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

January 30, 3002

David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Dave:

In February 1999, the Council adopted four changes to the Improved Retention/Improved Utilization (IR/IU) program. These proposed changes included: (1) A provision to allow discard of damaged or adulterated fish, (2) The addition of a product recovery rate for pollock kirimi, (3) A change to deduct fish caught for bait and personal consumption before calculating utilization rates, and (4) increasing the maximum pollock roe retention standard from 7% to 9%. The first three proposed changes have already been implemented through revisions to recordkeeping and reporting regulations. However, due to the press of higher priority issues, we have not yet issued a proposed rule to implement the recommended change to the maximum allowable roe retention rate.

In 2001, we accommodated the Council's higher recommended roe retention rate through an enforcement policy that has allowed catcher/processors and motherships in the directed pollock fishery to exceed the 7% regulatory standard to prevent regulatory discards of pollock roe. We believe this policy is appropriate given data developed in the 1999 analysis and subsequently which show that actual roe recovery rates on pollock catcher/processors may exceed 7% during periods of peak roe recovery. Consequently, this enforcement policy will continue for the 2002 roe fishery and we intend to have a regulatory change in place prior to the 2003 roe fishery.

In evaluating the Council's February 1999 action, however, we have come to the conclusion that pollock roe retention standards themselves are obsolete and no longer serve a regulatory purpose in light of more recent regulatory actions to implement the IR/IU program and the American Fisheries Act (AFA). As a result, we believe that a more appropriate approach at this time would be to eliminate roe retention standards altogether for the directed pollock fishery while retaining a 7% standard for vessels not engaged in directed

fishing for pollock. Our reasons for coming to this conclusion and our recommended course of action are described in the attached discussion of the issue.

If the Council concurs with our recommendations to remove the obsolete 7% maximum retainable roe percentage, NMFS would proceed immediately with proposed rulemaking that would:

- Eliminate the 7% maximum retainable roe percentage set out at 50 CFR 679.20(g)
- Specify that the 7% pollock roe PRR would be used to monitor compliance with the 20% pollock MRB for vessels engaged in directed fishing for species other than pollock
- Establish a simple and clear prohibition on the practice of roe stripping as defined in the Magnuson-Stevens Act

Given the Council's previous action in 1999 to revise this standard, and our opinion that the existing 7% maximum retainable roe percentage is obsolete and redundant, we believe we could proceed immediately with rulemaking to give effect to these changes without additional action by the Council. With the Council's concurrence we will develop the necessary documents to change the roe retention standard.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

ATTACHMENT

RATIONALE FOR ELIMINATING ROE RETENTION STANDARDS FOR THE DIRECTED POLLOCK FISHERY

Maximum roe retention standards were established in January 1991 (56 fr 492) as part of a final rule to implement Amendments 14/19, which prohibited roe stripping in the pollock fisheries off Alaska and divided the BSAI and GOA pollock fisheries into two and four seasonal apportionments, respectively. The 1990 reauthorization of the Magnuson-Stevens Act also contained a statutory prohibition on roe stripping which made NMFS and Council action necessary.

The act of roe stripping is currently prohibited under paragraph 307(1)(N) of the Magnuson-Stevens Act which states that it is prohibited for any person To strip pollock of its roe and discard the flesh of the pollock. the BSAI and GOA groundfish FMPs further state that "roe-stripping of pollock is prohibited, and the Regional Administrator is authorized to issue regulations to limit this practice to the maximum extent practicable."

In the analysis prepared for Amendments 14/19, several alternative approaches were examined to implement the statutory prohibition on roe stripping. These alternatives included: (1) Setting maximum roe retention standards and (2) requiring full retention and utilization of pollock. At that time, the Council rejected the alternative for full retention and utilization of pollock as unnecessarily burdensome and costly to industry and instead, chose to recommend the establishment of maximum roe retention rates as its preferred alternative.

Maximum roe retention rates were established as a indirect method of preventing roe stripping given the impossibility of observers monitoring the disposition of every fish carcass in a large factory trawler to determine that no fish carcasses have been discarded after extraction of the roe.

Nevertheless, the 1997 implementation of the IR/IU program, and the 1998 passage of the AFA have rendered the maximum roe retention standards obsolete and unnecessary in the directed pollock fishery for three reasons. First, the 1998 implementation of IR/IU program established a more effective and stringent prohibition on roe stripping than the 7% roe

retention standard ever provided. Under the IR/IU program, not a single pollock carcass can be legally discarded in the directed pollock fishery without first extracting a primary product and all vessels must meet a minimum utilization rate of 16%. Because roe cannot be reported as a primary product, the IR/IU requirements more effectively eliminate the possibility of roe stripping in the directed pollock fishery than the older 7% retention standard which could have still provided for limited roe stripping up to the 7% standard.

Second, the 1999 implementation of the AFA has effectively eliminated the open access "race for fish" in the BSAI pollock fishery which lead to the practice of roe stripping in the first place. Roe stripping only made economic sense in the open access fishery when vessels were racing to maximize economic value during a limited number of fishing days and the market prices for surimi and fillet products were relatively low. With the emergence of fishery cooperatives, which have eliminated competition for fish in the offshore sector, and stable prices for surimi and fillet products, the economic incentive for vessels to engage in roe stripping has vanished. Even if all statutory and regulatory restrictions on roe stripping were lifted, we do not believe that AFA catcher/processors would return to the practice of roe stripping because to do so would make no economic sense.

Finally, the inshore/offshore amendments have eliminated roe stripping as an issue in the GOA. Under the GOA inshore/offshore regime, which was extended until the end of 2004 as part of the AFA amendments, 100% of the BSAI pollock TAC is allocated to the inshore component. Given that the 7% maximum roe retention standard effectively applies only to offshore component catcher/processors and motherships, the standard has had no practical effect in the GOA pollock fishery since the original inshore/offshore amendments were implemented in 1991 and the GOA pollock fishery would be affected in any way by its elimination.

For these reasons, we believe that the maximum roe retention standard has outlived its purpose and that the statutory and FMP amendment prohibitions on roe stripping are more effectively implemented by the more stringent IR/IU regulations implemented in 1998.

RATIONALE FOR MAINTAINING A 7% ROE RETENTION STANDARD FOR VESSELS NOT ENGAGED IN DIRECTED FISHING FOR POLLOCK

Eliminating the 7% maximum roe retention standard would affect vessels engaged in directed fishing for other groundfish species that encounter incidental catch of pollock. To prevent giving vessels in other fisheries an incentive to top-off with pollock, or from being tempted to strip roe from pollock harvested in excess of the 20% maximum retainable bycatch amount (MRB) established for pollock, we believe it that maintaining limits on the amount of roe that non-pollock vessels can retain is appropriate.

We believe that the most effective means of regulating roe retention on vessels engaged in non-pollock fisheries would be to use roe in addition to primary pollock products to determine maximum retainable pollock amounts. Table 3 to 50 CFR 679 currently establishes a 7% product recovery rate (PRR) for pollock roe and this 7% PRR would be used to limit the amount of roe that could be retained on vessels engaged in non-pollock directed fisheries.

The following example shows how this would work for a vessel engaged in directed fishing for Pacific cod and encountering incidental catch of pollock. In this instance, the vessel has retained 100 mt round-weight equivalent of Pacific cod during a fishing trip.

MRB percentage for pollock is 20%
MRB amount of pollock is 20 mt (100 mt cod x 20%)
Maximum allowable pollock roe is 1.4 mt (20 mt x 0.07%)

In this instance, the vessel with 100 mt of Pacific cod on board could have on board no more than 1.4 mt of pollock roe. In addition, because the IR/IU program requires retention of a primary product from each fish retained, and roe, by definition cannot be considered a primary product, the vessel would have to have retained primary pollock products with a round weight equivalent of 20 mt during the same fishing trip to be judged in compliance with IR/IU requirements.

In short, using the 7% pollock roe PRR to monitor compliance with the 20% pollock MRB provides essentially the same maximum roe retention limit that non-pollock vessels face today under the existing 7% roe retention limit. Consequently, eliminating the 7% maximum roe retention standard set out at

50 CFR 679.21(g) would not provide vessels engaged in non-pollock fisheries the opportunity to increase their retention of roe beyond what is currently allowed under existing regulations.

RATIONALE FOR MAINTAINING A STRICT PROHIBITION ON THE PRACTICE OF ROE STRIPPING

Roe stripping is defined in the Magnuson-Stevens Act as the act of stripping pollock of its roe and discarding the flesh. Even with the elimination of the regulatory 7% maximum roe retention standard, this statutory prohibition would continue to prohibit the practice of roe stripping. We recommend, therefore, that this simple statutory prohibition be incorporated into regulations in place of the existing 7% standard. At no time would vessels engaged in directed fishing for pollock, or for other groundfish species be allowed to strip the roe from a pollock and discard the carcass without retaining at least one additional primary product from that carcass. While the existing IR/IU regulations prohibit this practice anyway, we believe that a simple and strict regulatory prohibition on roe stripping as defined in the Magnuson-Stevens Act would serve as an additional reminder for vessel operators to avoid this practice.

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

January 30, 2002

David Benton
Chairman, North Pacific Fishery
Management Council
605 West 4th Avenue
Anchorage, AK 99501-2252

Dear Dave,

A year ago, NMFS staff presented to the North Pacific Fishery Management Council (Council) a draft analysis on alternatives to change the annual total allowable catch (TAC) specification process. Prior versions of the analysis also were presented annually to the Council by NMFS and Council staff since 1998.

The original impetus for the proposed change to the annual TAC specification process was to provide for informed public comment and review of recommended harvest specifications. However, recent court decisions have clarified the necessity for proceeding with a change to the current process as soon as practicable. Based on the following discussion, we recommend that the Council schedule initial and final consideration of a revised analysis to change the current TAC setting process for its June and October meetings, respectively.

On August 20, 2001, the federal court of the Northern District of California issued an order in favor of the Natural Resources Defense Council (NRDC) in litigation commenced by NRDC. *National Resources Defense Council v. Evans*, Case No. C 01-0421 JL (N.D. Cal. August 20, 2001). The NRDC challenged the Pacific Coast groundfish fishery annual harvest specification process followed by the Pacific Fishery Management Council and authorized by the Secretary of Commerce, as well as the 2001 harvest specifications recommended by the Pacific Council and approved by the Secretary. The court decided in favor of the plaintiff, ruling that NMFS must publish the Pacific Coast groundfish fishery's proposed annual groundfish specifications in the Federal Register for public notice and comment prior to publication of final groundfish specifications.

This court decision is relevant to the North Pacific groundfish harvest specification process in several ways. First, existing regulations require that interim specifications be established for the beginning of each calendar year and remain in place until superceded by final harvest specifications. These interim harvest specifications are implemented by notice published in the Federal Register without prior notice and opportunity for comment and could be challenged on the same grounds that NRDC successfully challenged the Pacific Coast groundfish fishery annual fishery specification process. Second, as NMFS previously has reported to the Council, concerns also exist that the North Pacific groundfish fishery proposed harvest specifications

typically reflect a rollover of the current year's harvest specifications. Final recommendations by the Council that are developed during the December Council meeting are not published as proposed harvest specifications in the Federal Register. Thus, the public does not have opportunity to comment to the Secretary of Commerce on harvest specifications before they become final. This process is vulnerable in litigation based on the public's inability to comment on the proposed harvest specifications that will apply during the subsequent year.

In response to these concerns, Council staff; NOAA-GC staff; and NMFS staff from the Northwest Region and Science Center, Alaska Region and Science Center, and NMFS Headquarters met January 17-18 to discuss issues of mutual concern addressing existing processes for annual specification of harvest specifications. The meeting participants representing the Alaska groundfish fisheries renewed commitment to complete an analysis of alternatives for revising the harvest specification process to better address issues identified in the *NRDC* case. The participants also identified alternatives previously considered by the Council that should be revised or rejected in light of the *NRDC* case, and identified other new alternatives, including a preferred staff alternative, to better address numerous issues and challenges before the Council and the agency. These new alternatives, including the preferred alternative, are attached.

We recommend that the Council schedule initial review of the modified analysis of alternatives for revising the harvest specification process at its June meeting. Pending Council adoption of a fishery management plan amendment in October, NMFS would pursue rulemaking to implement the revised process as soon as practicable. NMFS staff will be available at the Council's February 2002 meeting to further discuss this recommendation and respond to questions the Council may have.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

Attachments (2)

Attachment 1

Proposed new alternatives for the North Pacific groundfish annual TAC specification process, including staff's preferred alternative. Alternatives previously considered by the Council would be retained in the analysis with an explanation on why they were not pursued further for legal or other practical reasons.

Alternative 1 (Staff preference). Maintain current resource assessment survey schedules, but provide more time for stock assessment scientists to incorporate survey results in stock assessment projections and allowable biological catch recommendations. Annual SAFE reports and the associated NEPA document would be completed in January for initial Council review and action at the February meeting. The Council preferred alternative for harvest specifications would be incorporated in the NEPA document and made available to the Council for final action in April. NMFS would proceed with proposed and final rulemaking based on the Council's April recommendations. Final harvest specifications would be published in the Federal Register in October and effective January 1 of the following year. A time line of this alternative is attached (Attachment 2).

Staff recommended that an option be included under this alternative that would provide for multi-year harvest specifications for those stocks that are surveyed biennially, i.e., Aleutian Islands and Gulf of Alaska groundfish.

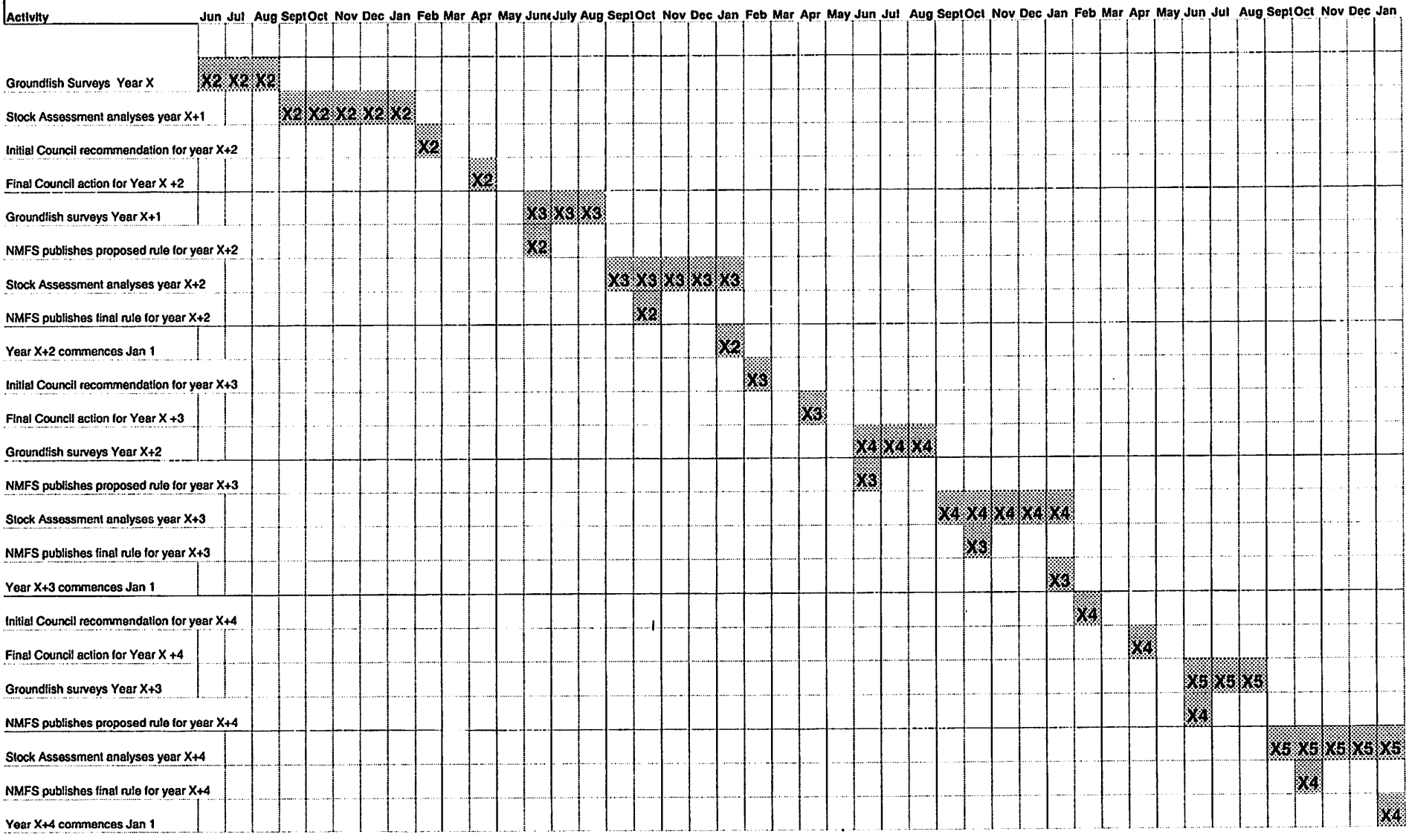
Alternative 2. Change the fishing year from January 1-December 31 to July 1 - June 30 to allow for proposed and final rulemaking based on the Council's final recommendation for harvest specifications. These final recommendations would continue to occur at the December meeting.

Alternative 3. Maintain the current fishing year (January 1 - December 31), and rely on "interim" specifications for the Jan 1 - June 30 time period while proposed and final rulemaking process is completed for the final harvest specifications for the year. The proposed and final harvest specifications for a year also would include the proposed and final "interim" specifications for the following year based on stock biomass and ABC projections.

Note: Although this Alternative 3 was discussed at the meeting, mid year implementation of the final harvest specifications along with "interim" specifications for the first 6 months of the following year essentially accomplishes what Alternative 2 does with a lot more administrative complexity that would result from replacing "interim" harvest specifications with final specifications mid year. For that reason, this Alternative 3 likely would not meet the objectives for the proposed FMP amendment as well as Alternative 1 or 2, above.

Attachment 2

Time line of TAC specification process under the staff preferred option



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

January 30, 2002

David Benton, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501

Dear Dave:

This letter provides a status report on the draft analysis of proposed revisions to the administrative regulations for the Community Development Quota (CDQ) Program. In addition, I would like to follow-up on two questions the North Pacific Fishery Management Council (Council) raised about the analysis at its December 2001 meeting, and make a request about how the Council should schedule final action on the CDQ issues and alternatives.

Draft analysis: The draft analysis is being prepared jointly by Council and NMFS staff. The primary work to be done to complete the analysis are revisions to address recommendations the Council made at its December 2001 meeting, analysis of Issue 7 related to the extent of government oversight of the CDQ groups and affiliated businesses, and completion of sections that address compliance with other applicable laws. Staff is on schedule to complete this draft in mid-March and to release it to the Council and public for review on March 15, 2002. This will provide about three and a half weeks for Council and public review of the final draft prior to the April 2002 Council meeting.

Environmental Assessment: The Council asked NMFS to confirm that it was not necessary to prepare an environmental assessment (EA) as part of the CDQ analysis. The alternatives under consideration by the Council address the role of government in administration and oversight of the economic development aspects CDQ Program. They are administrative and procedural in nature and we do not believe that they would change the impact of the harvest of CDQ allocations on the environment. Therefore, we believe that these alternatives do not individually or cumulatively have any impact on the human environment as that term is defined at 40 CFR 1508.14, and the proposed action could be categorically excluded from the requirement to prepare environmental analysis documents under the National Environmental Policy Act (NEPA). However, we have not yet received concurrence on this position within NOAA so we cannot, at this time, assure you that an EA does not have to be prepared. We intend to either have an approved categorical exclusion, or proceed to an EA

so that this issue does not prevent completion of the draft analysis by March 15, 2002.

Analyzing specific fixed allocations: A question arose at the December meeting about whether the analysis was complete under the Regulatory Flexibility Act (RFA) if it did not include analysis of specific, long-term, fixed allocations to the six existing CDQ groups under Issue 2, Alternative 3 ("make long-term allocations to CDQ groups").

The RFA requires that "each initial regulatory flexibility analysis shall also contain a description of any significant alternatives to the proposed rule which accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact of the proposed rule on small entities..." (§ 603(c)). In addition, each final regulatory flexibility analysis must contain "a statement of ...why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected." (§ 604(a)(5)).

Issue 2 provides alternatives for the length of the CDQ allocation cycle, including the alternative of making long-term allocations with no specific expiration date. The analysis describes the impacts of long-term allocations as a policy alternative, but states that "if the Council selects Alternative 3 as the preferred alternative and chooses to make long-term allocations to the individual CDQ groups, further analysis of specific CDQ allocations to individual groups or eligible communities would be necessary." We believe that the analysis provides sufficient information for the Council and the public to understand the differences between the policy alternatives of a fixed allocation cycle and long-term allocations. An analysis of specific fixed allocations is not necessary to comply with the RFA requirements described above, unless the Council selects this alternative as a preferred alternative.

Scheduling final action: The CDQ analysis examines eight complicated issues, each with a number of alternatives, options, and sub-options. These issues cover a broad range of policy issues that are controversial and have significant impacts on the CDQ groups, residents of the CDQ communities, the businesses affiliated with the program, the State of Alaska, and NMFS. In addition, the issues currently are the subject of lawsuits against both NMFS and the State of Alaska and proposed revisions to the Magnuson-Stevens Act through H.R. 553. Therefore, we request that the Council consider final action of the CDQ issues over the next two meetings in April and June 2002. The Council

would review the final draft and identify its preferred alternatives for each of the eight issues at the April 2002 meeting. Between April and June, staff would revise the analysis to include additional analysis focused specifically on the preferred alternative and would draft FMP text that would implement the Council's preferred alternative. At its June 2002 meeting, the Council would review the revised draft analysis and FMP text and either take final action to adopt its preferred alternative or provide further direction to staff.

We believe that Council review at its June meeting is necessary to ensure that the Council takes final action on the basis of a complete analysis that includes a more thorough description and assessment of the preferred alternative. This process would provide the public and the Council the opportunity to more fully understand the impacts of the Council's recommendations.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

cc: Dr. William Hogarth

30 January, 2002

RECEIVED
JAN 30 2002
N.P.F.M.C

To: The North Pacific Fisheries Management Council

From: The Kachemak Bay Fisheries Association

Re: Exemption from VMS

To the Chairman:

The Kachemak Bay Fisheries Association, a small boat fleet with approximately one hundred members, would like to request exemption from the proposed VMS requirements.

These small boats that fish for pacific cod will be placed under undue financial stress as a result of these measures. This mandate will very possibly force many of the small boat owners out of the fishery and cause severe economic hardship to our communities.

Like the jig fleet, our fleet catches only a small percentage of the pacific cod quota. Since there is little or no interaction between the small boat longline fleet and the Stellar sea lions, this regulation is not warranted nor is it needed to protect the sea lions.

If an exemption is not feasible, we would request that your office investigate other funding mechanisms through appropriate agencies that deal with the sea lion mandate. Again, this requirement will place undue financial stress on our small boat fleet. Imposition of the requirement will threaten both our livelihood and our ability to provide for our families and our communities. We will be more than willing to work with you and your office to find a solution that will satisfy all parties.

We appreciate your time and attention to this matter.

Sincerely,

David Polushkin
President
Kachemak Bay Fisheries Association

Yakov Reutov
Vice President
Kachemak Bay Fisheries Association

Cc: Ted Stevens
Frank Murkowski
Don Young
Tony Knowles
Kevin Duffy

North Pacific Fishery Management Council
Chairman David Benton

Dear Sir;

Please be informed that us in the groundfishery are completely astonished by National Marine Fisheries Service's implementation of the Vessel Monitoring System, (VMS).

First and foremost this is still America, apparently those responsible liken commercial fishermen to convicted criminals released on parole with electronic ankle bracelets. That's the only president that comes to mind.

I can only suppose that someone or some user group has fragrantly violated one or more than one of the sea lion rookery or haulout no fishing zones, if so, they're responsible, not the fishermen who abide by the rules.

More than a few operate at a minimum profit margin, additional expenses such as VMS could be very burdensome. It has been stated that the final cost of this system could exceed $4000 per unit including installation and subscription fees. Quite frankly we cannot afford this or any other radical changes that impact profitability. We have a right to maintain a livelihood along with our similar lifestyle.

I can only assume that this drastic measure was aimed at the small boat operation, if not, why include fixed gear vessels less than 60 feet. Fixed gear operators are well aware of sea lion no fish zones and they would have to be totally stupid to set fixed gear inside one.

I ask the council to review the following recommendations:

1. Postpone the VMS program -- allow the industry time to discuss alternatives.
2. Exclude non-trawl vessels less than 60 feet – vessel class that will be the most financially impacted.
3. Research or investigate those parties that abuse sea lion no fish zones – place the burden where it belongs.

Thank You,

Patrick Pikus

Box 8166
Kodiak, AK 99615

January 29, 2002

Dear Dr. Balsiger;

Welcome to the New World Order: Fishing Vessel Monitoring by Satellite 24 hours a day. Just like Uncle Junior on the "Sopranos". The only difference is he's a criminal. I'm not. There may be justification to keep an eye on that guy. He lost his Constitutional Rights because he's a convicted felon. I'm not.

The 4th Amendment to the Constitution guarantees me the right to be secure in my person houses, papers and effects against unreasonable searches and seizures. Having some faceless bureaucrat behind a desk in Podunk, Iowa with access to my whereabouts day and night violates the spirit of that Amendment.

The 5th Amendment guarantees me the right to not be compelled to be a witness against myself in any criminal case. If I inadvertently cut the corner on a sea lion rookery no transit zone, I have provided witness against myself, via my radio collar.

There is no evidence that I have committed heinous acts against sea lions, yet I am being compelled to carry a spying device to track me in my travels throughout the State. A cruel and unusual punishment for something I haven't been guilty or even accused of. See the 8th Amendment to my Constitution.

The environmentalists have forced this down our throats by threat of court action that would stop all of our fishing. Take away the means to support our families. Period. Now we respond to terrorism from people who don't know what an honest day's work really entails. Yachting around harassing fishermen while financed by grade school kids' dimes does not count.

Based on research and contact with the SINGLE VENDOR authorized by NMFS to provide the Vessel Monitoring System to fishermen, the first year costs for purchase and installation will be approximately $4,000. Subsequent service and maintenance will average $1,825 annually. I wonder whether Greenpeace will shake some slotted cans over my hand to pay for that. I doubt it.

Not to beat a dead horse but where are the Killer Whale Satellite Monitoring Systems? I have personally witnessed two killer whale killings of sea lions. Take into account the amazing circumstance that my boat and the whale/sea lion encounters were in the same

place at the same time, just randomly crossing paths. How many were eaten when I wasn't there? How much other anecdotal evidence is out there? Why monitor me?

The original focus of the crackdown on sea lion abuse was on a distinct type of fishery. When the heat came down they graciously lobbied to have the onus shared by all fishermen including longliners like myself and the rest of the small boat fleet. If there is a problem, a tighter focus is called for.

My suggestion is to stick with the tried and true formula of leaving the 60 foot or less fixed gear fishermen out of this war. Beyond the Constitutional issues, the financial burden is out of proportion to our fishing power. Clinton is out of office. I'm tired of feeling everyone else's pain.

Respectfully,

Bill Harrington
F/V Miss Lori
Kodiak

Cc: David Benton, NPFMC; Kevin Duffy ADF&G; AK Congressional Delegation; NPFMC Fisheries Advisory Panel; Governor Tony Knowles; Kodiak City and Borough Assemblies; Kodiak Legislative Delegation

B&E Fisheries
P.O. Box 8166
Kodiak, AK 99615

Jim Balsiger
NOAA Fisheries
P.O. Box 21668
Juneau, AK 99802

January 29, 2002

Dear Dr. Balsiger;

I am writing with regard to the Emergency Interim Rule 679.7 mandating Vessel Monitoring Systems (VMS) for all size boats participating in permitted federal groundfish fisheries. While recognizing the efforts of my representatives on the RPA Committee, the Fisheries Advisory Panel and the NPFMC, I am voicing my objection to the outcome mandating VMS for all gear types (except jig) and vessel classes. There has been insufficient notification of the implications of this rule – it is too much, too soon.

My initial reaction to the ruling is abhorrence with regard to the Orwellian nature of the technology. Hasty research indicates that VMS has apparently secured a role in fisheries management for highly migratory species, New England scallops, and an experimental longline program in Hawaii, where the units were purchased by NMFS. Until this ruling VMS in Alaskan fisheries management appears to be limited to the Bering Sea pilot program.

Setting aside the issue of civil liberties, I would like to focus on the expense and maintenance of VMS that is disproportionately burdensome for small owner-operated vessels. I reviewed estimates of both time and expense for VMS installation and operation from the Federal Register and the Council. They are conservative and assume 100% reliability, i.e., no replacement, no overnight freight for emergency parts flown to remote areas, and no loss of fishing time due to equipment failure. NACLS, the single source authorized by NMFS, is in the process of signing reseller agreements with area marine electronics companies; they are shooting for a March date for information about availability and final costs with installation. It sounds like it will be in the neighborhood of $4,000 per vessel for initial outlay. Based on the origin of this mandate in the RPA for stellar sea lion management, I find it unfair to pass this expense off as a normal cost of doing business when in fact it is a direct result of the litigation.

The total amount of funding secured by Senator Stevens for Stellar Sea Lion research this fiscal year is staggering. If the RPA Committee was unable to adopt an alternative on this issue that is more "reasonable" for the smaller class vessels, a share of the ample funds generated should be earmarked for purchase and service of the mandated VMS. I understand the NPFMC made recommendation to NMFS in October '01 to pursue funding for vessels on a volume of catch formula for this year. It is my further

understanding that at this point NMFS has made no funding recommendation for 2002, and is not anticipated to do so.

I respectfully request that NMFS make it a priority to release funds for VMS purchase and maintenance to the smaller class fleet, estimated at $811,000 (Federal Register Vol.67 No.8). Fund it as a pilot program and give the industry time to review it before final rule. The entire concept of a position beacon location system and my notion of civil liberty is almost impossible to reconcile at this moment. The further affront of being required to fund this indignation out-of-pocket due NOT to any transgression on the part of legally operating fishermen, but exclusively to the litigation over Stellar Sea Lion (mis)management seems to me to be totally unreasonable.

The question of the "usefulness" of VMS as an emergency position locator (another EPIRB?) and the potential trade-off of VMS for at-sea observers may be relevant to the large class vessels. That is not the case for small vessels continually handicapped by new fees and regulations challenging their efforts to make an honest living.

Thank you for your consideration.

Sincerely,

Cindy Harrington

907/486-9488
907/486-9426 fax
cindyh@eagle.ptialaska.net

cc: David Benton, NPFMC; Kevin Duffy ADF&G; AK Congressional Delegation; NPFMC Fisheries Advisory Panel; Governor Tony Knowles; Kodiak City and Borough Assemblies; Kodiak Legislative Delegation

January 4, 2002

David Benton, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

Chairman Benton,

This letter is to provide you and the Council with some basic information concerning enforcement's plan for responding to possible VMS violations beginning in June of this year.

As you are aware, the Alaska Enforcement Division (AED) has been monitoring the Atka Mackerel vessels using VMS for two seasons. We have also been testing it's validity for use for the halibut Area 4 vessel clearances. This has given us the opportunity to get familiar with the hardware and software associated with VMS. It has also given us the chance to set up protocols for responding to potential violations. We have found that it is important to have good communications between the fishing vessels and enforcement.

We have worked with NMFS Sustainable Fisheries and the U.S. Coast Guard to establish a response decision key for our VMS technicians to follow when certain events occur. We will be monitoring no transit areas, no fishing areas, areas closed to directed fishing, as well as investigating vessels with no VMS signal, so the procedures to follow will vary depending on the circumstances. Two constants in all situations are verifying the data and contacting the vessel operator and/or vessel owner to discuss the situation before taking any punitive actions. When voice communications is not accomplished, then enforcement will follow up with a Coast Guard contact at sea, a NMFS enforcement contact dockside, or both.

One specific concern is for the open access catcher vessel fleet. The concern is if their VMS unit stops transmitting, and transmission can not be re-established, will they be directed back to port? If we lose the connection, our VMS technician will contact the vessel and attempt to identify and correct the problem, but if that does not work, then the vessel may continue to fish and complete that trip. NMFS Sustainable Fisheries agrees that this will satisfy their management needs. The vessel will not be able to go out again until we establish a connection again. Our plan is to meet the vessel dockside and conduct interviews and inspect the VMS unit.

I hope this letter provides you and the Council with some satisfaction that NMFS Enforcement will enforce the regulations reasonably by communicating with the fishing fleet and through investigations prior to pursuing punitive measures.

Sincerely,

D. Jeffrey Passer
Special Agent in Charge
Alaska Enforcement Division
NOAA/NMFS Office for Law Enforcement

B-2

January 25, 2002

NPFMC
605 West 4th Suite 306
Anchorage, AK 99502-2252

Dear Chairman Benton and Council Members,

Subject: Small vessels targeting Pacific cod and VMS requirement

I am a commercial fisherman and have longlined and jigged Pacific cod, halibut, and rockfish in the GOA, PWS and Cook Inlet.

The requirement for all vessels (except jig) targeting Pacific cod in the federal waters to have an operational VMS will eliminate a large number of small boats (less than 45 ft.) from this fishery. Most vessels in this category scratch fish in several fisheries to remain viable. Reducing the participation in the Pacific cod fishery will also have a negative impact on the economy of small coastal communities like Homer and Seward. The LLP requirement already limits participation.

Larger boats are able to fish 24/7 in much worse weather allowing a greater removal of Pacific cod. Because of heavy weather and icing conditions much of the time during the "A" season small vessels usually fish only one or two trips. The amount of gear cycled daily and consequently the daily harvest by small boats using snap gear is considerably less than larger vessels using stuck gear and /or auto-baiters. The non trawl PSC of halibut reduces the hook and line season to just a few days during the balance of the year. The cost of fuel, groceries, bait, ice, crew insurance, and wear and tare on vessel / gear makes this fishery marginally profitable at best. The added expense to purchase and maintain a VMS to maybe participate is enough to remove some from the Pacific cod fishery.

Please exempt the small vessels (less than 45 ft.) from the VMS requirement.

Sincerely,

Don N. Bunker

Don N. Bunker
PO Box 604
Anchor Point, AK 99556