

**BEFORE THE**  
**UNITED STATES SENATE**  
**COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION**  
**SUBCOMMITTEE ON OCEANS, ATMOSPHERE, FISHERIES, AND**  
**COAST GUARD**

**On**

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*Fishing Vessel Safety, AFA Vessel Rebuild & Excessive Share Cap, and Pacific Cod  
Fishery Cooperative*

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Room 253 Senate Russell Office Building

**Testimony of**

**Michael Hyde**

Good afternoon Madame Chairman and Members of the Subcommittee. My name is Mike Hyde and I am testifying today on behalf of American Seafoods Group with respect to the harvest cap restrictions in the American Fisheries Act. I will also be pleased to respond to questions about other issues related to North Pacific fisheries. As background, American Seafoods is a Seattle based company that owns seven of the twenty catcher processors authorized under the AFA to operate in the catcher processor sector of the Bering Sea pollock fishery. It also owns three freezer longline vessels that operate in the Bering Sea Pacific cod fishery and it operates land-based processing plants in Massachusetts and Alabama. The Company employs over 1900 individuals and is owned by a diverse group of 28 individual owners and two Alaskan Community Development Quota (“CDQ”) groups representing 21 western Alaska communities and their more than 9000 residents. I have been involved in North Pacific fisheries for over 30 years as a deckhand, federal observer, vessel owner, lawyer and vessel manager. I served as the President of American Seafoods Company from 1998 through 2005 and was intimately involved on behalf of the Company in the negotiation of the American Fisheries Act and the formation of the Pollock Conservation Cooperative.

## 1. American Fisheries Act History

The American Fisheries Act (the “AFA”) was adopted in October, 1998 after months of intense negotiation among industry participants, state and federal regulators and Congressional staff. Four primary goals of the AFA were (1) Americanization of vessel ownership, (2) reallocation of pollock to shoreside operations, (3) rationalization of the Bering Sea pollock fishery and (4) reduction in the size of the overcapitalized catcher processor fleet. In addition, the AFA included a number of fishery protection measures.

In October, 1998, American Seafoods was the largest participant in the pollock fishery and was 100% Norwegian-owned. It had expanded aggressively from its original two catcher processors to sixteen vessels through the acquisition of competing companies. Because of State Department concerns about investment protection obligations between the United States and certain foreign nations, the Americanization provisions in the AFA were modified from initial drafts to exempt certain foreign-owned companies from the Americanization requirements (section 213(g)). This revision gave rise to concerns that American Seafoods would remain foreign-owned and continue to grow aggressively. In part to address this concern, section 210(e) (Excessive Shares) was added to the draft AFA. Section 210(e)(1) imposed a limit on the amount of pollock that could be harvested by any one entity:

“Harvesting. No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5% of the pollock available to be harvested in the directed pollock fishery.”

The referenced percentage was the approximate amount of the directed pollock fishery that American Seafoods was anticipated to receive in the negotiations to establish the Pollock Conservation Cooperative, the cooperative that rationalized the catcher processor sector of the Bering Sea pollock fishery. This harvesting limit effectively stopped the growth of what was thought at the time to be a foreign-owned pollock harvesting company (as noted American Seafoods is now 100% U.S. owned).

In contrast, section 210(e)(2) of the AFA addresses pollock processing (as opposed to harvesting) and provides in part:

“Processing. Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery.”

At its October 2000 meeting, the North Pacific Council took final action on the pollock processing cap. The Council analyzed a range of possible caps at 10%, 20% and 30%. After extensive staff reports, public comment and Council discussion, Council members agreed that there was no compelling evidence of any benefit to be gained from

a processing cap. The feeling of the Council members is reflected in the statement of Council member Bob Penney:

"Being big ain't always bad... You need big at the times of low, you need the flywheel of stability, companies that can tough it out. In times of good times, nobody likes big, but you like them when it's low because they're in it for the long haul, they have to stay, they bring stability. Now, we don't know for sure what's going to affect this cap, what's going to come out of it. But those people have the capital, they can't quit, they have to stay and they become like a flywheel in times of down markets. So don't think of good times, think of down times, you need big in bad times."

Although the sentiment of Council members was that no processing cap was necessary, the Council acknowledged the mandate from Congress in the AFA and adopted the highest cap in the range that it analyzed, a processing cap of 30%.

## 2. Issues

As a general principle, governmental restrictions on economic and operating efficiencies of private companies should be limited to circumstances in which a need for a restriction is identified and the proposed restriction is fair and equitable and addresses the identified need. American Seafoods believes that the current harvesting cap fails to meet either of these criteria and should be raised to at least match the current processing cap.

### a. Harvesting vs. Processing Caps.

As mentioned above, the North Pacific Council members examined in great detail the need for processing caps and based on their conclusion that no need had been identified, set the pollock processing cap at 30% - the highest level they had analyzed. We believe that if the Council had examined the need for a pollock harvesting cap, the Council would have reached the same conclusion and these two caps would be equal. Unfortunately, because the harvesting cap was established by Congress before the Council acted on the processing cap, the two caps are not the same and create a very unequal playing field between catcher processors and other processors.

The only sector of the Bering Sea pollock fishery in which the American Seafoods vessels are allowed to operate is the catcher processor sector. Catcher processors are vessels that perform exactly as the name implies: they catch fish and process them directly onboard. Because the only source of pollock for a catcher processor is the fish that it catches itself, its operations will always be limited by the lower of any applicable harvesting or processing cap. This has created the inequitable situation in the Bering Sea pollock fishery that American Seafoods is limited to harvesting and processing a maximum of 17.5% of the directed pollock catch while large competitors such as Trident Seafoods, Nissui and Maruha can effectively control the harvesting and processing of up to 30% of the directed pollock catch.

In the mothership and shoreside sectors of the pollock fishery, processors insure the delivery of pollock to their processing plants through the restrictions on the movement of catcher vessels that were included in the AFA, through delivery restrictions in each of the coop agreements and through private contracts directly with those catcher vessels that the processors do not already own. The harvesting cap does not restrict the amount those companies process because, in contrast to catcher processors, motherships and shoreside processors simply arrange for third parties to catch and deliver those amounts of pollock that if caught by their own boats would cause them to exceed the 17.5% harvesting cap.

For all Bering Sea processors (including catcher processors), the important statistic is not how much fish you catch but how much fish you process. The majority of processed pollock is sold in export markets and the strength of a company in international markets is significantly dependent on the volume of processed fish it controls. American Seafoods competes with a large handicap when Trident, Nissui and Maruha can control up to 30% of the Bering Sea pollock and American Seafoods has access to only 17.5% of the directed pollock fishery plus those amounts of the CDQ pollock allocation that the Company can lease from CDQ groups.

b. Operating Stability.

The harvesting cap limits any company to harvesting a maximum of 17.5% of the directed pollock fishery. Because this cap is set as a percentage rather than as a fixed amount, it causes unreasonable restraints on American Seafoods' ability to maintain a steady business operation. The total allowable catch of pollock in the Bering Sea fluctuates widely. In recent years, the quota has ranged from a low of less than 1.0 million metric tons to a high of nearly 1.5 million metric tons. When the quota is near the top of the cycle, nearly all of the AFA-eligible catcher processors are used in order to provide the necessary capacity to harvest the quota. On the other hand, when the quota is near the low end of the cycle, all operators could benefit from the option to harvest and process the fish through quota lease arrangements aboard the most efficient vessels in the fleet, most of which belong to American Seafoods. However, because the harvest cap limits the percentage of the pollock quota that American Seafoods can harvest, when the quota drops, so does the limit on American Seafoods which forces the less efficient vessels to continue operations.

In addition to reducing the overall operating efficiency of the fleet, the harvesting cap works to reduce economic efficiency and market stability. To achieve the highest prices and create stable relationships, a supplier needs to be reliable. While shoreside and mothership processors have no effective limit on how much they process, American Seafoods' production varies widely year to year. Given the opportunity, in low quota years American Seafoods would lease quota at market rates from the less efficient operators who could maximize their gain by leasing quota. However, the current harvesting cap makes that impossible. This leads to less efficient vessels operating in the reduced pollock fishery, depriving both American Seafoods and the owners of the less efficient vessels from maximizing operating and economic efficiencies.

c. Concerns?

It is natural to expect companies that hope to acquire additional quota to oppose the lifting of restrictions that handicap only their competitors. If a statutory restriction removes American Seafoods from the quota marketplace, thereby allowing a competitor to purchase quota at a reduced value, it is predictable that the competitor will hope to maintain that restriction. What is unclear is whether there are legitimate reasons to maintain the harvesting cap at its current level. Because we have not heard publicly from opponents of raising the harvesting cap, I will address those concerns that have been described to us in meetings with Congressional staff.

1. American Seafoods will drive us out of business. In an Olympic style race for fish, the least efficient operators are always at risk of being hurt by the most efficient operators. However, in the rationalized pollock fishery created by the AFA, each company operates with its individual quota and the most efficient operators pose no risk to others. If the harvest cap is increased, American Seafoods cannot unilaterally impact any other company's quota. In order for American Seafoods to purchase or lease additional quota, there has to be a willing seller on the other side of the transaction and any company that is not a willing seller will not be impacted.
2. American Seafoods will purchase all available quota. History has proven that this concern is not warranted. Since implementation of the AFA, the owners of four of the seven catcher vessels that received allocations of catcher processor quota under the AFA have been sold. The quota amounts on each of these vessels was small enough that American Seafoods could have purchased them and remained under the harvesting cap. In fact, American purchased only one of these four vessels and it was the one with the smallest quota. The other three vessels were all purchased by separate catcher processor companies.
3. A larger American Seafoods will drive down market prices. This argument reflects just the opposite of what is likely to occur in the event of a larger American Seafoods. Of the four major processors in the Bering Sea pollock industry, American Seafoods is the only one that is not heavily vertically integrated. Vertically integrated companies such as Nissui or Maruha are not hurt by lower commodity prices because they can make up the loss they incur on lower priced raw materials upon the sale of higher margin finished goods. American Seafoods does not have that opportunity and therefore has the motivation to demand the highest possible prices for its processed pollock. These higher market prices then benefit not only American Seafoods but other smaller processing companies and even the fishermen to the extent they are paid based on revenues to the pollock processor.

d. AFA Amendment Package.

Industry participants have proposed three amendments to the AFA. Each proposed amendment is intended to provide vessel owners with new flexibility to improve the efficiencies and economics of their operations. However, each of the three proposed amendments is likely to benefit only a subset of AFA participants. The replacement vessel provision is likely to benefit only those owners with the least efficient vessels. For companies such as American Seafoods, whose vessels are already among the most efficient vessels in the fleet, it is actually a competitive disadvantage to allow others to build new and more efficient vessels. American Seafoods harvests a large percentage of the CDQ pollock because its vessels are already highly efficient, giving it both the capacity and the financial strength to pay high CDQ lease rates. This competitive advantage will be lost to any new replacement vessels. The inshore permit stacking provision will be a huge benefit to vessel owners who will be allowed to combine quotas on a limited number of vessels and retire their least efficient vessels but it will benefit only participants in the inshore sector and does not even extend to the catcher vessels in the other two pollock sectors. Although the increase in the harvest cap will apply to all companies, realistically, only those companies that are at or near the current harvest cap are likely to benefit.

Each of these three provisions provides relief from unnecessary restrictions and should be supported. However, it is critical that they be supported as a package so that the benefits of any AFA amendments are spread equitably among all of the AFA participants. This balanced approach is consistent with the approach taken when the AFA was originally enacted and should be continued in any AFA amendment package.

In summary, the current harvest cap has created an unequal playing field that has unfairly disadvantaged American Seafoods. It has created economic and operating inefficiencies that are not producing offsetting value. We respectfully ask that this committee look favorably on legislation to increase the AFA harvesting cap as part of a balanced AFA amendment package.

Thank you for your time. I am pleased to answer any questions.