UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

ITEM C-1(e)
APRIL 2005

February 18, 2005

CERTIFIED – RETURN RECEIPT
CERTIFIED NO: 7003 2260 0007 2185 2919

Larry Cotter
APICDA
234 Gold Street
Juneau, AK 99801

Dear Mr. Cotter:

We are aware that on February 9, 2005, the State of Alaska (State) released its initial 2006-2008 multispecies and 2005 crab CDQ allocation recommendations (hereinafter referred to as "CDQ allocation recommendations"). The State has provided a 30-day comment period during which CDQ groups may request that the State reconsider its initial CDQ allocation recommendations. Additionally, the State has recently announced that it intends to provide CDQ groups with another opportunity to comment on the State's final CDQ allocation recommendations prior to the submission of its CDQ allocation recommendations to NOAA Fisheries Service (NMFS). In anticipation of the State's upcoming submission to NMFS of its CDQ allocation recommendations, I would like to take this opportunity to inform you that NMFS will provide the CDQ groups with an administrative appeal process of NMFS' initial administrative determination (IAD) concerning the State's CDQ allocation recommendations and that NMFS intends to conduct a record review of the State's CDQ allocation recommendations. Because NMFS will conduct a record review of the State's CDQ allocation recommendations, it is extremely important that (1) the State provide the CDQ groups with an opportunity to comment on the complete CDQ allocation recommendations and rationale the State intends to submit to NMFS and (2) the CDQ groups raise all factual issues and present all information during the comment periods provided by the State on its CDQ allocation recommendations.

In 2003, NMFS informed the North Pacific Fishery Management Council (Council) that procedural due process requires that notice of NMFS' IAD on the State's CDQ allocation recommendations be provided to the CDQ groups and that CDQ groups be afforded an opportunity to appeal NMFS' IAD before the agency makes a final decision on the State's allocation recommendations. Therefore, even though NMFS has not yet amended the regulations at 50 CFR 679.30(d) to provide for an administrative appeals process, this letter is to inform you that NMFS will provide an administrative appeals process for the agency's review of the State's CDQ allocation recommendations. Briefly, when NMFS receives the State's CDQ allocation recommendations, the Sustainable Fisheries Division will review the State's record and rationale for its recommendations and issue an IAD

either approving or disapproving the State's CDQ allocation recommendations. During its review of the State's CDQ allocation recommendations, CDQ groups will not be provided an opportunity to comment to the Sustainable Fisheries Division on the State's CDQ allocation recommendations. Upon issuance of the IAD by the Sustainable Fisheries Division, CDQ groups will be provided an opportunity to appeal the IAD to NMFS' Office of Administrative Appeals (OAA) regardless of whether the IAD approves or disapproves the State's CDQ allocation recommendations. If one or more CDQ groups file an appeal of the IAD, the OAA will provide the other CDQ groups and the State with an opportunity to respond to the appeal in writing. NMFS will provide more detailed information on the appeals process in the IAD.

As previously stated to the Council in 2003, NMFS intends to review the State's CDQ allocation recommendations based on the record submitted by the State. This "on-the-record" review means that NMFS will not review any factual disputes with the State's CDQ allocation recommendations or any new factual information from the CDQ groups if the State's recommendations and rationale were provided to the CDQ groups, and if the State provided the CDQ groups with an opportunity to comment on those recommendations and its rationale prior to the State's submission of its CDQ allocation recommendations to NMFS. Therefore, CDQ groups must raise with the State all factual errors they believe exist in the State's recommendations during the comment periods provided by the State and before the State submits its allocation recommendations to NMFS.

NMFS believes it is appropriate to limit the issues that can be raised on appeal for two reasons. First, NMFS' regulatory standard for review of the State's CDQ allocation recommendations is limited to one of review and is not one of independent evaluation. NMFS' review of the State's CDQ allocation recommendations is limited by regulatory design to conducting a careful inquiry of the record provided by the State for its CDQ allocation recommendations and determining whether the State considered relevant factors and articulated a satisfactory explanation for its action, including a rational connection between the facts found and the recommendations made by the State. Under this regulatory standard, the State is the entity best suited to consider the information available and the factual issues that form the basis of the CDQ allocation recommendations. Therefore, CDQ groups should raise factual disputes or present new information to the State during the State's development of its CDQ allocation recommendations. Second, NMFS intends to provide CDQ groups with an appeals process that meets the requirements for procedural due process in as timely a manner as possible. The introduction of new information after the submission of the State's CDQ allocation recommendations to NMFS may necessitate additional opportunities for comment on the new information. Any additional opportunities to submit and respond to new information will extend the time needed to reach a final agency action on the State's CDQ allocation recommendations, possibly extending NMFS' review of the State's CDQ allocation recommendations beyond the intended start of the new allocation cycle.

For the reasons presented above, it is imperative that CDQ groups present all information and raise all factual issues to the State during the State-provided comment periods and before the State submits its final recommendations to NMFS.

If you have any questions concerning this letter, please contact Sally Bibb, NMFS Alaska Regional Office, at 907-586-7389.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

cc: Edgar Blatchford, State of Alaska, DCCED
Greg Cashen, State of Alaska, DCCED