



Bonsai Buccaneers in The Fish Republic of Alaska

Commerce Hearing Adds Texture on IPQs & Thalassocracy

No. 15 in a Series by: Stephen Taufen, founder of the Groundswell Fisheries Movement

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Trident's Texture Tantrum

A political issue has acquired 'texture' when it ripens to the point that the information collected to date has become sufficient enough to warrant serious action. Bonsai #14 summarized *Groundswell* concerns about Crab Rationalization trickery, conflicts of interest and lies - prior to Senator Ted Stevens pushing through bogus economic legislation via a Rider in what became the Consolidated Appropriations Act of 2004 (P.L. 108-199).

We also challenged the *Keynote Address* speaker during Fish Expo - NOAA's Director, Dr. William Hogarth - to preemptively contact the U.S. Senate and advise them about ongoing investigations regarding the Adak allocations of crab rights and the Rider's special grant of pollock rights to TAC. Hogarth publicly acknowledged the 'pending investigation' but refused to understand that NOAA had the power to intercede before the Rider became law. We've since learned - according to one GAO source - that the NOAA Director may actually have been required by federal law to immediately inform Congress about NOAA's investigation and related, serious concerns - especially because of rider-sponsor Senator Stevens' family conflicts-of-interest and federal probes into questionable spending of Commerce grant funds at Adak.

Accordingly, during Fish Expo 2003, a processor CEO found *Groundswell's* explanation of such texture simply too much to handle, so he proceeded to verbally 'attack the messenger' instead of debating the messages. Soon after the name-calling and threats, we faced a judge in a domestic violence courtroom. The matter blossomed into a two-hour hearing on the Constitutional guarantee of rights to 'freedom of expression.' No permanent protective order was issued, but warnings were issued for no further incidents.

However, Judge Carol A. Schapira's two-hour hearing and its ruling showed deep interest for the public's rights to speak out about Crab Rationalization: and nailed shut the possibility of a counter suit on libel. Her First Amendment Rights treatment protects others,

as well. 'Justice prevailed;' and keep on writing, we will. And noting many wonderful letters to the editor in industry media lately - from courageous fleet and community leaders who have occupied the front in fighting Crab Rationalization in Washington DC - we'd like all of you to keep on writing, too.

After all, a 'groundswell' is the witness, courage and words of many placed to work for the common good. And U.S. Senator John McCain (R-AZ) and Olympia Snowe (R-ME) are leading the way for more texture by continuing hearings on the irrationality of Processor Quota shares.

Commerce Hearing Challenges Rider

On February 25, 2004, Senator McCain convened the Senate's Commerce, Science and Transportation's Full Committee in another challenge to the passage of Stevens' rider.

In opening remarks, McCain said, "*In the case of Individual Processor Quotas (IPQs), the cart came before the horse. Today we are examining a law that was enacted as part of the FY 2004 Omnibus Appropriations Act without having been debated in this Committee or by the full Senate; and we, the committee of jurisdiction, must try retroactively to figure out what the problems were that the law purports to address, and how and if the law addresses them.*"

"*During the past few years, the Appropriations Committee has circumvented our authorizing function, short-circuited the normal legislative process, and advanced, without meaningful debate or deliberation, controversial legislation on issues of significant public interest. Under this plan, individual processor quotas will require Alaskan crab fishermen to sell 90 percent of their harvest to a few predetermined processors.*"

"*Fishermen in Alaska are not the only ones who have objected to this market manipulation. Around the country, fishermen have expressed strong opposition to processor quota programs. For centuries, fishermen have used market forces to negotiate their dockside prices and foster competition that ultimately benefits*

consumers. Requiring fishermen to sell their catch to only a handful of processors sets this economic principle on its head, effectively removes competition, potentially violates our antitrust laws, and ultimately could hurt both fishermen and consumers. What justifies such a fundamental change, and one that did not go through the normal deliberative process?"

"Concerns about processor quotas are clearly justified according to the National Research Council (NRC), the General Accounting Office (GAO), and the Department of Justice's Antitrust Division." [The GAO's] December 2002 report on IFQs...failed to find that fish quota programs resulted in harmful impacts on processors in the halibut and sablefish fisheries that would warrant creation of a processor quota program. Furthermore, on August 27, 2003, the Assistant Attorney General of the U.S. Department of Justice Antitrust Division wrote a letter to the General Counsel of the National Oceanic and Atmospheric Administration (NOAA), in which he opposed the processor quotas provisions of the crab plan, stating 'processor quotas are not justified by any such beneficial competitive purpose' and he urged NOAA to oppose processor quotas."

"It is regrettable that we are reviewing the findings of these respected entities post facto."

Senator McCain had key witnesses ready to begin that review, including the Department of Justice and General Accounting Office. From written testimony it appears that the hearing centered on disputing that IPQs were the best means of addressing industry problems and outlined instead that IFQs may be a superior path to good public policy.

We're not certain what McCain and the Commerce Committee can do about the legislation enacted by the Rider, but it is a continuance of serious review by the Senate of the concerns *Groundswell* long expressed on "regulation-negotiation" tactics that circumvent the Public's rights to Due Process. Readers should also review the Council's recent Motion to examine the 90%/10% ratio and the effects of the PQ rider. Especially since NOAA General Counsel recently questioned the legality of community-held shares sub-allocated to individual fishermen.

We highly encourage you to go to the commerce.senate.gov website and find the Commerce hearing's witness list and download the full testimonies. Let's get a flavor for the 'texture' added under the advance of rational discussions at Commerce.

Cow-Pie Theories Still Stink

At the hearing, a new GAO report was released titled *'INDIVIDUAL FISHING QUOTAS: Economic Effects on Processors and Methods Available to Protect Communities'* (GAO-04-487T). The GAO again quarrels with an earlier study of effects of IFQs on processors and communities by Professor Scott C. Matulich and Michael Clark. The GAO reminds once more that "our analysis, as well as the analyses of others, identified concerns about the study's assumptions, representations, and potential participant bias, that raise questions about the reliability of the study's estimates."

"Several methods are available to help protect the economic viability of fishing communities under an IFQ program. However, it is important to recognize that protecting [that] is a social objective, and realizing such an objective may undermine economic efficiency and raise questions of equity."

The GAO report once again chews up the 'cow-pie' studies that propose processor quota shares as a viable means of public policy, and finds that "the Alaskan halibut IFQ program had varied economic effects on processors – some processors were adversely affected while others benefited." And the report sheds light on how much lighter alleged harmful effects on processors were than those found by biased analysts.

Also critical of cow-pie theory was a University of Washington economist, Robert Halvorsen, who has conducted studies for the North Pacific Fishery Management Council that dispute Matulich's handiwork.

Halvorsen eloquently addresses "the general issue of whether fishery rationalization programs should include explicit mechanisms to protect processors from possible adverse effects on them." And he discusses "the basis for the claim that individual processor quotas are a superior mechanism, capable of protecting both processors and harvesters from any adverse effects from a fishery rationalization program."

Halvorsen says, "There is no previous experience with processor quotas in any real-world fishery on which to base an evaluation of their economic implications. Professor Scott C. Matulich of Washington State University and his co-authors have attempted to establish a theoretical case for the superiority of a two-pie system but have not succeeded in providing a coherent analysis."

He adds, “Another critical factual problem with Matulich and Sever’s analysis is that it ignored the existence of substantial vertical integration in the fishery. In general, the market structures of real-world fisheries are more complex than the simple perfect competition model. This was found to be the case in independent analyses of the BSAI inshore pollock fishery and the BSAI crab fisheries that were commissioned by the North Pacific Fishery Management Council. Both of these studies concluded that processors had sufficient bargaining power to protect themselves from potential adverse effects of IFQ programs.”

Halvorsen concludes, “The rationale for including processor quotas in a rationalization program is that they are required to protect processors from adverse results that would otherwise occur. However, there is no convincing theoretical or empirical evidence that an IFQ program that did not include processor quotas would in fact have adverse effects on processors. And there is no clear economic rationale for protecting processors from losses even if they were expected to occur.”

‘And that’s that with that’ economic analysis of racketeer influencing by cow-pie theorists.

DOJ Displays Cassandra Trophy

Senator McCain also had J. Bruce McDonald of the Department of Justice testify, and review the August 27, 2003 Justice letter to the North Pacific Council.

DOJ repeated to the full committee, “we recommended that NOAA support replacing the current fishery-wide quota system, which generates a dangerous and wasteful “race to fish” as soon as the season opens, with Individual Fishing Quotas, or IFQ. IFQ would be more efficient than the current industry-wide quota, and would be an effective way to eliminate the race to fish.”

Under the IFQ system, harvesters would not need the excessive investment in equipment, boats, and crew needed in a race to fish; more importantly, IFQ would allow harvesters to proceed without the dangerous rush that today's system encourages.”

We emphasized that making the IFQ easily transferable was important for maximizing healthy competitive incentives for harvesters. We recommended that NOAA oppose the individual processor quotas, or IPQ, element of the Council's proposed program. Processor quotas would impose new regulatory

requirements that produce anticompetitive results in the processing market. Adding, IPQ further distorts the market's operation, and introduces competitive harm, without offering similar kinds of competitive benefits.”

“We proposed that, if the Council concluded it was desirable that processors be compensated for their past overinvestment, this could be addressed more directly and efficiently, rather than constructing an artificial marketplace in which competition is inhibited. We explained that IPQ would eliminate beneficial competition between processors and inhibit product innovation and efficient use of resources.”

“Moreover, we noted, IPQ were not needed to address the overcapitalization and safety concerns that would be addressed by replacing the fishery-wide quota with IFQ.”

It is not easy to keep the facts straight in the greedy processors’ deliberately created whirlpool of disinformation and distortions. But we’d give the DOJ the *Cassandra Trophy* as well as a badge of courage for coming out once more against Ted Stevens’ Rider that finalizes the goals of the conspirators in the racketeering known as Crab Rationalization.

Thalassocracy Challengers Forge Ahead

The processors are after a “thalassocracy” – a regime of the sea – that only they believe capable of ruling. As *Groundswell* has stated before, we continue to hope that Senator McCain and others will keep DOJ tracking this *monopsomania* and its conspirators. And that the NOAA OLE investigations will also someday lead to RICO charges before a federal grand jury.

We also heard that Senator Olympia Snowe (R-ME) chipped away during the hearing at the irrationality of processor shares. It’s obvious the Senators want the IPQs controversy on the record at Commerce - where it always belonged - because of the upcoming Reauthorization of the Magnuson Fisheries Act. The national elections will affect whether Stevens gets the chair back at Commerce.

Trident’s in-house lobbyist and Professor Matulich also spoke to the Commerce Committee. But of what use is their remarkably biased and processor-paid prattle? Trident threatened to support resource ‘auctions’ – a convenient position for processors to take, after billions of dollars of losses have occurred the past few years in declining ex-vessel catch values. Given that storehouse of monetary power, now harvesters

would not have a chance against transnational corporate warriors and financiers, both foreign and domestic, in auctions. Isn't over-investment already the problem?

Again, we wish DOJ and GAO would review the renown economics of Michael Porter of Harvard on national competitiveness, and the importance of industry-specific policy in determining global economic winners and losers. And that they'd revisit earlier *Groundswell* discussions of J. Maynard Keynes' "asset commoditization." McCain has laid the groundwork for this in Reauthorization, and *Groundswell* plans to be back with a topic that the Congressional Research Service entered in its 1999 review –Transfer Pricing.

Most important at Commerce were the witnesses who spoke out against IPQs with common logic and honesty; and the most noteworthy were two harvesters, Richard Powell of Kodiak and Robert Young, vice president of the Fishermen's Marketing Association. Despite any personal experiences on the processing and marketing side, both spoke ethically for the public and harvesters.

Powell said, *"I strongly believe that giving exclusive processing privileges to a select group of processors will result in anti-competitive behavior. As a longtime fisherman, coming from a fishing and processing family, I find it very difficult to believe that I can be told where I have to deliver my crab, and to whom I will have to deliver my crab. The Council's crab plan, as passed by Congress, will not permit me to buy and process crab taken by my own catcher vessels. This, in spite of the fact, that for 15 of the past 21 years, I did just that."*

"In addition, I will now be required to deliver 50% of the crab caught by my catcher vessels in the western Aleutians to a port in the western area (i.e. to Adak – as in how convenient for Stevens' family and friends, once again).

"Without competition, those who are forced to sell raw product will not receive a fair market price. The spillover effects to other fisheries will be apparent over time. Each fishery that gets closed to potential future processing companies will only keep new investment from coming into Alaska. This can't be good for the

price to the fishermen. As fishermen begin receiving a lower price for their fish, the crew and boat shares go down. As crewmembers and skippers receive less money, their families suffer. The local businesses suffer, and the entire community is impacted in a negative way. I am convinced that years from now, the adverse impacts of processing shares will be fully realized and understood by all."

Richard Young said, *"It's a pretty simple idea really. If you restrict where fishermen can sell their fish, then processors won't have to pay fishermen a fair price. [And] processor quotas can only protect processor investments by degrading someone else's investment. Whatever processors gain, fishermen, consumers, and communities will lose."*

"Capital that has been fully depreciated, or has returned a profit many times it's cost, is not stranded by changing fishing regulations. It would be far better to institute a cost-effective, and perhaps industry funded, buyback of excess processing capital."

"A rationalized fishery is a fishery where both fishermen and processors can respond to market demands and produce wholesome seafood in a form, at a time, and at a price that consumers most desire. A rationalized fishery is a fishery where fishermen have a sense of ownership in the management and the future of their fishery."

"Processor quotas simply restrict where fishermen can sell their fish and will inevitably lead to below market prices for fish. They are an irrational part of a rationalized fishery. The world would be a better place if processor quotas were quickly forgotten."

Groundswell likes all of this added texture, and reminds that the processors' arrogance and economic abuses have taken them into 'dying ground' where McCain and others have cut loose with some effective swordplay. We must not forget about all of the hidden truths that have shown their wicked logic waged during IPQ reg-neg trickery. And when the double-edged battle axe is finally drawn – with the NOAA's OLE Adak investigation on one edge, and the IRS re-entry on product laundering tax evasions on the other edge – it will be 'that's that with that' attempt at Thalassocracy.

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