

ALASKA LEGISLATURE COMMITTEE FILES 1991-1992 8672
7214 HOUSE RESOURCES

Honorable Rockwell Schnabel
February 27, 1992
Page 2

We ask you, as the person ultimately responsible for plan approval, to ask NMFS to reconsider its rejection of the Pacific whiting plan and to keep Congressional intent in mind as both plans are reviewed.

Thank you for your consideration of this matter.

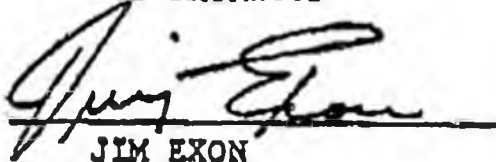
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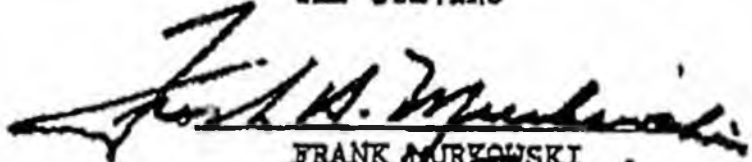
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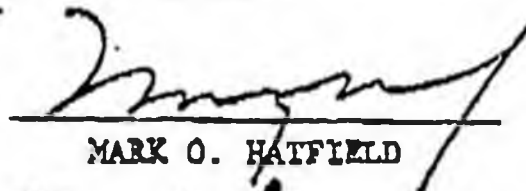
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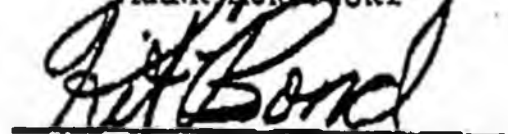
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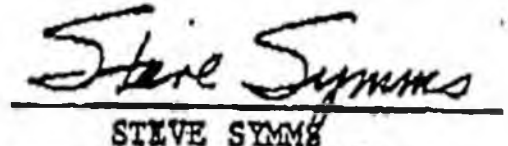
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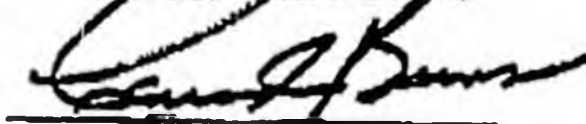
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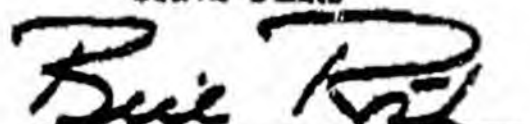
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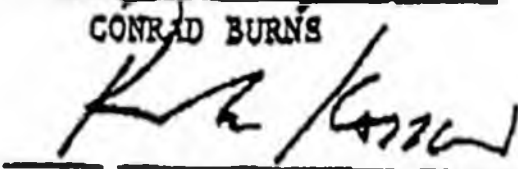
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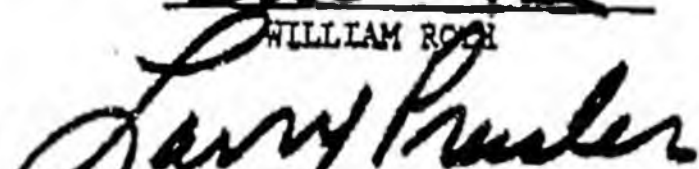
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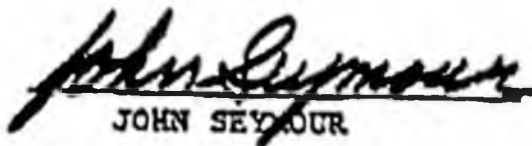
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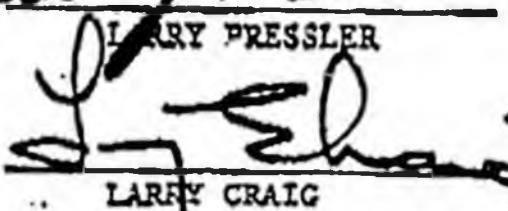
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The Anchorage Times

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FISH WAR INTENSIFIES

Trawlers show clout

ALTHOUGH MANY Alaskans may not realize it, our state is at war — a fish war in which Alaska fishermen who supply pollock to onshore processors are on one side, and the giant fleet of Seattle-based factory trawlers are lined up on the other. Unfortunately for our state, the other guys appear to be winning.

When lawyers at the Department of Justice weighed in the other day with an independent opinion on how Alaska's pollock should be allocated, it illustrated just how powerful the U.S. factory trawler lobby has become.

In their opinion, the federal attorneys argued against dividing Alaska's pollock resources between fishermen who supply the onshore processors and the offshore trawlers. They recommended instead an auction of the resource — all of Alaska's fish going to the highest bidder, which undoubtedly would mean the trawlers get all of it.

BECAUSE THE opinion was volunteered — no one had asked for it — and because the arguments it presented, wording and all, were very similar to the position advocated by the trawlers association, it could have been written by the trawlers themselves. In any event, it contained flaws in its reasoning.

Principal among those flaws is the contention that the allocation of U.S. resources should go to the most "efficient" operations, and whoever is willing to pay the most for those resources, therefore, must be the most efficient.

Obviously overlooked by the Justice Department lawyers is the fact that the reason trawlers make so much profit is because they are notoriously inefficient when it comes to full utilization of fish resources. The trawl fleet operations account for an enormous amount of fish waste — almost 30 percent of everything caught is discarded. The food is wasted in order to increase profit margins.

ALASKA'S INSHORE fishery, on the other hand, maximizes productivity from the fishery and therefore is the most efficient. Alaska's shore-based fishery also provides employment and economic benefits to numerous local communities, one of the objectives in federal guidelines for allocating fish resources.

Those were among the reasons why the North Pacific Fishery Management Council recommended last fall the allocation of up to half of the available pollock for annual harvest to the inshore fishery. But NPFMC's recommendation is still awaiting approval by the secretary of Commerce.

Former Commerce Secretary Robert Mosbacher was well briefed on the issue, and Alaskans were optimistic he would side in favor of the NPFMC recommendation. However, he has since moved on and a new secretary, Barbara Franklin, is awaiting confirmation by the Senate. Where she will come down on the issue, no one knows.

But it's apparent that the trawlers lobby will be doing everything possible to sway her opinion its way.

Official wants to reject plans for fish catch

Inspector general criticizes council's work on pollock

By BRIGID SCHULTE
and HAL BERNTON
Daily News reporters

WASHINGTON — The Commerce Department's inspector general says two proposals to guarantee pollock to Alaska's shore-based plants are based on incomplete and faulty studies, and should be rejected.

Inspector General Frank DeGeorge released the report Wednesday, one week before the department is scheduled to make a final decision on the allocation proposals. The proposals were approved last summer by the federal North Pacific Fishery Management Council. They have triggered one of the nastiest fish fights of the past decade, pitting Alaska politicians and shore operators against largely Seattle-based factory trawler companies that process fish

at sea. They are fighting for shares of a North Pacific pollock catch worth more than \$1 billion a year.

Factory trawler operators are hoping the inspector general's report will doom the allocation proposals.

"No self-respecting administration official would dare put their reputation on the line for this thing," said Stuart Looney, president of the factory trawler company Royal Seafoods Inc.

Meanwhile, Alaska politicians are trying to downplay the findings as they lobby the Bush Administration to support the shore plants.

"The audit revealed no violations of laws or regulations in the way the council process was conducted," Murkowski and Young said

Please see Back Page,
POLLOCK

POLLOCK: Official wants proposals rejected

Continued from Page A-1
a statement Wednesday. The council followed both the letter and intent of the law.

The proposals were approved by the fishery council last summer in a 9-2 vote. The council is a group of fishing industry, federal and state officials who help craft federal fishery policy, and the Commerce Department normally approves council actions.

One proposal would guarantee most of the Gulf of Alaska pollock to boats serving Kodiak and other shore-based plants. The other proposal would guarantee at least 45 percent of the much larger Bering Sea pollock catch to boats serving shore plants.

The fish are now caught

on a first come, first-served basis, and factory trawlers have charged the proposals are an unfair attempt to rig the harvest in favor of their competitors.

The inspector general's report did not attempt to judge the merits of the proposal. Instead, it looked at the economic, social and environmental studies on which the council is required to base decisions. The report's findings include:

- The council failed to prepare a cost-benefit analysis of how the proposal would affect the fishing industry.

- The council failed to document how the allocation proposal would help solve the problem of an oversized fleet with too many boats chasing after the pollock.

- The council failed to

- The council failed to address the full social impact of jobs being shifted from the factory trawler fleet to the shore-based processors.

Rick Lauber, the council chairman, said the council closely followed the legal advice of attorneys from the National Marine Fisheries Service. Those attorneys said the studies meet all legal requirements, and specifically said the council did not have to do a cost-benefit analysis.

"Now, they're saying we should have done something we thought wasn't necessary," Lauber said. "The

whole thing is so unfair." Both shore plant and factory trawler supporters are now pressing forward with a final week of lobbying to tip the scales in their favor. And both sides are vowing to sue for the decision against them.

"The record is unimpeachable for this action, so, given the violations of the law that have occurred, it would in all likelihood be gate on it," said J. Gilmore, a lobbyist for the American Factory Trawler Association.

Dennis Phelan, lobby director for the Pacific Seafood Processors Association, said plan meetings all legal standards. If the Commerce Department decides to "impose some new standard," Phelan said, that's illegal. "We'll have no choice but to sue."

ANCHORAGE TIMES
SATURDAY, February 22, 1992

Bottom-fish feud spills over onto Capitol Hill

By IMRE NEMETH

TIMES BUSINESS WRITER

Two warring factions of Alaska's commercial fishing industry have launched last-ditch efforts to woo federal regulators as a ruling nears on splitting Alaska's \$1-billion bottom-fish industry between the two groups.

The pending reallocation of bottom fish stocks in the Bering Sea and Gulf of Alaska has sparked a survival-of-the-fittest lobbying battle in which onshore processors and a well-positioned Seattle factory trawl fleet are slugging it out to influence officials from the White House to Capitol Hill.

"I've never seen anything like it," said Margaret Hayes, chief fisheries attorney for the Commerce Department. "This is more (lobbying) than I've seen before on any other fisheries proposal."

The proposal calls for a 55 percent share of

the harvest for factory trawlers, which process surimi and fillets at sea, and 45 percent for catcher vessels that deliver to shore-based plants in Dutch Harbor, Kodiak, Akutan and St. Paul.

A decision is expected March 5 by either yet-to-be-confirmed Commerce Secretary Barbara Franklin or the current acting secretary.

"It's a tough, tough battle," said Bill Woolf, spokesman for Sen. Frank Murkowski, R-Alaska, in Washington, D.C. "We frankly consider the allocation vital for Alaska. (Otherwise), people are going to be put out of work."

Both sides in the debate believe their economic survival hinges on the decision.

Bruce Buls, a spokesman for the Seattle-based American Factory Trawlers

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Fish

Continued from page

Association, said the proposal would cost his industry millions of dollars and give unfair control of the surimi market to large Japanese-owned processors in Dutch Harbor.

"Is the U.S. government, by policy, proposing to grant resource and market control to the Japanese?" he said. "We're talking about tampering with people's lives, and for what? So that Nippon Suisan, Taiyo and Trident could have guaranteed economic success."

Nippon Suisan and Taiyo, both Japanese companies, own Dutch Harbor plants, while U.S.-owned Trident Seafoods Inc. has a plant in Akutan.

Onshore interests were wary of guessing the outcome, but John Iani, president of the Pacific Seafood Processors Association, said his forces have a 50-50 chance of winning.

"I think we've gotten to the point where we've proven our case," he said. "Now it's a policy decision. This is the biggest fish issue to hit the state since the Magnuson Act. If it doesn't pass, the shore plants will be out of luck."

The state's congressional delegation is trying to arrange a meeting with White House officials next week to push the proposed allocation, said Rod Moore, an aide to Rep. Don Young, R-Alaska.

The factory trawl industry, which now harvests 80 percent of Bering Sea pollock, has been locked in political competition

with shore-based interests since the allocation proposal passed the North Pacific Fishery Management Council in June by a 9-2 vote.

Jim Cornelius, a council economist, described the current state of events as a "Super Bowl attrition" with no clear front-runner.

"I've seen controversy in the past, but not one that reached such a polarization," he said.

The proposal initially spawned more than 500 pages of economic and biological review by the Alaska office of the National Marine Fisheries Service and another 500 pages of public testimony. Both sides since have added further comment for the record and two full-scale governmental investigations also are under way.

The Commerce Department has probed allegations of conflict of interest among 11 members of the North Pacific council. A draft report based on the investigation has been issued to the National Oceanic & Atmospheric Administration following extensive study throughout Alaska. NOAA oversees the fisheries service and the council.

Wayne Weaver, a spokesman in Commerce's Inspector General's office, declined to say what was in the report, nor would he say when it would be made public.

The Washington, D.C., office of the fisheries service also has started analyzing the inshore-offshore proposal to supplement nearly 1,100 public comments and its Alaska offices's economic analysis, said Dick Schaefer, director of the service's Office of Fish Conservation and Management. A 90-day public comment

period ended earlier this month.

The fisheries service analysis of the entire issue remains "several weeks" from completion, but must be submitted prior to the March 5 deadline, Schaefer said.

The agency last month rejected a similar onshore-offshore allocation proposal dividing Pacific whiting off Oregon's coast. Bala said the move is indicative of the agency's feelings toward allocations between different user groups, but officials say the agency has voiced no opinion on the Alaska proposal.

The Department of Justice's Antitrust Division also has entered the fray, submitting a review that advocates rejection of the proposal.

"Neither the current allocation system nor the proposed amendment are consistent with the efficiency goals of National Standard," the opinion said.

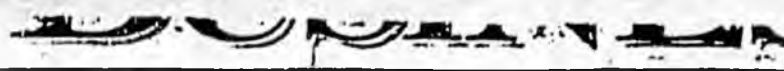
The National Standard, as defined by the Magnuson Act, says fishery management should promote efficiency in the utilization of the resource.

The Antitrust Division favored a controversial individual quota system passed by the North Pacific council in December. The council is to review the quota in April.

Moore, of Young's office, downplayed the Justice review, deriding it as "just an opinion of a bunch of lawyers."

Hayes at the Commerce Department said the Justice opinion was the first one she could recall on a fisheries issue. She said the Antitrust Division's review is without real clout, since the Natural Resource Division at Justice would defend her agency in the event of legal challenges to any allocation.

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2/14/92

Fish plan alive

Trawlers' actions irk Commerce

By DONNA PARKER
Special to the Daily News

A recent U.S. Justice Department opinion against a proposal to divide Alaska's rich bottom fishery between offshore processing ships and boats serving onshore plants was unsolicited, inaccurate and misused by those who hope the plan will be nixed, a top federal Department of Commerce official said.

Margaret Hayes, assistant general counsel on fisheries for the Commerce Department, said the legal comments circulated by the American Factory Trawler Association is being misrepresented as a Justice Department decision.

The comments were written by four attorneys from the Antitrust Division who urged the proposed allocation plan be rejected because it does not meet the requirements of federal law.

The allocation plan has torn apart the bottom fishing industry. Most of the offshore ships that fish off Alaska are based in Seattle or elsewhere outside the state. The onshore plants are located mainly in Kodiak and Dutch Harbor.

The onshore plants want a guarantee the huge ships that catch and process fish can't take all the fish near their plants; they say the guarantee is vital to the economic survival of Alaska

C6 Anchorage Daily News Friday, February 14, 1992

FLEET: Attorneys' letter irks Commerce counsel

Continued from Page C-1

coastal communities. The offshore group argues the plan is inefficient and penalizes them for their investment in at-sea processing.

The Commerce Department, which is to decide by March 5 on the allocation plan, did not request the comments, she said. And the Antitrust Division would not defend whatever decision is made, she said.

She was perturbed that the legal comments were being touted by the trawler association — which represents the offshore fleet — as representing a Justice Department decision.

"This document from Justice is not a decision. It is merely a comment on a set of proposed regulations that we asked the whole world to comment on," Hayes said.

The comments would not carry much weight within the Commerce Department, she said.

"We certainly would respect the opinion of the Antitrust Division in areas where they have expertise. But, I don't think they have any particular expertise on the national standards of the Magnuson Act," she said of the federal law that governs fishing off the U.S. coast.

The Justice Department lawyers did not return calls asking for comment.

Bruce Buis, spokesman for the trawlers association, said the group's lobbyists had solicited the Justice Department lawyers in hopes of securing a legal opinion that could overturn the proposed allocation plan.

"Yes, we contacted them. We talked to them and asked them to look into this. And we provided them with information explaining our point of view of the issue," Buis said.

"We've approached anybody that we think might help have this overturned."

The trawlers association circulated the Justice Department comments to the press last week with a cover letter interpreting the 10-page document.

The letter claimed the Justice Department had concluded the allocation plan wasn't consistent with the Magnuson Act's efficiency requirements and "puts the government in a bind if Commerce approves" the plan.

"This document from Justice is not a decision. It is merely a comment on a set of proposed regulations . . ."

— Margaret Hayes

"The reason is," wrote Buis in the cover letter, "that if the allocation is challenged in court — as it would be — the Department of Justice would have to defend the Department of Commerce. And Justice has already said that the proposed allocation doesn't satisfy the law."

That caused proclamations that the onshore/offshore proposal was all but dead. However, Hayes said that is far from true. The legal comments were inaccurate readings of the Magnuson Act, she said, and if the decision is challenged in court, the Lands and Natural Resource Division of the Justice Department would defend the government.

John Iani, director of the Pacific Seafood Processors Association, which represents on-shore plants, blasted the trawlers association.

"This is another case where the factory trawlers have ginned-up erroneous information," he said. The allocation proposal would guarantee shore-based fleets 45 percent of the huge pollock catch in the Bering Sea and all of the pollock catch in the Gulf of Alaska.

Last spring, the trawlers association was behind an ad campaign that asked fishermen to oppose the proposal because it would allocate most of the pollock to a monopoly of foreign-controlled processing plants and cause fishermen to get less for their fish. The ad campaign used a box number in Alaska but never identified the group as members of the at-sea processing sector.

The on-shore/offshore separate allocation proposal was passed in a 9-2 vote by the North Pacific Fishery Management Council last June.

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THURSDAY, JANUARY 23, 1992

KODIAK, ALASKA

16 PAGES

50 CENTS

American fishermen are landing millions of pounds of halibut caught in Russian waters

By MARK BUCKLEY
Staff Writer

An American-flagged fleet of factory trawlers and longliners has been operating in Russian territorial waters since August or September of last year. They're returning to North American ports, primarily Dutch Harbor, with millions of pounds of halibut and other groundfish.

Had some of those fish been caught in the U.S., they would have been illegal to keep.

Some of those fish landed may be of American stock.

Because of a loophole in federal regulation, no one in the U.S. knows how many boats are in this fishery. Additionally, no one knows exact tonnage or species composition of the fish being landed here.

"The situation is legal," said Bob Trumble, Senior Biologist with the International Pacific Halibut Commission (IPHC), the organization that manages Pacific halibut in U.S. and Canadian waters.

Because the boats landing Russian-origin fish in U.S. ports are American flagged processors, they are not technically "importing" the fish. The processors can legally sell the fish as "product of the U.S.A."

Because the fish were caught legally in Russian waters, no U.S. laws were broken. This is true even though the fish may have been caught, kept or landed in ways that are illegal in America.

"The vessel owners have an arrangement with the Russians for American boats to fish inside the Russian 200-mile limit," Trumble said. "The U.S. vessels pay a fee per pound and get to keep and process the fish at sea.

The boats are both trawlers and longliners. Some of the boats are from the U.S., some are from other places. Just recently, for example, a significant quantity of fish was landed in British Columbia," Trumble added.

"There are no reporting requirements," said Trumble. "Therefore, there is no official record of the quantity of fish coming in."

"The Russians allow trawlers who are targeting pollock and cod to keep a percentage of their halibut bycatch," said Shari Gross of the Halibut Association of North America (HANA). "In American waters, it's illegal to catch halibut with a net or keep halibut when you're longlining for other species, like blackcod. Bycatch halibut here have to be returned to the sea."

"In American and Canadian waters, the minimum legal size for halibut is 32 inches," Gross said, "but the Russians have no minimum legal size limit."

"It will be an enforcement nightmare when those sublegal fish start showing up in the U.S. markets. Who can prove those fish actually came from Russia? There's the potential they could've been caught illegally in U.S. waters and then passed off as Russian fish," Gross said.

Another question regarding the Russian fishery is the mixing of Russian and American stocks of halibut.

"There is the potential that North American halibut stocks will be affected by the Russian fishery," said the IPHC's Trumble. "There was some tagging in Russian waters a few years ago and we got some tags back in the U.S. sector. We ex-

pect some interchange, but don't have any idea what the proportion of the interchange might be."

Trumble forecasts U.S. participation in the Russian fishery is likely to increase. "I would guess there were probably less than 20 boats there in 1991. We do project an increase in landings for 1992, but, again, we have no official record," he said. HANA's Gross felt she could be a little more specific about landings. "We're estimating landings of 4 to 10 million pounds of halibut in 1991," Gross said. "We're expecting an enormous increase in volume for

1992 as the Russians sell more of their fish for hard currency.

"How will that increase in volume affect prices paid to the shorebased U.S. and Canadian halibut fishermen?" Gross asked.

According to industry monitors, the situation in the former Soviet Union today is chaotic. "For all we know, the Russians don't know what's going on out there," Gross said. "These deals that have been cut may or may not be with the knowledge of the central government."

A factory trawler representative defended his company's actions.

"We did have Russian observers on our boats," said Steve Finley, director of government affairs for Emerald Seafoods Inc. Seattle.

"We were operating three factory trawlers in Russian waters and had 2 to 3 observers on our boats at all times. They were Russian officials of some sort, but things are really confusing over there right now and I can't say who exactly employed them."

"We were really happy with how it all worked out," said Finley. "We plan to go back. See Halibut, Page 2."

Halibut— Fish come from Russia

Continued from Page 1
again. Right now our boats are fishing in the American zone, but our company president is working on the next contract with the Russians."

Finley said the American boats were required to keep bycatch.

"The contract required us to keep all bycatch. However, we had a bycatch limit as well as an overall quota. I'm not at liberty to say, though, what that bycatch limit was. When either the bycatch limit or the quota was reached, we would be out of the fishery for the rest of the year."

Finley said a total of 8 factory trawlers and several longliners operated in the Russian zone.

"We had three factory trawlers and there were (a total of) five others from both American Seafoods and Ocean Trawl."

"Arctic Alaska Seafoods converted some factory trawlers into longliners and I'd guess there were 8 or 9 longliners there, though some of them were catcher-ships delivering to motherships."

Asked if Emerald Seafoods ships were delivering halibut that would be of sublegal size if caught in the U.S., Finley said,

"Yeah, we're delivering 'sublegal' halibut; but our contract requires us to keep them. You know, there is no U.S. law that says we're prohibited from selling those fish in this country. They were legally caught in the Russian zone."

Finley said his company voluntarily reports deliveries of large and small halibut to the National Marine Fisheries Service.

"We're calling NMFS, telling them when we enter and plan to exit U.S. waters and what our po-

sition and course heading are," he said. "That way Coast Guard planes can overfly our boats to prove they're not fishing illegally inside the U.S. zone."

"When we deliver in the U.S., we report to NMFS the amount of fish we're delivering. We voluntarily tell them the amount of 'large market' and 'small market' halibut we're bringing in."

When asked if all the other companies engaged in the fishery were reporting their catches and activities in U.S. waters as well, Finley answered, "I don't know; I don't think so."

Shari Gross of HANA wants mandatory reporting, and more.

"We're going to work with NMFS and IPHC to identify the loophole and close it," said

Gross. "We brought this situation to the attention of the North Pacific Fishery Management Council at the recent Portland meeting. The council asked for a report from the NMFS staff."

"Our first goals are to close the reporting loophole and to get U.S. observer coverage on these boats."

HANA may have a difficult time putting controls on American boats in the Russian fishery, though.

IPHC's Trumble said, "I don't know if they're involved in taking any marine mammals such as dolphins or endangered species like sea lions or sea turtles. Unless that can be shown, it's hard to put import restrictions on the fishery."

Dealing government-to-government with the Russians will not be easy, either.

"The Russians aren't signatories to any treaties that cover this situation," Trumble said.