issue is: If one of these vessels (grandfathered under section 7 of the Act) is subsequently sold, should the Coast Guard apply the enacted controlling interest test to the new owner? House Report No. 100-423 [stating that if the ownership or control of a grandfathered vessel changes in whole or in part, the new American ownership requirements would apply] clearly addresses this issue...

The argument is made in some of the comments to the NPRM that the plain language of the statute does not expressly interpret the savings provision in this manner, and that the plain meaning should prevail to the exclusion of the

Letter from Thomas L. Willis to William N. Myhre (May. 10, 1989).
Letter from Thomas L. Willis to Terry L. Litzell (May. 16, 1989).
Letter from Thomas L. Willis to William N. Myhre (May. 31, 1989).
Letter from Thomas L. Willis to William N. Myhre (Jun. 13, 1989).
Letter from Thomas L. Willis to William N. Myhre (Jun. 30, 1989).
Letter from Thomas L. Willis to William N. Myhre (Aug. 17, 1989).

1990

Letter from Thomas L. Willis to Phyllis D. Carnilla (Jan. 2, 1990).
Letter from Thomas L. Willis to William N. Myhre (May. 10, 1990).
(Note: On Dec. 12, 1990, the Coast Guard adopts its Final Rule regarding the Anti-Reflagging Act's grandfather provisions.)

1991

Letter from Thomas L. Willis to William N. Myhre (Oct. 2, 1991).

legislative interpretations. I disagree with that argument. The "plain meaning rule" functions as a presumption, not an exclusionary rule. When literal enforcement of a statute would lead to incongruous results which the legislatures clearly did not intend, then a construction must be adopted to avoid such incongruities... In the instant case, the legislative history clearly defines the only rational interpretation of the savings provision of the Act, effectively rebutting the "plain meaning rule."

It is also noteworthy that Congressman Young, addressing the provisions of the Act, stated that the Act is "designed to advance the development of U.S. fishing industry and to correct certain inconsistencies in maritime law that have allowed foreign interests to deprive American shipyard workers and American crewmen of jobs." (Cong. Red. H9811). Based on the foregoing clarifications and the general purpose of the legislation, the correct interpretation is that the savings provision terminates once the vessel is sold or transferred. In such cases, the controlling interest provisions would apply to the new owner.

Despite the Coast Guard's unambiguous written legal position, its vessel documentation branch continued to issue ruling letters stating that the grandfather privileges permanently ran with the vessel—allowing foreign-owned corporations to acquire fishing industry vessels.

On November 16, 1990 the Coast Guard's Chief of Operational Law Enforcement wrote a remarkably candid letter to the agency's vessel documentation division.

Reference (a) [the December 18, 1988, written legal opinion] addresses the issue of whether or not the "Savings Provision" of the Commercial Fishing Vessel Anti-Reflagging Act of 1987 (Act) "runs with the vessel" upon sale or transfer. The position taken was that the provision did not "run with the vessel". The memorandum pointed out that it was clearly Congress's intent that the provision no longer apply to a vessel following its sale or transfer. Reference (b) [a March 20, 1990 letter] provided guidance for determining whether or not a vessel qualifies under the savings provision. The guidance did not address the sale or transfer of the vessel. I understand that this represents a change of position on the issue; that we now interpret the provision as permanently applying to qualified vessels.

This interpretation allows all vessels documented for fisheries and operating in the fisheries in U.S. waters prior to 28 Jul 87, even those that were U.S. owned and controlled at the time, to come under foreign control. I contend, consistent with reference (a) [the December 18, 1988, written legal opinion], that the intent of the Act was to stop foreign control of U.S. vessels, making an exception for those vessels under foreign control at the time to reduce economic impacts on the corporations involved. This interpretation is also consistent with the Magnuson Fisheries Conservation and Management Act of 1976 which was designed to Americanize the fishery off the U.S.

Request the guidance provided in reference (b) be revisited. It is damaging to the U.S. fishing industry to interpret a law designed to reduce foreign control over U.S. fishing vessels in a manner which allows for increase in foreign control.

The Operational Law Enforcement Division's letter was never answered, however, on December 12, 1990, a final rule was published with the provision that the grandfather rights run with the vessel forever, even upon its sale or transfer. By the time the final rule was published, the vessel documentation branch had already taken that position in over twenty separate ruling letters—without mentioning the fact that the Coast Guard's written legal analysis came to the exact opposite conclusion.

The vessel documentation office's decision to allow foreign-owned corporations to purchase fishing vessels was challenged in Southeast Shipyards v. U.S.. In that case the district court held the Coast Guard was wrong. The court noted,

The Anti-Reflagging Act is the latest in a series of steps taken to Americanize the fishery resources off the coasts of the United States, a process that has been ongoing since 1976, and the Coast Guard's interpretation would defeat that process.³

The district court's opinion was reversed on appeal⁴, which was not surprising given the judiciary's general deference to administrative

³ Southeast Shipyard Assoc., v. U.S., No. 901142 (Apr. 30, 1991).

⁴ Southeast Shipyard Assoc., v. U.S., 979 F.2d 1541 (D.C. Cir. 1992).

The Honorable Ted Stevens
January 23, 1998
Page Number 6

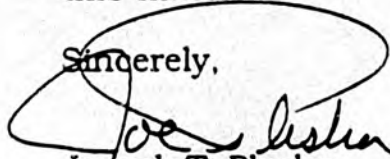
agency's expertise. The Coast Guard's December 18, 1988, written legal analysis, however, was never released to the plaintiffs nor presented to the Court.

The Magnuson-Stevens Fishery Conservation and Management Act was passed in 1976 with the primary purpose of assuring that U.S. citizens are the beneficiaries of our Nation's fishery resources—not foreign nationals. The Magnuson-Stevens Act goal of Americanizing the fishery resources off our shores was destroyed by the way the grandfather provisions of the Anti-Reflagging Act was ultimately handled by the Coast Guard.

Because you have long expressed concerns regarding abuses of the Anti-Reflagging Act's grandfather provisions, I wanted to send this information to you. The issue of why ruling letters were issued prior to rulemaking, why the Coast Guard's legal analysis was ignored and why the legal opinion was not previously disclosed to the public or the courts may warrant further investigation.

Please do not hesitate to contact me if you have any question regarding this material.

Sincerely,



Joseph T. Plesha
General Counsel

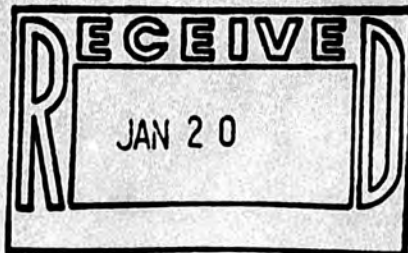
U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard District

P.O. Box 25517
Juneau, Ak. 99801
Staff Symbol: dl
Phone: (907) 463-2050
FAX: (907) 463-2054



5720
FOIA 98-18
January 16, 1998

Trident Seafoods Corporation
Attn: Joseph T. Plesha
5303 Shilshole Ave NW
Seattle, WA 98107-4000

Dear Mr. Plesha:

We have enclosed the records held by the Seventeenth Coast Guard District Office that are responsive to your Freedom of Information Act request of December 29, 1998.

If I can further assist you, please feel free to write or call again.

Sincerely,

A handwritten signature in black ink, appearing to read "G. T. Nelson".

G. T. NELSON
Lieutenant Commander
U. S. Coast Guard
By direction of the Commander

- Encl: (1) CCGD17 message 280119Z Nov 90
(2) G-LMI Memo 16713. of 19 Dec 88
(3) G-MVI ltr 16713/31/4 of 20 Mar 90
(4) G-OLE Memo 16713 of 16 Nov 90
(5) CCGD17 ltr 16720 of 14 Feb 90
(6) G-MVI ltr 16712/4 of 18 Jun 90
(7) G-OLE message 132011Z Feb 90

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UNCLAS E F T O F O U O //N16713//

SUBJ: SAVINGS PROVISION OF THE ANTI-REFLAGGING ACT OF 1987

- A. G-LMI MEMO 16713 DATED 19 DEC 88
- B. G-MVI LTR 16713/31/4 DATED 20 MAR 90
- C. G-OLE MEMO 16713 DATED 16 NOV 90

1. REF A STATES THE OPINION THAT CONGRESS DID NOT INTEND FOR SUBJ PROVISION TO RUN WITH A VESSEL UPON ITS SALE OR TRANSFER, NO CITED LEGAL PRECEDENT TO SUPPORT THAT OPINION. REF B, WHILE SILENT ON THE SALE OR TRANSFER ISSUE, HAS BEEN INTERPRETED TO MEAN THAT ONCE QUALIFIED, A VESSEL REMAINS QUALIFIED UNTIL DOCUMENT RENEWAL IS SOUGHT. IF OWNERSHIP IS DEMONSTRABLY U.S. AT THAT TIME, THE DOCUMENT WILL BE REISSUED. A REISSUED DOCUMENT WITH A FISHERY ENDORSEMENT GRANTS THE VESSEL EQUAL STATUS AND ACCESS TO U.S. FISHERY RESOURCES WITHIN THE EEZ.

2. MOST OF THE U.S. FACTORY TRAWLER FLEET IS HEAVILY FOREIGN FINANCED WITH PREFERRED MORTGAGES HELD BY FOREIGN BANKS. IT IS LIKELY THAT MANY OF THE U.S. TRUSTEES FOR THESE VESSELS WILL DECLARE BANKRUPTCY WITHIN TWELVE TO THIRTY-SIX MONTHS AS THE FOREIGN BANKS FORECLOSE ON THEM. BECAUSE OF CHANGES MADE IN 1989 TO THE SHIP MORTGAGE ACT, FOREIGN BANKS MAY NOW ACQUIRE THE TRAWLERS AT THE U.S. MARSHAL'S LIQUIDATION SALE. ONCE ACQUIRED, THE FOREIGN BANK CAN THEN SELL THE TRAWLER TO A WHOLLY FOREIGN OWNED U.S. COMPANY AND THEREBY RETAIN ITS U.S. DOCUMENT WHEN IT COMES UP FOR RENEWAL, AND WITH THE DOCUMENT GOES THE RIGHT TO HARVEST EEZ RESOURCES.

3. REF C READDRESSES THE OPINION EXPRESSED IN REF A, NOTES REF B'S VARIANCE AND THE DELETERIOUS IMPACT THAT VARIANCE MAY HAVE ON U.S. FISHERIES, AND SUMMARIZES THE LEGISLATIVE INTENT OF THE MAGNUSON AND ANTI-REFLAGGING ACTS. THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL(NPFMC) IS KEENLY INTERESTED IN THE COAST GUARD'S INTERPRETATION OF THE SAVINGS CLAUSE. SEVERAL MEMBERS HAVE READ RECENT PRESS REPORTS ALLEGING THAT COAST GUARD IMPLEMENTATION OF THE ANTI-REFLAGGING ACT, COUPLED WITH CHANGES IN THE SHIP MORTGAGE ACT, WILL HELP OPEN THE DOOR TO FOREIGN CONTROL OF U.S. DOCUMENTED VESSELS PARTICIPATING IN U.S. FISHERIES. ONE COUNCIL MEMBER HAS WRITTEN NOAA GENERAL COUNSEL ASKING FOR CLARIFICATION OF THE COAST GUARD'S POSITION, AND THE

9

LETTER HAS BEEN FORWARDED TO ME FOR REPLY.

4. AT NEXT WEEK'S 03-08 DEC NFFMC MEETING I EXPECT WE WILL BE CLOSELY QUESTIONED AS TO OUR INTERPRETATION OF SUBJ PROVISION. I MUST KNOW AND BE ABLE TO ARTICULATE A UNIFIED COAST GUARD POSITION BEFORE THE COUNCIL, AFFECTED MEMBERS OF THE INDUSTRY, THE PRESS, AND THE PUBLIC. A RESPONSE BY COB 30 NOV WOULD BE APPRECIATED.

BT

NNNN

**AMERICAN CONTROL PROVISIONS OF THE
COMMERCIAL FISHING VESSEL ANTI-REFLAGGING
ACT OF 1987 (NPRM COD 88-031)**

DEC 19 1988

Chief, Maritime & International Law Division

16713
G-LMI: 267-0095
LCDR Vellona

Chief, Administrative Law Branch

Ref: (a) G-LRA-1 Memo of 28 NOV 88

1. Reference (a) requests an evaluation of certain provisions of the subject Act. The following comments are submitted.

2. Issue: Is the "Savings Provision" permanent, i.e. does it in fact "run with the vessel" upon sale or transfer?

Section 7 of the Act provides that §12102(b)(1) of Title 46 applies to vessels issued a fishery license after 28 July 1987. §12102(b)(1) as enacted, applies for the first time to vessels holding a fishery endorsement, the requirement that the controlling interest of a corporate owner must be owned by U.S. citizens. However, that section does not apply if before that date the vessel (1) was documented under Chapter 121 of title 46 and operated as a fishing, fish processing, or fish tender vessel in the navigable waters of the U.S. or the EEZ, or, (2) was contracted for purchase for such purposes. The basic issue is: If one of these vessels (grandfathered under section 7 of the Act) is subsequently sold, should the Coast Guard apply the enacted controlling interest test to the new owner? House Report No. 100-423 clearly addresses this issue at page 3258 as follows:

The savings clause in subsection (b) does not apply in the event that the ownership or operational control of a vessel protected under the provisions of subsection (b) changes in whole or in part. In such an instance, the controlling interest provisions of subsection (a) would apply.

The argument is made in some of the comments to the NPRM that the plain language of the statute does not expressly interpret the savings provision in this manner, and that the plain meaning should prevail to the exclusion of the legislative interpretations. I disagree with that argument. The "plain

Subj: **COMMERCIAL FISHING VESSEL ANTI-REFLAGGING
ACT OF 1987 (NPRM 88-031)**

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meaning rule" functions as a presumption, not an exclusionary rule. When literal enforcement of a statute would lead to incongruous results which the legislatures clearly did not intend, then a construction must be adopted to avoid such incongruities. Rector of Holy Trinity Church v. United States, 143 U.S. 457, 12 S. Ct. 1689 (1892), People v. Chicago, 152 Ill. 546, 38 N.E. 744 (1894). In fact, presently, it can be said that although the "plain meaning rule" is still referred to, it has been effectively laid to rest. "When the plain meaning rhetoric is invoked, it becomes a device not for ignoring legislative history but for shifting onto legislative history the burden of proving that the words do not mean what they appear to say." P. Wald, Some Observations on the Use of Legislative History in the 1981 Supreme Court Term, 68 Yale Law Review 195 (1983). See also, J. Murst, Dealing With Statutes 49-50 (1982). In the instant case, the legislative history clearly defines the only rational interpretation of the savings provision of the Act, effectively rebutting the "plain meaning rule."

It is also noteworthy that Congressman Young, addressing the provisions of the Act, stated that the Act is "designed to advance the development of U.S. fishing industry and to correct certain inconsistencies in maritime law that have allowed foreign interests to deprive American shipyard workers and American crewmen of jobs." (Cong. Rec. H9811). Based on the foregoing clarifications and the general purpose of the legislation, the correct interpretation is that the savings provision terminates once the vessel is sold or transferred. In such cases, the controlling interest provisions would apply to the new owner. Permitting the savings provision to "run with the vessel" would be contrary to the statutory intent and general purpose of the Act stated in the House Report.

3. Issue: Does the "Controlling Interest Test" apply to business entities other than corporations?

NPRM CGD 88-031 in implementing §7 of the Act, proposes to continue the Coast Guard administrative policy of applying the controlling interest test to owner entities such as partnerships that are comprised of corporations. The Coast Guard has traditionally held in such cases that any subordinate entity which contributes to the citizenship of the title holder must be qualified to document a vessel with the requested license in its own right. The only difference is that the Coast Guard will substitute a greater-than-50% controlling interest test for the 75% controlling interest test

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Subj: **COMMERCIAL FISHING VESSEL ANTI-REFLAGGING
ACT OF 1987 (HRM 88-031)**

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consistently applied to vessels holding a coastwise endorsement.

The proper place to begin an analysis is House Report 100-423, page 3245. There, in the section discussing legislative purpose, it is stated:

H.R. 2398 harmonizes fisheries and maritime law by imposing similar requirements on the documentation, ownership, manning, and construction of fishing, fish tender, and fish processing vessels engaging in the fisheries trade as are imposed on vessels engaged in coastwise transportation under the shipping laws...The legislation imposes majority citizen ownership provisions on fishing vessels by incorporating a U.S. "controlling interest" test similar to section 2(b) of the Shipping Act of 1916, as amended...

This language expresses a clear Congressional intent to bring the documentation laws regarding fishery vessels into consonance with the existing shipping laws relating to coastwise vessels.

A colloquy between Senators Adam and Murkowski, which was subsequently inserted in the Congressional Record, (Cong. Rec. S18336) provides additional guidance in this matter.

Senator Adams: "It is also my understanding that the amendment does not speak to and is not intended to change the rules or administrative practice with respect to the documentation of vessels owned by partnerships, including those composed of one or more corporations as partners. I ask my good friend if that is his understanding as well."

Senator Murkowski: "That is also my understanding of the effect of this amendment. I would like, however, to clarify one point with regard to the question of partnerships composed of corporations. It is my understanding that the Coast Guard currently requires only that the general partner in such a partnership be controlled by corporate U.S. citizens...It is my belief that this constitutes a loophole. However, it is also my understanding that the Coast Guard is presently engaged in an administrative process intended to close the loophole."

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ACT OF 1967 (NPRM 88-031)**

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While some would interpret the above colloquy to mean that partnerships are insulated from the provisions of the Act, the reasonable interpretation supports the opposite position. The discussion between Senators Adams and Murkowski in fact supports the Coast Guard position enunciated in the NPRM by acknowledging that prior existing administrative policy regarding documentation of vessels owned by partnerships is not (emphasis added) changed by this Act. The Coast Guard has historically and consistently imposed the controlling interest test to partnerships comprised of corporations in regard to vessels holding a coastwise license. In these cases, the subordinate corporation(s) comprising the partnership must independently qualify as a U.S. citizen (i.e. 75% of the controlling interest owned by U.S. citizens). Under the provisions of the Act, the Coast Guard will remain consistent, applying the same requirements for vessels holding a fishery license, with the exception that a "greater-than-50%" controlling interest test will be applied vice the 75% test.

I believe the reasonable and proper interpretation is that the controlling interest provision of the Act does in fact apply to non-corporate entities such as partnerships comprised of subordinate corporations. Construing the application of the Act to parallel the application the Coast Guard has used in regard to coastwise licensed vessels is reasonable and consistent. Traditionally, it can be said that there is a duty to construe and apply statutes harmoniously where that can be reasonably done. See, Myrup v. Kleppe, 406 F. Supp. 214 (D.C. 1976), Singer, Statutes and Statutory Construction §53.01 (4th Ed. 1984). To interpret the Act otherwise would be inconsonant with the general stated purpose of the Act, contrary to a reasonable interpretation of the colloquy between Senators Adams and Murkowski, and contrary and inconsistent with past Coast Guard administrative practice and policy.

4. Issue: What is the definition of "voting shares" as used in the Act?

Section 12102(b)(1) of title 46, as enacted by §7 of the Act provides that a vessel owned by a corporation is not eligible for a fishery license unless the controlling interest (as measured by a majority of voting shares) is owned by U.S. citizens. Section 12102(b)(2) further provides that additionally the restrictions on controlling interest in 46 U.S.C. §802(b) apply. There is no guidance in the Act or its legislative history regarding the definition of "voting shares". Additionally, E-MVI has indicated that as a matter of administrative policy, they have not specifically addressed

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Subj: **COMMERCIAL FISHING VESSEL ANTI-REFLAGGING
ACT OF 1987 (NPRM 88-031)**

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this issue. Consequently, the plain meaning of the term should be applied. I believe that any subterfuge attempted in regard to corporate voting shares can be effectively addressed and disposed of by the restrictions provided in §802(b).

5. Issues regarding relationship of regulation to 46 U.S.C. §802 and 46 U.S.C. §12102(b)(1).

Comment 3 to the NPRM queries if a corporation which has issued only one voting share, owned by a U.S. citizen, with all other non-voting shares alien owned, meets the controlling interest test. Both the regulation and §12102(b)(1) must be read in conjunction with 46 U.S.C. §802(b) to respond to this query. Section 12102(b)(2) specifies that the restrictions on controlling interest set forth in §802(b) apply. Section 802(b) expressly addresses this situation by requiring that U.S. citizen controlling interest cannot exist unless the majority of stock and (emphasis added) the majority of voting power is vested in U.S. citizens. It must be stressed that the restrictions of §802(b) apply in any instance involving the determination of corporate controlling interest.

I agree with Comment 3 that to a certain degree, the proposed regulation seems to conflict with the statutory provision of 46 U.S.C. §12102(b)(1) regarding the issue of controlling interest. The controlling interest test for a corporation set forth in the proposed regulation on its face is different than the aggregation test mandated in 46 U.S.C. §12102(b)(1) for U.S. corporations. In regard to qualification for a Coastwise License, the Coast Guard has always required subordinate entities contributing to the ownership of another entity to be eligible to document vessels in their own right. Through this proposed regulation, we would be extending that practice to qualification for a Fishery License. However, 46 U.S.C. §12102(b)(1) requires that "...if the corporation is owned in whole or in part by other United States corporations, the controlling interest in those corporations, in the aggregate, must be owned by individuals who are citizens of the United States." There is no discussion in the legislative history of what is meant by the term "in the aggregate." Two possible interpretations may be made. The first would simply add together the percentages of U.S. ownership in each subordinate U.S. corporation and determine controlling interest based on the sum. This method, however, leads to incongruous results. The second interpretation would use the aforementioned method, but would add the extra step of dividing the sum by the number of U.S. corporations involved. LCDR Bruce (G-NVI-6) concurs that this is the reasonable and most supportable

**Subj: COMMERCIAL FISHING VESSEL ANTI-REFLAGGING
ACT OF 1987 (NPRM 88-031)**

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interpretation. In discussing this matter with LCDR Vallone, LCDR Bruce (G-MVI-6) indicated that in certain situations, applying the test in the proposed regulation would effect a different result than the aggregation test required in the statute. I understand that ideally, we desire to continue the same controlling interest test that we have administratively used in regard to qualification for Coastwise Licenses, however, the language of the statute controls in this situation. There is nothing in the legislative history of the Act that interprets the aggregation test in the manner stated in the proposed regulation. Consequently, in my opinion, the regulation should be redrafted to require the specific test mandated for U.S. Corporations in 46 U.S.C. §12102(b)(1), when U.S. corporations are involved in whole or in part in the ownership structure. The amended regulation could adopt the statutory aggregation test for all situations, or alternatively, it could apply its currently stated test to alien corporations, but apply the statutory test to U.S. corporations (when involved in whole or in part). Otherwise, I do not believe the proposed regulation in its present form is legally supportable.

J. S. CARMICHAEL
Acting



16713/31/4
MVI 08-90
20 MAR 1990

From: Commandant
To : Distribution

Subj: AMERICAN CONTROL PROVISIONS; COMMERCIAL FISHING INDUSTRY
ANTI-REFLAGGING ACT of 1987

1. Applications for issuance of certificates of documentation are being submitted for vessels qualifying for exemption from the American control provisions of the Commercial Fishing Industry Anti-Reflagging Act of 1987 ("the Act"). Section 7(b)(1) provides that the American control provisions of the Act do not apply if before July 28, 1987, the vessel was both documented and operating as a fishing, fish tender, or fish processing vessel in the navigable waters of the United States or the Exclusive Economic Zone.
2. A vessel owned by a corporation which fails to meet the requirements of 46 U.S.C. §12102(c)(1) is ineligible for a fisheries endorsement unless the Coast Guard has specifically determined that the vessel qualifies under the Section 7(b) savings clause. Previous determinations for eligibility under this section have been made at Headquarters level. Authority for making these determinations is granted directly to the vessel's homeport.
3. A determination requires:
 - a. Submission of an affidavit from a party or parties who have personal knowledge stating that the vessel involved was engaged in fishing, fish tender, or fishing processing activities in the navigable waters of the United States or the Exclusive Economic Zone. Evidence that a vessel was documented with a fisheries endorsement is not dispositive of having been engaged in the fisheries.
 - b. Review of vessel documentation records to confirm issuance of a Certificate of Documentation prior to July 28, 1987.
4. A listing of these determinations is to be maintained by name and official number and submitted to G-MVI-6 along with the quarterly backlog report.

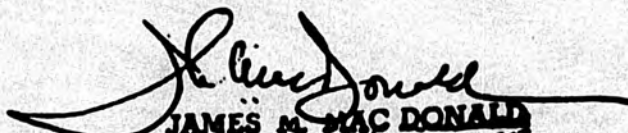
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5. Certificates of Documentation issued to these vessels shall be annotated in the remarks section as follows: VESSEL EXEMPT FROM SECTION 7(a) OF PUBLIC LAW 100-239.

6. This policy change will be reflected in Vol. IX of the Marine Safety Manual when published.


JAMES M. MAC DONALD
By direction

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NOV 16 1990

COMMERCIAL FISHING INDUSTRY VESSEL CONTROL PROVISIONS

16713

Chief, Operational Law Enforcement Division

G-OLE
LTJG COX
EXT: 267-1770

Chief, Merchant Vessel Inspection and Documentation Division

Ref: (a) G-LMI memo 16713 dated 19 Dec 88
(b) G-MVI ltr 16713/31/4 dated 20 Mar 90

1. Reference (a) addressed the issue of whether or not the "Savings Provision" of the Commercial Fishing Vessel Anti-Reflagging Act of 1987 (Act) "runs with the vessel" upon sale or transfer. The position taken was that the provision did not "run with the vessel". The memorandum pointed out that it was clearly Congress's intent that the provision no longer apply to a vessel following its sale or transfer. Reference (b) provided guidance for determining whether or not a vessel qualifies under the savings provision. The guidance did not address the sale or transfer of the vessel. I understand that this represents a change of position on the issue; that we now interpret the provision as permanently applying to qualified vessels.

2. This interpretation allows all vessels documented for fisheries and operating in the fisheries in U.S. waters prior to 28 Jul 87, even those that were U.S. owned and controlled at the time, to come under foreign control. I contend, consistent with reference (a), that the intent of the Act was to stop foreign control of U.S. vessels, making an exception for those vessels under foreign control at that time to reduce economic impacts on the corporations involved. This interpretation is also consistent with the Magnuson Fisheries Conservation and Management Act of 1976 which was designed to Americanize the fishery off the U.S.

3. Request the guidance provided in reference (b) be revisited. It is damaging to the U.S. fishing industry to interpret a law designed to reduce foreign control over U.S. fishing vessels in a manner which allows for an increase in foreign control.

S. J. DENNIS

Copy: G-LMI

12/15/90 | 16713 | 204
A 11/15
12/15/90

U.S. Department
of Transportation
**United States
Coast Guard**



Commander
17th Coast Guard District

MAILING ADDRESS:
P.O. Box 3-5000
Juneau, AK 99802-1217
Staff Symbol: (M)
(907) 586-7195

16720
14 Feb 90

From: Commander, Seventeenth Coast Guard District
To: Commandant (G-MVP-4)

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING INDUSTRY
VESSELS

Ref: (a) Commandant (G-OLE) msg 132011Z Feb 90

1. Foreign ownership, manning and control of U.S. flag fishing industry vessels are widely suspected in this district. This is currently an extremely sensitive issue with the North Pacific Fisheries Management Council (NPFMC) which alleges that provisions of the Commercial Fishing Industry Vessel Anti-reflagging Act of 1987 (P.L. 100-239) are being circumvented. The Council has requested congressional assistance to have the General Accounting Office audit the effect of this Act on fisheries. Alleged violations consist primarily of background foreign ownership of U.S. flag vessels, foreign manning in excess of allowed percentages by designation of crew as "technicians," foreign control of factory operations on fish processors, and foreign control of the vessels by alien "Fish Captains." Your review of the following scenarios and our proposed corrective action is requested.

2. Foreign ownership is best demonstrated by the ALASKAN HERO, O.N. 569276, a fishing/fish processing vessel. According to MSIS documentation records, AKC Corporation is the "owner-mng" of this vessel. According to enclosure (1), "All of the issued and outstanding shares of stock of AKC [Corporation] are owned by IPEI [International Pacific Enterprises, Inc.]." It further reads that "IPEI is in turn wholly owned by Aizawa Shipping." and that "All of the issued and outstanding shares of stock of IPEI are registered on its stock ledger in the name of Mr. Masami Aizawa, President and owner of Aizawa Shipping." Since Mr. Aizawa is a Japanese citizen, the ALASKAN HERO is totally under foreign ownership. She has been issued a fisheries license by the Vessel Documentation Office in Honolulu based upon a Maritime Administration Charter Order No. MA-6001, which is attached to enclosure (1), and also upon the exemptions (grandfather provisions) in the Anti-reflagging Act. Since no evidence has been identified thus far to prove that this vessel was fraudulently documented, no action for foreign ownership is planned against this vessel. It is our understanding that litigation is pending against the Coast Guard for our issuing fishery licenses under these exemptions to the Anti-reflagging Act.

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING INDUSTRY
VESSELS

3. Foreign manning questions/problems consist primarily of vessels excluding foreign "technicians" from their calculation of the 25% allowable non-resident aliens. Employment of aliens as mates and engineering watch officers also appears to be a common problem. In response to civil penalty action submitted against the AMERICAN EMPRESS for a boarding on 9 March 1989, their attorney argues that technicians and owner representatives aboard the vessel did not meet any of the definitions in 46 USC 8103(i)(1) because their visas, E-2 and B-1, prohibited employment under the Immigration and Naturalization Act. We suspect that these individuals may be required to hold visas permitting employment under this Act. If they are required to be employed under this Act, they should be included in the 25% maximum for non-resident aliens. We further suspect that these technicians may be temporarily employed on specific vessels while being employed on a non-temporary basis on the fishing ground by transferring from vessel to vessel. This issue will be further investigated with the Immigration and Naturalization Service. Employment of a non-citizen on a U.S. documented vessel as its master, chief engineer, radio officer, officer in charge of a deck watch (mate), or of an engineering watch appears to be, except as discussed below, a clear violation of 46 USC 8103(a). The requirement for a citizen radio officer is a little vague, however, when no radio officer is required on the vessel and non-citizens routinely operate the radio. Also, the requirement for a citizen engineering watch supervisor has to be evaluated on a case-by-case basis when a citizen chief engineer is employed; this is particularly true when the vessel is equipped with pilothouse control and/or an engineers' call system. Appropriate civil penalty action will be taken when such violations are established. Employment of a non-citizen master is discussed in detail below.

4. Another foreign manning issue arose recently in which a U.S. flag fishing vessel departed a foreign port without the required number of citizens aboard. The vessel claimed that it was deprived of some its citizen crewmen just prior to sailing and was unable to replace them in that foreign port. According to discussions between our offices and reference (a), it is understood that the citizenship requirement for such a vessel, while transiting from a foreign country to U.S. waters, is regulated under 46 USC 8103(a) and (b). The vessel was thus eligible for exemption from some citizenship requirements under 46 USC 8103(e). It is further understood that when this vessel engaged in the fisheries in U.S. navigable waters or the EEZ, it became subject to 46 USC 8103(i) and was not eligible for the exemptions in 8103(e).

5. Foreign control of commercial fishing industry vessels also appears to be a common and serious violation of U.S. law. The usual scenario has an alien fish captain and a U.S. citizen "paper" captain in charge of the vessel. The fish captain is supposedly aboard only to locate and ensure maximum harvest of fish. In many situations, and particularly when the vessel is substantially owned by foreign nationals, the fish captain is actually in charge of the vessel. This violation can be extremely difficult to prove unless the citizen captain or other responsible crewmen provide statements that confirm that a foreign national is in charge of the vessel. Additional evidence establishing

16720
14 Feb 90

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING INDUSTRY
VESSELS

who is in charge of the vessel might include such things as: Who is in charge of the vessel's navigation; who makes entries in the vessel's logbook; who pays the crew; who signs and/or initiates vessel reports; who controls stores on the vessel; who controls access to all spaces on the vessel; who conducts/logs drills that are conducted; who controls communications to and from the vessel; who has the authority to overrule any order aboard the vessel; who has the authority to hire and fire the vessel's crew; and who directs and supervises the vessel's crew. Language skills can also be an indication if the citizen master is unable to communicate with the crew without relying upon the fish captain to interpret his orders.

6. When foreign control by a non-citizen master is positively established for a vessel, its Certificate of Documentation becomes invalid in accordance with 46 USC 1211(a)(2). If the vessel is engaged in the fisheries while its document is invalid under this section, we believe that it may be seized under the authority in 46 USC 12110(c). This is, of course, an extreme enforcement action that should only be taken for serious violations when substantial evidence exists.

7. The common perception, especially among NPFMC members, is that the Anti-reflagging Act has been circumvented to the point where it does not protect the U.S. fishing industry. Vigorous enforcement of this Act and other citizenship laws by the Coast Guard is being demanded by the Council and other groups. Your guidance is requested on the above topics to identify which vessels can legally be issued a fisheries license under exemptions in the Anti-reflagging Act, and what criteria is necessary to establish foreign control of a vessel to substantiate seizure under 46 USC 12110(c).



D.E. BODRON
By direction

Encl: (1) Tomita & Kanazawa ltr dated 7 March 1988

U.S. Department
of Transportation

United States
Coast Guard



Commandant
United States Coast Guard

Washington, D.C. 20593-0001
Staff Symbol: G-MVI
Phone: (202) 267-0214
JUN 18 1990

16712/4

From: Commandant
To: Commander, Seventeenth Coast Guard District (m)

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING
INDUSTRY VESSELS

Ref: (a) Your ltr 16720 dtd 14 Feb 90
(b) COMDT COGARD Washington DC 132011Z Feb 90

1. Reference (a) requested guidance on the application of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-239) to vessels engaged in fishing in the Exclusive Economic Zone (EEZ). Your letter outlines three general categories of issues, as follows: (a) how the Coast Guard can effectively enforce provisions requiring that U.S. documented vessels must be owned by a U.S. citizen (46 U.S.C. 12102(a)(1)); (b) what criteria are to be used by the Coast Guard in enforcing provisions requiring that no more than 25% of the unlicensed seamen on board the fishing vessel can be non-resident aliens (46 U.S.C. 8103(i)(2)); and (c) what evidence may be required to substantiate an alleged violation of the requirement that a U.S. documented vessel may be placed under the command only of a citizen of the U.S. (46 U.S.C. 12110(d)). I will address each of these issues below.

2. Questions about the permissibility of foreign participation in the ownership of U.S. flag fishing industry vessels should be referred to COMDT (G-MVI-6) for resolution. To be eligible for documentation under U.S. flag, a vessel must be wholly owned by U.S. citizens. This seemingly straightforward rule is actually the starting point for a body of law and policy which often is quite complex. The U.S. citizen ownership requirements for documenting vessels with fisheries endorsements — which were changed by the American control provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (P.L. 100-239) (the 'Act') and the related savings clause — can produce difficult issues of fact and statutory interpretation. The Act is not necessarily circumvented by "background foreign ownership," depending on what that means. Generally, if other requirements are met, vessels owned by U.S. partnerships and corporations are eligible for documentation with a fisheries endorsement as long as noncitizen ownership of stock or equity in the vessel owning entity remains less than 50%. In the case of vessels owned by corporations and exempt from the American control provisions of the Act by virtue of its savings clause, they may be eligible for documentation even though all of the stock of the corporation is owned by noncitizens. There is ongoing litigation regarding the Coast Guard's interpretation of the Act's savings clauses. However, the Coast Guard's positions should prevail, and no change in that position is planned. No action against a vessel for failure

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING
INDUSTRY VESSELS.

to meet citizenship requirements for documentation should be taken without concurrence from COMDT (G-MVI). Based on the information you have provided, regarding the ownership of ALASKAN HERO, COMDT (G-MVI-6) intends to require AKC to provide evidence establishing that it meets applicable citizenship requirements and that it is, for documentation purposes, the actual owner of ALASKAN HERO.

3. Paragraphs 3. and 4. of reference (a) raise issues concerning the application of 46 U.S.C. 8103(i) and 8103(e) to unlicensed individuals serving in "officer" positions (such as officer in charge of a deck or engineering watch, and radio officer). In general, since 8103(i) applies to unlicensed seamen, it also applies to unlicensed individuals engaged to serve in "officer" positions where no license is required. On the other hand, the citizenship requirements of 8103(a) remain in effect for these individuals when they are actually serving in certain capacities aboard the vessel (e.g., as a deck watch officer, engineering watch or radio officer). Therefore, whether or not licensed, an individual who is serving as chief engineer, radio officer, or officer in charge of a deck watch or engineering watch must be a U.S. citizen under 8103(a). While a vessel on a foreign voyage would be temporarily exempted from this requirement if it was deprived of an individual (except master or radio officer) in accordance with 8103(e), any non U.S. citizen who was engaged as a replacement under this subsection must be taken into account in determining compliance with the percentage provisions of 8103(i) if the individual is not required to have a license. In those cases where licensed individuals are required to hold certain positions, as in the case of a vessel over 200 gross tons, a vessel operator would legally be able to use the provisions of 8103(e) to avoid a citizenship requirement of 8103(a), except for the positions of master and radio officer, while fishing in the exclusive economic zone. (Whether or not the fact that an individual "routinely operates the radio" changes the status of that individual to a radio officer who must be a U.S. citizen under 8103(a) and 8103(e) has not been addressed since the law was revised in 1987. It is my view that simply operating the radio on occasion may not make an unlicensed individual a radio officer for purposes of these two subsections).

4. Enforcement of the citizen in command requirement of 46 U.S.C. 12110(d) is certainly not a simple matter, under the circumstances you describe. Even with appropriate guidance, much will depend on the good judgment of the boarding party and their superiors in deciding how to handle the situation. Where aboard a documented vessel there is a U.S. citizen who claims to be in command, the Coast Guard must have a good basis, supported by evidence it can provide to a detached hearing officer or judge, for taking enforcement action despite the apparent compliance with the law. A suspected pattern of violations in a particular area or industry may justify a more probing inquiry, but a suspected pattern of abuse generally does nothing to reduce the need for evidence to establish a violation in any specific case. The factors identified in paragraph 5. of your letter can tend to show who is actually in command, but they should be considered in light of the normal industry practice on vessels which legitimately have a citizen in command. No individual can personally attend to all functions of command, 24 hours a day for the duration of a voyage. Some delegation of the command functions may be necessary, and normal industry practice is a good indicator of what is necessary in most instances.

**Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF CHEMICAL FISHING
INDUSTRY VESSELS**

5. As you state, if it is established that a noncitizen is in command, the vessel's certificate of documentation becomes invalid and subject to surrender. Forfeiture is arguably an available sanction because, although the certificate of documentation issued to the vessel permits it to engage in the fisheries trade, its operation under the command of a noncitizen renders its documentation invalid. Therefore, if a vessel engages in fishing with a noncitizen in command, it is being employed in a trade not covered by its certificate of documentation, in violation of 46 U.S.C. 12110(c). Presently, forfeiture is not an available sanction for vessels to which no certificate of documentation has been issued. The Coast Guard is seeking legislation to correct that anomaly. Another interpretation is that an "invalid" certificate of documentation is equivalent to operating a vessel without a certificate of documentation subjecting the vessel to a \$500 civil penalty, not forfeiture. We agree that forfeiture is an extreme enforcement action that should be taken only when substantial available evidence establishes a violation of law for which forfeiture is an authorized enforcement option.

6. The Coast Guard can only respond within the bounds of the law to demands to protect the U.S. fishing industry. Therefore, even the most vigorous enforcement of the Act has its limits. If the Act is commonly understood to prohibit noncitizens from controlling the stock of all corporations owning U.S. fishing industry vessels, that is a misunderstanding of the law which should be corrected. Until such misunderstandings are corrected, the Coast Guard may be perceived to be allowing circumvention of the Act, even when every effort is being made to enforce the law. If the Act is not providing adequate protection for the U.S. fishing industry, they may want to seek more effective legislation.

7. With respect to paragraphs 3. and 4. of reference (a), concerning the interpretation of 46 U.S.C. 8103(1) and the provisions on the percentage of non-resident aliens which may be allowed to be employed on a fishing vessel engaged in fishing in the EEZ, I suggest a two-stage test. First, I think a boarding officer must determine what number of individuals on the vessel are to be considered "unlicensed seamen." This is the total number which is to be used in determining the number allowed to be non-resident aliens. The officer should consider any unlicensed individual who is engaged or employed on board in any capacity as within this total number of unlicensed seamen. This definition is derived from the legislative history of the Anti-Reflagging Act.

8. The House Report which accompanied Public Law 100-239 includes the following statement concerning citizenship requirements: ". . . for the first time, 75 percent of the unlicensed seamen (all individuals on board, including those engaged in fish processing) must be citizens of the U.S. or aliens lawfully admitted to the U.S. for permanent residence." It is clear from the portion of the text in parentheses that Congress intended for the term "seaman" to be interpreted broadly. There is no indication in the wording of the statute or its legislative history that designation of an individual as a

Subj: FOREIGN OWNERSHIP, MANNING AND CONTROL OF COMMERCIAL FISHING
INDUSTRY VESSELS

"Technician" exempts that person from the status of unlicensed seaman. Additionally, an individual should not be exempted from this class on the basis that he or she is "temporarily" on the vessel when the individual's duties involve visits to more than one vessel; the total number of unlicensed seamen is calculated on the basis of those who are presently engaged or employed in any capacity on board the fishing vessel at the time of the boarding.

9. The second stage of the test should be a review of the documents held by individuals who are not citizens of the U.S. If fewer than 75% of the total number of unlicensed seamen are U.S. citizens or permanent resident aliens, then a violation of 8103(i) has been discovered, and a report of violation should be issued. This violation is separate from any violation which may relate to a particular individual who does not have the proper documentation to be engaged or employed on the vessel. These matters can be referred to the Immigration and Naturalization Service for appropriate action. In the meantime, an individual cannot be permitted to claim that because he does not have a proper work permit he is, therefore, not to be counted within the total number of unlicensed seamen or among the percent of non-resident aliens allowed to be on board. This would amount to allowing an operator to circumvent one legal requirement by violating another.

10. The issue raised in paragraph 4. of reference (a) was addressed in reference (b), and is properly reflected in your conclusion that "when this vessel engaged in the fisheries in U.S. navigable waters or the EEZ, it became subject to 46 USC 8103(i) and was not eligible for the exemptions in 8103(e)," with respect to unlicensed seaman.

11. It is clear that enforcement of the provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 requires close examination of the circumstances of each case, and careful documentation of the evidence accumulated during a boarding. When the boarding officer has a reasonable indication that the legal requirements are being circumvented, a violation report should be issued and the appropriate record should be added to the Marine Safety Information System (MSIS); then the operator's arguments to the contrary should be settled in subsequent hearings or appeals.


F. J. GRADY
By direction

COGSEVENTEEN STAFF ROUTING TOR-02:13:20:41:29: 90

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UNCLAS FOUO //N16214//
SUBJ: GUIDANCE FOR DOCUMENTING U.S. VESSEL MANNING VIOLATIONS

- A. COGSEVENTEEN JUNEAU AK 021801Z FEB 90
1. THE FOLLOWING IS PROVIDED IN RESPONSE TO REF (A):
 - A. ITEM 3A: WHEN AN IDENTIFIABLE U.S. CITIZEN IS ON BOARD AND IS LICENSED AS MASTER OR, FOR VESSELS NOT REQUIRING A LICENSED MASTER, CLAIMS TO BE THE MASTER, THIS CONSTITUTES PRIMA FACIE EVIDENCE THAT THE VESSEL COMPLIES WITH STATUTES. IN SITUATIONS WHERE THE MASTER AND/OR SEVERAL CREW MEMBERS INDICATE THAT HE IS NOT THE MASTER IN FACT, AND THIS IS OBSERVED TO BE APPARENT BY THE BOARDING TEAM, THEN VIOLATION OF 46 USC 8103 POSSIBLE. OFFICERS OF THE DECK WATCH, RADIO OFFICER, AND ENGINEERS ARE REQUIRED TO BE U.S. CITIZENS UNDER 46 USC 8103(A) EXCEPT WHEN, ON A FOREIGN VOYAGE, THE VESSEL IS FOR ANY REASON DEPRIVED OF A US CITIZEN (OTHER THAN THE MASTER OR RADIO OFFICER) AS PROVIDED FOR UNDER 46 USC 8103(E). 46 USC 8103(E) DOES NOT APPLY ONCE THE VESSEL BEGINS FISHING OPERATIONS WITHIN THE EEZ OR NAVIGABLE WATERS OF THE US, AS PROVIDED FOR IN 46 USC 8103(I).
 - B. ITEM 3B: NO WAIVER OF CITIZENSHIP REQUIREMENTS WAS GRANTED BY HEADQUARTERS STAFF. HOWEVER, AS NOTED ABOVE, THE VESSEL DOES NOT REQUIRE A WAIVER WHEN ON A FOREIGN VOYAGE. 46 USC 8103(E) ALLOWS REPLACEMENTS TO BE NON-US CITIZENS IF US CITIZENS ARE NOT AVAILABLE. HOWEVER, REGARDLESS OF DEPARTURE PORT, ONCE THE VESSEL ENGAGES IN FISHING ACTIVITIES UNDER 46 USC 8103(I), CITIZENSHIP REQUIREMENTS OF 46 USC 8103(I) MUST BE MET.

BT
#5564
NNN

copy

U.S. Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard District

P.O. Box 25517
Juneau, AK 99802-5517
Staff Symbol: (mpo)
Phone: 907 463-2247
FAX: 907 463-2216

Attachment 1

16701

JAN 20 1998

Dr. Clarence Pautzke
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED

JAN 22 1998

N.P.F.M.C

Dear Dr. Pautzke,

Back in October you asked me to query the Coast Guard data base regarding ownership and rebuild information for fishing vessels greater than 165 feet operating in Alaska. My staff faxed a copy of the results, Enclosure (1), to Mr. Darryl Brannan.

At the December meeting Dr. Pereyra indicated on Enclosure (2) mistakes in the information for several vessels. Although we queried our data base a second time, we got the same information as we did in our first query, indicating a potential problem with our data base. This could have occurred for several reasons:

- a. Incorrect information provided to the CG by vessel owners;
- b. Vessel data changes/updates not reported by owners to the CG;
- c. Correct information mis-entered by CG data clerks.

The Coast Guard does not routinely verify vessel documentation information; vessel owners are required by law to provide correct information to the Coast Guard and keep it updated.

With regard to the task at hand, I recommend your staff use the information we have provided and identify the Coast Guard as the source. As your analysis document goes through the public review process, individual vessel owners can then work directly with the National Vessel Documentation Center at 1-800-799-8362 to correct and update information for their vessels. I think this is about the best we can do, and hope it meets your needs.

Sincerely,

A handwritten signature in black ink that reads "J. V. O'Shea".

J. V. O'SHEA

Captain, U. S. Coast Guard

By direction of the Commander

Encl: (1) Vessel List
(2) Vessel List as annotated by Dr. Pereyra

Copy: Dr. Walter Pereyra, Arctic Storm, Inc.
Ms. Kristine Norosz, Icicle Seafoods

Factory Trawlers/Trawlers Targetting Alaska Pollock

Vsl Name	CG #	ADF&G	Reg. Len	LOA	GRT	HP	75%	Yr Built	Last Rebuild
	(COD)	(FV...)	(COD)	(FV...)	(COD)	(FV...)	(COD)	(COD)	(COD)
Alaska Juris	569276	54693	200.8	223	1213	3600	Y	1975	
Alaska Ocean	637856	60407	344	376	4555	6250	N	1981	Abroad
Alaska Victory	569752	61083	205.7	227	1215	5800	Y	1975	Abroad
Alaska Voyager	536484	51926	203.5	214	1245	4000	Y	1971	
Alaskan Rose	529154	55466	116	131	380	1300	Y	1970	
American Enterprise	594803	54836	191.7	210	1537	3000	Y	1978	
American Empress	942347	57623	280.6	306.4	2493	8254	Y	1974	Abroad
American Dynasty	951307	59378	240.7	272	3659	8000	Y	1974	Abroad
American Triumph	646737	60660	251.7	285	4294	7939	Y	1961	
American No. 1	610654	36202	143.2	160.2	560	2250	Y	1979	
Arctic Fjord	940866	57450	253.5	272	3369	6060	N	1974	
Arctic Storm	903511	54886	314.3	334	4068	6000	N	1942	Abroad
Bountiful	593404	34053	150.5	155	1032	*	Y	1978	
Browns Point	587440	55511	179.7	190	947	2700	Y	1977	
Christina Ann	653045	54852	177.4	204	831	5050	N	1962	
Constellation	640364	*	150.2	*	194	2250	Y	1981	
Elizabeth Ann	534721	54637	196.1	220	1478	3300	N	1971	Abroad
Endurance	592206	57201	239.1	277	2117	5300	N	1978	
Harvester Enterprise	584902	55183	170.2	188	1203	1800	Y	1977	
Highland Light	577044	56974	244	270	1533	5750	Y	1976	
Island Enterprise	610290	59503	273.8	304	2766	3950	Y	1979	
Katie Ann	518441	55301	267.4	296	1593	4497	N	1969	
Kodiak Enterprise	579450	59170	253.2	275	1584	5830	Y	1977	
Legacy	664882	*	117.2	132	194	1240	Y	1983	
Northern Glacier	663457	48075	175.6	201	1109	3000	Y	1983	
Northern Eagle	506694	56618	310.5	341	4437	6590	Y	1966	Abroad
Northern Jaeger	521069	60202	308.4	*	3732	6322	N	1969	
Northern Hawk	643771	60795	310.1	341	3582	8790	Y	1981	
Ocean Peace	677399	55767	199.5	*	1144	2250	N	1984	
Ocean Rover	552100	56987	223	*	4345	7080	N	1973	Abroad

Factory Trawlers/Trawlers Targetting Alaska Pollock

Vsl Name	CG #	ADF&G	Reg. Len	LOA	GRT	HP	75%	Yr Built	Last Rebuild
	(COD)	(FV...)	(COD)	(FV...)	(COD)	(FV...)	(COD)	(COD)	(COD)
Pacific Explorer	942592	57629	213.7	236	1389	4000	Y	1982	
Pacific Glacier	933627	56991	253.5	276	2241	6600	Y	1974	
Pacific Navigator	592204	54859	195	*	1097	3600	Y	1978	Abroad
Pacific Scout	934772	57438	213.7	236	1389	4000	Y	1982	
Rebecca Ann	592205	56197	200.2	217	1166	3300	Y	1978	Abroad
Rebecca Irene	697637	*	115.3	140	191	1800	Y	1981	
Seafisher	575587	56964	211.4	230	1453	3000	N	1976	Abroad
Seattle Enterprise	904767	56789	247	270.1	1519	3900	Y	1973	
Starbound	944658	57621	205.8	240	1533	5000	Y	1989	
U.S. Intrepid	604439	54392	173.2	185	1027	4800	Y	1979	
Victoria Ann	592207	56196	192.5	217	1112	3360	N	1978	Abroad
Former U.S. Vessels, Now Foreign Flagged									
Claymore Sea	L7391288		244		3072	*	N	1974	Abroad
Heather Sea	L7391317		264.4	292	3200	*	N	1975	Abroad
Saga Sea	L7390416		271		4848	*	N	1974	Abroad

Legend

- (COD) *Information copied from CG Certificate of Documentation
(FV...) *Information copied from 4th Edition of Fishing Vessels of the United States
CG # CG official documentation number
ADF&G State number
Reg Len - Registered Length
LOA Length Overall
GRT - Gross Registered Tonnage
HP - Horsepower
75% - 75% U.S. Ownership
Yr. Built Year Built
Last Rebuild Location of last rebuild
* - I Information unavailable

Factory Trawlers/Trawlers Targetting Alaska Pollock

Vel Name	CG #	ADF&G	Reg. Len	LOA	GRT	HP	75%	Yr Built	Last Rebuild
	(COD)	(FN...)	(COD)	(FN...)	(COD)	(FN...)	(COD)	(COD)	(COD)
Alaska Juris	569278	54693	200.8	223	1213	3600	Y	1975	
Alaska Ocean	637858	60407	344	376	4555	6250	N	1981	Abroad
Alaska Victory	589752	61083	205.7	227	1215	5800	Y	1975	Abroad
Alaska Voyager	536484	51928	203.5	214	1245	4000	Y	1971	
Alaskan Rose	529154	55486	116	131	380	1300	Y	1970	
American Enterprise	594803	54836	191.7	210	1537	3000	Y	1978	
American Empress	942347	57823	280.6	306.4	2493	8254	Y	1974	Abroad
American Dynasty	951307	58378	240.7	272	3659	8000	Y	1974	Abroad
American Triumph	646737	60880	251.7	285	4294	7939	Y	1981	
American No. 1	610854	36202	143.2	180.2	560	2250	Y	1979	
Arctic Fjord	940886	57450	253.5	272	3389	6080	(N) Y	1974	Abroad
Arctic Storm	903511	54888	314.3	334	4088	6000	N	1942	Abroad
Bountiful	593404	34053	150.5	155	1032	.	Y	1978	
Browns Point	587440	55511	179.7	190	947	2700	Y	1977	
Christina Ann	653045	54852	177.4	204	831	5050	N	1982	
Constellation	640364	.	150.2	.	194	2250	Y	1981	
Elizabeth Ann	534721	54637	186.1	220	1478	3300	N	1971	Abroad
Endurance	592208	57201	239.1	277	2117	5300	N	1978	
Harvester Enterprise	584902	55183	170.2	188	1203	1800	Y	1977	
Highland Light	577044	58974	244	270	1533	5750	Y	1976	
Island Enterprise	610280	58503	273.8	304	2785	3950	Y	1979	
Katie Ann	518441	55301	287.4	296	1583	4497	N	1989	
Kodiak Enterprise	579450	59170	253.2	275	1584	5830	Y	1977	
Legacy	684882	.	117.2	132	194	1240	Y	1983	
Northern Glacier	663457	48075	175.8	201	1109	3000	Y	1983	
Northern Eagle	508694	58818	310.5	341	4437	6590	Y	1986	Abroad
Northern Jaeger	521089	60202	308.4	.	3732	6322	N	1989	ABROAD
Northern Hawk	643771	60785	310.1	341	3582	6790	Y	1981	ABROAD
Ocean Peace	677389	55767	189.5	.	1144	2250	N	1984	
Ocean Rover	552100	58987	223	.	4345	7080	N	1973	Abroad

NOTE
MISTAKES

NOTE

Factory Trawlers/Trawlers Targetting Alaska Pollock

Vsl Name	CG #	ADF&G	Reg. Len	LOA	GRT	HP	75%	Yr Built	Last Rebuild
	(COD)	(FN...)	(COD)	(FN...)	(COD)	(FN...)	(COD)	(COD)	(COD)
Pacific Explorer	942582	57629	213.7	238	1389	4000	Y	1982	
Pacific Glacier	933627	58991	253.5	276	2241	6600	Y	1974	ABROAD
Pacific Navigator	582204	54859	195	*	1097	3600	Y	1978	Abroad
Pacific Scout	934772	67438	213.7	238	1389	4000	Y	1982	
Rebecca Ann	582205	58197	200.2	217	1166	3300	Y	1978	Abroad
Rebecca Irene	687637	*	115.3	140	191	1800	Y	1981	
Seafisher	575587	58964	211.4	230	1453	3000	N	1978	Abroad
Seattle Enterprise	904787	58789	247	270.1	1519	3900	Y	1973	
Starbound	944658	57621	205.8	240	1533	5000	Y	1989	
U.S. Inrapid	604439	54382	173.2	185	1027	4800	Y	1979	
Victoria Ann	582207	58196	192.5	217	1112	3360	N	1978	Abroad

NOVE

Former U.S. Vessels, Now Foreign Flagged

Claymore Sea	L7391288		244		3072	*	N	1974	Abroad
Heather Sea	L7391317		264.4	282	3200	*	N	1975	Abroad
Saga Sea	L7390416		271		4848	*	N	1974	Abroad

Legend

(COD) *Information copied from CG Certificate of Documentation
 (FN...) *Information copied from 4th Edition of Fishing Vessels of the United States
 CG # CG official documentation number
 ADF&G State number
 Reg Len - Registered Length
 LOA Length Overall
 GRT - Gross Registered Tonnage
 HP - Horsepower
 75% - 75% U.S. Ownership
 Yr. Built Year Built
 Last Rebuild Location of last rebuild
 * - Information unavailable

FAX MEMO

TO: Members of the Special Committee on Fisheries

From: Robert Schasteen
box 920752
Dutch Harbor, Alaska 99692

Subject: HJR-55, HJR-48

Currently the fisheries in the Bering Sea provide a long term, healthy economic environment for the people and government of our community and the State of Alaska. The allocation of fish in the Bering Sea, as it exists today, works. IF IT'S NOT BROKEN DON'T FIX IT!

Please do not turn our community into a "company town" monopolized by one sector of the fishing industry. We need BOTH inshore and offshore sectors of the fishing industry to provide competition, reasonable wages and fair markets.

Passage of either of these resolutions without proper research of their impact on our community and the State of Alaska would be premature at best.

①

To: Special Committee on Fisheries All Members
 FR: Shirley Marguardt Box 920021 Dutch Harbor, AK 99692
 RE: HJR 48

Mr. Chairman and Members,

Briefly, if the purpose of S1221 is "Americanization" of the fishery, by all means go forward. I am assuming this means for the Resource, not the uses, but have no problem with up to 75% American ownership for them as well. To support the mission of S1221 that throws out legitimate and valuable participants in the "Cleanest fishery in the World", that also significantly benefit the State of Alaska Revenues and the people of Unalaska/Dutch Harbor as well as many in Western Alaska, is to me throwing out the baby with the bath water. People who make their living in the fishing industry expect possible downturns and lean years, it's natural. But there is nothing natural about S1221 which legislates the destruction of a number of job and business opportunities we in Alaska have been enjoying for years. To do it in the name of Conservation is adding insult to injury, and does a dis-service to the members of the North Pacific Fisheries Management Council whom have worked hard and long to make this Mid Water Pollock fishery

(B)

the most highly regulated and rational fishery in the world. The responsibility for that is in their hands, not the catchers and processors, the NPFMC sets and monitors the quota, and Federal observers are there 100% of the time to ensure compliance and gather DATA.

This Bill will hurt Alaska, please don't support HJR 48, please let the process of gathering info, and knowing all the issues involved in such a drastic removal of ~~it~~ from the States pockets and our pockets continue to play its self out.

Thank you for your time,

Respectfully, Nily Mergardt
Shelby Mergardt

TO: MEMBERS of the SPECIAL COMMITTEE on FISHERIES

**FROM: Renee Petersen
P.O. Box 187
Unalaska, AK 99685**

SUBJECT: HJR-48 and HJR-55

Please do not turn over the total allocation for the fisheries in the Bering Sea to the shoreside facilities alone. The allocation as it is today seems to give everyone a chance to share in the economic benefits from the fisheries industry. Having the diversity of both the shoreside and offshore fleets has promoted economic and social development in our community. If this balance changes, there will also be no sense of accountability due to the lack of competition.

Please listen to the voices of our community, and research further how these bills will affect our community and the industry.

MEMO

TO: MEMBERS OF THE SPECIAL COMMITTEE ON FISHERIES

**FROM: ROBERT NUFER
P.O. BOX 920305
DUTCH HARBOR, AK. 99692**

RE: HJR-55, HJR-48

COMMITTEE MEMBERS, PLEASE DO NOT PASS THIS RESOLUTION. IT IS NOT IN THE BEST INTEREST OF OUR COMMUNITY OR THE STATE OF ALASKA.

BOTH THE INSHORE AND OFFSHORE SECTORS OF THE BERING SEA FISHERIES ARE VITAL FOR OUR ECONOMIC HEALTH. BOTH CONTRIBUTE GREATLY WITH LANDING TAXES, WAGES, AND SHORESIDE SUPPORT NEEDS.

I HAVE WORKED FOR BOTH SECTORS FOR NEARLY TWENTY YEARS. MY FAMILY AND MANY LIKE MINE WOULD BE ADVERSELY AFFECTED IF YOU PASS THIS RESOLUTION.

FAX MEMO

To: Members of the Special Committee on Fisheries

From: Tammy L. Fowler Pound
P.O. Box 920942
Dutch Harbor, AK 99692
907/581-1463

Subject: HJR-55, HJR-48

I respectfully request all Members of the Special Committee on Fisheries to reject HJR-55 and HJR-48.

The effect on our community and the State of Alaska will be a negative one, with the loss of jobs and small businesses, should these resolutions pass. Both sectors of the fishing industry, onshore and offshore, give Unalaska/Dutch Harbor a unique and stable economic base which has allowed individuals and companies to invest with confidence and our community to thrive.

Once again, I would like to say that this "fish fight" has everything to do with *money and control*, and nothing to do with what is best for our communities and state, or the people who live and work in both.

The cart has been put in front of the horse by the introduction of these resolutions without the research to make a sound judgment. I urge you to wait for the completion of an impact study commissioned by the North Pacific Fisheries Management Council, in order to make an informed decision.

Thank you for allowing my voice to be heard.

Respectfully,



Brent C. Paine
Executive Director



FEB 13 1998

Steve Hughes
Technical Director

February 13, 1998

2 Pages

Representative Alan Austerman
Chairman, Subcommittee of Fisheries
State Capital Building, Room 434
Juneau, Alaska, 99801

Re: HJR 48, the American Fisheries Act

Dear Representative Austerman,

I understand the House Resources Committee will be holding a hearing HJR 48 on Monday, February 16, 1998. I regret that I can not attend the hearing in person, but hope that for the record, my testimony can be presented in writing.

My name is Brent Paine and I serve as the Executive Director of United Catcher Boats (UCB). United Catcher Boats is a fishermen's trade organization comprised of 58 vessels that primarily trawl for pollock, Pacific cod and Yellowfin sole in the Bering Sea and Gulf of Alaska. Roughly half our vessels are home ported out of Dutch Harbor and Akutan and deliver to the shoreside processors in these two communities. The other half deliver catches to at-sea motherships. UCB members currently harvest approximately 50% of the Bering Sea/Aleutian Islands pollock and P. cod resource. My members live in California, Oregon, Washington and Alaska.

United Catcher Boats strongly supports Senator Stevens' "American Fisheries Act" (S. 1221) and urges the Alaska Senate Resources Committee to pass SJR out of Committee with a favorable recommendation.

Individual members of UCB were the first U.S. fishermen to harvest the Bering Sea and Gulf groundfish from the North Pacific. We were the first fishermen to enter into joint ventures with foreign processing companies, as well as the first fishermen to supply products to the Dutch Harbor and Akutan processing plants. UCB members were the individuals that took the financial and physical risks to Americanize the North Pacific groundfish fisheries. We were the individuals back in the 1980's that "kicked the foreigners out". Prior the passage of the Anti-Reflagging Act of 1987, catcher vessels harvested over 90% of the Bering Sea pollock resource. Due to the mis-interpretation by the U.S. Coast Guard of Congress' intent of the Anti-Reflagging Act, a massive preemption of the annual harvest has occurred. During the years 1987 through 1989, the fishery saw the introduction of roughly 20 new

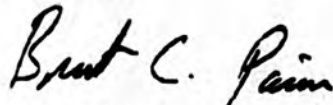
factory trawlers. This massive increase in large vessels more than tripled the harvesting capacity. The result was going from a year-round fishery in 1987 to a two month fishery in 1997. Many of these vessels used the Anti Reflagging Act's grandfather provision to enter into an American EEZ fishery. Where once the pollock resource was primarily harvested by small, independently owned catcher vessels operated by the owners, the fishery is now governed by Inshore/Offshore regulations (federal) that keep the offshore sector's harvest capped and preemption controlled.

United Catcher Boats members believe that our U.S. fishery resources should benefit U.S. fishermen. Due to the abuses of the 1987 Anti Reflagging Act, and the recent consolidation of the North Pacific's offshore factory trawl fleet, a large percentage of the value of the Bering Sea groundfish fisheries is lost to non-U.S. fishing/processing companies. This development since 1987 goes totally counter to Congress' intent of Americanization the EEZ fisheries via the passage of the Anti Reflagging Act as well as the original Magnuson Act of 1976. Senator Stevens is fully aware of the situation, thus has introduced S. 1221 to rectify the abuses of the Reflagging Act's provisions.

To summarize, my members support restoring the rights of bona fide U.S. citizens to have priority to U.S. fishery resources. Due to the current ownership structure, we support the reduction of foreign investment and control of vessels fishing in the North Pacific. We support Senator Stevens' efforts to accomplish this objective through the American Fisheries Act, S. 1221.

Thank you for your consideration.

Sincerely,



Brent C. Paine

JAN-28-1998 14:42

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H. A. BRINDLE

PROCESSOR OF
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Wards Cove Packing Company

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88 E. HAMLIN STREET
P.O. BOX C-8030
SEATTLE, WA 98105-0030

Day Fax (206) 323-9165

January 28, 1998

The Honorable Senator Jerry Mackie
State of Alaska
Room 427
State Capital
Juneau, AK 99801-1182

Dear Senator Mackie,

I am writing to express our full support for SJR 33, which supports the American Fisheries Act (SB 1221) that has been introduced by Senator Stevens. I would have preferred to be in Juneau today to testify, however scheduling conflicts prevented my personal attendance.

Thank you for your support of Americas fishery resources.

Sincerely,



Alec W. Brindle
President

cc: Senator Robin Taylor, Co-Sponsor
Senator Rick Halford, Chair, Senate Resources Committee

AWB/mg

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WESTERN ALASKA FISHERIES, Inc.

1111 THIRD AVE., SUITE 2200
SEATTLE, WASHINGTON 98101

TELEPHONE: (206) 382-0840

TELEFAX: (206) 683-0088
TELEX: 71-277178

January 28, 1998

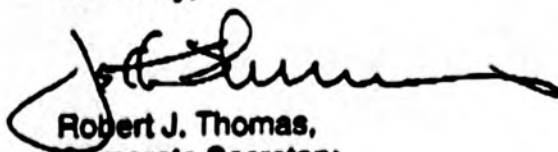
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Thank you for your advocacy of America's fishery resources.

Sincerely,



Robert J. Thomas,
Corporate Secretary

cc: Sen. Robin Taylor, Co-Sponsor
Sen. Rick Halford, Chair, Senate Resources Committee



333 First Avenue West / Seattle, WA 98119 USA / 206-286-8584 / FAX: 206-286-8810 / TELEX: 49612854 PRMPAC

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Sent via facsimile

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Sincerely,

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Douglas C. Forsyth
Vice President
General Manager

CC: Sen. Robin Taylor, Co-Sponsor
Sen. Rick Halford, Chair, Senate Resources Committee

JAN-28-1998 14:42

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