

103
ECONOMIC IMPACT OF THE WHITING ALLOCATION
ON OREGON COASTAL COMMUNITIES

4. SM 1: 103-24

Economic Impact of the Whiting Allo...

HEARING
BEFORE THE
SUBCOMMITTEE ON REGULATION, BUSINESS
OPPORTUNITIES, AND TECHNOLOGY
OF THE
COMMITTEE ON SMALL BUSINESS
HOUSE OF REPRESENTATIVES
ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NEWPORT, OR, JUNE 4, 1993

Printed for the use of the Committee on Small Business

Serial No. 103-24



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ISBN 0-16-041660-4

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ECONOMIC IMPACT OF THE WHITING ALLOCATION ON OREGON COASTAL COMMUNITIES

FRIDAY, JUNE 4, 1993

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON REGULATION, BUSINESS
OPPORTUNITIES, AND TECHNOLOGY,
COMMITTEE ON SMALL BUSINESS,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:55 a.m., in OSU Mark O. Hatfield, Marine Science Center Auditorium, 2030 Marine Science Drive, Newport, OR, Hon. Ron Wyden (chairman of the subcommittee) presiding.

Chairman WYDEN. Let us bring the Small Business Subcommittee on Regulation, Business Opportunities, and Technology to order.

It is a pleasure to convene here in Newport today at the request of my good friend, Mike Kopetski, in order to learn first hand the economic impact of the Whiting Allocation Decision on the Oregon coast and on this community specifically.

We made a special effort to be here today, because the Small Business Subcommittee on Regulation and Business Opportunities wants to look closely at the impact this decision has had on a number of areas such as small business lending and catch allocation decisions where the Federal Government is directly involved.

For example, at this time, there are more than 40 Small Business Administration loans directly related to the fishing industry on the Oregon coast which are at risk because of the whiting decision. In addition to those 40 direct loans, the subcommittee's inquiry into this issue found that in Clatsop, Tillamook, and Lincoln Counties alone, there are an additional 80 SBA loans supporting a variety of secondary and support businesses—such as hardware shops, boat repair yards, restaurants, and other small enterprises—that directly and indirectly owe their survival to the onshore fishing industry.

So, it's fair to say that already the Federal Government, considering the extent of these SBA loans, has tens of millions of dollars that are at risk because of the Pacific Whiting Decision. My concern is that unless this matter is dealt with properly, if those loans fail, if those loans wash up onshore, they are going to take a lot of other businesses with them, and that is something that Congressman Kopetski and I simply are not willing to accept.

There are two public policy questions that I have a special interest in examining today. First, I am particularly concerned about

what appears to be a growing trend by the Federal Department of Commerce to simply ignore or, I think it would be fair to say, flout the decisions that are coming out of the regional bodies, specifically the Pacific Fishery Management Council. We are seeing a pattern where, in effect, there is a great effort to involve local citizens, local communities, those most directly affected by the decision being made, and then the Commerce Department, in a fashion that, at best, seems arbitrary and using a seat of the pants kind of process, sets aside the decision of regional bodies. If that is, in fact, the case, at some point people are going to say, what is the use of trying to bring a regional focus and local input, if Washington, DC is just going to take it away from us and make these judgments on a political basis.

The second and last point that concerns me is that, as the subcommittee looks at the regulatory framework in which the fishing industry operates today, it appears to me that more and more of the regulations are being skewed to favor the big businesses. If you look at the regulatory system, it appears that the new regulations consistently seem to focus on the arguments that have been made by the large businesses and give short shrift to the many small businesses that tend to predominate on the Oregon coast.

This subcommittee exists to advocate for small business. We want small business to get a fair shake. It seems to me that there needs to be more balance, and there needs to be a sense of proportion brought back into the regulatory process so that these regulations are no longer skewed in favor of big business, but are balanced between the needs of both small and large businesses. This way, the small businesses that Congressman Kopetski and I saw first-hand this morning will get a fair shake.

So, this will be the end of the Chair's opening statement. Again, I want to commend our friend, Congressman Kopetski, for his good work, for getting us here today, and for all the leadership he has shown.

[Chairman Wyden's statement may be found in the appendix.]

Mr. KOPETSKI. Thank you, Mr. Chairman, and welcome to Newport and to Lincoln County.

I want to thank you for taking the time and effort to hold this hearing here in Newport today. As you can see, before us is an issue of great importance and interest to many people on the Oregon coast. We deeply appreciate your willingness to take time from your busy schedule and to bring your subcommittee out of your district to the coast of Oregon. Truly, you are an Oregon Representative, and we appreciate that.

Today, we will be hearing from many of the key players in the development of the onshore whiting fishery in Oregon. I am especially pleased to see that Barry Fisher, president of the Midwater Trawlers Association, will be testifying today. Barry, arguably the grandfather of whiting fishery in Oregon, has spent many hours with me and my staff getting this formerly landlocked legislator up to speed on the issues affecting Oregon's coastal fishermen. I am also grateful that other members of the coastal fishing community are able to attend. Similarly, I am happy to see the State of Oregon and fisheries associations and commissions well represented at this hearing.

Over the years, our State government, especially through the leadership of Bruce Andrews, the director of the State Department of Agriculture, has been involved in an intensive effort to develop the shore-site processing industry, investing both money and time to develop better ways of more efficiently utilizing this whiting resource.

I would also like to thank the representatives of the offshore processing industry for being here today. It may come as a surprise to some that I am not against factory trawlers entirely. I simply believe the council process was fair, given the history of the factory trawler fleet in the whiting industry, and that this sector should contribute to the wellbeing of the fishery in proportion to the benefits they receive.

As you may know, I recently introduced legislation, H.R. 2274, the Factory Trawler Equitable Tax Act, to impose an excise tax on the offshore processing of Pacific whiting. The legislation is straightforward. The amount of the tax per metric ton shall be 10 percent of the ex-vessel value of processed whiting, which is approximately \$7.70, or up to \$8.80 per metric ton in today's market.

Importantly, the bill directs that revenues collected from the tax be dedicated to Pacific whiting habitat restorations, restoration and rebuilding of fisheries and fishing stock, and by-catch gear selectivity and reduction research in Oregon, Washington, and California.

The Factory Trawler Equitable Tax Act attempts to make up for the competitive advantage that factory trawlers enjoy by not significantly contributing to State and local taxes in the Pacific Northwest, and the tax act provides revenues we need to research how to rebuild our fisheries industry here on land.

These revenues will be dedicated to important management issues, such as the effect that Olympic and pulse-type fisheries have on the Pacific whiting resource, as well as issues of by-catch, including techniques to reduce tonnage and increase utilization of that by-catch.

Finally, I would like to thank the Department of Commerce for sending a representative here today. Despite the events of the last several months, I remain confident that this administration strongly desires to do right by the people of Oregon and this important onshore industry. It is my goal today to help the administration begin to achieve that goal.

Mr. Chairman, again, thank you for holding this hearing. In the interest of time, I would like my longer statement inserted in the record.

[Mr. Kopetski's statement may be found in the appendix.]

Chairman WYDEN. Without objection, that will be so ordered, and thank you for your leadership and your excellent opening statement. Before we go further with our witnesses, I would like to note that this is the first congressional hearing to be held since the whiting decision came down, but I assure you, it will not be the last hearing on this topic. Our colleague, Congresswoman Elizabeth Furse, deserves considerable credit for the commitment she got from the Merchant Marine Committee, the full Merchant Marine Committee, to come to Oregon in August to again listen to the concerns of the Oregon coast. Between our two committees, the voice of the Oregon coast will be heard in Washington. So, we open

today's hearing, the first on this issue, but certainly not to be the last.

I would like to remind our witnesses that time is going to be extremely short. We're going to put their prepared statements into the record in their entirety, but we are going to have to be draconian in terms of enforcing the 5-minute rule today, and I would like to ask all our witnesses at the outset if they have a watch or an eggbeater with them or something like that, we'll make sure they stay on time.

Our first panel, the Honorable Hedy Rijken, State representative, and Bruce Andrews, the Oregon Department of Agriculture. If you would come forward, we have a couple of formalities.. Ms. Rijken and Mr. Andrews, we welcome you. It has been the practice of this subcommittee to always swear the witnesses who come before the subcommittee. Do either of you have any objection to being sworn as a witness today?

Ms. RIJKEN. No.

Mr. ANDREWS. No.

[Witnesses sworn.]

Chairman WYDEN. We welcome you both. Your prepared statements will be made a part of the record. Ms. Rijken, it is always a pleasure to see you and be able to work with you, Knowing of all of the work that you have done on behalf of the coastal fishing industry, it's great to have your input. Please proceed.

TESTIMONY OF HON. HEDY L. RIJKEN, OREGON STATE REPRESENTATIVE

Ms. RIJKEN. Thank you, Chair Wyden and Congressman Koptski. I would also like to welcome you to Newport and the Central Oregon coast. We very much appreciate your time in coming down and listening to the concerns of the citizens who are very much involved in this situation.

My name is Hedy Rijken, and I represent Oregon House District 4, which encompasses Lincoln County and parts of Tillamook and Lane Counties. It also includes Newport where we are meeting this morning.

Before I begin my statement, I would like to say on behalf of Senator Stan Bunn who is also representing this area on the Senate side, that he has testimony which I have given to your staff. He would personally very much like to apologize for not being able to join us today. He is a member of the Pacific Fisheries Task Force which is meeting over these 3 days, and they are discussing, as a matter of fact, the whiting issue and several other fishing industry issues, and he again, apologizes for not being able to join us this morning.

Chairman WYDEN. We will put Senator Bunn's statement into the record at this point.

[Mr. Bunn's statement may be found in the appendix.]

Ms. RIJKEN. Thank you.

As a coastal district, district 4 has felt first-hand the recent U.S. Department of Commerce decision allocating this season's whiting harvest. Over half of the entire Oregon trawler fleet that fishes for Pacific whiting is based right here in Newport. This Newport fleet

has been instrumental in the pioneering and development of the whiting fishery. That pioneering work included the development activities that stretched back to the late 1970's and early 1980's. It included contacts with the Russian, Polish, and other foreign partners. It included about \$10 million of investment in fishing vessels and another \$15 million in equipment for processing plants. The whiting industry in Newport even transported an entire fish meal processing plant down from Alaska in order to better use both the whiting resource and to turn what were once leftovers into value-added products. Four whiting processing plants are now located here which, together with the local trawler fleet, employ approximately 1,700 workers and bring more than \$35 million into the local economy during a normal season.

But this is not a normal season, as we all are well aware. When the Commerce Department decided, contrary to the recommendations of the Pacific Fishery Management Council, and 16 hours after the whiting season was scheduled to open in April, to allocate the bulk of the whiting harvest to factory trawler ships based on Puget Sound, it did some serious damage to this pioneering industry. Rather than the \$35 million in expected receipts in Newport, the area will be lucky to see \$15 million this year. Rather than 1,700 jobs in harvesting and processing, we could be facing fewer than half that amount.

The new processing capability added this year, that would have allowed local industry to take advantage of the fruits of their labor, will go to waste because of the bulk of the whiting harvest and will go to a fleet and an industry that has had no hand in the painstaking development effort that brought the whiting fishery to economic liability.

Worse yet, the decrease in the expected harvest in whiting will mean an increase in pressure on other fisheries in the area, such as crab and shrimp, which can ill afford the added competition. That may drive off the smaller boats headquartered in the area that have depended on the fisheries to make their own living.

The worst part about this decision was not that most of the harvest went to the factory fleet or that local fishing families will see less money in their pocketbooks this season. The worst part is the feeling of betrayal local folks feel. They went before the Pacific Fishery Management Council last year and presented their case. They heard the testimony of the biologists and the ecologists who told them how much fishing pressure the resource could bear. They listened to economists who described how important the whiting harvest is to a fishing industry that puts almost 90 percent of the \$80 to \$100 million per year the fishing industry generates into the hands of their friends and relatives who aren't directly employed in fishing. After all of that, they heard the recommendations of the PFMC, which decided that the onshore whiting industry deserved a chance to grow and prosper.

But the Commerce Department didn't think so. Without consulting the PFMC, it overturned its recommendation and opened the fishery to a short, intense, high-pressure fishing season that gave quick profits for a minimal investment to the large factory fleet. They ignored the effects on local communities, and it ignored the intent of the Magnuson Act, which specifies that local agencies in

touch with local people and local fishing conditions should make the allocation decisions. We need to hear from the Department how such a thing could happen, and we need to be sure that it will not happen again.

I'll leave it to the folks in the industry to tell you their stories and fill you in on some of the details the Department didn't take the time to find out. I'd like to submit for your consideration two letters that the Oregon coastal legislators and I have submitted to President Clinton, Secretary Brown, and members of the Oregon congressional delegation, as well as the members of the House Fisheries Management Subcommittee. One letter asks Congress to investigate the Commerce Department decision and to make findings that will ensure a better seasonal allocation process, and the other letter asks for specific amendments to the Magnuson Fisheries Conservation and Management Act that would limit the discretion of the Secretary of Commerce to make these sorts of arbitrary decisions in the future.

I urge you to give both of these proposals due consideration, and I urge you to listen to those who have suffered as a result of this decision.

I thank you once again for holding this hearing and allowing me the chance to convey the concerns of my friends and neighbors, and I respectfully will defer questions to the experts who will testify before you this morning. Once again, I thank you. I apologize to you and the rest of the folks here today for not being able to stay due to our own legislative session, but I appreciate the time that you have given me this morning. Thank you.

[Ms. Rijken's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Ms. Rijken, thank you for an excellent statement. It's very helpful. I know your time is short, so let me recognize my colleague if he'd like to ask any question of you, and we can excuse you.

Ms. RIJKEN. Thank you.

Mr. KOPETSKI. Thank you, Mr. Chairman. I have no questions. I know that Representative Rijken has to get back to Salem to the State House.

Ms. RIJKEN. Thank you again, and I think the key word that you brought up yourself this morning, Mr. Chair, was arbitrary, in regard to this decision. I think you'll probably hear that many more times this morning. I hope that you can do something to help this growing industry and get it back on track.

Chairman WYDEN. Thank you, and we'll excuse you. Drive safely.

Ms. RIJKEN. Thank you.

Chairman WYDEN. Mr. Andrews, welcome.

TESTIMONY OF BRUCE ANDREWS, DIRECTOR, OREGON DEPARTMENT OF AGRICULTURE

Mr. ANDREWS. Welcome and thank you. I very much appreciate your opening statements and the help of both of your staffs with our department on this issue. Before I proceed, I'd like to enter into the record a letter from Governor Roberts, who supports this industry and its efforts to seek a fair and equitable solution to this

long-term development strategy that's really important to Oregon's coastal economy.

Chairman WYDEN. Without objection, we will enter that record at this point, and the Governor has spoken to our delegation, to many of us, on this issue, and she feels very, very strongly about it and is very committed to some new approaches, and we appreciate her leadership.

[The letter may be found in the appendix.]

Mr. ANDREWS. I would ask that you at some point read the enclosed testimony, and I will just make a few brief points so that you can get on with those who are more affected by it.

The State of Oregon has a vested interest in this fishery. It's an interest that dates back many years where we've been trying to work with the local communities in developing an economic resource for the coastal communities, not only for primary processing, not only for the fishing fleet, but also for the outfall of additional processes and products that this type of industry produces, secondary processing and the related multiplied benefits that go out to the entire community.

We've entered into this and spent many thousands of dollars and been in consort with other State agencies to try to work from this process from the very beginning. We have testified numerous times in front of the council and laid out a very thoughtful and concise program of how we could develop the economic potential of this valuable resource. We find that the current situation from the Department of Commerce is not only unacceptable, it's really unexplainable in terms of both its process and its direction. It makes little sense in the face of the evidence. It makes little sense in the face of the commitment of not only the State and local government, but of its own management and decisionmaking process.

That's one of the things that I really want to point out today. It's the process that's not in question. Obviously, I would expect the factory trawlers to make whatever point that they can make on behalf of their own industry, but when we go through a system where we have allocated, and put our best case forward, and have received the support from the Pacific Fisheries and Management Council for a number of years, then to have it overturned at the last moment, the very last moment, we then brought into question who is and what will the decisionmaking process be? If not the Pacific Fisheries Management Council, who will make these decisions? Let us know so that we can make this case in front of them, because, clearly, we can't divest and invest enormous amounts of energy, time, and money in a decisionmaking process that will not be accepted, will not be looked after, or will not be utilized.

Last of all, I think it's incumbent upon the State to try to work through this process with the Department of Commerce to understand where their decisionmaking points are, and if, in fact, we are not reaching them with the type of information or the right kind of information, we would ask them to tell us precisely what it is that they need from us in order that we may reach the decisionmakers, because, clearly, you have a lot of people out here who are working under the impression that the time and energy that they spend with the Pacific Fishery Management Council, indeed, is productive. What this does is pull the stool or the legs out from that deci-

sionmaking process, and that's what we so much object to here today.

I thank you very much for the opportunity to speak in front of you, and I will defer to the many local interests who talk about the economic impact, which is considerable, because the one thing that I want, when I leave here, is people will ask, why Agriculture? Well, fisheries is agriculture. It's food, and it's part of this State's value added strategy, and without that strategy, I think the resources of our coastal communities, along with some of the other resources of our rural communities throughout this State, will be greatly impaired.

Thank you very much.

[Mr. Andrew's statement, with attachment, may be found in the appendix.]

Chairman WYDEN. Well, thank you, and let me recognize Congressman Kopetski and start some questions.

Mr. KOPETSKI. Thank you, Mr. Chairman. One point I want to bring out from your testimony is that it's my understanding that this isn't just a fishery that happened along. This was a targeted fishery that the State put its resources, thought, and money behind in terms of developing. Is that true?

Mr. ANDREWS. Clearly. In fact, this has been in the works, at least for our department, for 6 years now, and through the good efforts of the coastal fishermen, under the leadership of Barry Fisher, we've worked long and hard to recognize this is a potential resource and how to capture not only the utilization of the fishery fleet itself, but the shore-based processors, and we've looked at the marketing of this, not only domestically but internationally. We've looked at some of the value-added components that we could make from this. We've looked at some of the additional total resource allocations, the byproducts from it, and the environmental impacts of it. So, it's been well thought out. It's part of, in fact, the State's benchmark process. So, it's critical to planning of not only Oregon but other States that go through this type of planning process to have that type of decisionmaking process circuitously circumvented.

Mr. KOPETSKI. OK. I just want to point out also that the State and the communities do receive landing fees and taxes from on-shore fisheries, whereas the offshore folks, the sea-based fisheries and processors, don't pay these landing fees or taxes. Is that correct?

Mr. ANDREWS. Well, not only that, but if you look at the myriad of jobs, not only from the fishing fleet, but of the factories or the processors or the suppliers to those, the secondary, the transportation that moves the product in there, these are Oregonian jobs that we're talking about and who all pay local property taxes, who pay income tax, who pay State income tax, and Federal income tax. So, it ripples throughout the entire community, not only from the coast but inland as well.

Mr. KOPETSKI. Thank you. Thank you for your testimony. Thank you, Mr. Chairman.

Chairman WYDEN. Bruce, just one question, and I think you heard me characterize the process as arbitrary, it struck me as a seat-of-the-pants kind of exercise, and, obviously, we want to make

sure things are different in 1994. If you could ask for one thing for the next round to try to make sure that the State and small coastal and rural communities got a fair shake, what would it be?

Mr. ANDREWS. Well, I think the Department of Commerce needs to do a gut check and find out and determine themselves what their decisionmaking points are going to be and articulate those decisionmaking points to those people who are interested. If, in fact, they don't want to use the Pacific Fisheries Management Council, let's hear it, but tell us what the decisionmaking process will be, and then we will plug into it wherever it's going to be. The point of the matter is that they have to, themselves, lay out that process by which we can gain access.

Chairman WYDEN. It's pretty hard to get the target if you don't know really where it is and it keeps moving.

Mr. ANDREWS. Pretty difficult.

Chairman WYDEN. All right, thank you. We'll excuse you and look forward to working with you.

Our next panel, Frank Warrens, Pacific Fisheries Management Council; Jay Rasmussen, Oregon Coastal Zone Management Association; Joe Blum, American Factory Trawler Association; and Joe Easley, Oregon Trawler Commission. If you all will come forward. Gentlemen, it is the practice of this subcommittee to swear all witness. Do any of you have any objection to being sworn? Please raise your right hand.

[Witnesses sworn.]

We welcome all of you, and thank you for the cooperation you've shown. All of you have been very cooperative, and we'll make your prepared statements a part of the record. I'd like to ask you to keep to 5 minutes in the interest of time. Why don't we begin with you, Mr. Warrens?

TESTIMONY OF FRANK WARRENS, PACIFIC FISHERIES MANAGEMENT COUNCIL

Mr. WARRENS. Good morning, Chairman Wyden and Congressman Kopetski. I want to thank you for this opportunity to testify before you today. The Pacific Fisheries Management Council has provided you with written comments on this issue responding to your May 20 letter to Mr. Larry Six, our executive director. I will not reiterate that testimony but would rather expand on the council's concern about the regional fishery management process and the impacts of the recent Commerce Department action on that process.

Since 1991, when the U.S. seafood industry harvested and processed the entire Pacific whiting allowable harvest for the first time, conflict has escalated rapidly between U.S. at-sea processors, shore-based processors, and vessel owners and operators who had previously participated in the joint venture fishery. The council recommended annual allocation plans for 1991 and 1992 and then recommended a multiyear allocation for 1993 and beyond. The council developed this most recent whiting allocation recommendation over a 9-month period, including four meetings and one of the most extensive analyses ever prepared for a west coast fishery issue.

During that process, the council received hundreds of written public comments on this issue and listened to many hours of public testimony. This analysis and testimony left some unanswered questions, and the council had to rely on its judgment to determine the best use of the whiting resource. The council took final action in November 1992 and forwarded its recommendation and analysis to National Marine Fisheries in December.

The March 18, 1993, notice of proposed rulemaking differed from the council's recommendation, but retained most of the council's intent. The Commerce Department's final decision, as expressed in the final rule, differed substantially from both the council's recommendation and the proposed rule. The decision was announced on April 15, the day the whiting season opened, and 1 week after the council's April meeting. Thus, the council had no opportunity to reconsider the issue.

The Magnuson Act clearly intended the decision to be made at the regional level, providing opportunity for effective citizens to participate directly in the management process. This was the same theme of the administration's recent forest conference in Portland. Citizen support and participation will occur only if there's reasonable certainty that these regional decisions will be developed or adopted as the law of the land, assuming they are consistent with applicable laws.

Numerous individuals invested their time, money, and energy to participate in the council process. Now there is a risk that they will not continue to do so if they feel the major policy decisions will be made in Washington, DC. In 1982, Congress made clear on the record that the Secretary of Commerce was not to substitute his judgment for that of the council's. The committee on Merchant Marine and Fisheries, in its oversight report of March 2, 1982, said the decisions of each council with respect to a fishery management plan are, therefore, subject to a very limited review by the Secretary.

The fact that the Secretary would have reached a different conclusion on how to manage a fishery does not justify the Secretary in substituting his judgment for that of the council and disapproving the plan. The councils, not the Secretary, are to manage fisheries within the respective areas. Only if it is established that the council has acted in a manner that is either one, in clear disregard for national standards, or two, clear violation of the law, can the Secretary disapprove a fishery management plan or an amendment to a plan proposed by a council.

In the case of the Pacific Council's Whiting Allocation decision, the Secretary should have clearly identified the legal deficiency in our proposal and sent it back for reconsideration. However, this did not occur, and the council believes the way this was handled seriously jeopardized the regional fishery management process. Rather than specifying any legal problems with the council's recommendation, Commerce stated its judgment that the data did not justify the recommendation. In addition, the decision was delayed to a point that the council had no opportunity to reconsider its recommendation. We believe there must be a universal endorsement of the established management process and commitment to rely on that process.

Where issues are controversial or available information does not clearly indicate the best decision, there may be legitimate differences of opinion. It is the council's role to make the difficult judgment in such cases, and the Commerce Department must be willing to rely on those judgments and not allow itself to succumb to the pressures outside that process. Only then will the Magnuson Act succeed as Congress intended.

Thank you, Mr. Congressman.

[The Pacific Fishery Management Council's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Thank you. It was very helpful, and we'll have some questions in a moment. Mr. Rasmussen.

TESTIMONY OF JAY L. RASMUSSEN, DIRECTOR, OREGON COASTAL ZONE MANAGEMENT ASSOCIATION

Mr. RASMUSSEN. Good morning. I want to, on behalf of local governments on the Oregon coast, welcome both of you and indicate an appreciation, sincere appreciation, for taking time from your busy schedules to discuss this issue out here. It's a good opportunity also for me to see you in person. I have seen a number of you on C-Span on a number of issues, and occasionally on the coast, and certainly quite occasionally with Congressman Kopetski. I just want to relate to the Congressman that the Salmon Initiative Conference we held last December out here that you participated in has some fruits. Senator Bradbury is carrying on the floor of the Senate this morning a salmon restoration bill, so the State of Oregon is moving well on that. So, we appreciate your support last year and your continuing support.

I will not read from my rather lengthy testimony. I just want to mention a few things of importance. One is that the Pacific whiting is an important resource for the Oregon coast, and I think there's a testament here that you'll see in the break or after or maybe you met this morning. I notice that we have all three of the county commissioners from Lincoln County here. We have Commissioner Dove from Tillamook County. We have ports and others up and down the coast who are severely interested in this because we know a number of things about the Pacific whiting fishery.

One is that Pacific whiting has been and must remain an integral part of the ground fish fisheries for the State of Oregon. It was pioneered here and on the coast. It was an important portion of our income and our stability before. It needs to remain that. I'd like also to mention that it's really important that you recognize the council also understood that, and I'd like to depart just for a moment to read from my record to you a little statement here that the council made previous to this year's recommendation, and that is, "The council's number one responsibility is to coastal communities, traditional fishermen, and traditional processing entities, and the council believes whiting is crucial to that long-term economic picture." I hope, as we go through here today, that those issues will be addressed more fully by processors, by fishermen, and by others as well.

The last is, we must recognize that whiting plays a remarkably important portion of our stabilizing the industry for the Oregon

coast fishing industry. It represents nearly one quarter of the income derived from commercial fishing in Oregon, for example, and we have had tremendous downturns in salmon. We have dependent communities that are also facing downturns in the timber industry and other sectors, and Pacific whiting is absolutely critical to maintain the stability of these coastal communities and the fisheries.

I'd also just like to remind you, as Bruce Andrews indicated, the State of Oregon, my association of local governments, and others in the industry have spent a good deal of time investing time and money into promoting this industry as a stabilizing influence. In 1991, we made a report to the Oregon legislature on it, the future of it, and the necessity of it for the Oregon coast. It remains a very high priority.

I would like to turn just a moment to a portion of my testimony and read a bit on terms of the economics. There are a couple of points I'd like to make. I'd like to make them very specifically. On pages 4 and 5 of my testimony, I'm indicating to you that the economic impacts of the decision the Commerce made are fairly significant for the Northern California, Oregon, and coastal Washington. The following table illustrates that assuming a harvest of roughly 40,000 metric tons, that's 30,000 metric tons that was provided in the initial allocation by Commerce, plus around 10,000 metric tons that may be available from an early suspended open access fishery, there will be a loss of about \$4.5 million to fishermen, a job loss of approximately 1,250 jobs along those coasts, that's California, Oregon, and Washington, and a personal income reduction of around \$25 million. Job equivalents, by the way, are set at around \$20,000 of annual income.

So, there's a loss to the coastal communities, to fishermen, and I'd like to bring up one other loss as well. We tried to do some research also on the fiscal impact this would have, and on page 5, I indicate here that we are expecting in Oregon alone that the recommendation and the council being overturned by Commerce would mean that landing fees to the State of Oregon, to the Oregon Department of Fish and Wildlife, which is very hard pressed by measure 5 like a lot of other State agencies, would be essentially one-half of what would be expected. Rather than \$100,000, roughly \$50,000.

Corporate taxes would be halved roughly. Rather than \$250,000, around \$150,000. Personal income taxes, we're talking only in the State of Oregon, would go from about \$1,300,000 to around \$600,000. Then we have to say that if businesses are at risk, and they may be, that there is a long-term implication here for school property taxes, for property taxes for local government, and other revenue dependent agencies.

I'll quit right now and will be glad to respond to some questions here, but I hope you recognize that the State, local governments, and the industry, has spent a lot of time and effort on this to do the very best job with this resource, and with the highest utilization rate that we possibly can, for the most good for the dependent communities of the coasts here. Many of those are rural communities, and we recognize that this administration has made a commit-

ment to rural communities. One of the best commitments that could be made is for it to support decisions of its regional councils.

With that, thanks again for your willingness to come and talk with us and hear us.

[Mr. Rasmussen's statement may be found in the appendix.]

Chairman WYDEN. Thank you. Very helpful, and we'll have some questions in a moment. Mr. Easley.

TESTIMONY OF JOE EASLEY, ADMINISTRATOR, OREGON TRAWL COMMISSION

Mr. EASLEY. Mr. Chairman, Representative Kopetski, thank you for coming down. Like many others, I'm most appreciative of you coming to the Oregon coast instead of us having to go to Washington, DC. I find this environment much more pleasant, even with the problems we're having on the coast.

The Oregon Trawl Commission is a commodity commission under the Department of Agriculture in the State. It's solely supported by the trawlers that land their product in Oregon. That includes shrimpers, bottom fish, and whiting, which we consider part of the ground fish complex. We always have. We've invested money in this whiting since the late 1960's in technological research with the Oregon State Seafood Lab. We still have some ongoing research going on there to see if we can't improve products even more. We've always looked at it as a very integral part of what the ground fishery was, and that one day it would be a part of the portfolio, if you will, of the total fisheries.

The problem that we find ourselves in along the coast, and not just in Oregon, but the problems that are going on with salmon, we're getting pushed from one end with boats trying to get into that middle group. With the problems that we have now with the whiting, we've got boats from the other end trying to get into that middle group, and we don't have enough room for all of those boats, frankly. That's not a problem, it's just germane to the Pacific Council. It's also a problem in Alaska. The factory trawlers themselves, I think, would agree that they're overbuilt for the amount of resources available for them, both here and in Alaska. It just isn't there. If they had all of it, it isn't there.

It's something that in the long term, this little dab of fish down here is not going to save the factory trawler fleet, but it can make a tremendous difference for the coastal communities along this coast. In the short term, this is going to be a year of trying to hang on to see if you can make it, particularly for some of the support industries that I've talked to. They've really tightened their belts. They aren't buying supplies and stuff. Sometimes you have to wait for them to order it. They're just taking a much more cautious route, and I must say that there's a lot of disappointment in that we haven't got a long-term process on allocation in place.

We've been fighting this battle for a number of years now over and over, and it's been a very costly thing for all the people who have had to show up, and the information we've had to provide and gather. In fact, my organization has spent a lot of money on that very thing, offering grants because the Commerce Department will not fund the councils adequately so that they can do that thing,

but Commerce does demand all those kinds of analyses. Then to have Commerce turn around and do something totally way away from even what NOAA had come out and recommended as the possible allocation, which we weren't terribly happy with what they did, but we did support it. We said we would live with it. Then to have them even throw that into the hat and go way beyond even the wildest rumors we had heard without the analysis that was done like by the council is just totally unacceptable. We need to know what the rules are. We tried to play by the rules. Obviously, they didn't mean tiddley wink in this case, and we'd like to know what they are.

I think I'll let it go at that. You have my written statement. I'd be glad to answer any questions you have.

[Mr. Easley's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. It sounds too logical to me, this idea of knowing what the rules are. We wouldn't want to have all that logic break out all over Washington in one fell swoop. Thank you. Excellent statement. Mr. Blum, welcome.

TESTIMONY OF JOSEPH R. BLUM ON BEHALF OF AMERICAN FACTORY TRAWLER ASSOCIATION

Mr. BLUM. Thank you, Mr. Chairman and Congressman Kopetski. The American Factory Trawler Association also wants to thank you, and I do personally for not having to travel to Washington, DC, but to come to a nice coastal locale. Congressman Kopetski, I particularly am thankful to you for your opening statement in which you indicate you're not entirely against Factory Trawlers. It shows that the coastal friendliness is still there, and we have reason to think that we can get together.

Mr. KOPETSKI. I admit it.

Mr. BLUM. Mr. Chairman, the American Factory Trawler Association is a trade association with 18 member companies with 44 catcher processor and mothership vessels. I think it's important, particularly early in the discussions or as early as my particular part in the discussion, to sort of put the 1993 decision in context. The 1993 decision didn't just happen on April 15. There was a process that was followed, and it's a process that the Magnuson Act has encouraged since its inception, and included the elimination of foreign fishing. While we do not have the history that Barry, and Joe, and some of the folks have as the longevity, we do have the history, and we do have the longevity, if you will, in the Americanization process of the whiting fishery and other fisheries in the Pacific coast.

In the 1989-90 timeframe, there were about 8,000 tons of whiting coming onshore. The rest were going to foreign processing ships, caught by American catcher vessels but processed by foreign vessels. We came into the fishery in 1991 and converted it to 100 percent Americanization, and we believe that is an important part of the history of the whiting fishery and needs to be taken into consideration when decisions about whiting are made.

In 1991, the council made an allocation, made an allocation that basically divided the resource between catcher processors and

catchers, held a reserve onshore of about 30,000 metric tons, but basically allowed the other catcher boats to sell where the market provided the best price. In 1992, the council made a decision that basically said, we're not interested in what the market has to say. We're interested in supporting over the long term the coastal community onshore development, and basically took away from, in the initial allocation, the at-sea sector in order to provide that support.

The professionals within National Marine Fisheries Service in January 1992, when that issue was being decided, wrote back to the regional director and said, there's no justification for this action, at least as dramatic a realization as is envisioned in 1992. The realities of 1992 are that the shore-side folks were unable to process their allocation, and there are a variety of reasons for that, but the reality is they were unable to process by about 50 percent their allocation, and so that got released in a series of what I will say, with all due respect, herky-jerky releases that aren't good for anybody, either to the at-sea sector.

The 1993 decision, we are pleased, to be very honest with you, that the decision was finally announced on the 15th of April. That didn't do anybody any particular amount of good. We had urged early on that the Secretary reject the council's proposal. Just as in 1992, there was no basis for the type of dramatic reallocation that was taking place. What ultimately has played out is that in 1993, the shore side, with the 42,000 metric tons, will increase—if they use it all—their utilization by about 3 percent over what they utilized in 1992, which means we will be provided the opportunity to utilize 3 percent less.

The allocation process is a troubling process. It is a process within the context of a council system that was basically established for conservation and to eliminate foreign fishing, and right now we have a council process in that context that is allocating between U.S. fishers, and, quite honestly, we don't believe that the councils are appropriately set up to do that.

I will say something now that some people are going to be unhappy with, but the reality is there's no factory trawler vote on the Pacific Council. There is no consumer vote on the Pacific Council. There is no conservation vote in the context of a recognized association. So, maybe the council system, and I would drop the maybe, we think the council system needs to be looked at very, very hard as to what are you going to do now that we are no longer fighting the battle of the foreign fleets sitting off of our shores, but are allocating between and among U.S. fishermen.

Finally, and then I'd be happy to answer questions, councils are regional. The American Factory Trawler Association factory trawler fleet employs over 600 Oregonians. Over 80 percent of our total employment are made up of people who reside in the communities of the four States that comprise the Pacific Council. We also have some Alaska members, and we have members, I believe, from every State except two in the country. Communities that these folks come from, whether it be the 600 in Oregon or the several thousand in Washington, those in Idaho, or those in California, they also have coastal economies. They also have local economies that working on a factory trawler help support. I don't believe, Mr. Chairman, Congressman Kopetski, that those should be forgotten

in the context of this whiting decision. These communities need support as well. Westport, Washington, or Grace Harbor, Washington, 20 percent unemployment. We hire from there, just as we hire from this area. We don't think you should forget that, when you are reviewing this decision, and when you are reviewing how the council system is working. It's regional. It is not a Newport or an Oregon council. It was set up in that way because the fisheries are regional.

What are we going to do in 1994? We're very concerned about that, and I believe everybody at this table and probably everybody in the audience is concerned about it. We are aware that the chairman of the Pacific Council is considering that very fact, as are the other members of the council. What are we going to do in 1994? We would suggest that early on, that the industry be brought together, the various sectors, and that we explore what the range of options are, and that we, perhaps even through a facilitated process, if you will, the industry be charged to come back to the council with a solution so that the council doesn't have to get into this battle and the Department of Commerce doesn't have this issue sitting in front of us on April 15, 1994.

We think that there is the will on all sides of this issue to sit down and work it out. We think that the industry and that the communities that are affected by the industry ought to be given that opportunity, and I would urge the council chair and members of the council to continue thinking along those lines, and, perhaps this summer, we can start to work this process out. We've got to heal. It's not good for Washington and Oregon, for Alaska and the Pacific Northwest, to be in these confrontational issues over allocation. You folks have a lot more important things to be doing than working out these issues. These issues are very important now because they're being put in your lap, and we think the council system being looked at under the Magnuson Act reauthorization, we think the energies of this particular council interest can help resolve that, and it can be taken out of your lap.

Thank you, Mr. Chairman.

[Mr. Blum's statement, with attachment, may be found in the appendix.]

Chairman WYDEN. Thank you. We'll begin the questions with Congressman Kopetski.

Mr. KOPETSKI. Thank you, Mr. Chairman. That was a very good summation of all of your testimonies. I guess I'd like to start with Mr. Warrens first and ask if you were aware during the council process that the Commerce Department had concerns about the direction the council was headed in their allocation decision?

Mr. WARRENS. I believe that there were Commerce Department concerns and those were voiced pretty much through the regional director, Mr. Roland Schmitten. However, even though Rollie Schmitten does give us a reality check once in awhile, I believe that the process that we used and incorporating the testimony, both public and written testimony, clearly indicated that we felt justified in the decision that we made, and that even though there were concerns on the part of Commerce, that we weren't outside the requirements of either the Magnuson Act with respect to the national standards or any legalities of our decision at that point.

Mr. KOPETSKI. As I recall, your vote was 9 to 2, is that correct?

Mr. WARRENS. That's correct.

Mr. KOPETSKI. This is a regional council, and so it has representatives from across the region, not just Newport, Oregon?

Mr. WARRENS. That's correct. In fact, there are three members from the State of Oregon out of the 13 members on the council.

Mr. KOPETSKI. Do you know the rest of the makeup?

Mr. WARRENS. Yes; there are three from the State of Washington, two from Idaho, and four from California, as well as the Federal agencies that have a vote on it.

Mr. KOPETSKI. Had you been told, either by NMFS or in Washington or out in the region that your plan violated either the Magnuson Act or the council's own goals and mission statement?

Mr. WARRENS. We were not told to the best of my knowledge anything of the sort. There was no communication between Commerce and the council that we were outside the legal parameters from which we were required to operate within.

Mr. KOPETSKI. The Commerce was fully aware of the process, the debate, and where your decision was headed?

Mr. WARRENS. I believe that was well established in the 9 months previous to that decision, as well as input prior to that 9 month period. So, our direction, I believe, was very clear and well situated as far as the rationale that we used to achieve our decision.

Mr. KOPETSKI. So, there was no early warnings?

Mr. WARRENS. None whatsoever.

Mr. KOPETSKI. No early warning system that perhaps you were going beyond the Act or beyond your goals?

Mr. WARRENS. We were aware, as Mr. Blum has related, with respect to the allocation issue, of the volatility of the two positions with respect to allocations.

Mr. KOPETSKI. Of the decision itself?

Mr. WARRENS. Of the decision itself, but we were never given any indication that we were stepping over the line with respect to either the national standards or any applicable law.

Mr. KOPETSKI. Well, Mr. Warrens, why do you think the Department changed the plan so dramatically?

Mr. WARRENS. My personal perception is that it was probably the result of some continuing and very effective lobbying which occurred outside the council process on the part of the Factory Trawl lobby, and that lobbying obviously occurred in Washington, DC, and I'm sure that many of the members of the fishing industry were aware that was going on. However, I believe that we were totally caught blindsided, both members of the fishing industry and the council, and I make that statement predicated on conversations I had when the decision was finally made by Commerce with members of the fishing community. We were just totally blindsided by almost a reversal of what the council decision was as it was recommended through two national fisheries forward to Commerce.

Mr. KOPETSKI. Thank you very much for your testimony and questions. Mr. Blum, in terms of council representation, I'm a little bit worried about this. Did the Trawlers Association give testimony before the council?

Mr. BLUM. Mr. Chairman, yes; we did.

Mr. KOPETSKI. Were you able to attend all of the public meetings and see what was going on?

Mr. BLUM. Well, it's difficult. We attended all of the council sessions and provided the appropriate testimony, Mr. Chairman, throughout that process, yes.

Mr. KOPETSKI. So, I'm not sure I understand the purpose of your testimony. The problem you have with the council is that you don't have a vote on the council?

Mr. BLUM. Mr. Chairman, among the problems with the councils is there are not enough votes to represent everybody. That was the thrust of our testimony. There isn't a consumer—and my point being that—

Mr. KOPETSKI. Is there onshore representation?

Mr. BLUM. Yes; there is.

Mr. KOPETSKI. Is there a processor?

Mr. BLUM. Correct.

Mr. KOPETSKI. Is there onshore fishing?

Mr. EASLEY. No; processors. Lievsic represents some trawlers—

Mr. BLUM. I apologize.

Mr. EASLEY. He's based in California.

Mr. KOPETSKI. So you guys, in terms of onshore, offshore, you have the same status?

Mr. BLUM. At this time, yes; on this council.

Mr. KOPETSKI. But you were able to give testimony. You just want a vote?

Mr. BLUM. No; we want the council system to work, and we think right now, the council system is not working because it is not structured to work, and it puts it in the hands of the Secretary to have to offer the type of resolution the Secretary did in this particular issue. One of the solutions might be a vote, but if you give us a vote, then there are going to be 15 other groups out there or gear types of users of the resource that don't have a vote. So, the system needs to be worked on from the context of what its present apparent mission is, and that is allocation between U.S. fishers.

Mr. KOPETSKI. If the council would have come out with the plan that the Secretary announced and promulgated, would you have been satisfied with the council's action?

Mr. BLUM. If the council had issued—

Mr. KOPETSKI. Did what the Secretary did?

Mr. BLUM. Certainly, we would have been satisfied with that. I don't find that particularly humorous. The reality is that the council didn't pay attention to the record.

Mr. KOPETSKI. No; then you'd say that the council works?

Mr. BLUM. No; I would not. The council system has been outgrown, if you will, by the industry. We think the council system needs to be looked at, and I know there's disagreement, and I see Joe shaking his head appropriately. There's disagreement on that, but we believe the council system, for a number of reasons, whether it be this decision or decisions that were made in Alaska, are not meeting the allocated requirements because you have voting on the councils, in some instances, people who are in conflict within the industry. In other instances, you don't have broad enough representation of the various affected groups. We think that the council system, as a part of the Magnuson reauthorization, needs to be looked at, and that the role of the Secretary, and this will also bring chuckles, I'm sure, but the role of the Secretary, rather than

be diminished, since we are allocating between and among U.S. fishers in a national context, needs to be strengthened.

Mr. KOPETSKI. Well, a 9 to 2 vote sounds pretty strong to me. I mean, you get 11 people in a room and get nine of them to agree to something, I find that pretty significant. We can argue that, I guess, all day. In your testimony, you indicate that Oregonians earn about \$16.3 million annually working for at-sea processors. How much of that is in relation to the whiting fishery?

Mr. BLUM. Roughly 15 percent.

Mr. KOPETSKI. OK, so that's about \$2½ to \$2 million?

Mr. BLUM. Obviously, it depends upon what the allocation is, the amount of time. They work on a per-share basis, and that will fluctuate, and those I believe were 1990 numbers.

Mr. KOPETSKI. Also, you indicate that the at-sea processors have used the ports of Astoria and Coos Bay for offloading, purchasing fuel and goods, and arranging food changes. Given that the season only lasts about 3 weeks this year, how many times did the Factory Trawlers use these ports for these purposes?

Mr. BLUM. For 1993, I'm not aware that they did at all.

Mr. KOPETSKI. OK. I want to also ask you about the—we talked about the jobs issues, and I care about workers, whether they're in Gray's Harbor, Newport, Oregon, or New York City. Isn't it more labor intensive to use the onshore vessels? You look at the chain and number of jobs, factory trawlers offshore and how many jobs that creates versus how many jobs you create in processing here onshore?

Mr. BLUM. Regionwide, including the fisheries in Alaska, and that's a part of the Factory Trawler and the Magnuson Act jurisdiction, if you will, we employ approximately 10,000 people on the vessels, with wages that are above minimum wage. They come, as I said, from I believe 48 or 49 of the States, and I'm not sure labor intensive—10,000 of those jobs on Factory Trawler sector on the west coast, I think, is fairly labor intensive, paying good wages, what the folks themselves, some of whom are your constituents, will tell you are family wages. They can make it throughout a year if we have decent fishing time in the North Pacific and the Pacific.

So, in the Nation, in the analysis that was done on in shore and offshore in Alaska and the analysis that is done in whiting, if you roll the two together, the Nation benefits substantially from the at-sea sector. In fact, the Alaska in shore/offshore, and I realize that's not your particular issue, but it's a part of the overall equation, the original allocation onshore in Alaska would have cost the Nation upward of \$200 million because it was allocating to a less-efficient sector of the industry, and the point being that the at-sea sector is a part of the U.S. fishing economy and needs to be recognized as such. It's a major competitor in the world fish market, just as the shore-side folks are.

Mr. KOPETSKI. Those folks are catching lots of other fish as well beyond the whiting.

Mr. BLUM. That's correct.

Mr. KOPETSKI. There is a provision, it's my understanding, Mr. Warrens, and correct me if I'm wrong, but there is special consideration in the Magnuson Act for communities for special instances to

help protect those local economies dependent upon a particular fish.

Mr. WARRENS. The Magnuson Act, in response to your question, Congressman, is very specific within the national standards that we are bound to address, that we not allocate resources, fishery resources to any particular individual or corporation or disproportionately among the U.S. fishermen. In response to Mr. Blum's comment, we allocate fishery resources between U.S. fishermen as a routine among the fisheries that we do manage, and that allocation has to fall within some very specific parameters as to how we allocate, not solely on economics and for other reasons. It's as balanced an approach as we can make, and, obviously, somebody is not going to be happy with an allocated decision, no matter how it comes down.

Unfortunately in this situation, we were allocating against a very effective and powerful group of fishermen, and if I may speak for the rest of the council members who voted in that 9 to 2 vote, in a way we felt that was fair and equitable to all fishermen, and particular with a concern for the economies that were involved on a coast-wide basis that would, in our opinion, more equitably spread the resource or the income from that resource.

Mr. KOPETSKI. I just have two more questions, Mr. Chairman. It's my understanding that there is less waste if the onshore folks do the catching as opposed to the offshore in terms of by-catch, in terms of disposal of the processed fish. Is that a fair statement?

Mr. WARRENS. The vessels that catch whiting, target whiting, are permitted to land other species onshore as part of their managed stock complex, and thus probably retain—not probably, they do retain a much higher value for the majority of their catch, as opposed to Factory Trawler vessels—my understanding, and I would defer to Mr. Blum if I'm incorrect—Factory Trawl operations are set up to handle whiting specifically and are unable to capitalize on retaining other stocks or species because they just don't fit their production at that point. If we get caught in these pragmatic discussions of whose fishery is worth more or less, you can fall into some very definite traps in that respect.

To answer your question, the onshore catcher vessels do utilize more of their catch by volume than the Factory Trawlers are able to do.

Mr. KOPETSKI. My final question, Mr. Blum, Government is under fire for all kinds of reasons today, and at all levels. Do you think it really helps our system of Government to use the political muscle of the Factory Trawlers Association to reverse this council recommendation and allocation plan? Don't you think that adds to the skepticism and cynicism Americans have toward Government, that political muscle can be exercised to make these kinds of economic decisions?

Mr. BLUM. Mr. Chairman, if you will, Mr. Kopetski, I'd like to explore that in a little bit more detail than you might have wanted when you asked, and that would be to say that the process calls for public comment during the regulatory hearings that the council holds. We testified. The process calls for the Secretary to send out for public comment. We commented during that public comment period. Our congressional delegation in Washington made com-

ments, as I suspect at least one of you at the table, and I don't know, Congressman Wyden, whether you provided comments or not, but I believe you did, Congressman Kopetski, within the context set up under the Magnuson Act, to receive public comments, and that was the weight of our political lobbying.

In the context of that, I think it's very appropriate, and I think that's why the Congress and the regulations that Commerce imposed as a result of the congressional act, Magnuson Act, called for that kind of public input, and I think it's very appropriate. I don't buy into the concept that we used excessive political clout. We sure haven't used excessive political clout within the context of the North Pacific Council, where we've lost probably 40 percent or more of our open access fishery. We followed the same process in both arenas.

I believe the problem is, with all due respect to the shore-side interests in the room, the problem is the Commerce Department finally paid attention to what was going on, finally paid attention to the fact that two competing U.S. sectors of the industry, one sector was being totally disregarded by the council process at a cost to the Nation. I believe they said, until there is justification under the standards, this looks to us, and I'm speaking for them—they may want to speak for themselves; I'm sure they will—this looked to them like a purely economic allocation, which is a violation of the national standard. I think they said, whoa.

Mr. KOPETSKI. Well, Mr. Chairman, just a couple of points. I think the North Pacific issue we could debate a little further, and we don't have time for that. Do you know of personal phone calls from the representatives of the Factory Trawlers Association to Mr. Brown or to people at OMB or to the White House directly in terms of rather than just letters, but personal conversations with any of the people in those offices?

Mr. BLUM. I was never present. I have been told that members of our congressional delegation, ours being Seattle Washington's, did, in fact, talk with the Secretary's office. I don't know of any meetings with the Secretary. We provided input to staff at OMB, we being the association, with respect to numbers and that type of thing.

Mr. KOPETSKI. Did you have direct communication with Commerce staff, your association?

Mr. BLUM. The association staff, myself, and Mr. Gilmore visited, with an attorney present, Commerce people on the allocation. The normal type of things that get done when regulations are being promulgated, nothing extraordinary.

Mr. KOPETSKI. Do you know of any direct communications between your association and the Secretary personally?

Mr. BLUM. No.

Mr. KOPETSKI. Well, you had better success than I. I couldn't get any of those folks to return my phone calls. Thank you, Mr. Chairman.

Chairman WYDEN. I thank my colleague. I know this is very curious, and you kind of fall out of the sky into the middle of the whitening war and try to sort out how you ought to go about making decisions. Let me see if I can get a few issues addressed for me that seem to be central. It seems to me, Mr. Warrens, that what you all

can do is something that people feel very strongly about as they try to look at these issues. You all are in a position to bring scientific judgment and technical expertise to the decisionmaking process. That's why we have a regional kind of body. What does everybody else on the way to Washington, DC contribute other than politics? Do they have the kind of scientific and technical expertise that you all do on a regional basis to make these judgments?

Mr. WARRENS. In response to your question, Congressman Wyden, it would be presumptive of me to assume that people who travel from this coast to Washington, DC lack any scientific expertise or other types of expertise. However, the perception is that once that trek is made to Washington, DC, it's fundamentally for the political purposes of lobbying their position effectively to the appropriate people in order to achieve a specific goal.

Chairman WYDEN. Let me ask it another way. Organizationally, the bulk of the scientific and technical expertise is in this region on this region's issues rather than in Washington, DC, isn't that correct?

Mr. WARRENS. That is correct, and it provides a much broader scope of information that we receive as a council in order to make informed, fair, and equitable decisions in our opinion based on the issue. I think the fundamental issue, at least as representing the Pacific Council, that I would like to get across today, and you'll probably hear it a lot more as the day progresses, is that we have a system of regional management or fisheries resources which, although it may be less than perfect, but certainly more effective in dealing regionally, involving people regionally, and making much better informed decisions like bringing together those people with the expertise that you're speaking of, both scientific and economic, in order to reflect the needs of the community or the region in this case.

This process, in our opinion, has been seriously damaged by what we on the council perceive as somebody else having another day in court without our benefit of being able to respond. It will be up to you and Congress this year when we reauthorize the Magnuson Act to address the problems that Mr. Blum has related to with respect to the so-called conflict of interest issue, and I can tell you from my own experience in a 3-day meeting in San Francisco 3 weeks ago with all of the eight regional council chairmen and vice chairmen, we wrestled with conflicts of interest which we all hear about, considerably more so in the last year or so. Conflict of interest is strictly in the eye of the beholder. If somebody doesn't agree with you, then there must be a conflict of interest. The regional councils recognize the Magnuson Act and recognize that under the regional council process, there are going to be conflicts of interest.

Fishermen will be managing themselves, but the language in the act doesn't turn us loose by any sense of the word. We feel very strongly that these decisions don't reflect the interest of the communities when they're made in Washington, DC rather than in the regions which are affected by those decisions.

Chairman WYDEN. Now, it's very clear from Mr. Blum's responses to my colleague that his members, after the decision came down, the 9 to 2 decision, they went off and did some lobbying for

their point of view. Did your people have the same opportunity to do that kind of lobbying?

Mr. WARRENS. To answer your question, yes; we had the opportunity but felt obviously no need to lobby because the decision was made. It was passed up to National Marine Fishery Service. It did come back with some modifications which reflected leaning toward the Factory Trawler interest and not providing that we have this 30,000 metric ton reserve at the end of the season and rather tilted it slightly more toward the Factory Trawl industry.

Chairman WYDEN. Let's just pick up specifically on the meeting Mr. Blum talked about. After the Commerce Department gave another opportunity to the factory fleet folks and hear them out, did Commerce get back on the horn to your people and say, give us your response to them?

Mr. WARRENS. No; they opened the season the day they made the decision.

Chairman WYDEN. So, the last word was from the Factory Fleet? After we had a scientific process based on technical expertise, the last word went to the trawlers, and you all weren't even given an opportunity to respond to the issues that were discussed back in Washington?

Mr. WARRENS. That's an absolutely accurate statement.

Mr. BLUM. Mr. Chairman, might I comment on that?

Chairman WYDEN. Sure.

Mr. BLUM. Or would that be inappropriate?

Chairman WYDEN. No; you're very welcome.

Mr. BLUM. I think that is a very large assumption, Mr. Chairman, on both your part and Frank's.

Chairman WYDEN. Pardon me, Mr. Blum. Mr. Warrens is under oath, which is why we swear witnesses, and he was asked to respond as to whether he got an opportunity after the contacts your people had with the Commerce Department to respond, and he said he did not.

Mr. BLUM. I'm sorry, sir. The comment I was referring to was the last word. I don't know who had the last word as far as getting together and talking with the Commerce Department. I truly don't, and I don't know that anyone knows who had the last word.

Chairman WYDEN. Well, I guess if somebody got a call in somehow that we don't know about, we can continue to follow it up, but as I understood Mr. Warrens to say, the decision came down that day.

Mr. BLUM. Yes.

Chairman WYDEN. So, it would be hard to see how the point of view of the council, which made a judgment on a 9 to 2 decision could be in a position to compete with the lobbying that went on in Washington, DC, and this discussion that Mr. Blum's people had with the Commerce Department, and whether you all got a chance to respond to it. You know of no opportunity that you all were afforded to try to respond to these last minute arguments from Mr. Blum's people?

Mr. WARRENS. Congressman Wyden, I can only respond to your last comment in that we were not provided an opportunity. However, if Commerce had been entertaining for any length of time overturning the council's November decision, it would have been a per-

fect opportunity for the council to respond to their partial disapproval or total disapproval a week prior when the council was, in fact, in session in Portland in April fundamentally on salmon issues. However, there is always time in our agenda to address emergency situations, and had the system worked equitably with respect to responding to Congress' concerns in a timely fashion, they would have most appropriately been handled in the April meeting.

Chairman WYDEN. I think that's a very valid point, and, as you can tell, at the same time, I'm concerned that always, as the decisionmaking process moves toward the day when there's an ultimate judgment made, people do weigh in, and I'm concerned about whether the voice of the small guys was really in a position to be heard, and I question whether this was properly done.

Let me wrap up with just this. Tell us, if you would, Mr. Warrens, a lot of us in the Oregon congressional delegation are interested in changing the statute and making sure that you all have a broader role. I personally fear that if we don't, the decision that was made this year pushes you all toward irrelevance. That's what this is really about. I would be very interested in wrapping up by having you tell us what changes would most empower you to prevent this from happening again.

Mr. WARRENS. Congressman Wyden, in response to your question, we have had numerous conversations about this very issue since the whiting decision, and our council, including staff, although we have not addressed this in the full council, feels very strongly that we need help from Congress in tightening up the language in the Magnuson Act, which will require the Secretary on a regulatory measure or a regulatory amendment to, in a timely way, as he is now required to on a plan amendment, which is a much broader scope with respect to a specific group of stocks that we manage, on a regulatory amendment, that the Secretary be required to respond with any partial or disapproval on his part back to the council in a timely way so that the council can appropriately address the Secretary's concerns and make whatever changes are necessary to comply with applicable law for national standards and send back to the Secretary our compromise or amended regulatory package.

The way the process works now is the regulatory packages go to the very bottom of the pile, and the Secretary is not required under any time limit to address those regulatory packages, either amendments or regulations themselves. So, our recommendation to Congress coming from the council this year, in fact, all of the eight regional councils, will be to tighten up the timeframe for the Secretary to disapprove a plan or in that timeframe in which he may disapprove a plan, and also some other considerations with respect to if he disapproves a plan like he did with the whiting plan, that it must be accompanied by the Secretary's analysis that is required of us when we send him a plan or a regulatory package, his analysis that shows where the flaws or the inconsistencies with applicable law are, so that we can make those corrections.

Chairman WYDEN. Mr. Blum, can you support what Mr. Warrens is talking about as a way to strengthen the hand of the council?

Mr. BLUM. Mr. Chairman, without equivocation, yes. We think that the differential between how a plan amendment and a regulatory amendment are handled is counterproductive, and we think that there ought to be the same speed. It doesn't do anybody any good to be sitting there on April 15 wondering what the share is.

Chairman WYDEN. Well, that sounds constructive, and why don't we excuse all of you on a constructive note as well, and we will be working closely with you and appreciate your cooperation.

Mr. BLUM. Thank you very much.

Chairman WYDEN. Our next panel, Mr. Jay Johnson, Deputy General Counsel, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

If we could, let's come back to order. We are so far behind on the schedule. Mr. Johnson is being very gracious and is already on his feet. I take it you have no objection to being sworn as a witness.

[Witness sworn.]

Chairman WYDEN. Again, let me just ask our audience, in the name of keeping this moving, we're going to have to be very quiet, even as the panel is leaving.

Mr. Johnson, welcome. You have been extremely cooperative with this subcommittee in working for this hearing. We appreciate your personal attendance as well. We will make your prepared remarks a part of the record.

Why don't you make your oral statement, if you could, in about 5 minutes or so?

TESTIMONY OF JAY S. JOHNSON, DEPUTY GENERAL COUNSEL FOR FISHERIES, ENFORCEMENT, AND REGIONS, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

Mr. JOHNSON. This will be pretty much off-the-cuff. I have been listening to everything that has been said here. I think that you all deserve an explanation for what went on in Washington after we received the proposal from the Pacific Council.

This proposal was, in essence, a proposal to shift the sharing of the Pacific whiting resource from the offshore sector to the onshore sector. It was justified on the basis that there would be a greater national interest in favoring the shore-based communities. What you probably don't understand, however, is that there has been a dramatic change in the world market for these resources.

When the proposal was received in Washington, DC, the economists who work for the National Marine Fisheries Service, who are as professional and as capable in their discipline as the fishery biologists who provide advice to the council, informed the decision-makers in Washington that they could not accept the council's economic analysis.

There had been a 50-percent decrease in the price that had been paid for pollock surimi in 1 year. Inventories of pollock surimi and whiting surimi in Japan were at an all-time high, and were increasing.

There was still more product expected to come into Japan, the principal market, in the early March 1993 timeframe as a result of the Alaskan fisheries.

We also were receiving reports that the prices were either stable or falling for most of the whitefish finished products—pollock filets, whiting filets, and other products along that line—as a result of renewed efforts by the Russian fleet which had recently been removed from the strictures of their planned economy, and was out trying to make it in the new world economy. They were simply flooding the market with new products.

That being the case, the economic analysis that had been prepared originally to justify the action no longer worked. There was no confidence in Washington that this proposal would have a positive economic benefit to the Nation.

We have a published guideline for interpreting National Standard 4 of the Magnuson Act that has been on the books for a number of years. The guideline says the council can allocate among those various sectors of the industry, but they can only do so if they can demonstrate a national benefit.

That being the case, the objective in Washington in dealing with this problem was to try to preserve the status quo. Our original best guess as to how that should have been done would be to have issued an emergency rule that would have fixed the percentage shares of Pacific whiting at the shares that were obtained by both sectors in 1992.

My office advised the decisionmakers that they did not have the legal discretion to do that because they had used an emergency rule in 1992 to address this same problem. The Magnuson Act places a 180-day limit on the duration of an emergency rule.

We were thus faced with a choice of either rejecting everything the council submitted to us or approving parts of it. A decision was made after extensive consultations between the National Marine Fisheries Service, the National Oceanic and Atmospheric Administration, the Department of Commerce's General Counsel's Office, and the Office of Management and Budget, that the council provision that came closest to maintaining status quo between these two sectors was to take the council's 30,000 metric tons reserve and approve it, rejecting the balance of the council's proposal.

At the time that decision was made, we expected that would result in approximately 42,000 metric tons going to the shoreside sector, and 100,000 metric tons going to the offshore sector. That represented, in fact, an increase of the shoreside's percentage share of this resource of between 2 and 3 percent, and a corresponding decrease in the offshore sector.

So, compared to the status quo, the action taken by the Department of Commerce at least served the council's intent to some small degree of protecting the shoreside employment.

We do not work in a perfect world. We deal with the record that is given to us by the council. I might say that Mr. Schmitten had warned the council that their proposal was at some risk of being disapproved in Washington, that Mr. Schmitten abstained from the vote approving this action, which should have been a signal to the council that they may have difficulty with it, and that the decision was made by people in Washington whose jobs are to make these kinds of decisions.

People involved in this decision were, with one exception, all career employees of the Federal Government who have no vested

interest in favoring or disfavoring Oregon over any other State in the Union. I have heard allegations that this was the result of extensive lobbying.

Diana Josephsen, the one political appointee who was involved and who, in fact, made the decision as Acting Under Secretary of Commerce, refused to meet with either side in this dispute, although both sides requested to have such a meeting.

She did not want to have her decision encumbered by allegations that she was being lobbied by one side or the other. They may have attempted it, but it didn't have any result.

The facts speak for themselves. We had an economic analysis that did not support the council's action, and we acted accordingly. I will say personally that I have been involved with the administration of the Magnuson Act since 1976 and have known people like Joe Easley since the day I started working for NOAA.

We do not take our responsibilities lightly. We try to give an honest decision, not influenced by politics. That's what we tried to do in this context. We were interested in seeing that we got through the 1993 season with the minimum amount of disruption to everybody who had participated in this fishery.

One issue involves why did we limit it to 1 year only. The fact of the matter is there is every indication that the volatility in the world market for these resources is going to increase. We are seeing the Japanese developing new sources of surimi which will compete with our product all over the world. They are developing resources off Vietnam, off Chile, and off Africa. They are searching anywhere they can to try to find substitutes for the products that they are now buying from the United States.

We are going to be affected by that. We don't know what the effects will be in 1994. For that reason we were very reluctant to consider approving a long-term solution.

There is a problem. There will need to be a sharing of this resource between the onshore and the offshore sector. There is a need for stability for economic planning, but there are other factors involved besides just what the council wishes to do.

The other factor that inserted a great deal of uncertainty into our long-term decisionmaking is that the Pacific Fishery Management Council prepared, and the Secretary of Commerce approved, one of the most far-reaching fishery management plan amendments just last year.

That's the Limited Access Amendment that will place every fisherman along the coast of Washington, Oregon, and California in this fishery under license limitations. Those licenses, to some degree, are going to be transferable within the various sectors and across sectors.

We have no idea until we implement the 1994 Limited Entry System what effects there are going to be on the people who are now using Pacific whiting. We suspect that most of the factory trawlers will not have an opportunity to fish directly for the resource. We expect that a great number of smaller coastal boats will have that right.

We did not understand, and could not possibly understand, at this point what the economic consequences of the council's program would be in 1994 and beyond. The Secretary of Commerce does not

have a closed mind on this issue. We hope that the council will go back and look at some of these other factors and that we will reconsider this issue in 1994 if necessary.

I will say that I take some responsibility for the delay that was occasioned in getting this decision announced. The recommendation came in during the previous administration. It is one of my responsibilities, as a career lawyer, to apprise the incoming administration of decisions that were made by the preceding one so that they can reach their own conclusions.

We had extensive briefings with Diana Josephson to explain to her what the whiting issue was all about before she made her decision. The record is clear. We have revealed not only the decision memorandum that she signed approving the action, but also a decision memorandum that she had rejected.

Ordinarily those kinds of documents are retained within the executive branch and are not made public. We made it public in this case because we thought it would help the public understand the decisions that were made.

At that point, I think I will conclude my remarks. I will be pleased to answer any questions you have.

[Mr. Johnson's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Mr. Johnson, I am going to call Mr. Warrens back to the witness table with the Pacific Fisheries Management Council because I must say I find myself very curious now as to several things that are going on. I just want to ask Mr. Warrens a question and then recognize my colleague. Then I will take others.

Mr. Warrens, let me remind you that you still remain under oath for purposes of your testimony today.

Mr. Johnson said that the National Marine Fisheries Service had warned you about problems with the decision, Mr. Schmitten specifically. Is that correct?

Mr. WARRENS. Congressman Wyden, Mr. Schmitten frequently warns us that some of our decisions are getting very close to the line. He does so in a constructive manner. This was one of those times, when at the November meeting, Rollie again reminded us that we were making an allocated decision, which is always subject to Secretarial disapproval.

However, I don't recall at that November meeting that he specifically pointed out any particular part of our decision that was inconsistent with applicable law or the National Standards.

Chairman WYDEN. So, anything he might have said would have been sort of boiler plate, the kind of thing he would say generally, and he didn't mention anything specifically on the 9 to 2 decision that you made that was inconsistent with Federal law?

Mr. WARRENS. To the best of my recollection, he did not specifically make any statement of an issue that was outside it.

Chairman WYDEN. Let me recognize my friend for questions. This will be helpful to have you both here.

Mr. KOPETSKI. Thank you, Mr. Chairman.

Just a quick followup with Mr. Warrens. Is it normal that regional directors abstain from these kinds of votes?

Mr. WARRENS. It's almost routine anytime the council votes on any sort of emergency action. It is not uncommon for the regional

director to abstain from highly controversial issues, I assume, as a matter of policy.

Mr. KOPETSKI. So, that's really no consequence, the fact that he abstained? That's pretty normal?

Mr. WARRENS. No.

Mr. KOPETSKI. Mr. Johnson, I guess you are a little bit more concerned. Maybe what's past is past and we ought to go on, but I'm a little worried about this decisionmaking process.

Do you know of any meetings between the Trawlers Association, companies, trawler lobbyists, and the Washington State delegation?

Mr. JOHNSON. I would have no way of knowing that. I assume that they were in contact with the delegations.

Mr. KOPETSKI. But you had never heard that they were?

Mr. JOHNSON. Not specifically.

Mr. KOPETSKI. How about with any of those entities and Commerce employees?

Mr. JOHNSON. I know that there was a meeting. Mr. Blum has already referred to it. I had heard that the National Marine Fisheries Service's staff met with each side. I was not present at those meetings.

Mr. KOPETSKI. How about meetings with OMB and the Trawlers Association or lobbyists?

Mr. JOHNSON. I have no knowledge of that.

Mr. KOPETSKI. The White House?

Mr. JOHNSON. I have no knowledge of that.

Mr. KOPETSKI. Now, in your statement, you had said that what sort of set off the alarm was that some Washington, DC economists didn't like the economics of what was going on.

Mr. JOHNSON. It is not a question of the economics. I would think that if the economics had substantiated the position that the council had proffered, they would have told us that.

They told us the markets were so volatile that many of the surimi products processed in the preceding year were still in inventory in Japan. They hadn't been sold, and the price was dropping.

As a result of that, what the council had projected to be a positive benefit when they did their work, was not perceived later on in the process as still being a positive benefit.

Mr. KOPETSKI. So, I guess, Mr. Warrens, the council did an economic analysis, and NMFS did, and it showed an advantage to shore-based processing through higher utilization; is that right?

Mr. WARRENS. Congressman Kopetski, as I stated earlier, the analysis on whiting was the most in-depth, complete analysis that we have ever come up with for a west coast fishery. In fact, Mr. Pries, from the National Marine Fisheries, presented us with volumes of economic information.

Mr. KOPETSKI. You are aware that includes what is going on in the world market and what the Japanese are doing?

Mr. WARRENS. That was clearly pointed out through testimony to the council.

Mr. KOPETSKI. All of this before you made your decision?

Mr. WARRENS. Before we made the decision, yes.

Mr. KOPETSKI. But some Washington, DC economists didn't accept that?

Mr. JOHNSON. That's correct.

Mr. KOPETSKI. They threw the tons of testimony out the window and said, "They are wrong." How many economists is this? Is this one or five?

Mr. JOHNSON. I believe there were two economists at the National Marine Fisheries Service who initially reviewed it and came to that conclusion that it wasn't an adequate analysis to draw the conclusions the council drew. Subsequently, during our discussions with OMB, two of the professional staff economists at OMB came to the same conclusions.

Mr. KOPETSKI. Mr. Warrens, did your folks out here use Commerce data, Commerce information, to create this cost benefit analysis?

Mr. WARRENS. Yes; in 1992, with the disapproval of that plan, National Marine Fisheries informed us that we would be required for the 1993 analysis to include net benefits to the Nation. That's what invoked this rather lengthy and voluminous economic report which the National Marine Fisheries played a large role in. We were made abundantly aware of the contents of that analysis.

Mr. KOPETSKI. Did you use Commerce data? I'm told it's supposed to be the best of data around for economic analyses?

Mr. WARRENS. We did use their analysis. As a matter of fact, we leaned more heavily upon that than we did our own staff economists in light of this situation which could have been construed as a conflict of interest with our own staff economists.

Mr. KOPETSKI. How many economists did you use?

Mr. WARRENS. We have a contract economist. It was his analysis that was given less weight in our final decision because of the proximity and potential conflict of interest. So, we relied entirely on our PFMC staff economics and National Marine Fisheries economists.

Mr. KOPETSKI. So, that is two, right?

Mr. WARRENS. Yes.

Mr. KOPETSKI. Then did people reviewing these studies use their economists, whether it is the trawlers or the processors or others? Did they have economists who reviewed this?

Mr. WARRENS. They may have had their economists review it. However, I don't recall that any information from other economic sources or analysis were made to the council with respect to any alternative numbers that we were given.

By and large, though, the volumes of information with respect to the economic analysis came from the National Marine Fisheries with support from the PFMC staff economists.

Mr. KOPETSKI. Well, we're not going to make any economist jokes.

[Laughter.]

Mr. KOPETSKI. How much time did these four economists in Washington, DC study this issue and come up with their decision?

Mr. JOHNSON. I think they did it during the public comment period. They reviewed all the data that were available. They were specifically asked to give us their best judgment as to whether the council had made its case. We don't go into these things trying to disapprove the Pacific Council's recommendations. We have not had to do so very often.

I will say that all of the council's seem to be having some difficulty in preparing economic analyses that are related to allocation decisions. These are very difficult things to determine, whether the country is going to benefit by a loss of jobs in one sector and the creation of jobs in another sector.

Mr. KOPETSKI. Well, let me just conclude with this question which is somewhat similar to what the chairman was asking.

After these four Federal employees in Washington threw out this cost-benefit analyses that was done out here, you folks did not go back to the council and say, "We don't like your economics."

Mr. JOHNSON. We didn't have time.

Mr. KOPETSKI. You didn't have time.

Mr. JOHNSON. The fishery opened on—

Mr. KOPETSKI. You believed the bureaucrats in Washington over the months of study and thought that went on out on the west coast?

Mr. JOHNSON. The data and the study that were done on the west coast were part of the data that was used by the people in Washington. It's not unusual for a decisionmaker to want to rely on the people who they work most closely with, who they can sit down with and receive a briefing from.

There were briefings provided to Diana Josephson and to Dr. Nancy Foster, who was the Acting Head of the Fisheries Service at the time, as to what these economic issues were and what the professional staff was telling her.

I don't think Steve Freese, who I have known for a number of years, necessarily disagrees with the conclusion that was reached in Washington. The conclusion that we got from the field study was that there was a very slight benefit.

In fact, maybe I could read into the record what we were told so you might understand it.

Chairman WYDEN. Mr. Johnson, let us put it in the record. If you want to highlight a couple of points, that would be fine, but we will put it into the record as well.

Mr. JOHNSON. Well, it's very brief.

Chairman WYDEN. Go ahead.

Mr. JOHNSON. It says,

Although the cost-benefit analysis tentatively favors shoreside processing by the smallest of margins, when estimates are projected over an infinite time horizon, it is of limited value to analyze alternative allocations because of lack of key information.

Differences in added value resulted from secondary processing of whiting waste is the major difference between the two sectors, but data on secondary processing are also very weak.

In general, lack of actual data, combined with current high levels of volatility in whitefish markets overwhelmed any differences in the net benefits between alternatives.

Mr. JOHNSON. That being the case, we looked at our published guidelines and concluded that we could not support the decision. We would have been legally vulnerable in court had we approved it.

Chairman WYDEN. So, you said you didn't have time to really do your own economic analysis. I can tell you if Congressman Koppetski and I are faced with constituents who are about to be put

out of work, and we tell them we don't have enough time to look at the economics, they are going to—

Mr. JOHNSON. Mr. Congressman, people were going to be put out of work no matter what we did. This decision is about which people would be put out of work and which ones would not.

As it turns out, there will be people out of work in both sectors as a result of this decision. That was a foregone conclusion. There is simply much less whiting available this year than there was last year. Making more jobs out of it was not possible.

Chairman WYDEN. So, did the Department have any cost benefit analysis that specifically looked at the economic impact this decision would have on the folks in this audience and the folks on the Oregon coast, other than what Mr. Warrens put together?

Mr. JOHNSON. I think that is the sum total of the economic analysis. We knew there were going to be jobs lost in Oregon. We knew there were jobs going to be lost in Seattle.

Mr. KOPETSKI. So, you decided that it was OK if they were unemployed in Oregon and you would let Seattle keep working? That was the decision?

Mr. JOHNSON. In effect, the reduction in the harvest of the Seattle-based fleet is much more dramatic than the reduction in the harvest of the shore-based fleet, both in terms of percentage and in terms of tons of product.

This decision was not made to favor Washington over Oregon, or anything of that kind. The geographic location of the jobs that would be lost was not taken into consideration.

We were dealing with a reduced abundance of fish. We didn't know what was the best use of that fish because the economic data were not there. The decision was made to come as close to the status quo as possible on the belief—and perhaps this is mistaken—that what happened in 1992 was a reasonable situation.

Mr. KOPETSKI. Then, Mr. Chairman, why did they change their mind?

Mr. JOHNSON. Why did who change their mind?

Mr. KOPETSKI. Commerce, 2 or 3 weeks into the season?

Mr. JOHNSON. What happened is that was a technical problem that also I can take some responsibility for. When we made the initial decision to approve the 30,000 metric tons reserve for shore-based, we were advised by the professional staff at the National Marine Fisheries Service that during the open access fishery, shore-based operators would harvest approximately 12,000 metric tons of Pacific whiting.

That was based upon the relative performance of the two fleets in the preceding year. Essentially, during the open-access fishery in 1992, the shore-based vessels harvested about one metric ton of whiting for every nine metric tons harvested offshore.

This year, for one reason or another, the shore-based enterprises did not perform at that level during the open-access season. When it became apparent that they weren't going to harvest the 12,000 metric tons that we had anticipated they would, we issued another rule to ensure that they could.

That is what resulted in the final decision to stop offshore processing at 100,000 metric tons. There was an error. We monitor these things. We try to achieve what we set out to achieve. We try,

within the limits of law and our physical ability, to carry them out, to get there.

Mr. KOPETSKI. I was warned. I am learning about this stuff. But I was told what would happen before it happened by people on the west coast, not in Washington, DC, who know this and said,

Look, the trawlers are out there. They're going to get a head start. They're going to scoop all this stuff up. There's no way that onshore people are going to get their allocation. It will be gone before they even have a chance to get their nets in the water.

Mr. KOPETSKI. It happened.

Mr. JOHNSON. No; it didn't happen. We stopped them at the 100,000 metric tons we intended for them to harvest.

Mr. KOPETSKI. Because of a technical error?

Mr. JOHNSON. Not because of a technical error, but because we took an action to correct a regulation to prevent it from happening.

Mr. KOPETSKI. But nobody warned you in advance that this would happen? Nobody in Washington, DC or Oregon?

Mr. JOHNSON. Congressman, I have to rely on the information that I get from the professional staff.

Mr. KOPETSKI. The professional staff in this management council don't count, or is it only the professionals inside the Beltway that count?

Mr. JOHNSON. The professionals inside the Beltway in this case were in conference with the people in the State of Washington in our regional office about what would happen.

Mr. KOPETSKI. I'm sorry, Mr. Chairman.

Chairman WYDEN. Just a couple of others. I understood you to say, Mr. Johnson, that if you hadn't made the decision you finally made, you would have been sued, you would have been legally vulnerable; is that correct?

Mr. JOHNSON. I don't know whether we would have been sued. I feel that we would have been legally vulnerable on the record that we have.

Chairman WYDEN. Could you give the subcommittee that legal analysis that was done to justify that point?

Mr. JOHNSON. We didn't prepare a legal opinion on that point.

Chairman WYDEN. So, the justification was you would have been legally vulnerable. We're talking about an issue of enormous economic impact, but no legal analysis was done? You just said, "Well, we're going to get sued, so, we had better make this decision and that's the way it is?"

Mr. JOHNSON. Mr. Congressman, our legal office, the NOAA General Counsel's Office, has been dealing with issues arising under the Magnuson Act since 1976.

We have a reasonably good record in defending the actions of the Pacific Fishery Management Council. In fact, we are now engaged in litigation involving the Limited Access Plan. We make a lot of decisions without producing formal written legal opinions, as I am sure almost any Federal agency does.

It was our judgment that when you have in your own record a statement that undercuts the rationale that must be provided to meet your own regulations, that you are vulnerable in litigation. I am not saying we would have lost, but I felt we would have.

Chairman WYDEN. Well, I guess you say everybody is vulnerable to some conceivable exotic legal theory, but it seems to me again in a decision like this, overruling a 9 to 2 judgment from the regional council, and you say, "Ultimately we had to do it because they would have sued us to not"——

Mr. JOHNSON. I didn't say that. I did not say we had to do it because they would have sued us. I want to be very clear on that. It's the Secretary of——

Chairman WYDEN. All right. We have established no written legal documentation was done. Let me ask just a couple of other points.

I think it is still hard to follow this matter of whether or not Mr. Warrens and his associates really knew what was coming. I mean, in plain English that really is what this is about.

Mr. Warrens, I heard you to say in our earlier testimony something about a meeting that was held a week before the decision came down where if the Department had been moving against the council's decision, you could have easily been told at this meeting a week before the decision. Am I correct on that?

Mr. WARRENS. Yes; Congressman, you are correct on that. It was just a week prior to the decision, or a week and a day or two, that the council was meeting at a regularly scheduled meeting of its annual meeting process in Portland whereby it would have been an adequate opportunity for the council to modify any of its earlier decisions in response to concerns brought out by the Department of Commerce.

Chairman WYDEN. They didn't brief you and didn't bring it to your attention.

Mr. Johnson, can you see why people are so frustrated here at home? I mean, Mr. Warrens, who I think is bending over backwards to try to be conciliatory—to tell you the truth, I think he is really a model of patience here—has just said that a week before when there was a council meeting, and there would have been an opportunity to have some discussions and give-and-take, nobody told them what was going on. Can you see why people are so frustrated?

Mr. JOHNSON. I absolutely can see why? I can tell you that we didn't have the first recommendation from the National Marine Fisheries Service until April 8. That's 7 days after the comment period closed. We didn't have a final decision by NOAA until April 14th. I think that was after the council meeting had already concluded.

At that time, we were still actively seeking a way in which to resolve this issue. I'm not proud of the fact that we only had 14 days to turn around a decision of this consequence.

Chairman WYDEN. Let me give you the opportunity I gave the last panel to possibly let us leave on a positive note. The trawlers and Mr. Warrens both said that they would be supportive of a recommendation to strengthen the hand of the council.

What do you think could be done between now and next year so we don't get into this kind of fix again and contribute so much to the frustration and cynicism people have about Government and the way business is done?

Mr. JOHNSON. Well, if you are referring to the specific recommendation that they made that there be a time deadline, I can see where that is something that might contribute to the process. We would try to get our work done sooner. We have had more success in getting decisions made when we were faced with a statutory deadline.

On the other hand, the real issue here is the quality of the decision that has been made. Just because it is made on a timely basis doesn't mean it was the right decision. If we get in a situation where we are forced to come to a conclusion in a specified period of time, the quality of the decision might suffer.

We have a process that we are looking at now to try to get a little bit ahead of the power curve. You have to realize that we have a great number of fisheries around the country that we are regulating. Many of them have in-season changes and different adjustments that have to be made. I have asked my staff to start flagging the time-critical issues well enough in advance that we will be in a position to issue a timely regulation.

One of the most frustrating things, which we seem to be repeating over and over again, is not to be able to tell the fleet when they can go fishing, what they can catch, and how long they are going to be out there, in time for them to buy their bait, get their fuel, and hire their crews. That has happened at least twice this year on the west coast. We're trying to correct that.

Chairman WYDEN. Well, I will tell you as you leave, that one of the things that I am most concerned about is that Government fishing policy is moving in a direction that is going to leave us very few small prosperous fishing businesses left.

When you look at the net effect of all these policies, the big guys are going to be able to play. The big guys in some of these Washington economic analyses may actually be able to make the case that these policies make sense.

But if you factor in losing so many of the economic foundations of these coastal towns, which is what we are going to do if we lose these small businesses, I don't think you can say, then, that the Washington, DC analysis in favor of the big companies and their efficiency arguments, pencils out.

That is why it is so important that for the next round I think you've got to have specific economic analysis about what these decisions mean on the Oregon coast if you are going to overrule people like Mr. Warrens, who actually bring that kind of information to the table.

If you've got it, let's get it. Let's get it early and let's debate it. But if you don't have it, I think that we ought to be going with the decision to come out of the council, because they are in a position to tell us what this means for the communities they represent and the communities they deal with.

We will excuse you. Thank you for your cooperation.

All right. We are going to merge our last two panels in the interest of time. Mr. Barry Fisher of Newport; Mr. Tom Libby of Hammond; Mr. David Duncan of Hammond; Mr. Jerry Bates of Newport; and Mr. Bohannon of Portland.

None of you gentlemen have any objection to being sworn as a witness?

[Witnesses sworn.]

Chairman WYDEN. Gentlemen, we will make your prepared remarks part of the hearing record. If you could each take about 5 minutes or so, that would be great. Let us begin with you, Mr. Fisher.

TESTIMONY OF R. BARRY FISHER, PRESIDENT, YANKEE FISHERIES AND MIDWATER TRAWLERS COOPERATIVE

Mr. FISHER. Thank you, Mr. Chairman and Congressman Kopetski for going to the trouble of holding these meetings.

I can't help but comment, after listening to Mr. Johnson and his rendition of the facts, if I was every really guilty of stealing a horse, I would sure want him to represent me.

[Laughter.]

Mr. FISHER. One of the troubles of being old is that you have a memory. I would like to remind everybody that the Pacific Fisheries Management Council, back in the early 1980's, came in with a set of goals, objectives, and philosophies, demanded by NOAA, upon which they were going to base their management plans.

They consistently sent signals that they favored shore sites, that they favored continuation of the whiting fishery, they favored shore-site. In 1990, 1991, and 1992, they said the same things again. This isn't a 1-year thing.

I would also point out that what the council sent forward was a framework allocation plan which would have provided a mechanism to spare these kinds of bloodbaths based upon analysis.

I would really wonder why Mr. Johnson concentrated on pollock so much. We are talking about whiting. I do know from my now friends, the processors, that practically all of our product was sold long before this season started.

The other thing that I really would ask you to consider is we were allowed to sleep. About March 15th, Commerce put out a proposed ruling of their own—and we believed them—which had intact almost all that the council had asked for except for doing away with the 30,000-ton reserve that would have a priority access to shore-site.

We figured this is where they were going. We were told this is where they were going. Mr. Johnson—I've got some documents to back this up—on approximately April 8th, I sent two letters to Dr. Foster. I might have sent them by mistake to Florence—but you've got letters in your files at NOAA that showed that I knew what was going to come down. Several of us out here knew what was going to come down as far back as April 8th.

We knew that the factory trawlers were going to get 100,000 or better tons. We warned Mike Kopetski about this. We warned our citizens of this. We got that from leaks. You say that at that time NMFS was still making up its mind. It just doesn't wash. It absolutely does not wash. The factory trawlers knew a week to 10 days ahead of time what the rule was going to be. We did not.

I would also ask you if you were doing these economic analyses that came out this way, why didn't you let the council know? When we went back there in January, we were told the plan was proceed-

ing. Why did NOAA remove the Regional Director who is heavy in these decisions—taking him out of the loop?

There is so much confusion here, Congressman, that I frankly think that we should have a GAO audit of this process of how it went on, and what was involved. I bitterly resent the condescending paternalism of “we at OMB” and “we at NOAA,” and “we at NMFS.”

I’m making up your minds for you for the good of the Nation. Goddamn it, the Nation exists outside the Beltway.

As far as undue influence, I know that Senator Murray got to Ron Brown. That was publicly announced. I am sorry that your memory is that inconsistent.

When you get an association with a multimillion dollar budget that holds its annual convention in Washington, DC 2 or 3 weeks before the rule is going to be published, and spends most of that time running around seeing Commerce people, I think that’s lobbying. I think it is heavy lobbying.

I repeat. We were lulled to sleep, Mr. Johnson, by that rule that NOAA put out the proposal.

Chairman WYDEN. Mr. Fisher, please direct your testimony to us. Mr. Johnson isn’t on trial.

Mr. FISHER. I’m sorry. I know it. But he should be.

[Laughter.]

Chairman WYDEN. We have had a number of differences of opinion with Commerce, as you know. We appreciate hearing from you.

Mr. FISHER. My last words on this subject is I plead for a GAO audit. I pleaded for one once before in Alaska. The reasons we pleaded for it were confirmed by GAO. This one needs a GAO audit.

That being done, I won’t say anything else other than Mr. Blum made a remark about efficiency. Nobody would argue the fact that a factory trawler is the most efficient in terms of scooping up fish.

But I believe what we should focus on is what is the best economic utilization of that product. In that respect, it does not fly with the FC component. If you examine their record on waste, on discards, you will suddenly discover in recovery rates that they are not as efficient, and particularly this year. You will hear words of testimony as to the quality of the product that was produced this year.

They dump and waste considerable amounts. In my testimony, I refer to figures. Now we turn to something else. In front of you, you will see a dolly full of byproducts.

We now have the opportunity, and we have had it for quite a while. Damage was done beyond the primary process in the area. The secondary process is by Commerce’s decisions.

We have the capability. We have plants starting up that can take the whiting carcasses and turn them into several products. The first is well known, fish meal/bone meal oil.

That can be done to a limited extent by the factory trawlers, but they still dump a lot of the carcasses. There are better uses of it than these. For example, hydrolyzed products—there’s a bottle of one right here—hydrolyzed fish products that are superior to any chemical fertilizers in that they can release nitrogen over a long period of time, not releasing all the ones that burn the soil.

That can be applied to anything from garden boxes to massive agriculture. Those bags that you see are made of saw dust and wood waste. They are worth five times as much at retail by simply putting in 4½ pounds of whiting carcass produced products.

There are several other fertilizers that are also specialty supplemental rations for poultry and cattle that can be made. The greatest potential of all lies for a product that is produced by composting where you use seed grass straw or you use wood ash, or you use other unburnable forest product detritus. You combine that with whiting carcasses, or in some instances, whiting entrails, to produce products that are superior fertilizers.

Also—and here comes the big one—the best use for this stuff is for remedial soil treatment of heavily toxified soils to remove hydrocarbons and other toxic waste.

It goes without saying that every pound that is brought ashore is going to get processed. This is the wave of the future, total utilization. I would start arguing from now on that the economic analysts in Washington had better pay some attention to things like this.

Insofar as the professional capability of these folks, I read in the Secretary's justification that "Don't worry about impact of displaced whiting trawlers on the rest of the fisheries. They are management quotas. They can't catch any more fish."

Those people show ignorance of the fisheries. We fish for species assemblages. When a quota is reached, that doesn't mean you stop fishing that species assemblage. It means that you simply throw that animal overboard whose quota has been met, thereby contributing to one of the most severe problems we've got in groundfish management.

Now, the kind of person who says things like that, I won't accept as a qualified and professional analyst of the fisheries. I honestly believe that John Burns, the president of OSU, once told me that you got to be a successful oceanographer when you didn't have to go to sea anymore. Some of the same analysis applies to the National Marine Fisheries Service. The farther away you get from fish, the higher your chances are.

But total utilization, that's where we should be going. That's where I think that we should start to focus our sights. We should also start focusing our sights on how much losses the Nation is bearing from discards and waste from the out-sea component. The NMFS economists never put a dollar value on this. They should. That gets deducted from what they produce.

Thank you, Mr. Chairman.

[Mr. Fisher's statement may be found in the appendix.]

Chairman WYDEN. Thank you.

Mr. Duncan.

TESTIMONY OF DAVID DUNCAN, TRAWLER OWNER/OPERATOR, AND MEMBER, PACIFIC FISHERY MANAGEMENT COUNCIL

Mr. DUNCAN. Mr. Chairman, I don't know how much I can add after that other than to say like others I am also concerned about the process.

Mr. FISHER. Be rational.

Mr. DUNCAN. In spite of the comment made by Mr. Blum, the council did provide a factory trawler seat on its Ground Fish Advisory Panel. They have had access.

Mr. Johnson makes several comments about economics. The economics are the criteria for allocation. The act itself is very clear that there are other criteria, the history in the fishery and the dependence upon that fishery by those historical participants. The social economic impacts. There are many other criteria that the council and the Secretary can use other than solely economics. It is one of those issues that I am very concerned about.

The at-sea fleet has demonstrated to have a significant take of other groundfish. Those levels last year meant approximately 10 million pounds of available groundfish to the coastal groundfish industry. It was not utilized. That represents, according to Hans Brake, \$11 million not utilized.

I have received by fax yesterday afternoon from the NMFS Regional Office preliminary figures which show the at-sea fleet discarded 2,500 metric tons of otherwise usable groundfish. That equals approximately \$5 million. In 3 weeks the coastal groundfish industry, as a whole, subsidized the factory trawl fleet to the tune of \$5 million.

Chairman WYDEN. Mr. Duncan, let me make sure I've got that. That was an official Government analysis of the discard? That was a NMFS document?

Mr. DUNCAN. Yes; it is.

Mr. FISHER. I have copies of it, if you want.

Chairman WYDEN. We will make that a part of the record. That is extremely helpful.

[The information may be found in the appendix.]

Mr. DUNCAN. My point is that when the council did what it did, one of the reasons—one of the many—was that it was, as required by the act, to analyze the impact of this allocation on adjacent fisheries.

What it found was that people outside the whiting fishery were going to be impacted. It just further exacerbates the problem.

In fact, I would like to comment that the Fishery Management Plan itself, which the council follows clearly, says that, "Economics shall not be the sole reason for allocation." So this whole argument about economics, like Barry said, doesn't wash.

I would also like to comment about the fact that throughout this whiting debate that the American factory trawlers have said that their members made investments and built vessels in the spirit and the promise of the Act.

Well, I would suggest, Congressman, that many of us made investments, built vessels, in that same spirit. Their presence alone does not Americanize the fishery. In fact, many of us who have been catching whiting 12 years prior to their first involvement, have lost harvest opportunities in order to allow them to Americanize the fishery.

You asked me to make some comments about the impact of this allocation on my operation. I was a joint venture fisherman. I was displaced under this guise of Americanization. I have made a further investment in my vessel to bring this product to shore. The

investment made is guaranteed by the SBA. I have some concerns about where that leaves me.

The uncertainty that this allocation has created, I think, troubles all of us. Processors can't do adequate business planning. I can't. It's reeking havoc. If there is anything that this committee can do to offer some stability or some sense of certainty, we would all be grateful.

[Mr. Duncan's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. We thank you, Mr. Duncan. It is very helpful.

Let me say to all of our witnesses again. I'm going to have to keep you on 5 minutes or we will be here until dinnertime.

We welcome you, Mr. Libby.

TESTIMONY OF TOM LIBBY, GENERAL MANAGER, POINT ADAMS PACKING CO.

Mr. LIBBY. Thank you for the opportunity to be here.

There is one comment that I would like to start with. It is in regard to some of what Mr. Johnson had to say in relation to the economic analysis of this. The economic analysis did show, however small, an advantage shoreside.

He said that because of the recognized volatility of the market and the tremendous drop of the market, that the economists in Washington, DC felt that it skewed the economic advantage to the Nation to the factory trawlers.

The fact is the market has nothing to do with it. Whether it is a high market or a low market, the advantage is the same. So, that justification for throwing an economic analysis out doesn't stand the test of logic.

With that, I would like to see if I can give a few details that are related to a single processing company on the coast. I represent Point Adams Packing Co. We have a small processing operation in Hammond, Oregon, to produce surimi from the whiting. It is small in relation to the operation that exists here in Newport and extremely small in relation to the operations that exist on the factory trawlers.

In 1991, when the window of opportunity in the market opened to allow people into surimi production and whiting, surimi was becoming more acceptable in the market. Many of us along the coast here made a determination that this may be a fairly reasonable investment.

In watching from what happened, from the council standpoint, it looked like a fairly reasonable investment. Then it seemed, again in 1991, prior to the 1992 season, what happened with the Department of Commerce and their rejection of the support—and this was a year's worth of support development that the regional council put into their recommendation—it was rejected. Everybody held off on their decisions.

At the last minute, a decision was made—an emergency rule was issued—that made it appear that it was supporting the stated goals and objectives of the council, as well as the legislated direction under the Magnuson Act.

At that point, several of us made some very significant investments. In the case of Point Adams Packing Co., that was to retool the plant, retool an existing physical facility, to the tune of about \$3 million to process whiting surimi.

Then in the 1992-93 decisions, the same situation occurred—delays by the Department of Commerce and some uncertainties. By this time, as Barry said, there was knowledge a week or so prior to the announcement that shoreside allocation was probably in very serious trouble.

The ultimate final decision provides shoreside with less than 50 percent of the recommended allocation by the council. So, with that, many of the people working for Point Adams Packing Co. are no longer going to have a job.

In 22 days, 100,000 metric tons were taken by the factory trawlers. That 100,000 metric tons would have lasted the entire shore-side for Northern California through the Central Washington coast somewhere in the range of 7 months.

The council's recommendation was based on a sliding scale program. The proposed framework plan, if applied to the last 17 years' total allowable catch of whiting—if that framework plan were applied, would split right down the middle what the factory trawlers received and what the shoreside would receive.

That confirms the validity of that framework plan. It confirms the validity of the proposal that the council made. It is something that was totally ignored.

As you have been told earlier, natural resource economists have projected that somewhere in the range of 1,200 to 1,500 jobs have been lost as a result of this—this year, shoreside, approximately \$25 million.

For Point Adams Packing Co., that amounts to 60 employees, 5 months of work, \$750,000 of direct income, and somewhere between \$1 to \$1.5 million to the vessels that deliver to us, however many times that economic multiplier goes through the local economies.

In addition to that, the loss of the potential profit on that product, had we had the opportunity to take it—approximately 15,000 metric tons of product that Point Adams Packing Co. will not have access to—simply because it is not in the allocation.

The continuation of the Department of Commerce's contravention of regional council recommendations will ultimately, if this continues, result in the closure of some facilities that have been developed to handle Pacific whiting shoreside simply because of the costs involved and the fact that there is not enough volume and not enough time to cover the fixed costs that are associated with it. There are some very basic business decisions that have to be made.

Chairman WYDEN. Mr. Libby, I hate to do this, but we're over the time. If you could hit a couple of extra home runs, that would be great. Then we will move on.

Mr. LIBBY. I have one more comment that I would like to make. Of the total allowable catch, 70 percent was taken this year by the factory trawlers. Because of the time of year and the fact that they were dealing with postspawn fish—and I know this from personal experience of processing some of this fish myself, plus some anecdotal information from factory trawlers—the recoveries of this product were down from 15 to 12 percent.

On 100,000 metric tons that's a difference of 3,000 metric tons of finished product. That 3,000 metric tons are 6,618,000 finished pounds as additional market product that could have been handled had the product been taken in a more controlled fishery over time.

In addition, 20 percent additional fish of the resource had to be taken because the fish at this time of the year postspawn and are about 20 percent lighter. So, you have to take more fish to get the same pounds.

All those things have a tremendous economic impact. I don't know if there is an accurate way to consider them, but it certainly leans toward shoreside as a processing entity that has a greater economic impact.

That's the end of my statement.

[Mr. Libby's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Thank you. Well said.

Mr. Bohannon.

TESTIMONY OF FRANK B. BOHANNON, FISHERMAN

Mr. BOHANNON. Mr. Chairman and Congressman Kopetski, my name is Frank Bohannon. I have been a fisherman for over 30 years. I'm presently the owner of a traditional catcher vessel on this coast called the *Neahkahnie*.

I have fished Pacific whiting since 1979. I grew up in Tillamook, and I live in central Oregon. Not only do I have a lot of time and money invested in this fishery, but the lives of my children.

I have a son, Ethan, who is a captain on a vessel. I have a son, Eric, a crewman on another vessel. My daughter works on the mother ship, *Excellence*. My wife has operated the office for the last 15 years. She fished for me 5 of that. That's not much different than several of the people I know in this crowd here. It's a family business. It's just like any other in Oregon, basically.

I am board member of the American Independent Fisherman, and also a board member of the American High Seas. Because neither one of them were invited here today specifically, I am representing them.

Specially, those members with traditional catcher vessels have the longest history in the whiting fishery, and deliver primarily to the at-sea processors.

Let me thank the committee for their interest in the industry and for affording us the opportunity to present our views.

Many people have portrayed this issue as a contest between factory trawlers and shore-based processors as one sector of the fishery that has been largely ignored—the traditional catcher vessel in general—and specifically those that deliver at-sea to mother ships.

We who have the longest participation in the fishery have seen our catch reduced from a high of 96 percent in 1989 down to 10 percent in 1993. When the mothership and shore-based component broke out into their own categories, we were reduced from 37 percent down to 10 percent.

That's an enormous reduction in just 3 to 5 years. One of the main reasons for this is that we don't have an allocation of our

own and are forced to compete head-to-head with the much larger and more powerful factory trawlers.

We have been asking the council to base its allocation on the type of harvester rather than the location of the processing activity. In 1991 they allocated between harvesters, but for the last 2 years have allocated between processors.

The resulting impacts on Oregon's economy have been substantial. There are three full-time motherships. In 1992, they employed 619 crew, and 197 of them were Oregonians. The payroll was reduced between 1991 and 1993 from \$4.3 million down to \$194,000 this year. That's a 95-percent reduction.

There were 27 catcher boats which were contracted to fish for these motherships, and 10 of them were from Oregon. Those boats employ 130 people and 62 of them are from Oregon. The gross receipts of the mothership group of vessels between 1991 and 1993 were reduced from \$5 million to \$600,000. That's an 88-percent reduction.

During this same period, payroll for Oregon fishermen employed as crew was reduced from \$2.5 million to \$325,000. That's an 87-percent reduction. The net loss to Oregon from this group was well over \$6 million in wages lost during this period.

If you take the payments for goods and services that could be added to these wage figures, and with an economic multiplier, which we see from several of the groups, this could amount from \$60 to \$80 million lost to the State. Those are conservative numbers. I can document them.

Many of us use the shipyards and buy supplies, groceries, and vessels parts in Astoria, Tillamook, Newport, Coos Bay, and Portland. I can offer two examples of the potential impact.

One of the motherships did a \$20-million project at a Swan Island shipyard in Portland. Another catcher boat, a member of ours, was doing a \$3.5 million project on three different boats in Coos Bay.

We believe there is, in our opinion, a solution. We actually have an allocation plan that is in the written statement. There's not enough time to go into it here, but we think it has quite a bit of merit.

But we believe that if the license limitation doesn't go through, or if it needs an allocation plan, that the council should follow some guidelines which we don't think they have been doing the last 2 years.

The allocation should be based on harvesting, not processing. Magnuson addresses that. The allocation should go to harvesting vessels based on catch history. We have 15 years in the fishery from 1979 to this year. The factory trawlers only have 3 years.

The lack of mobility for the shoreside sector should be given consideration. The allocation should promote market freedom and competition so that fish prices reflect their true market value.

Let's set the record straight. The fish prices are down this year, but they are much lower than the at-sea segment. It shouldn't be that way. The shoreside boats, the vessels delivering shoreside, should have more money for their product because they are a transportation facility.

I am quoting my old mentor down here on the end of the table. They are a transportation facility. They are a storage facility for the shore plant. They should be compensated because of that.

Just to summarize it up a little bit—and I will make it quick here—from 1979 to 1990 the Pacific whiting fishery was stable, showing growth each year, and furnishing much needed income to the coastal community.

With the arrival of the factory trawlers, all that changed. They brought in far more harvesting ability than was needed. The catcher boats alone in 1983 could harvest this resource.

We Americanized this resource. My colleagues at the table were right there with me. In 1983, foreign markets went down. In 1989, we did that again.

The entry of factory trawlers also prompted and increased investment in shoreside processing facilities. There was overcapitalization in that sector as well. The battle for allocation became one of shoreside processor against factory trawler. The council began allocating to the common denominator, and that was the processing.

Our catch histories fell by the wayside, and the loser basically was the traditional catcher vessel. The boats that delivered to at-sea processors were further losers because they were forced into head-to-head competition with much larger factory trawlers into an Olympic-style fishery.

Because of this, the catch of whiting by catcher vessels delivering to a floating processor were reduced by 86 percent on catch. We were going from a 5-month fishery in 1991. We had a longer fishery than that prior to that to 3 weeks this year. I believe all the testimony here has brought that out.

I would like to say a word about the long-term players in this fishery. If you look at the history of our coastal fisheries, it is the small businesses like ours that stand it for the long haul.

We ride the highs and lows because we enjoy what we are doing. We are usually the pioneers in new fisheries and new gear technology. We are really not asking for anything more than the ability to maintain a place in the fishery that we pioneered.

If you can, please help us by bringing equity and rationality to this fishery and guiding the managers a little bit to provide equitably for all the interests in the fishery.

Thank you.

[Mr. Bohannon's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Thank you.

Jerry, we welcome you. I am going to put your statement in the record. If you would, would you just talk to us for 5 minutes or so. That would be great because we still have a lot more witnesses.

TESTIMONY OF JERRY BATES, PRESIDENT, DEPOE BAY FISH CO., INC.

Mr. BATES. Mr. Chairman and Mr. Kopetski, I appreciate that. I don't like reading anyway. I will just summarize a few points that may or may not have been missed.

But it is important to note that whiting is just one component of a fairly complex groundfish. You can't just discuss whiting without

discussing what is the impact on salmon trawlers, on the groundfishermen, shrimpers, and fixed gear like black cod fishermen. It's a very complex group of fisheries. We need to focus on the fact that it is a group.

As far as on price to vessels, I'm always sensitive to that. I always hear minimum wage. I want to remind everybody, we weigh all our fish. We weigh all the fish that is used. I owned a vessel that sold a lot of cod ends to processors that seem to vary from day-to-day on how big they were. So, there's a lot of difference in how you use the numbers.

I think we really need to focus on the fact that an annual plan allows no business planning for either sector or any sectors. We are constantly waiting until the opening day, deciding whether to hire people, buy supplies, or where we are going to market.

The Olympic style fishery is really forcing a heavy buy-catch because it is a derby-style fishery. It causes a lot of waste of product. This year it was prosecuted early when the fish really weren't ready. There was a lot of poor-grade product and poor-yield.

The shore-side plants cannot come and go as desired. If there is a lot of pollock, like previous to 1990, we may not see the at-sea group here. They may prefer to do pollock. We're going to be here all the time as long as we're allowed a chance to operate.

To compare a derby, out here there is economics. When you have a several day fishery over several months, it's really hard for me to see how the social and economic benefits are being fairly weighed. This year it was 22 days. We had hoped for 7 months.

We pay quite a bit of property taxes to the State. Our payroll for our own particular plant has over 100 people. It's nearly \$200,000 a month. They are not minimum wage jobs. They are \$6.00 to \$14.00 an hour. Salaries run \$2,500 up to \$5,000.

With regard to the final decision, it seems the overturning of the PFMC allocation and the published proposed allocation smacks a lot of smoke in mirrors to me. It showed little response to all the information, to all the hours of testimony that many of us have traveled up and down the coast to meetings, and a lot of staff work which has been presented.

I think the entire Commerce Department Operational Guidelines need to be looked at, in least some format that allows for an orderly decision through a legitimate process that can be followed. This is as if we get handed a card, "Here's the way to go on your business."

Last, I think that the importance of the severe cutbacks in our other fisheries need to be explored, particularly with any kind of a social or economic analysis. We have seen salmon go to virtually none.

From what I used to buy myself, groundfish has been cut by more than half of our traditional fish. The whiting is our last large volume fishery that our shoreside industry has. I refer to it as an industry, not just processors. We've got shoreside small businesses that supply gear, marinas, hardware, repair shops, as well as the fishermen. So, it's an industry and not just a processor group.

[Mr. Bates' statement may be found in the appendix.]

Chairman WYDEN. Well said. Gentlemen, all of you have said it. It's time to talk in Washington about statistics, charts, and all kinds of Washington economic analysis.

When we hear people like yourselves talk about what it is really like, discard rates, and how you all have been able to use so much more of the resource, really drives home what the stakes are.

Let me recognize my colleague for questions.

Mr. KOPETSKI. Mr. Chairman, I know that time is short and that you have to be in Portland at 3:00. I think I will just hold off on the questions at this point. I know you have to get up the road, and we have one more panel.

Chairman WYDEN. Gentlemen, I can tell you that the reason I am here, and the reason Mike Kopetski has put so much time and effort into this, is that our view is if folks like yourself don't survive and can't be prosperous, not only is the coast going to suffer, but the country is going to suffer.

We're going to look to strengthen this act. We are going to watchdog the Commerce Department in a way they have never been watchdogged before because we cannot have the kind of process we had happen again. You've given us very, very good input as ammunition to try to turn this situation around.

We'll excuse you at this time.

Mr. FISHER. I would hope, Congressman Mike, that you would take a bag of that byproduct based-product back to Washington for Ron Brown and Bill Clinton and tell it is not manure-based.

[Laughter.]

Chairman WYDEN. Let us call our witnesses up. Gilbert Sylvia and Neal Coenen. We just have two witnesses on our panel.

Folks in the audience, please, if you would, in courtesy to our witnesses, come to order.

Gentlemen, do any of you have any objection to being sworn as a witness?

[Witnesses sworn.]

Chairman WYDEN. If you would, why don't we begin with you, Mr. Coenen. Take 5 minutes or so. We will put your prepared statement in the record in its entirety.

TESTIMONY OF NEAL COENEN, MARINE PROGRAM MANAGER, OREGON DEPARTMENT OF FISH AND WILDLIFE

Mr. COENEN. Thank you, Chairman Wyden, Congressman Kopetski. You have my statement. It wasn't submitted earlier. You just received it.

What I have tried to do in the prepared testimony is provide perspective for the work that needs to be done in the future in 1994 and beyond for whiting allocation.

If you will turn to your document there, what I have prepared are a set of pie charts. What I sought to do there is to show you the nature and volume of the groundfish resource available in Alaska and on the west coast.

It is clear that the combined resource is of tremendous size—some 2.6 million metric tons. Alaska has 87 percent of this resource. Whiting is about 5 percent of the total, but represents a full 45 percent of the west coast resource.

The combined 1993 offshore allocations of about 789,000 metric tons were 30 percent of the total resource. That is a resource that is fundamentally allocated to the offshore sector, Alaska, and under the council's action for the west coast on whiting.

Secretary Brown's reversal of the council's whiting allocation resulted in a mere 8-percent increase for offshore interests, but required Pacific coast shoreside interests to forfeit 60 percent of what had been allocated to them.

Of greater importance on these charts is the comparison of offshore and onshore shares in Alaska and the west coast. In the Gulf of Alaska, with the small fishery-dependent communities, much like the coastal communities of Southern Washington, Oregon, and Northern California, onshore shares are 90 to 100 percent of the resource.

In the Bering Sea and the Aleutian Islands, the offshore sector dominates. Under the council's whiting decision, a sliding scale would have been a dynamic and fair approach which advances shoreside when stocks are low and uses the offshore sector's mobility when stocks are high.

In my chart, I show you how that percentage can vary. In the council's allocation, this offshore sector under the 1993 allowable harvest would have gotten 26 percent of the resource. The shoreside sector would have gotten 74 percent of the resource.

Under attack of 200,000 metric tons, those percentages would have risen to 37.5 percent for the offshore and fallen to 62.5 percent for the onshore sector. The nature of the sliding scale was that the resource availability increased. The offshore sector got more of the increase.

That takes advantage of their mobility and doesn't cause overcapitalization at the local level. Conversely, at low stock-sizes, there is a floor, a protection level, for the shoreside sector. You have heard testimony about how whiting is expected in the future to particularly fit more closely into the total available resource.

Another thing I want to have you examine—I didn't include it as attachments, but I provided the references—I believe your staff should spend serious time comparing the final rulemaking in the offshore/onshore allocations for the Gulf of Alaska Plan Amendment 23, approved by the North Pacific Council, and the regulations, the final rulemaking of Commerce on this whiting allocation decision. I think examination of those two rules will find that there is inconsistent approaches being taken by the Federal agency.

The final attachment I have is information that came from the input/output model result considered by the council as part of its whiting decision. During the council's process, offshore interests emphasized a point—and Mr. Blum repeated this point today—that the employment of Oregon citizens on factory trawlers would be impacted by the allocation decision.

The input/output model showed the difference in lost income between the council's preferred alternative. The best offshore alternative was \$108,000 for Oregon.

The Governor's office was apprised of these losses and, in the face of that, still made the policy decision that stability for coastal communities was important.

This amount of \$108,000 is very small because the factory trawler employment base is approximately 10,000 people and, as shown above, only a small fraction of total work for that fleet involves whiting.

Correspondingly, the input/output model showed local income gain under the council's preferred alternative to be \$11 million higher than under the best offshore case. This contrasts with a loss of \$22 million to the Seattle area economy.

The council chose to support the small coastal economies over the much larger regional economy, which already accrues the benefits of the offshore industry. Secretary Brown's reversal of the council decision finds a national benefit in increasing the disproportional relationship between coastal and regional economies and implies conscious utilization of the social and economic fabric of rural communities.

Thank you, Mr. Chairman, and Congressman Kopetski.

[Mr. Coenen's statement, with attachments, may be found in the appendix.]

Chairman WYDEN. Thank you. That was very helpful.

Mr. Sylvia.

TESTIMONY OF GILBERT SYLVIA, MARINE RESOURCE ECONOMIST, HATFIELD MARINE SCIENCE CENTER

Mr. SYLVIA. Thank you for the opportunity to allow an academic economist to be here.

I am a marine resource economist. I have worked on whiting issues over the last 4 years. I am a member of the Oregon State University and here at the Hatfield Marine Science Center as part of the Coastal Oregon Marine Experiment Station.

I have looked at four areas: Market issues; public policy; product quality; and value-added products. I will say now that those four issues cannot be separated for this particular fishery.

What I would like to do is briefly touch on six topics that will show those relationships.

Pacific whiting is a very complex fishery. The biology is very complex and the product characteristics of the fish while still in the ocean is very complex. Therefore, when, where, and how you manage this fishery affects the biological economic returns from the fishery. I think that is very important to emphasize. All of the work that we have done has showed that.

Such things as total volume, quality of output products, market price and production costs—all of these ultimately affect the benefits that can be generated, the inputs and investments to control product quality in approved market opportunities.

We found, for example, that improving product quality can add onto 25 percent of the price of the product and can lead to the production of a number of value-added products, including the kind of value-added products that we see here produced from the so-called wastes of Pacific whiting.

We also found that because there is so much variation in product quality, you don't necessarily want to produce one product form. You may want to produce three, four, or five product forms.

If you have small fish, you may want to produce a head and gutted product. If you have larger fishes, it may be optimal to go to fillets. This is important. Given the kind of price volatility that we just talked about, processors must look at producing these in the interest to try to reduce that kind of risk.

One of the things I have been concerned about is an Olympic-style fishery. I think there is a number of costs associated with an Olympic-style fishery that need to be emphasized. Many of these are related to the product quality issues.

The primary problem is time. When you are fishing under that compressed amount of time, you cannot slow down to control for product quality. It's not in your interest because you are going to lose production that will go to other fishermen.

It becomes a critical issue compared to trying to slow down the process and control product quality when you don't have to worry about competing with other fishermen under very narrow time constraints.

Research has also shown, using bioeconomic models, is that compressed Olympic-style fisheries can result in heavy fishing pressure on certain year-classes. Those year-classes of fish are very small fish. That's the primary year-class that you can depend on for 3, 4, or 5 years. You can create some biological instability in the fishery. It can ultimately impact economic benefits over time.

We also have showed that Olympic-style fisheries can increase inventory costs because if you have to catch all that fish at one moment in time, you can't leave them in the ocean and inventory them in the ocean until you need them. There are costs associated with that.

We have also looked at the cost associated with an early opening day season—April 15th. There appear to be a number of costs. Some of the processors and fishermen mentioned what those costs may be.

We did a lot of surveys with buyers, including one of the largest buyers in the world of European whiting products. It's a buyer in Germany. He made the comment that he used to buy whiting products from the Poles, primarily blocks, and that their primary problem was fish caught early in the season. Before May 15th, the blocks were poor quality.

This is because the fish have spawned during the winter and did not recover their weight. Their proximal composition is poor. They have low protein, high moisture, and relatively low fat. I think we have provided some evidence to show how that proximal composition changes over time.

Finally, let me say two more quick comments. I am very concerned about the policy uncertainty that's characterized the whiting industry. I think we have heard it over and over again today.

One of the problems is that this policy process has gone on for 3 or 4 years. A lot of investments have been made at the regional level in that policy process. Investments in terms of controlling product quality and in utilizing many of the product forms was made during that time. It had to be made as part of this policy process.

In fact, we looked at almost \$20 million of a direct investment in fishing boats and processing plants, utilizing existing capacity, but

putting in production equipment to produce value-added products and to control product quality.

This was done, and it was done under what I think very fair rules. Now the problem is that Commerce has overturned this. It is very important that Commerce, if it has its own policies, that it let this be known early to the policy process, to the people in this region, so they can respond to that, and make rational investment decisions.

One of the concerns that I have had here in listening about the economic analysis that was done by the NMFS economists, the regional NMFS economists are very competent. In fact, we worked with them as part of their analysis and supported them in trying to do this.

One of the problems, though, was trying to do the analysis of such a complex fishery in such a short period of time. One of the problems is data is missing. You cannot do this kind of analysis in a 2- or 3-month period of time.

Some kind of decision needs to be made if you are going to make serious allocation decisions or other long-run management decisions, to have a truly comprehensive economic analysis. It brings together the biological issues, efficiency issues, and social economic benefits.

The Magnuson Act does not allow—if you read the act—does not allow fisheries to be managed solely on economic efficiency criteria. You are supposed to bring in social economic benefits. What we need is analysis that shows the tradeoffs between solely efficiency and jobs, income, to different sectors of the economy. I think this is what the act says.

Thank you for this opportunity.

[Mr. Sylvia's statement, with attachment, may be found in the appendix.]

Chairman WYDEN. Gentlemen, that was very helpful and well said.

Mr. Kopetski.

Mr. KOPETSKI. Yes, Mr. Chairman.

Neal, thank you very much for your testimony. I really appreciate this. This is very concise and to the point. I appreciate the chart.

Gilbert, did you say you were an economist?

Mr. SYLVIA. Yes; I don't know if I should say this here. Yes; I am an economist.

Mr. KOPETSKI. I could understand what you are saying, which is normally not the case when I have to deal with economists. You make a lot of sense.

I don't think there's anybody in this room, though, that think that the decision was reversed back in Washington, DC by a couple of your economic economists-type colleagues. I hope you don't believe that because you seem like a really smart fellow to me.

If you are the quality of economists we have on the west coast—and I am sure you are—that folks back in Washington, they just look at numbers. They're not looking at the broader perspective and impacts on this. So, it leads them to a recommendation. Believe me, they did not reverse this decision. None of us think that.

But I really appreciate your testimony. I hope our staff and myself can work with both of you on this issue.

Mr. Chairman, I know you have to be in Portland in 3 hours without breaking the speed limit. I really want to thank you for coming over to the coast.

Chairman WYDEN. Thank you.

Mr. KOPETSKI. I hope you will come back again. We will have a little more time. Maybe we will get you out on those fishing boats for a couple of days, get some sunshine and some work.

Chairman WYDEN. I want to thank my friend, Mike Kopetski, for getting the subcommittee here. I can tell you the Wyden family always spends its vacation on the Oregon coast. But in all the years that we have done this, we have never learned as much about whitening as we have learned today.

[Laughter.]

Chairman WYDEN. Through the good work that Mike Kopetski has done, and as I say, Congresswoman Furse, who tried to educate our delegation about this as well, we have learned an awful lot today, I think, and in recent days, not just about this issue of whitening specifically, but what it is going to take to make sensible decisions in this area in the days ahead.

I think that your analysis is something that should have been done years ago—this question of really looking, for example, at Alaska and trying to do an analysis that compares the regions.

Mr. Sylvia, Mike Kopetski says you talk economics like it resembles the English language. We don't get an awful lot of that sort of thing in Washington, DC. Of course, you helped us to look at this in the longer view.

I hope that we can be back here in the not-too-distant future and really celebrating a very different way the Federal Government makes decisions in this area that factors in the kinds of things you all talked about, that Barry Fisher talked about in terms of the discard rate, and the extraordinary efforts that are being made by Mike's constituents.

This has been a very, very helpful hearing. We are going to do everything we can to change the way business is done at the Commerce Department on this and other issues.

Unless anyone has anything they would like to add further, we will adjourn at this time. The subcommittee is adjourned.

[Whereupon, at 1:00 p.m., the subcommittee was adjourned, subject to the call of the Chair.]

APPENDIX

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Congress of the United States
House of Representatives

OPENING STATEMENT
REPRESENTATIVE RON WYDEN
NEWPORT, OREGON, JUNE 4, 1993

ENERGY AND COMMERCE COMMITTEE
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HEALTH AND THE ENVIRONMENT
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SMALL BUSINESS COMMITTEE
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SUBCOMMITTEE
CO-CHAIRMAN
FORESTRY 2000 TASK FORCE

In recent months, a controversy has been raging throughout the Northwest, over the annual whiting allocation decision made last April by the Department of Commerce. The Small Business Subcommittee on Regulation, Business Opportunities and Technology meets today in Newport at the request of my good friend, Congressman Mike Kopetski, to learn first hand the economic impact of this decision on this community, on Oregon, and on the fishing industry as a whole.

Back in Washington, D.C., the effect that federal regulations and decisions have on business and communities are all too frequently obscured in a haze of statistics and official justifications. Today, we have asked our witnesses to explain in detail the official whiting allocation decision, to examine all the consequences of this decision, and to help Congress in determining whether the process has worked or how it should be improved.

There are a number of critical issues the subcommittee has asked today's witnesses to address.

First, and most importantly to this subcommittee, if the fishing fleets and processing businesses in Newport and other coastal communities suffer or fail as a result of the Department of Commerce's whiting allocation decision, it will be a disaster for Oregon.

It is important to recognize that, as the federal government has a significant investment in the economic success of Oregon's coastal businesses and communities, the economic consequences of this decision reach beyond the coastal region. A tide of business failures in the region's shore-based fishing and fish processing industry could wash away many other businesses backed by federally supported loans. For example, there are over 41 Small Business Administration Loans directly related to the fishing industry in Coastal Oregon which are now at serious risk because of the economic impact of the whiting allocation. In Clatsop, Tillamook and Lincoln counties alone, there are an additional 80 SBA loans supporting a variety of secondary and support businesses -- hardware shops, boat repair yards, restaurants and other small enterprises that directly and indirectly owe their survival to the on-shore fishing industry. These loans, totaling tens of millions of dollars, are now also at risk.

Second, we will look closely at why the Department of Commerce seemingly ignored its own decision making process for the whiting fishery by rejecting the Pacific Fishery Management Council recommendation. We will explore why the process for determining the equitable allocation of whiting between shore-based vessels, factory trawlers, mother-ships, and shore based processors was tossed over the side without explanation. The allocation decision has resulted in accusations of political favoritism, environmental insensitivity, and distrust of government and its ability to manage this critical resource.

Third, this decision comes with a high cost for the people of Newport and other communities in the region. The small fishing fleets and on-shore processors that are suffering as a result of this decision are, in many instances, the economic back-bone of their local communities. When these businesses suffer, when shore-based jobs are eliminated, when communities lose the heart of their economic base, there had better be a pretty good reason. However, no one, especially the Department of Commerce, has yet put forward a good reason.

We are here to listen and learn, and ensure that the process that the Department of Commerce uses to determine the future of this fishery fully addresses the important needs of this region's coastal communities.

I want to thank my good friend Mike Kopetski for inviting the subcommittee here today. I want to thank all of the individuals who have agreed to testify this morning and we look forward to their insights and advice. Finally, I must caution all our witnesses that time this morning is extremely tight. The subcommittee will place all written comments in the record in their entirety, but oral presentations must be limited to five minutes or we will not have the time we need to ask questions and engage in a dialogue with the panels about their testimony.

Opening Statement of the Honorable Mike Kopetski
Before the House Committee on Small Business
Subcommittee on Regulation, Business Opportunities and Technology
Newport, Oregon
June 4, 1993

Mr. Chairman, thank you for taking the time and effort to hold this hearing here in Newport today. As you can see, this is an issue of great importance and interest to many people on the Oregon Coast.

Today we will be hearing from many of the key players in the development of the on-shore whiting fishery in Oregon. I am especially pleased to see that Barry Fisher, President of the Midwater Trawlers Association, will be testifying today. Barry, arguably the grandfather of the whiting fishery in Oregon, has spent many hours with me and my staff, getting this formerly land-locked legislator up to speed on the issues affecting Oregon's coastal fishermen. I am also grateful that other members of the coastal fishing community are able to attend.

Similarly, I am happy to see The State of Oregon and fisheries associations and commissions well represented at this hearing. Over the years, our State government has been involved in an intensive effort to develop the shore-side processing industry, investing both money and time to develop better ways of more efficiently utilizing the whiting resource.

I would also like to thank the representatives of the off-shore processing industry for being here today. It may come as a surprise to some that I am not against factory trawlers. I simply believe the Council process was fair, given the history of the factory trawler fleet in the whiting fishery, and that this sector should contribute to the well being of the fishery in proportion to the benefits they receive. As you may know, I recently introduced legislation, H.R. 2274, the Factory Trawler Equitable Tax Act, to impose an excise tax on the offshore processing of Pacific whiting.

This legislation is straightforward. The amount of the tax per metric ton shall be ten percent of the ex-vessel value of processed whiting, approximately \$7.70 to \$8.80 per metric ton in today's market. Importantly, the bill directs that revenues collected from the tax be dedicated to Pacific whiting habitat restoration, restoration and rebuilding of fisheries and fishing stock, and by-catch gear selectivity and reduction research in Oregon, Washington and California.

The Factory Trawler Equitable Tax Act attempts to make up for the competitive advantage the factory trawlers enjoy by not significantly contributing to State and local taxes in the Pacific Northwest and provides the revenues we need to research how to

rebuild our fisheries. These revenues will be dedicated to important management issues such as the effect of olympic and "pulse" type fisheries have on the Pacific whiting resource, as well as issues of by-catch, including techniques to reduce tonnage and increase utilization.

Finally, I would like to thank the Department of Commerce for sending a representative here today. Despite the events of the last several months, I remain confident that this Administration strongly desires to do right by the people of Oregon. It is my goal today to help the Administration begin to achieve that goal.

Mr. Chairman, again, thank you for holding this hearing. In the interest of time, I would like my longer statement inserted into the record.

STAN BUNN
YAMHILL, TILLAMOOK, POLK, LINCOLN & LANE COUNTIES
DISTRICT 2

REPLY TO ADDRESS INDICATED.

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STATE SENATE
SALEM, OREGON
97310

June 2, 1993

Mr. Chair & Members of the Committee:

My name is Stan Bunn, State Senator from Oregon Senate District 2. My constituency includes the entire central coast of Oregon from Neskowin in the north, and beyond Yachats in the south. I appreciate the opportunity to offer testimony on such an important issue.

The effects of the Clinton Administration decision on the Pacific Whiting allocation is hard felt in the communities of the Central Oregon Coast. I feel that the administration's lopsided allocation to off-shore processors was poor decision making and a poor process. Both the Oregon Coastal Zone Management Association and the Pacific Fishery Management Council went through a long careful process to provide the Department of Commerce the information they needed to make a well-informed decision. The entire public input and information gathering process took over one year to complete. The decision to move more Pacific Whiting processing onshore was based on sound scientific and economic information.

Not only did the Department of Commerce disregard the Pacific Fisheries Management Council recommendation, but it also reversed a similar ruling by the National Oceanic and Atmospheric Administration (NOAA). The Commerce Department has undermined the process set up to make these types of decisions. The Magnuson Fishery Management Conservation Act (FCMA) set up a local decision making process, that truly empowers the local regions affected by the decision to have direct input into decision making. Many of my constituents spent much time and energy to be a part of this process. The department's decision also calls into question the validity and the role of open and public participation in a process intended to enable regional authorities to manage regional resources. It is my belief that both the letter and intent of the Magnuson Act were violated.

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Not only was this a poor process but the effect of this decision to Oregon coastal communities is enormous. It is expected that most of the quota will be taken by the offshore factory fleet. The total onshore industry is expected to take about 31,000 to 35,000 metric tons and Oregon is expected to harvest and process about 25,000 mt. The Oregon industry had expected to harvest and process about 80,000 mt. The difference to Oregon is a loss of about \$33 million in personal income or the loss of about 1,650 jobs. (Job equivalents at \$20,000 annual income.) The existing plants on the Oregon Coast for Pacific Whiting will only be operating at about 30% of their capacity.

Mr. Chair, I can tell you as can my colleagues representing the Oregon Coast that this is a disastrous decision, and it has a direct impact on our communities. If you take this decision and add to it the crisis in our timber industry, and the possible listing of the Salmon on the Endangered Species List, the result is that the Oregon Coast is in tough economic times. We have been disillusioned by some actions of the federal government for many years, and needless to say, many of us are very frustrated. I would appeal to this sub-committee to take strong action possible to help reverse this unreasonable decision.

Thank you again for providing a public forum to air these concerns.



HEDY L. RIJKEN
State Representative • District 4
 Lane, Lincoln, Polk, Tillamook and Yamhill Counties

Testimony of Representative Hedy Rijken
 before the
 Subcommittee on Regulation, Business Opportunities and Technology

June 4, 1993

Good morning Chair Wyden and committee members:

Thank you very much for the opportunity to testify before you this morning. My name is Hedy Rijken and I represent Oregon House district 4, which encompasses Lincoln County and parts of Tillamook and Lane Counties and includes the city we are meeting in this morning. As a coastal district, district 4 has felt first-hand the effects of the recent U.S. Department of Commerce decision allocating this season's whiting harvest.

Approximately half of the entire Oregon trawler fleet that fishes for Pacific whiting is based right here in Newport. According to agriculture and resource economist Hans Radtke, this Newport fleet has been "instrumental in the pioneering and development of the whiting fishery." That pioneering work included development activities that stretched back to the late 1970s and early 1980s. It included contacts with Russian, Polish and other foreign partners. It included about \$10 million worth of investment in fishing vessels and another \$15 million in equipment for processing plants. The whiting industry in Newport even transported an entire fish meal processing plant down from Alaska in order to better use both the whiting resource and to turn what were once leftovers into added-value products. Four whiting processing plants are now located here which, together with the local trawler fleet, employ about 1,700 workers and bring more than \$35 million into the local economy during a normal season.

But this is not a normal season. When the Commerce Department decided — contrary to the recommendations of the Pacific Fishery Management Council and 16 hours after the whiting season was scheduled to open in April — to allocate the bulk of the whiting harvest to factory trawler ships based in Puget Sound, it did some serious damage to this pioneering industry. Rather than the \$35 million in expected receipts the Newport area will be lucky to see \$15 million this year. Rather than 1,700 jobs in harvesting and processing, we could be facing fewer than half that amount. The new processing capability added this year that would have allowed local industry to take advantage of the fruits of their labor will go to waste because the bulk of the whiting harvest will go to a fleet and an industry that has had no hand in the painstaking development effort that brought the whiting fishery to economic viability.

Worse yet, the decrease in the expected harvest in whiting will mean an increase in pressure on other fisheries in the area, such as crab and shrimp, which can ill afford the added competition. That may drive off the smaller boats headquartered in the area that have depended on these fisheries to make their own livings.

The worst part about this decision was not that most of the harvest went to the factory fleet, or that local fishing families will see less money in their pocketbooks this season. The worst part is the feeling of betrayal local folks feel. They went before the Pacific Fishery Management Council last year and presented their case. They heard the testimony of the biologists and the ecologists, who told them how much fishing pressure the resource could bear. They listened to economists, who described how important the whiting harvest is to a fishing industry that puts almost 90 percent of the \$80 to \$100 million per year the fishing industry generates into the hands of their friends and neighbors who aren't employed directly in fishing. And after all of that, they heard the recommendation of the PFMC, which decided that the on-shore whiting industry deserved a chance to grow and prosper.

But the Commerce Department didn't think so. Without consulting the PFMC it overturned its recommendation and opened the fishery to a short, intense and high-pressure fishing season that gave quick profits for a minimal investment to the large factory fleet. It ignored the effects on local communities and it ignored the intent of the Magnuson Act, which specifies that local agencies in touch with local people and local fishing conditions should make the allocation decisions. We need to hear from the Department how such a thing could happen and we need to be sure that it doesn't happen again.

I'll leave it to the folks in the industry to tell you their stories and fill you in on some of the details the Department didn't take the time to find out about. I'd like to submit for your consideration two letters I and other Oregon coastal legislators submitted to President Clinton, Secretary Brown and members of the Oregon congressional delegation and to the members of the House Fisheries Management Subcommittee. One letter asks Congress to investigate the Commerce department decision and to make findings that will ensure a better seasonal allocation process. The other letter asks for specific amendments to the Magnuson Fisheries Conservation and Management Act that would limit the discretion of the Secretary of Commerce to make these sorts of arbitrary decisions in the future. I urge you to give both of these proposals due consideration and I urge you to listen to those who have suffered as a result of this decision.

Thank you once again for holding this hearing and allowing me the chance to convey the concerns of my friends and neighbors.

SEN. BILL BRADBURY
 SEN. STAN BURN
 SEN. JOAN DUKES



REP. TONY FEDERICI
 REP. TIM JOSI
 REP. HEDY RIJKEN
 REP. VERAL TARNO
 REP. JIM WHITTY
 REP. CHUCK NORRIS*

OREGON LEGISLATIVE ASSEMBLY COASTAL CAUCUS

REPRESENTATIVE TIN JOSI, CHAIR

*AFFILIATED MEMBER

CLATSOP, TILLAMOOK, LINCOLN, LAKE, DOUGLAS, COOS AND CURRY COUNTIES

President Bill Clinton
 The White House
 1600 Pennsylvania Avenue
 Washington, D.C. 20500

Dear Mr. President:

The members here undersigned of the Oregon Coastal Caucus, a bipartisan body with members from both chambers of the Oregon Legislative Assembly, would like to convey their deep distress at the arbitrary and capricious nature of the recent U.S. Department of Commerce decision to adopt a rule governing the 1993 Pacific whiting fishery that disregards (1) the recommendation of the Pacific Fishery Management Council (PFMC) and (2) a rule concerning whiting allocation recently proposed by the National Oceanic and Atmospheric Administration (NOAA).

With this action, the Department of Commerce has undermined the PFMC's process and its proper rule-making authority under the Magnuson Fishery Management Conservation Act (FCMA) and under the terms of the Fishery Management Plan for groundfish that the PFMC adopted and the Department approved. With this action the Department has also called into question the validity and the role of open and public participation in a process that was intended to enable regional authorities to manage regional resources. The Department has allowed politics to subvert the legitimate needs of the many coastal fishermen that have depended on the whiting resource for more than a decade, the needs of the many onshore coastal processors which have made major investment decisions on the basis of the PFMC's long-term direction on whiting allocation, and the needs of coastal communities that depend on these processors and fishermen.

We strongly urge that these actions be taken to clarify the nature of the Department's decision and to restore the proper historic balance in the Pacific whiting allocation:

- The Department should immediately reconsider its April 15 decision to promulgate its whiting allocation rule. The Department should again review the PFMC recommendation, the proposed NOAA rule and its own assumptions about the harvest, processing and allocation information available to it when it took action April 15.
- Oregon's Congressional delegation should support the convening of a field hearing in Oregon by the House Merchant Marine and Fisheries Committee's Subcommittee on Fishery Management to review the process used to make fishery management decisions for groundfish, including whiting, the rationale for the Department's decision to overturn PFMC's recommendation and NOAA's proposed rule. The subcommittee should also evaluate the allocation process and investigate the economic dislocations the Department's decision has produced.

Reply to Sean Brennan, Coastal Caucus staff aide, State Capitol Room S-205, Salem, OR 97310 Phone: (503) 378-8027

- Oregon's Congressional delegation should support a request to the General Accounting Office (GAO) for a review of the groundfish management decision process under the FCMA and FMP. This review should include findings regarding the process now employed and approaches to preventing arbitrary and capricious decision making in the future, including potential amendments to the FCMA that would ensure adherence to an acceptable process.
- Members of Oregon's fishing industry and representatives from state and local governments should have an opportunity to meet with Secretary Brown and with members of the PFMC to discuss the rationale for the April 15 whiting allocation decision, to present the concerns industry members and state and local government representatives have with the process and the conclusions that led to the Department's decision. The meeting should also address the implications of the decision for credible fishery management and work toward the establishment of a new working relationship that fairly meets the goals and guidelines of the FCMA and the FMP.

As representatives for the coastal communities who will suffer most from this decision, we ask that the actions outlined in this letter be given prompt and favorable consideration.

Respectfully,

Rep. Tim Josi, Chair
Coastal Caucus

Sen. Bill Bradbury
Senate District 24

Sen. Stan Bunn
Senate District 2

Sen. Joan Dukes
Senate District 1

Rep. Tony Federici
House District 1

Rep. Hedy Rijken
House District 4

Rep. Veral Tarno
House District 48

Rep. Jim Whitty
House District 47

Rep. Chuck Norris
House District 57
Affiliated Member

SEN. BILL BRADBURY
SEN. STAN BUNN
SEN. JOAN DUKES



REP. TONY FEDERICI
REP. TIM JOSI
REP. HEDY RIJKEN
REP. VERAL TARND
REP. JIM WHITTY
REP. CHUCK NORRIS*

OREGON LEGISLATIVE ASSEMBLY COASTAL CAUCUS

REPRESENTATIVE TIM JOSI, CHAIR

*AFFILIATED MEMBER

CLATSOP, TILLAMOOK, LINCOLN, LAKE, DOUGLAS, COOS AND CURRY COUNTIES

The Honorable Thomas J. Manton, Chair
House Subcommittee on Fisheries
203 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Manton:

The members here undersigned of the Oregon Coastal Caucus, a bipartisan body with members from both chambers of the Oregon Legislative Assembly, wish to convey their support for the reauthorization, with amendments, of the Magnuson Fisheries Conservation and Management Act. Over the course of its 17-year history the Act has worked admirably to balance often competing interests within the Nation's fishing industry and to balance the interests of the fishing industry against the need for the protection and conservation of the Nation's fishery resources. The Act is a vital piece of legislation that has set a worldwide standard for the management and conservation of fishery resources, and it deserves the support of the House Subcommittee on Fisheries Management and of the Congress.

Despite its admirable characteristics, however, the Act has some problems which we hope the Committee will see fit to address during its hearings. When enacted, the measure sought to give the principle responsibility for determining the use, conservation and management of the Nation's fishery resources to eight regional councils with the understanding that these councils could best weigh the biological, ecological, economic and social consequences of their management decisions because of their proximity to the sources of needed information. In recent years, however, decision-makers at the agency and department level, removed from the consequences of their actions, have had a disproportionate hand in fishery allocation decisions, overturning the recommendations of the Pacific Fishery Management Council — one of the two such councils that determine Oregon's share of the ocean fishery — and substituting their own judgment for the council's carefully reasoned and scientifically credible findings.

This occurred most recently with the Council's recommendations for the harvest of Pacific whiting and the allocation of the ocean harvest of salmon. In both instances, the Department of Commerce, with little justification and in a wholly capricious manner, rewrote the PFMC's careful determinations to suit its own understanding of the proper allocation policy for coastal fisheries. The whiting allocation decision, rendered some 16 hours after the whiting fishery had officially opened, threw the Oregon coast region into chaos, with small harvesters and shore-based processors forced to compete one-on-one, on a first-come, first-served basis with large, efficient factory trawlers capable of scooping up large quantities of marginal-quality whiting. During the early stages of the harvest, at a time when the Commerce department decreed that both fleets would have theoretically equal access to the resource, the overmatched shore-based harvesters watched as factory trawlers caught more than 4,000 metric tons of whiting per day to their own 36 tons per day.

Even leaving aside the economic impact that resulted from ignoring the PFMC's determination that the shore-based whiting processors should be favored with the bulk of the available harvest so that they could build their industries, the disproportionate harvest that followed the Commerce Department decision has had a negative impact on the resource itself and on other fisheries. An untimely opening for the season provoked a high discard rate among factory trawlers seeking better-quality whiting; furthermore, the very nature of the factory trawler's operation ensures a large — and generally unutilized — by-catch. It was these and similar consequences of poor and uninformed decision-making that Congress intended to avoid with its enactment of the Magnuson Act, and it is this sort of decision-making the Coastal Caucus now calls upon the Fisheries Management Subcommittee to prevent with appropriate amendments to the Act.

We have enclosed a proposal containing language that we, along with the chairs of the eight regional fishery management councils, believe will temper the wide-ranging and oft-abused discretion of the Secretary of Commerce on fishery allocation decisions and return the primary responsibility for fisheries management policy to the regional councils, as envisioned in the Act. We hope you will carefully consider these amendments and incorporate them into the Act when you deliberate on its reauthorization this summer.

Respectfully,

Rep. Tim Josi, Chair
Coastal Caucus

Sen. Bill Bradbury
Senate District 24

Sen. Stan Bunn
Senate District 2

Sen. Joan Dukes
Senate District 1

Rep. Tony Federici
House District 1

Rep. Hedy Rijken
House District 4

Rep. Veral Tarno
House District 48

Rep. Jim Whitty
House District 47

Rep. Chuck Norris
House District 57
Affiliated Member

Enclosure: proposed amendments to Magnuson Act

PROPOSED AMENDMENTS TO THE
MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT
FOR CONSIDERATION BY THE HOUSE SUBCOMMITTEE ON
FISHERIES MANAGEMENT

- (1) Amend 16 U.S.C. § 1802 (1993) to incorporate a new definition as follows:

“(23) The term “regulatory amendment” means any amendment to a regulation submitted by a Council not covered by Section 304(a)”

Renumbering as appropriate subsequent definitions in this section.

- (2) Add to 16 U.S.C. § 1854 (1993) the following new subsection (d), relettering subsections (d) through (g) as subsections (e) through (h):

“(d) ACTION ON REGULATORY AMENDMENTS

- (1) After the secretary receives a regulatory amendment which was prepared by a council, the Secretary shall —
 - (A) immediately commence a review of the regulatory amendment to determine whether it is consistent with the fishery management plan, the national standards, the other provisions of this Act, and other applicable law; and
 - (B) immediately publish in the Federal Register the Council’s proposed regulations for a 30-day public comment period.
- (2) (A) The Secretary shall take action under this section on any regulatory amendment which the Council characterizes as being a final regulatory amendment.
 - (B) For purposes of this section, “receipt date” means the 5th day after the day on which a Council transmits to the Secretary a regulatory amendment it characterizes as a final regulatory amendment.
- (3) If the Secretary does not notify the Council in writing of disapproval or partial disapproval by the 60th day after the receipt date, a regulatory amendment will take effect and be implemented.
- (4) If, after review, the Secretary determines the regulatory amendment is not consistent with the criteria set forth in paragraph (1) (A), the Secretary shall notify the Council in writing of the disapproval or partial disapproval of the regulatory amendment. Such notice shall specify —
 - (A) the applicable law or provision of the fishery management plan with which the regulatory amendment is inconsistent;
 - (B) the nature of such inconsistencies; and
 - (C) recommendations concerning the actions that could be taken by the Council to conform such regulatory amendment to the requirements of applicable law and the fishery management plan. Such recommendations shall be accompanied by the rationale and the appropriate analysis of impacts.
- (5) If the Secretary disapproves or partially disapproves a regulatory amendment, the Council may submit a revised regulatory amendment to the Secretary.
- (6) After the Secretary receives a revised regulatory amendment, the Secretary shall immediately —
 - (A) commence a review of the regulatory amendment to determine if it complies with the criteria set forth in paragraph (1) (A); and
 - (B) publish the revised regulation in the Federal Register for a 15-day public comment period.

- (7) Before the close of the 30th day after the revised receipt date, the Secretary, after taking into account any public comments, shall complete the review and determine whether the regulatory amendment complies with the criteria set forth in paragraph (1) (A). If the Secretary determines that the revised regulatory amendment is not in compliance with such criteria, the Secretary shall immediately notify the Council of the disapproval. After notifying a council of disapproval, the Secretary shall promptly provide to the Council a written statement of the reasons on which the disapproval was based and advise the Council that it may submit a further revised regulatory amendment for review and determination under this paragraph. If the Secretary does not notify the Council in writing of the disapproval or partial disapproval by the 30th day after the receipt date, a regulatory amendment will take effect and be implemented."

- (3) Amend 16 U.S.C. § 1854(a)(2) to read as follows:

"(a) (2) In undertaking the review required under paragraph (1) (B), the Secretary shall —

- (A) take into account only
- (i) the data, views and comments received from interested persons that have been made a part of the official record submitted by a council with the fishery management plan or an amendment to the plan under paragraph (1) (A), or a regulatory amendment to a plan under subsection (d); and
 - (ii) any written data, views and comments received pursuant to paragraph (1) (B), which must be on the issue of consistency with the national standards contained in Section 301, other provisions of this Act and other applicable law.
- (B) consult with the Secretary of State with respect to foreign fishing; and
- (C) consult with the Secretary of the department in which the Coast Guard is operating with respect to enforcement at sea and to fishery access adjustments referred to in section 1853(a)(6) of this title."

As used herein, matter in boldface type in a section to be amended is new; new sections are in boldfaced type and enclosed by quote marks.

Senate Joint Memorial 21

Sponsored by Senator BRADBURY; Senators S. BUNN, DUKES, YIH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Memorializes President and Congress to investigate decision of Department of Commerce to award majority of Pacific whiting catch to Puget Sound factory trawlers against recommendations of its subordinate agencies; to review department's procedures and policies for fisheries management; and to convene hearing in Oregon about impact of department's decision on coastal communities and make recommendations for cooperation between industry, local and regional management agencies and department.

JOINT MEMORIAL

1

2 To the President of the United States, the Senate and the House of Representatives of the United
3 States of America, in Congress assembled, and the Secretary of the Department of Commerce:

4 We, your memorialists, the Sixty-seventh Legislative Assembly of the State of Oregon, in legis-
5 lative session assembled, respectfully represent as follows:

6 Whereas communities along the Oregon coast have witnessed steady declines in many of the
7 fisheries that have historically supported their economies and provided livelihoods for their families;
8 and

9 Whereas many of those communities have endeavored to develop other fishery resources and
10 diversified industries based on those resources that would meet the needs of both the communities
11 themselves and of the marketplace; and

12 Whereas for more than a decade many Oregon coastal communities have relied on a growing
13 harvest of Pacific whiting to sustain themselves and to serve an expanding west coast and Asian
14 market for surimi and other whiting products; and

15 Whereas members of the whiting industry have formulated plans and made investments of time,
16 expertise, equipment and capital to develop this fishery with the expectation that their efforts would
17 be rewarded with the fruits of the stewardship they have exercised; and

18 Whereas these industry members have in good faith abided by the regulations, mandates and
19 procedures set forth in rule and statute for the sustainable management of the fishery, obeying the
20 directives of the Pacific Fishery Management Council and cooperating with other agencies with
21 regulatory jurisdiction over the resource, including the National Oceanic and Atmospheric Admin-
22 istration and the National Marine Fisheries Service; and

23 Whereas with its decision overturning the recommendations of these agencies and thereby ig-
24 noring the substantial scientific evidence and economic data that clearly favored continuing their
25 long-standing policy to award the majority share of the whiting allocation to shore-based processors
26 and their associated near-shore harvesters, the United States Department of Commerce has de-
27 stroyed the credibility of the very regional decision-making processes it has historically fostered and
28 encouraged and has contributed to substantial job and income losses in coastal communities de-
29 pendent on this resource; and

30 Whereas the department has not adequately explained the reasoning behind its decision of April

NOTE: Matter in boldfaced type in an amended section is new; matter (*italic and bracketed*) is existing law to be omitted.
New sections are in boldfaced type.

SJM 21

1 15 to award the majority of the whiting catch to large, Puget Sound-based factory trawlers, thereby
2 prompting speculation that the department's motives were arbitrary and capricious and not con-
3 sistent with the economic, biological and other data developed by its own subordinate agencies; now,
4 therefore,

5 **Be It Resolved by the Legislative Assembly of the State of Oregon:**

6 That the Legislative Assembly strongly urges the President and the Congress of the United
7 States to take the following actions:

8 (1) The President and Congress of the United States should demand that the Department of
9 Commerce adequately explain the basis for its decision, reconsidering as necessary the data supplied
10 by its subordinate agencies and setting forth the points of disagreement that led to its decision not
11 to accept the recommendations of those agencies.

12 (2) The Congress of the United States, acting through the authority of the General Accounting
13 Office and such other investigatory agencies as it deems necessary and proper, should immediately
14 conduct an inquiry into the procedures, rules, internal guidelines and policies of the Department of
15 Commerce as they apply to its fisheries management decisions and to its interpretation of the
16 Magnuson Fishery Management Conservation Act, with particular emphasis on the role of scientific
17 and economic evidence developed in the records of subordinate agencies and the role of the
18 Fisheries Management Plan the department commissioned and approved.

19 (3) The Congress of the United States should convene a hearing in the State of Oregon, with the
20 presence and participation of the Secretary of Commerce, by the House Merchant Marine and
21 Fisheries Committee's Subcommittee on Fishery Management for the purpose of taking testimony
22 as to the effect the department's decision has had on the whiting industry and on coastal commu-
23 nities and families dependent on that industry. Following such a hearing, the subcommittee should
24 issue findings respecting the evidence it hears and make recommendations concerning the estab-
25 lishment of a proper working relationship between the industry, the local and regional management
26 agencies, and the department that will ensure that future management decisions will comply with
27 the spirit and intent of the Fishery Management Plan and the Magnuson Act.

28 Copies of this memorial shall be sent to the President, to each member of the United States
29 Senate and House of Representatives, and the Secretary of Commerce.
30

Testimony to the U.S. House of Representatives
Small Business Subcommittee on Regulation, Business Opportunities &
Technology

Submitted by Bruce Andrews, Director
Oregon Department of Agriculture

June 4, 1993

Thank you for the opportunity to provide testimony on the subject of the U.S. Department of Commerce's decision allocating Pacific Whiting catch levels for all fishing vessels.

This topic is very important to the Oregon Department of Agriculture and the state of Oregon. In 1989 the Department headed a two-year effort, in cooperation with other state agencies, shore-based fisheries, local community interests, and Oregon State University, to research the viability of a shore-based whiting industry. This Department and the state have invested thousands of dollars in research on whiting availability, value-added processing and product identification, high utilization and low waste of the fish product,

processing facility funding, job creation and community development, and marketing and promotion efforts for this new industry.

We initially focused on a viable primary processing, shore-based industry in these efforts; however, in addition to the primary processors, several secondary-processing businesses have also emerged to utilize both the whiting and whiting by-product from the initial shore-based processing plants. These joint efforts have pioneered many unique products, processing methods, and marketing programs.

I believe these endeavors have been a real success story for Oregon, enabling us to manage a renewable marine resource under a well-coordinated regional program, develop new technologies and investments to create jobs and local community development, and protect our natural resources in the process.

This project took on a greater importance for coastal economic development due to the diminished harvest of the Salmon and the prohibition of logging on many coastal watersheds.

The recent decision of the U.S. Department of Commerce, reversing a two-year trend of shore-side allocations of whiting, places all our efforts in jeopardy. Indeed, it is very alarming to those of us in Oregon

who have invested a great deal of time and many resources in this process.

Even more blatant is the overturning of the Pacific Fishery Management Council decision-making process—a body not known for cavalier responses.

Even though the allocation decision has been modified, the estimated losses to the shore-based processing industries and other coastal community businesses may still approach \$25 million, according to independent estimates. This includes \$4.5 million to fishery harvesters, \$11 million to processors, \$2 million to fish meal plants, and the residual loss to the local community and secondary processors of some \$6.5 million.

The losses are not limited to the local economy, either. Sea-based fisheries and processors do not pay landing fees or taxes. The state of Oregon is losing monies invested in this industry to off-shore allocations. Others presenting testimony will document these losses in greater detail.

Many coastal communities and firms invested capital in equipment and processing capacity based on a projected availability of Pacific Whiting. I am greatly concerned about the effect of the recent decisions

on these local economies. Shore-based fisheries will suffer, and in turn, the local businesses from which they purchase supplies, nets, gear and other equipment will be hurt. Local banks will feel the effects of business' inability to repay capital and operating loans. As previously mentioned, there are also the secondary-processing firms that had projected a supply of whiting by-product into their business plans and are now faced with short supply and uncertainty of future allocations.

All these business will feel the effects of reduced catches and limited supply of whiting for processing.

New product development will be impaired. Many exciting products and processing methods were being pioneered. Surimi, fillets, and other food products were in development. Liquid fish fertilizer, fish compost-based potting soils, soil remediation products for toxic waste site clean-up, and other efforts were being developed by Oregon businesses. The economic contribution of the entire whiting industry and the environmental contribution of utilizing the entire components of the fish, demonstrated a win-win situation for Oregon communities and the natural resources of the area. Without a consistent allocation based on local planning, these businesses are at the whim of policy decisions made in Washington. Banks don't lend money on whim, nor can businesses build it into their economic plans.

Perhaps most disturbing to me is the fact that the U.S. Department of Commerce is ignoring recommendations on whiting allocation made by the Pacific Fishery Management Council. The Fisheries Conservation and Management Act of 1976 clearly states that fishery management plans and regulatory amendments are to be developed by regional fishery management councils. The Pacific Fishery Management Council worked closely with the Regional Office of the National Marine Fisheries Service in developing whiting allocations for 1993. The Council's goals and objectives, around which the allocation recommendations were based, have been approved by the Department of Commerce. Therefore, the allocation decisions by the Department of Commerce should be subject to these goals and objectives, and they should recognize the input and interests of the regional councils.

The Oregon Department of Agriculture has presented testimony before the Pacific Fishery Management Council on several occasions, and I would like to believe that the concerns and issues we express in that forum are being heard and considered by the Department of Commerce in its allocation decisions. I believe that the Nation's renewable marine resources should be carefully managed, and while the ultimate decision on management plans rests with the Department of Commerce, input from the regions should be the base consideration for an effective management plan.

The Oregon Department of Agriculture strongly supports the objectives of the Pacific Fishery Management Council, which include: stretching the season as long as possible, extracting the maximum value from the fish, encouraging development of new technology and supporting those who are doing so, fostering economic development in coastal communities and giving priority allocation to vessels that fish for shore plants. Further, the Department supports the Council's framework allocation plan that would have established a whiting allocation based on availability—in years of abundance, the factory trawlers would get more fish, while shore-based fisheries would receive requisite amounts for their needs; in years of low yields, shoreside would receive priority.

In conclusion, let me say that I am deeply disturbed that the U.S. Department of Commerce ignored the recommendations of the Pacific Fishery Management Council. I am troubled that the Department of Commerce is giving priority of whiting allocation to mobile factory trawlers over local and regional fishing interests. I am frustrated, as are many local communities and businesses, regarding the amount of time and investment we have devoted to the development of this industry in Oregon, only to have it jeopardized by decisions which disregard these efforts.

Hundreds—maybe thousands—of jobs, millions of dollars of investment and revenue, and preservation of natural resources are at stake.

I urge the Subcommittee to carefully examine the decision process of the U.S. Department of Commerce in relation to the Fisheries Conservation and Management Act. If the Pacific Fishery Management Council is not the true forum for evaluation of whiting allocations, we need to know what the process will be, and not after the fact. The State of Oregon, local communities and businesses need to know where we stand in the process and what information we can provide that will affect the allocation decision. The assistance of your Subcommittee is greatly appreciated.

Thank you for your time and opportunity to provide testimony on this important concern.

BARBARA ROBERTS
GOVERNOR



OFFICE OF THE GOVERNOR
STATE CAPITOL
SALEM, OREGON 97310-0370
TELEPHONE: (503) 378-3111

June 4, 1993

The Honorable Ron Wyden, Chair
Small Business Subcommittee on Regulation,
Business Opportunities and Technology
U.S. House of Representatives
1111 Longworth House Office Building
WASHINGTON DC 20515

Dear Representative Wyden *Ron*

I deeply appreciate the efforts of your subcommittee in coming to Oregon to take testimony and investigate the concerns we have about the U.S. Department of Commerce decision making process on Pacific whiting allocations.

As you know, the state of Oregon and many coastal communities have invested a great amount of time and resource in the development of a shore-based Pacific whiting industry. The diminished salmon harvest and restricted logging in coastal watersheds make this project particularly vital to the economic development of many coastal communities.

These coastal communities and the state of Oregon need to know why the Pacific Fishery Management Council's recommendations on allocation are being ignored and what we can do to ensure an adequate allocation for our shore-based fisheries and processing industry.

Thank you again for taking the time on this vital issue.

Sincerely,

Barbara
Barbara Roberts
Governor

BR/AD/COR/L16

PACIFIC FISHERY MANAGEMENT COUNCIL

CHAIRMAN
Philip Anderson

2000 SW First Avenue, Suite 420
Portland, Oregon 97201
Telephone: (503) 326-6352

EXECUTIVE DIRECTOR
Lawrence D. Six

TESTIMONY OF
PACIFIC FISHERY MANAGEMENT COUNCIL
ON PACIFIC WHITING ALLOCATION

BEFORE THE
COMMITTEE ON SMALL BUSINESS
SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES
AND TECHNOLOGY
U.S. HOUSE OF REPRESENTATIVES

JUNE 4, 1993

NEWPORT, OREGON

Chairman Wyden, thank you for this opportunity to provide written testimony for this hearing of the Committee on Small Business regarding the impact of the Department of Commerce's decision allocating Pacific whiting catch levels for all fishing vessels. This written statement responds to four questions in your letter of May 20, 1993, to Mr. Larry Six. In addition to this written statement, the Council will provide oral testimony at the hearing in Newport, Oregon on June 4, 1993.

1. How did the Council reach its recommendation on whiting allocation?

Pre-1993 The Council began its discussions of whiting allocation in July 1990, when it considered management measures for 1991. At that time, the joint venture fishery was still in operation and the Council anticipated an allocation between competing joint venture interests. By September 1990, it was apparent the entire whiting harvest would be harvested and processed by American companies for the first time, and the Council announced its intention to allocate the resource between offshore and shoreside fishermen. In its newsletter after the September meeting, the Council listed how it might achieve this harvest sharing: direct allocation, delayed opening dates, trip limits and trip frequency limits, area closures and limitation on the codend size or capacity. At its November meeting, the Council made a tentative decision to limit the amount of whiting that could be processed at sea during 1991 (192,000 mt of the 228,000 mt quota). The remaining 36,000 mt would be for shoreside processing, with the provision that if the full 36,000 mt was not used, any remainder would be made available for offshore use. An analysis was prepared, which the Council reviewed in March 1991. After reviewing the analysis and public testimony, the Council approved a proposal that combined several of the alternatives considered in the analysis. The adopted measures allocated 104,000 mt to catcher-processors and 88,000 mt to vessels that catch but do not process. The remaining 36,000 mt was to be held in reserve and released as necessary with preference for vessels that delivered to shore-based processors. The NMFS approved this recommendation on August 28, 1991. The catcher-processor fishery was immediately closed because its quota had been reached.

For the 1992 whiting fishery, the Council began deliberations in September 1991, proposing a multi-year, three tier priority system. The tentative proposal would give highest priority to vessels that catch, but do not process, whiting and would limit at-sea processing as shore-based processing expanded. Catcher-processors would be allowed to catch or process whiting, but would not be allowed to do both. In November, the Council revised its recommendation, opting for a one-year allocation of the 208,800 mt harvest limit. The recommendation would initially allocate 80,000 mt of whiting to vessels that deliver to shore-based processors and place a limit of 98,800 mt on offshore processing. No vessel would be allowed to both catch and process whiting, so catcher-processors would have to choose which type of operation they would participate in. The remaining 30,000 was to be held in reserve with shoreside priority. In January 1992, NMFS disapproved the Council's recommendation. The Council expanded its analysis and, at its March meeting, recommended an allocation plan for implementation under the Commerce Department's emergency authority. The proposal, which NMFS approved and implemented April 13, placed an initial limit of 98,800 mt on at-sea processing and allocated 80,000 mt for delivery to shore-based processors. The remaining 30,000 mt was held in reserve for priority use by vessels delivering to shore. The Council also recommended that not more than 50 percent of either allocation be taken before June 1, but that portion was disapproved.

Council Action for 1993 At its April 1992 meeting, the Council began consideration of a long-term (1993 and beyond) whiting allocation plan, even though measures for the 1992 whiting fishery had not been approved and implemented. To initiate the process, the Council reviewed its previous recommendations, National Marine Fisheries Service actions and public testimony. The groundfish fishery management plan (FMP) provides for implementation of allocation decisions by regulatory amendment; however, the Council considered whether the FMP amendment process would be preferable to the regulatory amendment process. One major difference is that an FMP amendment has a mandated time schedule for Secretarial action after the documents leave the Council office. The tradeoff is that the regulatory amendment process can be shortened, but implementation can be delayed indefinitely. The plan amendment process cannot be shortened other than by waiving the 30 day "cooling off" period before the rule takes effect. The Council opted for the regulatory amendment process.

At the April 1992 meeting, the Council decided to convene an ad hoc committee to discuss whiting management prior to and after the limited entry amendment takes effect, outline the different conceptual approaches and narrow the range of alternatives. The committee had one representative from each of five industry sectors.¹⁷ The committee met July 1. The participants held widely differing viewpoints and were too polarized to enter into negotiations. Therefore, rather than work towards compromise, each participant was offered the opportunity to propose an alternative for his group. Thus, five proposals were presented to the Council at its July meeting:

1. An abundance driven "sliding scale" allocation formula, including a base allocation for vessels delivering to shore-based processors and a reserve with priority to vessels which deliver to shore-based processors. The balance of the harvest guideline would be allocated between vessels that deliver to shore-based processors and vessels that deliver to at-sea processors and catcher processors. As the harvest guideline increases the share allocated to the at-sea component would increase. [proposed by shore-based interests]
2. Allocate between catcher vessels only (i.e., catcher-processors and vessels that catch but do not process). [proposed by catcher boat interests]
3. Establish a floor for vessels that deliver to shore-based processors based on historical performance (1989-1992 average). The balance would be made available to all vessels for harvest. [proposed by catcher-processors]
4. Establish a shore-based floor, a catcher-processor floor and a catcher vessel percentage with no restriction on point of delivery. [proposed by catcher boats delivering at-sea]
5. An allocation based on processor type with specific allocations to catcher-processors, vessels that deliver to motherships, vessels delivering to shore-based processors. Before the season catcher-processors would declare whether they will be motherships or catcher-processors. [proposed by mothership-processors]

1 The fishery participants fall into four major vessel categories with considerable overlap: catcher vessels that deliver to shore-based processors, catcher vessels that deliver to at-sea processors, vessels that both catch and process and vessels that process fish delivered at sea by other vessels. In addition, the shore-based processing sector is an integral component.

At its July meeting, the Council decided to analyze the shoreside proposal (Option 1) and one of the catcher boat proposals (Option 4), but not a proposal favoring at-sea processing interests. The 1992 allocation provisions and a no allocation alternative were also adopted for analysis, although the Council made it clear that it intended to allocate the resource in order to protect the various sectors from pre-empting each other. In September, the Council received the preliminary analysis and staff reports, several hours of oral public testimony and numerous written public comments. The Council adopted two major options and several sub-options for inclusion in the final analysis. Specific tonnages and percentages for the options were proposed and the Council identified its preferred alternative. Under the preferred alternative, the Council selected a sliding scale framework which would establish an allocation to vessels delivering to shore-base processing plants and provide an opportunity for catcher-processors and vessels delivering to at-sea operations. The second alternative would have provided separate percentage allocations for vessels delivering shoreside, catcher vessels in general (i.e., with no restrictions on place of landing) and catcher-processor vessels. The sub-options provided a range of percentages to each group.

The analysis presented to the Council in November 1992, attempted to assess the change in private efficiency (i.e., the net benefit or net cost reflected in the cost-benefit analysis) and also consider any information on non-market factors. These included social considerations (such as described in Section 6 of the analysis and public testimony) and effects on the biological resources (Section 3). Council members discussed their goals and objectives for the groundfish fishery, the federal mandate as established by the Magnuson Fishery Conservation and Management Act and its national standards, and other relevant policies and statutes. The Council recognized that each individual reviewer and Council member would have to rely on his or her own individual experience and judgement because there were valid differences of opinion, contradictions between goals and objectives, and a general lack of important information. Again, several hours of public comment and hundreds of written comments were received, which were split evenly between for and against the preferred alternative. Many proposed and supported a new alternative that would have provided a greater share to the offshore sector.

The cost-benefit analysis was not available prior to the meeting, so the authors presented a lengthy and detailed summary. The analysis identified specific problems where information was lacking, such as certain operating costs and prices. Surimi is the predominant product, and prices had been in such flux, the analysis assumed all participants receive the same price. The analysis concluded the economic efficiency cost of producing surimi is about the same for onshore and offshore operations. Shoreside appeared slightly more efficient overall due to use of waste products for meal and oil. However, the analysis pointed out that meal data were very uncertain. The conclusion was that there was very little certainty that any option was much better than any other, but it was clear that some regulation is better than no regulation. Council members questioned the authors extensively with regard to the available information, the assumptions in the analysis and the conclusions, making sure they understood what the analysis said. The authors acknowledged the great deal of uncertainty and reminded the Council it would need to exercise its own judgement about several issues.

The Council's Groundfish Management Team (technical experts) advised that, although the quantitative analysis did not clearly indicate which alternative was more beneficial, several

qualitative factors should be considered. They noted that the preferred alternative would provide greater stability to the shorebased sector, even at low stock sizes, while Alternative 2 would have all sectors more equally affected by the natural fluctuations of the whiting population. If shoreside capacity was found to be less than the initial allocation, at-sea operations would needlessly face multiple short seasons rather than a single longer season. Multiple short seasons add considerable cost to operations. And the team noted the considerable uncertainty about how the license limitation program will affect the fishery in 1994 and beyond.

The majority of the Council's Groundfish Advisory Subpanel (constituent group representatives) supported the preferred alternative, noting that it would provide the longest and most stable opportunity for the traditional whiting catcher boat fleet.

The Council's Scientific and Statistical Committee did not comment on the allocation issue.

Mr. Schmitt, Director of the Northwest Region of National Marine Fisheries Service, indicated the federal government (i.e., NMFS) should not take the lead in allocation issues, but rather act as umpire. He stressed the need for a long-term solution that provides opportunity for adjustment over time. He suggested that perhaps this issue should be revisited in 1995, after markets have settled. He stressed the need to be equitable and to avoid encouraging more capitalization. He questioned the need for a reserve and suggested that a single offshore release would be better. He suggested the two hardest proposals to justify were the preferred alternative and the new alternative favoring at-sea processing interests. He advised the Council to focus on fairness and equity.

The Council considered a motion to allocate the first 50,000 mt of the whiting harvest guideline to vessels delivering to shore-based processors and the next 50,000 mt equally between vessels which catch and process and catcher vessels delivering to processors at sea. Any additional portion of the harvest guideline would have been equally divided between shoreside and at-sea sectors. There would have been no further subdivision of the additional at-sea allocation. In 1993, the 142,000 harvest guideline would have resulted in shore-based processors receiving 71,000 mt, catchers delivering at sea would be expected to harvest 31,300 mt, and catcher-processors would take 39,700 mt. The motion failed and the Council then adopted its final decision with a 9:2 vote. That recommendation would establish a multi-year, sliding scale allocation plan based on stock abundance. The first 50,000 mt of available whiting harvest would be allocated to shore-based vessels. The next 30,000 mt would be held in reserve with shore-based priority; and, the next 30,000 mt would be allocated to the at-sea processing sector. Any amounts in excess would be allocated according to the sliding scale formula: the next 10,000 mt would be allocated 90 percent shoreside, 10 percent at-sea; the next 10,000 mt would be 80 percent shoreside and 20 percent at-sea; and, the next 10,000 mt 70 percent shoreside and 30 percent at-sea, etc., until the point (210,000 mt) at which it all would go to the at-sea sector. In 1993, based on the 142,000 mt harvest guideline, shoreside vessels would have been allocated 75,300 mt, the at-sea sector 36,800 mt and the reserve would have been 30,000 mt. Thus shore-based processors would have had access to as much as 105,200 mt in 1993.

The Council believed its allocation plan to be consistent with its earlier recommendations, the goals and objectives of the fishery management plan, and the MFCMA. Specifically, the Council intended to:

1. Prevent preemption of shore-based processing activities;
2. Ensure a large portion of the harvest guideline in 1993, for initial trawl "A" limited entry permit holders;
3. Foster stability of shore-based processing sector by providing replacement revenues for other faltering fisheries;
4. Help stabilize faltering rural coastal economies by providing fishing, processing and support industry revenues to replace income declines in other industries;
5. Achieve maximum net benefit to the nation by putting economic benefits directly into coastal communities and distributing income impacts/benefits along traditional geographic paths;
6. Spread fishery over time and area, reducing potential pulse fishery impacts on whiting, salmon and rockfish stocks;
7. Provide a similar or greater opportunity for traditional vessels as in 1992;
8. Prevent effort shift to other species;
9. Address management of the entire groundfish resource rather than piecemeal;
10. Contribute to increased long-term product yield and employment opportunities by spreading harvest over a longer season; and,
11. Discourage additional capital investment in harvesting or processing facilities.

Council interaction with the Department of Commerce respecting the Department's decision to reject the Council's recommendation

The Council sent a letter to Commerce Secretary Ronald Brown (attached) expressing various concerns with the decision and the process.

2. Did the Commerce Department share with the Council the grounds for its decision, and was the Council provided with an opportunity to defend its recommendation or otherwise appeal the Department's decision?

The Commerce Department, in its letter to Chairman Anderson rejecting the Council's recommendation (attached), stated "the socioeconomic data provided by the Council and the public do not justify implementing the Council's recommendation guaranteeing permanently an annual allocation to the shoreside processing sector substantially greater than its historical usage at the expense of the competing at-sea processing sector." In the final rule, NMFS stated "the Council did not demonstrate that the extreme reallocation to the shoreside processing sector at the expense of the at-sea sector would provide sufficient social or economic net benefits to the Nation to justify the proposal." The Department's final action occurred after the Council's April meeting and on the day the whiting season began, which provided no opportunity for the Council to address the issue.

3. Does the Commerce Department's revised plan address the concerns that the Council has expressed regarding the Department's original allocation plan? If not, why not?

In its letter to Secretary Brown, the Council raised several points of concern. One of these was our projection that, during the initial fishery, the shore-based sector would harvest far less than the 12,000 mt projected by the Department in its final rule. The Department's revised plan closed the at-sea fishery so that 12,000 mt of the initial allocation would remain for shore-based utilization. Thus, one of the Council's concerns was addressed. However, the total amount of whiting available to the shoreside sector remains far below the amount recommended by the Council and less than utilized in 1992.

4. What will be the effect, in both the long and short term, of the Commerce Department's allocation plan on small fishing operations and on-shore processing operations in the northwest?

It is difficult to assess the short-term impact for several reasons. First, with prices and markets as depressed as they are this year, it is not clear how much whiting would have been harvested and processed on shore even if no at-sea processors participated in the fishery. There is still a degree of uncertainty regarding processing capacity in shoreside plants, even if prices and markets were strong. The current processing capacity is about 80,000 to 130,000 mt. About 56,000 mt were processed on shore in 1992. In addition, the allowable harvest was reduced over 30 percent. Comparing the potential 42,000 mt shoreside harvest in 1993 to the 56,000 mt harvest in 1992, there is a 25 percent reduction, which is less than the reduction in total allowable harvest. Comparing the 42,000 mt harvest to what would have been available under the Council's recommendation, there is a 44 to 60 percent reduction.

Likewise, whiting fishing opportunities for small fishing operations will be substantially reduced. This includes both vessels delivering to shore-based plants and those delivering to at-sea processors. Deliveries by shore-based vessels will be reduced from 56,000 mt in 1992 to 42,000 mt in 1993, which is a 25 percent reduction. Deliveries by catcher vessels to at-sea processing vessels may be reduced as much as 73 percent from 1992.

Since the regulation is for 1993 only, there is no long-term impact beyond 1993.

PACIFIC FISHERY MANAGEMENT COUNCIL

Metro Center, Suite 420
2000 SW First Avenue
Portland, Oregon 97201

Telephone: (503) 326-6352

EXECUTIVE DIRECTOR
Lawrence D. Six

CHAIRMAN
Philip Anderson

April 23, 1993

The Honorable Ronald H. Brown
Secretary of the Department of Commerce
Herbert C. Hoover Bldg., Room 5862
14th Street between Constitution Ave. and E. Street NW
Washington, DC 20230

Dear Mr. Secretary:

Based on your recent action with respect to Pacific whiting allocation for the 1993 season, the Pacific Council is deeply concerned about the integrity and viability of the regional fishery management council process as prescribed in the Magnuson Fishery Conservation and Management Act. The Council and its constituents spent a considerable amount of time following a well-established process to develop measures for this fishery. This was a difficult and controversial decision to make, but the process has matured over the years to the extent that the public feels that they are afforded every opportunity to be a part of the solution. Some may not agree with the Council's final decision, but nearly all of the participants feel that they had full opportunity to be a part of the process and express their views.

There is a risk now that the public will feel that the regional council process is a waste of their time and money. There is little incentive for the public to use the council process in the future, if they perceive that the Secretary may significantly alter the Council's measure and implement a substitute without council input. Regardless of one's position on this issue, everyone should be concerned about the process.

The Pacific Council meticulously followed all of the requirements of the groundfish fishery management plan, the Magnuson Act and other applicable law, including requisite analyses, in developing an allocation. The Department of Commerce, in making substantive changes, did not cite legal or procedural problems with the Council's adopted measures in the final rule. It is our understanding that the councils were created to develop these sorts of policies and that the Secretary would approve them unless there were legal or procedural problems with council actions. Furthermore, councils should be given an opportunity to consider the Secretary's concerns and submit revised measures. If this is not the case, then the integrity of the regional process is seriously undermined.

Another concern relates to the intent of the final rule. It appears that the intent was to maintain the percentage sharing which occurred in the 1992 season. For the shore-based sector, this would be accomplished by assuming that they would process about 12,000 mt of the initial open access release of 112,000 mt, and all of the 30,000 mt reserve. In reality, the shore-based catcher boat fleet and the shore-based processing plants were not prepared to go head-to-head in an Olympic style fishery when the season opened on April 15. Many shore-based operations intended to begin in May, and poor weather has limited the ability of the shore-based boats to compete. The shore-based sector is expected to process less than 5,000 mt of the initial 112,000 mt.

We were especially disappointed in the timing of the Commerce ruling. The Council and its advisors and scientists worked for nine months, encompassing four Council meetings, in order to reach a final decision in November 1992. We submitted the package to the NMFS Regional Office on December 22, 1992.

Secretary Ronald H Brown
April 23, 1993
Page 2

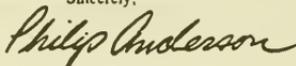
An entire industry, including thousands of employees and millions of dollars worth of capital investment, waited for the federal review process to be completed. The disapproval of the Council's action and the substitution of a significantly different measure was announced on April 15, 1993, the day the whiting season opened. Businesses can't plan properly to participate in the fishery in this kind of environment. The Commerce Department had ample time to review the Council decision and, if necessary, ask the Council to discuss it again at its March meeting. It is clear that a statutory time limit on regulatory amendments is needed. We will be proposing a change to the Act to require timely action on regulatory amendments.

Another problem is that the Commerce decision on whiting allocation is for 1993 only, while the Council's measure was a long-term plan. Annual allocation battles are time-consuming and hard on agency personnel, Council members and the public. We are confused about how to manage this fishery in 1994 and beyond. The final rule implementing your action states: "...limited entry should provide catcher vessels with the harvesting opportunities that the Council wishes to protect for them beginning in 1994, and it should not be necessary to restrict at-sea processing to achieve that same purpose." Does this mean that you will not entertain a Council recommended allocation in 1994? If an allocation is considered for 1994, can it deviate from the percentage sharing in the 1993 final rule? There are a number of possible outcomes of the limited access program. Factory trawlers may find it cost-effective to buy licenses to participate in the fishery. Or they may act as motherships. The Council's analysis clearly indicated that offshore processing capacity could easily preempt the shore-based sector, even if factory trawlers operate exclusively as motherships. Some level of protection will be necessary. We would appreciate your thoughts about our options for 1994 and beyond.

In order to maintain the integrity of the regional council process, we need a clear message that you support that process. Without this support, I believe the process will collapse. I attended the Forest Conference sponsored by President Clinton in Portland. One of the cornerstones of his message was that contentious regional issues are best solved within the region. The same is true of fishery management issues.

Mr. Secretary, we hope that we can work together to maintain the integrity of the fishery management process. We appreciate your leadership and cooperation in this endeavor.

Sincerely,



Philip Anderson
Chairman

PA:LDS:mmp



UNITED STATES DEPARTMENT OF COMMERCE
 National Oceanic and Atmospheric Administration
 NATIONAL MARINE FISHERIES SERVICE
 1335 East-West Highway
 Silver Spring MD 20910
 THE DIRECTOR

APR 20 1993

Mr. Phillip M. Anderson
 Chairman
 Pacific Fishery Management Council
 Portland, Oregon 97201

Dear Mr. Anderson:

The National Marine Fisheries Service (NMFS), with the concurrence of the National Oceanic and Atmospheric Administration, has made a final determination to partially disapprove the Pacific Fishery Management Council's recommendation for a permanent allocation of Pacific whiting. We have, however, approved the Council's recommendation for a 30,000-metric-ton (mt) reserve to be released with preference to shoreside processors, but only for the 1993 season. The balance of the 1993 harvest guideline is available to all vessels regardless of where the whiting is processed.

NMFS appreciates the economic stress experienced recently by many small and medium-sized towns along the west coast. However, the socioeconomic data provided by the Council and the public do not justify implementing the Council's recommendation guaranteeing permanently an annual allocation to the shoreside processing sector substantially greater than its historical usage at the expense of the competing at-sea processing sector. The Council's recommendation for an initial allocation of 50,000 mt to the shoreside sector with a reserve of 30,000 mt and sliding scale beginning at 110,000 mt would have resulted in an allocation of up to 105,200 mt or 74 percent of the 1993 harvest guideline being reserved for shorebased operations.

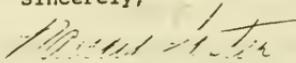
There is sufficient justification for providing a lesser degree of protection for the shoreside processing sector to prevent preemption of harvesting and processing opportunities by catcher/processor vessels and motherships. Voluminous public comment was received and considered on the options identified in the notice of proposed rulemaking. The decision to approve only the reserve allows for open competition early in the whiting season while ensuring at least 30,000 mt for the shoreside sector, depending upon anticipated use of whiting by shoreside processors during the fishing year. This decision addresses the issue of preemption in 1993, guarantees a minimum shoreside allocation approaching the percentage of the harvest guideline

THE ASSISTANT ADMINISTRATOR
 FOR FISHERIES



delivered shoreside in 1992, and provides a fair share to the U.S. at-sea processing sector. Under the final rule, at-sea processing will be prohibited and the 30,000-mt reserve will be made available for deliveries only to shoreside processors, on the date when 112,000 mt is projected to have been taken in the open fishery. If the harvest guideline has not been taken by September 1, the Regional Director will assess the amount of whiting reserve not expected to be used by shoreside processors during the remainder of the year and make any unneeded whiting available for at-sea processing.

Sincerely,



Nancy Foster, Ph.D.
Acting Assistant Administrator
for Fisheries



Oregon Coastal Zone Management Association, Inc.

P.O. Box 1033 • 313 S.W. Second • Newport, Oregon 97365 • (503) 265-8918/265-6651 • FAX (503) 285-5241

Testimony of Jay L. Rasmussen, Director
Oregon Coastal Zone Management Association
before the
United States House of Representatives
Small Business Subcommittee on
Regulation, Business Opportunities, and Technology
June 4, 1993
Newport, Oregon

Chairman Wyden, Congressman Kopetski, subcommittee members. I am representing in testimony before you today forty-one units of local coastal governments on the Oregon coast—counties, cities, ports, and soil and water conservation districts on the subject of the impact on small business from the Department of Commerce's Pacific whiting decision for the 1993 season. In the audience today is Dr. Hans Radtke, natural resource economist and a major contributor to our knowledge of the economics of whiting and other fisheries and who is available to respond to committee questions.

I will leave to others to respond to some of your questions. However, I do wish to emphasize at the onset several important points. First, it is important to understand that the Pacific whiting fishery was and is an integral part of the coast's fishing industry and coastal communities. Second, it should be extremely clear that the Pacific Fishery Management Council (PFMC) has consistently recognized and supported that association. Third, it is critical to comprehend that the loss of the whiting fishery for the onshore seafood industry of coastal communities would be a major blow to many areas that are already experiencing significant resource-related social and economic problems.

Today, I would like to focus on two major points that need to be made to fully understand the issues raised by the Department of Commerce's action:

- Oregon's coastal communities, its fishing industry, and its state agencies have used a studied, process-conscious, regional approach to meet the legitimate needs of those dependent industries and communities which were facing difficult times; and,
- The sudden decision by Commerce to reallocate most of the harvestable whiting resource to the at-sea processing fleet under a largely olympic-style fishery has severe economic and fiscal impacts to the industry, to coastal communities, and to the people of Oregon.

City of Brookings • City of Coos Bay • City of Depoe Bay • City of Florence • City of Garibaldi • City of Lakeside • City of Nehalem
City of Newport • City of Port Orford • City of Reedsport • City of Rockaway Beach • City of Toledo • City of Yachats • Clatsop County
Clatsop Soil & Water Conservation District • Coos County • Coos Soil & Water Conservation District • Curry County • Curry Soil & Water Conservation District
Douglas County • Lane County • Lincoln County • Lincoln Soil & Water Conservation District • Port of Astoria • Port of Astoria • Port of Bandon
Port of Brookings Harbor • Oregon International Port of Coos Bay • Port of Garibaldi • Port of Gold Beach • Port of Nehalem • Port of Newport
Port of Port Orford • Port of Siuslaw • Port of Tillamook Bay • Port of Toledo • Port of Umpqua • Siuslaw Soil & Water Conservation District
Tillamook County • Tillamook Soil & Water Conservation District • Umpqua Soil & Water Conservation District

A Local, State and Regional Approach

A study by this Association in 1989 estimated that about 36% of all personal income received by residents in Oregon's coastal communities was generated by resource-based industries. Another 43% comes from transfer payments and investment income (compared to 36% statewide) much of which is related to retirement. Among resource-dependent industries, commercial fishing plays an integral role in maintaining the liveability of coastal communities and in the diversity of their economic base. In areas of the Oregon coast like Newport, roughly 17% of the total personal income is generated by the commercial fishing industry and approximately 26% of earned income.

As you are aware, the coastal communities of this state and those of northern California and coastal Washington have been experiencing declines in many of their major commercial fisheries. The declines have been driven by either small allowed harvests or difficult market conditions and lower prices, or both. For some sectors of the commercial fishing industry, the decline has been pronounced. For example, in the past five years there has been a drop of 86% in coastal personal income from the salmon industry. This is due, in large part, to low salmon stocks and restricted harvests. This decline has been particularly difficult for coastal communities that are more dependent on sport and commercial salmon fishing. Additionally, for the past several years, ex-vessel prices have been moving downward for salmon, shrimp, crab and some groundfish.

In preparing our 1989 report, it was obvious that unless other developments intervened, the coastal areas of this state and of California and Oregon would experience a continuing decline in the contribution of fisheries to their respective industries and communities. This trend would be exacerbated by the loss of one of its most important and profitable fisheries when the joint venture delivery of Pacific whiting to foreign processing ships ended. Individual fisheries do not exist in a social or economic vacuum and the demise of the joint venture fishery would likely increase pressure on other, already fully utilized fisheries as unemployed vessels attempted to recoup the loss through other trawl and shrimp fisheries.

It was against this background that OCZMA, fishermen, processors, and the State of Oregon began in 1989 a concerted effort to maintain the healthy role of commercial fishing. And all recognized that ensuring the utilization of the Pacific whiting resource in an efficient, added-value method for on-shore processing throughout coastal communities from Eureka, California to Neah Bay, Washington was a major component of retaining a viable commercial fishery.

This collective effort produced a major report to the 1991 Oregon legislature on the Pacific whiting resource, on market uses, and on the economic development potential from this fishery for coastal communities. The report, funded by the Oregon Department of Agriculture, Oregon Economic Development Department, and Newport fisherman Captain R. Barry Fisher, included: market evaluations of worldwide whiting resource availability; Alaskan pollock markets; Pacific whiting resource availability; research on Pacific whiting; community impacts; market opportunities; infrastructure requirements; and, land use permitting requirements.

Among other conclusions, the study further defined the inextricable connection between the onshore utilization of the whiting resource and the overall health of the seafood industry and coastal communities. The study further recognized, and the consortium of local private and public effort pursued, the critical necessity of obtaining a shoreside allocation preference for whiting in order to optimize the physical and economic efficiency and the salutary effects of this fishery for coastal industry and communities.

I will leave to others to document the significant allocation policy and decisions that the Council has made over the past several years as well as the relationship of those policies and decisions to whiting and coastal entities.

Impacts to Oregon

Speaking more directly to the 1993 whiting fishery, what are some of the impacts to Oregon's coastal fishermen and communities from the onshore processing of Pacific whiting—both under the Council's recommended allocation and under the final decision rendered by the Secretary of Commerce?

According to economist Dr. Hans Radtke, in a recent report to the Interagency Team for the Clinton Administration's northwest forest summit, "the onshore whiting industry will generate about \$40 - \$50 million in personal income - about 1/4 of the total income generated by fishing. This relates," Radtke continued, "to about 2,500 jobs, many of which are high paying family-wage level jobs, jobs such as trawler crews, electricians, truck drivers, insurance agents, and retail clerks. For example, each trawler involved in the Pacific whiting fishery generates about 135 jobs."¹

As many as 60 medium-to-large trawlers have been involved in the Pacific whiting fishery off of the Oregon coast in the past five years. This includes those boats who had been involved in the joint venture fishery as well as those in the domestic whiting fishery. One consequence resulting from the loss of opportunity by these pioneers of the Pacific whiting fishing was clearly recognized by the study: these boats will either move into other fisheries off the Oregon coast—reducing opportunities for other smaller boats—or to Alaska or other parts of the world where these trawlers will impact other existing fisheries.

The Council fully understood this relationship in its consideration of the whiting fishery for earlier years as well as in its shoreside allocation recommendation for 1993. Previously the Council had stated: "The Council's number one responsibility is to coastal communities, traditional fishermen, and traditional processing entities, and the Council believes whiting is crucial to the long-term economic picture."

¹"The relationship between direct jobs (crews on the ship) and total jobs generated is high for the whiting fishery, because the whiting is a high volume, low priced raw product that is turned into a product (surimi) that involves a relatively high amount of processing. On-line fish processing, an important component of the whiting industry, receives about 11% of the total income generated by this fishery. The rest is earned by a variety of people local in the coastal communities."

Regretfully, this loss of opportunity to continue to fish for whiting was enhanced when, on the opening day of the 1993 Pacific whiting season, the U.S. Department of Commerce turned upside-down the recommendation of a regional management council and allocated most of the fishery to the at-sea component under a largely open access (aka, Olympic) system.

Similarly, Commerce ignored the Council's adopted and federally approved Groundfish Management Plan which sought to "encourage an environment which allows the industry and dependent communities to make long-term commitments in existing and underdeveloped fisheries by adopting management strategies which will better utilize the existing capital investment in fish vessels and processing facilities."

While the Oregon industry had expected to harvest and process about 80,000 metric tons (mt), that amount was suddenly reduced to approximately 42,000 mt for the total coast. Since California and Washington are expected to take about 7,000 mt, this leaves Oregon with approximately 35,000 mt. That amounts to a loss of about 45,000 mt to Oregon from what the industry had planned for in 1993.

For the whole coast, the economic impacts are significant. The following table illustrates that, assuming a harvest of 40,000 mt (30,000 mt initial allocation plus 10,000 mt available from an early-suspended open access fishery), there will be a loss to fishermen of \$4.5 million dollars, a loss approximately 1,250 jobs to coastal communities, and a personal income reduction of \$25 million. Job equivalents are set at \$20,000 of annual income.

Estimated 1993 Onshore Harvest And Economic Impacts
Under Management Allocation Strategies

	<u>PFMC Recommended</u>	<u>Commerce Decision</u>
Onshore Harvest	80,000 mt	40,000 mt
Ex-Vessel Revenue to Harvester	\$8,000,000	\$4,000,000
Personal Income- Economic Impact	\$50,000,000	\$25,000,000
Jobs Equivalent- Economic Impact	2,500	1,250

There are also fiscal impacts from Commerce's action. The following table provided by Shannon Davis, The Research Group, Corvallis, Oregon clearly illustrates a substantial loss in landing fees, corporate taxes and personal income taxes to the state, as well as property taxes to schools and local government.

 Expected 1993 Oregon Fiscal Impacts Under Management Allocation Strategies

	<u>PFMC Recommended</u>	<u>Commerce Decision</u>
Landing Fees	\$ 100,000	\$ 50,000
Corporate Taxes	\$ 230,000	\$ 115,000
Personal Income Taxes	\$1,258,000	\$ 629,000
School Property Taxes	\$300,000	(risk) ²
Local Government Property Taxes	\$300,000	(risk)

Dr. Radtke states that only about 10% of the economic impact from the at-sea fleet flow to coastal communities whose shores the factory harvesters operate off of Washington State's revenues will come from the home-ported at-sea fleet in the Seattle metropolitan area.

Also not to be ignored is the impact of Commerce's decision to foster an early, open-access fishery. The early Olympic system harvests smaller, emaciated, soft-fleshed fish just off their spawning grounds. According to Oregon State University economist Dr. Gilbert Sylvia, an early-season processing of whiting can result in an annual loss of about 15% of revenues. This is due to lower yields and lower prices. This, in turn, may also lead to a lower future whiting biomass and lower annual harvests since more fish must be harvested—since the fish are smaller—in order to reach the annual allowed quota. Fewer fish may be available in subsequent years to reproduce. And, since diminished tonnage of whiting to the onshore processors will result in less byproduct to be utilized by the onshore secondary processors of fish meal, fertilizer, and other products—and not utilized by the factory trawlers—this results in further loss of income generated in the region. For example, the loss of the expected 45,000 mt means the fish meal plant in Newport will have a reduction of about \$1,500,000 in fish meal sales out of a total of about \$3,500,000.

Finally, about \$15 million has been invested in Oregon's existing processing plants to process whiting into products such as surimi and fish meal (from resulting waste). Nearly an equal amount has been committed by harvesters in upgrading their quality handling of this resource. The existing plants built for Pacific whiting will only be able to operate at about 30% of their capacity. And, harvesters who have invested for upgrading to improve resource utilization and quality, are placed in greater risk.

² "Risk" implies greater potential for business dislocation and failure from reduction in allocation to onshore processors.

In Conclusion

A multi-year local, state and regional effort to stabilize the fishing industry and provide for the long-term and efficient use of a precious natural resource was frustrated by the Commerce Department in overturning the recommendation of the Pacific Fishery Management Council for the 1993 season. The consequences arising from that decision for coastal areas are significant. Fishermen, processors, other industry components, and dependent communities bear a large and negative economic burden from this action. Local and state governments are deprived of valuable revenue at a critical time when their own respective budgets are being squeezed by economic downturns, natural resource harvesting constraints, and mandated fiscal restraints. And, the processes under state and federal fishery management, most notably the Magnuson Fishery Conservation and Management Act, were severely compromised.

I appreciate the opportunity to speak before you this day and sincerely regret that this issue has been thrust upon all of us by the Department of Commerce—and the enormous amount of time and energy this action by Commerce has placed upon all of us.

Testimony of Joe Easley
Administrator - Oregon Trawl Commission

for

Committee on Small Business
Subcommittee on Regulation,
Business Opportunities, and Technology
Ron Wyden, Oregon - Chairman

Mr. Chairman, members of the committee, my name is Joe Easley and I am the administrator of the Oregon Trawl Commission. The Trawl Commission is a commodity commission under the Oregon Department of Agriculture. It has as members all the trawl vessels that land their catch in the state of Oregon. The Trawl Commission is supported by an ad valorem tax on the value of the trawl landings.

These vessels landed a little over 230 million pounds of groundfish and shrimp in the State of Oregon in 1992, 108 million pounds was whiting. These landings produced a Statewide Personal Income Impact of \$161.9 million in the State of Oregon, whiting produced \$32.4 million of that economic impact. Trawlers produced 89% of the landings and 54% of the Statewide Personal Income Impact in the State of Oregon.

The whiting landings were 49,000 metric tons in the State of Oregon, with several thousand tons landed in Washington and California. With 42,000 metric tons being allocated by the Department of Commerce to shore side landings this year, it is not hard to figure out that the State of Oregon will have a lot less to work with than the close to 100,000 metric tons they would have had under the Pacific Fishery Management Council's allocation. Hans Radtke an economist has told us that the difference between what Commerce allocated on shore and what the Council has allocated will mean \$35 million to the Oregon economy. The Council's allocation was a long term allocation, based on a sliding formula, that gives more to the shore side in low abundance years and more to the offshore sector in high abundance years.

The offshore sector caught and discarded about 8% of some

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other species harvest guidelines (mostly rockfish). The on shore sector landed all of the rockfish they caught and it was processed on shore.

The offshore fleet was not built for the whiting fishery, but for the pollack fishery off Alaska. The whiting can not support the offshore fleet, in fact the pollack fishery can not support the offshore fleet, nor can both fisheries support the offshore fleet. That fleet is way over built for the amount of resource available.

The part of the on shore fleet that is being displaced are vessels that are the most productive of the on shore fleet and have been in the whiting fishery for many years. They operated in the joint venture fisheries off the coast from the late seventies on. Their goal and the Council's goal was to bring this resource on shore to provide the economic impact that processing on shore could bring to the small coastal communities.

If these vessels do not have the whiting fishery to pursue they will have to compete in the other trawl fisheries, groundfish and shrimp, which they have been doing. This in turn leads to smaller catch for the rest of the on shore fleet. It has set up a situation where the total trawl fleet will have a very lean year, it could very well lead to some business failures along the coast. In fact, the Trawl Commission is looking at a budget reduction of about 33% for the upcoming fiscal year.

The whiting has been considered a part of the groundfish fishery by the Council and the fishing industry for many years. The fishery was counted upon to take pressure off the other species and trawl fisheries. I have attached the Comprehensive Fishery Management Goals of the Council for all fisheries they manage and the goals of the Groundfish Management Plan, let me highlight a few of them for you.

In the Comprehensive Fishery Goals under Social/Economic Goals, number 3 says "Encourage an environment which allows the industry and dependent communities to make long-term commitments in existing and undeveloped fisheries by adopting management

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strategies which will better utilize the existing capital investment in fishing vessels and processing facilities. Establishing long-term harvest goals would aid in this effort." The Council tried to do this in their recommendation to the Department of Commerce, which, it appears to us was totally ignored by Commerce.

Under the Groundfish Management Plan the Council established Management Goals in order of priority. There are Goal 1 Conservation, Goal 2 Economics and Goal 3 Utilization. Under each goal they established Objectives.

Objective 2 under Conservation is "Adopt harvest specifications and management measures consistent with resource stewardship responsibilities, for each groundfish species or species group." We believe that taking most of the whiting in a small point of time will led to the taking of more individual fish and in the long run will led to a much smaller quota of whiting on the average. What Commerce did we do not believe is good resource stewardship.

Objective 4 under Economics says "Attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries." The net economic benefit analysis done by the National Marine Fisheries Service show a greater benefit from landing and processing the whiting on shore than at sea. It seems that Commerce once again ignored the analysis that they have ordered the Councils to do, which can only be done at a great deal of trouble and cost.

Objective 5 under Economics says "Identify those sectors of the groundfish fishery for which it is beneficial to promote year round marketing opportunities and establish management policies that extend those sectors fishing and marketing opportunities as long as practical during the fishing year." Whiting has a limited storage life even when frozen. If one is to make the most out of the market opportunities available one needs to stretch the harvest out over as long as possible during the year and therefore stretch

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out the marketing opportunity through the whole year if possible. We see no evidence that Commerce took into consideration these factors in any form, although the Groundfish Management Plan is a Department of Commerce approved Plan.

We do not believe that Commerce explored the impact of their allocation on the small shore based vessels and the communities that depend upon them to bring their catch ashore. If Commerce did explore it, they obviously paid no attention to what they found. We see no evidence that Commerce did the analysis that they require of the Council, this has all the ear marks of a political decision made at the highest levels in the Department of Commerce.

The Commerce decision did not address the concerns raised by the original allocation in any fashion, except in the context of what happened last year as to the percentage split between off shore and on shore. On the one hand you have the off shore fleet, very large vessels that can take great amounts in a very short time (4800 mt/day in 1993) and the in shore fleet, made up of much smaller vessels which deliver about 45 mt a day. The largest processing plant on shore could probably do about 40,000 mt in a season, while the largest at sea processor is capable of about 100,000 mt in a season. What you have on the one hand is a shore based industry that is fashioned to take product over as long as possible period of time and an at sea industry that is based on gobbling up as much product as rapidly as possible.

The on shore sector can not pick up when the whiting quota is caught and go to Alaska and fish for pollack or one of the many other species there. It not simply a matter of stocking the vessel with supplies and a crew, throwing off the lines and steaming north to the Bering Sea. The plants are in the coastal communities attached to the land, where they provide jobs to the people of these communities. It does not make sense for the shore based people to invest more and more capital in plant and hire more vessels so that they can do the whiting fishery in three to six weeks and hang it up for the rest of the year. If the management

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is sound and in place it will encourage these plants to provide employment for as much of the year as possible. The sliding scale was very important to the shore side sector, because it gave them a base to work from and did not encourage them to invest in more and more plant.

The effect in the short term will be a very hard year for many of the small business that depend on the fishing industry. Some of them may not make it to next year. The fishing industry along the coast will most likely have its share of failures because of Commerce's decision. The processors that have made a commitment to whiting will have to rethink that commitment. It will be a year of hanging on and waiting to see if Commerce does the same thing next year. If Commerce does we believe it will be very hard to hang on for many of those who have made a commitment to whiting.

We believe that there will be a big adjustment of the at sea component as it is way over built and can not be supported by the resource base. If Commerce keeps its blinders on and what we see happening, happens, we could end up where we have nobody to harvest the whiting resource and it will have to be put up for foreign catch (TALFF). If this is the out come it would be a sad day in the history of American fisheries indeed.

16 U.S.C. 1851

TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL.--Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

98-623

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

97-453

(B) GUIDELINES.-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development or fishery management plans.

COMPREHENSIVE FISHERY MANAGEMENT GOALS
OF THE PACIFIC FISHERY MANAGEMENT COUNCIL
Adopted November 29, 1984

Introduction

The goals which follow represent general statements of aim, purpose or intent which apply to all fisheries managed by the Pacific Council. These goals serve as the cornerstone for development of more specific operational objectives for each fishery managed by the Council which are attainable, quantifiable, and verifiable. These goals also allow management problems common to all fisheries to be addressed by a single set of statements, and as a basis for setting more specific fishery-by-fishery objectives and strategies to achieve those objectives.

It is not intended that all plans will be amended to include these goals; they will stand alone. However, each plan will be modified to include more specific objectives which will improve management and allow performance to be evaluated.

The goals may or may not be achievable, and some may only be achievable outside of the fishery management plan process. The Council will actively pursue and recommend actions which may be beyond its authority to control. These goals are intended to address such problems, as well as those which can be resolved by fishery management plan measures.

These goals are consistent with the purposes, policies, and standards of the Magnuson Act, but are more specific statements regarding Council intent within the general requirements of the Act.

The order in which these goals are listed does not necessarily represent importance or priority.

Conservation Goals

The Council will manage the fishery resources in its area to achieve the greatest benefit to the Nation on a continuing basis. The goal of conservation is to benefit people through wise use, rather than simple preservation. In recognition that maintenance of a healthy resource is necessary to achieve continuing benefits to the Nation, the Council will:

1. Assume a more aggressive role in the protection and enhancement of anadromous and marine fish habitat. The Council will play a leadership and coordination role in support of the agencies with management responsibilities and authorities.
2. Manage for viable salmon stocks and maintain genetic diversity. However, the Council recognizes that in areas of importance to particular stocks, habitat degradation and water development may leave no alternative but to manage for hatchery production, or a combination of hatchery and natural production.

3. Strengthen its efforts to work with other jurisdictions, both domestic and international, to manage stocks of fish over their entire range.

This goal will address: (1) a strong commitment to conclude fair and equitable treaties with Canada and Mexico; (2) coordination with the states, Treaty Tribes, and other user groups to reach full agreement on management plans and to strengthen the resolve of all parties to implement such plans; and (3) effective coordination with the North Pacific Fishery Management Council (NPFMC), international management bodies, the State of Alaska, and Canada concerning interjurisdictional stocks.

4. Strongly support development of concepts and practices for management of mixed stock and multi-species complexes and rebuilding those complexes in a manner that economic and allocation objectives of the Council can be best met.
5. Support additional data collection and analyses which will improve the basis for management measures.

As a strategy, particularly important in these days of inadequate research and survey funds, the Council will encourage the use of fishing vessels for data gathering. Data collection and analysis will include information that makes possible the evaluation of fishery regulations.

6. Develop management measures which constrain incidental catches of fish and other animals within acceptable limits while harvesting target species.

Development Goals

In recognition of the need for further development of the U.S. fishing industry, the Council will:

1. Support innovative efforts by the U.S. industry to develop new fisheries on underutilized species, while maintaining viable existing U.S. fisheries.
2. Achieve full utilization of U.S. fishery resources by U.S. citizens.

Social/Economic Goals

Recognizing the need to consider social and economic factors and consequences in decision-making, the Council will:

1. Encourage cost-effectiveness in management activities.
2. Take a leadership role in coordinating the development of effort control measures in cooperation with users and other management entities.
3. Encourage an environment which allows the industry and dependent communities to make long-term commitments in existing and underdeveloped

fisheries by adopting management strategies which will better utilize the existing capital investment in fishing vessels and processing facilities. Establishing long-term harvest goals would aid in this effort.

4. Bring parties involved in gear conflicts together with management agencies to develop a solution. Only with failure of this effort will the Council impose a solution.
5. Seek to obtain the widest practical public input prior to decision-making.
6. Improve the evaluation of economic and social consequences of various management options prior to decision-making.

PFMC
11-29-84

2.0 GOALS AND OBJECTIVES

2.1 Goals and Objectives for Managing the Pacific Coast Groundfish Fishery [Section 2.1, page 2-4; Section 9.3.1 page 9-12 of FMP]

The Council is committed to developing long-range plans for managing the Washington, Oregon, and California groundfish fisheries that will promote a stable planning environment for the seafood industry, including marine recreation interests, and will maintain the health of the resource and environment. In developing allocation and harvesting systems, the Council will give consideration to maximizing economic benefits to the United States, consistent with resource stewardship responsibilities for the continuing welfare of the living marine resources. Thus, management must be flexible enough to meet changing social and economic needs of the fishery as well as to address fluctuations in the marine resources supporting the fishery. The following goals have been established in order of priority for managing the west coast groundfish fisheries, to be considered in conjunction with the national standards of the Magnuson Fishery Conservation and Management Act (MFCMA).

Management Goals.

Goal 1 - Conservation. Prevent overfishing by managing for appropriate harvest levels, and prevent any net loss of the habitat of living marine resources.

Goal 2 - Economics. Maximize the value of the groundfish resource as a whole.

Goal 3 - Utilization. Achieve maximum biological yield of the overall groundfish fishery, promote year around availability of quality seafood to the consumer, and promote recreational fishing opportunities.

Objectives. To accomplish these management goals, a number of objectives will be considered and followed as closely as practicable:

Conservation.

Objective 1. Maintain an information flow on the status of the fishery and the fishery resource which allows for informed management decisions as the fishery occurs.

Objective 2. Adopt harvest specifications and management measures consistent with resource stewardship responsibilities, for each groundfish species of species group.

Objective 3. For species or species groups which are below the level necessary to produce MSY, consider rebuilding the stock to the MSY level and, if necessary, develop a plan to rebuild

the stock.

Economics.

Objective 4. Attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries.

Objective 5. Identify those sectors of the groundfish fishery for which it is beneficial to promote year round marketing opportunities and establish management policies that extend those sectors fishing and marketing opportunities as long as practicable during the fishing year.

Objective 6. Gear restrictions to minimize the necessity for other management measures will be used wherever practicable.

Utilization.

Objective 7. Develop management measures and policies that foster and encourage full utilization (harvesting and processing) of the Pacific coast groundfish resources by domestic fisheries.

Objective 8. Recognizing the multispecies nature of the fishery, establish a concept of managing by species and gear, or by groups or interrelated species.

Objective 9. Strive to reduce the economic incentives and regulatory measures that led to wastage of fish.

Objective 10. Provide for foreign participation in the fishery, consistent with the other goals to take that portion of the OY not utilized by domestic fisheries while minimizing conflict with domestic fisheries.

Social Factors.

Objective 11. When conservation actions are necessary to protect a stock or stock assemblage, attempt to develop management measures that will affect users equitably.

Objective 12. Minimize gear conflicts among resource users.

Objective 13. When considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption to current domestic fishing practices, marketing procedures and environment.

PACIFIC COAST GROUND FISH PLAN - ALLOCATION6.2.3 Non-Biological Issues--The Socio-Economic Framework

From time to time non-biological issues may arise which require the Council to recommend management actions to address certain social or economic issues in the fishery. Resource allocation, seasons, or landing limits based on market quality and timing, safety measures, and prevention of gear conflicts make up only a few examples of possible management issues with a social or economic basis. In general, there may be any number of situations where the Council determines that management measures are necessary to achieve the stated social and/or economic objectives of the FMP.

Either on its own initiative or by request, the Council may evaluate current information and issues to determine if social or economic factors warrant imposition of management measures to achieve the Council's established management objectives. Actions that are permitted under this framework include all of the categories of actions authorized under the "points of concern" framework with the addition of direct resource allocation.

If the Council concludes that a management action is necessary to address a social or economic issue, it will prepare a report containing the rationale in support of its conclusion. The report will include the proposed management measure, a description of other viable alternatives considered, and an analysis that address the following criteria: (a) how the action is expected to promote achievement of the goals and objectives of the FMP; (b) likely impacts on other management measures and other fisheries; (c) biological impacts; (d) economic impacts, particularly at least one of the following:

1. enable a quota, harvest guideline, or allocation to be achieved;
2. avoid exceeding a quota, harvest guideline, or allocation;
3. extend domestic fishing and marketing opportunities as long as practicable during the fishing year, for those sectors for which the Council has established this policy;
4. maintain stability in the fishery by continuing management measures for species that previously were managed under the points of concern mechanism;
5. maintain or improve product volume and flow to consumer;
6. increase economic yield;
7. improve product quality;
8. reduce anticipated discards;
9. reduce gear conflicts, or conflicts between competing groups;
10. develop fisheries for underutilized species with minimal impacts on existing domestic fisheries;
11. increase sustainable landings;
12. increase fishing efficiency;
13. maintain data collection and means for verification;
14. maintain or improve the recreational fishery; or,
15. any other measurable benefit to the fishery.

The Council, following review of report, supporting data, public comment and other relevant information, may recommend management measures to the NMFS Regional Director accompanied by relevant background data, information and public comment. The recommendation will explain the urgency in implementation of the measure(s), if any, and reasons therefore.

The NMFS Regional Director will review the Council's recommendation, supporting rationale, public comments and other relevant information, and, if it is approved, will undertake the appropriate method of implementation. Rejection of the recommendation will be explained in writing.

The procedures specified in this chapter do not affect the authority of the Secretary to take emergency regulatory action as provided in Section 305(e) of the MFCMA if an emergency exists involving any groundfish resource, or to take such other regulatory action as may be necessary to discharge the Secretary's responsibilities under Section 305(g) of the MFCMA.

If conditions warrant, the Council may designate a management measure developed and recommended to address social and economic issues as a "routine" management measure provided that the criteria and procedures in Section 6.2.1. are followed.

Quotas, including allocations, implemented though this framework will be set annually and may be modified in season only to reflect technical corrections of ABC. (In contrast, quotas may be imposed at any time or year for resource conservation reasons under the points of concern mechanism.)

6.2.3.1 Allocation

In addition to the requirements described in Section 6.2.3, the Council will consider the following factors when intending to recommend direct allocation of the resource.

- a. present participation in and dependence on the fishery, including alternative fisheries;
- b. historical fishing practices in, and historical dependence on, the fishery;
- c. the economics of the fishery;
- d. any consensus harvest sharing agreement or negotiated settlement between the affected participants in the fishery;
- e. potential biological yield of any species or species complex affected by the allocation;
- f. consistency with the MFCMA national standards;
- g. consistency with the goals and objectives of this FMP.

The modification of a direct allocation cannot be designated as "routine" unless the specific criteria for the modification have been established in the regulations.

TESTIMONY OF JOSEPH R. BLUM

ON BEHALF OF THE

AMERICAN FACTORY TRAWLER ASSOCIATION

BEFORE THE HOUSE SMALL BUSINESS COMMITTEE

SUBCOMMITTEE ON REGULATION, BUSINESS OPPORTUNITIES, AND TECHNOLOGY

JUNE 4, 1993

Newport, Oregon

Thank you, Mr. Chairman, I am Joe Blum, Executive Director of the American Factory Trawler Association (AFTA). AFTA is a trade association comprised of 18 member companies operating 44 factory trawlers and motherships, principally engaged in the groundfish fisheries in the Pacific Ocean.

AFTA is an association comprised primarily of small businesses, and we are pleased that the House Small Business Subcommittee on Regulation has expressed an interest in improving the regulatory process affecting members of the fishing industry. Specifically, we welcome this opportunity to examine the regulatory regime affecting the Pacific whiting fishery. Over the past three years, the Pacific Fishery Management Council (the Council) has adopted several Pacific whiting allocation measures. Significant reallocations, threatening American jobs and causing substantial economic and social dislocation, have been proposed, but market-based solutions have not been pursued. The regulatory climate is chaotic. By examining, today, the recent management of Pacific whiting and identifying where the process has failed, perhaps a new course for responsible management can be charted when future allocation schemes are considered.

Prior to 1991, virtually all of the Pacific whiting resource harvested within the U.S. 200-mile zone was processed by foreign-flag at-sea processors. U.S. fishermen were paid approximately five cents a pound for delivering Pacific whiting to foreign

processors. In 1991, value added processing by the U.S.-flag at-sea processors almost quadrupled the value of the fishery to the U.S. economy. In 1990, the fishery generated \$18.0 million in economic benefits to the Nation, when U.S.-flag factory trawlers and motherships displaced the foreign vessels from the fishery the value of the fishery increased to \$64.0 million.

Regulatory Regime for Allocating Pacific Whiting.

The first whiting allocation scheme focused on the different harvesting capabilities among fishing vessels. The Council divided the 1991 Pacific whiting allocation between vessels that both catch and process and those that catch. Catcher vessels were free to sell their catch to either onshore or at-sea processors. The only restriction dictating where fishermen must land their catch was a provision reserving 30,000 metric tons (m.t.), 14 percent of the overall quota, for shoreside processors. The principal beneficiaries of this set aside were not even the shoreside processors that historically used less than 8,000 m.t. annually. Instead, the beneficiaries were shoreside operators building new surimi plants that were not even operational in 1990.

In 1992, the Council proposed increasing the shoreside guarantee to 110,000 m.t. Over fifty (50) percent of the harvest was allocated to processors that had only managed to process 20,500 m.t. in 1991, roughly two-thirds of the shoreside allocation.

During review of this proposed rule, the National Marine Fisheries Service (NMFS) unambiguously stated its opposition to

this major reallocation away from existing user groups. In January, 1992 the agency's fishery management professionals rejected the 1992 proposed whiting shoreside preference scheme for numerous reasons. The agency held that--

- increasing the preference accorded shoreside processors would exacerbate overcapitalization problems in the fishery,
- market based solutions should form the basis of fisheries allocation rules, and
- the record did not support a dramatic reallocation.

A copy of a memo issued by the NMFS Office of Fisheries rejecting the Council's proposal is attached to AFTA's testimony. We ask that it be included in the hearing record.

Concurrent with development of a 1992 whiting allocation, the North Pacific Fishery Management Council was considering an equally dramatic reallocation of pollock and cod away from the at-sea processing sector. The North Pacific Council's action prompted two investigations by the Commerce Department's Office of the Inspector General (IG). The IG determined that the North Pacific Council's analysis was inadequate and urged former NOAA Under Secretary John Knauss to reject the proposed shoreside preference rule. The Justice Department filed a public comment stating that the proposed rule violated the National Standards contained in the Magnuson Act and urged the Under Secretary to reject the rule. It also appears that not one fishery management professional in NMFS supported the major reallocations of pollock, cod or Pacific whiting. However,

unlike the recent whiting decision, the Commerce Department refused to release documents relating to the North Pacific allocation decision.

Responding to concerns about the more visible North Pacific Council scheme, Under Secretary Knauss directed NMFS to prepare a cost/benefit analysis to determine the economic impact to the Nation of reallocating 400 million pounds of pollock and cod away from the at-sea sector. The analysis demonstrated that the allocation would result in losses exceeding \$100.0 million.

On the eve of the final decision, the Alaska's three-member Congressional delegation met with then-White House Chief of Staff Samuel Skinner. Two of the three Republicans comprising the delegation were engaged at that time in tough reelection campaigns. They urged approval of the allocation proposal despite the weight of the evidence that the allocation was illegal, unfair and unjust. The North Pacific allocation was approved within 48 hours.

Shortly thereafter, Senator Bob Packwood, who was similarly engaged in a difficult reelection campaign, met with then-Commerce Secretary Barbara Franklin regarding the once rejected whiting allocation. Following that meeting, Secretary Franklin overrode the recommendations of NMFS' fishery management professionals, and approved a 1992 Pacific whiting allocation plan that quintupled the amount of whiting available to shoreside processors above the level processed in 1991.

This was how the Bush administration set fisheries policy--arbitrary and capricious council actions were approved, and the

views of those tasked to administer the Magnuson Act were overridden, if it was politically expedient. It was in this political environment that the Council developed the 1993 allocation.

The 1993 Pacific Whiting Allocation Decision.

The April, 1993 Pacific whiting decision, which is consistent with the position outlined by the agency last year before election year politics intervened, maintains the status quo in the fishery. The allocation guarantees both the at-sea and shoreside sectors roughly the same percentage of the harvest that they processed last year.

Some argue that the Secretary should not have altered the Council's plan. AFTA disagrees. The Council's proposal failed to adhere to the requirements of the Magnuson Act. The Secretary is obligated to uphold these standards specifically set out in statute. Perhaps the Secretary made an error in judgement by not rejecting the rule outright, instead of publishing the proposed rule for public comment. AFTA urged such a course of action, and though we were heartened that the preamble to the proposed rule exposed many of the flaws in the Council's plan, we felt that the proposal was contrary to law and lacked justification.

The Council's stated rationale for allocating 75 percent of the 1993 whiting quota to shoreside processors that processed only 25 percent of the 1992 catch was twofold. First, the Council sought to maximize benefits for coastal communities. Second, it

wanted to preserve access to the fishery for historical participants. However, the Council's own analysis revealed that neither goal would be attained by a major reallocation of Pacific whiting.

AFTA's public comment on the proposed rule demonstrated that 82 percent of workforce for the at-sea sector resides in the four states comprising the Pacific Council region. Many of these individuals live in coastal communities. For example, our segment of the industry employs 60 workers from Grays Harbor, Washington where the unemployment rate is almost 20 percent. Another 160 residents of Newport, Coos Bay, and Astoria earn approximately \$4.3 million annually working in the at-sea processing sector. In addition to direct employment, the at-sea processing sector is serviced by numerous West Coast ports and shipyards, fuel suppliers, financial institutions and dozens of other fishing industry support industries. The Council's analysis determined that the benefits of reallocating to shoreside processors accrued principally to one coastal community. Given this record, the goal of promoting coastal community stability was best achieved by maintaining an allocation reflecting historical levels of participation.

Requiring Pacific whiting to be landed ashore for processing also was not justified on the basis of protecting historical participants in the fishery. First, such an approach ignores the contribution of the at-sea processing fleet in Americanizing the resource. Second, limiting marketing opportunities for catcher

vessels that formerly participated in the Pacific whiting joint venture fishery was not a sensible method of preserving any perceived historical rights. There simply is no justification for departing so dramatically from the 1991 allocation that divided the catch between vessels of different harvesting capabilities, but did not impede commerce by precluding bidding among all processors for the fish.

Identifying Weaknesses in the Fishery Management Process.

The controversy surrounding Pacific whiting management is rooted, not only in the failed policies of the previous administration, but in the weaknesses of the existing fishery management system. Congress needs to address these problems when it reauthorizes the Magnuson Fishery Conservation and Management Act this year. Briefly stated, here are several existing flaws in U.S. fisheries policy that exacerbated the situation surrounding Pacific whiting management.

First, the Magnuson Act calls for proportional representation for user groups on the councils. However, the at-sea processing sector is not represented on the Pacific Council. If regional decisionmaking is going to work--and user groups are going to comprise the the decisionmaking body--then fair representation of all legitimate interests must be ensured, and due consideration must be given to the legitimate interests of all industry sectors.

Second, regional fishery management councils must be directed to aggressively pursue market-based solutions to fishery management problems. Until some form of property rights are assigned in fisheries, participants will continue to engage in open access (Olympic-style) fisheries. This race for the fish reduces efficiency, inhibits marketing opportunities, and can lead to wasteful fishing practices.

Finally, stronger federal guidelines must be developed for the council process. Councils are increasingly involved in contentious allocation disputes, but if these bodies are going to wield authority, guidelines for responsible action must be in place. There must be stricter guidelines dictating standards and methodologies for analysis performed when substantive reallocations are proposed. Some argue that the NMFS regional officials should be more assertive in guiding the councils, but we must be realistic. As long as elected officials urge the Secretary to override the views of the agency's professional fishery managers, as happened in 1992, it is likely that fishery managers in the agency will remain circumspect in advising the councils.

Avoiding Conflict When the 1994 Allocation is Considered.

AFTA offers the following thoughts on adopting a process to rationalize the Pacific whiting regulatory scheme for 1994 and beyond.

1. The 1993 NMFS decision on whiting mirrors the agency's views detailed in the January, 1992 memo to the Council. All

interested parties should recognize this clearly articulated policy on whiting allocations.

2. The Council should adopt market-based solutions that blend with the "license limitation" measure scheduled for implementation in January, 1994. Although AFTA believes that the contributions of the at-sea sector were not recognized when this limited entry program was designed, the interests of other historical participants have been addressed. Regulatory regimes that preclude certain processors from bidding on fish will not effectively complement the license limitation program.

3. The Council should further recognize that license limitation will not offer relief from an Olympic-style, or open access, fishery. The fishery should evolve to a transferable quota system of harvest rights.

4. Finally, affected user groups should be strongly encouraged to meet to resolve their differences on the whiting allocation issue. AFTA urges the Council to begin a process now, including use of a mediator or facilitator, if necessary, to bring the parties together to resolve their differences.

That concludes my statement, Mr. Chairman. I am pleased to answer any questions that members of the subcommittee might have. Thank you, once again, for the opportunity to testify.

AMERICAN FACTORY TRAWLER ASSOCIATION



RESPONSES TO SUBCOMMITTEE'S QUESTIONS

Issue #1: What effect did the 1993 whiting allocation have on the catcher vessel fleet and shoreside processors?

Comment: Catcher vessels from the Northwest and California deliver whiting for processing to factory trawlers, motherships, and shoreside facilities. The Pacific Fishery Management Council's (the Council's) analysis reports that about two dozen catcher vessels deliver to at-sea markets. The Oregon Department of Fish and Wildlife reports that last year, 15 catcher vessels delivered 96 percent of the whiting landed at Oregon shoreside plants.

AFTA has no figures on catcher vessel participation in the 1993 fishery, but at least two motherships participated in the fishery and some factory trawlers contracted with catcher vessels, as well. As stated in our testimony, however, stability for catcher vessels and catcher/processors is best assured by adopting a market-driven transferable quota system.

Shoreside processors will process 30 percent of the 1993 quota; last year, shoreside processors handled 28 percent of the catch. Both the shoreside and at-sea sectors will equally share the burden as harvest levels are reduced from 208,000 m.t. in 1992 to 142,000 in 1993. If shoreside processors can--for the first time fully use their allocation--at-sea processors will harvest approximately 98,000 m.t. of whiting this year. This is half the amount taken in 1991 and about two-thirds of the 1992 at-sea production.

Issue #2: What economic benefits does Oregon derive from at-sea processing operations?

Comment: Over 600 Oregonians are employed onboard motherships and factory trawlers engaged in Pacific Ocean groundfish fisheries. The latest figures compiled by AFTA indicate that Oregonians earn about \$16.3 million annually working as officers and crew aboard at-sea processors.

Each crewmember's salary is based upon a percentage of the vessel's production. Pacific whiting production comprises approximately 15 percent of the annual revenue earned by the vessels participating in the fishery.

AFTA does not have data on the number of Oregonians working aboard the two dozen catcher vessels delivering their catch to at-sea markets.

Unfortunately, AFTA does not have the resources to collect comprehensive data on the economic contributions that the at-sea processing sector provides to Oregon. However, we offer the following insights.

Portland's Cascade General shipyard has earned about \$5.0 million in revenues in recent years working on four repair and reconditioning projects of at-sea processing vessels. The larger projects lasted three months each in duration and employed approximately 100 shipyard workers per day. Cascade General, which has targeted maintenance and repair work on fishing vessels as a potential growth area, recently submitted bids for work on six additional at-sea processing vessels. Finally, The Ocean Phoenix is a former cargo container ship converted to a mothership; the owners of that vessel spent approximately \$15.0 million at Southwest Marine, Inc. on that project several years ago.

At-sea processors have used the ports of Astoria and Coos Bay for off-loading, purchasing fuel and goods, arranging crew changes, etc. Though the port authorities have not estimated our economic contributions, the Port of Grays Harbor (Washington) estimated that at-sea processors contributed half a million dollars to the local economy in 1992.

Operating in an open access fishery requires quick turnaround time for port calls. Therefore, at-sea processors generally call at Oregon ports when fishing in federal waters off that State, and at Washington ports when fishing in that locale. At-sea processors do not operate off the California coast.

Issue #3: What is the overall composition of the at-sea processing fleet?

Comment: There are approximately 65 factory trawlers and motherships in the U.S.-flag fleet of at-sea processing vessels. The fleet directly employs 7,500 people and indirectly provides jobs for an additional 2,500 individuals.

There are several classifications of at-sea processing vessels. Some vessels are equipped to produce fillets, others simply produce a "headed and gutted" product. Surimi vessels manufacture a fish paste that is the primary product in making artificial crab product.

Fifteen to 18 at-sea processing vessels have historically participated in the whiting fishery. The vessels produce a surimi product.

STATEMENT OF
JAY S. JOHNSON
DEPUTY GENERAL COUNSEL FOR FISHERIES,
ENFORCEMENT, AND REGIONS
NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
DEPARTMENT OF COMMERCE

BEFORE THE SUBCOMMITTEE ON REGULATION, BUSINESS
OPPORTUNITIES AND TECHNOLOGY
COMMITTEE ON SMALL BUSINESS
U.S. HOUSE OF REPRESENTATIVES

FIELD HEARING
NEWPORT, OREGON
JUNE 4, 1993

Mr. Chairman and members of the Subcommittee: I am Jay Johnson, Deputy General Counsel for Fisheries, Enforcement, and Regions of the National Oceanic and Atmospheric Administration, U.S. Department of Commerce. I appreciate this opportunity to present the Department's views on the recent decision allocating Pacific whiting between the shoreside and at-sea industry sectors.

The questions presented in the Subcommittee's letter of invitation are quite comprehensive, and my responses to these questions constitute the majority of my testimony.

Question 1: Please review for the subcommittee the process used by the Department for making the whiting allocation.

Pacific whiting is the largest component of the groundfish complex managed under the Fishery Management Plan for the Groundfish Fishery off Washington, Oregon, and California (FMP). The FMP contains framework processes by which the Pacific Fishery Management Council develops, analyzes, and recommends fishery

management measures, including allocations, to the Secretary of Commerce. The process involves at least two, and usually three, Council meetings where a variety of measures are discussed. The Council process involves public comment as well as the preparation of analytical documents to show a recommendation's compliance with the Magnuson Act's national standards, the National Environmental Policy Act, and other applicable Federal law.

After adoption, the Council sends its recommendation and supporting analysis to the National Marine Fisheries Service's (NMFS) Northwest Regional Director. The Regional Director initially reviews the recommendation and supporting analysis to determine whether it is consistent with the FMP, the Magnuson Act, other applicable statutes, and executive orders. If after an initial review the Regional Director concludes that the Council recommendation is consistent with the Magnuson Act and other requirements, then a Decision Memorandum for NMFS's Assistant Administrator for Fisheries is prepared. The Decision Memorandum requests concurrence in proceeding with publication in the Federal Register of the recommendation as a proposed rule with a request for public comments.

Following a public comment period, the Regional Director makes a final decision on approval of the rule, and prepares and submits to the Assistant Administrator a final rule for

publication in the Federal Register. The final rule becomes effective after a 30-day delay required by the Administrative Procedure Act, unless the delay is waived for good cause.

The Council considered various proposals to allocate Pacific whiting between the at-sea and shoreside industry sectors at its July, September, and November 1992 meetings. At the November 1992 meeting, the Council adopted a recommendation for a permanent allocation framework that guaranteed the shoreside sector an initial allocation of 50,000 metric tons (mt) plus an additional amount derived from an abundance-driven sliding scale. In addition, the Council's recommendation set aside a 30,000 mt reserve with priority for the shoreside processing sector. In 1993, with a total allowable harvest of 142,000 mt, the Council's proposal would have allocated 105,000 mt to the shoreside processing sector.

The Council forwarded its recommendation and supporting analysis to the Regional Director on December 22, 1992. Because this was an extremely controversial issue, both the regional and headquarters staff of NMFS and NOAA reviewed the documentation and discussed the issue. As is customary with nearly all of NOAA's regulations, the NOAA staff also consulted with the General Counsel's Office of the Department of Commerce and the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). On February 5, 1993, the Regional

Director submitted a Decision Memorandum to the Assistant Administrator proposing to disapprove the 30,000 mt reserve recommended by the Council, and to publish the remainder of the Council's recommendation as a proposed rule in the Federal Register. After further discussion within NMFS, NOAA, the Department, and OMB, the Assistant Administrator published a proposed rule in the Federal Register on March 18, 1993, requesting public comments on the Council's recommendation without the 30,000 mt reserve, and on several other options.

Following the public comment period, the Assistant Administrator reviewed the voluminous administrative record, including comments received during the public comment period, and came to a different conclusion than the Regional Director. The Assistant Administrator determined that the record failed to justify either the Council's recommendation or the partial disapproval recommended by the Regional Director. As a result, the Assistant Administrator withdrew approval authority from the Regional Director and recommended disapproval of two parts of the Council's original recommendation -- the 30,000 mt reserve and the sliding scale formula. This action would have guaranteed the shoreside processing sector 50,000 mt in 1993 -- approximately the same quantity of whiting as that sector used in 1992.

After further discussions within the Department and at OMB, the Assistant Administrator's recommendation was not concurred in

by the Acting Under Secretary for Oceans and Atmosphere. The Assistant Administrator then prepared and submitted a new recommendation which was approved by the Acting Under Secretary. This second recommendation was intended to result in a shoreside allocation of 42,000 mt -- approximately the same percentage of the Pacific whiting harvest guideline as that sector had used in 1992.

This final decision assumed that the shoreside processors would receive about 12,000 mt of the 42,000 from the open fishery, and the remaining 30,000 from the reserve. When it became clear that this would not occur, the Assistant Administrator, with the concurrence of the Acting Under Secretary and OMB, issued an emergency interim rule to preserve access up to 42,000 mt (including the 30,000 mt reserve) of whiting for vessels delivering to shoreside processors. This rule also closed at-sea processing operations on May 5 when 100,000 mt had been projected to have been harvested for at-sea processing.

Question 2: Prior to rejecting the allocation recommendation of the Pacific Fishery Management Council, what steps did the Department take to communicate any reservations it had regarding the analysis and allocation recommendations of the Pacific Fishery Management Council?

At the November meeting, the Northwest Regional Director testified that he had reservations about the draft recommendation and questioned its justification. However, the Department was unable to comment on the Council's supporting analysis prior to

the November Council meeting, when the Council adopted its recommendation, because the analysis was not completed until December.

Question 3: Did the Department, after rejecting the Council's recommendations, make any effort to consult or otherwise seek the Council's participation in the Department's reexamination of allocation issues? If not, why not?

The public comment period on the proposed rule ended April 1, 1993. After receipt and review of public comments, and extensive internal discussion, the Assistant Administrator made the final decision to disapprove most of the Council's proposal based on the administrative record before her. At this time it was too late to consult with the Council and develop a new proposal for the 1993 fishing season because the fishing season was scheduled to begin on April 15, 1993, just a few days after the close of the public comment period. Therefore, NMFS implemented the only portion of the Council proposal it believed was supported by the record, and advised the Council of its actions.

Question 4: In rejecting the Council's allocation, what cost/benefit analysis did the Department engage in, and did the Department rely on the best available data in reaching its decision? If not, why not?

NOAA used the best available data, including the cost/benefit analysis submitted by the Council and public comments that are included in the administrative record. The agency economists determined that, because of the extreme

limitations of the data available for use in the cost/benefit analysis, especially the lack of specific price differentials for shoreside processing products and comparable at-sea processing products, the analysis was not useful as the basis of a major reallocation among user groups.

Question 5: What effort did the Department make to include consideration of the potential negative economic impact on small fishing fleets and small on-shore processors and communities of precipitously increasing the allocation for large, at-sea processors?

While the amount ultimately made available to the off-shore sector was increased over what the Council had recommended, it was not increased over what that sector had utilized in either 1991 or 1992. In fact, both the offshore allocation and the shoreside allocation were decreased in quantity because the harvest guideline was reduced by approximately one-third in 1993. Both sectors are substantially overcapitalized and there is not a sufficient amount of Pacific whiting to satisfy their collective needs.

Question 6: How has the Department addressed environmental concerns raised regarding wasteful fishing and processing practices -- including discard and efficiency in processing problems -- of at-sea processors as well as by-catch concerns?

Environmental concerns, wasteful fishing and processing practices, discards, and efficiency, are issues inherent in every fishery in the United States. The Department is not aware of any documented environmental concerns resulting from allegedly wasteful fishing and processing practices that require Department

action independent from the Regional Fishery Management Councils. If problems arise in these areas, the Department will work with the Councils to develop effective and fair solutions.

Question 7: Has the Department addressed concerns that have been raised regarding the occupational safety and health of workers on sea-based processing vessels?

The Department has not been advised of any specific occupational safety or health problems of workers either on sea-based processing vessels or at shore-based processing plants. However, work on board any fishing or processing vessel always involves risk, as does any work involving vessels at sea or mechanical processes. If problems are found to exist in either shoreside or at-sea processing facilities, the Coast Guard and the Occupational Safety and Health Administration are the appropriate agencies to address these issues.

Question 8: How many at-sea processors participate in the whiting fishery, and how many small fishing fleets and shore-based processors?

A total of 18 at-sea processors participated in the fishery in 1993. An additional 8 catcher boats delivered to at-sea processors before the at-sea sector reached its share of the harvest guideline. In 1993, there are 10 shoreside processors, and from 15 to 21 catcher boats that either have or will deliver shoreside -- this part of the fishery is still open. Attached is a table describing the historic participation in the fishery.

Question 9: What steps, in re-allocating the whiting catch, did the Department take to assist small fishing fleets, shore-based processors and dependent communities to address problems, such as unemployment and bankruptcy, that will result from the Department's allocation?

If approved, the Council's recommendation would have provided the shoreside sector with more than twice the actual amount of whiting processed in 1992. The Department's partial disapproval attempted to maintain the relative proportion of whiting taken by each sector in 1992, thus sharing the conservation burden of a lower allowable harvest equitably between sectors. Unfortunately, any time resource allocation occurs in an overcapitalized fishery, participants are adversely affected. NOAA does not have the authority or the funding to assist these groups financially.

NOAA recently approved and is currently implementing a limited entry program for Pacific groundfish, including Pacific whiting, which will protect harvesting opportunities for vessels that historically harvested whiting on the West Coast. Many of the vessels that will receive initial permits are the small coastal vessels that provide fish to shoreside processors. Few, if any, at-sea catchers or processors are expected to receive initial permits.

Question 10: What is the total value of loans guaranteed by the federal government under the Fishing Vessel Obligation Guarantee Program? Specifically, what is the number of factory trawlers, shore-based processing plants and shore-based catcher boats?

The total value of loans under the Fishing Vessel Obligation

Guarantee Program (FVOG) nationally is \$211,801,966. The numbers of vessels, by type, and processing plants, by type, are outlined in the following table by geographic region.

Number of FVOG Program Components by Geographic Region

Region	Processor Vessels Only	Fishing Vessels Only	Catcher Processor Vessels	Shore-side Processors
Northeast	1	100	0	15
Southeast	0	68	0	0
Northwest	6	113	3	5

Total	7	281	3	20

Thank you, Mr. Chairman. This concludes my testimony. I would be pleased to answer any questions you or other members of the Subcommittee may have.

U O R K S H E F T - Masters of US Whiting Processors 1/ and Catcher Boats 2/, 1990-1993

	1990	1991	1992	3/ 1993
Harvest Guideline (in mt)	196,000	228,000	208,800	142,000
(a) Total Shoreside Processors (bread):	5	7	11	10
(b) California	3	3	3	3
(c) Oregon	1	3	6	6
(d) Washington	1	1	2	1
(e) Total At-sea Processors (f+g)	3	18	26	18
(f) Catcher/Processors (includes those taking codends from other catcher vessels)	3	15	23	16
(g) Motherships	0	3	3	2
(b) TOTAL US WHITING PROCESSORS (ave)	8	25	37	28
(1) Catcher boats delivering shoreside (j+k+l+m):	13	16	29	4/ 15-21
(j) California	5	5	6	5
(k) Oregon	5	12	22	4/ 9-16
(l) Washington	4	1	5	2
(m) In more than one state	1	2	4	4/ 1-2
(n) Catcher boats delivering at-sea	0	26	24	8
(o) Catcher boats counted above that delivered both at-sea and onshore in WA ¹	0	3	2	0
(p) TOTAL CATCHER BOATS THAT OSMAT PROCESS (l+m+n):	13	39	51	4/ 23-29

one metric ton (mt) = 2204.62 pounds

1/ Shoreside processors are those considered by each state to be major whiting processors, as determined by California Dept. of Fish and Game (CDFG), Oregon Dept. of Fish and Wildlife (ODFW), and Washington Dept of Fisheries (WDFW).

2/ Catcher boats are midwater trawlers that do not process whiting and which land more than 20 mt of whiting in a year.

3/ Shoreside data for 1993 are incomplete since the season is in progress.

4/ The high end of the range includes vessels that have signed "experimental fishing permits" (EFP's) to land salmon in the whiting fishery, but which have not yet landed 20 mt of whiting in 1993.

tally-ves

3/may93kk

Midwater Trawlers Cooperative

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President
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1628 North Coast Highway
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TESTIMONY GIVEN BEFORE U.S. CONGRESS SMALL
BUSINESS SUB COMMITTEE ON REGULATIONS,
BUSINESS OPPORTUNITIES AND TECHNOLOGY

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June 2, 1993

MEMBER VESSELS

AJ
AMBITION The Honorable Ron Wyden
BAYISLANDER Chairman, Subcommittee on Regulations, Business
BLUE FOX Opportunities and Technology
CAPE FALCON 2452 Rayburn House Office Bldg
CAPE KIWANDA Washington DC 20515-3703

CARAVELLE Dear Congressman Wyden:
COHO

EXCALIBUR My name is Barry Fisher. I am President of Yankee Fisheries Incorporated
EXCALIBUR II and also President of Midwater Trawlers Cooperative, a boat owners'
HAZEL LORRAINE association of approximately 40 vessels who fish for whiting and
LESLIE LEE groundfish in the Pacific Fishery Management Council area and who also
LISA MELINDA fish for cod, pollock and flounders in Alaska. Our members land their
MARATHON catches here and in Alaska to shore plants. We also have some members who
MISS BERTIE deliver their catches at sea to factory processors and mother ships.

MISS LEONA Midwater Trawlers Cooperative unanimously supports, and have supported,
NEW JANET ANN the framework allocation plan that was approved by the Pacific Fishery
NEW LIFE Management Council and sent to the Department of Commerce in December
OCEAN SPRAY 1992. That plan was a continuation of the Pacific Fishery Management
PACIFIC CHALLENGER Council's goals, objectives and priorities which in the past have been
PACIFIC FUTURE fully accepted by the Department of Commerce until April 15, 1992.

PACIFIC RAM The Department of Commerce's rejection of the PFMC's allocation plan has
PATIENCE in my opinion created a very large arena of jeopardy for the coastal
PATSY B fishing fleet in the Pacific Northwest. It jeopardized investments that
PEGASUS were made as a result of PFMC intents to prioritize whiting allocation to
PERSEVERANCE vessels who land their catches in shore plants. Commerce's April 15, 1993
PERSISTENCE allocation may be responsible for the cutting off of further investment in
PIONEER a promising area of product utilization, namely the processing of the
RAVEN whiting carcasses and offal to provide a whole series of secondary
ROSELLA products from the carcasses which still contain approximately 80 percent
ROYAL AMERICAN of the fish weight caught. Recovery rates in making whiting surimi and/or
SEADAWN fillets constitute roughly 20 percent of the raw weight of fish caught.
SEEKER Traditional use of this material is to render it into fish meal, bone meal
VANGUARD and oil. A great deal of this weight in the at-sea component is dis-
WESTERN DAWN carded as waste and hence does not constitute a proper total utilization
of the resource. As a result of considerable effort by the industry, Oregon State University Sea Grant Program, and the Oregon Department of Agriculture, several novel and productive uses have been found for the whiting carcasses.

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I am attaching a letter from Ken Hilderbrand, OSU Sea Food Technologist, which details some of these specific uses and names the companies involved.

These other uses are the production of hydrolyzed products which are superb natural and organic fertilizers with a broad spectrum of uses ranging from fertilizers for container gardens and small private gardens to applications of huge volume for large agricultural crops. Hydrolyzed products release their vital ingredients, namely nitrogen, evenly over a long period and hence constitute superior nutritive value as opposed to chemical fertilizers which often release most of their nutrients in a short three week to one month period and which leave chemical residues in the soil.

Another use for the secondarily processed whiting is the provision of supplemental animal rations for dairy and beef cattle and poultry. The products analyzed and test marketed to date show superior characteristics when compared with fish meal.

Another use with great potential for the Pacific Northwest and perhaps indeed for the nation is the utilization of whiting carcasses as a prime ingredient in composted materials for both fertilizers and the remediation of soils heavily laden with toxic wastes. Considerable research from the Sea Grant Program and other parties at both Washington State University and Oregon State University demonstrates that whiting carcasses mixed with other wastes such as seed grass straw, wood ash from saw mills, and non-burnable forest products detritus can produce superior fertilizers and a remedial treatment for soils heavy in toxic wastes. It is obvious to us that such usage has great social as well as economic benefits. Without the whiting carcass waste there is no other readily available source of fish wastes in sufficient volume to manufacture these products.

I would now like to turn to question one in Congressman's Wyden's letter in which he asks for our concerns regarding impact of the whiting allocation on small fishing boats and coastal shorebased processors.

The abrupt about-face which the Department of Commerce in the Clinton Administration has taken will result in a loss of markets of whiting for eleven member boats of my Association and a loss of some 550-660 shorebased processing plant jobs. When one remembers that the income multiplier for groundfish landed across the dock is 2.7:1 it is easy to compute that the loss of some \$30 million in payment for fish will turn into a total loss ranging from \$65 to \$75 million dollars spread throughout local shipyards, fuel depots, chandler shops, net makers, grocery stores, restaurants, coastal port merchants, etc. etc.

It should be remembered that the coastal ports are undergoing severe economic contraction as a result of forest products industry decline. There is little else to take up the slack in the coastal ports' economies except tourism which is not known for broad income distribution in well paying jobs. It must also be remembered that there have been significant declines in other fisheries such as salmon and groundfish.

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Parenthetically I also protest the Department of Commerce's overriding of the PFMC Salmon Management Plan.

The PFMC has long recognized that whiting is part of the groundfish complex of stocks. The Council has tried to manage so that the pioneers in this fishery continue to maintain their historic places in the whiting fishery as a means of alleviating stress or increased fishing effort on the traditional groundfish stocks. NMFS's reasoning on this last point is intellectually and scientifically bankrupt and I invite the Committee to question me on this point.

Question 2. I do not believe that the Department of Commerce adequately explored the impact of their decision on small shore based fishing operations. Commerce in its ruling provided exactly what the American Factory Trawler Association had advanced as their wishes in the allocation of whiting for 1993. I believe Commerce responded to heavy lobbying efforts by a lavishly funded special interest group (something that President Clinton said would not be tolerated in his administration). The incoming Department of Commerce officials never approached either PFMC or the coastal port fishermen and processors to obtain their views as counter arguments to what the factory trawlers proposed. Further, on or about March 15 Commerce proposed an allocation of its own which contained most of the PFMC's framework allocation plan. We reluctantly supported this. We now regard that Commerce proposed plan as an exercise in duplicity to lull us to sleep. The Factory Trawlers Association had advance notice of what the final Commerce ruling would be some 10 days before the rest of the world was acquainted with Commerce's ruling. The factory trawlers were hiring catcher boats and told the catcher boats exactly what tonnage would be allocated ten days before the Department of Commerce announced the final allocation. This whole area of conduct should be vigorously investigated, as should the whole allocation process by an organization such as GAO who we feel would be fair and objective.

Of greater import, we believe that the Department of Commerce has acted illegally in carrying out its obligations under the FCMA of 1976. No where in that Act can I find language that allows or justifies Commerce imposing its own allocation decisions in contrast to the Fishery Management Council recommendations. If Commerce wants to reject a plan it is supposed to do so in a critique to the Council as to where and how the Council's recommended management plan does not meet the requirements of the law or the criteria set forth as National Standards of the FCMA. Commerce's actions on the whiting allocation sends the message that there is little use in trying to conduct regional fishery management and that the regional management process laid down by the Congress in the FCMA is not important since Commerce may override the Council's recommendations on fishery management plans and allocations without any analysis, justification or documentation of its own. We do not believe that this was the intent of Senator Magnuson, Congressman Studds, and the other members of the U.S. Senate and House of Representatives who overwhelmingly passed the FCMA in 1976.

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Question 3. The Commerce Department's allocation plan negates almost all of the concerns raised by the original allocation recommendations made by the Pacific Fishery Management Council. The Management Council had turned in for the third consecutive year a management plan based on goals, philosophies and objectives which have been historically accepted by the Department of Commerce since 1985. In March 1992 the Council's summary noted for the third year in a row that a preference would be given to catcher vessels delivering shoreside. The Council's summary noted that a shoreside preference approach best achieved its goals by:

- * Preventing preemption of shore-based processing by an at-sea fleet with the capacity to harvest the total resource within a very short time frame
- * Fostering the stability of shore-based processing by "providing replacement revenues to coastal communities for other faltering fisheries"
- * Stabilizing "faltering rural coastal economies by providing fishing, processing and support industry revenues to replace income declines in other industries"
- * Achieving "maximum net benefit to the nation by putting economic benefits directly into coastal communities and distributing income impacts/benefits along traditional geographic paths"
- * Spreading the whiting fishery over both time and area and "reducing potential pulse fishery impacts on whiting, salmon and rockfish stocks"
- * Preventing the shift of displaced traditional harvesters of whiting to other, often over-utilized, fisheries
- * Contributing to the increased long-term yield of whiting by spreading the harvest over a longer season

The Department of Commerce's self-imposed allocation dooms us to repeat year-by-year allocation fights when the Council's plan called for a framework allocation plan that could be used year after year and into which you simply plugged the numbers of each year's allowable quota and allocated by formula. Worse, Commerce's allocation plan allowed for a "pulse" fishery in which 100,000 metric tons were taken in a 2 1/2 week period. The overwhelming majority of this catch will result this year in inferior product at lower than the income that would have been gained if the catch had been spread over a longer season of some six to seven months. We have reliable information that most of the factory trawlers' production amounted to grade KA and A grade surimi which are the two lowest quality standards obtainable. The fillets produced by the at-sea fleet, when they could produce fillets, were no better than Grade B.

The same low quality fish were obtained by our boats fishing for shoreside processors and both the catcher boats and the processors agreed that

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fishing operations should be suspended until a higher quality could be obtained.

The fish were of poor quality early in the season this year because they were comprised mostly of "spent" fish or fish that were recently spawned out. Spent fish give a lower recovery coefficient or the percentage of salable meat extracted from the whole fish. In addition the muscle fiber texture is such that a lower quality product results. In our opinion the product realized by the factory trawler fleet will be some 35 to 45 percent lower in value than if the fish were harvested later when they would be of much higher quality.

We have also heard that the bycatch of other species, primarily rockfish, this year in the short factory trawler season was high. These fish are discarded at sea and although counted are wasted and the nation loses that net economic benefit. These bycatch weights are deducted from the quotas available to the other coastal trawlers fishing mixed groundfish species. This of course is income lost to these boats and plants. Unfortunately, NMFS is unable, a whole month after the at-sea fishery closed, to provide us with the pertinent data relating to discards, waste and bycatch by the factory trawler fleet.

Finally it should be remembered that the Council has been concerned about utilization of the catch and recognizes that the factory trawlers waste a great deal of their targeted species, whiting, which can go overboard unprocessed because it is too large, too small, or because they have been crushed or otherwise damaged. NMFS has records that demonstrate that last year in the at-sea operations the factory trawlers and mother ships wasted over 10,000 metric tons of all species caught. NMFS documents this waste but either will not or cannot put an economic value on it. Every pound landed by coastal trawlers fishing for coastal plants is utilized as either primary or secondary product.

The Department of Commerce has literally told us in its rulings that it is protecting a factory trawler fleet and mother ship operation which overcapitalized itself in its intended target area of operations, the Bering Sea and the Gulf of Alaska. The thesis that Commerce is following is that they must give this fleet, in only the third year of operation in the whiting fishery, greater allocations because they are overcapitalized and need this opportunity. The coastal processors and catcher boats, and remember the catcher boats have in the main some 10 to 15 years in this whiting fishery, are not overcapitalized according to the Council's recommended plans. Commerce's reasoning is bankrupt. Less than a third of the factory trawler fleet is in this fishery and the income derived from the whiting fishery for the factory trawlers and mother ships involved is less than 10 percent of their annual income. Yet coastal trawlers and coastal plants are supposed to give up some 30 to 70 percent of their annual operations to accommodate and subsidize the factory trawler fleet. Ten thousand tons to the factory trawlers employs them for two days. Ten thousand tons landed in a coastal port provides jobs for a month and superior income distribution. Also remember, our plants and boats are 100 percent American owned; they buy all of their gear,

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machinery, vessel maintenance, construction, debt financing, etc. etc. from American sources. This is not true with many if any factory trawlers.

The Department of Commerce did not bother to analyze all of this (and a great deal more, in my opinion).

I now turn to question 4, "What will be the effect in the long and short term on small fishing operations and onshore operations in the Northwest?" We have made considerable investments over a 10 to 15 year period in the catcher boat fleet to catch whiting. None of us can afford to make more investments to maintain this fleet if we are going to be governed by the Department of Commerce's abrupt about-face in allocations. We can give little credence or support to the actions of a regional fishery management council if their recommendations are to be rejected in such preemptory fashion.

It should be openly recognized that the State of Oregon has made considerable investments in time, effort and money along with a cooperating fleet and shoreside processors in the area of product development, marketing efforts, processing methodology, product improvement, etc. etc. Most of the benefits of this research and effort are being enjoyed by all whiting producers, including the factory processors. For three consecutive years Oregon State University Sea Grant Program, OSU, Coastal Oregon Marine Experiment Station, the Oregon Department of Agriculture and the Oregon Coastal Zone Management Association in collaboration with the coastal fleet and processors have conducted very widely attended, several-day, workshop seminars where important research efforts and results have been given freely to the public at large. The whiting industry of boats and plants have set up a producers association with the avowed objectives of guaranteeing product quality, the development of secondary products from whiting, the provision of positive public relations for not only the whiting fishery but the coastal fisheries in general, and finally to enhance and promote scientific research to produce more and better products by the application of sea food technology and engineering.

All of these laudable public efforts from which society as a whole will benefit are jeopardized by the capricious behavior of the Department of Commerce.

On a more personal note I started the whiting fishery in 1978 in partnership with Marine Resource Company International of Seattle, Washington, an American-Russian joint venture company. The whiting fishery grew steadily over the early years of the 1980s in a joint venture mode. I led the first fleet of small Oregon, Washington and northern California trawlers to the Bering Sea in 1980 to commence bottom trawl operations in the joint venture mode. I was one of the early pioneers that developed the pollock fishery in Alaska.

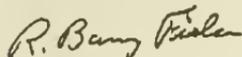
I am an old man now. I fought continuously from the late 1950s on for extended American jurisdiction over our renewable marine resources and our continental shelf areas. Foreign factory trawlers had shown up in great

Page 7

numbers, commencing in the late 1950s continuing through the 1960s, 1970s and early 1980s, vacuuming up huge stocks of fish which I and other old timers felt belonged to the people of the United States. We fought vigorously for many years in an uphill battle to make these stocks American and to bring them home to our coastal communities so that a lot of people would get a slice of the pie. I did not engage in that fight and sacrifice so much effort and treasure and undergo huge financial risks in order to continue to have our resources gobbled up by factory trawlers whose only difference was the transfer of the flag on the stern from foreign to an American flag. Commerce should remember and be forced to confront the fact that no other major fishery nation allows its factory trawlers to dominate their coastal communities.

Thank you for your interest and consideration.

Sincerely,



R. Barry Fisher
President and Chairman of the Board

Enclosure

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HAMMOND, OR 97121

NORTHWEST PACIFIC TRAWLERS, Inc



F/V CAPE FALCON
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June 1, 1993

To: The Honorable Ron Wyden, Chairman
U.S. House of Representatives' Subcommittee on Regulation,
Business Opportunities, and Technology

From: David Duncan

Re: Pacific Whiting Allocation

Mr. Chairman:

Thank you for the opportunity to offer testimony before the committee on this issue. I am the owner/operator of the coastal trawler *Cape Falcon*, a member of the groundfish advisory subpanel to the Pacific Fishery Management Council (PFMC), a small businessman and whiting fisherman.

While I'm disappointed over the final allocation figures, I have more serious concerns over the process in which this decision was made. I'm greatly troubled by the Commerce Department's disregard for the council process, and the disregard for both the human and financial resources spent to provide the secretary a recommendation and the supporting analysis as required by the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The refusal of the Department of Commerce to accept the recommendation of the NW Regional Director of the National Marine Fisheries Service (NMFS), to have relieved him of his role in this matter, and the refusal to even accept its own proposed rule as published in the Federal Register should give this committee grave concern over the manner in which the Commerce Department made this decision.

The Commerce Department did not weigh this issue against the many goals, objectives and criteria outlined in the Pacific Coast Groundfish Management Plan, as the PFMC and its advisory panels are obligated to do. Apparently the Commerce Department listened only to the intense lobbying effort of the American Factory Trawler Association (AFTA). AFTA has been very successful in hiring ex-high level NMFS officials to represent its interests in Washington D.C.

I do not believe the Commerce Department adequately explored the impact of their decision on the entire coastal fishing fleet, shore-based processors, or the coastal communities of Washington, Oregon and California.

To illustrate this point, one of the issues the Magnuson Act requires the council to consider when allocating, is the impact of that allocation on adjacent fisheries. While the council's supporting documentation did not go into great detail on this issue there are some numbers I would like to share with you. I have included two tables, one generated by NMFS staff in Seattle which lists the catch and discard of groundfish in the at-sea whiting fishery (i.e. factory trawlers), and another generated by Oregon Dept. of Fish and Wildlife (ODFW) reporting the catch of the shore-side whiting fleet in Oregon. Both of these tables represent the 1992 fishery. All of the species listed are important components of the traditional coastal groundfish fishery. Discards by the at-sea fleet represent significant lost harvest opportunities to other fishermen, processors and coastal communities outside the whiting fishery.

To demonstrate the magnitude of these lost harvest opportunities I've compared the discarded catch of a few of these species, and how that discarded number relates to the total allowable catch for that species in 1993.

- * Yellowtail Rockfish: The 1992 at-sea discard was 638.5 MT. This figure represents 14% of the entire allowable catch of 4400 MT for 1993.
- * Widow Rockfish: The 1992 at-sea discard was 387 MT. This figure represents 5% of the entire allowable catch of 7000 MT for 1993.
- * Pacific Ocean perch: POP was severely over fished by foreign fishing fleets during the 1960's. This stock has been managed under a stock rebuilding program since the early 1980's. While POP has a zero allowable catch, the council has allowed a

strictly monitored incidental harvest of 1500 MT. The 1992 at-sea discard was 341 MT. This figure represents 22% of that incidental take allowed the coastal fleet for 1993.

- * The entire at-sea catch and discard of groundfish other than whiting for 1992 was 4,765 MT. This figure represents 7% of all quota managed species which totaled 61,566 MT. 7% equals 10,502,633 lbs of non-utilized and wasted resource by the factory trawl fleet, and at the expense of the traditional coastal groundfish industry who depend on those fish.

It should be noted that the shore-side whiting fleet retained and landed its incidental groundfish catch. While the numbers were considerably smaller than the at-sea fleet, the shore-side incidental catch was utilized and provided economic benefit to the coastal communities and the nation as a whole.

As this allocation decision shifts more whiting harvest away from traditional whiting harvesters and toward factory trawlers, displaced traditional whiting vessels will be forced to participate in other already over capitalized fisheries. The increased effort in other fisheries, the lost access to whiting, and the lost utilization of at-sea discards all combine to further compound the negative effects of this allocation decision.

It is important that the committee understand that all participants of the coastal groundfish fishery will unfairly subsidize the factory trawler fleet in order to provide them a single species whiting fishery. This is one of the reasons why the PFMC choose to manage the whiting fishery as part of the entire groundfish fishery and developed the allocation framework it did.

Throughout the allocation debate AFTA has argued strongly that its members made investments and built vessels in the spirit and promise of the Magnuson Act to "Americanize" our nation's fisheries. They claim that their presence alone "Americanized" the fishery and gives them priority access to the whiting resource. The truth is that many of us made investments and built vessels in the same spirit and promise made by the Magnuson Act. In fact the "Americanization" of the whiting harvest came years ago with the advent of the whiting joint venture fishery in 1978. This fishery, recognized as a domestic fishery, provided harvest opportunities to U.S. catcher-vessels delivering whiting to foreign processors for twelve years before the first factory trawler participated in the fishery.

The coastal trawl fleet truly represents American small business. Our investment wasn't encouraged or shared by foreign trading partners or fueled by foreign capital. Our vessels weren't built or converted in foreign shipyards. Our businesses are often family owned and an integral part of the coastal communities in which we live. Through no fault of our own we have lost traditional whiting harvest opportunities to factory trawlers who have refused to purchase whiting from traditional whiting catcher vessels under the guise of "Americanization". Further more, their capacity and mobility has proven to preempt the shore-base operations and take enormous amounts of fish in a very short period of time. Offering little to the coastal communities and leaving economic chaos in their wake after a few short weeks of fishing.

Even though the Magnuson Act is not clear on this issue of priority, I cannot believe that it was the intent of the act, or the intent of Congress to have encouraged investment by small business to harvest this public resource, and then have it replaced or preempted simply because those small businesses are not vertically integrated.

The impact on my operation from this year's allocation is substantial. Whiting represented nearly fifty percent of our income last year. This year I estimate only twenty-five to thirty percent of our income will be whiting. The other fisheries I will need to turn to are already fully utilized. I have made a large investment in my vessel in order to bring this product ashore. Business planning is nearly impossible because of the uncertainty surrounding this allocation. Shore-base market opportunities for whiting are difficult to secure because of this uncertainty. If there is any thing this committee can do to provide some certainty to this allocation process we would all be grateful.

Cumulative Whiting Report
Oregon Shoreside Fishery Only
 (Best Available Data as of 11/4/92)



All Ports Cumulative Whiting Report, 4/15 - 10/30/92 End of the Season

	Observed At-Sea	Observed Shoreside	Observed Total	Fishery Total
Whiting Harvest (mt)	7,807	17,446	25,253	49,092
Number of Deliveries	196	449	645	1,317
Salmon Catch (no)	98	143	241	N/A
Misc Rockfish (lb)	2,928	11,937	14,865	69,026
Yellowtail Rockfish (lb)	18,755	41,653	60,408	67,027
Widow Rockfish (lb)	4,021	24,692	28,713	41,575
Sablefish (lb)	12,843	16,645	29,488	26,629
Mackerel (lb)	437,812	725,133	1,162,945	1,723,727
Misc Other Fish (lb)	20,287	43,288	63,573	120,141
Salmon Rate (no/mt)	0.013	0.008	0.010	N/A
Rockfish Rate (lb/mt)	0.375	0.684	0.589	1.406
Yellowtail Rate (lb/mt)	2.402	2.388	2.392	1.365
Widow Rate (lb/mt)	0.515	1.415	1.137	0.847
Sablefish Rate (lb/mt)	1.645	0.954	1.168	0.542
Mackerel Rate (lb/mt)	56.079	41.564	46.052	35.112
Other Fish Rate (lb/mt)	2.599	2.481	2.517	2.447
% of Deliveries Observed:	15	34	49	

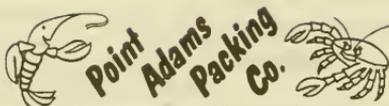
Comparison of 1991 and 1992 Pacific whiting at-sea processing operations.

COMMON NAME		WEIGHT Metric tons (mt)			CATCH RATE	
		1991	1992	Difference	1991	1992
R O U N D	Pacific whiting	196,770.628	152,684.379	-44,086.249	1.0000	1.0000
	Pacific cod	0.338	0.068	-0.270	0.0000	0.0000
	Lingcod	0.442	0.470	0.028	0.0000	0.0000
	Jack mackerel	228.714	852.731	624.017	0.0012	0.0056
	Sablefish	27.484	70.306	42.822	0.0001	0.0005
F L A T F I S H	Arrowtooth flounder	0.256	2.573	2.317	0.0000	0.0000
	Dover sole	0.034	0.116	0.082	0.0000	0.0000
	English sole	0.001	0.036	0.035	0.0000	0.0000
	Petrals sole	0	0.006	0.006	0.0000	0.0000
	Rex sole	0.312	1.439	1.127	0.0000	0.0000
	Rock sole	0	0	0.000	0.0000	0.0000
	Starry flounder	0	0	0.000	0.0000	0.0000
	All other flatfish spp (except halibut)	0.832	0.413	-0.419	0.0000	0.0000
R O C K F I S H	Bocaccio	12.072	7.319	-4.753	0.0001	0.0000
	Canary rockfish	5.055	1.808	-3.249	0.0000	0.0000
	Chilipepper rockfish	522.438	1.990	-520.448	0.0027	0.0000
	Pacific ocean perch	38.046	340.991	302.945	0.0002	0.0022
	Shortbelly rockfish	6.934	20.441	13.507	0.0000	0.0001
	Thornyhead	0.560	9.660	9.100	0.0000	0.0000
	Widow rockfish	366.326	387.178	20.852	0.0019	0.0025
	Yellowtail rockfish	320.556	638.497	317.941	0.0016	0.0042
All other rockfish spp	256.399	77.921	-178.478	0.0013	0.0005	
All other groundfish*	261.349	359.295	97.946	0.0013	0.0024	
TOTAL GROUND FISH		200,809.778	157,449.635	-43,360.141	n/a	n/a
N O N	Pacific mackerel **	0.001	829.874	829.873	0.0000	0.0054
	Pacific sardine **	0	30.556	30.556	0.0000	0.0002
P R O H I B I T E D S P E C I E S	Number of fish incidentally caught			Catch Rate (No. fish/mt whiting)		
		1991	1992	Difference	1991	1992
	Chinook Salmon	8,165	4,867	-1,298	0.03113	0.03188
	Other Salmon	165	204	39	0.00083	0.00134
	TOTAL SALMON	8,330	5,071	-1,259	0.03217	0.03321
Pacific Halibut	29	17	-12	0.00015	0.00011	

In the 1991 at-sea whiting fishery, chinook salmon comprised 97.4% of all incidentally caught salmon. In the 1992 at-sea whiting fishery, chinook salmon comprised 96.0% of all incidentally caught salmon.

* Defined as sharks, skatka, kelp greenling, cabezon, ratfish, morids, and grenadiers.

** Defined as non-groundfish species that are incidental to the whiting fishery.



Seafood Producers & Distributors
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CONGRESSIONAL HEARING
 JUNE 4, 1993
 PACIFIC WHITING ALLOCATION

WRITTEN TESTIMONY

TOM LIBBY, GENERAL MANAGER

PACIFIC WHITING ALLOCATION STRUCTURE

1992 EMERGENCY RULE:

TOTAL ALLOWABLE CATCH	208,000 METRIC TONS
AT-SEA ALLOCATION	98,000 MT
SHORE-SIDE ALLOCATION	80,000 MT
SHORE-SIDE PREFERENCE RESERVE	30,000 MT

AT-SEA SEASON TOTAL	152,000 MT
SHORE-SIDE TOTAL	56,000 MT

DIFFERENCES IN 1992 ALLOCATION AND ACTUAL CATCH ARE
 ADDRESSED IN THE FOLLOWING DETAIL.

1993 REGIONAL COUNCIL RECOMMENDATION:

TOTAL ALLOWABLE CATCH	142,000 MT
AT-SEA ALLOCATION	37,000 MT
SHORE-SIDE ALLOCATION	75,000 MT
SHORE-SIDE PREFERENCE RESERVE	30,000 MT

1993 DEPARTMENT OF COMMERCE PROPOSAL PUBLISHED FOR PUBLIC
 COMMENT BASED ON THE SLIDING SCALE CONCEPT RECOMMENDED BY
 THE REGIONAL COUNCIL:

AT-SEA ALLOCATION	53,000 MT APPROX
SHORE-SIDE ALLOCATION	89,000 MT APPROX

1993 FINAL RULE ISSUED BY THE DEPARTMENT OF COMMERCE:

OLYMPIC FISHERY	112,000 MT
SHORE-SIDE ALLOCATION	30,000 MT

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WHEN THE FACTORY TRAWLER FLEET TOOK 100,000 MT IN 22 DAYS OF EFFORT, AND AT THE REQUEST OF THE ENTIRE SHORE-SIDE INDUSTRY, THE DEPARTMENT OF COMMERCE STOPPED THE OLYMPIC FISHERY LEAVING 12,000 MT OF THE INITIAL 112,000 FOR SHORE-SIDE PARTICIPANTS.

SHORE-SIDE WILL ULTIMATELY BE PERMITTED TO TAKE APPROXIMATELY 42,000 MT. LESS THAN 50% OF THE REGIONAL COUNCIL'S RECOMMENDATION.

The Pacific Fisheries Management Council goals and objectives in regard to Pacific Whiting have been to develop the resource as an addition to the economic base of coastal communities. These goals and objectives were approved and have been recognized by the Department of Commerce since 1985. The Fisheries Conservation and Management Act of 1976 clearly states that fishery management plans and regulatory amendments are to be created by the Regional Fishery Management Councils. The Councils' conduct, deliberations and recommendations are governed by a Code of National Standards. Regulations include specific definitions of the analyses and documentation required for submission to the Secretary of Commerce.

In 1991 Point Adams Packing Company, based on the stated goals and objectives of the Regional Council and the Council's recommendation for the 1992 season's allocation, began to consider retooling an existing facility for the specific purpose of handling Pacific Whiting. Delays by the Department of Commerce in acceptance of that plan and a subsequent last minute emergency rule, under which the 1992 season was finally conducted, made it impossible to commit funds to retooling until the approximate opening date of the 1992 season. This problem was experienced to varying degrees by all of the Shore-Side processing facilities planning to handle Pacific Whiting, and as a result delayed shore plant start ups for that season. These uncontrollable delays made it impossible for the Shore-Side industry to take the allocation provided under the emergency rule. Although the physical capacity existed to handle the volume, the uncertainty created by Department of Commerce delays resulted in a loss of three months production time and the taking of only a portion of the shore side allocation.

During the five month waiting period for the 1993 Pacific Whiting allocation announcement, industry was routinely advised by the Regional office of NMFS that they were confident that the plan submitted by the Council was complete and met all of the requirements of the act.

In spite of that, the 1993 allocation as recommended by the Regional Management Council and the Regional director of NMFS was contravened by the Department of Commerce on a strictly political basis using the fact that the Shore-Side industry did not take its full allocation in 1992 as partial justification for that decision.

The Department of Commerce's politically motivated and arbitrary decision to contravene the Regional Council's recommendation for the 1993 framework allocation plan, and to provide Shore-Side participants with less than 30% of the Council's proposed allocation is projected to have long lasting negative effects on the entire Groundfish Complex and on the economies of participating coastal communities. Following are some specifics:

1. The Regional Council's proposed framework plan if applied to the last 17 years Total Allowable Catch would have split the resource equally between on-shore and off-shore participants. (see attachment). This confirms the validity of the framework plan.

2. Natural Resource Economists have projected that the economic impact of the Department of Commerce's reduction in Shore-Side Allocation from the proposed 105,000 Metric Tons to 30,000MT will be equivalent to the loss of more than 1,500 jobs equaling over \$30,000,000.00 in personal income.

For Point Adams Packing Company Specifically, the reduction amounts to the loss of 5 months of employment for over 60 employees directly involved in Whiting processing. A loss of \$750,000 in personal income.

3. Point Adams will also lose access to potential income generated from Pacific Whiting on 15,000MT of product that is not available because of the Shore-Side Allocation Reduction.

Continuation of the Department of Commerce's contravention of Regional council recommendations will ultimately result in closure of Shore-Side facilities that were established based on anticipated continuity in historical Regional Management philosophy, Councils' stated goals and objectives, and the Department of Commerce's obligation to act in accordance with the law as established under the Fisheries Conservation and Management Act of 1976.

4. The recommended Council allocation (by a vote of 9-2) considers Pacific Whiting as an integral part of the Groundfish Complex. Each decision on Pacific Whiting has a ripple effect through out the rest of the complex and is considered in the context of years of scientific data resulting from studies of the dynamics of the entire Groundfish Complex, as well as other currently fully subscribed fisheries.

It is already apparent that the reduced allocation has redirected the Shore-Side Whiting fleet's efforts to the other species of the Groundfish Complex and as a result, those species are requiring further control by the council. Continuation of the 1993 politically motivated allocation scheme will put the other species of the complex under further stress from a fleet that was developed to harvest the volumes available in the Pacific Whiting resource. These issues were all considered as part of the Council's recommendation and were all ignored by the Department of Commerce in its contravention of the Regional Council process.

5. Taking of 70% of the Total Allowable Catch of any resource in a pulse fishery as happened this year in Pacific Whiting is at best an atrocity. It is obvious that those who made the final decision had no idea what the effect would be on the resource or the economy.

a. 100,000MT were taken by the factory trawlers in a 22 day period providing less than a month's employment for their crews. The same volume of fish would have provided Shore-Side employment of seven months.

b. 70% of the Total Allowable Catch was taken immediately post spawn, when experience shows that fish are soft fleshed, higher in moisture content, and of a lower per unit average weight than at any other time in their life cycle. Because of this, processing recoveries are at their seasonal low requiring as much as 25% more raw product to produce the same number of pounds of finished product.

For example, the factory trawlers were allowed by the Department of Commerce, against the recommendation of the Regional Management Council, to take over 70% of the Total Allowable Catch at the worst possible time for the resource. For purposes of comparison let's assume that 100% of the factory trawler effort was directed to surimi production. Recovery reports from the factory trawler fleet indicate that 12% was the best attainable recovery. That recovery was confirmed by shore plant processing during the same time period. Additionally, it is documented fact that later season recovery on surimi production is, on the low end 15%. It follows then that the maximum finished pounds of surimi that could have been produced by the factory trawlers would approximate 12,000MT. While, had the product been processed over an extended time frame by Shore-Side participants the same 100,000MT of the resource would have produced an approximate 15,000MT of finished product. That equates to 6,616,000 additional finished pounds of marketable product.

Additionally, because of the poor condition of the fish during this post spawn period, the average weight per fish is approximately 20% less than later in the season. This means that 20% more fish were taken to attain the same total weight as the result of a huge volume pulse fishery.

The Regional Council recommendation took all of the above issues into consideration.

6. Additional concerns involve the documented magnitude of traditional species discarded by the at-sea fleet.

Yellowtail Rockfish 1992 discard equals 14% of 1993 total allowable catch.

Widow Rockfish 1992 discard equals 5% of the 1993 total allowable catch.

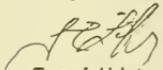
Pacific Ocean Perch 1992 discard equals 22% of the 1993 incidental catch allowed the coastal fleet.

The entire at-sea catch and discard of ground fish other than Whiting for 1992 was 4,765 MT, representing 7% of all quota managed species. 10,500,633 lbs of non-utilized, wasted resource by the factory trawl fleet. All product that would, as a matter of course, be processed if it was part of a shore-side whiting delivery.

The loss of these economic benefits to the fishery and the further unnecessary depletion of the resource are the direct responsibility of the Department of Commerce and its unwillingness to consider the documentation which supported the Regional Management Council's recommendation.

To conclude, the action taken by the Department of Commerce has negatively impacted the biological and economic management of the Pacific Whiting fishery, and has, contrary to legislation, ignored the recommendations of the Regional Management Council.

Very Truly Yours,



Tom Libby
General Manager

Year	U.S. Whiting Quota
1977	150,000
1978	130,000
1979	198,000
1980	175,000
1981	175,000
1982	175,000
1983	175,000
1984	175,000
1985	175,000
1986	227,500
1987	195,000
1988	232,200
1989	225,000
1990	196,000
1991	228,000
1992	200,800
1993	<u>142,000</u>
17 years	3,182,500 mt

3,182,500 mt/17 years = 187,205 mt/yr

187,205 mt = 95,000 mt shoreside (50.7%); 92,205 mt at-sea (49.3%)

STATEMENT OF FRANK B. BOHANNON
Before The
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON SMALL BUSINESS
Subcommittee on Regulation,
Business Opportunities, and Technology

4 June 1993
Newport, Oregon

Mr. Chairman and Members of the Subcommittee,

My name is Frank B. Bohannon. I have been a fisherman for over 30 years and am presently the owner of the traditional catcher vessel NEAHKAHNIE. I have fished Pacific whiting since 1979, the year the fishery started. I grew up in Tillamook, Oregon and am presently living in central Oregon. Ours is a family business. Not only do I have a considerable amount of money and my life invested in the fishery, but I have invested the lives of my children as well. My son Ethan is 28 and took over as captain on the NEAHKAHNIE this year. My son Eric, 25, is a crew member on the PACIFIC ALLIANCE, and my daughter Heather, 23, works on the mothership EXCELLENCE. My wife, Claudia, manages the office. This is not much different than most family fishing businesses in the Northwest.

I am a board member of American Independent Fishermen Association and a board member and past president of American High Seas Fisheries Association. Today I am representing both associations, whose members are traditional catcher vessels that have the longest history in the whiting fishery and deliver primarily to at-sea processors.

First, let me thank the committee for their interest in our industry and for affording us the opportunity to present our views.

Background

I have been asked by the Committee to explain the difference between factory trawlers, motherships, traditional catcher vessels and shorebased processors.

- Factory trawlers are primarily large vessels (250-35 feet long) with large horsepower (4,000-6,000 hp) that catch and process their own fish. Factory trawlers have the shortest catch history in the whiting fishery, starting in 1990.
- Motherships are large vessels that process fish but don't have the capability to catch their own fish. They contract with traditional catcher vessels to catch the fish for them. The only difference between motherships and shoreplants is the location of their processing activity.
- Traditional catcher vessels in the whiting fishery are 75-120 feet long, have 800-1200 horsepower, and catch but do not process fish. Instead, they deliver their catch either to a mothership or to a shoreplant for processing. The catcher vessels have the longest history in the fishery, going back to 1979.
- Shoreplants, located on the beach, process fish delivered by catcher vessels of the same class as those that deliver to motherships.

Most of those I represent today deliver to motherships at sea, although some have shorebased markets.

Many people have portrayed this issue as a contest between factory trawlers and shorebased processors. In the heat of this battle, one sector of the fishery has been largely ignored: the traditional catcher vessel in general and specifically those that deliver at sea to motherships. We who have the longest participation in the fishery have seen our catch reduced from a high of 96% in 1989 down to 10% in 1993 - an enormous reduction in just five short years (see Table I and IA). One of the main reasons for this is that we don't have an allocation of our own and are forced to compete head to head with the much larger, more powerful factory trawlers.

There seems to be a misunderstanding about the action that was taken by the Department of Commerce. They did not create an allocation plan of any kind. Instead their action had the effect of disapproving the Council's decision and ensuring that both the shoreside and the at-sea sectors would harvest the same percentages of the catch that they did in 1992. Their actions are well within their legal authority.

It might have been better for us if they had exceeded their authority. The council's decision was based on the location of the processor, either at sea or ashore, and would have placed the at-sea catcher boats in direct competition with factory trawlers for a share of the harvest. We had argued strenuously with the Council about the unfairness of this plan, and we continued to express this view to Commerce staff. We asked to have the at-sea allocation separated between catch

boats and factory trawlers. We also expressed concerns about the effect on price and market freedom that fishermen would find under the council's plan that guaranteed shoreside processors as much of the harvest as they are able to use. There are indications in the final rule that Commerce had some of those same concerns. It is possible that if they had substituted a plan of their own, it might have included the provisions we asked for.

It appears to us that the Commerce Department was trying to find a way to address the Council's stated concern about preemption of harvest opportunities for shorebased boats while ensuring fair treatment for the other harvesters. The Council's allocation was expressed in tonnages, rather than in percentages as we had requested, thus requiring the at-sea fleet to bear all the burden of conservation at low stock levels. In addition, the Council's plan would have encouraged increased investment in shoreside processing, at the expense of existing American processors. At the same time, it would not have provided market opportunities for more catcher boats, but simply have given more fish to the few boats that already have shoreside markets, contrary to the Council's stated concern for the limited entry fleet.

Because the council based its allocation scheme on processing, rather than harvesting, the traditional fishermen have been placed at the mercy of the processors regarding the price paid for the fish. An allocation that is, in practical terms, made to processors guarantees them a source of fish. As a result, they have the freedom to reduce the price they offer to fishermen, establish fishing seasons to their preference, and vertically integrate. This happened in Alaska last year when 35% of the pollock allocation was guaranteed to shoreside processors. The plants were assured of an adequate supply of pollock, the price was dropped from \$.15 to \$.07. It is interesting to note that the offshore catcher vessels had a relatively smaller reduction in price from 1992 to 1993 than did the catcher vessels that delivered shoreside. Many of the plants have purchased their own catcher boats and can exert further control through their vertically integrated fleets.

Congress has already addressed this situation in the Magnuson Act and in the legislation known as the Processor Preference Amendment.

National Standard #4 of the Magnuson Act (see Table II) is specific. It assumes that allocations will be made to fishermen, not processors, and says that the allocation should be fair and equitable to all such fishermen and that no particular individual, corporation or entity can acquire an excessive share. The Pacific Council allocated based on the location of the processor (shorebased, at-sea). What they should have done was base the allocation on the type of harvester (traditional

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catcher vessels, factory trawlers). They should also have taken into consideration catch history (longevity in the fishery).

The July 11, 1978, Congressional Record carries an account of the discussion on the floor of the House of House Resolution 13340 known as the Processor Preference Amendment (PL 95-354). "This amendment was unanimously voted out of the House Merchant Marine and Fisheries Committee, and had the support of all segments of the fishing industry, including both our domestic and distant water fishermen, our domestic seafood processors, and Department of State and Commerce". (Mr. Studds, Mass.)

During that discussion, Mr. Forsythe (New Jersey), the ranking minority member of the subcommittee, stated:

"It is therefore not intended that U.S. fishermen must satisfy the requirements of U.S. processors before the fishermen can sell fish to a foreign processor. Nor is it intended that U.S. fishermen should be compelled to sell their products to U.S. processors...[I]t is not the committee's intent, nor is it my intent, to force fishermen and processors into a business arrangement which they would not voluntarily enter into otherwise."

Mr. Ruppe (Michigan), the ranking member of the full committee, goes on to say: It is not the committee's intent to put fishermen at the mercy of fish processors to the extent that if fish processors have the capacity to process the fish harvested, the fishermen in turn would have to sell at whatever price the processors themselves would offer. It should be understood that we in no way want to make the fishing industry subject to the terms and conditions that might be unilaterally established by the U.S. processor industry."

The Congressional Record also notes the concurrence of Mr. Young (Alaska), Mr. ApCoin (Oregon), and Mr. Clausen and Mr. Legget (California), all with constituents that participate in the groundfish fisheries. In addition, Senator Stevens (Alaska) and Senator Magnuson (Washington), in a joint statement before the full Senate, agreed that the objectives of both bodies were the same.

What the Processor Preference Amendment did was provide a vehicle that established the priorities that would govern licensing of foreign processing vessels. The highest priority was given to fish caught and processed by the U.S. fishing industry. Second came fish caught by U.S. fishermen and purchased by foreign processing vessels. The lowest priority went to foreign fishermen. There was no mention of preferences between different segments of the U.S. fishing industry itself. Indeed, the members of both houses of Congress felt that the U.S. processor

had equal footing with the U.S. harvester in relation to the foreign component. Congress believed that, having established an advantage for domestic companies, no further preference should be given. Further, if one were to interpret the above, the independent American fishermen (harvesters) right to harvest and sell his fish under free and open market conditions was given the highest priority of all.

Many U.S. processors took advantage of this legislation by building factory trawlers, and shoreplants sprang up from Crescent city, Ca, to Dutch Harbor, Ak. During these years, the fishery was orderly, much easier to manage, and not overcapitalized. It was only later that excessive investment occurred as a result of the general interpretation by the U.S. Coast Guard of Congress's intent in the anti-Reflagging Act of 1987.

The result of this overcapitalization in both the processing the harvesting sectors has been contentious allocation battles, with each side asserting its right to the fishery. The role of the traditional catcher boats in developing the fishery is beyond question; however, it is the catcher boats delivering in their traditional mode to at-sea processors that have been denied their historical place in the fishery.

Impacts to Oregon

There are three full-time motherships that participate in the whiting fishery: EXCELLENCE, GOLDEN ALASKA and OCEAN PHOENIX. Collectively, they are capitalized at \$120 million and are 80% U.S. owned. In 1992 they employed 619 Americans aboard the ships, of which 157 were Oregonians. The payroll for Oregon employees for the years 1991-1993 is :

	1991	1992	1993
	\$4,320,000	\$2,860,000	\$194,000
Reduction from 1991		34%	95.5%

These numbers show a 95% reduction of the payroll of Oregon crew aboard motherships from 1992-1993 of \$4,126,000.

During those three years, the motherships contracted with a total of 27 catcher vessels, 10 of them from Oregon. These boats are 75-120 feet in length and employ a total of 130 people, of which 62 are from Oregon. The catcher boats are 100% American owned and have a capitalization of around \$40-\$60 million. While I do not have a collective crew share for those catcher boats, I can use one of them as an example of the economic impact from 1991-1993.

	1991	1992	1993
Fishing Days	150	40	21
% of 1991		26%	14%
Gross Receipts	5,000,000	1,600,000	600,000
% of 1991		32%	12%

These numbers show a reduction in fishing days of 86% and a loss of gross receipts of 88% in two years. Oregon fishermen employed as crew members on catcher boats delivered to motherships would have received approximately \$2,500,000 in 1991, but only \$325,000 in 1993. This is a net reduction to Oregon of \$2,175,000 in catcher vessel crew share.

The total net reduction to Oregon from the reduction of catch allowed to vessels delivering to motherships is \$6,301,000 in personal income.

The crews of the motherships and catcher vessels are nearly 100% American. Any foreign nationals aboard are in the role of advisors on the processors, and constitute less than 5% of the total employed. Depending on fish prices, the average wage on processors is \$3,200-\$5,000 per month. Many of the Oregonians are in management with considerably higher wages. Compare this with the \$5.00/hour, \$1,500/month shoreside processor situation as outlined in the "Oregonian" on April 11, 1993 (attached). Displacing established higher-paid Oregonians with lower-paid employees in the new plants constitutes a net loss to the State of Oregon, not to mention the nation as a whole.

Payments for goods and services should be added to these wage figures and, with an economic multiplier, could amount to well over \$60-\$80 million lost to the State. Many of us use shipyards and buy supplies, fuel, groceries and vessel parts in Astoria, Tillamook, Newport, Coos Bay and Portland. I can offer two examples of the potential impact. One of the motherships paid for a \$20 million project at a Swan Island shipyard in Portland. One catcher boat owner (with whiting catch history back to 1980) spent \$3.5 million in a Coos Bay shipyard this year.

Solution

The Pacific Council's license limitation program that will soon be in place will probably be of some help in bringing rationality to the fishery, because it will reduce the capitalization in the harvesting component of the fishery. But license limitations not a panacea, so an allocation will probably be needed. When

formulating an allocation plan, we think the Council should consider the following parameters:

1. The allocation should be based on harvesting, not on processing.
2. The allocation should go to harvesting vessels based on catch history:
 - a. catcher boats 1979-1993 15 years 80%
 - b. factory trawlers 1990-1993 - 4 years 20%
3. Because factory trawlers have 20% of the harvesting history, they will in turn process 20% of the allocation. Therefore, shoreside processing should be given a reserve equal to factory trawler processing - 20%. This compensates for the lack of mobility of shoreplants.
4. The allocation should promote market freedom and competition so that fish prices reflect their true market value.

To fulfill these criteria, we recommend an allocation that is divided into three parts:

- 20% - "A" season - fish caught by vessels for processing at sea
- 60% - "B" season - fish caught by catcher vessels delivering to the processing market of their choice
- 20% - "C" season - fish caught by catcher vessels delivering to shorebased processors.

The whiting fishery would open with the "A" season: factory trawlers catching their own fish and processing it, and traditional catcher vessels catching fish and delivering to at-sea processors. When 20% of the quota has been caught, the "B" season would begin. During this time, fish would be caught only by catcher boats, who would then deliver their catch to shoreplants, motherships and factory trawlers acting as motherships. When that 60% of the quota has been caught, the "C" season would begin. At that time, fishing would be open only for those catcher boats that have markets with shoreplants.

The equity of this arrangement is obvious. The factory trawlers have access to 20% of the harvest, and can buy up to 60% more from the catcher boats - for a total of 80%. The shoreside processors are guaranteed 20% of the harvest, and can buy up to 60% more from the catcher boats - for a total of 80%. The motherships can buy fish from catcher boats fishing both on the first 20% and on the following 60% - for a total of 80%. Traditional catcher boats have access to the entire quota, but only 80% is guaranteed - for a total of 80%.

One of the primary objectives stated by the Pacific Council is to provide markets for catcher vessels that do not now have markets, and to keep the traditional catcher boat fleet viable. The plan I have outlined here would accomplish this purpose by providing an incentive for the factory trawlers to buy fish from the catcher boats. At the same time, processors would be competing for a share of a large proportion of the harvest, which would ensure that fishermen could receive a good price for

their fish. The more markets that are available, the better off the catcher boats will be, thus increasing the distribution of benefits to coastal communities.

Summary

From 1979-1990, the Pacific whiting fishery was stable, showing growth each year and furnishing much-needed income to the coastal communities of the Northwest and their fishermen in the traditional catcher boat fleet. With the arrival of the factory trawlers in 1990, all that changed. They brought in far more harvesting ability than was needed - the catcher boats alone could harvest the full quota. Because of this, the season was shortened and the traditional catcher vessel was preempted from his historical position in the fishery.

The entry of factory trawlers also prompted increased investment in shoreside processing facilities, resulting in overcapitalization in that sector as well. The battle for allocation became one of shoreside processor against factory trawler, and the Council began allocating to the common denominator - processing. Catch histories fell by the wayside and the loser was the traditional catcher vessel. The boats that delivered to at-sea processors were further losers because they were forced into an Olympic-style fishery. Because of this, the catch of whiting by catcher vessels delivering to the floating processor component has been reduced from 93% in 1990 to 10% in 1993, and from a 5-month fishery in 1991 to 3 weeks in 1993. This is the result of an allocation that artificially divides the catcher boat fleet based solely on the location of their markets.

By dividing the bulk of the harvest instead between catcher boats and factory trawlers, this injustice is avoided. In addition, each processing sector will be assured of at least a minimum amount of fish, with the possibility of receiving much more if they are competitive.

In closing I would like to say that I am a long-term player in this fishery. If you look at the history of our coastal fisheries, it's the small fishing businesses like mine that stay for the long haul. We ride the highs and lows because we enjoy what we're doing. We're usually the pioneers in new fisheries and new gear technology. We're not asking for anything more than the ability to maintain a place in a fishery that we pioneered. Please help us by bring equity and rationality to our fishery and guiding the managers - whether they be the Council or the Department of Commerce, to provide equitably for all the interests in the fishery. Thank you.

TABLE 1

PACIFIC WHITING CATCH HISTORY

<u>Year</u>	<u>JV CATCHER</u>		<u>Domestic</u>		<u>Total</u>
	<u>BOATS</u>	<u>Foreign</u>	<u>Onshore</u>	<u>Offshore</u>	
1978	856 (.4%)	96827	689 (.7%)	0	195897
1979	8834 (7%)	114910	937 (.7%)	0	124681
1980	27537 (38%)	44023	793 (1%)	0	72353
1981	43557 (38%)	70366	838 (.7%)	0	114761
1982	67465 (89%)	7089	1024 (1.3%)	0	75578
TOTAL AMERICAN HARVESTING ACHIEVED					
1983	72100(98%)	0	1051 (1.4%)	0	73151
AMERICAN HARVESTING FEEL NEXT FIVE YEARS BECAUSE OF SHORTAGE OF PROCESSING MARKETS					
1984	78889 (81%)	14772	2721 (2.8%)	0	96382
1985	31692 (35%)	49853	7941 (8.8%)	0	89486
1986	81639 (52%)	69861	4959 (3.1%)	0	156469
1987	105997 (66%)	49654	5189 (3.2%)	0	160840
1988	125776 (83%)	18041	6876 (4.5%)	0	150693
TOTAL DAH (AGAIN)					
1989	203561 (96%)	0	7418 (3.5%)	0	210979
1990	170972 (93%)	0	8115 (4.4%)	4713(2.5%)	183800
TOTAL DAP					
1991	0	0	21000 (9.6%)	196700 (90%)	217700
1992	0	0	56200 (26.9%)	152600 (73%)	208800

DATA

metric tons

Source: NMFS

Offshore includes production of both motherships and factory trawlers

TABLE II

MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT

Public Law 94-265

As amended through November 26, 1990

16 U.S.C. 1851

TITLE III -- NATIONAL FISHERY MANAGEMENT PROGRAM

SEC. 301. NATIONAL STANDARDS FOR FISHERY CONSERVATION AND MANAGEMENT

(a) IN GENERAL--Any fishery management plan prepared, and any regulation promulgated to implement any such plan, pursuant to this title shall be consistent with the following national standards for fishery conservation and management:

98-623

(1) Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry.

(2) Conservation and management measures shall be based upon the best scientific information available.

(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocation as its sole purpose.

(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

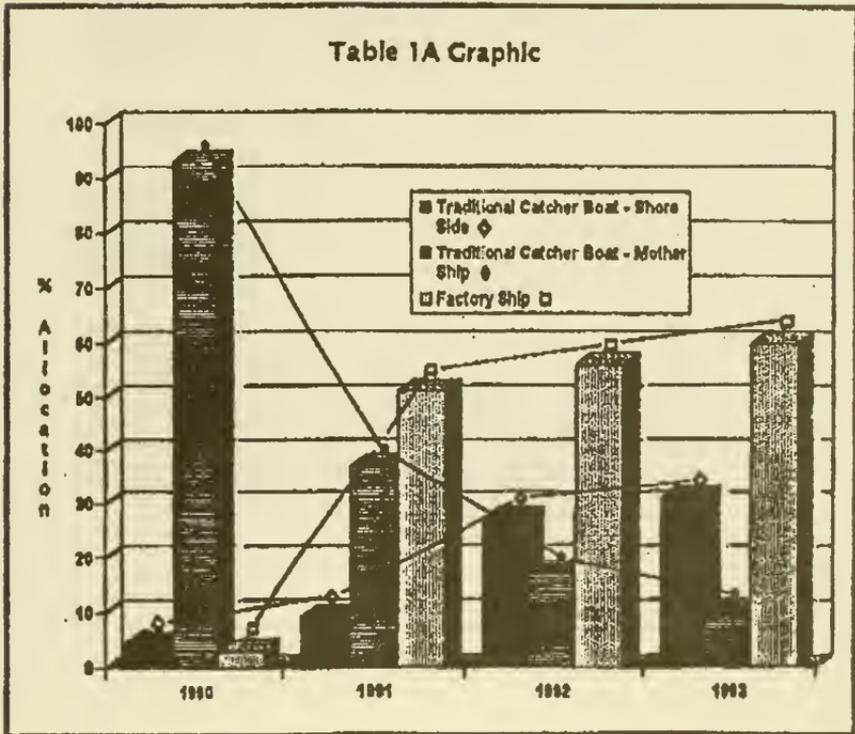
(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

97-453

(b) GUIDELINES.-- The Secretary shall establish advisory guidelines (which shall not have the force and effect of law), based on the national standards, to assist in the development of fishery management plans.

TABLE 1A

YEAR	TRADITIONAL CATCHER BOATS SHORE SIDE	TRADITIONAL CATCHER BOATS MOTHER SHIPS	FACTORY SHIPS
1990	8115 mt (4.4%)	170972 mt (93%)	4713 mt (2.6%)
1991	20500 mt (9%)	85000 mt (37%)	117000 mt (51%)
1992	56200 mt (27%)	36400 mt (17%)	116200 mt (56%)
1993	44000 mt (31%) (Allocation 1993)	13500 mt (10%) (As of June 1, 1993.....)	84500 mt (60%)




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June 4, 1993

 To: The Small Business Subcommittee on
 Regulation, Business Opportunities
 and Technology

RE: Whiting Allocation

Mr. Chairman and Members of the Committee:

I am an Oregon-based shoreside processor of Whiting as well as a part-owner in a trawler that has participated in the Whiting Fishery since the early 1980's. Our Newport plant was the first large-scale, shoreside processor along the coast, although some California plants have processed Whiting on a smaller scale since the early 1980's.

My major concerns regarding the recent Commerce Department's allocation plan are as follows:

1. The Commerce Department ignored all of the reasoning supporting the decision sent to them by the council. What is the purpose of having a regionally responsible system designed by the Magnuson Act and supported by the best scientific, economic and social impact information available to have it simply overturned by a politically motivated segment of the government.
2. Having on Olympic style, catch all you can-while you can, type of fishery in an area consisting of many fully-exploited and several threatened species is asking for serious by-catch complications and future severe catch restrictions. Most of this would be imposed on the shoreside processors and the existing small vessel historical fleet as this information would be available only after analyzing the offshore factory ship catch data. They would have sailed away to Alaska, Russia and other far away places leaving the burden to the coastal plants and fishermen.

3. The Whiting catcher vessels are the best of the trawler fleet, being equipped with the latest gear and experienced captains. Restriction their season to only a few months instead of a seven month season, pushes them back to compete onto already crowded shrimp and groundfish species. This causes even more severe cutbacks and shorter seasons for all coastal vessels.
4. This decision cost the coastal fishermen and processors dearly by restricting their harvest to only a few months instead of 6 to 7 months. In contrast, due to their mammoth harvest rate, the best season the factorship fleet can hope for is only one of several days duration. This year it was only about 22 days with only about one-third of the ships participating fully. One must look at how short this season really would be if all 60 some factory ships became involved in this harvest. The entire quota would be utilized in less than thirty days, making an economically viable fishery into one that is very questionable due to the shortness of the season. This rapid pulse fishery causes a very huge loss to the coastal communities in terms of payroll and support services required by the plants as well as vessels. Most of these small vessels are family owned as are most of the support businesses, ie., repair shops, gear supply houses, trucking companies, and were developed to handle the needs of the Historical Whiting Catcher Vessels.

In terms of employment, my particular plant, with a bi-monthly payroll of \$300,000, will have to lay off over 100 people who will have only worked an estimated 12 weeks instead of an anticipated 20 to 24 weeks this year. This will make it difficult for us to retain access to experienced people and also causes us marketing difficulties due to the U.S. and overseas buyers perceiving the onshore processors and not having access to enough product to fill their needs. This forces them to look to both the factorship companies but, even worse for us, and to look to other foreign countries for their needs. Whiting, when processed for a full 6 to 7 month season, represents 50% or more of my plant's income. It is important to note that our industry has lost over half of the available groundfish and salmon poundage that we had ten to twelve years ago. Having to operate on such a drastically reduced volume has caused several processors and small vessel owners to go out of business. Further restricting the Whiting harvest will only exacerbate this problem.

5. The intensifying of these harvest onto early, immature or depleted (from post-spawning conditions) fish is both economically wasteful and a major concern from the biological point of view. It has been made public record during council testimony that early fish are smaller thus have lower yield but, even more important, due to their depleted conditions the quality of the fillet or surimi is either marginally acceptable or unusable. This was the experience of the factorship this season as they could make only poor quality product and it has been offered out to the market at very distressed prices. This was a key reason for the shorebased industry not wanting to operate until late May.

I do not feel any study was made of the impact to coastal communities and the numerous small fishing operations that are going to be negatively impacted by the recent allocation decision. It is especially disturbing to me when that information has been made part of the Council record during public testimony about this issue and such impacts have been clearly described in the supporting documents sent to the Commerce Department by the Council staff.

According to a study done through the cooperation of the Oregon Coast Management Association along with assistance from Oregon State University and the Coastal Marine Experiment Station, Mr. Hans Radtke, and economist, determined that a single coastal trawler that would harvest about 9 million pounds of Whiting during a full six to seven month season, is responsible for generation about \$ 2,700,000 of personal income in the state of Oregon. This is including the spin-off from wages of both the vessel crew, plant employees, support industries and their employees and service industries such as grocery stores and clothing stores.

This same onshore average Whiting trawler will generate income equivalent to approximately 135 jobs paying about \$ 20,000 a year. The number of jobs created by the onshore Whiting fishery in 1992 generated about 1620 jobs in Oregon and over \$ 32,000,000 of statewide personal income impact.

The completely new allocation plan formulated by the Commerce Department did not address the original concerns covered by the original allocation. It did not spread the harvest over a longer period of time to allow for a better return from the fish as they grow in size. It did little to address the concerns about large volumes of by-catch of other species. It ignored the Pacific Council's long stated policy of attempting to maximize the social and economic benefits to the affected coastal states and the Historical Catcher Vessels along with good fishery management. No effort was made to understand the needs for something beyond an annual battle for fish quota.

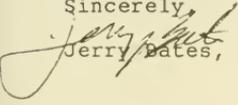
The need to have a rational business plan by all participants in the fishing industry was another reason for the allocation plan as originally requested by the Council. After hearing numerous people testifying that it is nearly impossible to effectively run a business without some knowledge of how the fishery is to be run from one year to the next, was another reason for a long term plan and the inclusion of the abundance driven formula. This formula was modeled after the plan used for allocation coastal Coho stocks between the sport and commercial entities and has proved workable for many years.

It was the element of fairness that was quoted as the rationale for the allocation rule by the Commerce Department. However, their allocation scheme dictated that the factorship fleet suffer only a 26% cutback from the 1992 harvest while the shoreside group were cutback nearly 47%. Again, the Commerce Department changed a plan that would have set a three year system to allocate fish based upon an abundance driven formula and chose to place our industry back onto a one year system. The formula based plan was documented to show a split that, based on the past 17 years quota, would have split the quota nearly 50/50.

All of the original plan was thrown out by the Commerce Department as they only looked (was guided) to how the season compared to last year and not how the plan was to have worked over time. They eliminated: (1) any long term solution of how to allocate, (2) a better method of harvesting for less by-catch and better yields over a longer season and (3) a solution of how to spread fishing efforts by the small coastal vessels off to already exploited, crowded fisheries and onto the largest fishery bio-mass available off our coasts.

Losing the balance of what would have been a rational, orderly fishery, over the entire fishery bio-mass, has caused buyers of our product to question whether we really have the ability to cover their expected orders, hampering our ability to grow and prosper with this fishery. Even worse, the large volume of very poor quality Whiting products produced early on in this season by the factorship fleet may have prejudiced the market regarding the value and quality of Whiting and might send them to purchase other competitive products from other countries. Lenders are even more cautious regarding approving loans to small vessels or processing plants to harvest or manufacture Whiting. This attitude will extend into all other fisheries as it has been shown that the Regional Council process can be completely overturned and dictated to by a very small, politically appointed group with little or no background history in the fisheries. It has been shown that one cannot offer a business loan to a financial institution or a production goal to a market as it is subject to manipulation at the Commerce Department's whim.

Sincerely,


Jerry Bates, President

NEAL COENEN, MARINE PROGRAM MANAGER

DEPARTMENT OF
FISH AND
WILDLIFE

MARINE REGION

June 4, 1993

Representative Mike Kopetski
House of Representatives
218 Cannon Office Bldg.
Washington, DC 20515

Representative Ron Wyden
House of Representatives
1111 Longworth House Office Bldg.
Washington, DC 20515

Dear Congressmen:

When Oregon Governor Barbara Roberts wrote to the Chairman of the Pacific Fishery Management Council Phil Anderson before the November Council meeting, the policy of the State of Oregon and the Department of Fish and Wildlife was clearly articulated. The Council's preferred alternative was supported as the means to prevent preemption by a mobile fleet and provide economic stability and predictability for coastal communities.

Following Secretary Brown's reversal of the Council's decisions on whiting first, and subsequently on salmon the Oregon Fish and Wildlife Commission communicated directly with Secretary Brown vigorously protesting that decision. The Commission's gravest concern was over the Secretary's undermining of the integrity of the Council fishery management process.

That said it is important that we begin to look ahead to the process for needed allocations for 1994 and future years. In doing so I here attempt to provide information which will help establish perspective.

Because of Secretary Brown's decision the pacific coast groundfish fishery in general and the whiting fishery in particular, with our offshore/onshore allocation issue, can no longer be considered in isolation.

Attached are a series of pie charts which identify and compare the total groundfish resource available in Alaska and the west coast and how it has been allocated offshore/onshore. It is clear that the combined resource is of tremendous size, some 2,626,021 mt. Alaska has 87% of this resource. Whiting is about 5% of the total, but represents a full 45% of the west coast resource. The combined 1993 offshore allocation was about 789,912 mt or 30% of the total resource. Secretary Brown's reversal of the Council's whiting allocation resulted in a mere 8% increase for offshore interests but required pacific coast shoreside interests to forfeit 60% of what had been allocated to them.



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Representative Mike Kopetski
Representative Ron Wyden
June 4, 1993
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Of greater importance is the comparison of offshore/onshore shares in Alaska and the west coast. In the Gulf of Alaska with the small fishery dependent communities (much like the coastal communities of southern Washington, Oregon and northern California) onshore shares are 90 to 100% of the resource. In the Bering Sea/Aleutian Islands the offshore sector dominates. Under the Council's whiting decision a sliding scale would have been a dynamic and fair approach which advantages shoreside when stocks are low and uses the offshore sector's mobility when stocks are high.

Your staff should spend serious time comparing the final rules reversing the Council on whiting and approving the Gulf of Alaska offshore/onshore allocation (CFR V.58, No. 74, April 20, 1993, and CFR V.57, No. 107 June 3, 1992). The substantive question raised is why application of federal policy could be so significantly inconsistent in application and appear so unfair in what are similar situations. The Gulf allocation was approved with negative net national benefits being out weighed by social/community considerations. The Council's whiting decision was based on slightly positive net national benefits.

The last attachment is a table of state, local and Seattle area economic values derived from the input/output model results considered by the Council as part of its whiting decision.

During the Council's process offshore interests emphasized a point that the employment of Oregon citizens on factory trawlers would be impacted by the allocation decision. The input/output model showed that the difference in lost income between the Council's preferred alternative and the best offshore alternative was \$108,094 for Oregon. This amount is very small because the factory trawler employment base is approximately 10,000 people and, as shown above, only a small fraction of total work involves whiting. Correspondingly, local income gain under the Council's preferred alternative was about \$11,000,000 higher than under the best offshore case. This contrasts with the loss of \$22,525,000 to the Seattle area economy. The Council chose to support the small coastal economies over the much larger regional economy which already accrues the benefits of the offshore industry. Secretary Brown's reversal of the Council decision finds national benefit in increasing the disproportional relationship between coastal and regional economies and implies conscious marginalization of the social and economic fabric of rural communities.

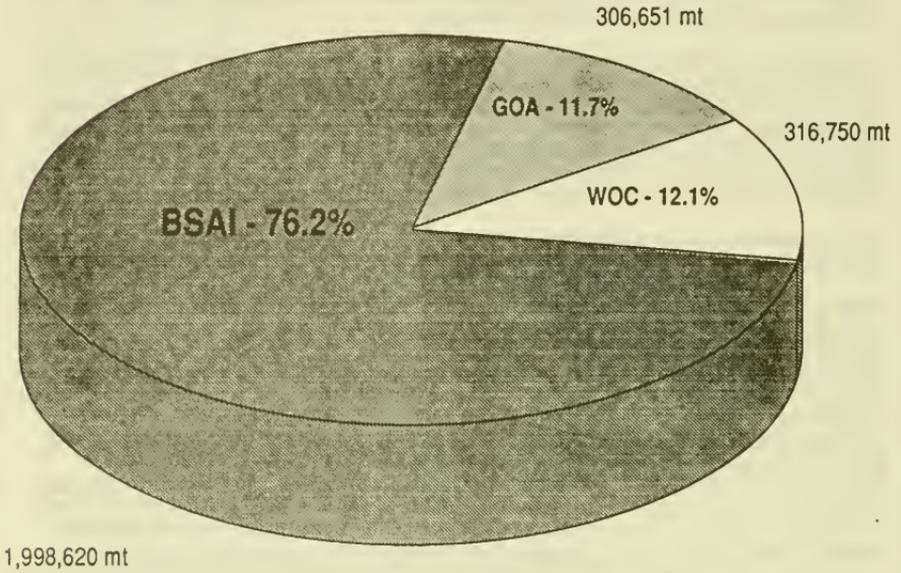
We appreciate the opportunity to assist you in investigating this issue.

Sincerely,



Neal Coenen
Marine Program Manager

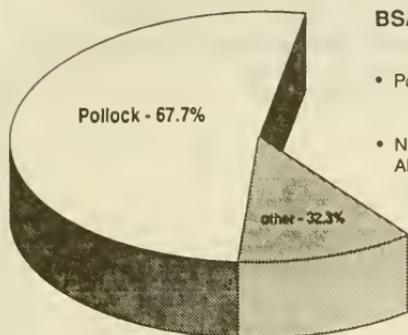
**1993 Total Allowable Catch of Groundfish from
Bering Sea/Aleutian Islands, Gulf of Alaska and Washington,
Oregon and California**



Sources:

- (1) North Pacific Fishery Management Council, December 1992 Newsletter
Council Recommended 1993 TACs; Table 1 pg 6, Table 2 pg 7.
- (2) Pacific Fishery Management Council, November 1992 Newsletter
Final 1993 ABCs and Harvest Guidelines; Table 1 pg 11.

Subregional Groundfish Catch Detail and Offshore/Onshore Sharing



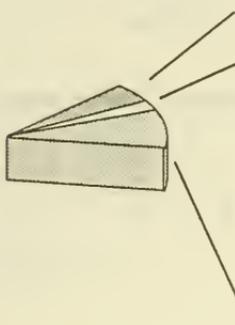
BSAI: 1993 Groundfish TAC = 1,998,620 mt

- Pollock TAC = 1,352,600 mt or 65.0% of BSAI TAC
- NPFMC BSAI Offshore/Inshore Plan Amendment Allocating Pollock Only, Less 15.0% Reserve ¹

	Offshore	Onshore
1993	65.0% (747,312 mt)	35.0% (402,397 mt)
1994	65.0%	35.0%
1995	65.0%	35.0%

- Remaining 646,020 mt groundfish not specifically allocated offshore or onshore

GOA: 1993 Groundfish TAC = 306,651 mt



- Pollock TAC = 114,400 mt or 37.0% of GOA TAC
- Pacific Cod TAC = 56,700 mt or 18.5% of GOA TAC
- NPFMC Offshore/Inshore Plan Amendment Allocating Pollock and Pacific Cod ²

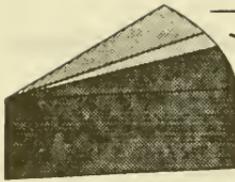
	Offshore	Onshore
Pacific Cod	10.0% (5,600 mt)	90.0% (51,100 mt)
Pollock	0.0%	100.0% (141,400 mt)

- Remaining 135,551 mt groundfish not specifically allocated offshore or onshore

¹ November 22, 1992, Letter U.S. Department of Commerce, Under Secretary For Oceans and Atmosphere John A. Knauss to Richard B. Lauber, Director, North Pacific Fishery Management Council.

² March 4, 1992, Letter U.S. Department of Commerce, Under Secretary For Oceans and Atmosphere John A. Knauss to Richard B. Lauber, Director, North Pacific Fishery Management Council.

WOC: 1993 Groundfish = 316,750 mt



- Traditional Groundfish Resource not specifically allocated offshore onshore. TAC = 109,150 mt
- Underutilized Species (jack mackerel, shortbelly, skates, rays, etc. TAC = 65,600 mt
- Whiting. TAC = 142,000 mt

Whiting Offshore/Onshore Allocation

	Offshore	Onshore
• PFMC Preferred Alternatives		
TACs below 80,000 mt	0.0%	100.0%
1993 TAC 142,000 mt	26.0% (37,000 mt)	74.0% (105,000 mt)
1993 TAC 200,000 mt	37.5%	62.5%
• Department of Commerce Decision		
1993 TAC 142,000 mt	78.9% (112,000 mt)	21.1% (30,000 mt)

Total 1993 Offshore Allocation Before Reversal of Council Action

BSAI 747,312 mt
 GOA 5,600 mt
 WOC 37,000 mt
 789,912 mt

- Increase to Offshore From Reversal
 - 100,000 mt
 - 37,000 mt
 - 63,000 mt
- 8% Increase in Total Offshore From Reversal
- 60% Decrease in Onshore Whiting Share

Differences in State, Local and Seattle Income Impacts Between PFMC Preferred Whiting Alternative IA and Worst Case for Shoreside Interests - Alternative 2C

% Crew Share 10,000 Total	Best Offshore Case Council Considered 60% offshore 40% shoreside		Council Preferred Alternative 74% shoreside 26% offshore		Loss in State Income
	State Income	State Income	State Income	State Income	
3% Idaho	600,318	553,992	43,326		
7% Oregon	1,400,742	1,292,648	108,094		
9% Calif.	1,800,954	1,661,976	<u>138,978</u>		
			290,398		
	Local Income 2C	Local Income 1A		Gain to Local Communities	
	31,226,000	42,165,000	10,939,000		
	Seattle Income	Seattle Income		Loss to Seattle	
	47,467,000	24,942,000	22,525,000		

Note: Based on Table 7-5c Input/Output Model Results Considered by PFMC, Nov. 1992, Using Long-Term Average Whiting TAC of 176,000 mt.

WRITTEN TESTIMONY FOR THE CONGRESSIONAL SUBCOMMITTEE ON
REGULATION, BUSINESS OPPORTUNITIES, AND TECHNOLOGY

Date: June 4, 1993

Topic of Hearing: Management and Allocation of Pacific Whiting
and Impacts on Small Business

Author: Gilbert Sylvia, Ph.D.
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Focus of Testimony: Economic and Market Issues Related to
Management of the Pacific Whiting Fishery

Introduction

Over the last four years the state of Oregon, the Oregon seafood industry, and Oregon State University (OSU) have supported extensive research into addressing issues related to management and development of the Pacific whiting fishery. As a marine resource economist with the OSU Coastal Oregon Marine Experiment Station, I have conducted considerable research into the economics of the Pacific whiting fishery with particular emphasis on market issues, public policy, and product quality. Studies have included surveys of national and international seafood buyers, development of biological-based economic policy models, market analysis of product quality, and development of value-added products.

Much of this work has focused on understanding the relationships between public management of the Pacific whiting fishery, private investment, and market demand. Due to the fisheries regulations and the biological traits which characterize the off-shore stock of Pacific whiting, public management decisions may have significant impacts on private investment at the harvesting, processor, and distribution levels. Given the subcommittee's task, I will focus my remarks on examining the relationships between fisheries management of Pacific whiting, market development, and industry behavior.

This testimony is divided into six related topics. Every effort has been made to substantiate and document these remarks; however, the fishery is relatively new, data is still scarce, and many economic issues cannot be easily quantified. Even with these problems, I believe that reasonable qualitative assessments can be made and a number of issues clarified in order to help this subcommittee understand some of the relationships of public regulation and industry development.

Topic 1: The intrinsic characteristics of Pacific whiting and relevance to public regulation of the resource.

Pacific whiting is the largest stock of groundfish found off the West coast of the United States (excluding Alaska) (Dorn et al. 1990). The off-shore stock of Pacific whiting is characterized by a complex set of biological and intrinsic (pre-harvest) product quality characteristics -- characteristics which for three decades have confounded the domestic industry's ability to successfully process and market Pacific whiting products (Sylvia and Peters 1991). These characteristics include: 1) high annual variation in recruitment; 2) complex annual migration patterns across three national borders (Mexico, the United States, and Canada); 3) spatial segregation of fish by age class during summer feeding (smaller and younger fish tend to stay south, larger older fish tend to travel further north) (Dorn et al. 1990, Dorn and Methot 1992); 4) a relatively soft and delicate flesh which bruises easily if mishandled; 5) infestations of myxosporidia parasites which can make the fish unsightly; 6) high level of protease enzymes (in conjunction with the myxosporidia parasites) that can turn the flesh into "mush" if the product is not handled carefully during catching, processing, distribution, and food preparation, and; 7) annual variation in proximal content (protein, moisture, lipids, ash) that may affect recovery rates, quality, and prices for processed products (see Marine Fisheries Review 1985, volume 47 (2), for a review of many of these issues).

These issues are critical because where, when, and how the fish are captured and processed can affect the economic benefits generated from the fishery by impacting total stock size and allowable harvest, stock variability, product characteristics, supply availability, shelflife, and a number of other intrinsic and extrinsic product quality characteristics (Enriquez 1992; Enriquez and Sylvia 1992). In turn, these characteristics can affect the total volume and quality of output products, impact market price and production costs, and ultimately affect the long-run investment decisions to improve and control product characteristics for a relatively wide range of marketable products.

To put these issues into perspective the stock of Pacific whiting may be thought of as a capital asset. Because it is a renewable resource the value of the asset can grow and change over time as a result of biological factors, regulatory decisions, and market conditions. Like an investment in a savings account or the stock market, the investor must decide on the timing, amount, and form of the withdrawal (harvests) in order to maximize benefits from managing the investment (the resource stock) over time.

This perspective has particular relevance for Pacific whiting given its variability and temporal and spatial characteristics. "Withdrawals" (harvests) which are not optimally controlled can result in lower returns to investors (i.e., the industry and

society). For Pacific whiting these lower returns could be a result of: 1) fish that are harvested when they are too small and haven't grown to the "optimal level of maturity" (Sylvia and Peters 1991; Enriquez and Sylvia 1992); 2) harvesting too early in the year when the post spawning condition and proximal composition (levels of proteins, lipids, and moisture) of the fish may result in a relatively low valued return on investment, (Peters et al. in press; Morrissey, personal communication), and; 3) harvesting too early or in such large quantities that the industry must pay substantial inventory costs (Sylvia and Peters 1991). However, it should be noted that the opportunity costs associated with internal rates of return from the whiting fishery will vary depending on the industry component (e.g., on-shore versus off-shore) and the other management rules in effect.

Topic 2: Some general findings on market and production issues and management of the Pacific whiting fishery.

The issues summarized under Topic 1 begin to illustrate the potential relationships between public policy, market demand, industry response to regulatory strategies, and the value of product characteristics. Most of the products processed from Pacific whiting are sold in global markets where prices and price variability are subject to impacts by market forces exogenous to the fishery (Natural Resource Consultants 1990; Sylvia, in press). The one exception, however, is product quality which is partially endogenous to the fishery and can be improved, controlled, and promoted depending on industry strategies and fisheries regulatory policies.

This issue can be illustrated in findings from a survey conducted in 1990-1991 on the importance and value of product characteristics of headed and gutted (H&G), fillets, and surimi products produced from hake/whittings (Sylvia and Peters 1991, Sylvia, in press). Table 1 shows how "break-even prices" for first and second receivers (respectively, wholesalers who buy from processors, and firms which buy from wholesalers), and "small" and "large" buyers (large buyers have revenues greater than \$10,000,000) are affected by changes in characteristics of a frozen whiting fillet product with the following "fixed" characteristics: shelflife of 12 months, slightly off-white color, moderately firm texture, 95% uniform in product attributes, "ideal" package (e.g., 5 lb frozen blocks), and terms of "net 30 days".

Supplying a 4-6 oz, skin-off fillet, 7 months a year accompanied by marketing support increases market price by \$.24 over the "basic" product. "Large" first receivers offer \$.04 less than "small" first receivers in exchange for larger purchase volumes. Second receivers offer approximately 20 percent more at break-even prices than first receivers and pay not only a higher "base price" but offer a higher absolute premium for improved attributes.

The information presented in Table 1 is useful for developing long run management and marketing strategies. The information allows processing firms to compare the costs and benefits of providing sets of product attributes. The composition of these attributes however, are also impacted by the regulatory strategies selected by policymakers in at least two ways: 1) fisheries policy can significantly affect the level of investment necessary to control product quality, and; 2) regulatory policy can affect when, where, and under what conditions the fish are harvested. Due to the spatial and temporal characteristics of Pacific whiting these management decisions can have significant long run impacts on a number of characteristics of the stocks and harvests including stock size, harvest levels, and variation in intrinsic product attributes (see Topics 3 and 4 for details).

An additional factor related to controlling product characteristics is that improvements in product attributes provide greater absolute and relative value to second receivers -- a result consistent with other survey findings which showed that the further downstream the buyer, the more important product quality characteristics become (Sylvia and Peters 1991). These findings raise important issues related to managing product qualities, developing sales strategies, and increasing industry profits. For example, one of the primary roles of the seafood middleman is to match buyers with suppliers, especially when variability in product supply and product characteristics is significant. Reducing this variability by providing longer and more consistent supplies of quality product can not only generate higher prices but can reduce distribution costs and eliminate middlemen. Survey results showed that second receivers of Pacific whiting are more sensitive to product quality characteristics than first buyers. Therefore, while increasing the supply availability of the product and standardizing product characteristics can increase margins (up to 25%) and reduce market prices by eliminating the "cut" of unnecessary middlemen, it also requires that product quality be improved for the more quality sensitive downstream buyer.

Issues regarding product quality and fisheries management also affect investment behavior. Prices for seafood products, like many agricultural products, demonstrate significant volatility over time. In order to reduce risks associated with price volatility, producers commonly diversify production strategies and develop a "portfolio" of products. The same is true for the seafood industry. By strategically controlling product quality a "portfolio" of product forms could be processed from Pacific whiting including H&G, fillets, surimi, minced, breaded, and other value-added products (Sylvia and Peters 1991). Given variations in market conditions and inter- and intra-seasonal variation in intrinsic product characteristics, strategies based on diversified products would be advantageous for sustaining development and reducing overall industry risks.

A major challenge for the Pacific whiting industry is determining how to optimally select a portfolio of product forms and improve and standardize product characteristics in order to reduce risks and maximize long run economic benefits. The industry must carefully assess the benefits of improving product quality characteristics and selecting the optimal combination of product forms consistent with intrinsic and extrinsic variation in product quality characteristics. Potential benefits of marginal improvements for each product characteristic must be compared with marginal costs in order to determine the optimal level of product quality and product mix. However, to take advantage of these production strategies, the industry must have some control or assurance regarding some minimum level of supply. Without this control, investment in product development and capital equipment becomes too risky or too unprofitable. Public policies should be designed to be consistent with this need; otherwise, regional and national benefits may be significantly reduced (see Topic 5).

One final issue related to fisheries management and private sector investment is that in order to control and improve product quality characteristics, a significant degree of cooperation, risk sharing, and marketing commitment is essential among industry sectors (Sylvia and Peters 1991). This is particularly true for Pacific whiting since abuse of the product at any stage of the distribution chain can significantly affect the quality of the product when it is consumed. To address these issues the industry may need to develop formal associations and generic quality standards, especially in response to evolving product quality standards in Europe and North America (Sylvia and Gaines 1992). The transaction and enforcement costs associated with developing these types of organizations may be quite high. The scale and level of control needed by industry to assure quality, therefore, may be significant. Pacific whiting managers must recognize how their alternative regulatory strategies will affect industry's decisions to work cooperatively to control and promote product quality. In particular some level of product supply must be assured over time in order that the investments to develop such programs would have meaningful long term payoffs.

Topic 3: The potential economic costs and benefits of an Olympic style "race for the resource" management regime for Pacific whiting.

There are few studies showing the potential costs and benefits of an Olympic Style "race for the resource" type whiting fishery. The following discussion, therefore, does not attempt to precisely quantify costs and benefits of the Olympic style fishery, but rather discusses those issues which characterize this management strategy.

Time becomes an overriding factor in an Olympic style fishery. For fisheries such as Pacific whiting, Alaska halibut, and even Dungeness crab, time takes on significant value since a loss of a day or a few day's fishing can mean the difference between success and failure. From an individual vessel's perspective, "down time" not only means a loss of short-run production, but a loss of total production since those fish may become available to other vessels. The concept of time, therefore, takes on significant value relative to other production factors.

Time is particularly important for Pacific whiting due to product quality issues. Processors operating under this system must trade-off control and improvement in product quality with potential losses in production due to the time constraints binding the fishery. For each individual vessel and processor, decisions to "slow down" and control such factors as tow size, tow time, culling, sorting, and matching product qualities with product forms, must be evaluated in the harsh reality of the opportunity costs of lost production resulting from the Olympic style fishery. What may be optimal practices for an Olympic style fishery may be less than optimal for a management scheme in which time is not a binding constraint. Relaxing the time constraint could result in improvements in production strategies, quality control, and recovery rates.

There are also other impacts of an Olympic style Pacific whiting fishery. Because of the spatial and temporal characteristics of the resource, compressed Olympic style fisheries can result in heavy fishing pressure on certain year classes and can lead to lower stocks and harvests and an increase in variability over time (Enriquez 1992; Enriquez and Sylvia 1992 -- see Topic 4 for more details). Olympic style fisheries can also result in higher inventory costs, and loss of shelflife relative to management strategies which allow fishermen to "inventory the product in the ocean" (Enriquez 1992). And finally, there are "learning costs" associated with each trip and processing run which can result in lower quality product during initial runs (Small 1993). In compressed fisheries the total time in which learning occurs is proportionally larger than fisheries in which effort is spread over time.

To summarize, there are a number of opportunity costs associated with compressed, pulsed, or Olympic style fisheries. These costs may be significant in the Pacific whiting fishery. Comprehensive analysis should be conducted in order to evaluate these impacts.

Topic 4: The potential economic costs and benefits of an early season whiting fishery (opening April 15) relative to a fishery which may begin later in the year.

This is another area in which important data and analysis is lacking. However, there appears to be a number of issues which may

affect economic returns due to an early season fishery. In addition, problems may be compounded if the early season fishery is associated with an Olympic style pulse fishery. Economic costs may result due to three related issues: 1) low weight of individual fish; 2) poor proximal condition of individual fish, and; 3) harvest of a higher proportion of younger fish. The relative importance of these factors, may depend, and be related to, selection of final product forms for processing.

Application of bioeconomic models (Enriquez 1992, Sylvia and Enriquez 1992) suggest that early season fisheries may generate up to 15 percent lower economic returns in the fishery over time due to the harvest of a relatively higher proportion of smaller and younger fish. Results showed that fishing early in the season and fishing south in an Olympic style fishery would increase the variability of harvests, revenues, and profits over time and increase industry risks compared to a fishery in which effort was more diversified temporally and spatially. These lost benefits would result from lower prices per pound of fillets due to their smaller size, lost growth of fish during the season compared to a fishery which may be extended over time and space (a result similar to findings by Methot and Dorn 1992) and smaller harvests and stocks over time. In addition, findings suggest there may be increased variability in the fishery over a long period of time due to the interactive effects of recruitment variability and the higher proportion of fishing effort on younger year classes.

Interviews with seafood buyers and preliminary and on-going work by food scientists suggest there may be other problems associated with an early fishery. Experienced European buyers of Pacific whiting fillet blocks have stated that the quality of product processed from fish harvested early in the season were generally poor as a result of the emaciated condition of the fish (During, personal communication; During 1992). This resulted in blocks of overall poor quality and shelflife, making them unacceptable for production into secondary products including fish sticks and portions. At least one buyer recommended that Pacific whiting should not be harvested until mid-May to ensure adequate product quality.

Ongoing research at the Astoria Seafood Laboratory also suggest there may be problems with an early season fishery (Morrissey, personal communication). Most fish species show annual changes in relative protein, lipid, and moisture contents due to sexual maturation and spawning (Love 1988). An example of the annual variation in proximal content of Pacific whiting is shown in Figure 1. These graphs indicate that early in the season (April, May) Pacific whiting may have a high moisture and relatively low fat and protein content following winter spawning. Preliminary evidence suggests that for many product forms including surimi, these conditions may affect recovery rates and product quality resulting in lower product grades, lower market prices, and a reduction in viable production options. However, much more

research is needed to evaluate and quantify these concerns.

Topic 5: Policy uncertainty and potential impacts on investment and costs.

This is another important issue, but one which is difficult to quantify. During the past four years I have observed the fishery management process and its associated politics. By its nature U.S. fisheries is highly political -- decisions are not determined solely by an elite group of scientific managers but result from a pluralistic policy process -- a process generally in accord with the legislative intentions of the Magnuson Fishery Conservation and Management Act (Sylvia 1992).

One of the issues which concerns me as an economist interested in public resource management, is the high degree of policy uncertainty characterizing the Pacific whiting policy process. During the last four years, fishery policy actors (including members of the Pacific Fisheries Management Council (PFMC), fishermen, processors, and community leaders) have made considerable investments based on their personal assessments of the policy outcomes likely to result from this process. In fact, from a given advocate's perspective, a necessary prerequisite to improve policy outcomes was to demonstrate his/her sector's (e.g., on-shore, off-shore) capability to efficiently use the resource. For example, the on-shore component, while employing underutilized capacity in existing processing plants and fishing vessels, invested approximately 20 million dollars in new processing and product quality control equipment (Radtke, personal communication). This investment was made at some risk to investors, given that the outcome of the policy process was not finalized. Yet this risk was considered reasonable and necessary given the nature of the policy process and the personal assessments of businessmen and policy "entrepreneurs."

The recent decision by Commerce to overturn the Pacific Fisheries Management Council's latest whiting plan, has expanded the process and increased policy uncertainty. Reasonable, investment decisions by private and public entrepreneurs have now been put into jeopardy. Increased time and capital must now be expended on affecting policy outcomes at not only the regional, but also the national level. The result will be wasted investment -- resources which would have been devoted to improving production and marketing of whiting products will be devoted to securing access to the resource.

In my opinion it is critical that an activist Department of Commerce announce their philosophies, initiatives, and intentions in a manner which allows industry members and policy participants the time to make adjustments in private and public investment behavior. Announcements on the opening of the season result in losses in regional and national welfare, and quite frankly, are

unfair to industry and communities depending on this resource. Commerce and NOAA need to articulate their policies to the regional fisheries councils in a timely and reasonable fashion for purposes of both efficiency and equity.

Topic 6: What type of economic issues should the fisheries management process consider when making public policy decisions including allocation decisions on the Pacific whiting fishery?

This testimony has focused on a number of complex and inter-related issues affecting management of the Pacific whiting fishery. Because the fishery is relatively new yet complex, analysis must be comprehensive and forward looking in order to understand the long run implications of management decisions. Even if analyzed by competent economists, a "snapshot" look of "Net Economic Values", where information about the fishery is sparse and property rights for the resource non-existent, may be misleading. Different groups may seek to derive different types of benefits from the fishery (Sylvia 1992). Differences in behavior and values can ultimately affect the market value of the resource and how it would be allocated. Models need to incorporate alternative objectives in order to demonstrate these fundamental issues and be consistent with the mandates of the Magnuson Fishery Conservation and Management Act. Perfunctory and simplistic economic analysis, which is accomplished primarily to meet procedural requirements rather than to reveal important economic information, wastes the analysts' abilities and deprives policymakers and other policy actors from having information critical for making rational management decisions. In addition, it is important that fisheries biologists, economists, seafood technologists, and other scientists work together to analyze this complex fishery and place this analysis within the context of other west coast fisheries.

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Table 1. The values of various product characteristics for frozen whiting fillets for first and second receivers and "small" and "large" wholesalers (Sylvia and Peters 1991 -- derived from Table 5.5, page 127).

First Receivers			
Base Attributes	Value	Improved Attributes	Value
Base price	\$.57	Base price	\$.57
Skin-on	\$.00	Skin-off	\$.10
2-4 oz fillet	\$.07	4-6 oz fillet	\$.12
2 month supply	\$.02	7 month supply	\$.06
No marketing support	\$.00	Marketing support	\$.06

Total price for "small" first receivers	<u>\$.66</u>		<u>\$.90</u>
Total price for "large" first receivers	<u>\$.62</u>		<u>\$.86</u>
Second Receivers			
Base Attributes	Value	Improved Attributes	Value
Base price	\$.66	Base price	\$.66
Skin-on	\$.00	Skin-off	\$.15
2-4 oz fillet	\$.10	4-6 oz fillet	\$.16
2 month supply	\$.03	7 month supply	\$.08
No marketing support	\$.00	Marketing support	\$.09

Total price for "small" second receivers	<u>\$.79</u>		<u>\$ 1.14</u>
Total price for "large" second receivers	<u>\$.73</u>		<u>\$ 1.08</u>

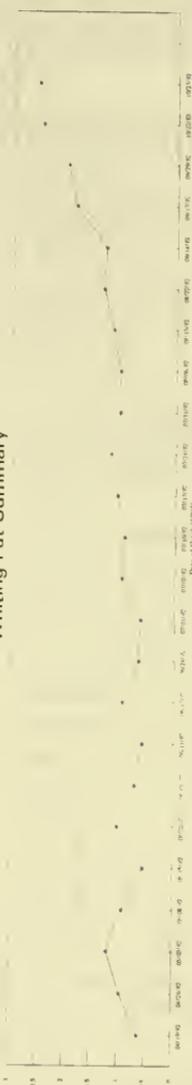
Whiting Moisture Summary



Whiting Protein Summary



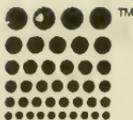
Whiting Fat Summary



Whiting Ash Summary



Figure 1. Proximal analysis for Pacific whiting

**BIOPRODUCTS™**

Fish Feeds Division
Bioproducts, Inc.
P.O. Box 429
Warrenton, OR 97146
(503) 861-2256
FAX: (503) 861-3701

3 June, 1993

Representative Kopetsky:

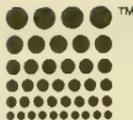
Enclosed are copies of two letters we sent trying to persuade the Department of Commerce to modify the Whiting allocation decision. Bioproducts invested over one half million dollars on new equipment last year to utilize the scrap material from the Whiting industry in our area. It is our long term goal to increase capacity of processing in Warrenton to eventually be able to process all whiting waste produced on the coast.

The current allocation decisions have a direct impact on our long range goals. Before we can invest further capital into process equipment we must show our owners that the money they spent last year was a good investment, and has generated the income we projected. This years reduced allocation will cause us to come up short of our projections. It will not be as severe as first thought, because of the increased allotment, but will still cause us to make a substantial substitution of ingredients in our manufacturing process. This will immediately increase our manufacturing cost, reduce our profitability, and reduce the payback for the capital investment. I won't be able to address the final numbers until the first of the year. The waste material coming from Pacific Whiting production is an essential component of the fish feeds we produce now. We are working to appropriate additional capital for investment in equipment to further utilize this raw material source. It makes no sense to process these fish at sea and dump the waste, when that same fish can be processed as well on shore, and the waste can be utilized in secondary processing. It makes economic and environmental sense. We fully support your efforts to increase the allocation of whiting to shore based processors.

I hope this information is helpful to you. If you have additional questions, or need more information please let me know.

Cordially yours,

Russ Farmer
Operations Manager


BIOPRODUCTS™

Fish Feeds Division
 Bioproducts, Inc.
 P.O. Box 429
 Warrenton, OR 97146
 (503) 861-2256
 FAX: (503) 861-3701

April 21, 1993

President Bill Clinton
 Executive Office of the President
 1600 Pennsylvania Avenue, N.W.
 Washington, D. C. 20500

Dear Mr. President:

Sixty days ago, eight people at my company were laid off. Now your Department of Commerce made a single decision that might cause me and all the rest of my co-workers to loose our jobs.

When you told us that your goal, if you should become President, was to create jobs, we believed you. But now, we don't know what to think. The Secretary of Commerce made a decision on the Allocation of PACIFIC WHITING that may mean the loss of several months work this year for myself and many other employees at Bioproducts, Inc., Warrenton, Oregon, (a fish feed manufacturer, and user of fish scrap). The Regional Council proposal would give the fish processors six to seven months work, but the Secretary's decision took so much fish away from the shore plants, it would cut them back to two months work. What this means to Bioproducts, is that we would not be able to receive the fish scrap we need to honor our contracts with various state and federal agencies, plus supplying feed to private fish hatcheries.

Because of the lack of jobs in the logging business and mills in Oregon, and the closure of Astoria Plywood Mill, we have no other place to turn to for jobs. If you allow those jobs to be taken away from us and given to the factory trawler fleet, how will we survive?

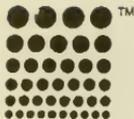
It said in the newspaper, that the reason the Secretary of Commerce changed the amount of fish that the companies on shore are supposed to get, was that somebody from Tyson Foods asked him to do it so that their fleet of factory trawlers could have the fish. YOU PROMISED US that your administration would not be influenced by special interest group lobbying. Why didn't the Secretary listen to the recommendations of the scientists, Regional Council members and National Marine Fisheries Service? Please help us keep our jobs! We all want to work but the decision made by your administration is taking our jobs away. Why do the political decisions always favor the individuals with the most money, rather than the working people? What is the value of the Council process if you don't accept the recommendations?

Please, President Clinton, help us, we want to work. Tell the Secretary of Commerce to stop the factory trawlers from taking our jobs away. Tell him to stop the fishing and accept the recommendation of the Pacific Fisheries Management Council and National Marine Fisheries Service. We need our jobs to feed our families. Please don't let us down.

BIOPRODUCTS PLANT WORKER
 Warrenton, Oregon

cc: Congresswoman Elizabeth Furse
 Secretary of Commerce Ron Brown
 Senators Hatfield and Packwood

TOTN 0 04



April 20, 1993

BIOPRODUCTS™

Fish Feeds Division
 Bioproducts, Inc.
 P.O. Box 429
 Warrenton, OR 97145
 (503) 861-2256
 FAX: (503) 861-3701

President Bill Clinton
 Executive Office of the President
 1600 Pennsylvania Avenue, N. W.
 Washington, D.C. 20500

Dear Mr. President:

A single decision by your Secretary of the Department of Commerce, Ron Brown could well cause the shutdown of our company, the largest employer in our area, with a direct payroll of \$1.8M.

Because of a decision made by your appointee to the Department of Commerce, Secretary Ron Brown, that is in direct contradiction of your state campaign promises and goals to create jobs and to reject the influence of special interest groups lobbyists, some 60 seafood workers in our community will lose five months of employment amounting to a minimum of \$750,000.00 in direct wages. This decision not only contradicts your goals and promises but contravenes the Regional Fisheries Management Council process, responsibility and authority.

Not only will our community lose the direct income referenced above, but the business that is generated by that income and the business that is generated through the community infrastructure by the processing plants, catching vessels, freight companies and other related businesses. This impact is repeated in every coastal fishing community.

The decision is not only contrary to your promises, goals and principles, it is contrary to the Department of Commerce's own proposal published in the Federal Register which was changed as the direct result of special interest group lobbying by the factory trawler association. Coincidentally, Tyson Foods is the single largest owner of factory trawlers, controlling approximately 25% of the total fleet capacity. It was wrong and should be changed immediately. Instruct Ron Brown to issue an emergency order to stop the fishery no later than April 26, 1993 and issue a new ruling following the recommended proposal of the Pacific Fisheries Management Council and the Northwest Regional Director of the National Marine Fisheries Service.

Sincerely yours,

Bioproducts, Inc.
 PACIFIC WHITING SUPPORT INDUSTRY
 PACIFIC WHITING SUPPORT COMMUNITY



Center for Marine Conservation

Formerly Center for Environmental Education, Est. 1972.

June 3, 1993

Hon. Ron Wyden
Chairman
Small Business Subcommittee on Regulation,
Business Opportunities, and Technology
Washington, DC 20515

Via Fax

Dear Chairman Wyden:

The Center for Marine Conservation appreciates the invitation to present testimony to the Subcommittee about the Department of Commerce's decision allocating Pacific Whiting. Regrettably, we are unable to present testimony before the Subcommittee. Instead we provide the following comments for your consideration.

The Center for Marine Conservation promotes conservation, sustainable use, as well as selective gear and non-wasteful fishing techniques in the management of marine fisheries. The Center actively participates in the regional fishery management council process in New England, the Mid-Atlantic, South Atlantic, Gulf of Mexico, and here in the Pacific. Established in 1972, the Center is a public, non-profit organization dedicated wholly to the health of coastal and marine environments and their living resources.

While the tangled process of developing an allocation framework for Pacific Whiting has moved forward, the Center was a relatively quiet observer, focused on the potential biological conservation impacts. The Center speaks out now to highlight concerns about the decisionmaking process and to reintroduce several conservation issues relating to Pacific whiting.

The federal fishery management process does not benefit from a drawn-out process and last minute flurries of contradictory decisionmaking. The lack of coordination between NMFS and the Pacific Council and the lengthy delays in decisionmaking at the Department of Commerce resulted in NMFS' proposed rule being published in March, three months after the Council's action and just weeks after the Council's March meeting. The final rule published just four weeks later, was dramatically different. The final rule also proved to be based on faulty assumptions as emergency action had to be taken on May 5 to halt at-sea processing.

The Magnuson Act and Council Rules and Regulations require that management decisions be based upon the best available scientific information. To reverse such a decision should certainly require presentation of information more persuasive in substance and quality than that used for the initial Council decision.



In addition to the scientific information, the Magnuson Act charges the Council with responsibility to receive and consider information regarding social, environmental, and cultural impacts of decisions and, implicitly, to address and ameliorate those impacts. The record of the fishery management process in the instant case indicates to us that the Pacific Fishery Management Council has followed both the letter and intent of the Magnuson Act.

Two last questions arise which the Center believes must be addressed. What was the rush to fish? Spawning populations of whiting were reportedly drained of quality and value. The products created, fish meal and surimi, reflected the conditions of the fish. Those products were produced into an over-sold market. How does the public interest benefit from a lower quality product being pumped into an over-supplied market?

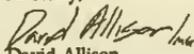
While these questions, on their face may not appear to be "conservation" issues, the issues of overharvest and unwise use of limited resources as well as issues of public process will always command our attention.

Meanwhile the battles over the allocation of Pacific whiting continue to divert valuable time and energy from important biological issues. The US/Canadian disputes over whiting have resulted in combined harvests that exceed the coastwise Allowable Biological Catch, leading us down the road to overfishing (1990 harvest, 106% of ABC; 1991, 125% of ABC; 1992, ~130% of ABC).

Finally, the whiting management and allocation process should incorporate as much biological information as possible on both the target species and bycatch of other species. Data collection on whiting discards and bycatch of salmon and rockfish should be a high priority for everyone involved with this fishery. Observer data from both the onshore and offshore sectors needs to be collected and analyzed. The recent regulation imposed on the whiting fishery to reduce bycatch of salmon is a step in the right direction.

Thank you for the opportunity to comment on this difficult process. The Center for Marine Conservation looks forward to continuing to work with the Subcommittee during its deliberations on this important matter.

Sincerely,



David Allison

Fisheries Conservation Director

MOTION INDUSTRIES, INC.

BEARINGS, FLUID & MECHANICAL POWER TRANSMISSION SPECIALISTS

113 41ST AVENUE S.E.
P.O. BOX 729
ALBANY, OREGON 97321
PHONE (503) 924-0262
FAX (503) 924-0256SENATOR RON WYDEN CHRNM.
House Comm. on Small Business

6/2/93

Dear Senator:

Motion Industries is an industrial distributor doing business with Inland Quick Freeze as well as other local processors that depend on a stable Whiting harvest. As such, the Dept. of Commerce's recent decision to give a majority of the available harvest to offshore processors has not only hurt Motion economically, but scores of others as well.

We believe that a fair and equitable allocation that gives first preference to local processors is needed here to maintain economic stability in the region. Your earnest consideration in this matter would be most appreciated.

Sincerely,

Michael J. Farmer

Branch Manager

Newport, Oregon
June 4, 1973

Rep. Ron Wyden -
Dear Sir:

I appreciate the fact that you and Rep. Kopitke both came to Newport to discuss our fishing industry - I know that you will hear from many business as well as Govt. officials regarding the whiting allocation - I am only an ordinary citizen of Newport, Oregon and have lived here for 30 years -

I realize the importance of the fishing industry to our local economy. I have seen many changes over the years. I've seen the shrimp canneries move to Berwald's - Shrimping continues but the product is now frozen - One Aquaculture struggled for many years before its downfall. Scallops were processed for several years - but no longer - Salmon & tuna have had good and bad years - Last year Surimi became the big issue.

Before the Surimi plants began operating - they were rumored of wages paying \$7.00 to \$15.00 a hour - I thought good - there will be jobs for our local unemployed - Instead we've seen an influx of Hispanics from outside our area - I do not know what their salary is - but it is not all spent locally.

There already is a shortage of rental housing in our area and now it is crucial - Causing many problems - The Churches as well as citizens have assisted with food and shelter - but only temporarily - as it involved too many people - Many things are needed to care for them - food, shelter, bathing and bathroom facilities - as well as assistance with our language - In the Valley - Temporary housing is available for some of the transient labor - but we do not have that.

The plants are not processing at the present time - but I still remember the horrible stench from the waste product. I live several blocks away but it was horrible. The waste at that time was collected in an old tanker and after several days towed out to sea for disposal. After much complaining by citizens - the answer was to empty the tanker often and it did help. but not entirely - Tourists as well as locals avoided the Bay Front at that time.

Last year was an unusually dry year - so water rationing was wide spread - but I do know that a very large amount of water is necessary in surimi plants. When I asked why they couldn't desalinate the sea water as the Processing Ships do - the answer was "too expensive". In the future water is going to be more in demand - as residential areas are growing all around Newport - and they also need water - I feel that the On Shore Plants should do the same as the Processing Vessels - and Consider it a cost of production.

For the following reasons I favor the Processing Plants.

1. They employ many people - Most of them U.S. Citizens - Their families live here - buying or renting homes - paying their taxes - spending their money in our area and taking part in community affairs.
2. The ships use their own water and power.
3. The ships furnish food, shelter and emergency medical care for the crew.

Thank you for coming.

Sincerely,
 Carolyn R. Price
 255 S. E. Foster Lane
 Newport, Oregon 97365

THE 1993 WHITING ALLOCATION

Imagine two boats fishing. They can't see each other but are in touch by radio. They seem to be catching about the same amount. Boat A gets a ton, and Boat B says that he's caught a ton too. Fishing drops off for A and he decides to move. Boat B shows no inclination to move. Is B still catching the same, or has he been doing better all along? Boat A goes to the same area that Boat B is in, "Just to keep him honest."

I've been hearing and reading lots of sea-stories about the 1993 Whiting allocation. I'm writing this because my side of the issue is unheard. I need to keep these guys honest.

I'm a fisherman and I've lived in Newport for 30 years. I've fished for a living for 21 years, both here on the coast, and in Alaskan waters. For the past 5 years I've worked on a factory trawler.

To find the roots of the current range war, you'd have to look into the past. In the 1970's crabbing and shrimping both boomed and their fleets grew. Foreign companies had factory trawlers in U.S. waters. Fishing seasons had a starting date and either a quota or an ending date.

In the early 1980's Americans moved into pelagic (mid-water) trawling. In order to use factory trawlers in U.S. waters (direct fishing) foreign companies had to send motherships to buy fish from U.S. catcher boats (the Joint Venture or JV fishery). At the same time a U.S. factory trawl fleet started working in the Bering Sea and North Pacific.

The U.S. factory fleet at that time was slow to expand. A trip took months and they had to develop their product to fit into the international marketplace.

In contrast, the JV fishery was booming. The U.S. boats transferred thousands of tons to foreign factory boats without ever having to touch a fish. They were paid for round fish and the foreign mothership fleet took care of product quality and marketing.

The JV fishery was on a time limit through the provisions of the Magnussen Act. Over a 10 year period for gn vessels were to be phased out of U.S. fisheries. During the second half of the 80's the U.S. factory fleet had grown to the point that it displaced foreign pollock allocations. The Japanese surimi fleet made up for this loss by shifting to the West Coast and making surimi from Whiting.

The U.S. factory fleet was now processing surimi and coming into a boom period.

By 1980 the Crab and Shrimp Fleets were overcapitalized. Because foreign JV partners could send over additional motherships the growing JV Fleet didn't know that it was overcapitalized until the JV's ended in 1990. The ensuing boom in the Factory Fleet led to it being overcapitalized in the early 1990's.

Today you can go to any fishing port (Newport is a good example) and see newer and more powerful boats each year. Local fishermen see the innovations and want the same for themselves. Overcapitalization is in every port and every fleet.

In 1989 and 1990 the newest factory trawlers were coming out with price tags of 50 million dollars or more. Those of us fishing wondered how anybody could make them pay. But at the same time, the Japanese were beginning construction of shore plants with price tags in the hundred of millions of dollars. We couldn't understand how they could make it, especially since they were limited to the range which shore based boats could deliver fish fresh enough to process.

The answer was shore- preference. The Japanese plants didn't get into production until 1990 for a few, and 1991 for the rest, but they asked that 35% of the Pollock allocation be dedicated to them, and 40% and 45% for the next two years after which they would stay at 45%. This would be a drastic reduction to the U.S. Factory Fleet. They had pioneered the groundfish industry and historically caught 80% of the allocation.

The governing councils and agencies recommended against the plan, but in an 11th hour decision, the Dept. of Commerce ruled in favor of the new shore plants.

With the Japanese plants guaranteed 35% of the allocation, surimi prices fell. The shore-based jobs for Alaskan communities turned out to be minimum wage and were filled by green-card, non U.S. citizens. Other problems arose with the need for fresh water and the disposal of processing wastes.

A year following the split of the allocation, the U.S. Factory Fleet was excluded for half the season from thousands of square miles of historically productive fishing grounds in order to protect shore-based interests. The Gulf of Alaska is also closed to factory trawlers. So for half of the year we are forced to stay west of 163 degrees West longitude.

In 1989 several U.S. factory trawlers fished for Whiting on the West Coast. They tried fillets and headed and gutted product. The poor quality of the Whiting made these products hard to sell. In 1990 other U.S. factory trawlers made surimi from Whiting and their success led to subsequent total involvement in Whiting surimi by the U.S. Factory Fleet. The importance of the Whiting fishery to this fleet and their historic involvement in it is no less than it is to local shore plants.

The local shore-based advocates have every right to be doing what they are doing. Their knowledge of the allocation process is thorough and they work hard to get what they want. But they ask for a lot.

The allocation for 1992 was 212,000 metric tons (mt) of which shore-based boats got 56,000 mt and offshore boats got 156,000 mt. The 1993 allocation is 142,000 mt of which shore-based boats will get 47,000 mt and offshore boats got 95,000 mt.

Local shore-based advocates wanted 93,000 mt for themselves leaving 49,000 mt for the offshore segment. The 1993 Whiting allocation for both shore-based and offshore boats is 67% of the 1992 allocation amount. If the shore-based interests had gotten what they asked for, the shore-based segment would have been given 166% of their 1992 catch amount, and the offshore segment 31% of their 1992 catch amount.

The Pacific Fisheries Management Council endorsed this plan but the Dept. of commerce disapproved it. Instead the Dept. of Commerce instituted a plan that gave the shore-based segment 75% of their 1992 catch amount, and the offshore segment 53% of their 1992 catch amount. This plan was based on past catch records and processing capabilities. It was a balanced answer to a complex question. Their intention was for the shore-based fleet to catch 12,000 mt and the offshore fleet to catch 100,000 mt in a 112,000 mt olympic fishery with a reserve set aside for the shore-based segment. They stopped the olympic fishery when the offshore fleet reached the target of 100,000 mt (actually slow fishing on the closing day caused 98,000 mt to be taken).

The Factory Fleet are not monsters. They are closely regulated and regularly boarded and inspected. Each vessel carries a NEMS certified observer that monitors the catch as it is hauled aboard. Approximately 100 people at a time work on each vessel and by law, fewer than 25% of them can be non U.S. citizens. Housing, food and medical attention are provided for the crew. The fresh water needed for processing is made onboard from seawater.

If you add up the jobs catching and processing Whiting for the shore-based industry, you will find at least as many Oregonians working in the Factory Fleet, in addition to thousands from elsewhere in the Pacific Northwest and around the nation. Then factor in the ripple effect and it will be the same for either shore-based or offshore employees.

Today's meeting deals with the local impact of the 1993 Whiting allocation. If I believed that the shore-based advocates speak for the coastal economy, my focus would be very narrow. The benefits of the shore-based Whiting fishery go to fewer people than its effects do.

The majority of the jobs brought to the community are minimum wage jobs filled by migrant labor. These people need shelter and health care. Our County Social Services are strapped and the area has a housing shortage.

Currently water is an important issue. Last year we experienced a shortage. The communities in the area are growing and water needs are increasing. Could our supply have withstood a 93,000 mt shore-based allocation (it takes 5 tons of water to process 1 ton of surimi)?

The disposal of processing wastes has been a problem in the past. Tourism is adversely affected by the odor of the Whiting process. I'm sure new plans are being made to meet this problem but many solutions have fallen short up to this point, and a successful solution has yet to be achieved.

Another unmeasured effect is ^{in regard} to the fisheries that have become less significant to the shore plants in order for them to develop surimi capability. Shrimp fishing in particular has lost ground in this arena.

In the format of a congressional hearing you will get the views of the most vocal advocates from both sides of an issue, myself no less partisan than the rest. To learn about the impact of this issue on this community, you or members of your staff would profit from just talking to people on the street.

The end of the shore-based vs. offshore conflict is not in sight. Both sides are overcapitalized and their alternative pursuits are diminishing. The Whiting allocation has become something that neither side can afford to be excluded from. Beyond the noise about where the benefits go, who is a pioneer, or what sound science says, the answer will be in a shared fishery. Not shared better in some years and shared worse in others. To keep any vessel running well, you have to maintain all of its parts. You won't get by by just putting grease on a squeaking wheel.

Thank you for giving me the opportunity to submit my views on this matter.

Steve Price

Steve Price
855 Christiansen Road
Toledo, Oregon 97391
(503) 336-1212

June 1, 1993

To: Barry Fischer
Pacific Whiting Association

From: Norm Sease
Rogue Agri-Mulch

My company has for the last five months been involved in a feasibility study concerning a new product line scheduled for 1994. Our study has now evolved into two more product lines, one in an entirely new direction from our start. These new products will have need for a high solids, pasteurized, fish viscera as part of their mix content.

One products will be used in remediation of heavy laden hydro-carbon soils. This new process will use large quantities of fish viscera, that is if our experiments prove out our hypothesis. This market could account for 8,000 to 12,000 barrels of processed fish viscera in the first year alone.

The Whiting allocation for shore based processors will have a definate impact on our decisions concerning this new product line and the expansion plans as well. If sufficient quantities cannot be found on the Oregon coast it will be necessary to go further north to locate them. This move north will impact our transportation costs of finished product.

The future of this project looks excellent if all the parts and plans can be achieved. Employment indirectly could come close to 100 and directly we could employ and additional 25 persons on packaging and application of products being developed.



Willamette Industries, Inc.
Beaverton Corrugated Plant

5500 S.W. Western Avenue
P. O. Box 666
Beaverton, OR 97075
(503) 641-1131

June 2, 1993

The Honorable Ron Wyden
United States House of Representatives
363 Rayburn
Washington, DC 20515

Dear Congressman Wyden:

I am writing to you to express my concern for the recent decision of the Commerce Department to reverse the decision made by the North West Fisheries Commission regarding the Pacific Whiting allocation.

As a corrugated container supplier to fish processing companies, this reversal has cost my company approximately \$37,500.00 in box sales to one customer alone. It has also significantly effected my customers who for the most part are small businesses.

Pacific Whiting processed at our local processing plants provide real long-term jobs and provide growth incentive in all areas of our community. Please use you position to help support the processors and suppliers to the processors of Pacific Whiting.

Sincerely,


John Rodecap

JR/tm



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Silver Spring, Maryland 20910

JAN 17 1992

MEMORANDUM FOR: F/NWR - Roland A. Schmitt
FROM: F/CM - Richard H. Schaefer
SUBJECT: Pacific Whiting Allocation for 1992

On January 8, 1992, we received from your office an advance copy of the "Final Report on Proposed 1992 Management Measures to Allocate Pacific Whiting" and its related EA/RIR. We also received regional memos sent to the Pacific Council last fall that were critical of the preliminary analysis under review at that time. We have conducted a review of these documents and have concluded that problems exist with both the proposed action and the accompanying analysis. This memo documents oral comments conveyed between our respective staffs on January 10, and during a conference call by F/CM and GCF staff with your staff on January 13.

Acceptability of Proposed Action

Summary - The Council's proposed action to allocate the 208,800 mt 1992 harvest guideline for Pacific whiting (80,000 mt for shoreside processing; 98,800 mt for at-sea processing; and 30,000 mt reserve, priority for shoreside processing; catcher/processors prohibited from harvesting; and reapportionment of unused allocations authorized) is a marked departure from last year's allocation and is causing considerable controversy that is likely to result in litigation. In our opinion, the action is not approvable because the Council has not demonstrated that the preferred alternative is fair and equitable in accordance with National Standard 4 of the Magnuson Act, and may, to a lesser extent, have difficulty conforming with National Standard 5's prohibition against management measures having economic allocation as their sole purpose and National Standard 7's charge to minimize costs and avoid unnecessary duplication. The preferred alternative also is inconsistent with at least one of the FMP's objectives. The rudimentary problem from which the proposed action suffers is that it requires additional capital investment in shoreside processing capacity when present processing capacity (ashore and at-sea) substantially exceeds the amount of Pacific whiting available to the fishery.

o The need for the action has not been justified -- problem statement is extremely limited, not supported by analysis, only unsubstantiated statements.

- o In order for shoreside processing to utilize 80,000 mt of whiting, the EA/RIR indicates that an investment of \$30 million in additional processing capability will be necessary.
- o An untried (no test market analysis) assumption is made that by expanding existing shoreside processing lines to produce surimi, this higher-priced specialty product will be readily accepted in the marketplace and benefits will flow to the local and state economies.
- o The preferred alternative is difficult to justify because it encourages economic inefficiencies and results in extreme impacts in relation to benefits.
- o Given the fact that the catcher/processors have the capability to process the entire 1992 harvest guideline in 8 to 10 weeks, why should they be forced to subsidize the expansion of shoreside processing at the expense of their own efficiency?
- o It would seem that the traditional fishery was the foreign fishery followed by U.S. catcher vessels supplying foreign joint venture processors; the proposed action would limit the amount of fish catcher vessels can sell to the at-sea processors and thereby impose inefficiencies upon them by requiring them to sell their remaining catch (80,000+ mt) to shoreside processors and interfere with the normal workings of free market enterprise.
- o The action regarding harvesting by catcher/processors in 1992 is confusing. As explained by your staff and the F/NWR talking points prepared for the Jan. 7 briefing of F, F/CM, and GCF, catcher/processors will be prohibited from harvesting. However, pg. 18 of the EA/RIR states that "catcher/processors will be allowed to participate in the fishery, but vessels must choose whether to act as a catcher or as a processor (not both)."
- o Under the socioeconomic framework of the FMP, as established by Amendment 4, actions taken under this framework are to be evaluated for consistency with the FMP goals and objectives. The preferred alternative is clearly inconsistent with Objective 13 ("when considering alternative management measures to resolve an issue, choose the measure that best accomplishes the change with the least disruption of current domestic fishing practices, marketing procedures and environment").
- o The action also raises some seriously perplexing policy questions such as, should the U.S. government be involved beyond the wise use of the resource and preserving the viability of the fishery?

Adequacy of Analysis

Summary - This is an incomplete analysis that fails to justify the preferred alternative.

- o Quantitative analysis is admittedly lacking and the qualitative analysis that is included is made on assumptions that are highly questionable, and conclusions are largely speculative.
- o The Council's recommended action is identified as alternative #7 in the EA/RIR (pg. 4), which is supposed to be an analytical document supporting the Council's "Final Report on Proposed 1992 Management Measures to Allocate Pacific Whiting"; however, it is not identified, discussed, or analyzed in the Final Report (the EA/RIR should be an appendix to the Final Report not vice versa).
- o The analysis in the Final Report and the EA/RIR is primarily one of income distribution and does not analyze costs/benefits (no net benefit conclusion); while the analysis seeks to establish a social basis for the action, it fails to establish either a social or an economic basis.
- o The analysis shows lots of redistribution of income to individuals and local and state economies, but does not help gauge one alternative vs. another.
- o The analysis fails to identify costs and economic and social benefits to the nation as a whole. Accordingly, the action is not consistent with the FMP's Objective 4 ("attempt to achieve the greatest possible net economic benefit to the nation from the managed fisheries").
- o The Input/Output model is not useful in selecting the best alternative on a cost/benefit basis; I.O. model does show a shifting of benefits from the Seattle area to Oregon; however, this is obvious without the model because the catcher/processors are based in Seattle and most shoreside processors are located in Oregon.
- o Negative impacts on catcher/processors are largely ignored.
- o The best available information is not used (see Final Report, pg. 18, lines 6-8).
- o There is no analysis of impacts on fisheries in adjacent areas as required by the Magnuson Act.
- o The Final Report and the EA/RIR contain internal inconsistencies (e.g., regarding the income distribution effects on catcher/processor employees - local to Seattle or accruing to Washington and Oregon economies?)

o A critical inconsistency in the analysis is the estimate of shoreside processing capacity for 1992: pg. 43 of the Final Report (dated Dec. 91) estimates it at 40 - 60,000 mt, whereas pg. 8 of the EA/RIR (also dated Dec. 91) says it is over 80,000 mt. Only the EA/RIR includes the preferred alternative #7 allocating 80,000 mt for shoreside processing. The EA/RIR should have analyzed all of the alternatives based on the most recent estimate by NMFS of shoreside processing. Shoreside processing amounted to only 20,000 mt in 1991, a year when much more was available to this sector.

o This analysis lacks an objective presentation of shoreside vs. at-sea processing benefits and costs. It is skewed to benefit shoreside processors at the expense of the catcher/processors as though shoreside processors were the traditional processing activity in this fishery. Shoreside processors have historically processed small quantities of whiting (8,000 mt or less representing a small fraction of the overall harvest) until 1991 when they utilized 20,000 mt (representing 9 percent of the harvest). Catcher/processors entered the fishery in 1990 and caught and processed about 5,000 mt and in 1991 they harvested 117,000 mt and motherships processed 80,000 mt (almost 200,000 mt was processed at sea in 1991 by domestic processors).

o The analysis does not distinguish between all catcher vessels that have the ability to bring the net on board for delivery to the shoreside processors, and those that do not. Furthermore, the EA/RIR does not analyze the impact of the action based on catcher vessel characteristics.

o Table 8 (pgs. 37 - 39, Final Report) shows that the 1991 allocation has the greatest income benefit; however, product values for shoreside processors appear to be based upon highly speculative assumptions that markets will exist for expanded products); speculative estimates of shoreside impacts form the basis for expansion of the shoreside processing industry in an amount of \$30 million at the expense of existing capacity at sea.

o The EA/RIR does not analyze whether requiring catcher/processors to act as motherships introduces costs. It is implausible to conclude that catcher/processors can buy whiting more cheaply than they could catch whiting, plus inefficiency is presupposed because the catcher/processor vessels are not operating optimally or as they were designed (to harvest as well as process).

o Fishing for alternative species is not an option for catcher/processors because everything is calibrated for Pacific whiting; this opportunity cost should be factored into the analysis. Furthermore, we are unaware of surpluses available for other species that could be harvested by this sector.

o Assumptions are made that raw product can be transported to shore without serious loss of quality. This may not be correct given the fragile nature of hake.

Recommendation

We recommend that the proposal be returned to the Council for rethinking along the lines of what was approved in 1991, because of basic problems with the proposed action and because we do not believe the analysis can be stretched to support it. A more moderate proposal would not require as many benefits because you would not have as many obvious costs and impacts.

Alternative 1 in the Final Report and EA/RIR, the 3-tiered approach, is also flawed for many of the same reasons and may be more difficult to justify than the Council's preferred alternative. Of all alternatives considered, Alternative 4, continuing the 1991 allocation percentages in 1992, would be the most expedient and moderate of actions considered by the Council.

Rules proposed to implement FMP amendments are published without a determination of compliance with the Magnuson Act and other applicable law. However, for regulatory amendments under a framework FMP, the Secretary must make these determinations at the proposed rule stage. They are our proposed rules, not just the Council's. Although publication of a proposed regulatory amendment does not commit us to issuing exactly the same text in final form, it is more analogous to the Day 95 approval of an FMP amendment than to the Day 15 proposed rule publication.

We recognize the consequences of not having an allocation scheme in place when the season opens April 15 and, accordingly, are anxious to support quick processing and approval of a fair and equitable allocation that is analyzed and justified.



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