

ALASKA LEGISLATURE COMMITTEES FILES 1997-1998 8672

9681 SENATE RESOURCES

5 May 1993 - Final Review Draft

**LANA C. SHEA**

Current Position: Habitat Biologist  
Alaska Department of Fish and Game  
Douglas, Alaska 99824

Regional Supervisor, Habitat Division, 1993 - present

Regional Habitat Biologist, 1986 - 1993

Academic Training: B.S. Middlebury College, 1974, Biology/Environmental  
Studies

**KIMBERLY TITUS**

Current Position: Wildlife Research Biologist  
Alaska Department of Fish and Game  
Douglas, Alaska 99824

Brown bear research project leader, 1989 - present

Academic Training: B.S. University of New Hampshire, 1976, Environmental  
Conservation  
M.S. Frostburg State College, 1980, Wildlife Management  
Ph.D. University of Maryland, 1984, Wildlife Science

JLML

**Review of  
Wildlife Management and Conservation Biology  
on the  
Tongass National Forest:  
A Synthesis with Recommendations**

**A. Ross Klester**

**and**

**Carol Eckhardt**

**Pacific Northwest Research Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331**

**March, 1994**

## Reviewer Affiliations

A. Ross Klester, Ph.D.  
Global Biological Diversity Team Leader  
Pacific Northwest Research Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331

Craig W. Benkman, Ph.D.  
Assistant Professor  
Department of Biology  
Box 30001  
New Mexico State University  
Las Cruces, NM 88003

Carol A. Eckhardt, Ph.D.  
Project Coordinator  
TLMP Review Project  
Pacific Northwest Research  
Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331

Eric Forsman, Ph.D.  
Supervisory Research Wildlife  
Biologist  
Pacific Northwest Research  
Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331

Andrew J. Hansen, Ph.D.  
Assistant Professor  
Department of Biology  
Montana State University  
Bozeman, MT 59717

Oliver Houck, J.D.  
Professor  
Law School  
Tulane University  
New Orleans, LA 70118

Robert L. Jarvis, Ph.D.  
Professor of Wildlife Ecology  
Oregon State University  
Nash 114  
Corvallis, OR 97331

Russell Lande, Ph.D.  
Professor  
Department of Biology  
University of Oregon  
Eugene, OR 97403-1210

William Z. Lidicker, Jr., Ph.D.  
Professor of Integrative Biology  
and Curator of Mammals  
Museum of Vertebrate Zoology  
University of California, Berkeley  
Berkeley, CA 94720

Bruce G. Marcot, Ph.D.  
Wildlife Ecologist and Spotted  
Owl Technical Coordinator  
Pacific Northwest Research  
Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331

Dale R. McCullough, Ph.D.  
Professor  
Department of Forestry and  
Resource Management  
University of California, Berkeley  
Berkeley, CA 94720-0001

Jerry P. McIlwain, M.S.  
Director of Fisheries, Wildlife, &  
Range  
Southern Region  
USDA Forest Service  
1720 Peachtree Road, NW  
Atlanta, GA 30367

Bruce N. McLellan, Ph.D.  
Wildlife Research Ecologist  
British Columbia Ministry of  
Forests  
1761 Big Eddy Drive  
Revelstoke, BC V0E 3K0

## Reviewer Affiliations

A. Ross Klester, Ph.D.  
Global Biological Diversity Team Leader  
Pacific Northwest Research Station  
USDA Forest Service  
3200 SW Jefferson Way  
Corvallis, OR 97331

Paul C. Paquet, Ph.D.  
Director  
Central Canadian Rockies Wolf  
Ecology Project  
Box 128  
Meacham, Sask. S0K 2V0

Daniel H. Pletscher, Ph.D.  
Director  
Wildlife Biology Program  
School of Forestry  
University of Montana  
Missoula, MT 59812

Roger A. Powell, Ph.D.  
Professor  
Department of Zoology  
North Carolina State University  
Raleigh, NC 27695

John T. Ratti, Ph.D.  
Department of Fish & Wildlife  
Resources  
University of Idaho  
Moscow, ID 83843

Mark L. Shaffer, Ph.D.  
Vice President for Resource  
Planning & Economics  
The Wilderness Society  
900 17th St. NW  
Washington, DC 20006

Christopher C. Smith, Ph.D.  
Professor  
Division of Biology  
Kansas State University  
Manhattan, KS 66506

Richard D. Taber, Ph.D.  
Affiliate Professor  
University of Montana  
Professor Emeritus  
Forest Zoology and Wildlife  
Science  
University of Washington  
625 Continental Way  
Missoula, MT 59803

Jeffrey R. Walters, Ph.D.  
Professor  
Department of Zoology  
Campus Box 7617  
North Carolina State University  
Raleigh, NC 27695

# **Report to Congress**

## **Anadromous Fish Habitat Assessment**

**January 1995**

**United States Department of Agriculture  
Forest Service  
Pacific Northwest Research Station  
Alaska Region**

**R10-MB-279**



## PREFACE

The Conference Committee Report on the Fiscal Year 1994 Congressional Appropriations Act for Interior and Related Agencies directed the USDA Forest Service to study and report to Congress on the effectiveness of Forest Service salmon and steelhead habitat protection on the Tongass National Forest and determine if any additional protection is needed. This document, the Anadromous Fish Habitat Assessment, constitutes the report to Congress. The assessment was completed jointly by the Alaska Region and the Pacific Northwest Research Station of the Forest Service.

### Assessment Managers

John C. Capp

Regional Director  
Wildlife, Fisheries, Ecology  
and Watershed  
Alaska Region, Forest Service

Fred H. Everest

Program Manager  
Aquatic/Land Interactions Research  
Pacific Northwest Research Station,  
Forest Service

### Synthesis Authors

Fred H. Everest

Program Manager  
Aquatic/Land Interactions Research  
Pacific Northwest Research Station,  
Forest Service

John C. Capp

Regional Director  
Wildlife, Fisheries, Ecology  
and Watershed  
Alaska Region, Forest Service

Jeffrey L. Kershner

National Fish Ecologist  
Wildlife, Fish and Rare  
Plants Staff  
Washington Office, Forest Service

Martha H. Brookes

Writer/Editor  
Pacific Northwest Research Station,  
Forest Service

### Fish Habitat Analysis Team

Jeffrey L. Kershner (leader)

National Fish Ecologist  
Wildlife, Fish and Rare  
Plants Staff  
Washington Office, Forest Service

|                    |   |
|--------------------|---|
| Mason D. Bryant    | Fisheries Scientist<br>Pacific Northwest Research Station,<br>Forest Service                                    |
| Max J. Copenhagen  | Hydrologist<br>Regional Watershed Program Leader<br>Alaska Region, Forest Service                               |
| Steven J. Kessler  | Fisheries Biologist<br>Tongass Land Management Planning Team<br>Alaska Region, Forest Service                   |
| Calvin H. Casipit  | Regional Fisheries Program Leader<br>Alaska Region, Forest Service  |
| Steven J. Paustian | Hydrologist<br>Chatham Area, Tongass National Forest<br>Alaska Region, Forest Service                           |
| John D. McIntyre   | Fisheries Research Scientist<br>Intermountain Research Station,<br>Forest Service (retired)                     |
| Rebecca T. Baldwin | Economist/Analyst<br>Alaska Region, Forest Service<br>(resigned)  |
| *Lana C. Shea      | Regional Supervisor,<br>Habitat and Restoration Division<br>Alaska Department of Fish and Game                  |
| Tamra L. Faris     | Fisheries Biologist<br>National Marine Fisheries Service,<br>National Oceanic and Atmospheric<br>Administration |

### **Watershed Analysis Team**

|                           |   |
|---------------------------|---|
| Michael H. Kuehn (leader) | Regional Watershed Analysis Team<br>Regional Hydrologist<br>Alaska Region, Forest Service   |
| Richard S. Aho (leader)   | Stikine Area Watershed Analysis Team<br>Fisheries Biologist<br>Stikine Area, Tongass National Forest<br>Alaska Region, Forest Service |
| John T. Day               | GIS Analyst<br>Tongass Land Management Plan<br>Alaska Region, Forest Service  |

|                             |   |
|-----------------------------|---|
| Ronald L. Dunlap            | Fisheries Habitat Relationships Coordinator<br>Alaska Region, Forest Service  |
| *James M. Ferguson          | Forester/Economist<br>Alaska Department of Environmental<br>Conservation  |
| Daniel F. Kelliher (leader) | Chatham Area Watershed Analysis Team<br>Hydrologist<br>Chatham Area, Tongass National Forest<br>Alaska Region, Forest Service             |
| Ronald H. Medel (leader)    | Ketchikan Area Watershed Analysis Team<br>Fisheries Biologist<br>Ketchikan Area, Tongass National Forest<br>Alaska Region, Forest Service |
| Douglas N. Swanston         | Research Geologist<br>Pacific Northwest Research Station,<br>Forest Service   |

**Monitoring Team**

|                        |  |
|------------------------|--|
| Randy Coleman (leader) | Regional Monitoring Coordinator<br>Alaska Region, Forest Service                                       |
| Douglas N. Swanston    | Research Geologist<br>Pacific Northwest Research Station,<br>Forest Service                            |
| Steven J. Paustian     | Hydrologist<br>Chatham Area, Tongass National Forest<br>Alaska Region, Forest Service                  |
| *James M. Ferguson     | Forester/Economist<br>Alaska Department of Environmental<br>Conservation                               |
| Julianne E. Thompson   | Hydrologist<br>Stikine Area, Tongass National Forest<br>Alaska Region, Forest Service                  |
| Maria S. Dudzak        | Hydrologist<br>Ketchikan Area, Tongass National Forest<br>Alaska Region, Forest Service                |
| Larry H. Meshew        | Ecosystem Management Staff<br>Ketchikan Area, Tongass National Forest<br>Alaska Region, Forest Service |

Jere J. Christner

Fish, Wildlife, Watershed, Ecology Staff  
Chatham Area, Tongass National Forest  
Alaska Region, Forest Service

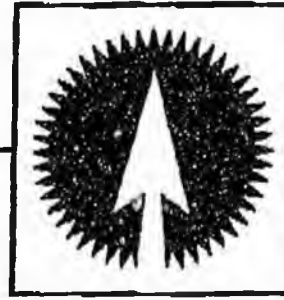
### **Other Contributors**

Many others contributed to the assessment by serving as consultants, sources of information, peer reviewers, expert field reviewers or by providing literature review, editing, or support services. Please see appendices C.1, C.2, and C.3. These people represented the Forest Service's Washington Office, Pacific Southwest Research Station, Pacific Northwest Research Station, Intermountain Research Station, Southeastern Research Station, Pacific Southwest Region, and Pacific Northwest Region, as well as \*Oregon State University, \*University of Washington, \*Weyerhaeuser Company, and the U.S. Environmental Protection Agency.

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\*Non-federal participants were excluded from all Team decision making and formulation of recommendations due to provisions of the Federal Advisory Committee Act.

## Alaska Forest Association, Inc.



111 STEDMAN SUITE 200  
KETCHIKAN, ALASKA 99901-8599  
Phone 907-225-6114  
FAX 907-225-5920

**Testimony of Jack E. Phelps, Executive Director  
In support of SJR 24  
Offered to the Senate Resources Committee  
March 26, 1997**

Mr. Chairman, members of the Committee:

Thank you for hearing Senate Joint Resolution 24, *A Resolution Relating to the Tongass Land Management Plan and to Continued Congressional Oversight of that Plan*. The Alaska Forest Association (AFA) wishes to be on record in support of SJR 24, and urges the committee to act on it quickly so that it may be heard on the Senate floor soon.

As you know, the Tongass Land Management Plan has been a matter of great controversy throughout Southeast Alaska over the past several years. The plan under which the Forest Service and the industry are currently operating has been in effect since 1979. The Revised Plan has been in the works for more than 10 years. A Record of Decision was produced in 1993 which specified new environmental protections but demonstrated the ability of the Forest Service to continue an Allowable Sales Quantity (ASQ) of 450 million board feet (mmbf). That decision was never signed, and since that time the Forest Service has completely reworked the Revised Plan. Last spring, the Forest Supervisors unveiled their new draft preferred alternative, which reduced the ASQ to 357 mmbf, of which the Forest Service says only 297 mmbf will be economic to harvest under current conditions.

While the AFA believes this ASQ was unnecessarily low, members of the industry are now more greatly alarmed by persistent rumors that the lengthy delay in releasing the plan is related to efforts by the White House's Council on Environmental Quality and the U.S. Fish and Wildlife Service (FWS) to push the Allowable Sales Quantity much lower, perhaps into a range below 100 mmbf. If this turns out to be the case, it will utterly destroy any hopes Alaskans may harbor for maintaining and restoring that segment of its timber industry operating on Federal land.

Among the key factors that are likely to influence the contents of the plan are the persistent efforts to obtain Endangered Species Act listings for the so-called Alexander Archipelago wolf and the Queen Charlotte (or Northern) goshawk. Actual data collected so far on both these creatures would lead a reasonable person away from the conclusion that the listings are warranted, but it

appears that political factors are limiting the information that is being considered as part of the decision-making process. In any event, the failure by the Forest Service to release the plan as scheduled seems to be a factor in the attempts by radical elements within the FWS to obtain the listings.

For all these reasons, the AFA considers the present resolution to be an important part of an overall effort to continue Congressional oversight of the proposed Tongass Land Management Plan revision. If ever there were a situation in which it is appropriate for elected leaders to monitor carefully the activities of the unelected bureaucracies, this is one. The entire Clinton/Gore alliance with the radical national environmental community is at work on this one, and the honest, working people of the Tongass are those who stand to lose if they prevail. The timber workers of Southeast Alaska, together with their families and the timber dependent communities need the full attention of Congress directed to this issue. Your assistance in this through actions like SJR 24 are very useful in helping maintain that focus.

In closing, I do believe there is a change you should consider to the resolution as written. On page 3, lines 2 - 11, the resolution refers twice to a "harvest level of 300 mmbf," and urges the Forest Service to maintain that harvest level. While it is appropriate for the industry and the legislature to talk about the need for a specified minimum harvest level, the Forest Service cannot actually control a "harvest level." What they can control is *consistent offerings* of economic timber sales spread throughout each fiscal year. So, I would urge the committee to rewrite those two resolved clauses so that they assert the need for the Forest Service to "make an annual amount of at least 300 mmbf of economic timber available with offerings uniformly released throughout each fiscal year." This will more correctly address the problem of annual harvest levels needed to keep the industry healthy, while using language that reflects what the Forest Service can actually control.

Thank you for considering my comments. And thank you again for weighing in on this crucial problem facing the timber industry in Alaska. Please feel free to contact me if I can be of further assistance.

ee

drS



Official Business

# ALASKA STATE LEGISLATURE

## SENATE RESOURCES COMMITTEE

State Capitol  
Juneau, AK 99801

Chairman: Senator Rick Halford  
Vice Chair: Senator Lyda Green  
Senator Loren Leman  
Senator Bert Sharp  
Senator Robin Taylor  
Senator John Torgerson  
Senator Georgianna Lincoln

### AGENDA

3:30 TO 5:00 p.m.

Wednesday, January 28, 1998

**SJR 33: Support American Fisheries Act**  
**Senator Mackie, sponsor**

Expected Witnesses:

**Senator Mackie to present the bill**

### NEXT MEETING

Friday, January 30

Briefing: Waterway Management Issues

**ADJOURN**

**SENATE COMMITTEE REPORT**  
**First Committee of Referral**

DATE: 1/16/98

FURTHER:

Date of 5-Day Notice: 1/22/98  
 (in accordance with Uniform Rule 23)

DATE TURNED  
 IN TO OFFICE: 3/3/98

Resources Committee considered      SENATE JOINT RESOLUTION NO. 33

Supporting passage of S. 1221, the "American Fisheries Act," by the United States Congress.

and recommends:

- be replaced with \_\_\_\_\_ CS SJR 33 (RES)
- adopt previous \_\_\_\_\_ CS \_\_\_\_\_
- attached amendment(s)
- adopt Letter of Intent by \_\_\_\_\_ Committee
- further referral to the \_\_\_\_\_ Committee

- Senate Bill:  
 same title  
 new title  
 House Bill:  
 same title  
 technical title  
 new: SCR# \_\_\_\_\_

| SIGNING DO PASS            | DP | OTHER RECOMMENDATIONS | NR | DNP | AM |
|----------------------------|----|-----------------------|----|-----|----|
| <i>Adrian Taylor</i>       |    | <i>Gov. Chase</i>     | X  |     |    |
| <i>Gov. J. Lewis</i>       |    | <i>Lyle Greer</i>     | ✓  |     |    |
|                            |    |                       |    |     |    |
|                            |    |                       |    |     |    |
| CHAIR: <i>Rick Hatford</i> | ✓  | CHAIR:                |    |     |    |

**NEW FISCAL NOTE(S):**

Department      Date      Zero      Fiscal

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APPLIES TO 0216. & CS

**PREVIOUS FISCAL NOTE(S):\***

Department      Date      Zero      Fiscal

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APPROPRIATION -- no fiscal note

\*include fiscal notes accompanying Governor's bill

# FISCAL NOTE

**STATE OF ALASKA**  
**1998 LEGISLATIVE SESSION**

**BILL NO. SJR 33**

Revision Date January 16, 1998 Dept. Affected \_\_\_\_\_  
 Title Support American Fisheries Act BRU \_\_\_\_\_  
 Component \_\_\_\_\_  
 Sponsor Mackie \_\_\_\_\_  
 Requester \_\_\_\_\_ Component Serial No. \_\_\_\_\_

**Expenditures/Revenues** (Thousands of Dollars)

| OPERATING EXPENDITURES | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      | FY 04      |
|------------------------|------------|------------|------------|------------|------------|------------|
| Personal Services      |            |            |            |            |            | 0.0        |
| Travel                 |            |            |            |            |            |            |
| Contractual            |            |            |            |            |            |            |
| Supplies               |            |            |            |            |            |            |
| Equipment              |            |            |            |            |            |            |
| Land & Structures      |            |            |            |            |            |            |
| Grants & Claims        |            |            |            |            |            |            |
| Miscellaneous          |            |            |            |            |            |            |
| <b>TOTAL OPERATING</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

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| <b>CAPITAL EXPENDITURES</b> |  |  |  |  |  |  |
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| <b>CHANGE IN REVENUES [ ]</b> |  |  |  |  |  |  |
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**FUND SOURCE** (Thousands of Dollars)

| FUND SOURCE                      | FY 99      | FY 00      | FY 01      | FY 02      | FY 03      | FY 04      |
|----------------------------------|------------|------------|------------|------------|------------|------------|
| 1002 Federal Receipts            |            |            |            |            |            |            |
| 1003 GF Match                    |            |            |            |            |            |            |
| 1004 GF                          |            |            |            |            |            |            |
| 1005 GF/Program Receipts         |            |            |            |            |            |            |
| 1037 GF/Mental Health            |            |            |            |            |            |            |
| 1091 Designated Program Receipts |            |            |            |            |            |            |
| <b>TOTAL</b>                     | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> | <b>0.0</b> |

Estimate of any current year (FY98) cost: 0.0

**POSITIONS**

| POSITIONS | FY 99 | FY 00 | FY 01 | FY 02 | FY 03 | FY 04 |
|-----------|-------|-------|-------|-------|-------|-------|
| Full-time |       |       |       |       |       |       |
| Part-time |       |       |       |       |       |       |
| Temporary |       |       |       |       |       |       |

**ANALYSIS:** (Attach a separate page if necessary)

This resolution is anticipated to have no fiscal impact on state agencies.

Prepared by Senate Resources Committee  
 Division \_\_\_\_\_  
 Approved by Senator Rick Halford, Chairman *Rick Halford*  
 Agency \_\_\_\_\_

Phone 465-4907  
 Date 2/2/98  
 Date \_\_\_\_\_

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# ALASKA STATE LEGISLATURE

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### NEXT MEETING

Friday, January 30

Briefing: Waterway Management Issues

**ADJOURN**

SENATE DISTRICT C  
KODIAK ISLAND  
SOUTHEAST ISLANDS

STATE CAPITOL  
JUNEAU, ALASKA 99801-1182  
(907) 465-4925  
(800) 821-4925 (TOLL FREE)  
(907) 465-3517 (FAX)

Senator\_Jerry\_Mackie@legis.state.ak.us

# SENATOR JERRY MACKIE

ALASKA STATE LEGISLATURE

## SPONSOR STATEMENT SJR 33, American Fisheries Act

I introduced SJR 33 to put 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 on shore processors have struggled to gain a foothold in these new and valuable fisheries off of 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 around 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 off shore fish resources and to protect them from depletion. The current over capitalization of the off shore harvesting capacity threatens both the resources and our Alaskan economic stake in its continued health. I believe that 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 off shore marine resources.

15 Nov

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|--|-------------------|--------------|
| Post-It™ brand fax transmittal memo 7671 |                   | # of pages ▶ |
| To Joe P.                                | From JOHN HERRICK |              |
| Co. MORIE                                | Co.               |              |
| Dept. GRIST FOL                          | Phone #           |              |
| Fax # THE MILL                           | Fax #             |              |

Grant Lee  
P.O. Box 15085  
Fritz Creek, AK, 99603  
(907) 235-0620

January 4, 1998

Dear North Pacific Fishery Management Council Member,

I come to you as an ex-employee of the factory trawler fleet. Leaving my position was not my choice, rather I was terminated for reasons that are not apparent to me, or the other officer's aboard the vessel I worked on. This I know from discussions with ex-crewmembers and officers, including the Captain of the vessel. Enclosed please find an evaluation form and an exit letter from the office. Every item on the evaluation is at issue. I have written a 5 page letter to American Seafoods Inc. in retaliation of this evaluation, and have copied it to the Director of Operations, the Vessel Operations manager, the Personnel Manager, and the Public relations firm that American Seafoods has retained in Anchorage, as well as a few other key personnel. That was sent out on November 12, there has been no reply from anyone. A copy of this letter can be obtained on request.

Please don't take the tone of this letter in the wrong way, I am not writing to cry about getting fired from my job. A job that I loved and will truly miss as well as the many co-workers that I had developed friendships with. After three years aboard the same vessel you get to know a few people. Rather my concern is for the hundreds of Alaskans that American Seafood is recruiting to work on these vessels.

When I returned to work last August to prepare for the '97 "B" season I was bombarded by PR people taking my picture, having me write post cards, and having me call the Alaska Congressional offices. This all to support the company as a "pro-Alaska hire" company. I also found out that American Seafoods had opened a Personnel office in Anchorage. This is the first time that American Seafoods has had a Personnel office in Alaska that I am aware of. You see, American Seafoods didn't hire me directly. I was working aboard the Ocean Rover when American Seafoods purchased it from Birting Fisheries Inc. in May of 1996. This Personnel office was going out to the villages on the West Coast of Alaska and actively recruiting people to staff their vessels as processors. Many of these people have never worked in a seafood processing plant before, let alone worked at sea. From talking to a few of them on the pier in Seattle, they had no real idea what they were getting into, they were told how wonderful working at sea can be.

and how prosperous it is. I talked personally to Ronald N. Dalby, the Alaska employment manager for American Seafoods while we were in Dutch Harbor to off-load during "B" season. I was told if I knew anyone in Homer that wanted to work on the Ships, he would send someone to Homer to interview them and a determination of employment could be made without leaving the State.

**UP TO THEN, AMERICAN SEAFOODS POLICY ON OUT OF STATE (AK) HIRES WAS THEY HAD TO GO TO SEATTLE AT THEIR OWN EXPENSE JUST FOR AN INTERVIEW.**

Mr. Darby also informed me that American Seafoods Co would pay for any transportation to and from the vessels for Alaska hires.

**TO THIS DATE, AS VERIFIED BY A CO-WORKER IN SUPERIOR WI. ALL CREWMEMBERS ARE RESPONSIBLE FOR THEIR OWN TRANSPORTATION TO AND FROM THE VESSELS, WITH THE EXCEPTION OF ANNUAL CONTRACT CREW, WHICH ARE THE OFFICERS ONLY.**

The impression I received was that they wanted to get as many Alaskans on these vessels as possible to show how responsible they are to the State of Alaska in regard to Alaska hire issues. How long do you think it will be before the several hundred other crewmembers in the lower 48 are up in arms over the fact that Alaska hires have their transportation paid and they don't? How long do you think American Seafoods will be willing to support this bias towards Alaskan hires after the vote on the allocations in June? My bet would be as soon as the vote is over, regardless of which way it goes, American seafoods will reapportion their Alaska hire policies to reflect that of the lower 48. There will be no more preferential treatment for Alaskans, and the big push for Alaskan hire will be a thing of the past.

To put the past policies of American Seafoods into perspective, through "B" season of '97 there were two Alaskans working onboard the Ocean Rover, I processor and me. Out of a crew of 130 people that puts Alaskan hires at 1.55% of the total crew. Out of there 16 vessel fleet there were several with no Alaskan hires. There were approximately 10 times more Norwegians working for American Seafoods than there were Alaskans!

When this is all over and the innocent people from the towns and villages of Alaska are displaced because American Seafoods doesn't need the body count any more, who will deal with the trauma this will cause to their lives? What will these people do now that they have left their livelihoods to go to work at sea for a few

seasons, only to find that the company that made all these promises has backed out on them.

American Seafoods has already shown me personally that they are not responsible in their corporate management. If they can fire an officer of the ship who is an Alaskan resident for no apparent reason, what is to make you think they would have any loyalty to processors from Alaska? If this were an issue of a company of 1 or 2 vessels it may seem like the exception rather than the rule, but it's not. American Seafoods has 16 vessels fishing the Alaska Pollock Quota, giving it more than 40% of the total offshore catch. They have a huge stake in the outcome of any decision on the Quota allocations. My personal issue's I am taking up with the Alaska Human Rights Commission.

One other issue that I wanted to touch on is the matter of the on-shore plants being owned by Maruha and Nissui, two multinational companies in Japan. A multinational Norwegian holding company owns American Seafoods, a wholly owned subsidiary of Norway Seafoods. They also own Helly-hansen sportswear, brooks shoes, among others, and trades on the Oslo stock market in Norway. Most of the key personnel on the vessels are Norwegian nationals. The reasoning I have heard for this is they can't find qualified Americans to take these positions. I submit they don't try very hard.

In closing, I would say that I certainly don't know all of the issues surrounding the allocation of the Bering Sea Pollock Quota, but I hope that the smoke screen of American Seafoods isn't so thick that you can't see through to the truth about this company's objectives. They certainly don't have any loyalty to Alaskans, or Americans for that matter. Their only concern is for their own bottom line.

Please feel free to contact me if you have any questions regarding this letter, or if there is anything else I can help you with.

Sincerely,

Grant A. Lee,  
Ex Chief Steward,  
F/T Ocean Rover.



**American Seafoods Company**

October 31, 1997

Grant Lee  
PO Box 15015  
Vilix Creek, AK 99103

Dear Grant,

Please find enclosed a copy of your evaluation for 1997. We regret to inform you that we will not be offering continued employment to you. We will continue your company provided medical insurance through December 31, 1997 and will send information regarding COBRA coverage in December.

Please do not hesitate to call me if you have any questions.

Sincerely,

Renee J. Vargas  
Vessel Personnel Manager

### Galley Department Key Crew Evaluation

American Dynasty  American Empress  American Triumph   
Ocean Rover  Pacific Explorer  Pacific Navigator  Pacific Scout

Name Grant Lee Position \_\_\_\_\_  
Date on \_\_\_\_\_ Date off 10/20/97  
Eligible for rehire?  YES  NO

#### GENERAL PERFORMANCE:

Please circle the number that represents the employee's general work performance

1 = Poor 2 = Below Average 3 = Average 4 = Good 5 = Excellent

|  |          |          |          |          |   |
|--|----------|----------|----------|----------|---|
| Reports to work on time                  | 1        | 2        | 3        | <u>4</u> | 5 |
| Accepts direction/constructive criticism | 1        | 2        | <u>3</u> | 4        | 5 |
| Shows a positive attitude                | <u>1</u> | 2        | 3        | 4        | 5 |
| Takes initiative for tasks               | 1        | <u>2</u> | 3        | 4        | 5 |
| Friendly and considerate                 | 1        | 2        | <u>4</u> | 4        | 5 |
| Safety conscious                         | 1        | <u>2</u> | 3        | 4        | 5 |
| Supports company/management philosophy   | 1        | <u>2</u> | 3        | 4        | 5 |
| Personal hygiene                         | 1        | 2        | 3        | <u>4</u> | 5 |

#### SKILLED AREAS OF PERFORMANCE: Please comment on each area

1. Cooking abilities, baking, prepwork, and presentation: Many complaints from crew regarding quality of food, galley management

2. Cleanliness and organization: \_\_\_\_\_

3. Customer service attitude: \_\_\_\_\_

4. Additional comments: Management skills weak - unable to lead crew with galley staff and take responsibility for the staff

POTENTIAL FOR ADVANCEMENT: \_\_\_\_\_

Jack Lee  
SUPERVISOR'S SIGNATURE

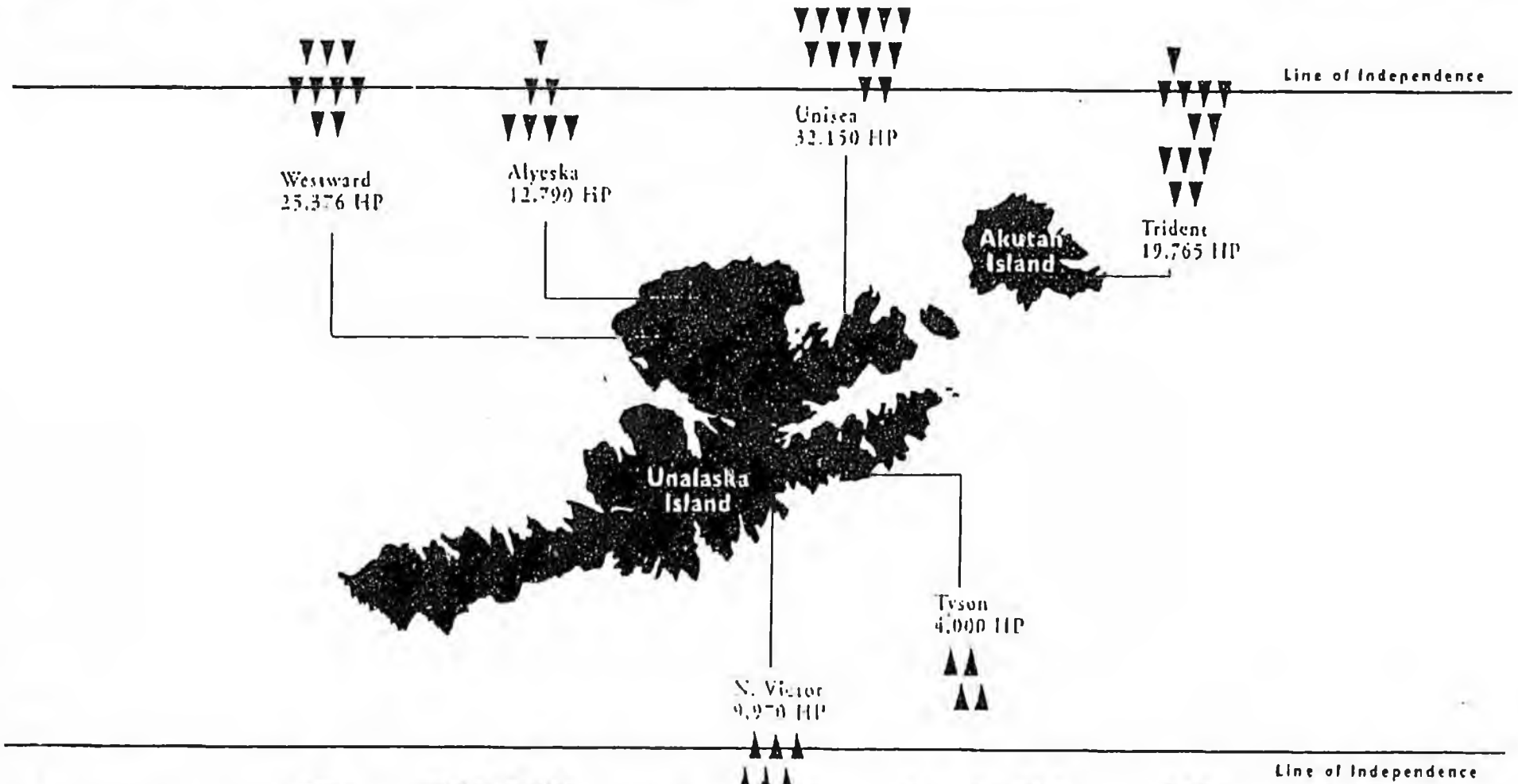
10/31/97  
DATE

EMPLOYEE'S SIGNATURE

# 1997

104,000 horsepower  
 5,500 mt per day pace, 70 day season  
 60% wholly or partly owned by market  
 Price 21% of finished products (\$210/mt:\$1016)

52 boats  
 16,000 mt canit capacity

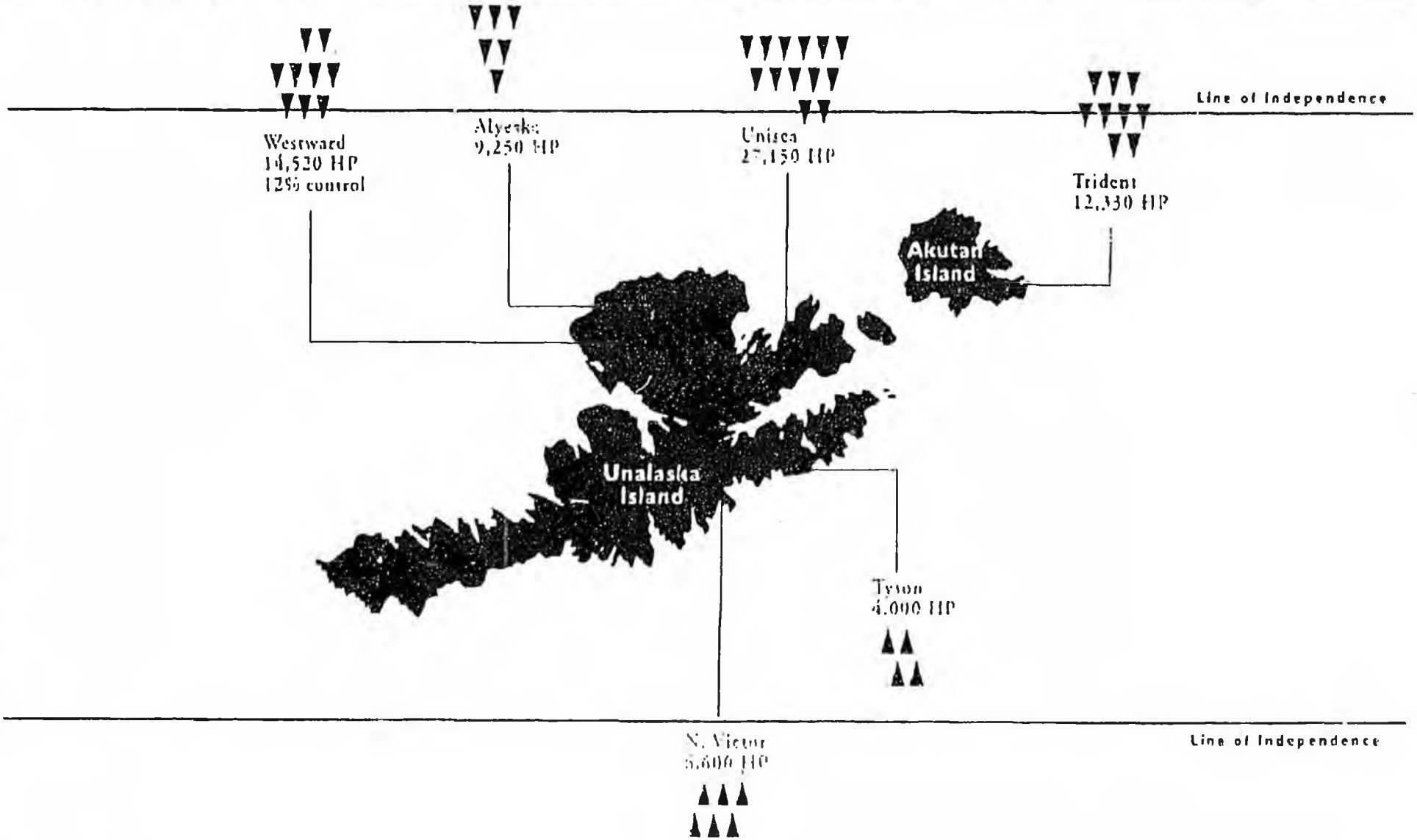


0. 345 01-23 '98 13:58 ID:AMERICAN SEAFOODS

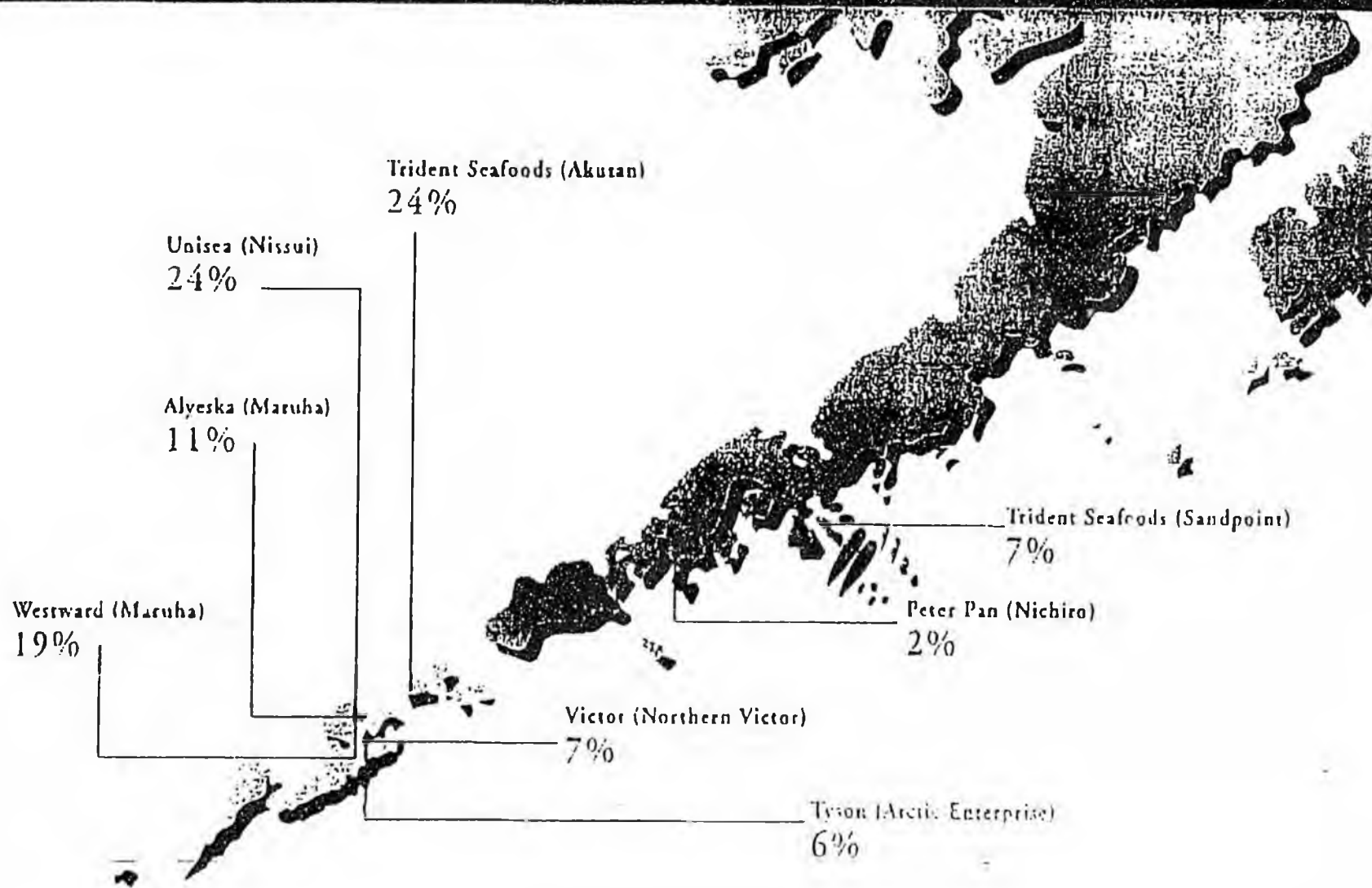
|                               |                     |         |                            |
|-------------------------------|---------------------|---------|----------------------------|
| Post-It <sup>®</sup> Fax Note | 7671                | Date    | # of pages                 |
| To                            | <i>H. W. ...</i>    | From    | <i>Peter S. Fitzgerald</i> |
| Co./Dept.                     |                     | Co.     |                            |
| Phone #                       |                     | Phone # |                            |
| Fax #                         | <i>907 556 4761</i> | Fax #   |                            |

# 1992

- 74,000 horsepower
- 1,300 mc per day pace, 135 day season
- 10% wholly or partly owned by market
- Price 27% of finished products (\$266/mc, \$995)
- 47 boats
- 12,000 mc tank capacity



# Onshore Market Share - Pollock Bering Sea Quota



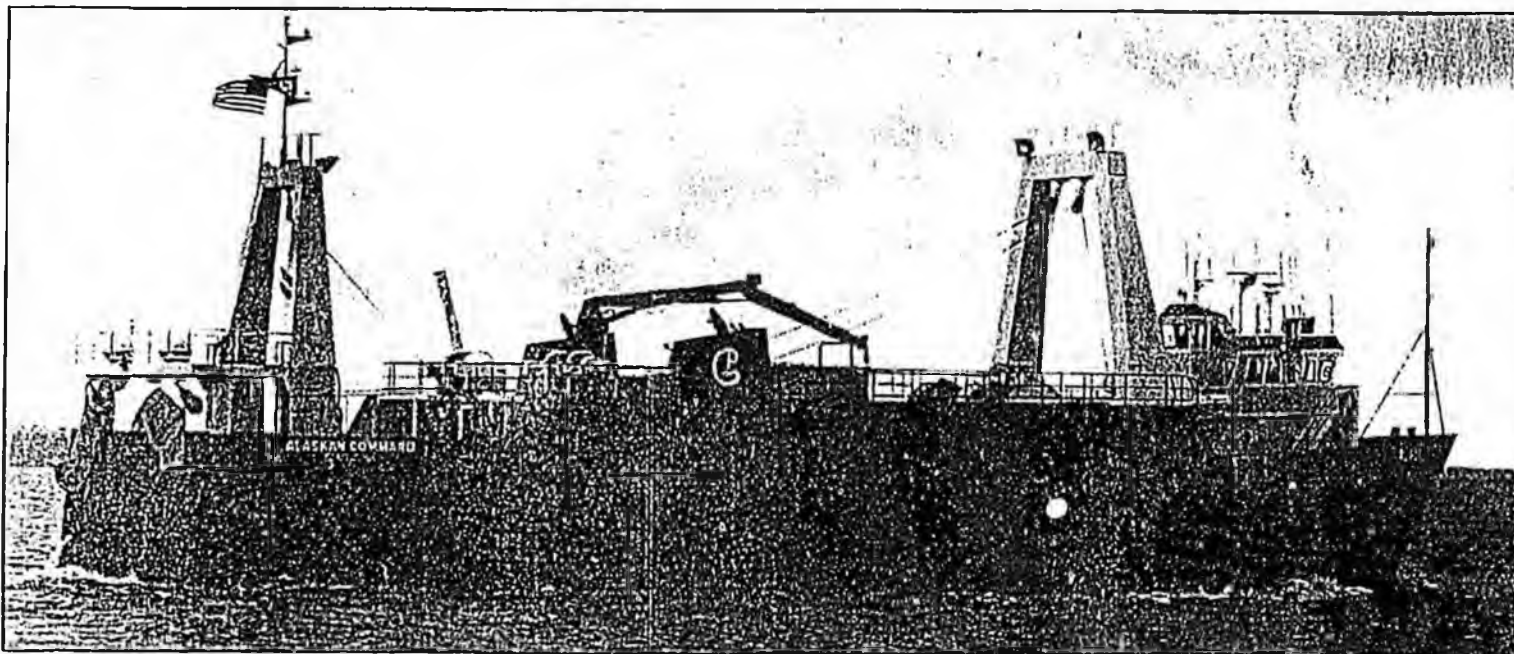
**Appendix III**

**Participation in the 1994 Fisheries and License Qualified Vessels  
by the Owner's County/Borough of Residence**

*NPFMC License Limitation Analysis  
5/27/97*

Not from AK  
↓

| County/Borough                         | FMP Subarea         | Catcher Vessels |           |          |            | Catcher Processors |          |           |           | Total Vess |
|--|---------------------|-----------------|-----------|----------|------------|--------------------|----------|-----------|-----------|------------|
|  |                     | < 60            | 60-125    | >=125    | Total      | < 60               | 60-125   | >=125     | Total     |            |
| Kenai Peninsula                        | AI                  | 3               | 0         | 0        | 3          | 0                  | 1        | 6         | 7         | 10         |
| Kenai Peninsula                        | BS                  | 9               | 2         | 0        | 11         | 1                  | 2        | 9         | 12        | 23         |
| Kenai Peninsula                        | CG+WY               | 211             | 18        | 0        | 229        | 1                  | 3        | 5         | 9         | 238        |
| Kenai Peninsula                        | SEO                 | 17              | 2         | 0        | 19         | 1                  | 0        | 2         | 3         | 22         |
| Kenai Peninsula                        | WG                  | 2               | 2         | 0        | 4          | 1                  | 1        | 7         | 9         | 13         |
| <b>Kenai Peninsula</b>                 | <b>Endorsements</b> | <b>242</b>      | <b>24</b> | <b>0</b> | <b>266</b> | <b>4</b>           | <b>7</b> | <b>29</b> | <b>40</b> | <b>306</b> |
| <b>Kenai Peninsula</b>                 | <b>Vessels</b>      | <b>222</b>      | <b>21</b> | <b>0</b> | <b>243</b> | <b>1</b>           | <b>3</b> | <b>9</b>  | <b>13</b> | <b>256</b> |
| Ketchikan Gateway                      | CG+WY               | 8               | 1         | 0        | 9          | 0                  | 0        | 0         | 0         | 9          |
| Ketchikan Gateway                      | SEO                 | 33              | 0         | 0        | 33         | 0                  | 0        | 0         | 0         | 33         |
| Ketchikan Gateway                      | WG                  | 0               | 1         | 0        | 1          | 0                  | 0        | 0         | 0         | 1          |
| <b>Ketchikan Gateway</b>               | <b>Endorsements</b> | <b>41</b>       | <b>2</b>  | <b>0</b> | <b>43</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>43</b>  |
| <b>Ketchikan Gateway</b>               | <b>Vessels</b>      | <b>39</b>       | <b>1</b>  | <b>0</b> | <b>40</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>40</b>  |
| Kodiak Island                          | AI                  | 0               | 1         | 0        | 1          | 0                  | 0        | 1         | 1         | 2          |
| Kodiak Island                          | BS                  | 5               | 17        | 0        | 22         | 0                  | 1        | 2         | 3         | 25         |
| Kodiak Island                          | CG+WY               | 101             | 45        | 0        | 146        | 0                  | 1        | 1         | 2         | 148        |
| Kodiak Island                          | SEO                 | 4               | 0         | 0        | 4          | 0                  | 0        | 0         | 0         | 4          |
| Kodiak Island                          | WG                  | 1               | 3         | 0        | 4          | 0                  | 1        | 1         | 2         | 6          |
| <b>Kodiak Island</b>                   | <b>Endorsements</b> | <b>111</b>      | <b>66</b> | <b>0</b> | <b>177</b> | <b>0</b>           | <b>3</b> | <b>5</b>  | <b>8</b>  | <b>185</b> |
| <b>Kodiak Island</b>                   | <b>Vessels</b>      | <b>104</b>      | <b>47</b> | <b>0</b> | <b>151</b> | <b>0</b>           | <b>1</b> | <b>2</b>  | <b>3</b>  | <b>154</b> |
| Matanuska-Susitna                      | CG+WY               | 14              | 1         | 0        | 15         | 0                  | 0        | 0         | 0         |            |
| Matanuska-Susitna                      | SEO                 | 3               | 0         | 0        | 3          | 0                  | 0        | 0         | 0         |            |
| Matanuska-Susitna                      | WG                  | 2               | 0         | 0        | 2          | 0                  | 0        | 0         | 0         | 2          |
| <b>Matanuska-Susitna</b>               | <b>Endorsements</b> | <b>19</b>       | <b>1</b>  | <b>0</b> | <b>20</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>20</b>  |
| <b>Matanuska-Susitna</b>               | <b>Vessels</b>      | <b>15</b>       | <b>1</b>  | <b>0</b> | <b>16</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>16</b>  |
| Northwest Arctic                       | CG+WY               | 1               | 0         | 0        | 1          | 0                  | 0        | 0         | 0         | 1          |
| <b>Northwest Arctic</b>                | <b>Endorsements</b> | <b>1</b>        | <b>0</b>  | <b>0</b> | <b>1</b>   | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>1</b>   |
| <b>Northwest Arctic</b>                | <b>Vessels</b>      | <b>1</b>        | <b>0</b>  | <b>0</b> | <b>1</b>   | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>1</b>   |
| Prince of Wales-Outer Ketchikan        | CG+WY               | 1               | 0         | 0        | 1          | 0                  | 0        | 0         | 0         | 1          |
| Prince of Wales-Outer Ketchikan        | SEO                 | 49              | 1         | 0        | 50         | 0                  | 0        | 0         | 0         | 50         |
| <b>Prince of Wales-Outer Ketchikan</b> | <b>Endorsements</b> | <b>50</b>       | <b>1</b>  | <b>0</b> | <b>51</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>51</b>  |
| <b>Prince of Wales-Outer Ketchikan</b> | <b>Vessels</b>      | <b>50</b>       | <b>1</b>  | <b>0</b> | <b>51</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>51</b>  |
| Sitka                                  | AI                  | 0               | 1         | 0        | 1          | 1                  | 1        | 0         | 2         | 3          |
| Sitka                                  | BS                  | 1               | 1         | 0        | 2          | 0                  | 1        | 0         | 1         | 3          |
| Sitka                                  | CG+WY               | 23              | 2         | 0        | 25         | 2                  | 1        | 0         | 3         | 28         |
| Sitka                                  | SEO                 | 131             | 3         | 0        | 134        | 0                  | 0        | 0         | 0         | 134        |
| <b>Sitka</b>                           | <b>Endorsements</b> | <b>155</b>      | <b>7</b>  | <b>0</b> | <b>162</b> | <b>3</b>           | <b>3</b> | <b>0</b>  | <b>6</b>  | <b>168</b> |
| <b>Sitka</b>                           | <b>Vessels</b>      | <b>136</b>      | <b>4</b>  | <b>0</b> | <b>140</b> | <b>2</b>           | <b>1</b> | <b>0</b>  | <b>3</b>  | <b>143</b> |
| Skagway-Yakutat-Angoon                 | CG+WY               | 36              | 0         | 0        | 36         | 0                  | 0        | 0         | 0         | 36         |
| Skagway-Yakutat-Angoon                 | SEO                 | 56              | 0         | 0        | 56         | 0                  | 0        | 0         | 0         | 56         |
| <b>Skagway-Yakutat-Angoon</b>          | <b>Endorsements</b> | <b>92</b>       | <b>0</b>  | <b>0</b> | <b>92</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  | <b>92</b>  |
| <b>Skagway-Yakutat-Angoon</b>          | <b>Vessels</b>      | <b>82</b>       | <b>0</b>  | <b>0</b> | <b>82</b>  | <b>0</b>           | <b>0</b> | <b>0</b>  | <b>0</b>  |            |



The 56.38 metre *Alaskan Command* as she entered the Nichols Brothers yard. She is due to emerge this month as a tank ship.

## Yard's third trawler for deep water

A 40 METRE stern trawler being built for the Fairweather Fishing Co. Ltd. of Peterhead, Scotland, is destined for deep sea fishing in Atlantic waters.

The \$5.6 million trawler, designed by Macduff Ship Design Ltd. for a crew of up to 18, will have sophisticated fish handling systems.

With a speed of 14 knots, the new trawler from the Ailsa-Troon shipyard on the Firth of Clyde is mainly for twin-rig trawling and she will have two stern ramps and six sweepline winches serving her large trawl deck.

Fairweather has been formed by Peterhead skipper John Buchan and Caley Fisheries Ltd. Their craft replaces *Pursuit II* (PD 197) which will continue to operate within the Caley organisation, but with a new skipper.

Three 43-tonne trawl winches, each carrying 3460 metres of 26 mm warp, will be computer-controlled, while a mechanised fish handling system will feed her 340 cu. metre chilled fish-room.

Ailsa-Troon is now building a 40 metre stern trawler for Ian and Billy Gatt, together with the Denholm Fishing Co. Planning work is also under way on a \$4.6 million and 34 metre trawler which will be delivered to the Harems Fishing Co. based in the Orkney Islands.

A US factory trawler is being transformed into a mid-water trawling tank ship on the same lines as the highly successful *Chelsea K*.

Westward Sea Foods is converting the 185 ft. (56.38 metre) *Alaskan Command* to land to its processing plant in Alaska.

*Chelsea K*, the 150 ft. tank ship built by the Nichols Brothers Shipyard at Tacoma, set catch records for the US fleet fishing pollock.

Now, *Alaskan Command* is due to emerge from the Nichols Brothers Boat Builders Inc. shipyard later this month repowered and refitted.

Her refit for US-based owner Westward Sea Food includes two new 12V200 Wärtsilä main engines each developing

# Factory ship switches to tanks...

3250 hp at 1500 rpm — replacing her old 1200 hp engines also from Wärtsilä.

The engine maker is also supplying new shafts, shaft generators and controllable pitch propellers.

She is being fitted with a new hydraulic system and

control room, along with two new trawl winches from Norwegian firm Rapp Hydema, replacing her old Marco WT366 MarTrawl winches. Rapp Hydema also supplied a new fish pump system.

Existing deck machinery includes an automated trawl control system and

net drums, both supplied by Marco, along with gilson and auxiliary winches from Pullmaster.

*Alaskan Command* will also have her fish holding capacity increased and a new refrigerated seawater system installed.

She originally started her career as an offshore

supply vessel before being converted to a factory trawler in 1989 (see *FNI* March 1989) at the Marco shipyard in Seattle.

Changes to her then included: fish holds converted from former mud tank areas; wheelhouse modifications; relocation of her control house to act as a trawl control station; raised bulwarks with winch foundations; two gantries; a mezzanine deck; and an additional two rooms in the accommodation area.

For the last eight years *Alaskan Command* has been catching yellowfin sole, rock sole and Pacific cod, which were headed, gutted and frozen on board before being delivered at sea to reefer vessels.



## TRIDENT SEAFOODS CORPORATION

5303 Shilshole Ave NW, Seattle, WA 98107-4000 • (206) 783-3818 • Fax: (206) 782-7195  
Domestic Sales: (206) 783-3474 • Fax: (206) 782-7246  
Export Sales: (206) 783-3818 • Fax: (206) 782-7195

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.

Alaska

★ The American Connection

Washington

Akutan • Anchorage • Clarks Point • Dillingham • Dutch Harbor • Ketchikan • Naknek • Sand Point • So. Naknek • St. Paul  Anacortes • Bellingham • Seattle

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.<sup>1</sup>

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.<sup>2</sup>

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

<sup>2</sup> 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

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Letter from Thomas L. Willis to William N. Myhre (May. 10, 1989).  
Letter from Thomas L. Willis to Terry L. Leitzell (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. 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.

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.<sup>3</sup>

The district court's opinion was reversed on appeal<sup>4</sup>, which was not surprising given the judiciary's general deference to administrative

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

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

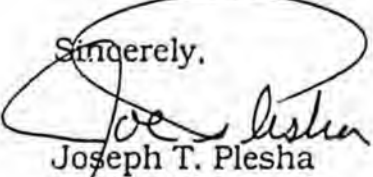
agency's expertise. The Coast Guard's December 18, 1988, written legal analysis, however, was never released to the plaintiffs nor presented to the Court.

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



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March 2, 1998

The Honorable Rick Halford  
Alaska State Senate  
State Capital  
Juneau, Alaska 99801-1182

Dear Senator Halford:

I am writing to express Trident Seafoods Corporation's strong endorsement of C.S. 33, the Resolution in Support of the American Fisheries Act. We very much appreciate Senator Stevens efforts to Americanize the fishery resources off Alaska and urge the Resources Committee to favorably report out this resolution.

Trident is a 100% American-owned company which was founded in 1973 by its President, Chuck Bundrant. Trident has never declared a dividend for its shareholders, but instead reinvested its earnings in the seafood industry. Most of Trident's investments have been in shorebased processing in Alaska. We have plants in Alaska at Akutan, Sand Point, St. Paul Island, North Naknek, South Naknek and Ketchikan.

As you are aware, the waters off Alaska are rich in fishery resources. Groundfish stocks such as Alaska pollock, Pacific cod, yellowfin sole and various other species of flatfish are especially prevalent in these waters. Pollock is the most abundant species with an annual harvest during the past twenty years in excess of two and a half billion pounds each year.

In the 1960's and early 1970's these groundfish stocks were harvested almost exclusively by foreign fishing fleets. Senator Stevens proposed the first major expansion of U.S. fishery jurisdiction beyond twelve miles in January of 1971 with the introduction of legislation that would create a fishery zone of at least 200 nautical miles.<sup>1</sup> The goal of eliminating foreign fishing off Alaska was a major reason for the adoption of the Magnuson-Stevens Act five years later, in 1976.

Trident was the leader in "Americanizing" the harvesting and processing of groundfish in the North Pacific in the early 1980s. For example, Trident purchased the very first Baader mechanical filleting machine ever

<sup>1</sup> S. 46, 92 Cong. 1st Sess. 117 Cong. Rec. 351-352 (Jan. 25, 1971).

used in Alaska. Major shorebased processing of groundfish in the Bering Sea began in 1982 when Trident started its operation at Akutan. Trident processed over 40 million pounds of groundfish at Akutan until its plant was destroyed by fire in the spring of 1985. The plant was rebuilt and immediately began to process groundfish again, including pollock fillets for the United States market. In 1987 Trident began processing groundfish at Sand Point. We have invested well over \$125,000,000 into groundfish processing at these two locations alone.

By the middle of the 1980's virtually all of the pollock resource was being harvested by American-owned fishing vessels. But a loophole in vessel documentation laws was found that allowed foreign fishing interests to own United States fishing vessels. So, with Senator Stevens leadership, Congress quickly passed the Anti-Reflagging Act which clarified that U.S. fishing vessels had to be built in the United States owned by bona fide American interests.

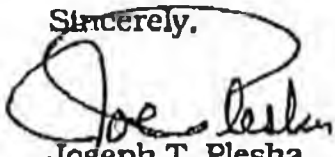
As late as 1988, the Bering Sea pollock quota lasted the entire year. Fishing vessels and processing plants operated a full twelve months. However, a large number of foreign-owned and foreign-rebuilt factory trawler vessels entered the fisheries during 1989 and 1990, in apparent violation of the Anti-Reflagging Act's prohibition of foreign-ownership and building of fishing industry vessels. Now the Bering Sea pollock quota is taken in less than three months.

There is currently more foreign fishing off the coast of Alaska than at any time since the Magnuson-Stevens Act was first passed in 1976. Most of these foreign-owned vessels are heavily subsidized and crewed by foreign fishing masters.

No other fishing nation in the world allows foreign fishing off its shores. Passage of the American Fisheries Act is essential if the goal of "Americanizing" utilization of Alaska's fisheries resources is to be realized. Senator Stevens has been a leader in this effort since he first came to the United States Senate. Trident supports Senator Stevens in this effort, and we urge the Committee to favorably report C.S. 33.

I would be grateful if you would distribute this letter to the Committee's members at the hearing this afternoon.

Sincerely,



Joseph T. Plesha  
General Counsel



**Tyson Seafood Group, Inc.** 1900 West Nickerson Street • Suite 200 • Seattle, WA 98119 • Phone: 206-282-3445 • Fax: 206-281-8052

March 2, 1998

Senator Rick Halford  
Chair, Senate Resources Committee  
State Capitol Building, Room 121  
Juneau, Alaska 99801

Re: SJR 33 – Resolution in Support of the American Fisheries Act

Dear Senator Halford and Resource Committee Members,

I am forwarding this statement of support for SJR 33. Since you have scheduled a meeting today on this resolution I thought it would be appropriate to provide, in writing, the testimony I gave before your committee on January 28, 1998. Hopefully, that hearing and the message delivered recently by Senator Stevens in his address to the Alaska Legislature has provided enough information and impetus for Committee members to approve sending SJR 33 out of committee with a recommendation to pass.

You expressed interest in reducing the amount of bottom trawling and had asked if the American Fisheries Act would help to accomplish a reduction. Supporters of the Bill see an urgent need to address the over-capacity problem in our fisheries and this Bill, as written, will eliminate approximately seven to ten of the largest pollock trawlers. Mr. Ron Dalby, testifying for American Seafoods Company at the hearing on January 28, proclaimed his fleet was among the cleanest in the world with bycatch averaging less than 2% - 3%. I do not dispute the stated rates, however, I would point out this is for mid-water pollock only. What Mr. Dalby failed to mention, was the fact that a significant portion of the 15 vessel American Seafoods fleet engages in trawling other than mid-water pollock. When they prosecute those other fisheries, which include atka mackerel, cod and yellowfin sole, they use bottom nets. In fact the "pollock fleet" as a whole, is responsible for harvesting 25% of the total groundfish other than pollock using bottom gear. So, in answer to your question, yes, there will be a reduction in the amount of bottom trawling if Senator Stevens Bill becomes law.

I am also enclosing a newspaper article published December 7, 1990, that talks about the GAO study on the Anti-Reflagging Act. The GAO concluded "The act's American control provisions have had little impact on ensuring increased American control of the U.S. fishing industry." The American Fisheries Act is designed to correct this fatal flaw and will clarify, once and for all, the intent of Congress in exercising sovereign rights over our nations fish resources.



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**Tyson Seafood Group, Inc.** 1900 West Nickerson Street • Suite 200 • Seattle, WA 98118 • Phone: 206-282-3446 • Fax: 206-981-8052

**Testimony of Dave Benson on SJR 33  
Senate Resource Committee  
January 28, 1998**

Good Afternoon, my name is Dave Benson. I am Director of Government Affairs for Tyson Seafood Group. I thank the committee for this opportunity to testify in favor of SJR 33, the resolution supporting the American Fisheries Act (S. 1221) proposed by Senator Stevens in the United States Senate. Tyson would also like to take this opportunity to thank Senator Stevens for introducing this legislation, which we believe was long overdue.

The American Fisheries Act is designed to finally and fully accomplish the goals of the Magnuson-Stevens Fishery Conservation and Management Act, passed in 1976. The Magnuson-Stevens Act established exclusive U.S. management jurisdiction over all fishery resources within the U.S. 200-mile exclusive economic zone and, significantly, gave American fishermen the first priority to harvest them. Consistent with customary international law, the U.S. established a policy of exercising sovereign rights over fishery resources. Unfortunately, since 1987, this policy has been progressively reversed. Today, foreign-controlled vessels harvest more than half of the Bering Sea pollock quota. I will not detail how this happened because I know other testimony today will explain the history of the Anti-Reflagging Act and how, through Coast Guard interpretation, the grandfather clauses to that Act effectively derailed the Congressional intent of American preference in the allocation of fish resources.

The main point I would like to make is that the American Fisheries Act is an opportunity to address the biggest problem facing the North Pacific groundfish industry today. That is the problem of overcapitalization. Overcapitalization has resulted in a pollock fishery that has gone from a year around fishery in 1989 to a fishery that now lasts about 70 to 80 days. It has many negative consequences for the economics and safety of the fishing industry. The North Pacific Fishery Management Council has identified overcapitalization as a priority issue for many years, but only very limited progress has been made to address this serious problem.

The American Fisheries Act would directly address overcapitalization in the North Pacific Fisheries in five important ways that are consistent with established U.S. fishery policy, the intent of Congress, and customary international law.

- (1) Consistent with U.S. policy and customary international law, Title I of the American Fisheries Act would ensure once and for all that only bona fide U.S. citizens will benefit from American Preference policy.

Because U.S. American Preference policy prohibits foreign fishing if U.S. fishery resources will be harvested by vessels of the U.S., reduction in capacity should be achieved first by eliminating the "foreign fishing" that is now conducted by foreign controlled companies under the guise of an American flag.

The bill would increase from 51 percent to 75 percent the required level of U.S. citizen ownership of vessels operating in U.S. fisheries and, far more importantly, would require 75 percent of the control over such vessels to be held by bona fide U.S. citizens.

Additionally, the bill would establish a rigorous enforcement regime designed to prevent further circumvention of legislative intent by foreign controlled companies interested in preserving their ill-gotten American Preference.

Unless foreign fishing companies legitimately divest their current ownership and significant reductions in the capitalization of the North Pacific fleet are anticipated as a result of this legislation.

- (2) Consistent with the spirit and intent of Congress reflected in the Commercial Fishing Vessel Anti-Reflagging Act, Title II of the American Fisheries Act would require those 16 foreign-rebuilt, high-capacity vessels that entered U.S. fisheries through a loophole created by the misinterpretation of the Act, to retire from the fishery a vessel of equal or greater size in order to remain in the fishery. Significant reductions in capitalization of the North Pacific fleet are anticipated as a result of this legislation.
- (3) Title III of the American Fisheries Act would prevent U.S. vessels that now operate Under a foreign flag in foreign fisheries from re-entering U.S. fisheries. This is also an issue the North Pacific Fishery Management Council is currently examining. Four or five large factory trawlers and approximately 13 crab catcher-processors will be prevented from entering North Pacific fisheries as a result of this provision.
- (4) Title III of the American Fisheries Act would also prevent further entry of new large Fishing vessels into U.S. fisheries and thereby prevent further increases in capacity in the North Pacific fisheries. The current, Council-imposed moratorium is scheduled to expire at the end of 1998 and the new, Limited License Program has not yet been implemented. This bill will ensure the prohibition of new, large capacity in the North Pacific as well as the rest of the nation.

- (5) Title III of the American Fisheries Act would also prevent the replacement of vessels Over 165' and 750 gross tons or 3,000 horsepower. This is known as the phase-out provision of large vessels since they will be allowed to serve out their useful lives but not be replaced except in cases of fire or sinking.

Opponents of this Bill will tell you that Tyson supports it simply because it benefits them at the expense of competitors. I would point out that this Bill will extract blood from us as well. We currently have three crab catcher-processors involved in joint ventures in Russia. They will lose the option of returning to U.S. crab fisheries. Opponents will also say that Tyson wants the opportunity to buy new factory trawlers at a reduced price from those affected by the Title II section of the Bill. The fact is that Tyson has been consolidating its fleet, selling both crab catcher/processers and factory trawlers and we would not have re-invested the millions it's taken to get our Kodiak shore plant back on line if we plans to take over the at-sea pollock sector. If industry consolidation and control is a concern, then I suggest people should look at the Norwegian controlled at-sea company that now has the distinction of owning the largest fleet in the United States.

Hopefully, the American Fisheries Act, if approved by Congress, will give the Coast Guard greater authority to enforce American control of vessels engaged in fishing. In spite of current regulations, we are aware that many of the factory trawlers are still controlled by foreign fish masters and have foreign citizens controlling the top management positions of these vessels. Tyson has methodically reduced the number of ros and H/G technicians aboard our vessels and currently employ only U.S. citizens in those positions. Our vessels have always been under the control of U.S. citizens.

Opponents will tell you that thousands of jobs will be lost. I submit that the same amount of fish will be caught although by fewer vessels and yes, by fewer crew. however, those jobs that remain will be proportionately longer – certainly more than 70 days per year.

You have the opportunity to voice your opinion through SJR 33. I urge you to support this legislation and I thank you for the opportunity to express the views of Tyson Seafood Group.

# Anti-Flagging Act, Contd.

(Continued from Page 1)

Alaska groundfish industry and the factory trawler fleet.

Packwood's request to the congressional auditing agency came a year and a half after passage of the act to eliminate what some American fishermen had seen as potential barriers to Americanization in laws enacted in 1987. While moves to eliminate unregulated fishing by foreign fishermen had begun early in the 1970s, culminating in the Magnuson Fishery Conservation and Management Act of 1976 which established exclusive U.S. management of fisheries out to 200 miles off U.S. shores and gave priority to U.S. fishermen and vessels for receiving fish quotas within the 200-mile limit, fishermen, shipbuilders, and others were concerned that foreigners could take advantage of licensing laws current in 1987 to simply move into the developing bottomfish fishery and preempt honest-to-good American fishermen.

For one thing, in 1987 existing American control requirements for licensing a corporate-owned vessel under U.S. flag were minimal. These requirements allowed, for example, a company's stock to be totally owned by foreigners.

Some Americans also feared that foreign owners could merely reflag their foreign-built fish processing vessels as "vessels of

the United States" by giving up their foreign registry and becoming documented under U.S. laws and operate within the U.S. fishery, thus gaining first priority to process fish caught by U.S. fishing vessels.

Third, proponents of an act to tighten control feared 1987 law which made it possible for American-built vessels to retain their U.S.-built status and reeking fish-catching privileges even if they were later substantially rebuilt abroad into essentially new vessels.

### The act itself

To address these concerns, the Anti-Refloating Act was signed into law on January 11, 1988. It established more stringent American control requirements, including application of criteria from the Shipping Act of 1916, for corporations licensing vessels under the U.S. flag. These include a requirement that the controlling interest in the vessel, as measured by a majority of voting stock, be owned by U.S. citizens, a prohibition against a contract or understanding that would allow the voting power to be exercised in favor of a noncitizen, and assurance there is no other means by which control of the corporation is permitted to be in favor of

a noncitizen or existence of any controlling interest that could lead to foreign control, such as the existence of foreign financing.

The anti-refloating act also requires fish-processing vessels entering the fisheries after the act was passed to be U.S. built. Foreign-built fish-processing vessels already operating in the fisheries must be licensed to process fish only and are not permitted to catch or harvest fish. This action was meant to eliminate the ability of new entrants to reflag foreign-built or foreign-owned fish-processing vessels so as to gain priority access to U.S. fishery resources.

The act also prohibits owners from participating in the U.S. fishing industry with vessels rebuilt abroad.

### Grandfather clauses

But the act also contained several grandfather clauses to protect the financial interests of owners who had become involved in U.S. fisheries under the previous conditions of law. Under the anti-refloating act's grandfather clauses, vessels are exempt from these requirements if either of two conditions was met before July 28, 1987: (1) The vessel was licensed under U.S. law and operated as a fishing, fish-processing, or fish-tender vessel in the navigable waters of the United States or the 200-mile zone established by the Magnuson Act; or (2) the

vessel was being purchased for such purposes.

Thus, a foreign-owned company whose vessel was operating in U.S. waters prior to July 1987, or that had a contract to buy a vessel to do so, could continue to operate or carry out its plans after passage of the act. And owners whose vessels were being rebuilt in foreign yards or who had purchased vessels with that intention could continue with foreign-rebuilding plans without jeopardizing the vessel's right to participate in the fisheries.

### USCG interpretation

According to the GAO, it is not the provisions of the act but the Coast Guard's interpretation of the nature of these grandfather provisions that has reduced to ineffectual the act's provisions to beef up ownership requirements.

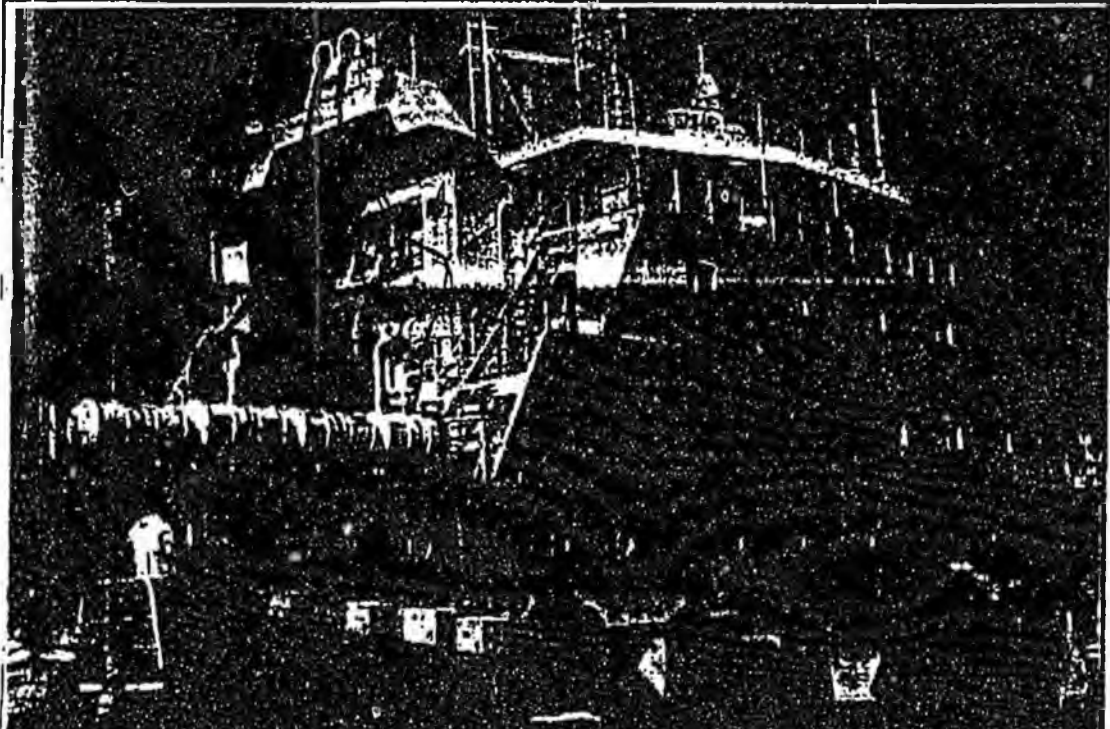
Under the Coast Guard interpretation, rather than being vested in the owners, "the grandfather exemptions remain with the vessels even if the vessels are subsequently sold to foreign-owned companies." Under that interpretation, a vessel that meets the grandfather conditions has a permanent exemption from the new American control requirements. This means that the vessel can be bought and sold repeatedly without losing fishery privileges, regardless of whether the new owner is a corporation with totally foreign-owned voting stock or other arrangements that offer potential for foreign control, giving "foreign-owned companies continued access to U.S. fisheries."

By contrast, GAO notes, the act's prohibitions against foreign rebuilding of vessels used in U.S. fisheries are likely to have a significant impact. This is so because the grandfather exemptions that apply to specific vessels, all of which have passed. Generally, vessels rebuilt in a foreign country were required to be delivered to the owners before July 28, 1990. GAO expects that in the future, "owners who desire to rebuild their vessels and who wish to participate in U.S. fisheries will likely rebuild in U.S. shipyards."

### Effects of interpretation

Under the Coast Guard's interpretation of the anti-refloating act's grandfather clauses, vessels that meet applicable conditions are thus permanently exempt from the act's American control provisions. GAO quotes the USCG Chief of Vessel Documentation as saying that nearly all of the vessels

(Continued on next page)



The Factory Trawler HEBATHRA SEA was rebuilt in Norway, one of what the GAO says is 29 percent of the offshore bottomfish catcher/processor fleet that participates in the BEZ bottomfish fisheries off Alaska by virtue of grandfather clauses in the Commercial Fishing Vessel Anti-refloating Act of 1987.

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29,000 vessels were licensed for catching fish, and were therefore U.S. built, at the time the act passed in 1987; and GAO says, nearly all of them could likely be grandfathered for American control requirements under the act by virtue of their past fishing within the 200-mile limit.

By contrast, the Chief estimates 2,000 new vessels constructed and documented for the fisheries in the two years following passage of the act are subject to the new American control conditions. About 86 percent of the vessels that participate in the groundfish industry off the coast of Alaska would likely meet the American control grandfather exemption.

The Coast Guard interpretation also has an impact on the amount of effort in the groundfish fisheries of the EEZ. According to the documentation chief, the lives of groundfish vessels that meet grandfather exemptions could be extended almost indefinitely by periodic rebuilding in the United States.

Furthermore, the Chief told the GAO, about 800 of the 20,000 vessels in the United States that were licensed for fish catching when the act was passed and meet the grandfather exemptions are well suited for rebuilding or conversion into factory trawlers or other types of relatively large vessels that now dominate groundfish operations in Alaska. Thus, any number of these vessels could, at any time, join the heavy gear, Alaska groundfish fleet without needing to meet the new American control provisions.

The GAO conducted its audit work between November 1989 and August 1990. During that time, auditors interviewed Coast Guard headquarters and field office officials with responsibility for enforcing the anti-reflagging act. They also met with members of the Alaska groundfish industry, and developed data on that industry's factory trawlers and other processing vessels from Coast Guard documentation files and vessel listings provided by the National Marine Fisheries Service.

Without obtaining formal comments, the agency discussed its findings and conclusions with Coast Guard officials who generally agreed with the facts contained in this report.



According to the General Accounting Office audit of the Anti-Refloating Act of 1987, 800 of the 29,000 vessels licensed for fish catching when the act was passed meet the act's grandfather exemptions and are well suited for rebuilding or conversion into factory trawlers or other types of relatively large vessels that now dominate groundfish operations in Alaska.

## Coast Guard strengthening procedures for enforcing ownership constraints

As part of its evaluation of certain provisions of the Commercial Fishing Vessel Anti-refloating Act of 1987, General Accounting Office auditors obtained information on how the Coast Guard enforces those provisions.

As GAO notes in an appendix to its report, the Coast Guard enforces the anti-refloating act's foreign-built, foreign-rebuilt, and foreign-control prohibitions through several activities carried out in support of other laws and maritime missions: basically, documentation (licensing, at-sea boarding, and investigations).

Through its vessel-documentation function at 15 Coast Guard documentation offices nationwide, the Coast Guard licenses vessels to participate in U.S. fisheries. If an application to document a fishing vessel shows compliance with USCG regulations, the field office issues a certificate of documentation with an endorsement authorizing use of the vessel in the fisheries. Good for one year, the certificate must be inspectable on the vessel at all times. It is routinely renewable if no changes have occurred. Otherwise, the Coast Guard requires owners to apply for new documentation when the vessel's ownership or dimensions change.

For vessels that fall under the anti-refloating act's foreign-built, foreign-rebuilt, and foreign-control prohibitions, owners must show compliance with the act's grandfather clauses in order to obtain documentation for fishery privileges. The Coast Guard relies on a variety of owner-supplied information as it makes decisions on whether to issue documentation.

For example, owners must certify that the applications they submit for documentation contain accurate citizenship information. For corporate owners, this information includes the extent to which stock is owned by U.S. citizens.

Sometimes, as well, owners have to provide additional information besides that contained in the application. For example, Page 17



The GOLDEN ALASKA is a foreign-built processor in the bottomfish fishery by virtue of grandfather clauses in the Anti-refloating Act of 1987.

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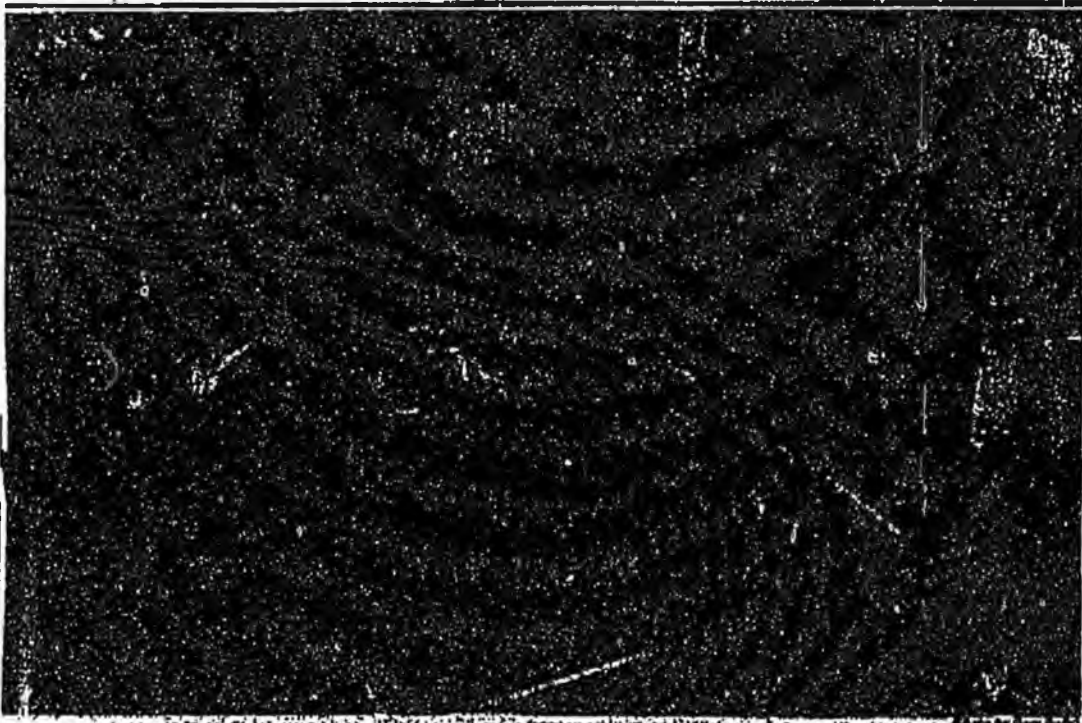
Vol. II Ed. 25

Alaska's Own Fish Newspaper

\$1.50

December 7, 1990

# Americanization all for benefit of foreign owners?



**THE PRELIMINARY FINAL CATCH FIGURE** for the Bristol Bay red king crab fishery is in. According to Alaska Department of Fish and Game biologist Ken Griffin, 241 vessels harvested 19,020,716 pounds of crab in the fishery which opened November 1 and closed November 15 at noon. That compares with 10,185,570 pounds last year. ADFG has also released other crab catch figures for other crab fisheries currently open. As of November 25, crabbers had harvested 405,715 pounds of red and 135,716 pounds of brown king crab in the Adak fishery. As for the C. Baird Tanner crab fishery in the Bering Sea, which opened seven days after the Bristol Bay closure, on November 20, the catch reported as of November 25 was 977,956 pounds.

## Fish Board rules subsistence fisheries are to take place in Upper Cook Inlet

The Alaska Board of Fisheries has approved a subsistence salmon fishing proposal for Upper Cook Inlet after a week of grueling, painful sessions which cost them, at the very least, participation by one member and won them, at the very most, general dissatisfaction with their plan. Under the plan, during 18 days next summer subsistence fishing with dip nets and set nets will occur in Upper Cook Inlet. The days were selected to spread the

fishery over all the Cook Inlet salmon fisheries and impact both commercial and sports fishermen. Nine of those days will be in July, when red salmon and late run king salmon are returning. Subsistence fishermen will be sharing the beach with commercial fishermen during that busy commercial fishing season. The subsistence fishery will also occur two days in May and two in June, during the early run of pinks and kings; two days

in August and three in September, for the early and late runs of silver salmon. The limit for those who participate in the subsistence fishery will be 25 salmon per permit holder, plus ten more fish for each member of the permit holder's household. Still to be determined is the process and fee for the subsistence fishery. At the moment all the Alaskans who

(See Subsistence fisheries, Page 6)

### GAO report concludes Anti-reflag Act a failure

The U.S. Coast Guard's interpretation of certain grandfather provisions of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 has made ineffectual the provisions of that act meant to ensure increased American control of the U.S. fishing industry, concludes a study by the General Accounting Office of the effect of specific provisions of the act. GAO did not examine the validity of the Coast Guard's interpretation of the grandfather clauses, however, because of a lawsuit filed last May by a coalition of fishing and shipbuilding groups challenging, in part, the constitutionality of the

of Congress in passing the act.

As a course of action rather, the agency suggests that if Congress desires control provisions to actually ensure control of U.S. fishery operations by U.S. citizens, it make some changes in the act as it now

Besides assessing whether the act's more stringent U.S. vessel ownership requirements have ensured American control of fishery operations, GAO also evaluated the provisions prohibiting vessels rebuilt in foreign countries from participating in U.S. fisheries. The agency concludes that while a great amount of rebuilding occurred between the passage of the act and the final delivery cutoff date — of the 52 factory trawlers that participated in the Alaska groundfish industry between January 1989 and February 1990, 15 vessels, or 29 percent, were rebuilt in foreign countries since the act's passage and had received exemptions from the Coast Guard under the act's grandfather clauses —, these latter provisions will be very effective in the future because the deadlines permitting vessels to be rebuilt abroad have all passed.

### Why the study

The GAO undertook the evaluation of the anti-reflagging act at the request of Senator Bob Packwood, who particularly wanted to know the effect of the act on the

(See Anti-reflagging failure, Page 14)

Brent C. Paine  
Executive Director



Steve Hughes  
Technical Director

January 28, 1998

Senator Rick Halford  
Chair, Senate Resources Committee  
State Capital Building, Room 121  
Juneau, Alaska, 99801

Re: SJR 33, the American Fisheries Act

Dear Senator Halford and fellow Resources Committee members,

I understand the Senate Resources Committee will be holding a hearing this afternoon on SJR 33. 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

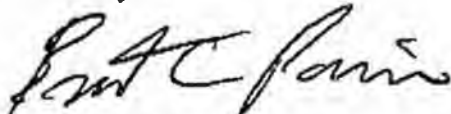
harvesting capacity. The result was going from a year-round fishery in 1987 to a two month fishery in 1997. Many of these vessels used the Anti Reflagging Act's grandfather provision to enter into an American EEZ fishery. Where once the pollock resource was primarily harvested by small, independently 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

A. W. BRINDLE  
H. A. BRINDLE

PROCESSOR OF  
CHOICE ALASKA SEAFOOD  
SINCE 1912

# Wards Cove Packing Company

PHONE (206) 321-3200

88 E. HAMLIN STREET  
P.O. BOX C-5030  
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

ALASKA BOAT • ALITAK • CRAIG • EGEKIK • EKUK • EXCURSION INLET • HAINES • HOONAH TRADING • ICY CAPE INTERNATIONAL SALES  
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# WESTERN ALASKA FISHERIES, INC.

1111 THIRD AVE., SUITE 2200  
SEATTLE, WASHINGTON 98101

TELEPHONE: (206) 382-0640

TELEFAX: (206) 825-0089  
TELEX: 71-277178

January 28, 1998

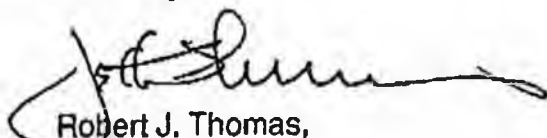
The Honorable Senator Jerry Mackle  
State of Alaska  
Room 427  
State Capitol  
Juneau, AK 99801-1182

Dear Senator Mackle:

Please accept this letter as Western Alaska Fisheries' full support of SJR 33, which supports the American Fisheries Act that has been introduced in the U.S. Senate by Senator Stevens (SB 1221). Were it possible for me to be in Juneau today, I would prefer to personally offer my support in your efforts. Unfortunately, however, scheduling conflicts prevent my personal attendance.

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: 49612654 PRMPAC

January 28, 1998

The Honorable Senator Jerry Mackie  
State of Alaska  
Room 427  
State Capitol  
Juneau, Alaska

Sent via facsimile

Dear Senator Mackie,

Please accept this letter as our full support of 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 personally offer my support, however scheduling conflicts prevented my attendance.

Thank you for your advocacy of America's fishery resources. We strongly support the notion that America's fish should be caught by American fishermen in American catcherboats.

Sincerely,

A handwritten signature in dark ink, appearing to read "Douglas C. Forsyth".

Douglas C. Forsyth  
Vice President  
General Manager

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

A. W. BRINDLE  
H. A. BRINDLE

PROCESSORS OF  
CHOICE ALASKA SEAFOOD  
SINCE 1812

# Wards Cove Packing Company

PHONE (206) 323-3200

88 E. HAMLIN STREET  
P.O. BOX C-5030  
SEATTLE, WA 98105-0030

Day Fax (206) 323-9165

## Facsimile Cover Sheet

January 28, 1998  
Date

To: State of Alaska Room 427

Attn: Honorable Senator Jerry Mackie

Fax Number: (907) 465-3517

Contact Number: \_\_\_\_\_

From: Alec W. Brindle  
Wards Cove Packing Company

Fax Number: (206) 323-9165

Message: Please accept the following and circulate it to

Senator Robin Taylor and Senator Rick Halford.

Thank you!

Total Pages Including This Cover Sheet: 2

Please call (206) 323-3200 if you have any problems receiving this fax.

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 JAMES H. ENGLISH, MINORITY STAFF DIRECTOR

## United States Senate

COMMITTEE ON APPROPRIATIONS  
 WASHINGTON, DC 20510-6025

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 these

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

January 27, 1998  
Hon. Jerry Mackie


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 rate 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

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, 1997; (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 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 quota's (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.

As introduced 9/25/97

105TH CONGRESS  
1st Session

S. \_\_\_\_\_

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

---

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 Representatives of  
2 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 "American

1 Fisheries Act".

(b) TABLE OF CONTENTS.--The table of contents for 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.

1 TITLE I -- STANDARD OF OWNERSHIP

2 SEC. 101. FINDINGS AND PURPOSES.

3 (a) FINDINGS.--The Congress finds that--

4 (1) non-U.S. citizens own and control many United  
 5 States flag fishing vessels and are harvesting significant  
 6 amounts of fishery resources in the navigable waters and  
 7 exclusive economic zone of the United States that could  
 8 otherwise be harvested by citizens of the United States;

9 (2) in the largest fishery in the exclusive economic  
 10 zone of the United States (the Bering Sea pollock fishery),  
 11 Norwegian and Japanese entities control a substantial  
 12 majority of the harvesting and processing through the  
 13 ownership and control of U.S.-flag fishing vessels,  
 14 including factory trawlers and large trawlers;

15 (3) these levels of ownership and control of United  
 16 States flag fishing vessels by non-U.S. citizens are

1 inconsistent with the intent and requirements of the  
2 Commercial Fishing Industry Vessel Anti-Reflagging Act of  
3 1987 (Pub. L. 100-239);

4 (4) the foreign rebuilding requirements of section  
5 4(a)(4) of such Act were misinterpreted in a manner that  
6 rewarded the very speculation Congress sought to prevent  
7 with the passage of that Act, resulting in a far greater  
8 number of foreign-rebuilt vessels entering the fisheries off  
9 Alaska than Congress intended to allow;

10 (5) under customary international law, including the  
11 United Nations Convention on the Law of the Sea, a coastal  
12 state has sovereign rights for the purpose of exploiting,  
13 conserving, and managing the living marine resources in its  
14 navigable waters and exclusive economic zone, including the  
15 sovereign right for its citizens to harvest and process the  
16 entire allowable catch within its exclusive economic zone if  
17 they have sufficient capacity;

18 (6) the United States must have a meaningful and  
19 enforceable standard of ownership and control for United  
20 States flag vessels employed in the fisheries of the United  
21 States in order to ensure that citizens of the United States  
22 are given first priority in the harvesting and processing of  
23 the allowable catch in the exclusive economic zone of the  
24 United States;

25 (7) consistent with customary international law, the  
26 Magnuson-Stevens Fishery Conservation and Management Act

1 allows fishing vessels of other nations to harvest or  
2 process the portion of the allowable catch within the  
3 exclusive economic zone of the United States that United  
4 States flag fishing vessels do not have the capacity to  
5 harvest or process; and

6 (8) fishing vessels greater than 165 feet in registered  
7 length, of more than 750 gross registered tons, or that have  
8 engines capable of producing a total of more than 3,000  
9 shaft horsepower, including factory trawlers and other  
10 trawlers that exceed these measurements--

11 (A) are less likely than smaller, less powerful  
12 vessels with smaller gear to avoid bycatch and minimize  
13 the mortality of bycatch that cannot be avoided;

14 (B) have been a cause of overfishing in fisheries  
15 both within the navigable waters and exclusive economic  
16 zone of the United States and elsewhere throughout the  
17 world; and

18 (C) are more likely to be owned by investors and  
19 under pressure to produce profits at the expense of the  
20 long-term health of fishery resources.

21 (b) PURPOSES.--The purposes of this Act are to--

22 (1) establish a meaningful and enforceable standard of  
23 United States citizen ownership and control for United  
24 States flag vessels employed in the fisheries in the  
25 navigable waters and exclusive economic zone of the United  
26 States;

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

5 (3) begin to phase out the use of fishing vessels  
6 greater than 165 feet in registered length, of more than 750  
7 gross registered tons, or that have engines capable of  
8 producing a total of more than 3,000 shaft horsepower in the  
9 navigable waters and exclusive economic zone of the United  
10 States by prohibiting the issuance of new fishery  
11 endorsements to vessels which exceed these limits;

12 (4) place a capacity reduction burden on the fishing  
13 vessels that came through the loophole created by the  
14 misinterpretation of section 4(a)(4) of the Commercial  
15 Fishing Vessel Anti-Reflagging Act; and

16 (5) prohibit Federal loan guarantees for the  
17 construction of new fishing vessels greater than 165 feet in  
18 registered length, of more than 750 gross registered tons,  
19 or that have engines capable of producing a total of more  
20 than 3,000 shaft horsepower, or for the rebuilding or  
21 improvement of existing vessels which would result in a  
22 fishing vessel which exceeds these limits.

23 SEC. 102. STANDARD OF OWNERSHIP.

24 (a) CLARIFICATION OF DOCUMENTATION STANDARD.--Section  
25 12102(a) of title 46, United States Code, is amended in paragraph  
26 (4) by striking "president or other chief executive officer" and

1 inserting in lieu thereof "chief executive officer, by whatever  
2 title,".

3 (b) STANDARD FOR FISHERY ENDORSEMENTS.--Section 12102(c) of  
4 title 46, United States Code is amended to read as follows--

5 "(c) (1) A vessel owned by a corporation, partnership,  
6 association, trust, joint venture, or other entity is not  
7 eligible for a fishery endorsement under section 12108 of this  
8 title unless at least 75 per centum of the controlling interest  
9 in such entity, in the aggregate, is owned by citizens of the  
10 United States.

11 "(2) The Secretary shall apply section 2(c) of the Shipping  
12 Act, 1916 (46 App. U.S.C. 802(c)) in determining under this  
13 subsection whether at least 75 per centum of the controlling  
14 interest in an entity is owned by citizens of the United  
15 States."

16 (c) EFFECTIVE DATE FOR VESSELS WHICH MEET CURRENT STANDARD.-

17 -A vessel owned by an entity which satisfies the controlling  
18 interest requirements of section 12102(c) of title 46, United  
19 States Code, as that section was in effect prior to the  
20 amendments made by this Act, and for which a fishery endorsement  
21 was in effect on September 25, 1997, shall not be required to  
22 comply with paragraphs (1) and (2) of section 12102(c) of title  
23 46, United States Code, as amended by this Act, until the date  
24 that is eighteen months from the date of the enactment of this  
25 Act, provided such entity does not, prior to such compliance  
26 date, fail to satisfy the controlling interest requirements of

1 section 12102(c) of title 46, United States Code, as that section  
2 was in effect prior to the amendments made by this Act.

3 SEC. 103. ENFORCEMENT OF STANDARD.

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

15 (3) Transfers of ownership and control shall be rigorously  
16 scrutinized by the Administrator, with particular attention given  
17 to leases, charters, mortgages, financing, or other arrangements  
18 involving other than citizens of the United States, and to  
19 contracts involving the purchase over extended periods of time of  
20 all, or substantially all, of the living marine resources  
21 harvested by a fishing vessel. Regulations to implement this  
22 paragraph shall prohibit impermissible transfers of ownership or  
23 control.

24 (4) The Administrator, on a regular basis, shall provide the  
25 Commandant of the United States Coast Guard with a list of, and  
26 relevant information about, all vessels that the Administrator

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

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

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

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

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

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

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

25 (f) PENALTY.--Section 12122 of title 46, United States Code,  
26 is amended by inserting at the end the following new subsection:

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

13           (g) REVIEW OF TRANSFERS.--Section 9(c)(1) of the Shipping  
14 Act, 1916 (46 U.S.C. 808(c)(1)) is amended by striking "in a  
15 vessel that has been operated only as a fishing vessel, fish  
16 processing vessel, or fish tender vessel (as defined in section  
17 2101 of title 46, United States Code) or".

18           **TITLE II — ANTI-REFLAGGING ACT EXCEPTIONS**

19           **SEC. 201. RESTRICTIONS ON BUILD AND REBUILD SAVINGS CLAUSE.**

20           (a) REPEAL.--Notwithstanding section 4 of the Commercial  
21 Fishing Industry Vessel Anti-Reflagging Act of 1987 (Pub. L. 100-  
22 239, 46 U.S.C. 12108 note), a certificate of documentation may  
23 not be endorsed with a fishery endorsement for a vessel which  
24 does not meet the requirements of paragraphs (2) and (3) of  
25 section 12108(a) of title 46, United States Code, unless the

1 certificate of documentation for such vessel was endorsed with a  
2 fishery endorsement that was effective on September 25, 1997 and  
3 the vessel otherwise qualifies for a fishery endorsement,  
4 including under sections 12102(c) and 12108(e) of title 46,  
5 United States Code, as amended by this Act.

6 (b) RESTRICTION.--Notwithstanding subsection (a) or any  
7 other provision of law, any fishing vessel (as defined in section  
8 2101 of title 46, United States Code) which--

9 (1) had a fishery endorsement in effect on September  
10 25, 1997;

11 (2) is greater than 165 feet in registered length, of  
12 more than 750 gross registered tons, or has an engine or  
13 engines capable of producing a total of more than 3,000  
14 shaft horsepower; and

15 (3) was built in the United States and was--

16 (A) purchased or contracted for purchase prior to  
17 July 29, 1987 for use in the fisheries of the United  
18 States;

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

21 (C) delivered after such rebuilding and issued a  
22 fishery endorsement prior to July 29, 1990; and

23 (D) not owned or controlled by the same entity  
24 during the occurrence of each of the events described  
25 in subparagraphs (A) through (C);

26 shall be ineligible for a fishery endorsement under section 12108

1 of title 46, United States Code, if the controlling interest in  
2 the entity that owns the fishing vessel on September 25, 1997 is  
3 materially changed after such date, unless a fishery endorsement  
4 for another fishing vessel of the same or greater registered  
5 length, gross registered tons, and shaft horsepower, which  
6 actively harvested fishery resources in the fisheries under the  
7 authority of the same Regional Fishery Management Council during  
8 the year prior to such material change, is permanently  
9 surrendered.

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

11 (a) REPEAL.--(1) Section 7(b) of the Commercial Fishing  
12 Industry Anti-Reflagging Act of 1987 (Pub. L. 100-239; 46 U.S.C.  
13 12102 note) is hereby repealed.

14 (b) EFFECTIVE DATE.--Subsection (a) shall take effect  
15 eighteen months after the date of the enactment of this Act.

16 **TITLE III -- PHASE OUT OF CERTAIN FISHING VESSELS**

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

18 (a) GENERAL PROHIBITION.--Section 12108 of title 46, United  
19 States Code, is amended by adding at the end the following new  
20 subsection:

21 "(e) A certificate of documentation may not be endorsed with  
22 a fishery endorsement for a fishing vessel that is greater than  
23 165 feet in registered length, of more than 750 gross registered  
24 tons, or that has an engine or engines capable of producing a  
25 total of more than 3,000 shaft horsepower unless--

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

5 (2) the registered length, gross registered tons, and  
6 shaft horsepower do not exceed the length, tonnage, and  
7 horsepower of such vessel on such date."

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

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

24 (c) REPLACEMENT OF LOST VESSELS.--Notwithstanding section  
25 12108(e) of title 46, United States Code, as added by this Act,  
26 the owner of an existing vessel greater than 165 feet in

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

20 (d) FISHING VESSELS OPERATING BEYOND THE EXCLUSIVE ECONOMIC  
21 ZONE.--Section 12108(e) of title 46, United States Code, as  
22 amended by this Act, shall not apply to a fishing vessel engaged  
23 in fishing exclusively for highly migratory species (as that term  
24 is defined in section 3 of the Magnuson-Stevens Fishery  
25 Conservation and Management Act (16 U.S.C. 1802)) primarily  
26 outside of the navigable waters and exclusive economic zone of

1 the United States.

2 SEC. 302. RESTRICTION ON LOAN GUARANTEES.

3 Section 302(b) of the Fisheries Financing Act (46 U.S.C.  
4 1274 note) is amended--

5 (1) by inserting "(1)" before "Until October 1, 2001"; and

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

7 "(2) No loans may be guaranteed by the Federal  
8 Government for the construction or rebuilding of a vessel  
9 intended for use as a fishing vessel (as defined in section  
10 2101 of title 46, United States Code), if such vessel will  
11 be greater than 165 feet in registered length, of more than  
12 750 gross registered tons, or have an engine or engines  
13 capable of producing a total of more than 3,000 shaft  
14 horsepower, after such construction or rebuilding is  
15 completed."

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Central Microfilm Services  
Department of Education  
State of Alaska

1 the United States.

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10 2101 of title 46, United States Code), if such vessel will  
11 be greater than 165 feet in registered length, of more than  
12 750 gross registered tons, or have an engine or engines  
13 capable of producing a total of more than 3,000 shaft  
14 horsepower, after such construction or rebuilding is  
15 completed."

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01/28/98  
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LEGISLATIVE TELECONFERENCE NETWORK SYSTEM  
PARTICIPANT LIST (TESTIFIERS ONLY)  
TCN:80178 SCHEDULED FOR:01/28/98 15:30 TO 17:00  
PUBLIC HEARING SENATE RESOURCES

LTN1150  
BY:JNU  
FOR:ALL

LOCATION: ANCHORAGE  
SJR 33

EUGENE

ASICKSIK

NSEDC

TESTIFY

LOCATION: DILLINGHAM

SJR 33  
SJR 33

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HARVEY  
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SAMUELSEN  
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UNALASKA VOLUNTEER SITE

SHIRLEY MARQUARDT

TAMMY POUND

TINY SCHASTEEN

Line 1

STR 33

**American Seafoods Company**

FEB 09 1998

February 9, 1998

Senator Rick Halford, Chairman  
Senate Resources Committee  
Alaska State Capital  
Juneau, Alaska 99801-1182

Dear Senator Halford:

In my testimony before the Resources Committee on January 28, there were a couple of questions asked by Senator Lincoln that I was unable to answer or there was some misunderstanding about the answer.

The first centered around our extended discussion of the number of people employed by the At-sea Processing Association fleet as a whole and my company as part of that larger group. First of all, there are approximately 650 Alaskans at sea right now on board ships belonging to the various companies that are members of the At-sea Processors Association. This is from a total of approximately 3,600 employees in the entire fleet of 27 ships currently at sea for the pollock A season. This yields a rate of 18 percent of the workforce being Alaskan. In our company, which has the largest actual number of Alaska hires, we have 280 Alaskans working in a total work force of approximately 1,900 people for a rate of about 15 percent.

The second part of Senator Lincoln's question revolved around pay rates. The 280 of the 650 total employees who work for American Seafoods will share in the \$6 to \$8 million in wages. Using the mid range of \$7 million, this works out to an average of \$25,000 per employee (\$7 million divided by 280 American Seafoods' employees).

The second set of questions concerned the number of ships fishing for cod after the pollock A season is complete. The correct answer is six of our ships will make a cod trip after the pollock quota has been met. But I stress here again that we are not scraping the bottom for cod, either. We use essentially the same nets; they are just "flown" very close to the ocean floor when fishing for cod. Bycatch is critical in the cod fishery—if fishermen surpass a certain limit of bycatch, the cod fishery is shut down by federal managers. Thus we are extremely careful to take every possible step to limit bycatch in this fishery, and have been pretty successful. Our overall bycatch rate of less than 2 percent includes our participation in the cod fishery.

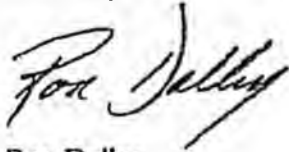
Additionally, at the conclusion of the pollock A season we will have a boat anchoring near Chignik to provide an alternative market for a pot cod fishery that has been in place for several years. We expect to be able to offer cod fishermen from 1.5 to 2.5 times the going rate for their cod, depending upon the size and frequency of their deliveries.

We are also, at present, investigating the stationing of a ship near the southern end of Kodiak Island this spring to service another long-time cod fishery. While no final determination on this has been made yet, if we go ahead with this venture we expect to pay for catches at the same rate as planned for the Chignik pot cod fishery. We are already in contact with several Kodiak-area fishermen, and I expect a final decision on this Kodiak fishery within the next couple of weeks.

If I can be of further assistance, please don't hesitate to give me a call. Besides my office phone, I can be reached at home, 745-0193 or via cellular phone at 232-0521.

And, finally, it was indeed a pleasure to testify before the Senate Resources Committee, and I appreciate the time you allowed for me to speak. This is a very complicated issue, and I will be glad to travel again to Juneau if you hold additional hearings to gather more information.

Sincerely,



Ron Dalby  
Alaska Employment Manager

Cc: Senator Georgianna Lincoln



**American Seafoods Company**  
Resolution Plaza Building 1029 West 3rd Avenue Suite 550 Anchorage, Alaska 99501 USA  
(907) 276-8252 Fax (907) 276-8262

**Don't be misled** by the  
Japanese-  
controlled **onshore**  
fish processors



Find out the facts...

# **The fact is that the at-sea pollock processors work hard to keep this resource healthy.**

**The Bering Sea mid-water pollock fishery is the cleanest in the world,** according to an April 1994 report by the Food and Agriculture Organization of the United Nations.

**We championed the new zero-discard law for cod and pollock.** Working with the North Pacific Fisheries Management Council, we helped develop regulations prohibiting the discard of these species.

**We play by the rules to ensure Bering Sea pollock won't be overfished.** By law, Federal observers are on-board our ships 24 hours a day to monitor catches.

We have all seen how overfishing and waste depleted the once bountiful fisheries off New England. We refuse to repeat their mistakes.

That's why we will not stay silent when the Japanese-controlled onshore processors try to mislead you.



Alaska is showing  
the world the way.

*And we thought you'd be proud to know.*

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**Don't be misled** by the  
Japanese-  
controlled **onshore**  
fish processors



Find out the facts.



## What a waste!

Factory Trawlers Waste More than *One Million Pounds* of Alaska's Fish Each Day! *Why?* Because *Factory Trawlers* Don't Have to Pay for the Fish They Catch.

# WRONG!

Last year, the Factory Trawler Harvest of Alaska's Bering Sea Pollock was caught in only 57 days! And that means Factory Trawlers wasted more than 1 Million pounds of fish - each day! It also means

**North Pacific Seafood Coalition**

Alaska's Onshore Processors, Memberships and Catcher Boats

215 Third Street, Juneau, Alaska 99801

**Don't Get Caught** in the Factory Trawler's Net of Deception.

You may have seen this ad in the *Juneau Empire*. It was paid for by a group of Japanese-controlled onshore fish processors (calling themselves the North Pacific Seafood Coalition). They are seeking to inflame and confuse the fisheries debate.

# **The fact is that the at-sea pollock processors work hard to keep this resource healthy.**

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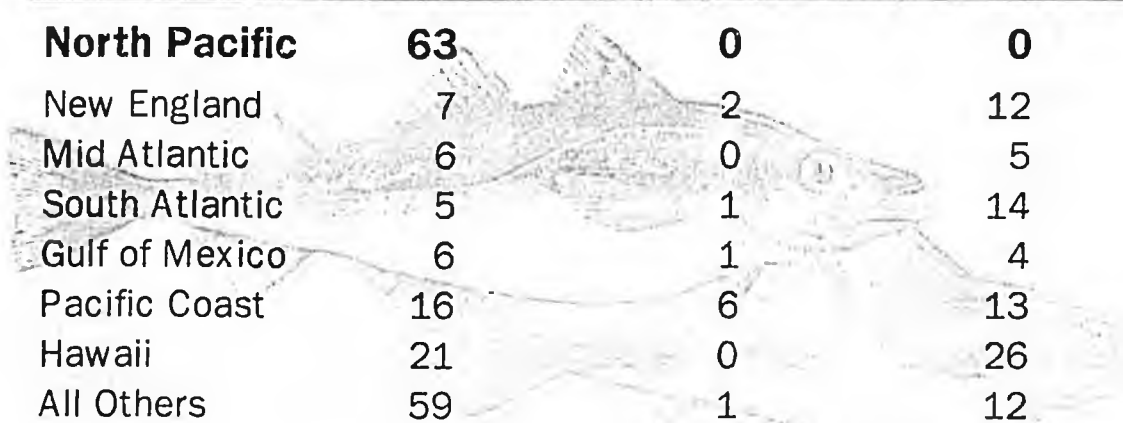
Alaska is showing  
the world the way.

*And we thought you'd be proud to know.*

**The National Marine Fisheries Service has confirmed:**

There is no overfishing of  
pollock in Alaskan waters.

| NUMBER OF SPECIES    | Not Overfished | Approaching Overfished | Overfished |
|----------------------|----------------|------------------------|------------|
| <b>North Pacific</b> | <b>63</b>      | <b>0</b>               | <b>0</b>   |
| New England          | 7              | 2                      | 12         |
| Mid Atlantic         | 6              | 0                      | 5          |
| South Atlantic       | 5              | 1                      | 14         |
| Gulf of Mexico       | 6              | 1                      | 4          |
| Pacific Coast        | 16             | 6                      | 13         |
| Hawaii               | 21             | 0                      | 26         |
| All Others           | 59             | 1                      | 12         |



SOURCE: National Marine Fisheries Service  
Report to Congress, Sept. 1997



**AMERICAN SEAFOODS COMPANY**

Resolution Plaza Building  
1029 West 3rd Avenue, Suite 550  
Anchorage, Alaska 99501  
(907) 276-8252