October 17, 2002

DR. HANS RADTKE
CHAIR
PACIFIC FISHERIES MANAGEMENT COUNCIL
7700 NE AMBASSADOR PLACE, SUITE 200
PORTLAND, OR 97220

RE: 2003 PACIFIC SARDINE QUOTA ISSUE
AGENDA ITEM F.3 COASTAL PELAGIC SPECIES MANAGEMENT
OUR FILE NO. 106640-129862

DEAR DR. RADTKE:

I write on behalf of Astoria Holdings, Inc and its owners Jerry Thon and Robert Seidel, with respect to the year 2003 harvest quota for Pacific Sardines on the West Coast of the United States. My clients support the recommendation of the CPS Advisory Panel that the Council adopt a single quota without any geographic split, for the year 2003.

The PFMC has the authority to adopt this quota under its Fisheries Management Plan (FMP) because this is a routine management measure under Section 2.1.1. of the FMP. The FMP specifically recognizes that the Council is not required to issue any type of geographic allocation. The goals and objectives in Section 1.5 of the FMP will be promoted by the adoption of a single quota as recommended by the advisory panel.

“Routine Management Measures” are defined in Section 2.1.1 of the FMP as “those the Council determines likely to be adjusted annually or more frequently.” On page 2-3 of Amendment 8 of the FMP, the “specification of annual harvest guidelines or quotas” are classified as routine measures. Section 2.1.3 of the FMP also provides that the “Council may designate a management measure developed and recommended to address social and economic issues as a routine management measure” if Section 2.1.1 applies and is followed.
The recommendation for a single annual quota for Pacific Sardines is also contemplated by Section 4.8.1 of the FMP which governs the general procedure for setting annual specifications. The factors to be considered as set forth in Section 4.8.2 all support the recommendation for a single, annual quota. The procedure being followed for the adoption of a single quota for the year 2003 is well within the Council’s power under the FMP.

Nothing in the FMP requires the allocation of the quota among geographic areas. The key language is in Section 5.2 of the FMP, which states that it only “authorizes” allocations of the Pacific Sardine harvest guidelines by geographic area. Nothing in the FMP requires the Council to make such an allocation. Indeed, the second sentence of Section 5.2 of the FMP provides that: “Nothing in this FMP precludes additional allocations based on other geographic areas or other factors developed under the authority of this FMP.” Allocating a single quota for the entire coast is well within the Council’s authority to adopt under the FMP, without any changes to the management plan itself.

The foregoing confirms that the PFMC has more than sufficient legal authority to accept the recommendation of the CPS Advisory Panel to adopt a single quota for Pacific Sardines for the year 2003.

If you have any questions, please feel free to call.

Very truly yours,

Thomas V. Dulcich

TVD:dkg

cc: Mr. Robert Seidel/Astoria Holdings, Inc.
Mr. Joe Childers (via e-mail/mail)
October 16, 2002

Dr. Hans Radtke
Chair
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, Oregon 97220

Re: Agenda item F.3 Coastal Pelagic Species Management

Dear Dr. Radtke:

At the last council meeting, the Pacific Fishery Management Council and the National Marine Fisheries Service worked together to quickly and efficiently enact an emergency rule to effect an early release of unused sardine allocation from the southern to the northern region. For that we thank you very much. The fishery did close briefly due to the previously announced fishery closure, and unfortunately most of the work force left the area to look for seasonal jobs elsewhere. Nevertheless, some fishing and processing was able to restart after the emergency rule was implemented. More importantly, your quick action helps to keep alive the enthusiasm that this re-emergent fishery has kindled in the region.

We encourage the council to act now to prevent a recurrence of the premature closure situation again in 2003. The CPS Management Team report indicates that the sardine stocks continue to be robust. The 2003-harvest guideline recommendation of 110,908 mt is probably sufficient for the entire sardine industry. The sardine harvest has not exceeded 78,500 mt in more than 20 years. We support the CPS Advisory Panel recommendation that there not be an allocation between regions in 2003.

Whether an allocation is or is not made between regions in 2003, it is still necessary to begin an FMP amendment process to permanently address this problem for the future. Reallocation of the resource to reflect recent participation in the fishery is necessary and we support it. The first step is to establish an allocation to each region that guarantees some stability. We propose an FMP amendment that allocates a divided quota between the regions totaling 80% with the remaining 20% set aside to be used by any region as needed.

Ultimately, this type of a regional allocation may not stop the race for fish especially if stocks are not as plentiful. We believe that the council should be looking at breaking the boom and bust cycle of fisheries. The reemergence of the pacific sardine industry is a fitting place to start the process. We assert that all regions have significant and long-term involvement in the sardine business. If the modern fishery continues to develop, over capitalization will occur creating excess capacity, which will lead to a continued race for
fish. This ensures that the maximum value will not be achieved in the fishery, and management costs will soar, value added processing will lag, and ultimately the public will be dragged in to absorb the costs of well intentioned but doomed fishery policy.

Consider that the highest value of the sardine resource today is in the large fish caught in the north. The market for these fish is primarily food and high-end bait. The southern fishery sells its catch of small sardines, for less money, as fish feed. The market for fish feed is not sufficient to absorb all the small sardines available in the south. The food/bait market in the north is valued higher, but the fishery is artificially limited by quota. The result is that the south doesn't catch its quota and the north races for theirs. Because of the race in the north, industry is focused on throughput, not value added processing. The whole situation is wrongheaded.

Some day the market situation or the resource availability will change. We need to think about adding flexibility so that industry can respond to market and resource changes on a real-time basis. Our opinion is that the best long-term solution is a cooperative management system where allocations of quota are shared between fishermen, processors, and communities that are based on historic participation. We feel that allocations should be managed by industry cooperatives similar to those adopted by the North Pacific Fishery Management Council. Most importantly, cooperatives could be allowed to reallocate quota from cooperative to cooperative and from region to region. For example: if cooperatives in the southern region have excess quota this season, they should be able to reallocate it to the north and vice versa. Compensation for the reallocations can be handled through inter co-operative agreements. NMFS and the PFMC can simply manage the resource for optimum yield and sustainability. The allocation process could be accomplished by industry, dynamically, as resources and markets change.

In conclusion, we support the CPS Advisory majority recommendation that no sardine allocation be made in 2003. We encourage the council to begin the plan amendment process to change the sardine allocation process, so that the race for fish is not accelerated unnecessarily. And finally, we hope that the council will start thinking about a completely new paradigm for sardine management. Let the managers focus on the health and sustainability of the resource, and let industry handle the allocations.

Thank you,

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Jerry Thon
Vice-President
Astoria Holdings, Inc.
October 22, 2002

Dr. Hans Radike, Chair and
Members of the Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

PFMC FAX: (503) 820-2299

SUBJECT: Need for Pacific Sardine Research and Precautionary Management

Dear Dr. Radke and Council Members:

I am aware that the Council has received a proposal from Pacific Northwest interests calling for elimination of the current allocation system in 2003. This is due to the presence of considerable biomass again occurring in the ocean waters off northern California to British Columbia, and in light of recent expansion of the sardine fishery in Oregon and Washington, coupled with the desire to further expand the sardine fishery in the Pacific Northwest. Such expansion and presumed increase in quota allocation and changes in current management measures may ultimately be justified, but I urge caution and some additional fact finding before any adjustments to the present management scheme are considered.

I started my career as a fishery biologist in 1960, during the final years of decline of the sardine resource. I witnessed the fishing moratorium that lasted nearly two decades, as well as the recent, episodic recovery of the resource, and have been involved in some of the technical work studying the sardine resource. I had hoped that managers had learned a lesson of caution from the history of this fishery, and certainly also from the histories of the other fisheries that are now in decline in this region.

In the case of sardines the precautionary questions that require answers are:

¥ What is the relationship of the fish in the northern area to the southern spawning biomass from which the current stock assessments are extrapolated?

¥ Do the fish in the north spawn in the northern area, and do they over-winter in the Pacific Northwest?

¥ If so, are they are part of a single northern Mexico-southern California spawning stock?

¥ Do northern fish return to the southern area to spawn, where they contribute to the biomass assessment in the south and are counted in setting quotas according to the present assessment and harvest rules?

¥ Do these northern fish spawn to the north and are part of the same exploited stock, but are not counted in the assessment process? If so, the assessment area needs to be expanded to include them, and a new and higher quota may be justifiable.

¥ Or are these northern fish part of the southern spawning stock that has moved north and do not spawn? If so, are they surplus to the stock?

¥ Or do they spawn to the north and constitute a separate spawning stock that should be assessed separately and have separate quotas and harvest rules?
At present, the management team expresses a great deal of uncertainty with the current extrapolated stock assessment. Team members acknowledge that assessment limitations include a lack of understanding of the stock structure and migration rates; further, current fishery independent data are limited primarily to southern California. I suspect no one can answer which of the several possibilities listed above (or others) is more nearly correct.

The Council might note, however, that CalCOFI data, which come from 1951 on after the decline of the resource was well underway and the northern fisheries had disappeared, indicate that spawning did not occur north of San Francisco. So until new data are available from the northern areas, it seems prudent that the Council not consider any action other than to seek support to have the necessary research done as quickly as possible, to provide the requisite understanding of the relationship of these northern fish to the southern stock and to the spawning biomass as a whole.

It might be possible to get a quick partial answer by summarizing the occurrence of sardine eggs and larvae in recent (last five years) ichthyoplankton collections from off Oregon and Washington, and gonad indexes from specimens taken in the northern areas. How do egg and larval densities north of San Francisco and south of the Columbia River plume compare to those from the southern California to Monterey area? And what is occurring in the waters north of the Columbia River? What do the gonad data reveal?

I don’t know the answer to these questions, but if it turns out that there is little evidence of spawning to the north from the ichthyoplankton data and the examination of specimen fish, then one might consider the likelihood that the fish there are part of the northern Mexico-California stock. In this case the Council should move with great caution until there is some understanding about how these large fish contribute to the spawning biomass. Do they move south to spawn at times? Or are they a senescent biomass that stays north and does not contribute to maintaining the stock?

Thank you for the opportunity to comment. I hope you will take these remarks under consideration and explore ways to obtain the necessary information about the resource before taking any action to encourage further expansion of this fishery in area or in harvest level on the mature stocks, recalling that the FMP when it was developed did not consider the possibility of a major sardine fishery in the area north of California.

Sincerely,

Frank J. Hester

Dr. Frank J. Hester
Apo. 20
Loreto, Baja California Sur
Mexico

cc: Dr. Bill Hogarth, NMFS
Mr. Rod McGinnis, NMFS, SW Region
Dr. Kevin Hill, CDFG
Senator Dianne Feinstein
Congressman Duke Cunningham
October 25, 2002

Dr. Hans Radtke, chair and
Members of the Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

SUBJECT: NEED FOR RESEARCH AND PRECAUTIONARY MANAGEMENT OF THE
Pacific Sardine Fishery

Dear Dr. Radtke and Council members,

Thank you for this opportunity to address an issue of great
concern to California wetfish producers. The California Wetfish
Producers Association represents the majority of processors and
fishermen who produce sardines, mackerel and squid in California.
Members currently include the Southern California Commercial
Fishing Association, representing the San Pedro purse seine fleet,
and six southern California processors: State Fish Company, Tri-
Marine Fish Company, Southern California Seafood, Tomich Bros.
Seafood, California Refrigerated Services/Standard Seafood, and
Ocean Gem Seafood. Together these fishermen and processors
produce, on average, about 80 percent of the sardines landed in
California. These comments are presented on their behalf.

At the September Council meeting I addressed the Council on the
immediate need for expanded sardine research, in light of the
recent rapid expansion of the sardine harvest in the Pacific
Northwest. The stock assessment presented by the CPS
Management Team reinforces the critical need for this research as
soon as possible.

Sardine abundance waxes on warm-water cycles and wanes on cold-
water cycles. The ocean appears to be entering another cold-
water cycle:

--sardine population growth appears to have leveled off;
--the harvest guideline has dropped for three years running;
--water temperature hovers near the trigger
point that will reduce the harvest rate from 15% to 5%

Nevertheless, Pacific northwest interests lobby to increase their
sardine allocation of this cyclical resource at a time when
virtually all signs point to the beginning of a natural population
decline. The harvest guideline is declining as well.

The CPS management team expresses "a great deal of uncertainty"
in their extrapolated stock assessments. Scientists have
acknowledged they "reel at the puny empirical science and massive
assumptions that their current work entails." The CPSMT
qualifies that this work may be the "best available science" - given
what data is available - but at the same time team members
acknowledge the striking limitations, including a lack of
understanding of stock structure and migration rates and that
these extrapolated projections are based primarily on research in
the southern California bight. "Best available" doesn't
necessarily mean "good."
what if the assumptions are wrong? What if the mature spawning fish now assumed to make a one-way trip to the Pacific Northwest actually do return to southern California to spawn in the winter? Independent scientists have written letters to the Council to emphasize the need for expanded research now. The management team also expresses the desire and need for expanded research on the Pacific Northwest sardine resource.

The history of the sardine fishery offers a clear roadmap. We know how this cyclical resource behaves in a cold-water regime. Notwithstanding the El Niño projected for California this winter, Mother Nature's signs point to the probability that the sardine resource has turned the corner. Considering history, the early-warning signs of decline and the great uncertainties expressed by the management team should serve as a proxy for "Precautionary management".

I'd like to call your attention to the letter sent by Dr. Frank Hester, a scientist with more than 40 years experience studying sardines. He pointed out a number of questions that should be answered to better understand and manage the sardine resource. In conclusion he stated: "I hope you ... will explore ways to obtain the necessary information about the resource before taking any action to encourage further expansion of this fishery in area or in harvest level on the mature stocks, recalling that the FMP when it was developed did not consider the possibility of a major sardine fishery in the area north of California."

I also wish to call to the Council's attention the CPSAS statement made at the October 8 meeting. The advisory panel also unanimously supported the immediate need for expanded research and recommended that the Council encourage NMFS to fund the expanded survey proposed by the SW Region and SW Fishery Science Center. We support this statement and encourage the Council to act on this recommendation.

However, we point out that sub-panel representation was tilted in favor of Pacific northwest interests when it voted 4-1 to suspend the allocation system for the 2003 season. A coast-wide quota would open the door to further expand - and overcapitalize - the Oregon / Washington sardine fishery in the absence of research to determine the relationship of the mature spawning fish in the north to the biomass as a whole. The ensuing derby fishery would not ensure protection for Monterey's fall harvest, and such expansion could precipitate or hasten the decline of the resource.

In light of the management team's uncertainties and expressed lack of knowledge, and considering Dr. Hester's statement encouraging precaution until baseline research provides some answers, the California wetfish producers association supports the minority report included in the CPSAS statement.

With regard to the 2003 fishery, CWPA members urge the Council to exercise precaution and maintain the status quo allocation system until research in the Pacific Northwest provides needed answers. We strongly feel that it is premature to make a reasoned decision on allocation in the absence of baseline research on the northern stocks; however, we would support an amendment modifying FMP language to establish an in-season adjustment mechanism, providing flexibility to NMFS to modify sub-area allocations in the event of demonstrated hardship or need (e.g. allocate fish to Monterey if the Pacific Northwest summer season curtails Monterey's fall harvest). If that option proves unworkable, we would consider supporting an amendment to move up the automatic reallocation date from October 1 to September 1 for the 2003 fishery only, conditional on including additional language to authorize the open harvest of any unused quota by all regions effective December 1. (We oppose moving the reallocation date to August 1 as this would again encourage expansion in the Pacific Northwest in the absence of research.)

By way of background on the December 1 open allocation, the California Department of Fish and Game made this management decision in 1998, when southern California utilized its allocation before the end of the year but fish remained in Monterey's sub-quotas. In developing the FMP, CPS advisors discussed and approved including language to provide year-end flexibility, however the language was omitted in the final plan. I wish such
Flexibility were available this year: Southern CA lost 50 percent of its sub-quota in the emergency reallocation process; now squid are disappearing from Southern California waters with the onset of another El Niño, as expected. The fleet will focus full attention on sardines, and our remaining quota will likely be insufficient. The north will not utilize all of its reallocated share, yet the south will have no recourse without another emergency reallocation. Clearly this is a problem that needs to be fixed in the FMP.

In conclusion, we respectfully request that the Council emphasize to Dr. Hogarth the importance of conducting expanded sardine research in the Pacific Northwest in 2003/2004. Until scientists gain deeper understanding of the relationship between the mature northern spawning stock and the resource as a whole, we urge the Council to maintain the status quo allocation system. As I noted, we would support an amendment giving in-season flexibility to NMFS. Or if that is not a workable option, we would support an amendment moving up the reallocation date for the 2003 fishery from October 1 to September 1, conditional on including language to allow open harvest of any unused quota by all regions, effective December 1.

Thank you once again for this opportunity to comment. I will provide our further comments on potential future allocation options in the appropriate public comment section.

Sincerely,

[Signature]

Diane Pleschner-Steele for California Wetfish Producers Association
October 29, 2002

Hans Radtke, Chairman & Council Members
Pacific Fishery Management Council
7700 NE Ambassador Place, Suite 200
Portland, OR 97220

Re: Agenda Item F.2.d, Pacific Sardine Stock Assessment and Harvest Guideline for 2003

Mr. Chairman & Council Members:

These comments are respectfully submitted on behalf of the Pacific Seafood Group. The Pacific Seafood Group is a major producer of sardines in the Pacific northwest fishery. Our company received and processed 6,700 st of sardine during the 2002 season. We received product through the Port of Ilwaco in Washington State.

Our comments today are directed toward the premature closure during the 2002 season, the adverse economic impacts caused by that closure, and a request for Council action in order to avoid a recurrence of the events which transpired at the end of the 2002 season.

As you know, the allocation for the northern management area in 2002 was expected to be reached by September 14th and the fishery was subsequently closed in Washington, Oregon, and Monterey, California. Two weeks prior to the shut down, Ms. Heather Munro submitted a request to the National Marine Fisheries Service on behalf of the West Coast Seafood Processors Association asking for emergency action to keep the fishery open by reallocating unused sardine harvest from the south when the northern allocation was reached. Unfortunately, the initial request to NMFS was denied and the fishery was slated for closure. Two weeks later, the Council made a similar request to NMFS to implement the emergency rule. Fortunately, the NMFS and the Secretary of Commerce finally agreed with the need for the emergency rule and early reallocation of sardine. The fishery was reopened on September 20th. However, due to the uncertainty of whether or not NMFS would actually implement the rule, many of the boats that were fishing sardine found it necessary to look for other work. It was not economically feasible to have boats simply tied up waiting for an opening that was not sure to come. In turn, processing plant workers had to be laid off. When the fishery finally did reopen it was to late to pick up where the industry had left off. Pacific Sardine and Del Mar diligently worked with vessel owners that were willing to wait around, without any profit, in hope that
some reallocation would be approved and that the weather would be cooperative so that they could catch enough sardine to make up losses. Pacific had limited success in getting vessels to stay around. Pacific was even less successful in getting skilled plant workers to wait around without any guarantee that we would be able to start up sardine production again. Pacific was placed in a difficult position of having to decide whether we should let skilled workers go or find acceptable work enough to keep them around. Overall, we lost approximately 3,000 mt equaling US$2,000,000. As you know this dollar amount translates into a much higher amount in coastal communities.

While we support the ongoing effort to amend the Coastal Pelagic Species Fishery Management Plan (FMP), in order to address the existing issues of concern regarding the antiquated allocation scheme in place, this process will likely not be completed prior to the start of the Pacific northwest fishery. Even more concerning is the very real possibility that Monterey will continue catching sardine through March of the 2003 season, utilizing a good portion of the northern allocation. This will likely cause a race for fish once the Pacific northwest fishery opens in late May or June.

Regardless, it is a fact that the northern allocation for 2003 (approximately 36,969 mt) will be caught prior to the reallocation of unused sardine harvest on October 1st. The industry in Washington, Oregon and Monterey, California will be forced to shut down while large amounts of fish will still be available for harvest off the coast-wide harvest guideline. The industry will be forced once again to request an emergency rule to reallocate early in order to prevent a premature closure. We believe that there is flexibility within the FMP that allows NMFS not to implement the one-third, two-third allocation during the setting of the annual specifications. We strongly urge the Council to recommend to NMFS that they not set this allocation for the 2003 season. The harvest guideline for 2003 is similar to that of 2002 and is obviously sufficient for all sectors of the industry if no formal allocation is put into place. Eliminating the allocation for 2003 will provide the industry with a chance at reaching optimum yield, something that has never been accomplished under federal fishery management. Implementing the allocation will prevent optimum yield from being reached and will force a premature shut down once again in the northern management area.

This issue is purely economic, not biological. In the Federal Register notice published by NMFS implementing the emergency rule in 2002 it states:

The harvest guideline is not likely to be reached by the end of the fishing season on December 31, 2002; however, allocating the unharvested portion earlier than the scheduled date so that existing markets can be satisfied will increase the likelihood of achieving optimum yield. As long as the harvest guideline is not exceeded, there will be no impact on the status of the resource.

This statement was true in 2002 and will be true again in 2003. As long as the harvest guideline is not exceeded there is no impact on the status of the resource. We would ask the Council to consider the many justifications for not
setting a formal allocation for the 2003 season, then consider the alternative management mess that implementing the allocation will cause. We strongly urge the Council to recommend to NMFS that the action to implement a formal allocation is discretionary and that they exercise their power not to implement an allocation for the 2003 season.

Thank you for your consideration.

Sincerely,

[Signature]

Frank Dulcich
President & CEO
October 28, 2002

Dear Mr. McInnis:

I write on behalf of Astoria Holdings, Inc and its owners Jerry Thon and Robert Seidel, with respect to the year 2003 harvest quota for Pacific Sardines on the West Coast of the United States.

I understand NMFS's apparent position on process requirements for changing sardine allocation to require "notice and comment rulemaking" within the Socioeconomic Framework of the FMP (section 2.1.3). However, the Socioeconomic Framework allows for abbreviated rulemaking actions (section 2.1). Moreover, federal court of appeals decisions provide for abbreviated rulemaking. In 1996, the Commerce Department instituted a new "Framework" rulemaking procedure allowing the regional regulatory authorities to amend fishing regulations "at any time." The Gulf of Maine Fishermen's Alliance v. William C. Daley, 292 F.3d 84, 86-7 (1st Cir. 2002). This abbreviated procedure allows regional councils to adjust fishing restrictions over the span of two regular monthly meetings with the inclusion of timely public notice of any proposed change in regulations and public comment prior to and at the second meeting. Id. This abbreviated process would speed up the implementation period substantially by avoiding the public review process of the proposed rule.

Another alternative is to move by emergency rulemaking as you did last month.
I urge you to adopt the swiftest rulemaking process in order to prevent extended damage and loss to industry participants and the communities. If you have any questions or comments, please feel free to call.

Very truly yours,

Thomas V. Dulcich

TVD: rhh