

**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

**NOTICE OF VIOLATION AND ASSESSMENT
OF ADMINISTRATIVE PENALTY**

RESPONDENTS: ICICLE SEAFOODS, INC.
4019 21st Avenue West
Seattle, Washington 98199

ADAK FISHERIES, LLC
P.O. Box 1147
Petersburg, Alaska 99833

ADAK FISHERIES DEVELOPMENT, LLC
P.O. Box 1884
Adak, Alaska 99546

CASE: ICICLE SEAFOODS, INC.

FILE NO.: AK035039

This is your official Notice of the civil violation and administrative penalty described herein.

VIOLATION OVERVIEW:

The Bering Sea and Aleutian Island (BSAI) pollock fishery is one of the most lucrative fisheries in the world. Through the American Fisheries Act¹ (AFA), participation in this fishery by fishers and processors has been limited. Icicle Seafoods, Inc. (ICICLE) is one of the processing corporations that acquired the privilege of processing BSAI pollock under the AFA.

During the drafting of the AFA legislation, many non-AFA entities - that is, fishermen and processors who were not among the entities that the AFA authorized to participate in the BSAI pollock fishery - expressed serious concerns that implementation of the AFA would have detrimental economic consequences for them. A primary concern of these non-AFA entities was that the AFA entities could expand their fishing and processing activities into other fisheries where the AFA entities had little historical participation.

To address those concerns, Congress put several restrictions on, as they are commonly known,

¹Public Law 105-277, 112 Stat. 2681 (1998)

"sideboard" provisions in the AFA through the use of harvesting and processing restrictions (i.e., caps). The caps apply, and thereby limit competition, when AFA entities participate in certain fisheries outside of the BSAI pollock fishery. The federally managed crab fisheries in Alaska are covered by the AFA "sideboard" provisions.

The AFA specifically sought to ensure that AFA entities did not use subsidiaries and affiliates to circumvent these limitations. Accordingly, the AFA mandates that "any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity" for the purposes of applying the AFA limitations. Thus, whenever there is 10% or more ownership or control by the AFA entity, all crab processed by its subsidiary or affiliate is added to the total crab processed by the AFA entity for the purposes of determining if the AFA crab cap has been exceeded.

The Agency is alleging that ICICLE controlled, to an extent greater than 10 percent, the operations of the sole crab processor on Adak Island, Adak Fisheries Development, LLC (DEVELOPMENT). Accordingly, under the AFA's sideboard provisions, all crab processed by DEVELOPMENT would be attributable to ICICLE's AFA "crab cap."

NOAA is further alleging that ICICLE's crab cap was exceeded by 3,825,917 pounds from 2002 through 2004, as all the parties named in this NOVA would be subject to ICICLE's AFA crab cap. During this three-year period, on 82 separate occasions, DEVELOPMENT processed vessel deliveries of western Aleutian brown king crab after ICICLE's crab cap was reached. This violation resulted in a significant loss of market opportunity for non-AFA crab processors and is a significant contravention of the market restrictions that the AFA put in place to protect non-AFA processors.

FACT SUMMARY:

1. **Location.** Adak Island is a remote island located near the western most end of the Aleutian Island chain, approximately 1300 miles southwest of Anchorage, Alaska. Adak is a city incorporated on Adak Island. There are approximately 200 persons who reside in Adak. Adak was a United States military base from 1942 until 1996 when it was transferred to the Aleut Corporation, a regional Alaskan native corporation, for conversion to civilian uses. Most structures at Adak are former military facilities. All crab processing operations referenced in this Notice occurred on Adak.
2. **Parties.** a. ICICLE is a corporation licensed under the laws of the State of Washington and doing business as a seafood processor. ICICLE has its headquarters in Seattle and is one of the largest processors of seafood in Alaska. Its major product lines include pollock, salmon, crab, herring, halibut and cod, which are sold primarily to wholesalers and distributors throughout the world. In 2000, ICICLE acquired the F/P NORTHERN VICTOR, an AFA licensed floating processor, making ICICLE an AFA

entity. ICICLE is bound by the AFA's crab processing "sideboard" limitations (i.e., crab caps); all corporate entities owned or controlled by ICICLE to an extent greater than 10% are also bound by ICICLE's AFA crab cap.

- b. Adak Fisheries, LLC (FISHERIES) is a seafood processing company incorporated under Alaska state law with its principle place of business located at Adak, Alaska. FISHERIES was incorporated on December 15, 2001 and was owned 50% by ICICLE and 50% by Kjetil Solberg. Respondents concede that FISHERIES is bound by ICICLE's AFA cap.
- c. DEVELOPMENT was a seafood processing company incorporated under Alaska state law with its principle place of business located at Adak, Alaska. DEVELOPMENT was incorporated and owned 100% by Kjetil Solberg. The Agency is alleging that DEVELOPMENT is also bound by ICICLE's AFA cap.

3. **ICICLE controlled DEVELOPMENT's ability to operate** [paragraphs 3-12]. As set out below, ICICLE, through FISHERIES, controlled DEVELOPMENT's ability to operate on Adak. Under a management agreement between ICICLE and FISHERIES, ICICLE held exclusive management authority over FISHERIES. ICICLE listed FISHERIES as one of its subsidiaries.
4. FISHERIES leased the facility that housed the sole seafood processing operation on Adak from Adak Enterprise Corporation (AEC). AEC is the corporate entity that manages, on behalf of the Aleut Corporation, all buildings and infrastructures on Adak Island. The facility leased by FISHERIES consisted of one warehouse, which housed the processing equipment and freezer storage units, and one smaller building, which housed the on-site management offices.
5. FISHERIES purchased, from the former owners of the Adak seafood processing facility, all equipment and fixtures used in the processing facility, including the crab processing equipment. (The former owner of the Adak plant had been a partnership between Norquest Seafoods and Kjetil Solberg).
6. FISHERIES resold the crab processing equipment it had acquired to DEVELOPMENT. (Kjetil Solberg, ICICLE's 50% partner in FISHERIES, incorporated and owned 100% of DEVELOPMENT.)
7. FISHERIES retained the right to buy back all crab processing equipment, along with all crab processing history, for the original sale price of \$125,000 should the lease be terminated. The lease could be terminated upon thirty-day written notice at any time by either FISHERIES or DEVELOPMENT. FISHERIES retained a "right of first refusal"

to repurchase under any condition.

8. Solberg was the corporate President of FISHERIES and DEVELOPMENT. Dennis Gulhke, a corporate Vice President of ICICLE was the Chief Financial Officer of FISHERIES and DEVELOPMENT.
9. FISHERIES held "veto power" over any other processor locating on Adak; FISHERIES' lease from AEC. gave FISHERIES the exclusive right to process all seafood on Adak unless FISHERIES consented to having another processor operate on the island.
10. FISHERIES consented to DEVELOPMENT exclusively processing all crab landed on Adak.
11. DEVELOPMENT could not assign or sublease any portion of the leased space.
12. FISHERIES, which made approximately 20 times the annual revenue of DEVELOPMENT, paid an annual rent to AEC of \$108,000 to rent the entire facility; DEVELOPMENT, under a sublease to FISHERIES, paid more than half that amount (\$60,000) to FISHERIES as rent for its partial use of the facility.
13. **Commingling of operations.** The management, functioning and business interests of FISHERIES and DEVELOPMENT were so commingled as to be practically indistinguishable. Evidence of this commingling includes, *but is not limited to*, the following:
 - a. DEVELOPMENT and FISHERIES used the same employees for their processing operations.
 - b. DEVELOPMENT and FISHERIES used the same facility for their processing operations.
 - c. Solberg was in charge of the day-to-day on-site operations of both FISHERIES and DEVELOPMENT on Adak.
 - d. Solberg's employment contract with FISHERIES included a \$300,000 annual salary, which was reduced by any income he made from DEVELOPMENT's crab processing operation.
 - e. Solberg was an at-will employee of FISHERIES and could be terminated at any time for any or no reason.
 - f. ICICLE provided substantially all administrative service, at a charge determined solely by ICICLE, to both FISHERIES and DEVELOPMENT, including

maintaining its books and records, any necessary insurance, acquiring and maintaining the operations equipment, and providing necessary utilities.

- g. Decisions concerning DEVELOPMENT's operations were often made with ICICLE's direct advice and in consideration of the benefit that would enure to FISHERIES.
 - h. Over the period January 1, 2002, to February 28, 2004, FISHERIES purchased approximately 90% of all crab that DEVELOPMENT processed.
 - i. After DEVELOPMENT processed the crab for FISHERIES, the processed crab was sold by FISHERIES with ICICLE's marketing support.
14. **AFA market restrictions** [paragraphs 14 - 15]. In 1998, Congress placed several market restrictions or, as they are commonly referred to, "sideboard" provisions, in the AFA. These sideboard provisions were specifically designed to limit the ability of AFA vessels and processors to compete in other non-pollock fisheries and markets. The "sideboard" provisions place harvesting caps on AFA vessels when such vessels participate in a non-pollock fishery and, similarly, place processing caps on AFA processors when they process non-pollock harvests. The crab processing sideboard limitations of the AFA are defined in AFA Section 211(c)(2)(A).
15. Under AFA Section 211(c)(2)(A), "any entity in which 10% or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity" for the purposes of applying AFA crab caps.
16. **ICICLE is an AFA entity.** In 2000, ICICLE purchased the F/P NORTHERN VICTOR, an AFA licensed floating processor. Ownership of an AFA licensed processor made ICICLE an AFA entity that is bound by the AFA's crab processing "sideboard" limitations (i.e., crab caps). As calculated under the methodology mandated by AFA Section 211(c)(2)(A), ICICLE's annual AFA crab cap for western Aleutian brown king crab, was 221,901 pounds in each of the years 2002, 2003 and 2004. Moreover, all corporate entities owned or controlled by ICICLE to an extent greater than 10% were bound by ICICLE's AFA crab cap.
17. **ICICLE was familiar with the AFA crab caps.** Prior to the passage of the AFA legislation in 1998, ICICLE was a member of the "Fair Fisheries Coalition." The Fair Fisheries Coalition was a nonprofit group comprised of non-AFA fishermen and processors which actively lobbied Congress to insert market restrictions such as AFA Section 211(c)(2)(A) (the crab processing sideboard limitations) into the AFA for the protection of non-AFA fishing and processing interests. After acquiring the F/P NORTHERN VICTOR and, thus, becoming an AFA processor, ICICLE no longer advocated that such restrictions be placed in the regulations implementing the AFA.

VIOLATION CHARGED:

During the period February 2002 - February 2004, ICICLE, through the actions of its officers, and through its management and operation of FISHERIES, controlled the operations of DEVELOPMENT to an extent greater than 10%. Accordingly, under AFA Section 211(c)(2)(A), all crab processed by DEVELOPMENT is attributable to ICICLE's AFA crab cap.

During the period February 2002 - February 2004, DEVELOPMENT received and processed a total of 82 vessel deliveries of western Aleutian brown king crab after DEVELOPMENT had reached ICICLE's annual AFA crab cap for brown king crab. ICICLE's annual brown king crab cap was 221,901 pounds. Through these 82 deliveries, DEVELOPMENT processed a total of 3,826,135 pounds of brown king crab in excess of ICICLE's AFA crab cap for western Aleutian brown king crab.

DEVELOPMENT's processing of these 82 deliveries of brown king crab in excess of ICICLE's AFA crab cap for western Aleutian brown king crab constituted 82 violations of AFA Section 211(c)(2)(A) and its implementing regulation at 50 CFR 679.7(k)(2). Tables 1- 3 of this NOVA are a listing of the specific dates and amounts of these 82 deliveries; Table 4 is a cumulative total. All Tables are incorporated by reference.

MARKET IMPACT:

As a result of ICICLE's actions, non-AFA crab processors lost the market opportunity to conduct the processing of this 3,826,135 pounds of brown king crab. The purchase price of this brown king crab paid by the processor/buyer to the crab harvester/sellers was approximately \$13,162,510.00. The value of the processed crab would be much greater.

TOTAL ASSESSED PENALTY: \$3,444,000.00 (\$42,000 per violation x 82 violations)

Respondent, Respondent's attorney or other representative may seek to have this penalty amount modified on the basis that Respondent does not have the ability to pay the assessed penalty. Any request to have the penalty amount modified on this basis must be made in accordance with 15 CFR 904.102 and should be accompanied by supporting financial information.

STATUTE/REGULATION VIOLATED:

American Fisheries Act, Section 211(c)(2)(A) and Section 210 (g); Magnuson Stevens Fisheries Conservation and Management Act, 16 U.S.C. 1861; 50 CFR 679.7(k)(2).

NOTICE:

This is not a criminal proceeding. Respondents, Respondents' attorney, or other representatives have 30 days following service of this Notice in which to respond. During this time Respondents may:

1. Accept the assessed penalty by signing the AGREED DISPOSITION below and returning that document to the address specified below;
2. Seek to have this Notice modified to conform to the facts or the law as Respondents see them, by contacting the attorney specified below;
3. Request a hearing (like a trial) before an Administrative Law Judge (ALJ) to deny or contest all, or any part, of the violation charged and the civil penalty assessed. If a hearing is requested, the ALJ will independently determine whether a violation occurred and what penalty, if any, is warranted. **THE ALJ IS NOT BOUND BY THE AMOUNT ASSESSED IN THIS NOTICE BUT MAY FIX A PENALTY BASED UPON HIS JUDGMENT OF WHAT IS APPROPRIATE, UP TO THE MAXIMUM PROVIDED BY LAW.** Under the Magnuson Stevens Fisheries Conservation and Management Act, **A MAXIMUM CIVIL PENALTY OF \$120,000 MAY BE ASSESSED FOR EACH VIOLATION.** A hearing request must be in writing and be dated, and must be served either in person or by certified or registered mail, return receipt requested, at the address specified below. The request must either be accompanied by a copy of this Notice or refer to the case number appearing in the heading of the Notice;
4. Take no action. If Respondents take no action within 30 days of service of this Notice, this Notice (including the assessed penalty) becomes final in accordance with 15 CFR 904.104.

For good cause shown, Respondents may, within the 30-day period specified above, obtain an extension of time to respond.

JOINT AND SEVERAL LIABILITY:

This civil penalty is assessed jointly and severally against ICICLE SEAFOODS, INC., ADAK FISHERIES, LLC, and ADAK FISHERIES DEVELOPMENT, LLC. All Respondents jointly, and each individually, are liable for the assessed penalty. Whether one pays the entire amount or each pays equal or unequal portions is for Respondents to determine. This case will not be closed, however, against either Respondent until the entire penalty amount is paid.

WARNING! IF NO RESPONDENT EXERCISES THE RIGHTS SPECIFIED ABOVE WITHIN 30 CALENDAR DAYS FOLLOWING SERVICE OF THIS NOTICE, ALL OF THE ALLEGATIONS AND THE PENALTY HEREIN WILL BE TAKEN AS ADMITTED AND THIS ASSESSMENT WILL BECOME A FINAL ADMINISTRATIVE ORDER ENFORCEABLE IN ANY UNITED STATES DISTRICT COURT as provided in the Magnuson

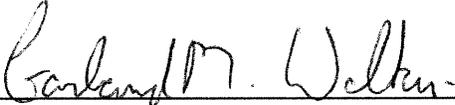
Stevens Fisheries Conservation and Management Act, and the implementing regulations in 15 CFR Part 904.

FINDINGS, CONCLUSIONS AND ORDER:

Having considered all of the facts and circumstances presented in this matter, and taking into account the criteria for determining the amount of civil penalty (as provided in the Magnuson Stevens Fisheries Conservation and Management Act), I hereby find and conclude that the Respondents herein violated the Magnuson Stevens Fisheries Conservation and Management Act as alleged, and that a just and reasonable disposition for such violation is a civil penalty in the amount of \$3,444,000.00.

IT IS SO ORDERED.

For the Secretary of Commerce



Garland M. Walker



Dated

Send reply or make inquiry to: NOAA, Office of General Counsel, U.S. Department of Commerce, Attn: Garland M. Walker, P.O. Box 21109, Juneau, Alaska 99802. Telephone: (907) 586-7414.

TABLE 1
2002 Brown King Processed by Adak Development

Counts	Date Landed	Live Pounds*	Cumulative Live Pounds	Cumulative Over Cap of 221,901 lbs.	Assessed Penalty
	1/16/2002	41,985	41,985	0	\$0.00
	1/21/2002	64,405	106,390	0	\$0.00
	1/23/2002	37,873	144,263	0	\$0.00
	1/25/2002	31,107	175,370	0	\$0.00
	2/3/2002	15,852	191,222	0	\$0.00
AFA crab processing cap exceeded in all subsequent deliveries.					
1	2/4/2002	34,022	225,244	3,343	\$42,000.00
2	2/4/2002	31,403	256,647	34,746	\$42,000.00
3	2/20/2002	26,051	282,698	60,797	\$42,000.00
4	2/21/2002	38,330	321,028	99,127	\$42,000.00
5	2/26/2002	33,798	354,826	132,925	\$42,000.00
6	3/3/2002	28,190	383,016	161,115	\$42,000.00
7	3/12/2002	37,110	420,126	198,225	\$42,000.00
8	3/15/2002	37,243	457,369	235,468	\$42,000.00
9	3/18/2002	25,873	483,242	261,341	\$42,000.00
10	3/19/2002	23,107	506,349	284,448	\$42,000.00
11	3/22/2002	37,076	543,425	321,524	\$42,000.00
12	3/30/2002	24,556	567,981	346,080	\$42,000.00
13	3/31/2002	28,321	596,302	374,401	\$42,000.00
14	4/1/2002	25,320	621,622	399,721	\$42,000.00
15	4/1/2002	44,729	666,351	444,450	\$42,000.00
16	8/30/2002	36,225	702,576	480,675	\$42,000.00
17	9/2/2002	41,965	744,541	522,640	\$42,000.00
18	9/5/2002	54,600	799,141	577,240	\$42,000.00
19	9/10/2002	34,008	833,149	611,248	\$42,000.00
20	9/15/2002	44,160	877,309	655,408	\$42,000.00
21	9/26/2002	72,230	949,539	727,638	\$42,000.00
22	9/28/2002	41,392	990,931	769,030	\$42,000.00
23	9/30/2002	11,428	1,002,359	780,458	\$42,000.00
24	10/4/2002	74,662	1,077,021	855,120	\$42,000.00
25	10/10/2002	45,836	1,122,857	900,956	\$42,000.00
26	10/18/2002	23,975	1,146,832	924,931	\$42,000.00
27	10/18/2002	75,869	1,222,701	1,000,800	\$42,000.00
28	10/22/2002	16,948	1,239,649	1,017,748	\$42,000.00
29	10/27/2002	67,312	1,306,961	1,085,060	\$42,000.00
30	11/7/2002	65,313	1,372,274	1,150,373	\$42,000.00
31	11/11/2002	28,084	1,400,358	1,178,457	\$42,000.00
32	11/13/2002	2,116	1,402,474	1,180,573	\$42,000.00
33	11/15/2002	46,027	1,448,501	1,226,600	\$42,000.00
34	11/17/2002	59,174	1,507,675	1,285,774	\$42,000.00
35	11/18/2002	2,145	1,509,820	1,287,919	\$42,000.00
36	11/26/2002	4,021	1,513,841	1,291,940	\$42,000.00
37	11/28/2002	67,306	1,581,147	1,359,246	\$42,000.00
38	11/29/2002	33,584	1,614,731	1,392,830	\$42,000.00
39	12/8/2002	56,170	1,670,901	1,449,000	\$42,000.00
40	12/12/2002	33,033	1,703,934	1,482,033	\$42,000.00
41	12/18/2002	62,924	1,766,858	1,544,957	\$42,000.00
Totals			1,766,858	1,544,957	\$1,722,000.00

* Live Pounds=Landed Pounds-deadloss-personal use retention: It is the poundage purchased by the processor

TABLE 2
2003 Brown King Processed by Adak Development

Counts	Date Landed	Live Pounds*	Cumulative Live Pounds	Cumulative Over Cap of 221,901 lbs.	Assessed Penalty
	1/14/2003	83,010	83,010	0	\$0
	1/16/2003	36,339	119,349	0	\$0
	1/24/2003	58,145	177,494	0	\$0
	1/25/2003	39,588	217,082	0	\$0
AFA crab processing cap exceeded in all subsequent deliveries.					
42	2/5/2003	29,740	246,822	24,921	\$42,000
43	2/7/2003	58,000	304,822	82,921	\$42,000
44	2/16/2003	41,405	346,227	124,326	\$42,000
45	2/20/2003	57,977	404,204	182,303	\$42,000
46	2/28/2003	7,978	412,182	190,281	\$42,000
47	2/28/2003	41,776	453,958	232,057	\$42,000
48	3/9/2003	32,092	486,050	264,149	\$42,000
49	3/12/2003	90,309	576,359	354,458	\$42,000
50	8/25/2003	38,621	614,980	393,079	\$42,000
51	8/27/2003	73,781	688,761	466,860	\$42,000
52	9/7/2003	100,775	789,536	567,635	\$42,000
53	9/8/2003	57,930	847,466	625,565	\$42,000
54	9/9/2003	49,551	897,017	675,116	\$42,000
55	9/16/2003	89,478	986,495	764,594	\$42,000
56	9/20/2003	102,237	1,088,732	866,831	\$42,000
57	9/24/2003	71,893	1,160,625	938,724	\$42,000
58	9/26/2003	31,578	1,192,203	970,302	\$42,000
59	10/1/2003	108,276	1,300,479	1,078,578	\$42,000
60	10/7/2003	50,944	1,351,423	1,129,522	\$42,000
61	10/13/2003	91,860	1,443,283	1,221,382	\$42,000
62	10/23/2003	61,598	1,504,881	1,282,980	\$42,000
63	10/25/2003	102,279	1,607,160	1,385,259	\$42,000
64	11/7/2003	90,907	1,698,067	1,476,166	\$42,000
65	11/12/2003	47,774	1,745,841	1,523,940	\$42,000
66	11/17/2003	24,923	1,770,764	1,548,863	\$42,000
67	11/20/2003	92,036	1,862,800	1,640,899	\$42,000
68	11/23/2003	40,188	1,902,988	1,681,087	\$42,000
69	11/30/2003	35,179	1,938,167	1,716,266	\$42,000
70	11/30/2003	7,399	1,945,566	1,723,665	\$42,000
71	12/2/2003	86,670	2,032,236	1,810,335	\$42,000
72	12/3/2003	20,653	2,052,889	1,830,988	\$42,000
73	12/13/2003	21,182	2,074,071	1,852,170	\$42,000
74	12/15/2003	82,879	2,156,950	1,935,049	\$42,000
75	12/18/2003	53,279	2,210,229	1,988,328	\$42,000
76	12/19/2003	8,973	2,219,202	1,997,301	\$42,000
Totals			2,219,202	1,997,301	\$1,470,000

* Live Pounds=Landed Pounds-deadloss-personal use retention: It is the poundage purchased by the processor

TABLE 3
2004 Brown King Processed by Adak Development

Counts	Date Landed	Live Pounds*	Cumulative Live Pounds	Cumulative Over Cap of 221,901 lbs.	Assessed Penalty
	1/12/2004	51,458	51,458	0	\$0
	1/14/2004	102,066	153,524	0	\$0
	1/16/2004	29,044	182,568	0	\$0
AFA crab processing cap exceeded in all subsequent deliveries.					
77	1/23/2004	49,585	232,153	10,252	\$42,000
78	1/24/2004	20,706	252,859	30,958	\$42,000
79	1/26/2004	86,710	339,569	117,668	\$42,000
80	2/7/2004	30,183	369,752	147,851	\$42,000
81	2/8/2004	51,587	421,339	199,438	\$42,000
82	2/8/2004	84,439	505,778	283,877	\$42,000
Totals			505,778	283,877	\$252,000

* Live Pounds=Landed Pounds-deadloss-personal use retention: It is the poundage purchased by the processor

TABLE 4
2002-2004 Cumulative Brown King Crab Deliveries Processed by Adak Development

Year	Total Live Pounds*	Live Pounds Over Cap of 221,901 lbs.	Assessed Penalty
2002	1,766,858	1,544,957	1,722,000
2003	2,219,202	1,997,301	\$1,470,000.00
2004	505,778	283,877	\$252,000.00
Totals	4,491,838	3,826,135	\$3,444,000.00

Source: ADF&G original fish tickets

* Live Pounds=Landed Pounds-deadloss-personal use retention: It is the poundage purchased by the process