



October 31, 2007

The Docket Clerk
Marketing Order Administration Branch
Fruit & Vegetable Programs, AMS, USDA
1400 Independence Ave., SW., STOP 0237
Washington, DC 20250-0237

Reference: Docket No. AMS-FV07-0095

Dear Sir/Madam:

The above docket references reporting changes being considered for the federal marketing order pertaining to pistachios produced in California (ACP). I have served on the ACP as the vice chairperson since its inception as a handler member. I previously served on the California Pistachio Commission (CPC) for 11 years, including 4 terms as chairperson. My business is growing, hulling, drying, processing, and marketing California pistachios. I have been a grower of California pistachios for 25 years, and processed and marketed pistachios for the past 17 years.

Under ACP regulation, I am considered a handler, and impacted by the proposed regulation put forth in the referenced docket. For purposes of the ACP, I am not considered a small business.

My comments are restricted to the collection of inventory and shipment data from handlers by the ACP. Under the proposed regulation, the ACP will collect domestic and export shipment data, as well as monthly inventory data from first handlers, those responsible for collecting assessments from growers.

My company, Nichols Farms, and I personally are opposed to the continued collection and dissemination of the export shipment and monthly inventory data. This data has been collected voluntarily, and is published on the ACP website approximately 15 days past the end of each month. This data, in the past, when collected by the CPC, proved valuable in evaluating market conditions, setting prices, and measuring the effectiveness of marketing efforts by private companies such as my own and public agencies such as the CPC.

So why then, am I now opposed to collection and dissemination of this data? First, the inventory data presented is inaccurate, and publishing it has put my company potentially at a competitive disadvantage to others in our industry. Second, there is no need to collect export shipment data, as the ACP deals only with domestically shipped product, unlike the CPC, which needed export data to measure effectiveness of export marketing programs.

Let me elaborate on the first point, that inventory data is inaccurate. Please refer to the attached inventory/shipment report for August, 2007. As reported, the industry's cumulative open inshell inventory adjustments were in excess of 17% of open inshell receipts for the year. During the previous crop year, adjustments were less than 2%. Nichols Farms open inshell inventory adjustments during the 2006/07 crop year were 2.23% of crop received. During the prior year,

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2005/06, our adjustments were 5.04% of crop received. I understand that our experience can vary significantly from others in the industry, but these differences are beyond reasonable.

In terms of tonnage, the open inshell adjustment was slightly more than 34 million pounds, or greater than 3 times the value of the 2nd highest adjustment in the past 11 years. It is a greater volume than that received by the 3rd largest handler, and equal to 39% of all domestically shipped inshell pistachios during the marketing year!

The only explanation for these discrepancies is deliberate or accidental errors in reporting inventory levels to the ACP. There are no standards for determining inventory levels, and no process to ensure all handlers are computing inventory accurately. There are no provisions for auditing the process or results submitted by the various handlers. As such, it is a simple process to alter month end inventories to expand or contract "reported" inventory. Unscrupulous operators could easily manipulate their reported inventory to seek competitive advantage in the marketplace. I believe this happened during the past year, although I have no direct evidence, other than mysterious changes to inventory levels, to support my belief.

The solution to this dilemma is standardized inventory reporting practices, coupled with an audit process of each handlers inventory reporting procedures. The audit process need not be burdensome, but must give reasonable assurance to industry members as to the accuracy of the inventory data reported. Short of this, inventory data should not be collected, and definitely should not be published.

As far as the second point, collection of export shipment data, there is no reason to collect the data. Exports of pistachios are already collected by the US Dept. of Commerce; collecting this information twice is redundant and time consuming. Further, there is no tangible need to collect export shipments to execute the mission of the ACP. The ACP's regulatory authority is over domestically shipped pistachios. As a final point, the same issue of reporting exists relative to export shipments. They are difficult to audit, and easily manipulated to establish a competitive advantage by unscrupulous handlers.

Along with this letter I am submitting the following for your consideration:

1. email correspondence between myself and Bob Klein, relative to Nichols not reporting inventory levels and export shipments
2. Statistical data showing unexplained inventory adjustments for the past 10 years in open inshell pistachios (as collected by the CPC/ACP)
3. August, 2007 ACP inventory report.

I urge the Agricultural Marketing Service to repeal its proposed change to ACP form 7 requiring monthly inventory reports and export shipment data until such time as there is a process to ensure the reporting has not been manipulated, is not being manipulated, and is within reasonable limits of accuracy. This situation does not currently exist.

Sincerely,



Chuck Nichols

President, Nichols Farms

Vice Chairperson, Administrative Committee for Pistachios

Chuck C. Nichols

From: Chuck C. Nichols
Sent: Wednesday, October 03, 2007 11:37 AM
To: Bob Klein
Cc: Terry Vawter; Randy Raber
Subject: Inventory/Shipment report
Attachments: Open Inshell inventory adjustments 1996-2007.xls

Bob,

This message concerns the inventory shipment report requirements recently adopted by the ACP. Nichols Farms will not continue to provide data for this report unless an audit process to ensure reasonable accuracy of data submitted by pistachio handler is enacted. It is our belief that one or more handlers is either deliberately manipulating the data, are incompetent, or don't care to provide accurate data for other reasons. Attached are data backing up our claim.

Open inshell inventory adjustments as reported on the inventory/shipment report for the past crop year were in excess of 17% of open inshell receipts. During the previous crop year, adjustments were less than 2%. Nichols Farms open inshell inventory adjustments during the 2006/07 crop year were 2.23% of crop received. During the prior year, 2005/06, our adjustments were 5.04% of crop received. I understand that our experience can vary significantly from others in the industry, but these differences are beyond reasonable.

In terms of tonnage, the open inshell adjustment was slightly more than 34 million pounds, or greater than 3 times the value of the 2nd highest adjustment in the past 11 years. It is a greater volume than that received by the 3rd largest handler, and equal to 39% of all domestically shipped inshell pistachios during the same period!

Clearly, something is wrong.

We had requested the ACP instigate an audit process earlier this year, when the adjustment numbers began to exceed accepted norms. The request was dismissed, and to my knowledge, nothing has been done in the interim to improve the reliability of the inventory/shipment report. The only thing worse than no information is bad information.

My greatest concern is for handlers, including Nichols Farms, who have submitted accurate, timely reports. As a group, we are providing useful data to competitors who are NOT providing accurate data. This may put us in a situation where our competitors have accurate data on shipments and inventory, and we do not. For this reason, we have suspended reporting inventory and shipments to the ACP on a monthly basis. We will provide crop receipt information, as there is no indication this data is being misrepresented.

Should the ACP put in place an acceptable audit procedure, we will provide the ACP with all monthly reports between now and the implementation date.

Chuck Nichols
Nichols Farms
13762 First Avenue
Hanford, Ca. 93230

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Fax: 559/584-6711
Cell: 559/731-0484

10/31/2007

Chuck C. Nichols

From: Bob Klein [bobk@acpistachios.org]
Sent: Wednesday, October 03, 2007 4:49 PM
To: Chuck C. Nichols
Cc: Terry Vawter; Randy Raber
Subject: RE: Inventory/Shipment report

Chuck -

I have also noticed the increased quantities in the inventory adjustments and I agree with your analysis and your concerns. Inshell inventory adjustments were equal to 18.44% of total inshell shipments for the year and, in keeping with other years, the number should have been closer to 5%. This leaves a "credibility gap" of about 25 million pounds. Your interest in an audited inventory/shipment report was not forgotten or dismissed. Unfortunately, I am stuck on this in a legal sense.

Prior to the deauthorization of the CPC, the ACP collected an inventory/shipment report so domestic shipments could be audited for marketing order compliance. We did not audit other data on that form and the lack of an audit on the other data was written into the compliance plan - the other data was considered CPC business and there was concern about the ACP overstepping its authority. With the new compliance plan which took effect September 1, we now have the authority to audit all the data. However, the ACP discussed that authority in conjunction with the new Form 7 which is currently open for comment (until November 6th) and is thus not yet a legal form. Once the new form is authorized, we will be able to audit the data submitted on the new Form 7. Despite our lack of authority, the processor(s) reporting the large inventory adjustments are cooperating with ACP queries about the adjustments. The issue has not yet been resolved to our satisfaction, even if there is nothing we can do about it.

I know that this sounds like an evasion and a legal cop-out but the ACP can't take compliance actions without authority. However, I must ask that you continue to submit a monthly inventory/shipment report, especially of your domestic shipments, for compliance purposes. This will allow audits of your domestic shipments and keep you in compliance with the marketing order. Reporting of export data is not required on the current form and you are not obligated to report this. If you do not submit export data, the ACP will not issue a monthly summary inventory/shipment report due to lack of data. The data you submit is confidential and I will not indicate who did not submit the data, just as I cannot indicate which processor (s) has reported the seemingly excessive adjustments. In the meantime, I urge you to make comments on the new Form 7, indicating that you consider audits of the submitted data essential to the reporting process. It always helps to have that in the record. If you need the link for the comments, please let me know.

At your convenience, I would like to discuss acceptable audit procedures.

Bob Klein, Ph.D., Manager
Administrative Committee for Pistachios
4974 East Clinton Avenue, Suite 110B
Fresno, California 93727
Tel: (559) 255-6480, ext. 103
Fax: (559) 255-6485

-----Original Message-----

From: Chuck C. Nichols [mailto:chuck@nicholsfarms.com]
Sent: Wednesday, October 03, 2007 11:37 AM
To: Bob Klein
Cc: Terry Vawter; Randy Raber

10/31/2007

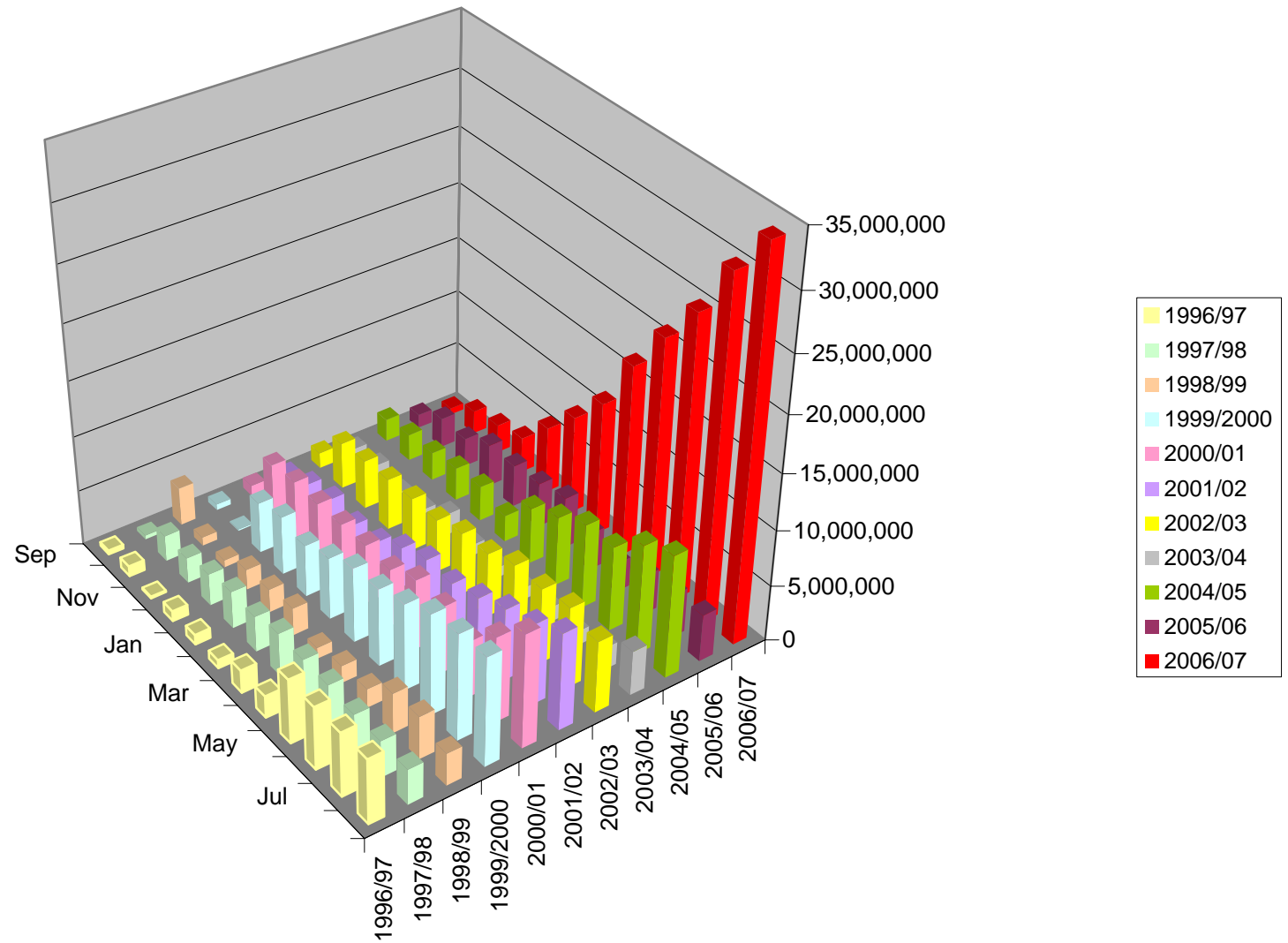
Open Inshell Cumulative Inventory Adjustments 1996/97 crop year to 2006/07 crop year

Report Month	1996/97	1997/98	1998/99	1999/2000	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Sep	339,423	343,753	3,446,438	528,829	968,189	682,057	1,424,954	501,749	2,053,828	1,243,273	602,484
Oct	915,235	2,327,395	776,588	128,874	4,870,406	1,700,146	4,226,002	796,240	2,435,856	2,689,284	2,127,672
Nov	150,318	2,292,384	653,767	4,612,717	5,220,191	2,225,088	4,480,128	135,051	2,589,245	2,600,197	2,621,318
Dec	923,762	2,883,326	1,837,503	5,296,165	5,163,520	1,801,744	4,654,418	414,365	3,025,268	3,871,131	3,227,972
Jan	883,460	3,361,432	2,088,985	4,714,585	5,251,274	2,196,432	4,824,518	1,950,959	3,200,143	3,826,111	6,053,937
Feb	751,090	3,223,325	2,455,106	5,614,081	5,360,967	3,673,973	4,828,303	1,044,808	2,434,343	4,065,836	8,900,481
Mar	2,054,093	3,869,192	1,000,661	6,783,252	5,186,179	4,648,328	5,632,292	934,725	5,096,501	4,663,907	12,014,342
Apr	1,970,858	3,711,563	1,553,753	7,029,455	6,359,337	4,552,689	5,803,992	1,104,410	6,261,299	3,393,580	17,182,187
May	5,801,863	3,689,178	1,692,650	7,838,577	6,038,825	5,349,903	6,877,917	1,387,836	7,624,423	2,636,512	21,369,331
Jun	5,670,271	3,330,762	3,606,123	9,126,771	5,094,017	6,481,940	6,836,473	1,311,848	7,636,297	3,623,522	25,189,124
Jul	5,767,230	3,311,319	3,848,324	9,589,811	7,732,516	7,303,931	7,288,903	2,023,412	9,871,260	3,975,542	30,202,039
Aug	5,839,901	3,191,361	2,919,522	9,826,583	10,225,166	8,733,563	6,455,957	3,984,770	11,045,640	4,204,583	34,185,741

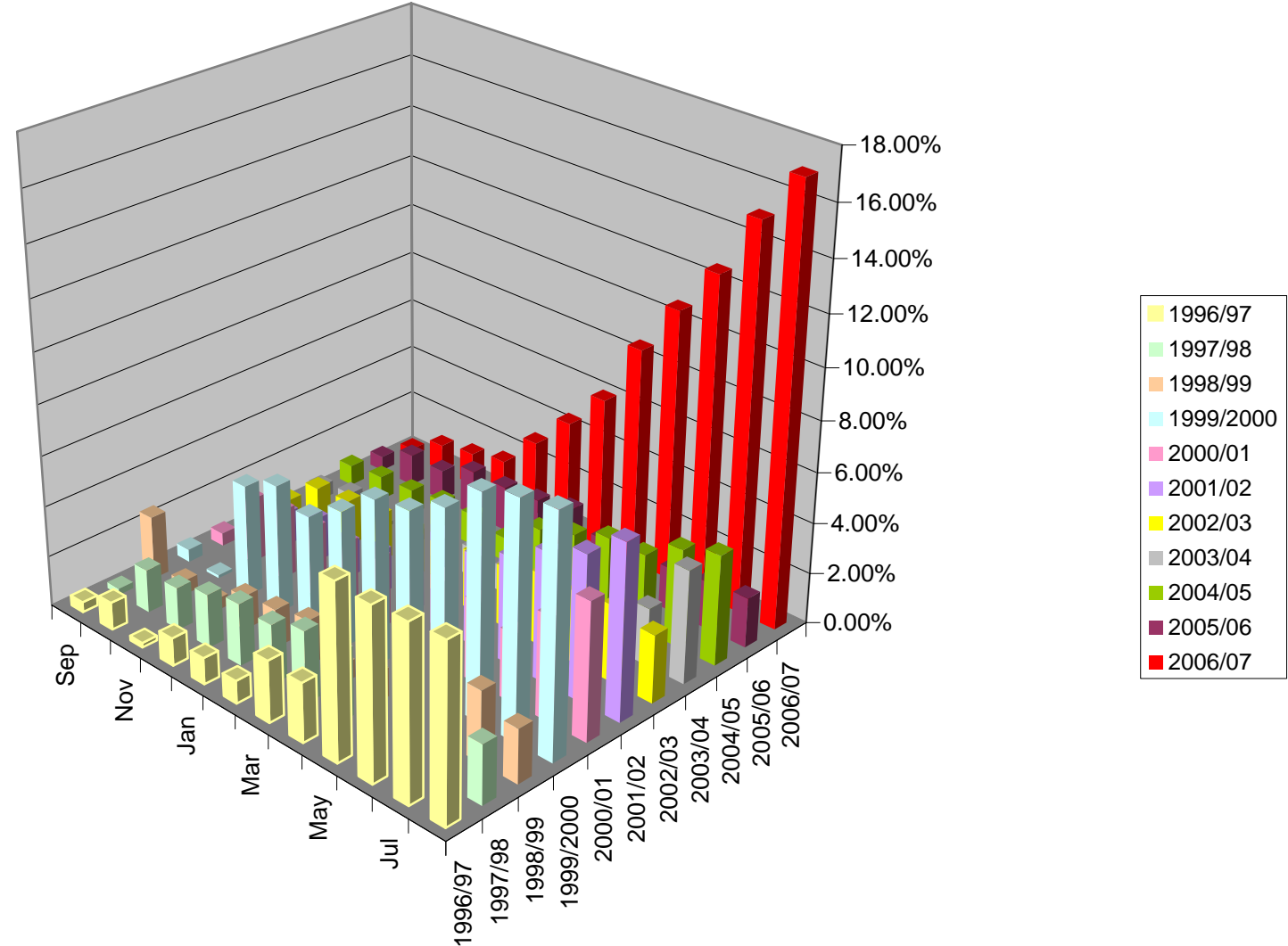
84,469,382	136,725,863	137,641,995	104,380,666	188,793,654	126,333,848	241,656,847	89,255,589	254,161,694	214,575,387	200,234,652
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Report Month	1996/97	1997/98	1998/99	1999/2000	2000/01	2001/02	2002/03	2003/04	2004/05	2005/06	2006/07
Sep	0.40%	0.25%	2.50%	0.51%	0.51%	0.54%	0.59%	0.56%	0.81%	0.58%	0.30%
Oct	1.08%	1.70%	0.56%	0.12%	2.58%	1.35%	1.75%	0.89%	0.96%	1.25%	1.06%
Nov	0.18%	1.68%	0.47%	4.42%	2.77%	1.76%	1.85%	0.15%	1.02%	1.21%	1.31%
Dec	1.09%	2.11%	1.33%	5.07%	2.74%	1.43%	1.93%	0.46%	1.19%	1.80%	1.61%
Jan	1.05%	2.46%	1.52%	4.52%	2.78%	1.74%	2.00%	2.19%	1.26%	1.78%	3.02%
Feb	0.89%	2.36%	1.78%	5.38%	2.84%	2.91%	2.00%	1.17%	0.96%	1.89%	4.45%
Mar	2.43%	2.83%	0.73%	6.50%	2.75%	3.68%	2.33%	1.05%	2.01%	2.17%	6.00%
Apr	2.33%	2.71%	1.13%	6.73%	3.37%	3.60%	2.40%	1.24%	2.46%	1.58%	8.58%
May	6.87%	2.70%	1.23%	7.51%	3.20%	4.23%	2.85%	1.55%	3.00%	1.23%	10.67%
Jun	6.71%	2.44%	2.62%	8.74%	2.70%	5.13%	2.83%	1.47%	3.00%	1.69%	12.58%
Jul	6.83%	2.42%	2.80%	9.19%	4.10%	5.78%	3.02%	2.27%	3.88%	1.85%	15.08%
Aug	6.91%	2.33%	2.12%	9.41%	5.42%	6.91%	2.67%	4.46%	4.35%	1.96%	17.07%

Open Inshell Cumulative Inventory Adjustments 1996/97 crop year to 2006/07 crop year



Open Inshell Cumulative Inventory Adjustments as a percentage of Open Inshell Receipts



CALIFORNIA PISTACHIO SHIPMENTS - MONTHLY REPORT IN POUNDS																								
AUGUST 2007																								
DOMESTIC	OPEN INSHELL POUNDS				ARTIFICIALLY OPENED POUNDS				CLOSED SHELL POUNDS				SHELLING STOCK POUNDS				KERNELS POUNDS				GRAND TOTALS			
	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07
SEPTEMBER	9,573,399	10,935,124	10,514,000	6,728,059	798,704	706,828	424,403	272,320	0	154,765	58,897	25,000	7,868	7,045	16,843	22,409	687,693	1,015,413	722,833	866,714	11,067,664	12,819,175	11,736,976	7,914,502
OCTOBER	11,704,745	15,493,725	7,751,623	7,812,433	657,992	639,520	241,693	264,447	44,776	95,828	62,012	39,486	65,676	89,272	35,293	32,957	668,540	984,616	929,851	921,463	13,141,729	17,302,961	9,020,472	9,070,786
NOVEMBER	12,155,921	9,550,878	6,587,187	8,396,904	700,159	505,929	7,025	198,256	20,173	19,509	99,211	28,031	18,356	19,541	22,478	16,210	794,942	982,763	853,561	1,148,766	13,689,551	11,078,620	7,569,462	9,788,167
DECEMBER	14,158,585	11,633,364	9,204,171	10,387,652	676,251	752,537	123,255	333,340	42,600	185,133	28,855	0	5,198	32,320	5,160	3,772	1,123,850	1,002,903	796,466	1,012,937	16,006,484	13,606,257	10,157,907	11,737,701
JANUARY	10,224,752	9,560,690	7,440,891	8,720,860	545,844	392,189	82,458	227,610	0	0	6,476	11,552	2,110	143,500	664	58,662	660,988	913,611	876,377	892,057	11,433,694	11,009,990	8,406,866	9,910,741
FEBRUARY	7,756,159	5,624,310	5,417,347	5,410,042	479,847	724,644	202,068	594,770	4,262	41,000	4,690	1,515	11,956	2,639	562	2,660	542,139	682,826	666,648	761,302	8,794,363	7,075,419	6,291,315	6,770,289
MARCH	9,925,076	6,899,721	5,884,669	6,359,322	480,641	612,044	183,706	445,123	54,000	132,010	13,086	0	6,224	64,217	0	2,200	1,026,716	862,318	717,437	907,974	11,492,657	8,570,310	6,798,898	7,714,619
APRIL	8,166,647	6,327,200	6,336,308	6,019,290	764,144	1,043,865	225,212	316,839	0	0	0	220,000	4,790	18,000	0	0	795,728	847,705	949,364	1,122,207	9,731,309	8,236,770	7,510,884	7,678,336
MAY	7,531,304	7,463,860	6,137,601	6,842,192	707,566	585,423	334,680	268,979	880	45,802	24,709	117,212	5,049	72,101	0	29,728	709,575	906,184	837,364	1,086,269	8,954,374	9,073,370	7,334,354	8,344,380
JUNE	8,716,351	8,194,792	7,246,298	7,849,908	750,969	635,805	220,219	406,065	0	3,095	14,125	0	4,762	3,430	66,668	0	1,054,856	779,937	702,779	1,163,746	10,526,938	9,617,059	8,250,089	9,419,719
JULY	5,650,329	6,378,931	5,396,782	5,658,396	864,088	606,214	341,526	481,099	0	0	2,803	0	250	41,516	1,233	0	877,809	879,362	668,895	1,110,285	7,392,476	7,906,023	6,411,239	7,249,780
AUGUST	6,366,521	7,710,483	7,998,840	7,178,595	844,248	1,243,605	350,639	453,973	0	100,000	0	0	4,789	75,804	0	0	1,100,884	911,832	1,100,479	1,226,946	8,316,442	10,041,724	9,449,958	8,859,514
SUBTOTAL YTD THROUGH AUGUST	111,929,789	105,773,078	85,915,717	87,363,653	8,270,453	8,448,603	2,736,884	4,262,821	166,691	777,142	314,864	442,796	137,028	569,385	148,901	168,598	10,043,720	10,769,470	9,822,054	12,220,666	130,547,681	126,337,678	98,938,420	104,458,534
% SHIPMENTS	67.8%	52.5%	51.0%	47.1%	54.6%	40.4%	28.3%	43.2%	8.4%	11.2%	14.7%	4.2%	100.0%	76.7%	90.4%	43.4%	83.4%	74.8%	75.2%	70.9%	67.1%	51.7%	51.1%	46.8%
YEAR TOTAL-DOMESTIC	111,929,789	105,773,078	85,915,717	87,363,653	8,270,453	8,448,603	2,736,884	4,262,821	166,691	777,142	314,864	442,796	137,028	569,385	148,901	168,598	10,043,720	10,769,470	9,822,054	12,220,666	130,547,681	126,337,678	98,938,420	104,458,534
% SHIPMENTS	67.8%	52.5%	51.0%	47.1%	54.6%	40.4%	28.3%	43.2%	8.4%	11.2%	14.7%	4.2%	100.0%	76.7%	90.4%	43.4%	83.4%	74.8%	75.2%	70.9%	67.1%	51.7%	51.1%	46.8%
EXPORT	OPEN INSHELL POUNDS				ARTIFICIALLY OPENED POUNDS				CLOSED SHELL POUNDS				SHELLING STOCK POUNDS				KERNELS POUNDS				GRAND TOTALS			
	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07	2003/04	2004/05	2005/06	2006/07
SEPTEMBER	4,248,541	12,939,198	8,588,525	6,517,712	702,000	920,625	1,045,386	353,791	176,000	211,200	196,000	0	0	0	4,000	0	20,000	105,001	132,211	238,800	5,146,541	14,176,024	9,966,122	7,110,303
OCTOBER	4,233,559	10,299,659	10,235,750	10,226,138	445,407	557,200	1,578,000	340,570	44,000	995,468	474,000	266,000	0	13,200	0	0	194,150	95,165	446,023	365,860	4,917,116	11,960,692	12,733,773	11,198,568
NOVEMBER	5,970,616	9,211,913	8,765,990	9,326,922	415,170	1,916,350	998,206	326,080	176,000	1,196,800	294,000	0	0	0	5,000	0	119,600	275,408	186,817	365,250	6,681,386	12,600,471	10,250,013	10,018,252
DECEMBER	6,605,183	8,956,193	8,381,516	10,449,508	995,512	505,400	619,378	743,785	364,400	1,670,240	510,400	529,000	0	0	0	0	226,300	291,480	574,725	248,438	8,191,395	11,423,313	10,086,019	11,970,731
JANUARY	6,198,795	7,687,261	5,950,094	7,748,373	344,312	1,321,776	189,734	703,350	221,000	316,008	258,000	129,800	0	15,000	0	0	145,762	477,612	108,495	159,826	6,909,869	9,817,657	6,506,323	8,741,349
FEBRUARY	4,957,290	9,027,052	4,465,171	5,271,863	416,358	1,558,049	(47,200)	372,755	263,472	352,000	88,000	394,000	0	0	0	0	424,039	310,066	306,909	595,002	6,061,159	11,247,167	4,812,880	6,633,620
MARCH	5,542,849	8,476,502	6,798,147	8,623,539	862,516	1,508,110	337,641	606,250	176,528	659,555	0	394,000	0	0	0	0	281,340	283,139	124,325	705,932	6,863,233	10,927,306	7,260,113	10,329,721
APRIL	4,200,713	6,909,970	5,468,867	6,953,351	671,826	1,214,612	460,300	366,323	132,000	264,000	0	1,266,750	0	0	6,850	132,000	116,362	386,756	163,310	536,523	5,120,901	8,775,338	6,099,327	9,254,947
MAY	3,707,071	5,755,345	6,532,663	7,697,885	479,607	749,760	426,000	172,050	175,700	176,000	0	1,271,650	0	0	0	88,000	249,365	392,384	346,700	719,175	4,611,743	7,073,489	7,305,363	9,948,760
JUNE	3,394,457	5,495,814	6,167,246	8,151,761	684,000	539,020	323,680	399,100	88,000	0	0	2,185,662	0	0	0	0	79,550	309,498	192,578	333,607	4,246,007	6,344,332	6,683,504	11,070,130
JULY	2,493,655	4,690,242	6,067,736	6,422,154	285,338	845,158	476,625	528,450	0	88,008	0	2,745,800	0	0	0	0	76,054	458,619	323,585	484,730	2,855,047	6,082,027	6,867,946	10,181,134
AUGUST	1,617,141	6,312,517	5,131,250	10,594,369	578,004	850,428	511,448	697,700	0	218,284	0	955,375	0	144,829	0	0	69,808	247,031	332,900	253,538	2,264,953	7,773,089	5,975,598	12,500,982
SUBTOTAL YTD THROUGH AUGUST	53,169,870	95,761,666	82,552,955	97,983,575	6,880,050	12,486,488	6,919,198	5,610,204	1,817,100	6,147,563	1,820,400	10,138,037	0	173,029	15,850	220,000	2,002,330	3,632,159	3,238,578	5,006,681	63,869,350	118,200,905	94,546,981	118,958,497
% SHIPMENTS	32.2%	47.5%	49.0%	52.9%	45.4%	59.6%	71.7%	56.8%	91.6%	88.8%	85.3%	95.8%	0.0%	23.3%	9.6%	56.6%	16.6%	25.2%	24.8%	29.1%	32.9%	48.3%	48.9%	53.2%
YEAR TOTAL-EXPORT	53,169,870	95,761,666	82,552,955	97,983,575	6,880,050	12,486,488	6,919,198	5,610,204	1,817,100	6,147,563	1,820,400	10,138,037	0	173,029	15,850	220,000	2,002,330	3,632,159	3,238,578	5,006,681	63,869,350	118,200,905	94,546,981	118,958,497
% SHIPMENTS	32.2%	47.5%	49.0%	52.9%	45.4%	59.6%	71.7%	56.8%	91.6%	88.8%	85.3%	95.8%	0.0%	23.3%	9.6%	56.6%	16.6%	25.2%	24.8%	29.1%	32.9%	48.3%	48.9%	53.2%
YEAR TOTAL	165,099,659	201,534,744	168,468,672	185,347,228	15,150,503	20,935,091	9,656,082	9,873,025	1,983,791	6,924,705	2,135,264													