



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

March 13, 2008

Tim Smith  
Nome Fishermen's Association  
Box 396  
Nome, Alaska 99762

Dear Mr. Smith:

Thank you for your letters of February 6, 2008, and February 29, 2008. In your letters, you asked specific questions about our interpretation of the following program eligibility requirement in section 305(i)(1)(E)(i) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act):

*(i) BOARD OF DIRECTORS.-The entity shall be governed by a board of directors. At least 75 percent of the members of the board shall be resident fishermen from the entity's member villages. The board shall include at least one director selected by each such member village.*

You also expressed concerns about the process for selecting the board of directors for Norton Sound Economic Development Corporation since this requirement was added to the Magnuson-Stevens Act.

As you are aware, this requirement was added to the Magnuson-Stevens Act in July 2006 by the Coast Guard and Maritime Transportation Act of 2006 (Coast Guard Act). The Coast Guard Act addressed all aspects of fishery management and oversight of the CDQ Program, including the purpose of the CDQ Program; allocations of groundfish, halibut, and crab to the CDQ Program; allocations of quota among the CDQ groups; management of the CDQ fisheries; eligible communities; eligibility criteria for participation in the CDQ Program, limits on allowable investments; the creation of a CDQ administrative panel; compliance with State of Alaska (State) reporting requirements; a decennial review and allocation adjustment process; and other aspects of program administration and oversight by the State and NMFS, on behalf of the Secretary of Commerce.

Since July 2006, NMFS's priority has been to implement regulations needed for the fishery conservation and management requirements of section 305(i)(1) before developing any regulations that may be needed for the administrative or oversight aspects of the CDQ Program. Therefore, NMFS has not yet implemented regulations for the eligibility requirements at section 305(i)(1)(E). While agency personnel have been examining what regulations may be necessary for the eligibility requirements at section 305(i)(1)(E), we have not yet completed that examination.



NMFS may promulgate only those regulations necessary to implement the specific requirements of the Magnuson-Stevens Act and we do not have the authority to regulate the CDQ entities or eligible villages beyond the scope authorized by the Magnuson-Stevens Act. It initially appears that regulations necessary to address some of the questions you raised are outside the scope of NMFS's statutory authority. For example, regulations addressing the rights and powers of the governing body for a member village or its residents, the qualifications to serve as a director, rules governing elections for directors, or how to resolve disputes about the board selection process do not appear to be within NMFS's authority under the Magnuson-Stevens Act. However, we will consider all of the issues and questions you raised in your letters as we develop regulations for the CDQ Program eligibility requirements at section 305(i)(1)(E) and address those that we determine are within the scope of our authority.

Sincerely,



Robert D. Mecum  
Acting Administrator, Alaska Region

cc: NSEDC  
WACDA  
Joe Austerman, State of Alaska