

Executive Director's Report

Council member resignation

As you are no doubt aware, Council member Bob Penney is resigning from the Council. Copies of his letters to the Secretary of Commerce and the Governor of Alaska are under B-1(a). According to the Magnuson-Stevens Act, Council appointments, including replacements named by the Secretary, cannot serve until 45 days after announcement of the appointment. Any replacement would serve the remainder of Mr. Penney's term, at which time the seat would once again be open for appointment to a full term.

Staff news

In June I introduced Diana Evans, our NEPA Specialist/Fisheries Analyst, who is for the near future primarily devoted to work on the Programmatic Groundfish SEIS. To fill the Plan Coordinator position vacated by David Witherell, we brought another Diana on board this summer. Beginning in September, Dr. Diana Stram will take over as Gulf of Alaska FMP Coordinator. She has a Ph.D. in oceanography from the University of Rhode Island, and previously worked for the environmental consulting firm URS (where she also worked on the DPSEIS project under contract to NMFS). Jane DiCosimo has been promoted to Senior Plan Coordinator and will handle BSAI FMP duties, along with numerous other responsibilities.

U.S. Ocean Commission

The U.S. Ocean Commission held a hearing in Anchorage this past August, which some of you attended. Chairman Benton's written comments to the Commission were forwarded to you in a Council mailing in August. We also forwarded to you a copy of the publication we completed in time for the Commission's visit - 'Responsible Fisheries Management into the 21st Century - a Report from the North Pacific Fishery Management Council'. I also had the privilege of accompanying several Commission members on a trip to Dutch Harbor, where we toured both the Arctic Storm catcher/processor and the UniSea plant, and met with several fishermen and city officials (kudos to Frank and Shirley for organizing this trip). During that trip and during the Commission meeting itself, there was a very positive tenor among the Commissioners with regard to how we manage fisheries here in the North Pacific, with several remarking that these fisheries illustrate that the current fisheries management process is not broken.

Independent Reviews

Two independent reviews commissioned by the Council are now complete. The independent legal review, examining the role of the Council relative to ESA and the application of ESA, MSA, and NEPA, will be presented under B-5 by Mr. Bud Walsh. The written version of that report is available to the public also. The other independent review, to examine our basic F40 exploitation strategies, is scheduled as a D-1 groundfish item, but a report will be taken from Dr. Dan Goodman today. The written version of that report will be available later this month.

Donut Hole, ICC, and BSFAB meetings

From September 16-21 the 7th Annual Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, along with the Intergovernmental Consultative Committee (ICC) and the Bering Sea Fisheries Advisory Board (BSFAB), met in Moscow to discuss Donut Hole resources and the maritime boundary issues between Russia and the U.S. Neither Chairman Benton nor I were able to attend due to the press of other business, but several members of our Council family were in attendance, including Rich Marasco, Dennis Austin, and Earl Krygier. We will provide to you any information or reports on those meetings as they become available. A recent letter on these issues, from the public interest 'watchdog' group State Department Watch, is under B-1 (b). Also included is a letter from Alaska Independent Fishermen's Marketing Association regarding high seas salmon bycatch.

Joint meeting with the Board of Fish

Although I placed this under 'Other Issues' later in the draft agenda, it seemed more appropriate to discuss it here. We need to determine when to meet with the Board of Fish, given that we are meeting in Seattle (downtown!) this coming February. My conversations with Diana Cote indicate that just prior to our April meeting in Anchorage would be the best target date. The Joint Protocol Committee would meet December 3 to discuss, at a minimum, BOF progress on MPAs; Council progress on EFH; BOF groundfish proposals; and, Council update on GOA rationalization. The Council would have that report in time for its December meeting. Minutes from the July 2002 Protocol Committee meeting are under B-1(c).

Evening events

Please note that there is going to be a video presentation tonight by Tom Loughlin, AFSC, summarizing Steller sea lion telemetry techniques, at about 6:00 pm, or shortly after the Council breaks for the day. Also, there is an industry reception being held at Salty's tomorrow (Thursday) night. Thanks again to the industry for putting this annual function together.

MMPA lawsuit

In a recent mailing I included a copy of the litigation against NMFS, challenging their compliance with provisions of the Marine Mammal Protection Act to reduce marine mammal death and injury (additional copy under B-1(d)). Item B-1(e) is a copy of a September 10, 2002 letter from Lieutenant Governor Fran Ulmer to the Secretary of Commerce urging the agency's compliance and development of take reduction plans, including potential assistance from the Council. I do not know whether or to what extent any fisheries off Alaska may be affected, or whether we have any role in the matter, but wanted to inform you of these events. NOAA GC may be able to offer some additional insights.

USCG Commercial Fishing Industry Vessel Safety Advisory Committee letter

B-1(f) is a recent letter from James Herbert, Chairman of the USCG CFIVSAC, offering their advice on potential safety implications of proposed FMPs/amendments being considered by the Regional Councils. Of course we get the input of our own Coast Guard representatives on all Council actions in this regard, and we have an Enforcement Committee that provides an additional look at these issues when relevant. I would suggest, with your concurrence, that I consult with Captain Preston as various Council actions progress, and forward to this Committee any that we feel might benefit from their review and comment.

November 7 meeting with Alaska Subsistence Regional Advisory Councils

Item B-1(g) is a copy of the April letter I sent to the Subsistence Regional Council Coordinator, in response to their letter requesting coordination in reducing salmon bycatch for the benefit of Yukon-Kuskokwim residents. They have responded to our offer to meet and discuss these issues, and some of our staff will be meeting on November 7 with the Chairs of several of the Regional Advisory Councils, along with Mr. Tom Boyd with the Office of Subsistence Management. The intent of the meeting is to exchange information, and explain what we are doing in terms of our fisheries management program. Representatives from the pollock cooperatives will also attend to inform them of the industry initiatives relative to reducing salmon bycatch. I will also be inviting representatives from ADF&G and/or the Board of Fish, and NMFS, to attend these discussions.

Calendar with upcoming meetings, conferences, etc.

For your information, I would remind everyone that there is an interactive calendar on our Council website, which we will strive to keep up to date, which depicts meetings, conferences, events, etc. as we know them. Items of interest in the near future include: (1) the Symposium on Effects of Fishing Activities on Benthic Habitats, November 12-14 in Tampa, Florida; (2) the International Fisheries Observer Conference, November 18-21 in New Orleans, Louisiana; (3) the 2nd Annual Fisher's Forum focusing on Seabird and Turtle Interactions with Fisheries (hosted by the Western Pacific Council with support from the North Pacific Council), November 19-21 in Honolulu, Hawaii.

Stanford Fisheries Policy Project

Council members may have recently received a questionnaire from Sarah Newkirk with the Stanford Fisheries Policy Project, which is studying various aspects of the regional fishery management Councils (copy of the questionnaire is under B-1(h)). She requested a few minutes at this meeting to inform Council members of the nature and scope of this project, and I scheduled her briefing for this morning, after the ED report.

AGENDA B-1(a)
OCTOBER 2002

Penco Properties

3620 Penland Parkway
Anchorage, Alaska 99508

September 23, 2002

The Honorable Donald L. Evans
Secretary of Commerce
U.S. Department of Commerce
14th and Constitution Avenue NW
Washington DC 20230

RECEIVED
SEP 24 2002
N.P.F.M.C

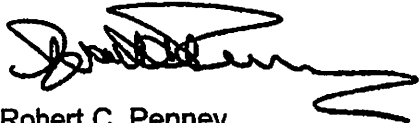
Dear Sir:

A new event that is scheduled for our family commercial property in San Diego is going to require all my time and energy for the next fourteen months. In order to keep our largest tenant, a national insurance company, we must build them a new office building or they will be vacating our property at the end of their lease on July 1, 2003. The new building has to be designed, built and started at once to achieve that occupancy goal. The design and construction will require that I be on location near full-time until the building is complete.

At this time I must resign my position with the North Pacific Fisheries Management Council as of October 9, 2002. I will also be vacating other civic and social positions in our community as this property is our most important family asset.

I thank you for your consideration and the opportunity to have served on the Council.

Sincerely



Robert C. Penney

cc: Senator Ted Stevens
Governor Tony Knowles
Dave Benton, Chairman NPFMC



Penco Properties

3620 Penland Parkway
Anchorage, Alaska 99508

September 23, 2002

RECEIVED
SEP 24 2002
N.P.F.M.C

Honorable Tony Knowles
Governor, State of Alaska
716 Calhoun
Juneau, AK 99811

Dear Governor Knowles:

Appointing a person from the 'public user group' to the North Pacific Fisheries Management Council was thoughtful and historically will prove to be one of the most important appointments that you made as Governor.

I have very much enjoyed being that representative from the non-commercial sector. However, because of a pending business development, I need to resign my Council seat. To continue my presence on the Council would not be fair to my peers there nor to my family.

You are aware of the property our family purchased three years ago in San Diego. The remodeling is complete but now it has become apparent that to make this investment truly successful, we must add a new building to the site. It will be an investment of an additional \$7 million and will take fourteen months to complete. It is our major asset and I have to be there to oversee construction. It will take most of my time and energy during this period.

While on the Council, I believe I have helped add a new perspective to the decisions and votes. They do pay more heed now to the public's need for harvest opportunities.

One issue I do regret is the charter boat IFQ's. These quotas were 'on the train and roaring down the track' when I came aboard the Council in August of 2000. We came close to defeating those ill conceived federal restrictions and lost by just a 6 to 5 vote. It still is hard to understand why the Council would endorse such a plan that will be so detrimental to the public angler. It is difficult to believe it could pass after you, the Governor of Alaska, sent a letter speaking out against adoption, as did the State Legislature with the testimony of the Speaker of the House and then similar testimony by the Chairman of the State Board of Fish. All three advised "no" yet the Council approved them. Hopefully wiser heads at the SOC office will see that these costly IFQ's will be given a final demise.

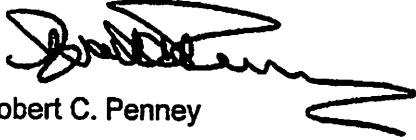
I was very much involved with the Halibut subsistence decision and believe I helped temper what could have been a one sided allocation. An effort proposed by me to stop killing the big female halibut (over 100#) by sport anglers is making it's way through analysis process as well. I have been quite active on other significant Council issues and believe I have contributed in a positive way to those decisions. Three criteria guided my Council decisions:

- 1) "The fish come first" - nothing is more important than maintaining the resource base. Guaranteeing sustainable fisheries is our job # 1.

- 2) Whenever possible maintaining Alaskan jobs are the primary benefit our state receives from this, the largest fishery in our nation.
- 3) Alaskan communities and the general public should all benefit from and have fair and equitable access to North Pacific fishery resources.

I thank you for your consideration and the very enjoyable term spent on the North Pacific Fisheries Management Council.

Sincerely,



Robert C. Penney

WATCH

STATE DEPARTMENT

NATIONAL HEADQUARTERS
Post Office Box 65398
Washington, D.C. 20035
703-241-3700

WEST COAST OFFICE
Post Office Box 6102
Woodland Hills, California 91365
818-223-8080

September 19, 2002

AGENDA B-1(b)
OCTOBER 2002

Mr. David Benton
Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue #306
Anchorage, Alaska 99501-2252

Re: 158th Plenary Session, October 2-8, 2002
Written comments for meeting notebooks

Dear Chairman Benton:

The US-Russia maritime boundary is a crucial issue inasmuch as it delimits the rights of Americans for the exclusive economic zone including fishing rights. Any establishment or change in this boundary impinges on most agenda items, including their economic impacts. This extends all the way from the Executive Director's Report to the Staff Tasking (with directions on what actions to take about the boundary).

This letter and its attachments are intended as written comments to give the Council authoritative materials to review and act on.

State Department Watch is a nonpartisan foreign policy public interest watchdog group. We were the only public group that testified on the maritime boundary agreement before the Foreign Relations Committee of the U. S. Senate in 1991. We raised numerous serious defects in that executive agreement, including the (1) exclusion of the public, Congress, and State of Alaska from any participation in the negotiations or approval of the terms of the proposed boundary; (2) the secret nature of all the negotiations of the Department of State (the dates, locations, and names of negotiators for the 10 sessions remain classified); (3) the giveaway of the seabeds for 8 Alaskan/American islands to the Soviets/Russians (Wrangell, Herald, Bennett, Jeannette, and Henrietta Islands in the Arctic Ocean; and Copper Island, Sea Lion Rock, and Sea Otter Rock at the western end of the Aleutians); (4) the lack of any quid pro quo to the American public (including the fishing industry) for these giveaways; and (5) allowing the Soviets/Russians exercise sovereign powers on American seabeds (western special areas).

We have delivered approximately 100,000 protest letters to the Department of State. Numerous national organizations have protested. The legislature of the State of Alaska has overwhelmingly protested in a series of resolutions, the latest of which was House Joint Resolution 27 in 1999. The legislature of the State of California unanimously passed Senate Joint Resolution 20 in support of the State of Alaska in 1991.

Page 2

The maritime boundary agreement is only an executive agreement between foreign affairs departments of the United States and Russia. It can be withdrawn, rescinded, or abandoned at the stroke of a pen. It is not a ratified treaty, inasmuch as the Russian side apparently thinks that it did not get enough territory on its side of the boundary line.

As you may know, the Russian parliament has made strong statements recently to demand thousands of more square miles of seabeds to be taken from the American seabeds. This translates into millions of pounds of fishing catches and other resources (including oil), valued in the hundreds of millions of dollars annually.

It is important that any negotiations over setting or revising any maritime boundary be open to the public, to governmental bodies such as NPFMC, to the State of Alaska and all other affected states, and to Congress. Economic impact analyses need to be explicit. This would also include an analysis of the economic losses due to the current boundary line under the executive agreement which puts the 8 islands and their seabeds on the Russian side.

We are prepared to assist in this process. Please let us know what we can do to help protect the American public interest. Direct all replies to our West Coast Office.

Sincerely,



Carl Olson
Chairman
State Department Watch

Attachments:

1. July 12, 2002, RIA Novosti article on Russian demands
2. Sep. 3, 2002, report on Russian demands on "The Echo of Moscow" radio broadcast
3. Map of current maritime boundary agreement
4. Alaska House Joint Resolution 27 in 1999
5. California Senate Joint Resolution 20 in 1991
6. 1867 treaty between the United States and Russia, annotated to indicate inclusion of Copper Island, Sea Lion Rock, and Sea Otter Rock on the U.S. side (east of 167E).
7. Excerpt from John Muir book "The Cruise of the Corwin" about American discovery/claiming of Wrangell Island
8. U.S. Senate commemoration of centennial of awarding gold medals to crew of USS Jeannette, who discovered/claimed Bennett, Jeannette, and Henrietta Islands for the U. S.

RUSSIA READY FOR POLITICAL DIALOG WITH US ON REVISION OF BERING STRAIT DIVISION AGREEMENT

MOSCOW, JULY 12, RIA NOVOSTI - The Federation Council, Russian parliament's upper chamber, intends to promote Evgeny Nazdratenko's initiative to revise the Russian-US agreement on Bering Strait division at an international level, Alexander Nazarov, chairman of the chamber's committee for the northern and scanty ethnicities affairs, has said in an interview with RIA Novosti.

Nazarov raised the issue at a meeting between the Russian president and the chamber's leadership the day before, he said.

On Friday, chairman of the State Fishery Committee Evgeny Nazdratenko called the division of the Bering Strait "absolutely illegal" and the 8,253 square km of water surface given to the USA "a huge loss" for Russia.

Nazdratenko called on Russian MPs to discuss with US Congress the return to Russia of the territory the USA received after the Bering Strait division under the Baker-Shevardnadze agreement of 1990.

The Federation Council on its part will utterly promote the initiative, Nazarov said.

"Even being chairman of the district executive committee and, later, governor of the Chukotka autonomous district I intensely resisted the idea of dividing the economic zone and continental shelf of the Arctic and Pacific oceans, and the Chukchi and Bering Seas between Russia and the USA," he pointed out.

The US government took advantage of the unstable situation in the Russian higher political circles then, "and the document was signed by a weak person", according to Nazarov.

As chairman of the Committee for the North affairs, he "repeatedly proposed to the State Duma [parliament's lower chamber] the solution to the issue, but it was postponed", he said.

Today Russia is ready for a serious political dialog with the USA on this problem, the senator believes. The upper chamber is able to make a substantial contribution to the settlement effort, he added.

His committee in cooperation with the international committee intends to consider the issue, "and one of the senators may appear at the international level with specific proposals by autumn", Nazarov said.

He recalled that the upper chamber of the Russian parliament was in a permanent contact with US MPs. Interaction on specific problems is conducted within an ad hoc group the US Senate and Russian Federation Council set up last year on the Russian senators' initiative.

**Note: RIA Novosti is the news service of the
government Russian Information Agency**

Revision of Baker-Shevamadzze Strait of Bering Agreement Directed Neither Against US nor Georgia Rosblat

MOSCOW, September 3. Today, speaking on the air in a program of The Echo of Moscow radio, Alexander Torshin, a Deputy Chairman of the Council of Federation of Russia, said, 'The necessity of revising the Baker-Shevamadzze agreement on the delimitation on the Strait of Bering became obvious a long time ago. Now, the Council of Federation came around to doing so'. He further emphasised that 'This by no means should be considered as directed against the US'. Mr. Torshin said he believed the senators of the US and Russia should more actively cooperate either affirming or revising international legal documents.

Also, the Deputy Chairman of Russia's Council of Federation categorically denied that the agreement became the focus of senate's attention now because of Russian-Georgian tensions. 'Who signed the document is of no consequence', he said. 'The only thing important is whether or not it is advantageous or detrimental for Russia. If we wanted to pick on Georgia, we could find a large number of other excuses. No one has had a thought of inviting Mr. Shevamadzze to take part in the process and no one is likely to have such an idea'.

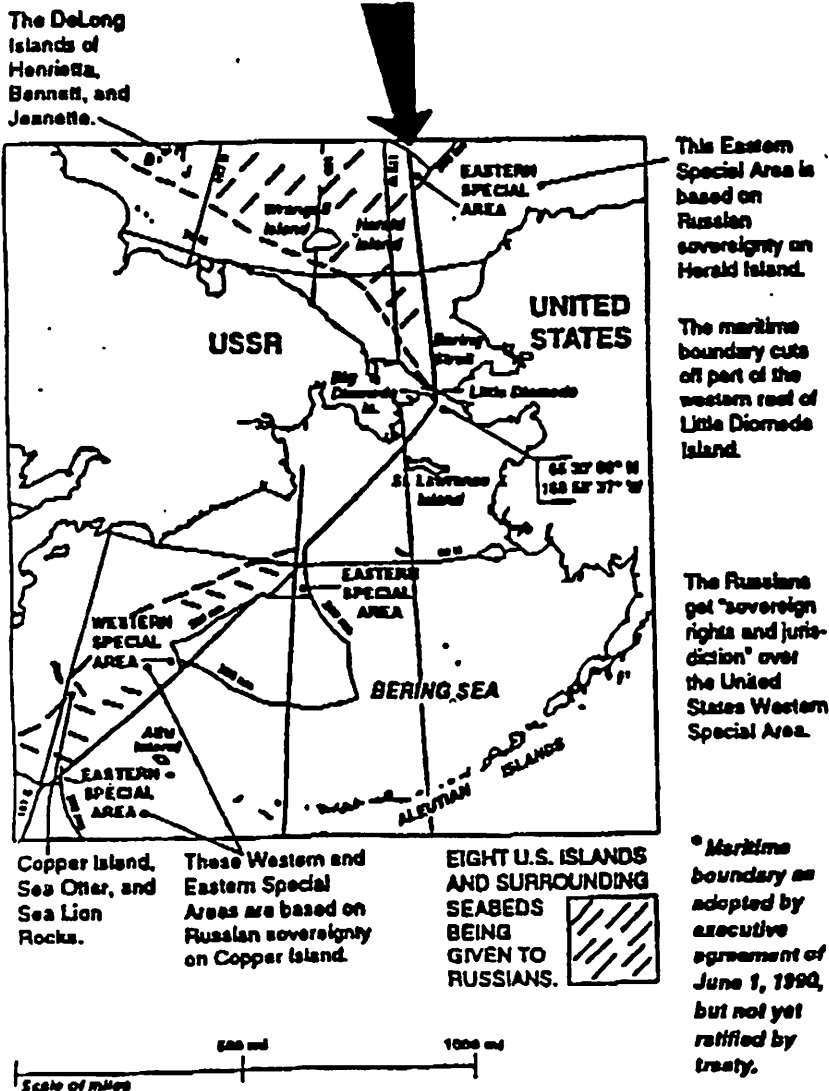
Today the workgroup for the revision of the agreement convened for the first time. The agreement on the delimitation on the Strait of Bering was signed in 1990 by James Baker, the Secretary of State of the US, and Eduard Shevamadzze, the Foreign Minister of the USSR at the time. The agreement assured the US control over areas lying within the exclusive economic zone of the USSR in the central part of the Sea of Bering whose estimated annual productivity is 200,000 tonnes of fish. Because of this, Russia loses annually over USD 200 million. Besides, these areas are rich in oil and gas. Because this document is detrimental to the interests of the USSR and now of Russia, it has never been ratified by neither the Supreme Council of the USSR nor, later, by the State Duma and the Council of Federation

Under the US-Russia Maritime Boundary Agreement, which the U. S. State Department has agreed to, the Russians get all the territory/seabeds to the east of the line as shown below. This amounts to a virtual cession to the Russians of 8 American/Alaskan islands of Wrangell, Herald, Bennett, Jeannette, and Henrietta in the Arctic Ocean, and Copper Island, Sea Lion Rock, and Sea Otter Rock.

The Russians also get hundreds of thousands of square miles of valuable seabeds as shown. Vast petroleum, fishery, and other resources are at stake to be permanently turned over from the American/Alaskan public to the Russian government.

Maritime Boundary Giveaway

UNITED STATES-USSR MARITIME BOUNDARY*



Passed House 31-5 Apr. 19, 1999
 Passed Senate 16-4, May 18, 1999
 Signed by Gov. Tony Knowles

Sponsored by Representative John Coghill Jr.
 State Capitol
 Juneau, Alaska 99801
 907-465-5719

HOUSE JOINT RESOLUTION NO. 27

Relating to the maritime boundary between Alaska and the former Union of Soviet Socialist Republics.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS, on June 1, 1990, United States Secretary of State James A. Baker III signed the United States - U.S.S.R. Maritime Boundary Agreement without the participation or consent of Alaska in the negotiations or terms of the proposed treaty agreement; and

WHEREAS the maritime boundary described in the proposed treaty agreement places on the U.S.S.R. side the following eight islands and their entire territorial seas and seabed Wrangell, Herald, Bennett, Henrietta, and Jeannette Islands in the Arctic, and Copper Island, Sea Lion Rock, and Sea Otter Rock on the west end of the Aleutian Chain; and

WHEREAS the maritime boundary described in the proposed treaty agreement delimits the territorial sea and seabeds of Little Diomed Island at less than the normal 3-m or 12-mile extent; and

WHEREAS Alaska has sovereignty and potential or actual property interests in these islands and their territorial seas and seabeds; and

WHEREAS the Fifteenth Alaska State Legislature unanimously passed Senate Joint Resolution 12, which requested that a representative of Alaska be included in the United States Department of State's negotiations on setting a maritime boundary between Alaska and the Soviet Union; however, a reply was never received from the United States Department of State, and a representative of Alaska was never included in the negotiations; and

WHEREAS the views of 28 bipartisan members of the Alaska House of Representatives and eight bipartisan members of the Alaska Senate were expressed on the proposed treaty agreement in a letter dated May 17, 1991, to Senator Joseph Biden, Jr., of the United States Senate Committee on Foreign Relations, stating in part:

"We firmly believe United States interests and Alaskan interests are at stake and in jeopardy in the proposed treaty. . . No Alaskan official has ever been invited to participate in the treaty negotiations, in spite of abiding Alaskan interests in fisheries, petroleum and other potential continental shelf resources and the considerations of navigation in the area. In the entire history of the treaty negotiations, Alaska has had no official voice. Alaska has not been fully consulted in the entire matter. . . It is our purpose to urgently recommend that the presently-proposed treaty not be ratified by the U.S. Senate, and that negotiations be continued to include appropriate Alaskan officials and current United States and Alaskan historic, territorial, and resource interests"; and

WHEREAS the California Legislature unanimously passed in 1991 Senate Joint Resolution 20 supporting Alaska, and the resolution requested the President to withdraw the proposed treaty agreement from consideration by the United States Senate and requested the United States Senators from California to decline to consider the proposed treaty agreement until Alaska has been able to participate fully in negotiations and has been guaranteed that consent will be required for any agreement affecting its boundaries; and

WHEREAS the U.S.S.R. and its successor, Russia, have not approved the proposed treaty agreement, and the agreement has not been put into force as a treaty; and

WHEREAS, at the same time he signed the proposed treaty agreement on June 1, 1990, Secretary of State Baker signed an executive agreement with the U.S.S.R. Foreign Minister that stated that, pending the entry into force of the proposed treaty agreement, the two governments agreed to abide by the terms of the proposed treaty agreement as of June 15, 1990; and

WHEREAS the executive agreement was not publicly revealed at the time or mentioned in the transmittal of the proposed treaty agreement to the United States Congress, the United States Department of State testimony to the United States Senate Committee on Foreign Relations, in the committee report, or in the Senate floor debate; and

WHEREAS the United States Department of State is currently negotiating with the Russian government over its demand to redraw the maritime boundary under the executive agreement so as to take from the American side and give to the Russians an additional 40,000 square miles of ocean and seabed that would yield 300,000,000 pounds of fish a year without any quid pro quo for the United States;

BE IT RESOLVED by the Alaska State Legislature that, because the proposed United States - U.S.S.R. Maritime Boundary Agreement has not been put into force, negotiations for the proposed treaty should include participation by the State of Alaska, and any discussion of terms in a new proposed treaty regarding Alaska's territory, sovereignty, or property should involve representatives of the State of Alaska; and be it

FURTHER RESOLVED that the Alaska State Legislature considers participation of the State of Alaska to be essential to the validity of the executive agreement, requests the United States Department of State to report any and all acts and directives regarding implementation of the executive agreement, and respectfully requests the Governor and the Attorney General of Alaska to investigate whether any actions in this matter are not consistent with law and to report on their findings to the legislature before the convening of the Second Regular Session of the Twenty-First Legislature; and be it

FURTHER RESOLVED that the Alaska State Legislature urges the Alaska delegation in the United States Congress to promote and pursue the views expressed in this resolution, especially the need for Alaska representation in negotiations over setting a maritime boundary between the state and eastern Russia; and be it

FURTHER RESOLVED that the Alaska State Legislature finds that setting a maritime boundary between Alaska and eastern Russia is a constitutional issue of states' right and respectfully requests the Governor and the Attorney General of Alaska to actively pursue the matters described in the previous resolves; and be it

FURTHER RESOLVED that the current negotiations by the United States Department of State with the Russian government over conceding more seabed and fishing rights to the Russians under the executive agreement on the maritime boundary should be opened to include representatives of the State of Alaska and to provide hearings for public input before signing.

COPIES of this resolution shall be sent to the Honorable Bill Clinton, President of the United States; the Honorable Madeleine K. Albright, U.S. Secretary of State; the Honorable Janet Reno, Attorney General of the United States; the Honorable Jesse Helms, Chair of the U.S. Senate Committee on Foreign Relations; the Honorable Benjamin A. Gilman, Chair of the U.S. House Committee on International Relations; the Honorable Joseph R. Biden, Jr., Ranking Minority Member of the U.S. Senate Committee on Foreign Relations; the Honorable Sam Gejdenson, Ranking Minority Member of the U.S. House Committee on International Relations; and to the Honorable Ted Stevens and the Honorable Frank Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

Passed State Senate 35-0, July 11, 1991
 Passed State Assembly 73-0, Sept. 3, 1991

Introduced by Senator Rogers

May 2, 1991

Senate Joint Resolution No. 20—Relative to the boundaries of Alaska.

LEGISLATIVE COUNSEL'S DIGEST

SJR 20, as introduced, Rogers. Alaska boundary negotiations.

This measure would state the Legislative support for the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union. The measure would memorialize the President to withdraw from the United States Senate the proposed boundary treaty between the United States and the Soviet Union and request the California United States Senators to decline to consider the proposed treaty until the State of Alaska has been allowed to participate in the treaty negotiations and has been guaranteed that its consent will be required for the agreement.

Fiscal committee: no.

WHEREAS, Every state has a compelling constitutional interest in determining its own boundaries with other states and foreign countries; and

WHEREAS, The State of Alaska's boundary with the Soviet Union has been the subject of negotiations between the United States government and the Soviet government since 1981; and

WHEREAS, The State of Alaska has never been permitted to participate in the negotiations carried on by the Department of State; and

WHEREAS, The Alaska Legislature has vigorously protested this exclusion in the form of Senate Joint

Resolution 12, which was passed unanimously by both houses and signed by Governor Steve Cowper in May 1988; and

WHEREAS, The Department of State ignored these protests, and its negotiations have resulted in a proposed treaty titled "Agreement with the Union of Soviet Socialist Republics on the Maritime Boundary," which is now before the United States Senate for ratification; and

WHEREAS, The California Legislature previously expressed its support for the State of Alaska for its right to participate in any negotiations affecting its boundaries in the form of Resolution Chapter 122 of the Statutes of 1987; and

WHEREAS, It is settled procedure with respect to negotiations of state boundaries that representatives of any affected state not only must be included in the negotiations, but also must consent to the terms of the proposed boundary treaty (such as was the case when Secretary of State Daniel Webster negotiated with Great Britain over the boundary between Canada and the State of Maine in 1842); now, therefore, be it

Resolved by the Senate and Assembly of the State of California, jointly; That the California Legislature renews its support for the State of Alaska in its rightful position of participation in any boundary negotiations involving its boundaries with the Soviet Union; and be it further

Resolved, That the California Legislature (1) respectfully memorializes the President of the United States to withdraw the proposed treaty from consideration by the United States Senate and (2) requests the California United States Senators to decline to consider the proposed treaty, until such time as the State of Alaska has been able to participate fully in negotiations and has been guaranteed that its consent will be required for any agreement affecting its boundaries; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President and the Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, to the Governor of Alaska, to the President of the Alaska Senate, and to the Speaker of the Alaska House of Representatives.

Resolution author:

Sen. Don Rogers
 State Capitol
 Sacramento, Calif.
 95814

Convention signed at Washington March 30, 1867
 Senate advice and consent to ratification April 9, 1867
 Ratified by Russia May 3, 1867
 Ratified by the President of the United States May 28, 1867
 Ratifications exchanged at Washington June 20, 1867
 Entered into force June 20, 1867
 Proclaimed by the President of the United States June 20, 1867

15 Stat. 539; Treaty Series 301

The United States of America and His Majesty the Emperor of all the Russias, being desirous of strengthening, if possible, the good understanding which exists between them, have, for that purpose, appointed as their Plenipotentiaries: the President of the United States, William H. Seward, Secretary of State; and His Majesty the Emperor of all the Russias, the Privy Counsellor Edward de Stoeckl, his Envoy Extraordinary and Minister Plenipotentiary to the United States.

And the said Plenipotentiaries, having exchanged their full powers, which were found to be in due form, have agreed upon and signed the following articles:

ARTICLE I

His Majesty the Emperor of all the Russias agrees to cede to the United States, by this convention, immediately upon the exchange of the ratifications thereof, all the territory and dominion now possessed by his said Majesty on the continent of America and in the adjacent islands, the same being contained within the geographical limits herein set forth, to wit: The eastern limit is the line of demarcation between the Russian and the British possessions in North America, as established by the convention between Russia and Great Britain, of February 28-16, 1825,¹ and described in Articles III and IV of said convention, in the following terms:

"Commencing from the southernmost point of the island called Prince of Wales Island, which point lies in the parallel of 54 degrees 40 minutes north latitude, and between the 131st and the 133d degree of west longitude,

¹ For text, see *British and Foreign State Papers*, vol. 12, p. 38.

1216

CESSION OF ALASKA—MARCH 30, 1867

1217

(meridian of Greenwich.) the said line shall ascend to the north along the channel called Portland channel, as far as the point of the continent where it strikes the 56th degree of north latitude; from this last mentioned point, the line of demarcation shall follow the summit of the mountains situated parallel to the coast as far as the point of intersection of the 141st degree of west longitude, (of the same meridian;) and finally, from the said point of intersection, the said meridian line of the 141st degree, in its prolongation as far as the Frozen ocean.

"IV. With reference to the line of demarcation laid down in the preceding article, it is understood—

"1st. That the island called Prince of Wales Island shall belong wholly to Russia," (now, by this cession, to the United States.)

"2d. That whenever the summit of the mountains which extend in a direction parallel to the coast from the 56th degree of north latitude to the point of intersection of the 141st degree of west longitude shall prove to be at the distance of more than ten marine leagues from the ocean, the limit between the British possessions and the line of coast which is to belong to Russia as above mentioned (that is to say, the limit to the possessions ceded by this convention) shall be formed by a line parallel to the winding of the coast, and which shall never exceed the distance of ten marine leagues therefrom."

The western limit within which the territories and dominion conveyed, are contained, passes through a point in Behring's straits on the parallel of sixty-five degrees thirty minutes north latitude, at its intersection by the meridian which passes midway between the islands of Krusenstern, or Ignalook, and the island of Raumanoff, or Noonarbook, and proceeds due north, without limitation, into the same Frozen ocean. The same western limit, beginning at the same initial point, proceeds thence in a course nearly south-west, through Behring's straits and Behring's sea, so as to pass midway between the northwest point of the island of St. Lawrence and the southeast point of Cape Choukotski, to the meridian of one hundred and seventy-two west longitude; thence, from the intersection of that meridian, in a south-westerly direction, so as to pass midway between the island of Attou and the Copper island of the Kormandorski couplet or group in the North Pacific ocean, to the meridian of one hundred and ninety-three degrees west longitude, so as to include in the territory conveyed the whole of the Aleutian islands east of that meridian.

ARTICLE II

In the cession of territory and dominion made by the preceding article, are included the right of property in all public lots and squares, vacant lands, and all public buildings, fortifications, barracks, and other edifices which are not private individual property. It is, however, understood and agreed, that the churches which have been built in the ceded territory by the Russian government, shall remain the property of such members of the Greek Oriental Church resident in the territory, as may choose to worship therein. Any government archives, papers, and documents relative to the territory and dominion aforesaid, which may be now existing there, will be left in the possession of the agent of the United States; but an authenticated copy of such of them as may be required, will be, at all times, given by the United States to the Russian government, or to such Russian officers or subjects, as they may apply for.

ARTICLE III

The inhabitants of the ceded territory, according to their choice, reserving their natural allegiance, may return to Russia within three years; but if they should prefer to remain in the ceded territory, they, with the exception of uncivilized native tribes, shall be admitted to the enjoyment of all the rights, advantages and immunities of citizens of the United States, and shall be maintained and protected in the free enjoyment of their liberty, property and religion. The uncivilized tribes will be subject to such laws and regulations as the United States may, from time to time, adopt in regard to aboriginal tribes of that country.

ARTICLE IV

His Majesty the Emperor of all the Russias shall appoint, with convenient despatch, an agent or agents for the purpose of formally delivering to a similar agent or agents appointed on behalf of the United States, the territory, dominion, property, dependencies and appurtenances which are ceded as above, and for doing any other act which may be necessary in regard thereto. But the cession with the right of immediate possession, is nevertheless to be deemed complete and absolute on the exchange of ratifications, without waiting for such formal delivery.

ARTICLE V

Immediately after the exchange of the ratifications of this convention, any fortifications or military posts which may be in the ceded territory, shall be delivered to the agent of the United States, and any Russian troops which may be in the territory shall be withdrawn as soon as may be reasonably and conveniently practicable.

ARTICLE VI

In consideration of the cession aforesaid, the United States agree to pay to the treasury in Washington, within ten months after the exchange of the ratifications of this convention, to the diplomatic representative or other agent of his Majesty the Emperor of all the Russias, duly authorized to receive the same, seven million two hundred thousand dollars in gold. The cession of territory and dominion herein made is hereby declared to be free and unincumbered by any reservations, privileges, franchises, grants, or possessions, by any associated companies, whether corporate or incorporate, Russian or any other, or by any parties, except merely private individual property holders; and the cession hereby made, conveys all the rights, franchises, and privileges now belonging to Russia in the said territory or dominion, and appurtenances thereto.

ARTICLE VII

When this Convention shall have been duly ratified by the President of the United States, by and with the advice and consent of the Senate, on the one part, and on the other by his Majesty the Emperor of all the Russias, the ratifications shall be exchanged at Washington within three months from the date hereof, or sooner, if possible.

In faith whereof, the respective plenipotentiaries have signed this convention, and thereto affixed the seals of their arms.

Done at Washington, the thirtieth day of March in the year of our Lord one thousand eight hundred and sixty-seven.

WILLIAM H. SEWARD (SEAL)
 EDUARD DE STOECKL (SEAL)

193° W = 167° E
 COPPER ISLAND, SEA LION ROCK, AND
 SEA OTTER ROCK ARE EAST OF
 THIS LONGITUDE MERIDIAN.

THE CRUISE OF THE CORWIN

Journal of the Arctic Expedition
of 1881 in search of De Long
and the Jeannette

BY

John Muir

EDITED BY

WILLIAM FREDERIC BAGE



BOSTON AND NEW YORK
HOUGHTON MIFFLIN COMPANY
1917

CHAPTER XV

THE LAND OF THE WHITE BEAR

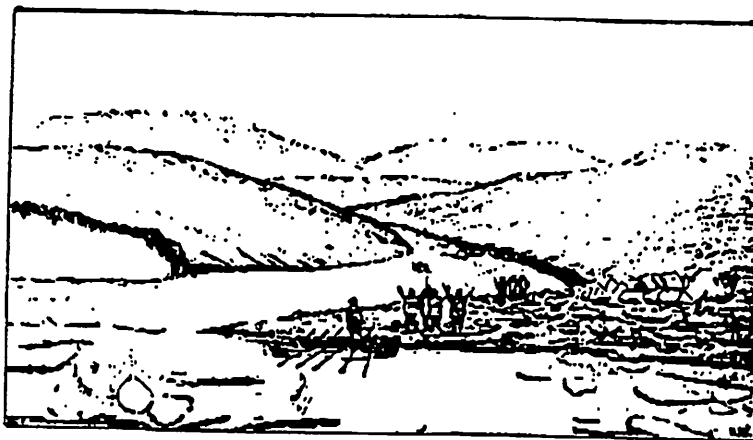
[Steamer Corwin,
Wrangell Land, August 12, 1881.]

A NOTABLE addition was made to the national domain when Captain Calvin L. Hopper landed on Wrangell Land,¹ and took formal possession of it in the name of the United States. We landed near the southeast cape, at the mouth of a river, in latitude $71^{\circ} 4'$, longitude $177^{\circ} 40' 30''$ W. The extent of the new territory thus acquired is not definitely known, nor is likely to be for many a century, or until some considerable change has taken place in the polar climate, rendering the new land more attractive and more accessible. For at present even its southernmost portion is almost constantly beset with ice of a kind that renders it all but inaccessible during both the winter and summer, while to the northward it extends far into the frozen ocean.

Going inland, along the left bank of the river, we found it much larger than it at first appeared to be. There was no snow left on the lowlands or any of the hills or mountains in sight, excepting the remnants of heavy drifts; nevertheless, it was still

¹ The landing was made August 12, 1881.

[169]



VINEY LANDING ON WRANGELL LAND





United States
of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 101st CONGRESS, SECOND SESSION

Vol. 136

WASHINGTON, THURSDAY, SEPTEMBER 20, 1990

No. 117

Senate

THE 100TH ANNIVERSARY OF THE U.S.S. "JEANNETTE" ARCTIC EXPEDITION

● Mr. WILSON. Mr. President, 100 years ago, a congressional medal was awarded to the crew of U.S.S. *Jeannette* "in commemoration of the perils encountered by the officers and men of the *Jeannette* Arctic Expedition and as an expression of the high esteem in which Congress holds their services in the said expedition."

On September 30, 1990, this centennial anniversary will be observed in Los Angeles, CA, by members of State Department Watch, a nonpartisan foreign affairs study group with approximately 15,000 members nationwide, 3,000 of whom reside in California.

It is appropriate at this time to illuminate once again the heroic Arctic expedition undertaken by the crew of U.S.S. *Jeannette* between 1879 and 1882. Commanded by Lt. George Washington DeLong, with Chief Engineer George W. Melville, the expedition resulted in the discoveries of Bennett, Henrietta, and Jeannette Islands, known together as the DeLong Islands.

From September 6, 1879, to June 12, 1881, U.S.S. *Jeannette* was caught in an ice pack of the Arctic Ocean where the ship was crushed and sank. The officers and crew abandoned ship and headed southward over hundreds of miles of icebergs and open ocean, eventually reaching land, but suffering the loss of approximately half of the crew, including Lieutenant DeLong.

The expedition of the U.S.S. *Jeannette* was a joint venture between Government and industry, cosponsored by the U.S. Navy and the New York Herald publisher, James Gordon Bennett. It is remembered and revered for its success in pushing forward the northward frontier of explored Arctic Ocean and providing valuable scientific knowledge to the world community.

The U.S. Congress will see fit to express its appreciation by awarding a medal to each crew member by an act of Congress approved on September 30, 1990.

I have the honor and privilege of bringing the historic accomplishments of U.S.S. *Jeannette* to the attention of my Senate colleagues today and would ask them to join with me in recognizing remarkable, unprecedented, and arduous expedition undertaken over 100 years ago by a crew whose courage and pioneering spirit opened new frontiers for the enlightenment and enrichment of their fellow man. We salute them again today in this Chamber of the U.S. Senate as they were saluted 100 years ago, with national pride and with gratitude and respect for the great legacy the crew of U.S.S. *Jeannette* left to our Nation. ●

**Alaska Independent Fishermen's
Marketing Association**

Post Office Box 60131
Seattle, Washington 98160
Telephone/Fax [206] 542-3930



September 9, 2002

Christopher Oliver
N. Pacific Fishery Mgmt. Council
605 W. 4th, Ste. 306
Anchorage, AK 99501

Dear Mr. Oliver,

Re: U.S./Russia I.C.C. Meeting, Moscow, September 20-21, 2002

Bristol Bay, Alaska fishermen continue to catch a high incidence of net-scarred sockeye. This incidence emphasizes the continued problem of Bristol Bay sockeye salmon interceptions outside of U.S. waters. We urge you to address our concerns and work to resolve this problem during the upcoming ICC meeting in Moscow.

The high incidence of net-scarred salmon caught in Bristol Bay demonstrates and supports that **lower than expected returns during the past several years are most likely the result of fisheries inside Russian waters and, perhaps illegally, on international high seas.** Reports of net-scarred sockeye first surfaced in 1996, when the total in-shore run in Bristol Bay was short by nearly seven million sockeye, and have continued yearly through the 2002 season.

I have attached photos of net-marked sockeye that were caught in Bristol Bay. We have extensive experience in identifying types of net-marks from years of experience fishing with a variety of types of gillnets in fisheries in Alaska and elsewhere.

Net-Mark Analysis

It is well documented that foreign fleets use a different type of gillnet web than is used by Alaskan salmon fishermen. Nets used by fleets fishing for salmon in Russian waters and illegal drifters on the high seas clearly produce a different net mark than are produced by fishermen's nets within Alaskan waters.

- **Foreign fleets** use mesh sizes of 4½ inches or smaller. The nylon webbing is of a monofilament construction that **easily cuts a salmon's flesh.** **Alaskan fishermen** use a multifilament webbing that is **highly unlikely to cut the flesh of a salmon.**
- Salmon caught and escaped from small mesh nets (perhaps 2-3") may show a net mark that is closer to the nose of the salmon.

Fisheries inside Russia have at least two opportunities to target salmon bound for North American streams:

- 1) A fishery on immature stocks takes place in the late summer and early fall.
- 2) A fishery on maturing stocks in the spring targets salmon returning to streams in North America.

The impact of trawling on salmon stocks in Russian waters is also concerning as to the impact on sockeye, along with other salmon species, including chum salmon.

Thank you for any help you can give in mitigating this serious problem. Please feel free to contact me.

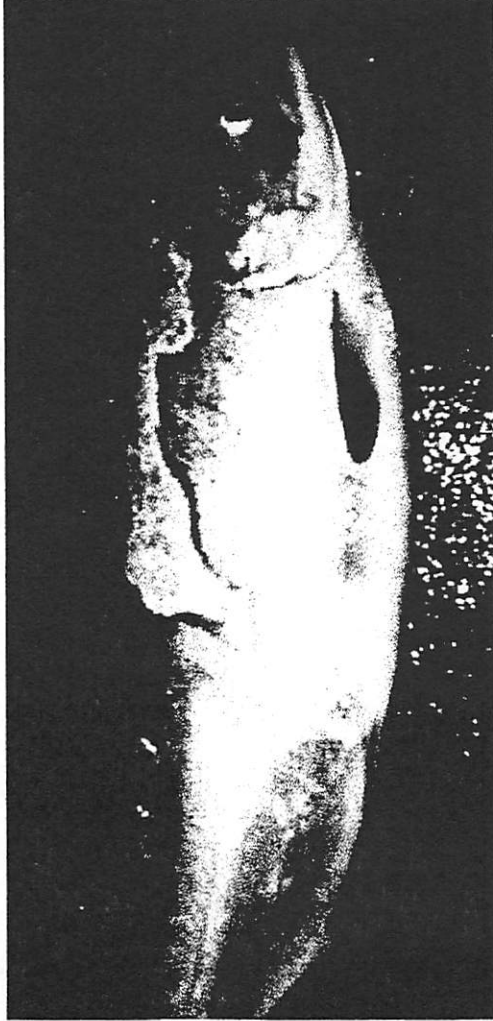
Sincerely,

David Harsila,
President

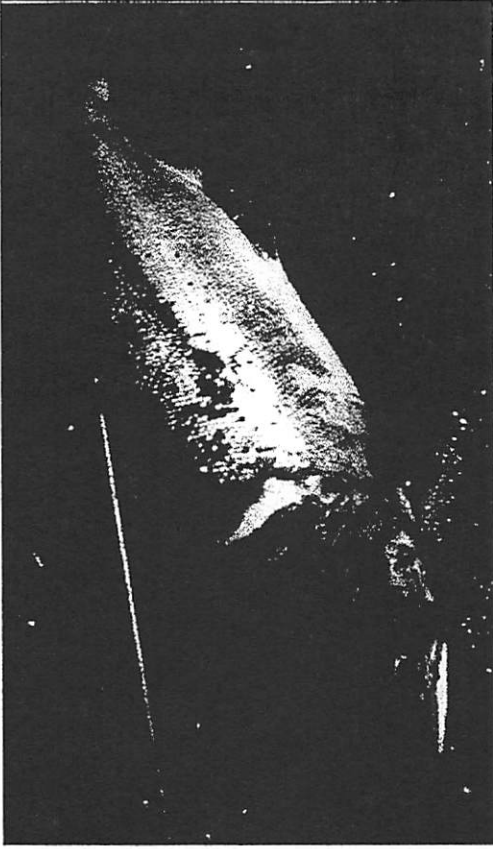
cc: Alaska Governor Tony Knowles
1 enclosure

Bristol Bay Sockeye Escape from Nets outside of U.S. Jurisdiction

These photos show examples of damage done to Bristol Bay sockeye by foreign nets. These Bristol Bay sockeye escaped foreign nets and returned to be caught by U.S. fishermen in Bristol Bay, Alaska. Bristol Bay fishermen have caught a high incidence of similar net-scarred fish since 1996 when seven million fish were missing from the Bristol Bay run. Since 1996, Bristol Bay runs have continued to experienced unexplained "missing" sockeye.



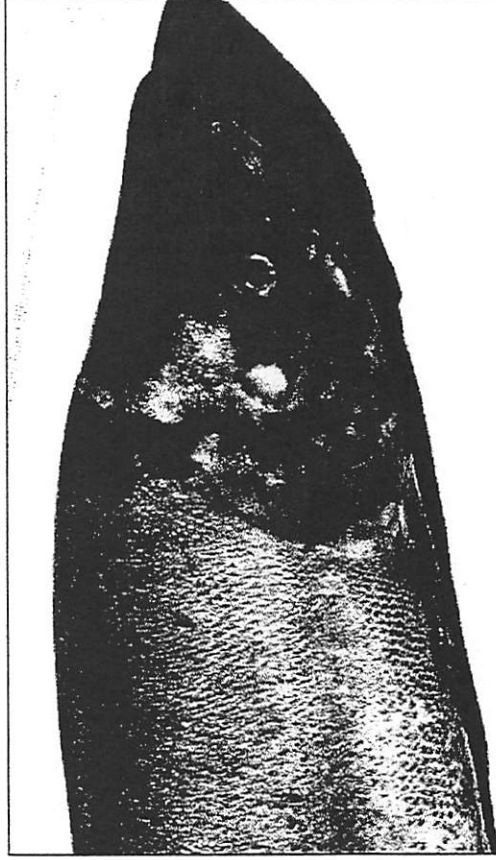
This sockeye shows severe descaling. The net mark is healing, placing occurrence of the injury in waters outside of state and U.S. jurisdictions.



Well-healed net-scarred sockeye that escaped a foreign net.



This sockeye shows a recent net wound that was probably caused in the spring before the salmon's return to Bristol Bay. The sockeye was cut with nylon (monofilament) web. Nylon (multifilament) web used by Alaskans does not have this ability to cut a salmon.



This sockeye appears to have an older, healed net scar, indicating it was caught at a younger age, possibly at age three. Note that the net scar is close to the nose, demonstrating that a smaller mesh size, possibly 3", was encountered.

**North Pacific Council/Board of Fisheries Joint Protocol Committee
Meeting Summary
July 29, 2002**

The Joint Protocol Committee convened at approximately 10:15 AM. Chair Ed Dersham, Russell Nelson, and Dr. John White represented the Alaska Board of Fisheries. Co-Chair Dennis Austin, Bob Penney, and Stosh Anderson (for Robin Samuelson) represented the North Pacific Fishery Management Council. Council member Kevin Duffy also attended. Twelve agency staff and twelve members of the public attended.

Crab rationalization. Prior to implementation of the June 2002 Council action to rationalize the Bering Sea and Aleutian Islands crab fisheries Congressional legislation must be enacted authorizing individual fishing quotas and processor quota shares and other program elements, the Council must take final action after completion of the Draft Supplemental Environmental Impact Statement (SEIS) on the crab FMP, and the Secretary of Commerce must approve the Council's final action. ADF&G staff reported that it would update the Board at the end of the 2002/2003 cycle with the status of federal actions. The staff also would discuss requested complementary State actions for the end of the 2002/2003 Board proposal cycle once the EIS has been released. Board members noted that the Board did not have authority to limit access to any parallel State fisheries that might compromise the Federal plan. The Board could decide not to create parallel State fisheries, if appropriate. At the request of the committee, ADF&G staff clarified that the Federal government adequately compensates ADF&G for its expenditures (originally funded by the State Legislature) for managing the joint State/Federal crab fisheries.

Essential Fish Habitat/Marine Protected Areas. The committee complemented Doug Woodby and ADF&G staff for their report, *Marine Protected Areas in Alaska: Recommendations for a Public Process* and their continued staff support to the Board in development of its MPA policy. The Council's EFH Committee is currently developing alternatives for the EFH SEIS, and is then planning to develop a protocol for submitting Habitat Areas of Particular Concern proposals to the Council. There will be adequate opportunity for coordination with the Board in the Council timeline to coordinate public processes between these two entities. The Joint Protocol Committee encouraged continued coordination between the Board and Council and their staffs on development of their respective MPA and EFH plans during Winter 2002. Doug Woodby will attend the upcoming Council's EFH Committee meeting. One of the EFH Committee Co-Chairs (Stosh Anderson or Linda Behnken) will attend the October 2002 Board Work Session. Cathy Coon will continue to represent the Council in monthly teleconference calls of the ADFG MPA Task Force, as well as interagency staff coordination meetings. Doug Woodby will distribute copies of the MPA Task Force report to all Council members and EFH Committee members. The committee passed the following motion.

The Joint Protocol Committee requests that coordination of the Board's Marine Protected Areas process and the Council's Essential Fish Habitat process be made a high priority by the respective chairs of these regulatory bodies in order to ensure a transparent and comprehensive public input process. As a first step, the chairs should instruct the Joint Protocol Committee, appropriate staff, and MPA/EFH Committee chairs to meet as soon as possible following the Board's October work session of the Alaska Board of Fisheries to focus on development of a comprehensive coordination plan.

The committee concluded that the Board will determine whether to take up Council proposal #422, "Management Plan for High Impact Emerging Species" at its next opportunity.

GOA groundfish rationalization. The committee discussed the need to begin a dialog on the potential for addressing parallel State water groundfish fisheries management as part of the Council's initiative to rationalize the Gulf of Alaska groundfish fisheries. Denby Lloyd, ADFG Western Region, will participate at the August and September Council committee meetings to develop the range of possible actions the Board might take after Council action. Council action is not expected until late 2003, at the earliest.

The Committee also took informational reports on management of **Steller sea lions, seabirds, vessel monitoring systems, and halibut.**

Next meeting. The meeting adjourned at approximately 3 PM. The tentative date of the next meeting is Tuesday, October 22 at the West Coast International Inn in Anchorage.

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Pro Hac Vice

14 Attorneys for Plaintiffs

15 UNITED STATES DISTRICT COURT FOR THE

16 NORTHERN DISTRICT OF CALIFORNIA

17 Case No:

18 COMPLAINT FOR DECLARATORY
19 JUDGMENT AND INJUNCTIVE
20 RELIEF

17 CENTER FOR BIOLOGICAL DIVERSITY,
18 TURTLE ISLAND RESTORATION,
19 NETWORK, and OCEANA,

19 Plaintiffs,

20 v.

21 NATIONAL MARINE FISHERIES SERVICE,

22 Defendant.

25 I. INTRODUCTION

26 1. This is an action for declaratory judgment and injunctive relief challenging the failure of Defendant

27 the National Marine Fisheries Service ("NMFS") to comply with Section 118 of the Marine Mammal Protection

28 Act ("MMPA"), 16 U.S.C. § 1387.

COMPLAINT FOR DECLARATORY

JUDGMENT AND INJUNCTIVE RELIEF

1 8. Pursuant to Civil Local Rule 3-2(c), the appropriate intradistrict assignment of this case is to either
2 the San Francisco Division or the Oakland Division.

3 III. PARTIES

4 9. Plaintiff Center for Biological Diversity ("the Center") is a non-profit corporation dedicated to the
5 preservation, protection, and restoration of biodiversity, native species, ecosystems, and public lands. The Center
6 has over 7,000 members and maintains offices in Berkeley, Idyllwild and San Diego, California, as well as Phoenix
7 and Tucson, Arizona, Silver City, New Mexico, Shaw Island, Washington, and Sitka, Alaska. The Center's
8 members and staff regularly use the coastal and pelagic waters of the West Coast, Alaska, Hawaii, the Gulf of
9 Mexico, and the Atlantic for observation, research, aesthetic enjoyment, and other recreational, scientific, and
10 educational activities. The Center's members and staff have researched, studied, observed and sought protection
11 for many marine mammal species. The Center's members and staff have researched, studied, visited and
12 observed, and photographed marine mammals on the shores or in the waters off of the West Coast, Alaska,
13 Hawaii, the Gulf of Mexico, and the Atlantic. The Center's members and staff intend to continue to study, visit and
14 observe, or attempt to study, visit and observe, these species in the future. The Center's members and staff derive
15 scientific, recreational, conservation, and aesthetic benefits from the existence of marine mammals in the wild. The
16 Center brings this action on behalf of itself and its adversely affected members and staff.

17 10. Plaintiff Turtle Island Restoration Network ("TIRN") is a non-profit corporation committed to the
18 study, protection, enhancement, conservation, and preservation of the world's marine and terrestrial ecosystems
19 and the wildlife that inhabit the oceans, including marine mammals. TIRN, with its principal place of business in
20 Forest Knolls, California, has approximately 4,000 members throughout the United States and the world, including
21 research biologists, eco-tour operations, professional photographers and videographers, all of whom rely on healthy
22 populations of marine mammals in order to conduct their businesses. TIRN's members and staff regularly use the
23 coastal and pelagic waters of the western United States, Alaska, Hawaii, the Gulf of Mexico and the Atlantic for
24 observation, research, aesthetic enjoyment, and other recreational, scientific, and educational activities. Many, if
25 not most, of TIRN's members and staff spend time on the shores or in the waters off of the West Coast, Alaska,
26 Hawaii, the Gulf of Mexico and the Atlantic in a number of wildlife-viewing activities such as swimming, snorkeling,
27 kayaking, scuba diving and whale watching. TIRN's members and staff intend to continue to study, visit and
28 observe, or attempt to study, visit and observe, these species in the future. TIRN brings this action on behalf of

1 itself and its adversely affected members and staff.

2 11. Plaintiff Oceana, Inc. ("Oceana") is a non-profit, international advocacy organization dedicated to
3 protecting the world's oceans. Oceana's mission includes the protection and conservation of the world's marine
4 ecosystems and wildlife, including marine mammals. Oceana's headquarters are located in Washington, D.C., and
5 it has offices or staff in Alaska, California, Connecticut, Florida, Maryland, and New Jersey. Oceana has over
6 13,000 members throughout the United States and the world, and over 97,000 e-activists who participate in ocean
7 advocacy on behalf of Oceana. Oceana's members and staff regularly use the waters off the West Coast, Alaska,
8 the Gulf of Mexico, and the Atlantic for enjoyment, recreation, scientific research, fishing, and other activities.
9 Many of Oceana's members and staff participate in marine mammal wildlife viewing activities, such as kayaking,
10 whale watching, and snorkeling. Oceana's members and staff intend to continue to study, visit, observe, or attempt
11 to observe marine mammal species in the future. Oceana's members and staff derive scientific, recreational,
12 conservation, spiritual, and aesthetic benefits from the existence of marine mammals in the wild, and these interests
13 will be injured if marine mammals continue to become killed or injured by commercial fishing gear around the
14 country. Oceana brings this action on behalf of itself and its adversely affected members and staff.

15 12. The Plaintiffs' scientific, recreational, conservation, and aesthetic interests in marine mammals are
16 harmed by the failure of NMFS to adequately protect these species from the often harmful effects of commercial
17 fisheries. Specifically, NMFS's failure to develop and implement Take Reduction Plans for marine mammals has
18 resulted in the continued mortality and serious injury to these marine mammals. NMFS's failure to finalize the report
19 on the progress of commercial fisheries towards reducing mortality and injury of marine mammals, has prevented
20 NMFS from taking action required by the MMPA to reduce this mortality and injury. The death and injury of
21 marine mammals impairs Plaintiffs' ability to exercise their scientific, recreational, conservation, and aesthetic
22 interests in these species. This harm to the marine mammals, and to Plaintiffs' interests in them, would not have
23 occurred if NMFS had complied with the requirements of the MMPA. Only if NMFS complies with the
24 procedural and substantive requirements of the MMPA—and consequently takes the necessary steps to reduce the
25 mortality and serious injury of marine mammals to insignificant levels—will the harm to Plaintiffs' interests be
26 redressed. Therefore, Plaintiffs' members and staff have been, are being, and unless the relief requested is granted,
27 will continue to be adversely affected and injured by NMFS's failure to comply with the MMPA.

28 13. Due to NMFS's failure to comply with Section 118 of the MMPA, Plaintiffs' members and staff

1 have also suffered procedural and informational harms connected to their substantive conservation, recreational,
2 scientific, and aesthetic interests. Plaintiffs' members and staff rely on NMFS to comply with the requirements of
3 the MMPA and to properly implement the statute so as to protect marine mammals from the adverse impacts of
4 commercial fishing operations. Plaintiffs' members and staff also rely on NMFS to comply with the requirements
5 of the MMPA to prepare the reports and plans called for by the statute. Plaintiffs' members and staff rely on these
6 reports and plans to facilitate their conservation missions and as important sources of information from which
7 informed decisions regarding the management of marine mammals and fisheries can be made. Without the proper
8 preparation of these reports and plans, NMFS, Plaintiffs, and the public at large are denied essential information
9 regarding the management of marine resources. These informational and procedural harms can only be remedied
10 if NMFS is made to comply with the requirements of the MMPA. Plaintiffs have no adequate remedy at law.

11 14. Defendant National Marine Fisheries Service is an agency of the National Oceanic and
12 Atmospheric Administration of the United States Department of Commerce and the government of the United
13 States. NMFS is sometimes referred to as "NOAA Fisheries." NMFS is charged with the management of fisheries
14 in United States' waters as well as with the implementation, on behalf of the Secretary of Commerce, of the
15 requirements of Section 118 of the MMPA. NMFS has the legal responsibility for ensuring that its actions comply
16 with the MMPA.

17 IV. LEGAL AND FACTUAL BACKGROUND

18 A. The MMPA

19 15. The MMPA was passed in 1972 in response to widespread concern that large numbers of marine
20 mammals, particularly dolphins, were being killed in interactions with commercial fisheries. Congress found that
21 "certain species and population stocks of marine mammals are, or may be, in danger of extinction or depletion as
22 a result of man's activities." 16 U.S. C. § 1631(1). The overriding intent of the MMPA is that "such species and
23 population stocks should not be permitted to diminish beyond the point at which they cease to be a significant
24 functioning element in the ecosystem of which they are a part, and, consistent with this major objective, they should
25 not be permitted to diminish below their optimum sustainable population." 16 U.S. C. § 1631(2).

26 16. The primary mechanism by which the MMPA protects marine mammals is through the
27 implementation of a "moratorium on the taking" of marine mammals. 16 U.S.C. § 1371(a). "Take" is defined
28 broadly by the MMPA to mean "to harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any

1 marine mammal.” 16 U.S.C. § 1362(13). Numerous exemptions to the moratorium are included in the MMPA,
2 including a regime to regulate and authorize limited incidental taking in conjunction with commercial fishing
3 operations.

4 17. On April 30, 1994, the MMPA was significantly amended by Congress. Three new
5 sections—117, 118, and 120—were added to the MMPA to address interactions between commercial fisheries
6 and marine mammals. 16 U.S.C. §§ 1386, 1387 and 1389. Section 117 requires the preparation of marine
7 mammal stock assessments to provide a scientific basis for the new incidental take regime. 16 U.S.C. § 1386.
8 Section 118 sets forth the regime governing the take of marine mammals incidental to most commercial fishing
9 operations. 16 U.S.C. § 1387. Section 120 addresses interactions between pinnipeds and fishery resources. 16
10 U.S.C. § 1389.

11 18. Section 118(a)(1) states that “it shall be the immediate goal that the incidental mortality or serious
12 injury of marine mammals occurring in the course of commercial fishing operations be reduced to insignificant levels
13 approaching a zero mortality and serious injury rate within 7 years after the date of enactment of this section.” 16
14 U.S.C. § 1387(a)(1).

15 19. Section 118(b) further describes this “zero mortality rate goal” (“ZMRG”). 16 U.S.C. § 1387(b).
16 Specifically, the section commands that “[c]ommercial fisheries shall reduce incidental mortality and serious injury
17 of marine mammals to insignificant levels approaching a zero mortality and serious injury rate within 7 years after
18 the date of enactment of this section.” 16 U.S.C. § 1387(b)(1) (emphasis added).

19 20. While the MMPA does not define ZMRG, and NMFS has not promulgated any regulations defining
20 it, NMFS has repeatedly used the threshold of ten percent of the potential biological removal level as a measure
21 of whether the ZMRG has been achieved.

22 21. To reach the substantive ZMRG, the MMPA places several affirmative requirements on NMFS.
23 Primary among these is Section 118(b)(3)’s requirement that by April 30, 1997, NMFS review the progress of
24 commercial fisheries towards reaching the ZMRG, and by April 30, 1998, report on the results of the review to
25 Congress:

26 Three years after [April 30, 1994], the Secretary shall review the progress of all commercial fisheries, by
27 fishery, toward reducing incidental mortality and serious injury to insignificant levels approaching a zero rate.
28 The Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and
the Committee on Merchant Marine and Fisheries of the House of Representatives a report setting forth
the results of such review within 1 year after commencement of the review. The Secretary shall note any

1 commercial fishery for which additional information is required to accurately assess the level of incidental
2 mortality and serious injury of marine mammals in the fishery.
3 16 U.S.C. § 1387(b)(3). The report has never been finalized nor sent to Congress.

4 22. Subsequent to completing the review required by Section 118(b)(3), NMFS was to take action
5 based upon the review through the formation and implementation of Take Reduction Plans that would lead to the
6 achievement of ZMRG:

7 If the Secretary determines after review under paragraph (3) that the rate of incidental mortality and serious
8 injury of marine mammals in a commercial fishery is not consistent with paragraph (1), then the Secretary
9 shall take appropriate action under subsection (f) of this section.

10 16 U.S.C. § 1387(b)(4).

11 23. Section 118(f) outlines the requirements for the formation and implementation of Take Reduction
12 Plans. 16 U.S.C. § 1387(f). Specifically, Section 118(f) states that NMFS “shall develop and implement a take
13 reduction plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts
14 with a commercial fishery listed under subsection (c)(1)(A)(i) or (ii).” 16 U.S.C. § 1387(f)(1) (emphasis added).

15 24. A “strategic stock” is a marine mammal stock

16 (A) for which the level of direct human-caused mortality exceeds the potential biological removal level;
17 (B) which, based on the best available scientific information, is declining and is likely to be listed as a
18 threatened species under the Endangered Species Act of 1973 within the foreseeable future; or
19 (C) which is listed as a threatened species or endangered species under the Endangered Species Act of
20 1973 (16 U.S.C. 1531 et seq.), or is designated as depleted under this chapter.

21 16 U.S.C. § 1362(19).

22 25. The term “potential biological removal level” (“PBR”) in turn is defined as “the maximum number
23 of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that
24 stock to reach or maintain its optimum sustainable population.” 16 U.S.C. § 1362(20).

25 26. To facilitate implementation of Take Reduction Plans, Section 118 further requires NMFS to
26 classify fisheries under three categories of interactions with marine mammals, those that have:

- 27 (i) frequent incidental mortality and serious injury of marine mammals;
28 (ii) occasional incidental mortality and serious injury of marine mammals; or
29 (iii) a remote likelihood of or no known incidental mortality or serious injury of marine mammals

30 16 U.S.C. § 1387(c)(1)(A). NMFS must publish this classification, called the List of Fisheries in the Federal
31 Register. 16 U.S.C. § 1387(c)(1)(B).

32 27. For fisheries that are listed as Category i or ii in the List of Fisheries, and that interact with strategic
33 stocks, NMFS is required to implement Take Reduction Plans under Section 118(f). 16 U.S.C. § 1387(f)(1).

1 28. The immediate goal of a Take Reduction Plan is to reduce the incidental mortality or serious injury
2 of marine mammals to levels less than the PBR level, within six months of its implementation. The long-term goal
3 of the Plan is to reduce such mortality or injury to ZMRG, within five years of its implementation. 16 U.S.C. §
4 1387(f)(2).

5 29. The required contents of Take Reduction Plans are described in Section 118(f)(4). 16 U.S.C. §
6 1387(f)(4). These include, among other things, a review of the information found in the final stock assessments,
7 regulatory measures to reduce mortality, and dates for achieving the plan's objectives.

8 30. To develop Take Reduction Plans, NMFS is charged with establishing Take Reduction Teams
9 composed of scientists, fishermen and other interested and qualified parties. 16 U.S.C. § 1387(f)(6). The Take
10 Reduction Teams are then charged with developing draft Take Reduction Plans which NMFS is to amend as
11 necessary to comply with the MMPA, approve, and implement. 16 U.S.C. §§ 1387(f)(7) and (8).

12 31. Section 118(f) also contains specific timelines by which the Secretary is to establish the Take
13 Reduction Teams and implement the Take Reduction Plans.

14 At the earliest possible time (not later than 30 days) after the Secretary issues a final stock assessment
15 under section 1386(b) of this title for a strategic stock, the Secretary shall...

- 16 (i) establish a take reduction team for such stock and appoint the members of such team in
17 accordance with subparagraph (C); and
18 (ii) publish in the Federal Register a notice of the team's establishment, the names of the team's
19 appointed members, the full geographic range of such stock, and a list of all commercial fisheries
20 that cause incidental mortality and serious injury of marine mammals from such stock.

21 16 U.S.C. § 1387(f)(6)(A) (emphasis added).

22 32. The MMPA required that the initial stock assessments referenced in Section 118(f) be completed
23 by January 1995. 16 U.S.C. §§ 1386(a) and (b). The stock assessments were released in August 1995. 60 Fed.
24 Reg. 44308.

25 33. The MMPA also requires that NMFS review and, if necessary, revise the stock assessments "(A)
26 at least annually for stocks which are specified as strategic stocks; (B) at least annually for stocks for which
27 significant new information is available; and (C) at least once every 3 years for all other stocks." 16 U.S.C. §
28 1386(c).

34. The most recent final stock assessments were released on March 8, 2002. 67 Fed. Reg. 10671.

35. Depending on the status of the stocks at issue, the MMPA sets two different timelines for the
development of a Take Reduction Plan following the establishment of the Take Reduction Teams. In cases where

1 “human-caused mortality and serious injury from a strategic stock is estimated to be equal to or greater than the
2 potential biological removal level,” then “[n]ot later than 6 months after the date of establishment of a take reduction
3 team for the stock, the team shall submit a draft take reduction plan for such stock to the Secretary.” 16 U.S.C.
4 §§ 1387(f)(7)(A)(1). Following the receipt of the draft plan, NMFS is to, within 60 days revise the draft, publish
5 it for a 90 days of public comment, and not later than an additional 60 days after the close of the comment period,
6 publish and implement a final Take Reduction Plan. 16 U.S.C. §§ 1387(f)(7)(B) and (C). In those cases where
7 “human-caused mortality and serious injury from a strategic stock is estimated to be less than the potential biological
8 removal level,” NMFS has an additional 5 months to finalize and implement Take Reduction Plans. 16 U.S.C. §
9 1387(f)(8).

10 36. In sum, the MMPA provides NFMS a maximum of 14 months from the publication of the final
11 stock assessment reports to complete Take Reduction Plans for strategic stocks where human-caused mortality
12 is greater than PBR, and 19 months for all others.

13 **B. NMFS’s Failure to Implement the MMPA**

14 37. The April 30, 2001, deadline for all fisheries to meet ZMRG has passed with numerous fisheries
15 still killing and injuring marine mammals in numbers far above that contemplated and allowed by the 1994
16 Amendments to the MMPA.

17 38. For twenty-four marine mammal stocks covered in the 2001 Pacific final stock assessment report,
18 NMFS could not conclude that fisheries related mortality and serious injury were at the statutory required ZMRG.

19 39. For two of these stocks, the harbor porpoise (Central California stock) and the false killer whale
20 (Hawaiian stock), fisheries related mortality and serious injury still exceeds PBR.

21 40. For nine of these stocks, fisheries related mortality and serious injury, while below PBR, is known
22 to exceed the ZMRG. These stocks are the California sea lion (U.S. stock), harbor seal (California stock), harbor
23 porpoise (Washington Inland Waters stock), northern right whale dolphin (California/Oregon/Washington stock),
24 killer whale (Eastern North Pacific transient stock), short finned pilot whale (California/Oregon/Washington stock),
25 sperm whale (California/Oregon/Washington stock), humpback whale (Eastern North Pacific stock), and fin whale
26 (California/Oregon/Washington stock).

27 41. For the remaining thirteen of these stocks, all in Hawaii, NMFS possesses insufficient information
28 to make a determination as to whether the ZMRG has been obtained.

1 42. Six of the stocks in the Pacific for which NMFS cannot conclude the ZMRG has been reached are
2 classified as "strategic." These are the harbor porpoise (Central California stock), false killer whale (Hawaiian
3 stock), sperm whale (California/Oregon/Washington stock), humpback whale (Eastern North Pacific stock), fin
4 whale (California/Oregon/Washington stock), and the Hawaiian monk seal.

5 43. For seventeen marine mammal stocks covered in the 2001 Alaska final stock assessment report,
6 NMFS could not conclude that fisheries related mortality and serious injury were at the statutory required ZMRG.

7 44. For six of these stocks, fisheries related mortality and serious injury is known to exceed the ZMRG.
8 These stocks are the Steller sea lion (Western U.S. stock), Steller sea lion (Eastern U.S. stock), killer whale
9 (Eastern North Pacific northern resident stock), harbor porpoise (Gulf of Alaska stock), humpback whale (Western
10 North Pacific stock), and humpback whale (Central North Pacific stock).

11 45. For eleven of these stocks, NMFS possesses insufficient information to make a determination as
12 to whether the ZMRG has been obtained.

13 46. Six of the stocks in Alaska for which NMFS cannot conclude the ZMRG has been reached are
14 classified as "strategic." These are the Steller sea lion (Western U.S. stock), Steller sea lion (Eastern U.S. stock),
15 humpback whale (Western North Pacific stock), humpback whale (Central North Pacific stock), beluga whale
16 (Cook Inlet stock), and fin whale (Northeast Pacific stock).

17 47. For sixteen marine mammal stocks covered in the 2001 Atlantic and Gulf of Mexico final stock
18 assessment report, NMFS could not conclude that fisheries related mortality and serious injury were at the statutory
19 required ZMRG.

20 48. For six of these stocks, the North Atlantic right whale (Western stock), humpback whale (Gulf of
21 Maine stock), long-finned pilot whale (Western North Atlantic stock), short-finned pilot whale (Western North
22 Atlantic stock), common dolphin (Western North Atlantic stock), and bottlenose dolphin (Western North Atlantic
23 coastal stock) fisheries related mortality and serious injury still exceeds PBR.

24 49. For ten of these stocks, fisheries related mortality and serious injury, while below PBR, is known
25 to exceed the ZMRG. These stocks are the fin whale (Western North Atlantic stock), Risso's dolphin (Western
26 North Atlantic stock), white-sided dolphin (Western North Atlantic stock), harbor porpoise (Gulf of Maine/Bay
27 of Fundy Stock), harbor seal (Western North Atlantic stock), bottlenose dolphin (Western Gulf of Mexico coastal
28 stock), bottlenose dolphin (Northern Gulf of Mexico coastal stock), bottlenose dolphin (Gulf of Mexico Bay, Sound

1 and Estuarine stocks), Risso's dolphin (Northern Gulf of Mexico stock), and short-finned pilot whale (Northern
2 Gulf of Mexico stock).

3 50. Ten of the stocks in Atlantic and Gulf of Mexico for which NMFS cannot conclude the ZMRG has
4 been reached are classified as "strategic." These are the North Atlantic right whale (Western stock), humpback
5 whale (Gulf of Maine stock), fin whale (Western North Atlantic stock), long-finned pilot whale (Western North
6 Atlantic stock), short-finned pilot whale (Western North Atlantic stock), common dolphin (Western North Atlantic
7 stock), bottlenose dolphin (Western North Atlantic coastal stock), bottlenose dolphin (Gulf of Mexico Bay, Sound
8 and Estuarine stocks), and short-finned pilot whale (Northern Gulf of Mexico stock).

9 51. In sum, for fifty-seven stocks of marine mammals NMFS has failed to meet the mandate of the
10 MMPA to reduce fisheries related mortality and serious injury to "insignificant levels approaching zero." For eight
11 of these stocks, fisheries related mortality and serious injury still exceeds PBR. For an additional twenty-five stocks
12 fisheries related mortality and serious injury is known to exceed ZMRG. For the remainder of these stocks NMFS
13 has failed to gather the necessary information to determine if ZMRG has in fact been met.

14 52. Numerous fisheries are known to be taking marine mammals at levels above that allowed by the
15 MMPA. In the 2002 List of Fisheries, six fisheries are still considered as Category i, meaning that they have
16 "frequent incidental mortality and serious injury of marine mammals." 67 Fed. Reg. 2410 (January 17, 2002). An
17 additional thirty-three fisheries are still classified as Category ii fisheries, meaning that they have "occasional
18 incidental mortality and serious injury of marine mammals." *Id.* Each of these fisheries was required to have
19 reached ZMRG by April 30, 2001.

20 53. The failure of these fisheries to meet the substantive ZMRG for all marine mammal stocks can be
21 directly traced to NMFS's failure to implement the non-discretionary mandates of the MMPA.

22 54. As mandated by Section 118(b)(3), NMFS should have completed the fisheries review and report
23 by April 30, 1998. Had the report been completed and submitted, NMFS would have assessed the progress of
24 all fisheries in the United States toward meeting the ZMRG.

25 55. Because NMFS has not completed the review and report required by Section 118(b)(3), NMFS
26 has failed to comply with the mandate of Section 118(b)(4) to, based upon the report, "take appropriate action
27 under" Section 118(f) to implement Take Reduction Plans in an effort to attain the ZMRG.

28 56. Despite the clear command of Section 118(f)(1) that NMFS "shall" develop Take Reduction

1 Teams for "each" strategic stock, NMFS has only developed Take Reduction Plans for a handful of stocks.

2 57. Despite the explicit mandate of Section 118(f)(6)(A) that NMFS "shall" convene Take Reduction
3 Teams within thirty days of the issuance of final stock assessments for strategic stocks, NMFS still has not
4 convened Take Reduction Teams for many strategic stocks.

5 58. If NMFS had complied with the MMPA the agency would have convened Take Reduction Teams
6 for all strategic stocks interacting with Category i and ii fisheries within thirty days of the issuance of the initial final
7 stock assessments in August 1995. NMFS did not at that time convene the required Take Reduction Teams.

8 59. On March 8, 2002 NMFS released the 2001 final stock assessment reports, the most recent stock
9 assessment reports completed. The MMPA required NMFS to convene within thirty days Take Reduction Teams
10 for all strategic stocks described in the final 2001 stock assessment reports that interact with Category i and ii
11 fisheries. More than thirty days have passed since the release of the 2001 final stock assessment reports and
12 NMFS has not convened any additional Take Reduction Teams.

13 60. To date, NMFS has convened only six Take Reduction Teams and completed only three Take
14 Reduction Plans, one of which is a combined plan for two of the Take Reduction Teams.

15 61. Since NMFS has failed to convene Take Reduction Teams for many strategic stocks, NMFS has
16 also failed to meet the deadlines contemplated by Sections 118(f)(7) and (8) for the issuance and implementation
17 of Take Reduction Plans.

18 62. The MMPA requires NMFS to develop Take Reduction Teams and Take Reduction Plans for
19 marine mammal stocks. For some stocks, the existing Take Reduction Teams and Plans are designed around
20 specific marine mammal stocks. In other cases the Take Reduction Teams and Plans are designed around specific
21 fisheries rather than stocks. In such cases, the Take Reduction Teams and Plans do not always address all the
22 Category i or ii fisheries that cause mortality or serious injury to a given strategic stock of marine mammal. In those
23 cases, NMFS is still required to develop Take Reduction Teams and Plans so as to address all Category i or ii
24 fisheries that interact with any strategic stock.

25 63. At least ten strategic stocks interact with Category i or ii fisheries, and yet are not protected under
26 Take Reduction Plans for those fisheries.

27 64. The harbor porpoise (Central California stock) is a strategic stock. It is known to interact with the
28 California Angel Shark/halibut and Other Species Large Mesh Set Gillnet Fishery, a Category i fishery. Injury and

1 serious injury to the harbor porpoise from this fishery is known to exceed PBR. No Take Reduction Plan exists
2 for this stock and no Take Reduction Team has been convened for this stock.

3 65. The common dolphin (Western North Atlantic stock) is a strategic stock. This stock is known to
4 interact with three Category i fisheries that are not already subject to a Take Reduction Team or Take Reduction
5 Plan. These are the Northeast Sink Gillnet, Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline
6 and the Atlantic Squid, Mackerel, Butterfish Trawl Fisheries. Additionally, this stock interacts with at least one
7 Category ii fishery that is not already subject to a Take Reduction Team or Take Reduction Plan, the U.S. Mid-
8 Atlantic Coastal Gillnet Fishery. Fisheries related mortality and serious injury to this stock exceeds PBR. No Take
9 Reduction Plan exists for this stock. While a Take Reduction Team was convened for the longline fishery, no Take
10 Reduction Plan was ever completed and the Take Reduction Team has since been disbanded. No Take Reduction
11 Team has been convened for this stock that covers any of these other fisheries.

12 66. The long-finned pilot whale (Western North Atlantic stock) and short-finned pilot whales (Western
13 North Atlantic stock) are strategic stocks. They are known to interact with two Category i fisheries that are not
14 already subject to a Take Reduction Team or Take Reduction Plan. These are the Atlantic Ocean, Caribbean, Gulf
15 of Mexico Large Pelagics Longline and the Atlantic Squid, Mackerel, Butterfish Trawl Fisheries. Additionally,
16 these stocks interact with at least one Category ii fishery that is not already subject to a Take Reduction Team
17 or Take Reduction Plan, the U.S. Mid-atlantic Coastal Gillnet Fishery. Fisheries related mortality and serious injury
18 to these stocks exceeds PBR. No Take Reduction Plan exists for these stocks. While a Take Reduction Team
19 was convened for the longline fishery, no Take Reduction Plan was ever completed and the Take Reduction Team
20 has since been disbanded. No Take Reduction Team has been convened for these stocks that covers any of these
21 other fisheries.

22 67. The humpback whale (Gulf of Maine stock) is a strategic stock. This stock is known to interact
23 with at least one Category i fishery that is not already subject to a Take Reduction Team or Take Reduction Plan,
24 the Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery. Additionally, this stock interacts
25 with at least one Category ii fishery that is not already subject to a Take Reduction Team or Take Reduction Plan,
26 the Northeast Anchored Float Gillnet Fishery. Fisheries related mortality and serious injury to this stock exceeds
27 PBR.

28 68. In addition to these five strategic stocks for which fisheries related mortality and serious injury

1 exceeds PBR, for at least four other strategic stocks, fisheries related mortality and serious injury, while below PBR
2 still exceeds ZMRG. These stocks interact with Category i or ii fisheries that are not subject to Take Reduction
3 Teams or Take Reduction Plans. These stocks include the harbor porpoise (Gulf of Maine/Bay of Fundy stock),
4 the fin whale (Western North Atlantic stock), the Steller sea lion (Western U.S. stock), the beluga whale (Cook
5 Inlet stock), and the humpback whale (Central North Pacific stock).

6 69. For each of these ten stocks, NMFS is in violation of the MMPA for failing to convene Take
7 Reduction Teams within thirty days of the issuance of the final stock assessment reports. For those stocks
8 interacting with the Atlantic Ocean, Caribbean, Gulf of Mexico Large Pelagics Longline Fishery, NMFS is also in
9 violation of the MMPA for failing to develop and finalize a Take Reduction Plan in the required timeframe.

10 70. Because NMFS has failed to convene Take Reduction Teams for these stocks, NMFS has not
11 complied with the mandate of the MMPA to develop Take Reduction Plans for each strategic stock interacting with
12 a Category i or ii fishery.

13 71. NMFS' failure to meet these requirements of the MMPA has resulted in the needless death and
14 injury of hundreds of marine mammals.

15 72. NMFS' failure to implement the non-discretionary requirements of the MMPA has resulted in the
16 near complete failure of United States' fisheries to meet the unambiguous MMPA mandate to "reduce incidental
17 mortality and serious injury of marine mammals to insignificant levels approaching a zero mortality and serious injury
18 rate" by April 30, 2001.

19 V. CLAIMS FOR RELIEF

20 First Claim for Relief

21 (Failure to Comply with Section 118(b)(3) of the MMPA)

22 73. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs
23 1 through 72 of this Complaint.

24 74. NMFS is violating Section 118(b)(3) of the MMPA by failing to complete and submit to Congress
25 the report on the progress of commercial fisheries towards reaching the zero mortality rate goal. 16 U.S.C. §
26 1387(b)(3).

27 75. NMFS' failure to complete and submit to Congress the report on the progress of commercial
28 fisheries towards reaching the ZMRG is arbitrary, capricious, and not in accordance with procedures required by

1 law pursuant to the APA and is subject to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

2 76. NMFS' failure to complete and submit to Congress the report on the progress of commercial
3 fisheries towards reaching the ZMRG also constitutes agency action that is unreasonably delayed and/or unlawfully
4 withheld as provided by Section 706(1) of the APA and is subject to judicial review thereunder. 5 U.S.C. §§ 701
5 through 706.

6 **Second Claim for Relief**

7 **[Failure to Comply with Section 118(f) of the MMPA]**

8 77. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs
9 1 through 76 of this Complaint.

10 78. NMFS is violating Section 118(f) of the MMPA by failing to convene a Take Reduction Team
11 within thirty days of the release of the final stock assessment reports for each strategic stock which interacts with
12 a commercial fishery listed under Section 118 (c)(1)(A)(i) or (ii) of the MMPA. 16 U.S.C. § 1387(f)(6)(A).

13 79. NMFS' failure to convene Take Reduction Teams within thirty days of the release of the final stock
14 assessment reports for each strategic stock which interacts with a commercial fishery listed under Section 118
15 (c)(1)(A)(i) or (ii) of the MMPA is arbitrary, capricious, and not in accordance pursuant to the APA, and is subject
16 to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

17 80. NMFS' failure to convene Take Reduction Teams within thirty days of the release of the final stock
18 assessment reports for each strategic stock which interacts with a commercial fishery listed under Section 118
19 (c)(1)(A)(i) or (ii) of the MMPA constitutes agency action that is unreasonably delayed and/or unlawfully withheld
20 as provided by § 706(1) of the APA, and is subject to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

21 **Third Claim for Relief**

22 **[Failure to Comply with Section 118(f) of the MMPA]**

23 81. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs
24 1 through 80 of this Complaint.

25 82. NMFS is violating Section 118(f) of the MMPA by failing to develop and implement a Take
26 Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic stock which interacts
27 with a commercial fishery listed under Section 118 (c)(1)(A)(i) or (ii) of the MMPA. 16 U.S.C. § 1387(f).

28 83. NMFS' failure to develop and implement a Take Reduction Plan designed to assist in the recovery

1 or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under Section 118
2 (c)(1)(A)(i) or (ii) of the MMPA is arbitrary, capricious, and not in accordance pursuant to the APA, and is subject
3 to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

4 84. NMFS' failure to develop and implement a Take Reduction Plan designed to assist in the recovery
5 or prevent the depletion of each strategic stock which interacts with a commercial fishery listed under Section 118
6 (c)(1)(A)(i) or (ii) of the MMPA constitutes agency action that is unreasonably delayed and/or unlawfully withheld
7 as provided by § 706(1) of the APA, and is subject to judicial review thereunder. 5 U.S.C. §§ 701 through 706.

8 **VI. PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully requests that the Court:

10 (1) Adjudge and declare that NMFS is violating Section 118(b)(3) of the MMPA by failing to
11 complete and submit to Congress the report on the progress of commercial fisheries towards reaching the zero
12 mortality rate goal;

13 (2) Adjudge and declare that NMFS is violating Section 118(f) of the MMPA by failing to convene
14 Take Reduction Teams within thirty days of the release of the final stock assessment reports for each strategic stock
15 which interacts with a commercial fishery listed under Section 118 (c)(1)(A)(i) or (ii) of the MMPA;

16 (3) Adjudge and declare that NMFS is violating Section 118(f) of the MMPA by failing to develop
17 and implement a Take Reduction Plan designed to assist in the recovery or prevent the depletion of each strategic
18 stock which interacts with a commercial fishery listed under Section 118 (c)(1)(A)(i) or (ii) of the MMPA;

19 (4) Adjudge and declare that NMFS' violations of Sections 118(b)(3) and (f) are arbitrary, capricious,
20 and not in accordance with law and constitute unreasonably delayed and/or unlawfully withheld agency action
21 pursuant to Section 706(1) of the APA.

22 (5) Order NMFS to complete and submit to Congress, by a date certain, the report on the progress
23 of commercial fisheries towards reaching the zero mortality rate goal as required by Section 118(b)(3) of the
24 MMPA;

25 (6) Order NMFS to, by dates certain, convene Take Reduction Teams and develop and implement
26 Take Reduction Plans designed to assist in the recovery or prevent the depletion for each strategic stock which
27 interacts with a commercial fishery listed under Section 118 (c)(1)(A)(i) or (ii) of the MMPA;

28 (7) Award Plaintiffs their fees, costs, expenses, and disbursements, including reasonable attorneys' fees,

1 associated with this litigation; and

2 (8) Grant such additional relief as the Court deems just and proper.

3 **VII. CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

4 Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties,
5 there is no such interest to report.

6 Dated: August 13, 2002

Respectfully submitted,

7
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ALASKA OCEANS NETWORK



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TO: David Denton, Chairman
 North Pacific Fishery Management Council
 603 West 4th Avenue, Suite 306
 Anchorage, AK 99501
 James W. Baltiger, Administrator, Alaska Region
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, AK 99802-1668
 RE: North Pacific Groundfish Programmatic SEIS
 Dear Chairman Denton:

Compliance with the National Environmental Policy Act (NEPA) is part of the marine stewardship responsibility held by the National Marine Fisheries Service (NMFS) and its regional councils. It is intended to guide decision-makers in considering alternative ways of carrying out federal actions that thereby can reduce or avoid impacts to the affected natural environment. The North Pacific Groundfish Programmatic SEIS is particularly important in this respect because it marks the first attempt by NMFS not only in this region, but also anywhere in this country, to assess the cumulative environmental impacts of the policies and programs of Fishery Management Plans (FMPs) in their entirety. In your role as public officials charged with overseeing this complicated maze of regulations, the Council should encourage and welcome the NEPA process as a way to step back from the year-to-year planning cycles and day-to-day management of the fisheries, and should welcome the broader opportunity to engage the public in fisheries and marine management issues.

The Alaska Oceans Network believes that the NEPA process will not only improve decision-making, but will also improve our ability to achieve fishery sustainability, community sustainability and ecosystem sustainability goals we all share. Thus, to date we have advocated for an ecosystem-based approach to management of the fisheries, advocated for an ecosystem-based definition of sustainability, and have sought a separation of the SEIS "bookends" into separate alternative FMPs. We again advocate for the separation of Alternative 4 into two separate and distinct alternatives: a highly precautionary FMP as Alternative 4; and a "no fishing" FMP as Alternative 5. For clear comparison of management alternatives as directed by the NEPA regulations, and for clearer public perception of the intent of the Council and of NMFS, the Alaska Oceans Network again requests a separation of Alternative 4.

A WASHINGTON ASSOCIATION OF FISHING COMMUNITIES AND ALASKA NORTH PACIFIC OCEANS NETWORK
 WITH THE FISHING COMMUNITIES AND ALASKA NORTH PACIFIC OCEANS NETWORK

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for 586 7263
Joe Aaa
MC

September 24, 2002

TO: David Benton, Chairman
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CC: James W. Balsiger, Administrator, Alaska Region
 National Marine Fisheries Service
 P.O. Box 21668
 Juneau, AK 99802-1668

RE: North Pacific Groundfish Programmatic SEIS

Dear Chairman Benton:

Compliance with the National Environmental Policy Act (NEPA) is part of the marine stewardship responsibility held by the National Marine Fisheries Service (NMFS) and its regional councils. It is intended to guide decision-makers in considering alternative ways of carrying out federal actions that thereby can reduce or avoid impacts to the affected natural environment. The North Pacific Groundfish Programmatic SEIS is particularly important in this respect because it marks the first attempt by NMFS not only in this region, but also anywhere in this country, to assess the cumulative environmental impacts of the policies and programs of Fishery Management Plans (FMPs) in their entirety. In your role as public officials charged with overseeing this complicated maze of regulations, the Council should encourage and welcome the NEPA process as a way to step back from the year-to-year planning cycles and day-to-day management of the fisheries, and should welcome the broader opportunity to engage the public in fisheries and marine management issues.

The Alaska Oceans Network believes that the NEPA process will not only improve decision-making, but will also improve our ability to achieve fishery sustainability, community sustainability and ecosystem sustainability; goals we all share. Thus, to date we have advocated for an ecosystem-based approach to management of the fisheries, advocated for an ecosystem-based definition of sustainability, and have sought a separation of the SEIS "bookends" into separate alternative FMPs. We again advocate for the separation of Alternative 4 into two separate and distinct alternatives: a highly precautionary FMP as Alternative 4; and a 'no fishing' FMP as Alternative 5. For clear comparison of management alternatives as directed by the NEPA regulations, and for clearer public perception of the intent of the Council and of NMFS, the Alaska Oceans Network again requests a separation of Alternative 4.



FRAN ULMER
LIEUTENANT GOVERNOR
STATE OF ALASKA

September 10, 2002

RECEIVED
SEP 18 2002
N.P.F.M.C

The Honorable Donald Evans
U.S. Department of Commerce
14th & Constitution Ave.
Washington, D.C. 20230

Dear Mr. ~~Secretary~~:

On August 13, a lawsuit was filed by environmental organizations in the Northern District of California seeking to compel the National Marine Fisheries Service (NMFS) to comply with requirements of the Marine Mammal Protection Act (MMPA), including development of "take reduction plans" for commercial fisheries that have interactions with marine mammals. The federal government's failure to meet its statutory obligations under this act now pose a threat to the livelihoods of thousands of Alaskans who make a living in commercial fisheries. I am therefore writing to ask that your department eliminate the basis for this lawsuit by taking immediate action to fulfill your obligations under this act.

During discussions that preceded passage of this law, Alaska fishermen agreed to participate in an intrusive observer program in recognition that reliable data were necessary to achieve the goals of the MMPA. Now those same fishermen face the specter of a potential court order interrupting their employment because of your department's failure to fulfill the federal government's obligations. It is time the federal government did its part.

I believe a thorough review of commercial fisheries in Alaska would show that despite large populations of marine mammals, relatively few have interactions with commercial fisheries. Steps taken by the North Pacific Fisheries Management Council to protect Steller sea lions have assured the fisheries do not jeopardize sea lion recovery. Certainly, no population of marine mammal has been adversely affected by salmon drift gillnet fisheries or other fisheries targeted in the lawsuit. This conclusion is based upon reports by state and federal observers and fishermen themselves. As such, "take reduction plans" for Alaska fisheries are not warranted.

In my discussions with agency personnel in Alaska, I have been told that NMFS officials in Washington, D.C., have not been able to agree on the level of marine mammal mortality that should be established as a national goal. That disagreement has caused

Secretary Evans, page 2

several deadlines established by Congress to pass. I encourage you to agree on a reasonable goal for reducing marine mammal mortality that allows commercial fishing to continue without undue restrictions and to file a report to Congress before the federal courts intercede.

I have copied this letter to the North Pacific Fisheries Management Council in hopes that its staff can assist NMFS in resolving this important issue.

Sincerely,



Fran Ulmer
Lieutenant Governor

Cc: David Benton, chair NPFMC

United States Coast Guard

Commercial Fishing Industry Vessel Safety Advisory Committee

Commandant (G-MOC-3)
2100 Second Street, S.W.
Washington, DC 20593-0001

AGENDA B-1(f)
OCTOBER 2002

August 28, 2002

Chris Oliver
Executive Director NPFMC
605 West Fourth Suite 306
Anchorage, AK 99501-2252

RE: National Standard 10 Input to FMP's

Dear Mr. Oliver:

The United States Coast Guard Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVAC) is comprised of 17 members of the industry from around the nation representing various regional fisheries, training organizations, maritime insurers, and naval architects. We seek to provide the USCG with industry based advice on matters that have maritime safety implications.

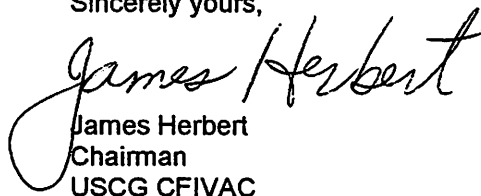
Since the implementation of the Commercial Fishing Vessel Safety Act of 1988 we have seen a substantial reduction in the loss of lives of commercial fishermen nationwide. We attribute this to the carriage of safety and survival gear and a heightened awareness of safety through training and education. We know that under National Standard 10 of the Magnuson-Stevens Fisheries Act, conservation and management measures shall, to the extent practicable, promote the safety of life at sea.

The records of our committee reflect serious concerns that members have shown regarding the negative implications some management decisions have had on the safety of fishermen. At our most recent meeting in Hampton, VA on August 21, 2002, the Committee unanimously endorsed the idea of working with the Fishery Management Councils and to provide input on the potential effect on fishermen's safety of the FMP's before you. In some cases there do not seem to be significant safety problems associated with the final plan. In others, despite hard work by all concerned, the final product seems to have not always given adequate consideration to the safety of the participants in the fisheries and the safety of the USCG as potential rescuers.

It is not our job to make fishery management decisions and in no way do we wish to interfere with your process. However, we would like to offer our advice and counsel as it pertains to National Standard 10 and the safety impacts of the proposed actions. If you request our input we will be happy to give it. If on a regional basis our Committee feels there is a significant safety concern regarding a FMP before you we may offer an opinion for the record for your consideration.

We appreciate the difficult and important work you and your Council do. We hope to be of some assistance in the process and work with you in the future.

Sincerely yours,


James Herbert
Chairman
USCG CFIVAC

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North Pacific Fishery Management Council

AGENDA B-1(g)
OCTOBER 2002

David Benton, Chairman
Chris Oliver, Executive Director



605 W 4th Ste 306
Anchorage, AK 99501-2252

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April 24, 2002

Mr. Vince Matthews
Subsistence Regional Council Coordinator
Office of Subsistence Management
101 12th Avenue, Room 110, Box 19
Fairbanks, AK 99701

Dear Mr. Matthews:

Thank you for your letter of April 9, and resolution from the Alaska Subsistence Regional Advisory Councils requesting that the Council work in partnership to reduce salmon bycatch for the benefit of Yukon and Kuskokwim River residents.

Enclosed is an overview of the salmon bycatch issue. To summarize, about 37,500 chinook salmon and 69,000 other salmon species (> 95% are chum salmon) were caught annually in Bering Sea groundfish trawl fisheries and 21,000 chinook salmon and 20,500 other salmon were caught annually in Gulf of Alaska trawl fisheries (1990-2001). Bycatch is primarily juvenile salmon that are one or two years away from returning to the river of origin as adults. The origin of salmon taken as bycatch includes rivers in western Alaska, central and southeast Alaska, Asia, and British Columbia. Analysis indicates that a Bering Sea trawl fisheries bycatch level of 30,000 chinook salmon equates to about 14,500 adult fish from western Alaska. Similarly, a bycatch of 60,000 chum salmon in Bering Sea trawl fisheries equates to about 13,000 adult chum salmon from western Alaska. It was estimated that, on average, salmon bycatch in BSAI trawl fisheries reduced the western Alaska chum salmon run by less than 0.22%, and reduced the western Alaska chinook salmon run by less than 2.6%.

Notwithstanding these overall low percentages, we do realize the importance of these salmon runs to western Alaska, and that certain, individual drainages could be disproportionately impacted. The Council has worked to control and reduce bycatch over the years. Since 1995, salmon bycatch controls have been in place for Bering Sea trawl fisheries. Areas with high bycatch rates of chinook and chum salmon are closed to trawling if allowable bycatch limits are reached. The bycatch limit for chinook salmon was further reduced in 1999. In February 2002, the Council initiated analysis of alternatives to control salmon bycatch by implementing time and area closures for Gulf of Alaska trawl fisheries. We have also recently implemented explicit coordination with the Alaska Board of Fisheries to address salmon bycatch and other issues of mutual concern.

The fishing industry also realizes the importance of this issue, and is working diligently to minimize salmon bycatch. The pollock fleet operating in the Bering Sea shares information on salmon bycatch rates so they can avoid fishing in hot spot areas. Additionally, the pollock fishery cooperatives (established by the American Fisheries Act) provide an increased ability for the fleet to manage its salmon bycatch, by allowing for inter-cooperative contract agreements which establish bycatch rate standards, vessel level accountability,

Mr. Vince Matthews

April 24, 2002

Page 2

and penalties for exceeding set bycatch rates. In the fall of 2001, bycatch of chum salmon was shown to be substantially reduced under this program. A similar program, specifically aimed at chinook salmon bycatch reduction, was initiated in 2002. Further efforts are underway by the pollock fleet, including development this year of a salmon excluder device to be fitted in pollock trawl nets, and development of an acoustic signal device to disperse salmon away from the nets. Field trials of these experimental devices are scheduled for later this year and into next year.

We believe that collectively these measures will go a long ways towards reducing salmon bycatch. We also recognize the concerns of the Federal Subsistence Regional Advisory Councils, and encourage you to continue your input to our management process. If it would be helpful, we would be willing to organize a meeting sometime this summer, including key Council staff as well as pollock fishery cooperative representatives, to further discuss these issues with your Advisory Councils. Please contact myself or David Witherell at my office if you would like additional information.

Sincerely,



Chris Oliver
Executive Director

Enclosure

cc: Tom Boyd, Office of Subsistence Management
Mitch Demientieff, Chair of the Federal Subsistence Board
John Gruver, Pollock Inter-Cooperative Manager
Ed Dersham, Chairman, Alaska Board of Fisheries

3. Do you believe that different Council members represent different constituencies?

Yes No

a. If so, what constituencies do you believe you represent?

b. How do the interests of your constituencies differ from those of the general public, if at all?

c. Are there any constituencies that you believe are under-represented on the current Council?

4. How often do you find the scientific information you receive on a fishery to be sufficient for effective and well-informed Council decision-making?

Always sufficient Sometimes sufficient Never sufficient

5. Do you believe that you have been provided with adequate training and other resources to evaluate the scientific information you receive?

Yes No

a. What, if any, additional training or resources would be useful to you in evaluating scientific information?

b. How, if at all, has your background or experience proven valuable in evaluating scientific information?

6. How often do you find the economic information you receive on a fishery to be sufficient for Council decision-making?

Always sufficient Sometimes sufficient Never sufficient

7. Do you believe that you have been provided with adequate training and other resources to evaluate the economic information you receive?

Yes No

a. What, if any, additional training or resources would be useful to you in evaluating economic information?

b. How, if at all, has your background or experience proven valuable in evaluating economic information?

8. List the three most important decisions, in order of their importance, made by your Council regarding an FMP or FMP amendment over the last year and state why each decision was important.

Decision no. 1:

Decision no. 2:

Decision no. 3:

9. Which of these decisions, if any, generated the most controversy *within* the Council? Why?

10. Which of these decisions, if any, generated the most public controversy? Why?

11. Compared with existing opportunities for public input, do you believe that there should be more opportunity for public input, less opportunity for public input, or that existing opportunities for public input are adequate?

More opportunity

Less opportunity

Existing
opportunities are
adequate

a. If you believe that there should be more opportunity for public input, what should be done to provide additional opportunities?

b. If you believe that there should be less opportunity for public input, please say why.

12. Do you believe that the public takes full advantage of the existing opportunities to comment on Council activities?

- Yes No

13. How important are each of the following factors in helping to formulate your decisions on fishery management issues? (1 = most important, 9 = least important.)

Factor	Rank
Comments from fishermen	
Comments from environmental groups	
Comments from other members of the public	
Opinions of other Council members (specify)	
Scientific recommendations	
Personal experience/knowledge	
Economic impact assessments	
Other:	
Other:	

14. Do you believe that the media coverage of your Council's fishery management decisions has been fair to the Council? If not, please elaborate.

15. Do you believe that the fishing community is sufficiently aware of Council activities? If not, what should be done to increase awareness?

20. Have you ever considered recusing yourself from Council deliberations regarding fisheries in which your friends, neighbors or clients were active? If so, please describe the circumstances.

21. Under what circumstances do you believe it is appropriate for a Council member to recuse himself or herself from Council deliberations?

22. What changes, if any, to the composition of the Council or its decision-making process would you recommend?

If you have questions regarding any aspect of this questionnaire, contact:

Sarah Newkirk
Stanford Fisheries Policy Project
Stanford Law School
559 Nathan Abbott Way
Stanford, CA 94305
(650) 725-2341
snewkirk@law.stanford.edu

**THIRTEENTH SESSION OF THE
US-RUSSIA INTERGOVERNMENTAL CONSULTATIVE COMMITTEE
ON FISHERIES**

September 20-21, 2002
Moscow, Russia

I. Opening Remarks.

In accordance with Article 14 of the 1988 Agreement on Mutual Fisheries Relations (hereinafter referred to as the "Agreement"), representatives of Russia and the USA conducted the Thirteenth Session of the Intergovernmental Consultative Committee on Fisheries in Moscow, Russia, on September 20-21 2002. The Russian delegation was led by Dr. Boris N. Kotenev, Director, VNIRO (Fisheries Research Institute), and the U.S. delegation was led by Ambassador Mary Beth West, Deputy Assistant Secretary of State for Oceans and Fisheries.

The U.S. delegation noted that this meeting is taking place at a time when relations between the United States and Russia are strong. The U.S. delegation stated that through this Agreement, the two nations have built avenues of communication and cooperation that have thrived since 1988. The U.S. delegation expressed concern that globally many of the fish stocks are overfished and depleted. The U.S. delegation expressed satisfaction at the entry into force of the 1995 UN Fish Stocks Agreement. On the subject of the Bering Sea pollock fisheries, the U.S. delegation stated that the United States and Russia have arrived at a new stage in the evolution of this issue, and that further discussion on the basis of the U.S. 1997 proposal would not be fruitful. The U.S. delegation made clear that the United States is not prepared to review or renegotiate the maritime boundary treaty, though the U.S. was prepared to discuss other areas of cooperation.

The Russian delegation stated that both Russia and the United States shared difficulties in restructuring their fisheries. However, the ideas shared at these meetings help form the roots for fruitful cooperation. Russia shares the view that this meeting should be the impetus for new cooperation, and hopes that fishermen will take advantage of the 1988 agreement. A major purpose of this conference is ensuring the well-being of fishermen.

II. Election of the Chairman, Presentation of the Delegations, and Adoption of the Agenda

The delegations agreed that Dr. Kotenev serve as Chairman for the meeting. A complete list of the U.S and Russian delegation members is provided in Attachment 1. The delegations considered and adopted the agenda provided in Attachment 2.

III. Consideration of the Issues Connected with the 1988 Agreement.

III.1 Fisheries Research Cooperation

The U.S. delegation stated that there has been a good history of cooperation. The delegation noted that TINRO and the Alaska Fisheries Science Center have expanded their

communication, and that the U.S. delegation would like to develop a Memorandum of Understanding to further enhance the working relationship. The U.S. delegation said that Dr. Richard Marasco would be the point of contact for the National Marine Fisheries Service for the proposed MOU.

The Russian delegation noted that a MOU would reduce the cost of work, and would allow each side to make exchanges in areas of their strength. The Russian delegation appointed the State Committee for Fisheries as the Russian contact point on the proposed MOU.

III.1.1 2001 Research on the condition of Bering Sea pollock stocks

The U.S. delegation briefly reported that the status of stocks in the Eastern Bering Sea is generally healthy. The total allowable catch (TAC) in 2002 has been set at the highest level in several years. The Aleutian Basin stock remains low and depressed, however. The North Pacific Fisheries Management Council has not permitted fishing in the Aleutian Island region.

The Russian delegation reported that the status of the northern and western stocks remained depressed. However, phytoplankton counts and analysis indicate stabilization at low levels with some prospects for growth. Data obtained in recent years has allowed more successful management in these areas, and stock levels are expected to rise. The Russian Federation has instituted several conservation measures. A fishing moratorium continues in the West Bering Sea for the third year. The TAC has been reduced since 2001. The TAC for 2004 will be developed in November or December, and it is expected it will be lower than the 2002 TAC.

III.1.2 Research vessel clearances

The U.S. delegation noted that permitting Russian research vessels to enter the U.S. EEZ for inter-ship calibration with the U.S. survey vessel is not as effective as permitting a U.S. vessel to enter the Russian EEZ to continue its pollock survey into the Russian zone. The United States remains concerned that Russia has not allowed research in its EEZ by a U.S. vessel since 1998. The United States continues to await a response to its July 2002 diplomatic note requesting an explanation for the continued refusals. The United States would also like to participate on some Russian research cruises in the western and northern Bering Sea. TINRO was able to get permission to have a U.S. scientist placed on a salmon research cruise by the R/V *TINRO* under the NPAFC-BASIS salmon research arrangement this September-October. The U.S. delegation inquired if this permission was granted because it is cooperative research agreed to through an international convention (NPAFC).

The Russian delegation confirmed its interest in cooperating, and expressed regret that the process for granting research vessel clearance has become more complex. Other agencies are able to overrule the Fisheries Committee on vessel clearance issues. The Russian delegation assured the U.S. delegation that this is not targeted against U.S. researchers, noting that similar problems existed for Norway in the Barents Sea. The Russian delegation did note acoustic calibration and hydro acoustic comparisons conducted with U.S. vessels. The Russian delegation also noted presence of the U.S. scientist on the R/V *TINRO*, and stated that *TINRO*

invites Alaska scientists to participate in research cruises each year. Cooperation on a bilateral basis was much more effective than on a multilateral one.

III.1.3 Exchange of information on salmon problems

III.1.3.1 Data exchange through NPAFC

The U.S. delegation noted that informal exchanges of scales samples with Russian scientists seem to have been replaced by more bureaucratic procedures involving formal requests at NPAFC meetings. Worse yet, requests are not being fulfilled. The United States is interested in biological samples and data for salmon stock identification studies from the salmon by catch of the commercial and/or research trawl fisheries in the Russian EEZ in the North Pacific Ocean and Bering Sea. The United States would also like to request biological samples for stock identification and data from directed salmon trawl fisheries in the Russian EEZ in the North Pacific Ocean and Bering Sea. The U.S. delegation wondered if there was a new system in place for requesting samples.

The Russian delegation remained very interested in data exchange on salmon, and stated that scale specimens will be provided at the NPAFC council meeting in Vladivostok.

III.1.3.2 Coordination of Bering Sea Salmon Research Plans

The U.S. has been pleased with cruise planning and coordination under the NPAFC-BASIS program. In particular, the delegation noted the work and coordination of Dr. Olga Temnykh of Russia, who appeared to be authorized to make decisions on the planning of cruises. The U.S. delegation hoped Russia would be able to accommodate NPAFC scientists on its BASIS cruises, as it is doing in 2002 with a U.S. scientist.

The Russian side is attempting to ensure that the methodology of data capture is good. The BASIS program involves a survey of three vessels. The first expedition has produced results on standardization of fishing gear. Unfortunately, there are no facilities for genetic sampling. BASIS we will develop uniform techniques for genetic analysis. In 2003, the Russian side plans to conduct studies on the standardization of identification methods of salmon stock, within the framework of the BASIS program.

III.2 Extension of the 1988 Agreement

The Russian delegation stated its interest in extending the 1988 agreement, and is prepared to extend it for another five years by adopting the appropriate documents.

The U.S. delegation noted that the agreement had already been extended twice for five years. Though the U.S. side had not yet obtained formal approval to propose an extension of the agreement, its preliminary view is that the agreement should be extended for another five years and that the process of extending the agreement should begin as soon as possible.

III.3 Discussion of cooperation between fisheries enforcement organizations of Russian and the United States

The U.S. expressed satisfaction with the effectiveness of the enforcement function of the North Pacific Anadromous Fish Commission (NPAFC), and cooperative actions of the U.S. Coast Guard and FBS of the Russian Federation. The US delegation stated they were particularly pleased with the resolution of the VLADA case.

The Russian side on its turn highly appreciated the importance of joint actions within the NPAFC framework and the results of cooperation between the 17th CG District and the North Eastern Regional Department of the FBS of the Russian Federation, having underlined the significant role of coordinated plan of joint actions and joint patrolling

The Russian side stated it is prepared to send a patrol vessel of the Russian Federation FBS to the vicinity of the boundary line and ensure air patrols during the active fishing season.

III.4 Exchange of information on violations near the maritime boundary between the Russian and US EEZs in the Bering Sea

The U.S. delegation presented information on recent violations of the border line by Russian fishing vessels; 01 Aug 02 F/V MYS MURAVJEVA, 05 Aug 02 F/V MYS DATTA, 04 Sep 02 F/V VIYTNA, and 06 Sep02 F/V KAPITAN BOLSUNOVSKIY, as well as deep concern with recent action by Russian fishing vessels and crews to counter legitimate Coast Guard law enforcement actions.

The Russian side shared the US concern by these problems and informed the US counterparts that the appropriate actions had been taken in compliance with the Law of the Russian Federation.

A separate technical discussion between the Coast Guard and Federal Border Service was conducted, and both sides agreed to further discussion of enforcement and legal issues in the future.

Both sides presented their views on the differential between geodetic coordinate systems. The US noted the differences in the charting datums cannot completely account for the magnitude of incursions detected. The FBS of Russia proposed to run a joint experiment to identify technical capabilities of various navigation systems which are being used by the US Coast Guard and the Russian Federation FBS vessels in this region. The US agreed, but noted this topic was previously resolved at the 11th ICC session in March 2000.

III.5 Cooperation between representatives of the fishing industries of Russian and the United States.

The Russian delegation noted the cooperation between U.S. and Russian fishermen in 2001 and 2002. Three Russian vessels received mackerel in the U.S. EEZ. The deal was not economically viable, but both sides expressed great interest in cooperation in the future. There

were no serious problems during these projects, and all issues were resolved at a working level. The Russian delegation noted business contacts would be facilitated by a direct catch quota and also suggested that there is joint interest in Russian and U.S. scientists conducting research regarding mackerel in U.S. waters. The Russian delegation proposed a meeting of U.S. and Russian businessmen, so similar projects could be established on the west coast, and the U.S. could possibly obtain scientific data from Russian fishermen.

The U.S. delegation agreed that these commercial projects have been of mutual benefit and hope they would continue. The U.S. could not predict if there would be a surplus in the future. The U.S. delegation suggested discussions could begin with industry representatives traveling with the U.S. delegation.

IV. Next steps for expert level consultations on the draft intergovernmental agreement on fishing in the Northern Bering Sea

The Russian delegation reviewed the history of the Maritime Boundary Agreement. The Russian side did not ratify the agreement due to differences in evaluating the economic benefits of the agreement, primarily for fisheries industry. The Russian side said that the U.S. and Russia have been discussing compensation for the 1990 agreement for five years without progress. The Russian delegation noted frequent calls to reconsider the agreement and to return to the situation prior to 1990. The urgent development of a bilateral agreement that would compensate Russian fishermen for their losses after some of the fishing regions in the Bering Sea had come under U.S. jurisdiction would expedite the ratification of the 1990 agreement by the Russian side and would help eliminate incidents between Russian fishing vessels and USCG vessels in the Bering Sea. Although the situation has changed in recent years, there are provisions in the 1997 proposal that both sides could agree to without reservations. The Russian delegation said that not meeting for a year and a half has been too long and has led to misunderstandings. The Russian delegation proposed to meet again in six months for technical discussions.

Senator Nazarov proposed a working group comprised of the U.S. and Russia to draw up recommendations to amend the maritime boundary agreement so it could be ratified in both the U.S. and Russia. Russia is not suggesting that this issue should become a stumbling block in resolving economic and political issues, but hopes that the matter could be resolved in a working group that could meet in the next six months.

The U.S. delegation noted that the 1997 proposal only allowed fishing in the U.S. EEZ if Russia accepted specified conservation measures on its side of the boundary line. Russia has not been willing to accept the basic tenets of this proposal. The U.S. continues to believe the 1990 maritime boundary agreement is a fair and equitable treaty that represents a carefully negotiated compromise of numerous economic and political interests. Many interests were at stake in the negotiations, including territorial issues, Arctic claims, and oil and gas interests. The United States is not prepared to review or renegotiate the treaty. The U.S. delegation stated that Russia lost the unfettered right to fish in waters on the U.S. side of the Bering Sea in 1977, not 1990. The United States has made two separate proposals in an effort to induce Russian ratification of the 1990 agreement. These proposals were not to compensate Russia as no compensation is due. Rather, these proposals were incentives for ratification. The U.S. delegation stated that Russia's

counterproposals have failed to accept that there is too much fishing pressure on pollock in the Russian EEZ, and not nearly enough control over the fishing vessels that operate there. In addition, the U.S. noted that conditions in the fishery have changed markedly on both sides since the proposal was made in 1997. The U.S. delegation believes further discussion of its 1997 proposal would not be productive, and that it is instead searching for new opportunities for cooperation, particularly in the areas of fisheries in law enforcement and increased scientific cooperation.

The Russian delegation noted that in February, 1977, during negotiation of the EEZ Boundary Line, the United States informally agreed that the USSR had lost losses catches (150,000 tons). The United States provided relative quotas to Russian fishermen until 1981. This practice was stopped then owing to the events in Afghanistan. The concept of the draft agreement proposed by the U.S. side in 1997 with the intent to solve this problem was based on the assumption that stocks of pollock caught in the Russian EEZ come from the U.S. side. During a meeting held in May, 1998, experts of both sides did not support this concept. The Russian delegation noted that the TAC of pollock on the Russian side had steadily declined while the stock on the U.S. side remained healthier, which also supports the view the conclusions made by the experts in 1998. This is the reason why Russia had not accepted the U.S. proposal of 1997.

The U.S. delegation responded that the U.S. was well within its rights in deciding on allocations of surplus fish stocks. There was never a guarantee that there would be indefinite access to the U.S. EEZ or compensation for lost catches. The U.S. delegation reiterated its view that there is significant trans-boundary movement of pollock and noted that U.S. stocks feel pressure from the large amount of Russian vessels within 20 nm of the boundary. The increase of U.S. stocks is due to the U.S. industry's low exploitation rate. The U.S. delegation proposed studying pollock migration patterns. Further, the U.S. offered several specific proposals for cooperation, including enhanced scientific cooperation, enhanced enforcement cooperation, and cooperation to address illegal exportation of fish products. The U.S. would like to accept the invitation for experts meetings in six months to further discuss areas of cooperation.

V. Exchange of opinions regarding the Agreement for the implementation of the provisions of the UN Convention on Law of the Sea of 1982 related to the conservation and management of straddling fish stocks and highly migratory fish stocks.

The U.S. delegation considers this a vital agreement. The U.S. will urge others to ratify this agreement and hopes Russia will do the same.

The Russian delegation stated both sides will work together towards this goal.

VI. Discussion of the issues related to the Conference of the Parties of the Convention on the Central Bering Sea

VI.1 Review of overall meeting results from the 2002 Annual Conference in Moscow

The Russian delegation reported on the results of the conference. It ended successfully in that the two coastal states achieved an AHL set to zero. Last year the first signs of stock recovery appeared both in U.S. and Russian zones. The forthcoming years will require consideration of the conditions for trial fishing. The Russian delegation proposed meeting before the Working Group meeting in Korea to prepare a joint position.

The U.S. delegation thanked the Russian delegation for hosting the conference and for its assistance in maintaining an AHL of zero at the 2001 conference which the entire U.S. was unable to attend. The U.S. delegation agreed to meet prior to the Korea meetings.

VII. Exchange of information on fishing within the framework of the Agreement of 13 June 1996 on Preservation of Transboundary Fish Stocks in the Central Okhotsk Sea.

The Russian delegation reported that during the recent eight years, pollock stocks in the Sea of Okhotsk have drastically fallen. The TAC in the northern part fell from 900,000 to 180,000, and in the eastern part, it fell from 800,000 to 150,000. In 2003, the 1997 year class is abundant, and it is possible the TAC could be increased. Russia conducts a yearly review of the regulations of this area.

The U.S. delegation expressed its interest in helping conserve stocks in this region. The U.S. delegation enquired as to where vessels that had previously fished in this area had been displaced, possibly the maritime boundary. To this, the Russian delegation responded that it would be practically impossible, and the only option for vessels in this area was to switch to fishing other species.

VIII. Discussion of positions of the Parties related to the activity in the framework of regional international organizations: NAFA, ICCAT, NASCO, PICES, SEAFO, CITES.

The U.S. delegation had no specific issues to raise with respect to most of these organizations. The delegation did inquire as to which agency in the Russia Federation handles marine species issues in relation to CITES and who will represent Russia at the Santiago meeting in Chile.

The Russian delegation responded that the composition of the Russian delegation to Santiago is not yet decided. The Russian delegation noted that the State Committee on Fisheries is responsible for CITES issues concerning sturgeon and other commercial fish species. The Ministry of Natural Resources is responsible for all other marine species.

IX. U. S. update on prevention of seabird by-catch in longline fisheries of the North Pacific

The U.S. delegation stated that the U.S. has integrated the prevention of seabird by-catch into its fishery management plans. The U.S. stated that there are three species of albatross that could be caught in the Russian area. The United States hopes Russia will implement measures to help prevent the incidental by-catch of seabirds. The U.S. invited Russia to attend international conferences on this issue.

The Russian delegation agreed that seabird by-catch is a problem that is technically difficult to resolve. The delegation noted that Russia has begun to deploy technology to scare away birds and whales, though technical problems remain, in particular with the equipment used by long-line fishermen. The Russian delegation suggested that this issue could be added to the proposed MOU to be signed between fisheries services at the upcoming working group meeting.

X. Status of Acceptance of FAO Compliance Agreement

The U.S. delegation stated this Agreement will not be in force until three more States deposit their instruments of ratification. The U.S. delegation urges Russia to become party to this important agreement.

The Russian delegation stated that several ministries are involved in the decision to accept this agreement, so Russia is not yet prepared to do so. Russia believes that its becoming a party to the FAO compliance agreement would be useful to regulating catch on the high seas of the worlds oceans.

XI. Other issues of mutual interest

XI.1 Intermixing of salmon stocks in the Russian EEZ

The Russian delegation stated that Asian and North American salmon intermix in the winter when on the high seas. The share of American salmon in the Russian catch is very low, approximately one tenth of one percent of the total salmon catch. The Russian delegation stated this was confirmed by the multilateral tagging program.

The U.S. delegation does not believe that there is comprehensive information on salmon mixing in either the Bering Sea or the North Pacific as Russia did not participate in sampling conducted by the International North Pacific Fisheries Commission at that time. The U.S. delegation expressed the hope that the BASIS program will provide a more complete picture. The U.S. delegation also stated that it continues to attach importance to the 1992 agreement prohibiting salmon fishing beyond 25 miles from shore in U.S. and Russian waters of the Bering Sea and North Pacific Ocean. Finally, the U.S. noted its problem of chum salmon by-catch in its pollock fishery and inquired if Russia had a similar problem.

The Russian delegation answered that they have prepared an atlas of the distribution of variants of Pacific salmong stocks during spring and summer feeding season and pre-spawning

migrations, and they believe they understand the location of salmon. The Russian delegation suggested that this could be an issue for discussion under the MOU. The Russian delegation also suggested that the 1992 agreement on salmon could be revisited. The Russian delegation stated that the economic consequences of the chum issue are great in the Russian Far East.

XI.2 Large-scale, High Seas Driftnet Fishing issue

The U.S. delegation continues to support the U.N. resolution creating a moratorium on large-scale driftnet fishing on the high seas. There were no confirmed incidents of such fishing in the North Pacific during the past year, and the U.S. is grateful for the cooperation and assistance from Russia in this regard.

The Russian delegation stated that this type of fishing does not exist in Russia. In 2001, Russia proposed to NPAFC an international program to study salmon migration on the high seas using 4-kilometer driftnets, but this proposal was not accepted at that time. Russia would like to submit this proposal again at the upcoming NPAFC meeting, but would like U.S. support.

The U.S. delegation noted that driftnet fishing remains controversial in the U.S., but stated that it would be willing to consider the Russian proposal.

XI.3 Steller Sea Lion Issue and Status of Steller Sea Lion Population in the Russian EEZ

The Russian delegation reported that the decline in Steller Sea Lions occurred in both EEZs. The decline in the Russian EEZ did not have as large an impact on fisheries as in the U.S. Russia believes the decline in population is due to natural causes, and noted stabilization in populations, with dramatic growth in select populations. Russian scientists believe sea lion populations in the North Pacific will increase in the future.

The U.S. delegation noted the meeting on sea lions recently held in Russia and the close contacts between U.S. and Russian scientists on this issue. In the U.S., Steller sea lions are still considered endangered for the western population. The U.S. noted that the Steller sea lion areas were not closed only because of the impact of fisheries on sea lion population, but for other reasons as well. The U.S. has taken serious and extensive measures to conserve the sea lion population, and remains interested in what happens to these mammals when they leave the U.S. EEZ. The U.S. is very interested in Russian data on incidental catches.

The Russian delegation responded that in the area around the Commander islands and the Kurile islands, Steller sea lion habitats are closed to economic activity. The Russian delegation noted that the loss of economic activity in the Kurile Islands for one year is larger than U.S. investment in Steller sea lion conservation for four years. The Russian delegation did not believe that incidental catches of sea lions affected the population, and reiterated their belief that natural causes are the primary reason for population decline.

XI.4 Russian membership in the FAO

The U.S. delegation believes the FAO has become much more effective in the field of fisheries, and hopes the Russian Federation will join. The U.S. delegation feels Russia would have much to contribute to the work of the organization.

The Russian delegation noted that the Fisheries Committee has an observer to the FAO, and works very closely with the FAO and its members since the 1960s. The question of joining the organization is not decided solely by the Fisheries Committee, but primarily by the Ministry of Finance. The Russian delegation continues to work towards joining the FAO.

XI.5 Shark conservation and management

The U.S. delegation reported that in 2000, the U.S. Congress passed a law prohibiting shark finning, and called upon us to encourage other countries to do the same. The U.S. is also interested in shark conservation. The U.S. is interested in implementing the FAO plan of action. The U.S. hopes Russia will participate in the December meeting on shark conservation.

The Russian delegation stated that there are practically no shark problems, as there is no shark fishing industry in Russia. Further, there is no market for shark products in Russia, but will be prepared to acquaint themselves with the laws. The Russian delegation requested further information on the laws and December meetings.

XII. Time and place of the 14th Session of the ICC.

The U.S. delegation invites the Russian delegation to Seattle for working group talks in six months. Work on the MOU between NMFS and the State Committee for Fisheries will take place before the meeting, with a view to having the document ready to sign at the working group.

The U.S. delegation invited the Russian delegation to the next committee meeting after the Donut Hole meeting in Portland in September.

XIII. Signing the record of the meeting

XIV. Closing of the meeting

These minutes, done on September 21, 2002, are in duplicate in the Russian and English language.

Mary Beth West
Head of the delegation of the USA

Boris Nikolayevich Kotenev
Head of the delegation of the RF

Item: Proposed Cooperative Marine Research Agreement between TINRO (Russia) and the Alaska Fisheries Science Center (United States)

Background: Correspondences have taken place in 2001 to initiate a cooperative marine research agreement between the TINRO Lab and the Alaska Fisheries Science Center. The draft of the cooperative agreement was started by the AFSC (see below) and a reply was received from TINRO that shows general support for the agreement. A follow up email from Dr. Richard Marasco (AFSC) to Dr. Lev Bocharov (TINRO) asking what next steps to take has not been answered. The agreement would promote coordination of surveys, joint research on transboundary species, exchange of more detailed commercial fisheries data, and have an annual meeting between TINRO and AFSC to facilitate such cooperations.

Talking Points:

1. This ICC meeting would be the proper forum to pursue this cooperative agreement. Ask if the Russian side is interested in this agreement and how to proceed with the paperwork.
2. Designate responsible persons to follow through with the paperwork. Dr. Richard Marasco will be the designated person for the U.S. side

Attachments

**Proposed Cooperative Marine Research Agreement
Between Russia (TINRO) and the United States (AFSC)**

There is a long history of cooperation in marine research between the United States and Russia in the North Pacific Ocean and the Bering sea. Together, we have discovered fisheries resources, brought them to commercial and other uses, conserved them, and fostered the study of their sciences. Today, we face a greater challenge as these resources reach full utilization and are stretched to support the economic entities build around them. More so than ever before, we need a better understanding of the intricacies of the atmosphere and the oceans, including its resources and their uses. These research tasks are formidable and require more cooperation than ever before.

The TINRO and Alaska Fisheries Science Center and their affiliated scientific laboratories situated in the Russian Far East and Alaska have a strong history of cooperative research on the oceanography and fisheries resources of our common regions. These relationships have unfortunately weakened in recent years and must be strengthened in order to meet the challenges of the future. We must have an Agreement to provide practical and meaningful procedures to plan and carry out cooperative research. Specifically, this Agreement would foster the following cooperative activities:

- A. Conduct Oceanography and Marine Resources Surveys
 - i. Coordinate sampling strategies and research equipment.
 - ii. Inter-calibrate vessel research capabilities
 - this would require vessel presence in the same vicinity, expected to be both in U.S. and Russian EEZ.
 - iii. Exchange survey experts and train them on common techniques.
 - iv. Share biological specimens and other data.

- v. Jointly analyze and exchange analytical results and reports.
- B. Specifically promote and allow joint research on transboundary stocks like salmon and pollock so that research activities A and B above can be accomplished.
- C. Conduct Annual Bilateral Meetings between TINRO and AFSC and their affiliate scientific laboratories to foster research activities A, B, and C above.
- D. Exchange Commercial Fisheries Data
 - i. Exchange fishing fleet information and vessel fishing characteristics
 - ii. Exchange catch and bycatch data in agreeable time-area resolution.
 - iii. Allow limited placement of scientific observers on vessels and shore stations to observe fishing operations and collect biological specimens.

Reply from TINRO to AFSC

Dr. Richard Marasco
Alaska Fisheries Science Center
BIN C15700 Building 4
7600 Sand Point Way NE
Seattle, WA 98115, USA

Dear Rich,

We are generally interested in your proposal of closer cooperation between our research centers in marine bio resources' and Bering Sea environment research. Most of your suggestions are in line with Intergovernmental Agreement on cooperation in fisheries, 1988 (article 9). That is why during the next regular Intergovernmental Consultation Committee (ICC) meeting early in 2002 we should formulate and write down the proposals on the form of direct cooperation between TINRO-Centre and AFSC. These proposals and the ways to implement them are to be written down in a protocol. We have handed the draft proposals for the 13th ICC Meeting to Moscow for the consideration in Russian State Committee for Fisheries and VNIRO.

Still under the clauses of 1988 Agreement not all the proposed forms of cooperation are allowed. It is such issues as joint oceanographic research (under A in your suggestions) and the data exchange on fishing vessels and their features (under D).

Having this in mind we suppose that the forms of cooperation are to be mentioned in the Draft Agreement on Fisheries in the North Bering Sea which is being worked out now. Maybe your proposal as a whole can constitute a scientific and technical cooperation part of the Agreement.

Considering your suggestions the outline of our cooperation may go as following:

- 3. Major goals and results.
 - 3.1 Joint preparation of the necessary data to publish The Distribution of the Major Commercial Fisheries Species in Bering Sea.
 - 3.2 Information gathering on fisheries vessels and their characteristics. Working out the relevant list of catching boats to be used for fishery in Bering Sea. Recommendations on rational distribution of such catching fleet.
 - 3.3 Collection and preparation of data on catches and accompanying catches in certain fishing areas at the same time. Coordinated ways to use such data.

3.4 Working out the environmental ecological capacity forecast with due regard to oceanographic research results. Such forecast should pay special attention to the environment factors influence on salmon and pollack resources dynamics.

4. Specific measures to implement the goals.

4.1 In the nearest future – call for the bilateral TINRO-Centre and AFSC meeting to promote the cooperation under 1988 Agreement clauses with the initiative of ICC 13th Meeting. The cooperation may include the coordination of the research techniques, adjustment of the ships' equipment, specialists' exchange, biological specimens' and survey results' exchange, submitting the reports and joint analysis.

4.2 In the long run – preparation, signature and ratification of the new Agreement on Fisheries in the North Bering Sea that will combine previously accepted methods of cooperation in science and technology (under 1988 Agreement) as well as new ways of communication. The latter include the data exchange on catching vessels and their characteristics, and on catches; interchange of observers on the fishing boats.

4.3 The research concerning the transboundary species, specifically two different subjects of catch – the pollack and the salmon – should be considered a priority of the joint work.

4.4 The additional way of cooperation is carrying out the joint (or coordinated) oceanographic research. Newly enacted Russian legislation severely limits the possibility for foreign vessels to conduct the marine environment research in the Russian waters. Thus these issues (the limits, nature, methods, and means of research) should be thoroughly discussed not to object the national regulations of our countries. In either case such a cooperation calls for a considerable legal foundation. The Agreement on Fisheries in the North Bering Sea could have become this foundation. Our scientists believe that the major ways of cooperation on this subject may include:

- The coordination of terms and programs of trips
- Reciprocal adjustment of the hydrological equipment on the research vessels
- Carrying out the joint monitoring research using drifters like ARGO
- Joint research using data from satellites NOAA in visible and infrared light specters. Analysis of the data from satellites and vessels during the surveys and most interesting for biologists periods
- Exchange of specialists in oceanology to participate in the joint surveys and analyze the results of such research, to master the new techniques of data processing
- Data exchange during PICES meetings following previously coordinated pattern

Please let us know if there is any possibility for American side to fund such a research in case the agreement on this cooperation will be reached.

Wishing you all the best in the New Year of 2002,

TINRO-Centre Director

Lev N. Bocharov

**SEVENTH ANNUAL CONFERENCE OF THE PARTIES TO THE CONVENTION ON THE
CONSERVATION AND MANAGEMENT OF THE POLLOCK RESOURCES IN THE
CENTRAL BERING SEA**

**AGENDA B-1
OCTOBER 2002
Supplemental**

**REPORT OF THE MEETING OF THE
SCIENTIFIC AND TECHNICAL COMMITTEE**

**September 16-18, 2002
Moscow, Russia**

Final corrected: 18 September 2002

Delegations from the People's Republic of China (China), Japan, the Republic of Korea (Korea), the Republic of Poland (Poland), the Russian Federation (Russia), and the United States (U.S.) participated in a meeting of the Scientific and Technical (S&T) Committee in Moscow, Russia.

1. Opening remarks

Dr. Richard Marasco (U.S.), Chair of the Scientific and Technical Committee, opened the meeting at 14:10, 16 September 2002. The meeting agenda and a list of the participants are provided in Attachments 1 and 2.

2. Appointment of Rapporteur.

LCDR Phillip Thorne (U.S.) was appointed as rapporteur.

3. Adoption of Agenda

The Agenda was adopted (Attachment 1).

4. Discussion of Scientific Issues

4.1. Update Catch and Effort Statistics.

4.1.1 In fulfilling the recommendation of the 5th Annual Conference, Japan and Korea provided documents that present the historical data of Pollock fishing in the Central Bering Sea during the period 1984-1991 (Attachments 3 & 4) The United States noted that data from Russia and China remains outstanding. China and Russia stated that they would supply the necessary data.

4.1.2 The United States raised the issue of where the data is to be archived and whether the data should be considered public. The United States recommended development of a website with password protection and data archival, if parties wish it protected. The matter was deferred for parties to consider and be re-addressed under agenda item 6, "Other Matters and Recommendations".

4.2. Year 2001-2002 Results of Trial Fishing

- 4.2.1 Korea requested clarification on the reporting period for trial fishing. To remain consistent with reports from previous years, the reporting period was determined to be from the last conference to the present conference (year 2001-2002).
- 4.2.2 China reported two vessels were sent to the Donut Hole from 11-14 November 2001 for trial fishing and reported no catch or location of pollock. However, the scale of trial fishing was not sufficient to produce good results.
- 4.2.3 There was no trial fishing conducted by any other parties since the last meeting.
- 4.2.4. China reported they may conduct trial fishing in Nov/Dec 2002, and will report their intentions to the U.S. Coast Guard.
- 4.3. Review Results of 2001/2002 Research Cruises
 - 4.3.1. The United States reported on the winter surveys conducted by the R/V Miller Freeman from 18 Feb – 11 Mar in the Bogoslof I. (BI) and Eastern Bering Sea (EBS) areas in cooperation with the Japanese R/V Kaiyo Maru 9 Feb – 5 Mar. In the BI area there was 227,000 mt and in the EBS there were 1,355,000 mt of pollock. Results of the data were shared with all parties (Attachment 5).
 - 4.3.2. Japan reported on the winter Echo Integration Mid-Water Trawl (EIMWT) survey conducted by the R/V Kaiyo Maru 9 Feb – 5 Mar in the U.S. EEZ. (Attachment 6)
 - 4.3.3. The United States noted the pollock biomass estimate by Japan of 181,000 mt was very close to the R/V Miller Freeman's estimate of 227,000 mt. The lower biomass estimate from the R/V Kaiyo Maru's survey can be attributed to the survey occurring earlier in the year.
 - 4.3.4. Russia reported on the status of Bering Sea pollock stocks in the Russian EEZ. 10 scientific cruises were made to the northern and northwestern Bering Sea in 2001 and first half of 2002. Pollock stocks in the northern and northwestern parts of the Bering Sea have stabilized at a low level. The low abundance of the West Bering Sea and Navarin stocks will prevent pollock from extending into the Aleutian and Commander basins in any large numbers in 2003. Results of the data were shared with all parties (Attachment 7).
 - 4.3.5. In answering the question posed by the United States, Russia reported that the exploitation rate on the Navarin basin pollock stocks is less than 30%.
 - 4.3.6. The United States presented a summary of the preliminary results of the 2002 Summer EBS survey. On the EBS shelf, 3.6 mmt of pollock was estimated in the pelagic zone (surface to 3 meters from sea floor), and 4.8 mmt were found in the demersal zone (within 3 meters of the sea floor). Detailed data on the survey will be distributed to all Parties.

4.3.7. Korea asked the United States how they account for the survey error bias involved with "double counting" pollock that migrates during the survey. The United States responded that the survey is conducted during a period where it is thought that migration is minimal, but that the migration issue is one that needs to be considered.

4.4. Review the Status of Aleutian Basin Pollock Stocks.

4.4.1. United States reported there is no reliable biomass estimate for pollock in the Aleutian basin as defined as sea areas beyond 500 meters. No survey in the Aleutian region has been conducted in 2002, the most recent was completed in 2000. A survey of the Bogoslof Island area (Convention Specific Area) was completed in March 2002. Therefore the use of the Bogoslof I. biomass as a proxy is appropriate, in accordance with the provisions of the Convention.

4.4.2. Korea suggested that there is insufficient data to independently estimate the biomass of Aleutian Basin pollock stock, and an indirect method would be necessary. Furthermore, continuous efforts like comprehensive surveys were recommended to estimate the Aleutian Basin Pollock biomass, and an intersessional workshop would be needed to plan that effort.

4.5. Factors Affecting Recovery of the Stock

4.5.1. China addressed a question to the United States delegation about the possible relationship between the harvest of 1.2 million tons of pollock each year in the EBS and the continued absence of any pollock in the Convention Area. The biomass of Pollock in the EBS remains steady while US continues fishing effort, but in the Convention area there has been a 10 year moratorium but the Pollock biomass decreases. China would like a reasonable explanation for this phenomena. The United States replied that although for management purposes pollock are managed as one stock on the EBS, there may be more than one discrete stock found there, and that there are different pollock spawning areas in the EBS at different times. Furthermore, the path and manner of pollock migration is not fully understood. U.S. research surveys of the outer EBS shelf and slope have documented the presence of very few pollock, indicating that there does not appear to be a mass migration of EBS stocks into the Aleutian Basin. The United States believes the Bogoslof stock is closely tied to the Aleutian Basin stock, and the United States has not fished the Bogoslof region for pollock since 1991. The Aleutian Island stock is also possibly closely tied to the Aleutian Basin stock, and the United States has not fished this region for pollock since 1998.

4.5.2. Japan expressed interest in an explanation by United States and Russia of pollock management measures in their respective EEZs. The United States response is summarized in page 6 of attachment 5, and section 4.5.1 of this report. Russia reported taking similar management measures as the United States, primarily establishing fishing moratoria on areas where stocks are scarce and reduced fishing pressure where stocks are depressed. Furthermore, measures have been taken to close areas with high abundance of juvenile pollock, and insertion of square mesh lining in intermedia to reduce the catch of juvenile pollock. Mesh size limits of 110 mm's in codends have

also been implemented. Finally, there has been a complete ban on pollock fishing in the Russian EEZ during periods of pollock spawning. In 2002 this closure was 01 March – 15 May.

- 4.5.3. Considering the frequent questions on measures of the coastal states, Korea recommended the United States and Russia draft a summary report of management measures implemented in respective EEZs as an appendix to the committee report.
- 4.5.4. The Chairman proposed that the coastal states each prepare a paper describing management measures taken as appendixes to the meeting report for the 7th Annual Conference. The United States and Russia agreed to provide these reports. These reports will be forwarded to all Parties by 01 January 2003.
- 4.5.5. The Chairman noted while several workshops have been conducted in the past, and these workshops were conducted to examine the issue of factors affecting the recovery of pollock stocks, we are still in a position of not having these factors definitively identified. The delegations at this meeting concluded that it is time to explore with more detail and depth possibly at another scheduled workshop.

4.6. The Effects of the Moratorium and its Continuation

- 4.6.1 Russia stated that it has detected the first signs of recovery of pollock stocks in a location off of Cape Olutorskiy in the Western Bering Sea. This is the first time this band of pollock stock has been detected in 10 years and likely can be attributed to the moratorium on fishing in the Convention Area and sound management policies implemented by the State Fisheries Committee of Russia. Additionally, in 1993, fishing for pollock was prohibited for 30 nm around the Commander Islands. A survey of pollock egg levels in 2001 indicated a large increase in pollock stocks since the 1980s.
- 4.6.2 Korea questioned the appearance of the Pollock band off Cape Olutorskiy in the WBS as a positive sign of the effect of moratorium in the donut hole.

4.7. Methodologies to Determine Allowable Harvest Level (AHL)

- 4.7.1. Japan suggested establishing AHL in any circumstance, even if very small, and based on scientific foundation. These calculations are based on United States' method of establishing ABC. Japan provided calculations for a conservative ABC estimate of 2,336 mt in the Specific Area and 3,894 mt in the whole Aleutian Basin Area for 2003. This calculation reflects the same methodology proposed by Japan for the past 3 years and the situation of the Pollock stock being severely depressed. (See attachment 8).
- 4.7.2. Poland questioned Japan on how to develop an AHL from the proposed ABC procedure. Japan stated AHL is indeed derived from the ABC, as part of a 2 step process. Japan wanted to first discuss the proposed ABC prior to discussing the determination of AHL.

- 4.7.3. The United States noted the Japanese proposal is similar to part of the process used by the North Pacific Fishery Management Council (NPFMC) to reach Total Allowable Catches (TACs). There is, however, there is other input that the NPFMC uses to go from ABC to TACs, especially when considering stocks that are severely depressed and in need of rebuilding.
- 4.7.4. Japan believes that for the fishing countries, the moratorium in the CBS is devastating. There should be a way to accommodate the needs of both coastal countries and the fishing countries. That is why establishing the correct ABC's and then an AHL are very important issues.
- 4.7.5. Russia supports the position and comments presented by the United States.
- 4.7.6. Korea notes per the Convention, AHL can be established first by consensus, and if that fails, move to Part I (Article VII). If AHL is set by consensus, we need to set up methodology for setting AHL. Korea appreciated Japan for introducing the concept of ABC as one methodology of determining AHL when the AHL is set by consensus.
- 4.7.7. China notes the data is not good enough to support resumption of commercial harvests. China suggests that setting even a token AHL would give fisherman a little hope, even if it would not result in commercial fishing.
- 4.7.8. The United States proposed that the Japanese proposal for setting ABC, if adopted, should be flexible, and may be subject to future change.
- 4.7.9. Korea clarified its position that it supported the Japanese proposal for introducing the concept of ABC that can be applied as a prior step in determining AHL. However, it recommended that the number of ABC itself on the Japanese proposal might be improved in the future.
- 4.7.10. Japan proposes to establish AHL based on ABC figures. Japan stated that even if we do not go into commercial fishing, there should be AHL figures established.
- 4.7.11. The United States stated that method proposed by Japan to calculate ABC is an intermediate step to possibly be used to calculate AHL. In the future, Parties may come up with other proposed methodologies for calculating ABC. It may be appropriate that in the future Parties should submit methodologies to calculate ABC to all other Parties prior to an annual meeting to give everyone time to consider the proposals.
- 4.7.12. The United States inquired of the Japanese delegation if they would like to discuss the setting of an AHL as part of the S&T Committee meeting or at the plenary meeting. Japan replied that the plenary meeting was the appropriate venue.
- 4.7.13. Korea stated that it does accept the Japanese proposal for the method of determining ABC as one option. In addition, it would accept the number, 3.849t, as the ABC for this year if all Parties commit to reaching an AHL

based on this ABC by consensus.

- 4.7.14. The Chairman confirmed with all Parties that they accepted the ABC proposed by the Japanese delegation for this year, and that the setting of the AHL would be deferred to the plenary session. The Chairman also recommended that the intersessional workshop discussed for 2003 be the appropriate venue to determine how ABC will be established in the future.

4.8. Comprehensive Research Plan

- 4.8.1. Korea requested a review of the current status of the comprehensive research plan.
- 4.8.2. The United States provided an overview of the work of the comprehensive research workgroup that was formed in 1999 to coordinate and plan for research in calendar year 2002. Three nations had available vessel time (Russia, Japan, and the United States) for 2002 and agreed to coordinate their vessel days in planning research in the Bering Sea. Results of the workgroup were presented earlier in this meeting. The United States proposed to continue the working group, and inquired as to which parties have vessel time available to conduct research in the Bering Sea for 2003. The United States will make the dates of its research vessel availability to all parties in 2-3 months, and has invited all Parties to participate.
- 4.8.3. Korea inquired if the United States had plans to conduct research in the Bogoslof I area, the United States responded yes, the survey will be conducted in March 2003 and be similar to the survey conducted in 2002.
- 4.8.4. Korea anticipates that there is a high probability that it could send a research vessel and some trial fishing vessels to the Bering Sea in 2003 for research. Korea is willing to host an intersessionary meeting to plan and coordinate that work.
- 4.8.5. Japan has no plans to send a research vessel into the Bering Sea in 2003.
- 4.8.6. Russia reported TINRO will conduct a hydroacoustic survey in Western Bering Sea in July 2003, and a bottom trawl survey in August 2003, and requested each Party to conduct plankton and physical oceanography data collection during their research.
- 4.8.7. Russia inquired of the United States delegation if it would be possible to conduct egg and larvae survey on the United States research vessel in the Bogoslov Island region in Feb 2003. The United States responded it was not aware of any plans for such a survey, but that pollock don't generally spawn in the BI area until at least mid March, so an egg count in late February or early March would not be productive.
- 4.8.8. The United States recommended the comprehensive research planning team develop sampling procedures for research within the Convention Area.

4.8.9. Poland does not plan to conduct trial fishing operations during 2003, but would like to participate in the R/V Miller Freeman cruise.

4.8.10. The Chairman suggested that due to the short time period that exists before already planned 2003 research cruises, Korea work with the comprehensive research team to integrate their survey activity directly with the United States for 2003. There is also a need for a comprehensive survey in the Convention Area, and this survey would be best planned in a workshop, which Korea has volunteered to host about in March 2003. Matters such as pollock genetics and aging, formulation of ABC/AHL, how to integrate trial fishing in research plans, and Pollock migration between the EBS and the Convention area should also be discussed at the workshop. Each party should forward a tentative agenda for the workshop to the Chairman prior to the end of November, and the Chairman will circulate the collated agenda to all Parties.

5. Discussion of Enforcement and Management Issues

5.1. Trial Fishing Terms and Conditions for 2003.

5.1.1. China noted that no fish were found during its trial fishing effort in 2001, and that this is primarily due to the short period of fishing and the participation of only two vessels. An increase in the number of trial fishing vessels each country could utilize and/or the coordination of trial fishing by vessels for more than one country could result in more effective fishing. China believes that trial fishing can be an effective part of scientific research.

5.1.2. The United States presented an enforcement report on trial fishing in the Convention Area for 2001/2002 (attachment 9). The United States also distributed a letter to all Parties that requested cooperation by them in allowing their trial fishing VMS data to be accessed by the U.S. Coast Guard.

5.1.3. The Chairman noted with respect to trial fishing, there seemed to be 3 issues that need to be discussed: (1) the number of vessels permitted to trial fish, (2) the time frame for trial fishing, and (3) integration of trial fishing with research surveys.

5.1.4. Korea proposed that the right to send trial fishing vessels into the Convention Area should be transferable between Parties, with the total allowable number of trial fishing vessels allowed each month to remain at 12. Korea believes that this will make trial fishing more effective, and will make the willingness of Korean fishing companies to send their vessels to the Convention Area stronger. Korea believes that the Parties can leverage this private investment towards exploration into receiving more scientific data on Pollock stocks in the Convention Area.

5.1.5. The United States will not support a request for more than 2 trial fishing vessels per month in the Convention area from any Party, or the transfer of a Parties' trial fishing rights to any other Party, for the reasons it had stated in past annual meetings.

- 5.1.6. Poland commented that the current conditions of trial fishing is sufficient now, and that issues of sharing trial fishing rights with other Parties should be discussed at a workshop. Two trial fishing vessels for each Party is enough.
- 5.1.7. The United States (as chair of the comprehensive research working group) states that the group did not discuss the issue of trial fishing as part of a cooperative survey because there was no interest by any Party in trial fishing in 2001/2002.
- 5.1.8. The Chairman proposed including trial fishing in the agenda for the next comprehensive research working group meeting, and stated the issue of integrating trial fishing into a research plan is very complicated and requires significant prior planning.
- 5.1.9. The Chairman proposed making the terms and conditions for 2003 trial fishing the same as those for 2002. All Parties agreed.

5.2. Number and priority Placement of Observers Required by Article XI

No issues noted.

5.3. Methods to Determine Catch Weight

No issues noted.

5.4. Components of a Management System

No issues noted.

6. Other Matters and Recommendations

- 6.1. The United States has put a small amount of information (reports from 3rd, 4th, 5th, 6th annual meetings) on it's NOAA regional website as a demonstration of what can be done if all Parties agree to support a website. The United States provided a demonstration page on page 14 of Appendix 5 of what a more robust website could contain. The United States will continue to develop the website if all Parties agree. The United States will consult with Parties on information to have on the website, and password protected information that Parties would like to have available, but not to the public. The alternative is for all Parties to have independent websites.
- 6.2. Korea addressed advantage of website – a common method of modern communication, an effective way to coordinate activities, and a useful means of preserving Conference history. Many fisheries organizations use websites to communicate and share information and announcements. Issues that need to be discussed include how to organize the structure of the website, and the need for funds to maintain and update the website.
- 6.3. Japan inquired if the website will be made public so others may access the information. The United States replied that some information is already made public, however some information should not be made public. The United States reiterated that it believes no sensitive information should be made

public unless all Parties agree. It would like to continue to develop the website, correspond via e-mail over the next year on appropriate website material, and re-visit the website at the next annual meeting.

- 6.4. The Chairman stated that in order to coordinate the website work of the United States, the United States would issue a password to each Party that will enable access to the demonstration web site. Parties can access that website and provide comments on improving it to the United States.

6.4 List of Attachments

1. S&T Agenda
2. List of S&T participants
3. Japan catches of Pollock in Donut Hole area of the Bering Sea during 1984-1991
4. Korean catches of Pollock in Donut Hole area of the Bering Sea during 1984-1991
5. Information submitted to the S&T committee by the United States party for the 7th Annual Conference.
6. Cruise results of the winter 2002 Bering Sea Pollock survey (Kaiyo Maru)
7. Status of Bering Sea Pollock in the Russian EEZ
8. Japanese proposal for the ABC of 2003 in the Convention Area
9. U.S. Coast Guard report on Donut Hole Activity 2001-2002

**REPORT OF THE SEVENTH ANNUAL CONFERENCE OF THE PARTIES TO THE
CONVENTION ON THE CONSERVATION AND MANAGEMENT OF POLLOCK
RESOURCES IN THE CENTRAL BERING SEA**

September 16-19, 2002
Moscow, Russia

**AGENDA B-1
OCTOBER 2002
Supplemental**

Final: 19 September 2002, 13:00

1. Opening of the Conference.

The Chairperson, Dr. Boris Kotenev, the director of the Russian Federal Research Institute of Fisheries and Oceanography, welcomed the delegations of the Parties to the Convention on The Conservation and Management of the Pollock Resources in the Central Bering Sea to the Seventh Annual Conference. Chairperson invited the representative of the Chinese Government, the Republic of Korean Government, Japanese Government, Polish Government, and United States Government to present opening Statements.

2. Welcome Address and Statements of the Delegates

2.1. Opening statements provided by the Parties are included in Appendix 1.

2.2. A list of the participants is presented in Appendix 2.

3. Election

3.A. Chairperson

Dr. Boris Kotenev was elected as Chairperson of the Seventh Annual Conference.

3.B. Vice-Chairperson

Dr. Richard Marasco (U.S.) was elected as Vice-Chairperson.

3.C. Chairman of Scientific and Technical Committee

Dr. Richard Marasco – (U.S.) was elected the Chairman of the Scientific and Technical Committee.

3.D. Rapporteur

Dr Stepanenko (Russia) was appointed as rapporteur
LCDR Phillip Thorne (U.S.) was appointed as rapporteur.

4. Adoption of the Agenda

The Agenda was adopted (Appendix 3).

5. Report of the Scientific and Technical Committee

The Chair of the Scientific and Technical (S&T) Committee reported on the S&T Committee Meeting of September 16— September 18 2002. The S&T Committee produced the S&T Report, which was distributed separately to the parties. Items discussed during the S&T Meeting were highlighted, which are fully described in the Report of the S&T Meeting. A summary of the S&T Committee's AHL discussion follows:

Japan and Korea presented historical data on the harvest of Pollock from the CBS from 1984-1991, and China and Russian will continue work to supply the necessary data.

Korea requested clarification of the reporting period for trial fishing. To remain consistent with reports from previous years, the reporting period will be from the previous conference to

the current conference.

China reported two vessels were sent to the Donut Hole in 2001, with no catches or locations of Pollock. China also noted the scale of trial fishing was not consistent to produce good results.

United States, Japan and Russia provided an overview of all survey activity conducted. The results from these activities are reported in the S&TC minutes.

United States reported no reliable biomass for the Aleutian Basin. No survey in the Aleutian Basin region was conducted in 2002. The most recent year for which a survey was conducted was in 2000. A survey of the Bogoslov I. (Convention Specific Area) was completed in 2002. The US proposed use of the Bogoslov I biomass as a proxy in accordance with the Convention. Korea also noted there is insufficient data to independently estimate the Convention area biomass. They noted comprehensive research to collect necessary data was necessary, and offered to host an intersessionary meeting on this issue.

There is no definitive answer to what factors are responsible for the low biomass of Pollock in the Convention area. Coastal states will prepare documents identifying management measures taken within their EEZ's and append them to the conference documents.

Russia has detected the first signs of rebuilding of Pollock stocks in high seas off the Cape Olutorskiy area of the Bering Sea, the first time this stock of Pollock has been detected in 10 years. It was suggested that the appearance of this stock could be attributed to the moratorium, although Korea questioned whether this appearance was due to the moratorium.

Japan suggested AHL be established in any circumstance, and proposed the methods used by the United States in the North Pacific be used as an approach to develop AHL. Japan suggested a method for calculating ABC, included as attachment 8 to the S&TC report. There was consensus that the ABC should be calculated using the methodology similar to the one proposed by Japan, or an improved one. Korea recommended the AHL can be set by consensus, if consensus is not reached then the procedures of Article VII of Part I of the Convention must be followed. The intersessional workshop will be an appropriate forum to have a complete discussion of AHL and ABC issues.

An overview was presented by the comprehensive research working group on activities for calendar year 2001-2002. Russia, Japan and the United States had vessel research days available and agreed to coordinate their research efforts in the CBS. Results of the research are reported in the S&TC report. It was proposed the work of this group continue. An inquiry was also made of Parties for research vessel time in 2002-2003, and the US indicated it was willing to take the lead in coordinating the research activity in the CBS. Dates of research vessel availability should be reported to all Parties 2-3 months in advance.

All parties should begin work immediately in developing a cooperative research plan for 2003, due to the short time period that exists for already planned research activity. All parties agreed there is a need for a comprehensive survey of the Convention area for AHL determination. Korea volunteered to host a meeting in Spring 2003 to develop a 2003 survey plan. There was also a discussion of integrating trial fishing with research activity. This issue will be made as an agenda item for the intersessional workshop proposed in Spring 2003. Agenda items for this workshop should be submitted to the Chairman of the S&TC by the end of November.

China reported an intention to engage in trial fishing activities in Nov-Dec 2002. It is the opinion of China that trial fishing can be an important part of research. The United States provided an enforcement report that was submitted with the S&TC report. Korea suggested that trial fishing rights should be transferable between parties. The United States would not support a request for more than 2 trial fishing vessels per month in the Convention area, or the transfer of trial fishing rights between Parties. The terms and conditions for trial fishing in

2003 will be the same as 2002.

The United States indicated it has put together a small amount of information on its NOAA regional website as an example. A demonstration page was submitted with the S&TC report. All parties agreed there are advantages with the development of a website. The remaining issue is what information should be made available to the public, and determination of appropriate information for the website. The US will provide a password that will allow access to the website by one member of each delegation.

The Conference agreed to adopt the Report of the Scientific and Technical Committee

6. Action Items

6.A. The Review of Scientific Data and Conservation Measures of the Coastal States Related to Pollock Fishing in the Bering Sea

- 6.A.1 Japan inquired of the United States if there are any regulation requiring a minimum net mesh size, and if there is a minimum size limit for retention of commercially harvested pollock. The United States responded there is no mesh size regulation, however 4.5 – 5 inches is typically used, as there is no market for small fish. There is no minimum size limit regulation, however the targeted size of pollock set by the processing industry is 600-1200 grams.
- 6.A.2 Japan inquired of the United States if bycatch of small pollock was a concern, and the United States answered that it was a concern, but as there is no market for those fish, fishermen try to avoid catching them.

6.B. The Establishment of a Plan of Work for the Scientific and Technical Committee

The United States suggested using the S&TC report to develop the plan of work.

6.C. The Establishing of the Terms and Conditions for Trial Fishing in 2003

- 6.C.1 The United States proposed the conditions for trial fishing for 2003 be identical to the 2002 conditions, consistent with the recommendation of the S&TC report.
- 6.C.2 Korea re-iterated their proposal made in the S&T Committee that parties which do not intend to conduct trial fishing be allowed to transfer their trial fishing rights to Parties that intend to conduct trial fishing. Additionally, Korea is willing to impose a catch limitation scheme for trial fishing, asserting that this would be more conservative than the current trial fishing plan. All parties will work on incorporating trial fishing into the comprehensive research plan at the Spring 2003 intersessionary meeting.
- 6.C.3 China stated trial fishing is different than commercial fishing, and is a vital part of scientific research. The scale of trial fishing should be expanded and encouraged. The data and results of trial fishing should be shared with all Parties. This will result in the Parties obtaining more effective data on the status of pollock stocks.
- 6.C.4 The United States is aware of the benefits and value of trial fishing, and is also aware of how trial fishing can be used in a scientific fashion. The integration of trial fishing information into any scientific assessment presents serious problems. Those problems have not been adequately addressed by this body. The United States, as in the past, cannot support the transfer of trial fishing rights from one party to another, and the reasons for this position have been passed at previous annual conferences and there is no need to repeat those reasons.
- 6.C.5 The Chairman noted at the scientific meeting in Seattle, detailed information on trial fishing were presented. In view of those detailed discussions in Seattle, the terms and conditions of trial fishing in 2003 should be the same as 2002, and the suggestions on trial fishing made by

Korea and China be discussed at the working group meeting to take place in Spring 2003 in Korea.

- 6.C.6 The United States supports the Chairman's comment, and the United States would entertain changes to the rules associated with trial fishing provided the usefulness of trial fishing in scientific research is clearly documented, and a comprehensive research plan established. Very stringent requirements would have to be imposed. These conditions are no more stringent than conditions imposed when several fishing vessels work together to evaluate the status of a stock. One of the features commonly associated with a comprehensive research plan is that fishing vessels occupy specified and fixed survey stations. All Parties should take it upon themselves to point out to their fishing communities that to be useful to science, very stringent requirements need to be followed. The United States has struggled with using commercial fishing vessels for scientific research in the US EEZ for several years. The United States will entertain this issue if it is developed in its full extent.
- 6.C.7 Korea appreciates the United States willingness to re-consider the terms and conditions of trial fishing in the context of a comprehensive research plan.
- 6.C.8 The Chairman proposed to make the terms and conditions for trial fishing in 2003 the same as 2002. However, the 2003 workshop in Korea can recommend new terms and conditions for trial fishing in a comprehensive research plan. If recommendations are suggested, Parties to the Convention will be contacted to act on recommendations in a timely manner. All Parties agreed.

6.D. The Establishing of the Allowable Harvest Level

- 6.D.1 The United States commented that this body is dealing with a depleted resource and it should be concerned with conservation. With all delegates aware of the status of the pollock resource, the United States strongly believes the AHL be set equal to zero. Furthermore, all fishermen from all nations Party to this convention have all shared in the grief of having fishing quota set at zero or very low levels and areas closed to fishing.
- 6.D.2 Japan is fully aware of the need for conservation and agrees that the preservation of the stock is important, but equally important is rational use of the resource. In the S&TC meeting Japan proposed ABC. Japan believes that all the countries interested in preservation of the stock also need a hope they will be able to fish that resource. It is Japan's wish that an AHL be established based on ABC figures. Japan agrees with the United States on the status of the stock, but would like to set a minimal AHL, even if it does not allow commercial fishing.
- 6.D.3 The Korean delegate representing Pollock fishing industry made a statement, which is included as Appendix 5.
- 6.D.4 China stated the result of 10 years of moratorium is very clear, the pollock resource has not recovered. Flexible or alternative measures, such as setting a minimum AHL to allow Parties to allow fishermen to come to the Convention area are necessary. It has been China's experience that fishing in an area can actually stimulate stock reproduction. Conversely, when fishing vessels leave an area for an extended period of time, often fish stocks are discovered to be gone when fishing vessels return. Therefore, the proper fishing in the Convention Area would be positive to the stock production in the Convention Area.
- 6.D.5 Poland is of the opinion that AHL for the pollock stock be established taking the precautionary approach into account, and establishing AHL at a minimum level will have no harm on the stock. Poland supports the Japanese proposal of establishing AHL based on ABC.
- 6.D.6 The Chairman noted 4 parties proposed AHL at a low level, two parties proposed setting AHL at zero, and since consensus is not reached the procedure of Annex I of the convention should be applied. All Parties should recognize the Convention was established prior to the

entry into force of the 1995 Straddling Stocks agreement, consequently the nations of this table are in a better position than they would be if this issue were controlled by the Straddling Stocks agreement. Under that agreement, coastal states would establish the rules for fishing for pollock in the CBS, and no vessel of any state would be able to fish the CBS. Therefore, all Parties should understand this Convention enables all Parties to consider opening up fishing possibilities once the stock recovers.

- 6.D.7 Japan recommended setting AHL at a very low level, close to zero as a symbolic measure. Japan understands the United States position on setting AHL at zero, but requests a symbolic level of AHL.
- 6.D.8 At the meeting of the S&TC, Parties to the Convention agreed to Japan's proposal to determine an ABC for pollock stock in the Aleutian Basin.
- 6.D.9 Japan believes that, basing on above ABC volume, with the due consideration to the reasonable promotion of conservation, management and the optimum use of pollock resources and for the sake of further cooperation among the member states, aimed at achieving goals of the Convention, Parties should set scientifically sound quota as AHL. This very quota should be established no matter how small and unworthy of interest to the fishing industry it may be. The Convention countries should now and in the future strive to verify the effectiveness of moratorium as a measure to manage resources, as well as rationality of continuing moratorium itself. No effort should be spared to reveal the causes why, in spite of long term present moratorium, recovery of the stock did not occur.
- 6.D.10 The Chairman brought all Parties attention to paragraph 4, article 10 of the Convention. Per this article, establishment of any AHL would preclude trial fishing.
- 6.D.11 Japan commented they view AHL and trial fishing equally important, and this is why the adoption of AHL was suggested.
- 6.D.12 Per Annex I of the Convention, AHL was set at zero.

6.E. The Establishment of the Individual National Quotas

Since the AHL for 2003 was set at a zero level, no individual national quotas (INQ) were established.

6.F. The Adoption of Appropriate Conservation and Management Measures Based upon the Advice of the Scientific and Technical Committee

Since the Chairman for S&T Committee stated that no new recommendations were forwarded by the S&T Committee, all the decisions regarding regulations and measures which were made last year at the 6th Conference, were adopted.

6.G. Trial Fishing Plans

- 6.G.1 China will send fishing vessels for trial fishing purposes during March-December 2003 and will notify the U.S. Coast Guard when details of the operations are known.
- 6.G.2 Korea will also conduct trial fishing activity in 2003 in conjunction with a comprehensive research survey. Details will be discussed at the Spring 2003 workshop, and the survey may be conducted in the summer vice winter.
- 6.G.3 Japan noted it is unlikely Japan will conduct any trial fishing, however if a concrete plan is developed all Parties will be notified.
- 6.G.4 Russia plans on conducting trial fishing in the next year.
- 6.G.5 The United States has no plans for trial fishing next year. The United States noted that in the

past, Parties should have appropriate documentation for trial fishing available at the annual conference.

6.H. Reception of Reports Relating to Measures Taken to Investigate and Penalize Violation of the Convention

Report was discussed at the S&TC meeting, and was not re-addressed.

6.I. The Consideration of Matters Related to the Conservation and Management of Living Marine Resources other than Pollock in the Convention Area

No comments

6.J. Meeting Observers

The Parties agreed to the same observers rules for 2003 that were used in 1998-2002 (See Report of the Second Annual Conference 1997 Part 6.J.10).

7. Eighth Annual Conference

7.A. Time and Location

United States offered to host the Eighth Annual Conference in Portland Oregon, the week of September 15.

7.B. Election of Chairperson and Vice-Chairperson

- 7.B.1 Dr Jim Balsiger was elected chairperson
- 7.B.2 Takashi Mori was elected vice-chairperson

8. Other Business

8.A Re-evaluation of current convention

- 8.A.1 Korea has proposed two items under this agenda to promote the goal of the Convention. The first item, "Discussions of the Convention issues," may focus on integrating and reevaluating all scientific findings that have been collected during the last decade and make a summary report that includes highlights of key accomplishments from scientific activities. The next step would be to compare the scientific information in the Convention with the highlights obtained. The final step would be to make a review report on this issue. Korea expects that this issue be discussed at the Spring 2003 workshop in Korea.
- 8.A.2 The United States agrees that the integration of scientific findings should be an agenda item for the Spring workshop.

8.B Establishment of intersessional activities

Korea considers that the second item, "The establishment of an intersessional activity," was smoothly reflected during the Scientific and Technical Committee meeting.

9. Closing Statements

The closing statements of the Parties are provided in Appendix 8.

Appendix 2 -- LIST OF DELEGATIONS

SEVENTH ANNUAL CONFERENCE OF THE PARTIES TO THE CONVENTION ON THE CONSERVATION AND MANAGEMENT OF POLLOCK RESOURCES IN THE CENTRAL BERING SEA

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7. Janusz Kupczyk
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Press Release

SEVENTH ANNUAL CONFERENCE OF THE PARTIES TO THE CONVENTION ON THE
CONSERVATION AND MANAGEMENT OF POLLOCK RESOURCES IN THE CENTRAL
BERING SEA

September 16-19, 2002 Moscow Russia
JOINT PRESS RELEASE
Final, 19 September 2002

Representatives from the six Parties to the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea met in Moscow, Russia and continued their cooperative efforts to conserve and manage pollock stocks in the Convention Area.

The Seventh Annual Conference held under terms of the Convention took place 16-19 September 2002. The Conference was chaired by Dr. Boris Kotenev from Russia. The Parties to the Convention, the Russian Federation, Poland, the People's Republic of China, Japan, the Republic of Korea, and the United States of America, agreed on the conservation and management measures and reviewed scientific information on the status of pollock stocks. The Scientific and Technical Committee agreed on a plan of work for 2003.

The Seventh Annual Conference determined that the biomass of the pollock resources in the Convention Area has not reached the criteria described in the Convention. Accordingly, by the Convention rules, the annual harvest level of pollock in the Convention Area was set at zero. In the absence of a harvest level, trial fishing by vessels of the Parties to the Convention will be permitted in 2003. The Parties agreed to strengthen scientific efforts and cooperation.

In 2003, member States plan to conduct a coordinated research effort in the Central Bering Sea and the Aleutian Basin. This provides a unique opportunity to study pollock distribution and migration patterns in the Bering Sea. Comprehensive scientific information such as this will allow the Parties to make better informed decisions on the conservation and management of the pollock resource.

The United States of America invited the Parties to start the Eighth Annual Conference in September 15, 2003 in Portland, Oregon.

Appendices:

1. Opening Statements

2. Delegation Lists

3.enary Agenda

4. Trial Fishing Terms and Conditions for 2003

5. Statement of the Korean Fisheries industry

6. Press Release

7. Closing Statement

PUBLIC TESTIMONY SIGN-UP SHEET FOR
AGENDA ITEM B - Reports

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