



June 2018

**UNITED STATES DEPARTMENT OF COMMERCE**  
**Chief Financial Officer**  
**Assistant Secretary for Administration**  
Washington, D.C. 20230

**MAY 09 2018**

The Honorable Jerry Moran  
Chairman  
Subcommittee on Commerce, Justice,  
Science, and Related Agencies  
Committee on Appropriations  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

Enclosed is the National Oceanic and Atmospheric Administration's (NOAA) Report to Congress, "Aleutian Islands Pollock." This report was requested in Senate Report 115-139, Fiscal Year (FY) 2018.

This report responds to the Committee's request by summarizing historic and current management of the Aleutian Islands pollock fishery, factors limiting the ability of Adak to receive the benefits of its originally designated allocation, and recommendations on how NMFS can help Adak receive the economic benefits of its Aleutian Islands pollock allocation.

If you have any questions, please contact me at (202) 482-4951. Thank you for your continued support of the Department of Commerce and its programs.

Sincerely,

A handwritten signature in blue ink that reads "Lisa Casias".

Lisa Casias  
Acting Chief Financial Officer/Assistant Secretary  
for Administration, and Deputy Assistant Secretary  
for Administration

Enclosure

## National Oceanic and Atmospheric Administration Report to Congress on Aleutian Islands Pollock

The Senate Report (115-139) accompanying the ‘Consolidated Appropriations Act, 2018 (P.L. 115-141) included the following language, “*Aleutian Island Pollock.—When Congress created the 2005 Pollock allocation for the economic improvement of Adak, Alaska, provided in section 803 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199), it recognized the difficult task of making a viable community and attempted to provide a revenue stream to offset the burdens of a remote location. Due to the Stellar Sea Lion’s Endangered Species Act listing in 1990 and subsequent protective measures put into place, fishery restrictions closed nearly all vital fishing grounds in the Aleutian Islands. Thus, the allocation could not be utilized at any point and the community of Adak has not realized any economic benefits or prosperity from the Pollock fishery. The Committee agrees that the intended beneficiaries should have a right to derive these lost benefits by assigning their Pollock allocation to others for monetary remuneration. Therefore, NMFS is directed to help Adak receive the economic benefits of their originally designated Pollock allocation and shall provide a report to the Committee on such action within 120 days of enactment of this act.*” This report responds to the Committee’s request.

NMFS has prepared this report that summarizes historic and current management of the Aleutian Islands pollock fishery, factors limiting the ability of Adak to receive the benefits of its originally designated allocation, and recommendations on how NMFS can help Adak receive the economic benefits of its Aleutian Islands pollock allocation under NMFS’s existing statutory authority.

### Executive Summary

Multiple factors have hampered Adak from realizing the economic benefits from the Aleutian Islands pollock allocation provided by section 803 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (division B of Public Law 108–199)(section 803 of the 2004 Appropriations Act). These factors include protection measures for endangered Steller sea lions, reductions in pollock biomass, geographic shifts in pollock abundance, and a lack of reliable shoreside processing capacity. NMFS recommends a two-step approach to help Adak receive economic benefits of its pollock allocation:

- **First, NMFS should assist Adak with an exempted fishing permit to conduct test fishing for pollock in portions of the Aleutian Islands currently closed.**
- **Second, NMFS should provide the test fishing results to the North Pacific Fishery Management Council and explore whether revisions to existing regulations are warranted by the test fishing results.**

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## Terminology Used in This Report

To aid the reader, several key terms are defined in this report as follows:

- “Aleut Corporation” means the Aleut Corporation or its authorized agent(s) for purposes of describing activities required for managing the Aleutian Islands directed pollock fishery authorized under section 803.
- “Amendment 82” means Amendment 82 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) and its accompanying regulations that implemented section 803.
- “Directed fishery” means a fishery in which a specific species is explicitly targeted for harvest and is not incidental to the harvest of other groundfish species.<sup>1</sup>
- “Section 803” means the provisions of sections 803(a), (b), and (d) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (Public Law 108–199).
- “Total allowable catch” or “TAC” means the annual catch target for a stock or stock complex, derived from the acceptable biological catch by considering social and economic factors and management uncertainty (i.e., uncertainty in the ability of managers to constrain catch so the annual catch limit is not exceeded, and uncertainty in quantifying the true catch amount).

## Statutory and Regulatory Background

### American Fisheries Act (AFA)

A key event in the management of Bering Sea and Aleutian Islands (BSAI) pollock resources was the enactment of the AFA in October 1998 (Public Law 105-277). The purpose of the AFA was to tighten U.S. ownership standards for fishing, and provide the BSAI pollock fleet the opportunity to conduct the fishery in a more rational manner while protecting non-AFA participants in the other fisheries. The AFA established sector allocations in the BSAI pollock fishery, determined eligible vessels and processors, allowed the formation of cooperatives, set limits on the participation of AFA vessels in other fisheries, and imposed special catch weighing and monitoring requirements on AFA vessels. Since 1998, NMFS and the North Pacific Fishery Management Council (Council) have undertaken public processes to develop the AFA management program. Since 1998, Congress has amended the AFA primarily to clarify specific provisions related to replacing vessels eligible to harvest pollock allocated under the AFA. This report uses the term “AFA” to refer to the AFA as amended unless explicitly noted otherwise.

The effects of the AFA on the pollock industry were highly beneficial. Capacity was reduced, efficiency was increased, regulatory bycatch was reduced, a higher portion of the fish was utilized, and higher valued products were produced.<sup>2</sup> The AFA provides discretion for the

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<sup>1</sup> Directed fishing is defined at 50 CFR section 679.2.

<sup>2</sup> Detailed analysis on the results of the AFA was provided in “Report to the U.S. Congress and the Secretary of Commerce Impacts of the American Fisheries Act, 2002. Available at: <https://www.npfmc.org/wp-content/PDFdocuments/resources/AFACongress202.pdf>. A more recent evaluation of the AFA was completed by the North Pacific Fishery Management Council in 2017, and is available at: [https://www.npfmc.org/wp-content/PDFdocuments/catch\\_shares/AFA/AFAprogramReviewFinal\\_0717.pdf](https://www.npfmc.org/wp-content/PDFdocuments/catch_shares/AFA/AFAprogramReviewFinal_0717.pdf).

Council to recommend and for NMFS to implement conservation and management measures in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that supersede the provisions of the AFA, with two important exceptions.

Section 206 of the AFA directs NMFS to allocate the Bering Sea pollock TAC (and Aleutian Islands pollock TAC prior to the enactment of section 803) as follows:

#### SEC. 206. ALLOCATIONS.

(a) Pollock Community Development Quota. Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 505(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

(b) Inshore/Offshore. Effective January 1, 1999, the remainder of the pollock total allowable catch in a Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catch/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

Whenever NMFS allocates TAC to the Bering Sea pollock fishery, NMFS must use the provisions of section 206 of the AFA to allocate to the specific sectors defined in the AFA. The allocation of pollock to the AFA directed pollock fisheries under section 206(b) of the AFA now only pertains to the Bering Sea pollock TAC given that section 803 fully allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation.<sup>3</sup>

Section 213(c) of the AFA clarifies that the Council cannot recommend and NMFS cannot implement measures that would alter the allocation of pollock TAC in the Bering Sea (section 206 of the AFA), or the definition of eligible vessels or processors (section 208 of the AFA).

#### SEC. 213. DURATION.

(a) General. Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. There are authorized to be appropriated \$6,700,000 per year to carry out the provisions of this Act through fiscal year 2004.

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<sup>3</sup> The annual Aleutian Islands subarea pollock TAC, after subtracting first for the CDQ directed fishing allowance and second for the incidental catch allowance, is allocated to the Aleut Corporation for a directed pollock fishery.

(b) Existing Authority. Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) Changes to Fishery Cooperative Limitations and Pollock CDQ Allocation. The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this subtitle, except for section 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitable to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this subtitle; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

Consistent with the provisions in the AFA, the Council recommended and NMFS implemented conservation and management measures as part of several fishery management plans under the Magnuson-Stevens Act to give effect to the AFA in 2001.<sup>4</sup> Consistent with the provisions of section 213(c) of the AFA, the fishery management plan amendments recommended by the Council and implemented by NMFS maintained the allocation of the directed pollock fishery in the Bering Sea (and initially the Aleutian Islands) established in section 206 of the AFA.

### **Section 803 of the 2004 Appropriations Act**

Congress has provided the Aleut Corporation (or its authorized agent) with exclusive harvest privileges in the directed pollock fishery in the Aleutian Islands. Section 803 provides the following:

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<sup>4</sup> 50 CFR part 679 Subpart F: American Fisheries Act and Aleutian Island Directed Pollock Fishery Management Measures

## SEC. 803. ALEUTIAN ISLANDS FISHERIES DEVELOPMENT.

(a) ALEUTIAN ISLANDS POLLOCK ALLOCATION- Effective January 1, 2004 and thereafter, the directed pollock fishery in the Aleutian Islands Subarea [AI] of the BSAI (as defined in 50 CFR 679.2) shall be allocated to the Aleut Corporation (incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)). Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857), subject to the penalties and sanctions under section 308 of such Act (16 U.S.C. 1858), and subject to the forfeiture of any fish harvested or processed.

(b) ELIGIBLE VESSELS- Only vessels that are 60 feet or less in length overall and have a valid fishery endorsement, or vessels that are eligible to harvest pollock under section 208 of title II of division C of Public Law 105-277 [the AFA], shall be eligible to form partnerships with the Aleut Corporation (or its authorized agents) to harvest the allocation under subsection (a). During the years 2004 through 2008, up to 25 percent of such allocation may be harvested by vessels 60 feet or less in length overall. During the years 2009 through 2013, up to 50 percent of such allocation may be harvested by vessels 60 feet or less in length overall. After the year 2012, 50 percent of such allocation shall be harvested by vessels 60 feet or less in length overall, and 50 percent shall be harvested by vessels eligible under such section of Public Law 105-277.

(c) GROUND FISH OPTIMUM YIELD LIMITATION- The optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons. For the purposes of implementing subsections (a) and (b) without adversely affecting current fishery participants, the allocation under subsection (a) may be in addition to such optimum yield during the years 2004 through 2008 upon recommendation by the North Pacific Council and approval by the Secretary of Commerce (if consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)).

(d) MANAGEMENT AND ALLOCATION- For the purposes of this section, the North Pacific Fishery Management Council shall recommend and the Secretary shall approve an allocation under subsection (a) to the Aleut Corporation for the purposes of economic development in Adak, Alaska pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Sections 803(a), (b), and (d) of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2004 (Public Law 108-199) are directly applicable to the allocation of the Aleutian Islands directed pollock fishery to the Aleut Corporation for the

economic development in Adak, Alaska. Section 803(c) applies to the BSAI groundfish fishery as a whole and is not specific to economic development in Adak.

Section 803 requires the Aleut Corporation to select participants in the Aleutian Islands directed pollock fishery to harvest the allocation, and limits participation to AFA qualified entities and vessels 60 feet or less in length overall (LOA) with certain fishery endorsements. Per section 803, and beginning in 2013, vessels 60 feet or less in LOA must receive 50 percent of the annual Aleutian Islands directed pollock fishery allocation. AFA vessels (all of which are greater than 60 feet in LOA) may harvest the remaining 50 percent of the annual directed pollock fishery allocation in the Aleutian Islands.

Prior to the enactment of section 803, the Aleutian Islands directed pollock fishery was managed pursuant to the AFA as initially enacted. Public Law 108-199 (section 803) supersedes portions of the AFA and allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation. Implementation of section 803 required an amendment to the AFA provisions in the FMP and to regulations at 50 CFR part 679 to provide for the allocation of the Aleutian Islands directed pollock fishery to the Aleut Corporation and to specify the management of this fishery. The allocation of pollock under section 206(b) of the AFA now pertains only to the Bering Sea pollock TAC because section 803 fully allocates the Aleutian Islands directed pollock fishery to the Aleut Corporation.

### **Amendment 82 to the FMP**

After the enactment of section 803 on January 23, 2004, the Council and NMFS began work to implement section 803. The Council recommended and NMFS approved regulations to implement section 803 under Amendment 82 in 2005 (70 FR 9856, March 1, 2005). Amendment 82 revised the FMP to establish the management framework for the Aleutian Islands directed pollock fishery consistent with section 803. Amendment 82 established the following:

- Restrictions on the harvest specifications for the Aleutian Islands directed pollock fishery, including limits on the size of the annual Aleutian Islands pollock TAC, limits on the A season (early portion of the year) harvest of TAC, allocation requirements for vessels 60 feet or less in LOA, and provisions to allow the reallocation of unharvested amounts of Aleutian Islands pollock allocations to the Bering Sea if specific conditions are met;
- Provisions for fishery monitoring, including the Aleut Corporation's selection and NMFS's approval of vessels and processors participating in the Aleutian Islands directed pollock fishery, restrictions on possession of pollock from the Aleutian Islands and either the Bering Sea subarea or the Gulf of Alaska on a vessel at one time, scale requirements, catch monitoring control plans for shoreside and stationary floating processors, and the Aleut Corporation's and participants' responsibility for ensuring harvest does not exceed the Aleutian Islands directed pollock fishery allocation;
- Reporting requirements; and



- A new Aleutian Islands Chinook salmon prohibited species catch limit that, when reached, closes the directed pollock fishery in the existing Chinook salmon savings areas in the Aleutian Islands.

Section 803 did not establish how the Council should establish the TAC for Aleutian Islands pollock. Under Amendment 82, the Council recommended and NMFS implemented a maximum TAC for Aleutian Islands pollock of 19,000 metric tons (mt). The Council recommended and NMFS implemented this 19,000 mt TAC limit after reviewing historic harvests of Aleutian Islands pollock and the overall management of BSAI groundfish resources. Amendment 82 requires that the TAC be set lower than 19,000 mt if Aleutian Islands stock conditions warrant a lower TAC; however, stock conditions have consistently provided for the maximum TAC of 19,000 mt since 2005.

Consistent with section 803, Amendment 82 allocates the Aleutian Islands pollock TAC into three categories: an incidental catch allowance (ICA) to accommodate vessels participating in other groundfish fisheries; an allocation to the Western Alaska Community Development (CDQ) Program consistent with the provisions of the AFA and section 305(i) of the Magnuson-Stevens Act; and an allocation of the remaining TAC to the Aleut Corporation.

As Amendment 82 was developed, the Council and NMFS recognized that there could be years when the full Aleutian Islands pollock TAC would not be harvested due to ongoing challenges in the fishery (described later in this report). Amendment 82 includes a provision that allows NMFS to reallocate unharvested Aleutian Islands pollock TAC to the Bering Sea.<sup>5</sup> NMFS reallocates any unharvested Aleutian Islands pollock TAC among the inshore and offshore fishery sectors according to the provisions of section 206(b) of the AFA. NMFS carefully reviews fishery catch data, and consults with the Aleut Corporation before any reallocation to ensure that a reallocation does not occur if an Aleutian Islands pollock fishery may take place. Since 2005, NMFS has reallocated almost all of the Aleut Corporation's TAC allocation to the Bering Sea. NMFS was unable to reallocate a portion of the unharvested Aleutian Islands TAC to the Bering Sea from 2007 through 2010. During those years, the Bering Sea TAC was set equal to the acceptable biological catch (the upper harvest threshold), and a full reallocation of the unharvested Aleutian Islands TAC to the Bering Sea would have exceeded that upper limit.

## **Management of Aleutian Islands Pollock and Other Groundfish Fisheries**

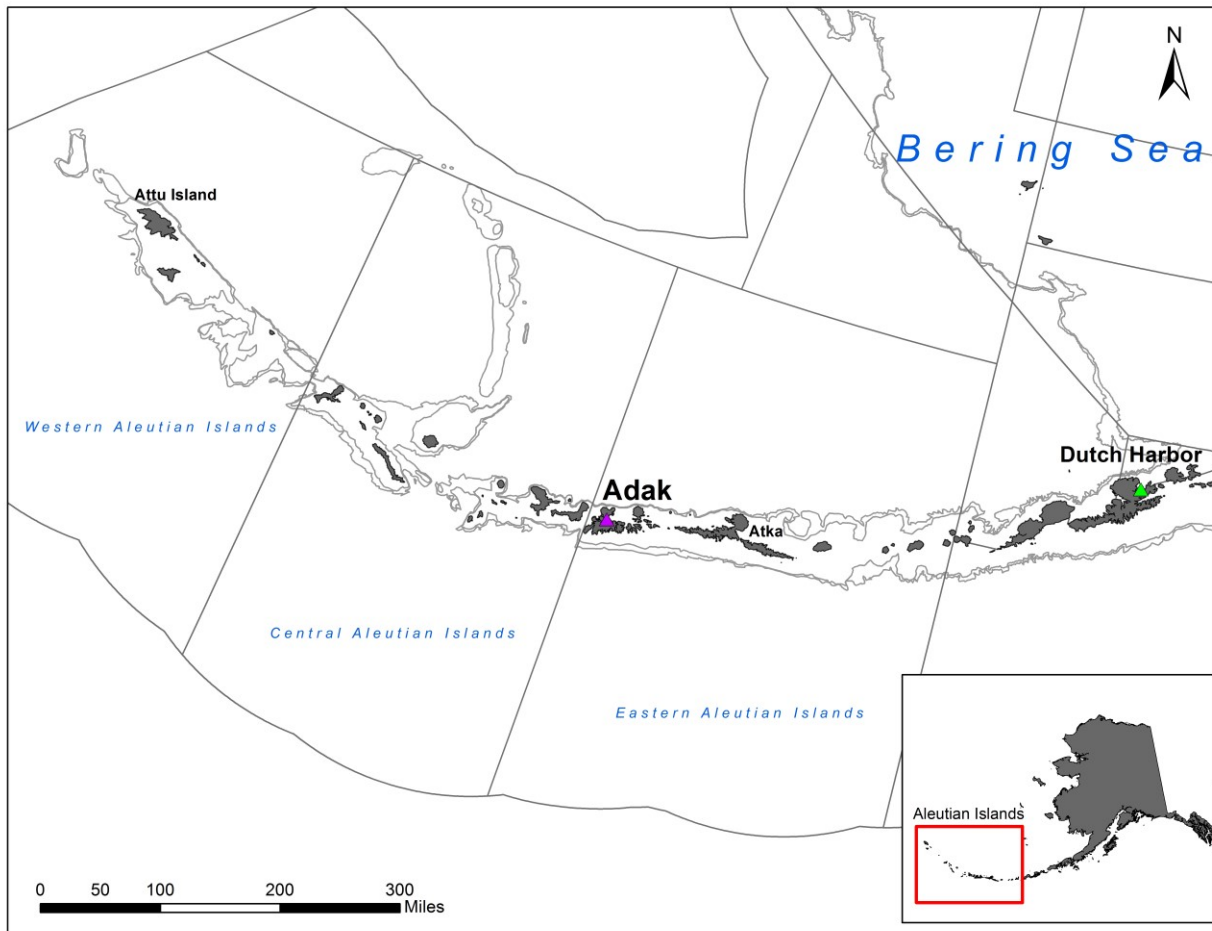
This report divides the management of the Aleutian Islands pollock fishery into several time periods that describe phases of management or other key events that may have influenced harvesting, processing, or management of Aleutian Islands pollock and other fishery resources.

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<sup>5</sup> The final rule implementing Amendment 82 published March 1, 2005 (70 FR 9856), and is codified in regulation at 50 CFR part 679.

### *Geographic Scope of this Report*

Figure 1 shows the key Federal fishery management areas and the location of Adak.



**Figure 1: Aleutian Islands Fishery Management Areas and Communities**

### **1977 through 1990**

Before the enactment of the Magnuson-Stevens Act in 1977, foreign vessels may have harvested pollock outside of 3 nautical miles (i.e., territorial waters) in the Aleutian Islands, but NMFS does not have reliable data on the amount of harvest. Beginning in 1977, foreign vessels pursued a pollock fishery in the U.S. Exclusive Economic Zone around the Aleutian Islands. Beginning in 1986, NMFS established a TAC for Aleutian Islands pollock. By 1987, harvests by joint venture (joint foreign and U.S. operations) and domestic U.S. vessels had entirely replaced harvests by foreign vessels.<sup>6</sup> By 1990, domestic U.S. vessels had entirely replaced the joint

<sup>6</sup> Part A, section 1. Final Resource Assessment for the 1989 Bering Sea/Aleutians Islands Groundfish Fishery. 1998. Prepared by Bering Sea/Aleutian Islands Groundfish Plan Team. North Pacific Fisheries Management Council. November 1988.

venture fleet.<sup>7</sup> From 1977 through 1990, catcher/processors harvested all of the Aleutian Islands pollock.<sup>8</sup> Catcher/processors catch and process their catch at-sea and do not deliver catch to onshore processing facilities.

### 1990 through 1998

During the mid-1990's, Aleutian Islands pollock harvests peaked. In many years from 1990 through 1998 the total catch exceeded the annual TACs. Beginning in 1996, harvests began to decrease. During this period of relatively high catch, fishery surveys conducted by the Alaska Fisheries Science Center showed that the total abundance of Aleutian Islands pollock was decreasing from a peak of 444,000 mt in 1986 to 78,000 mt in 1994.<sup>9</sup> A range of factors contributed to decreasing abundance and catch from the mid-1980s to the mid-1990s, including “undocumented fishing by foreign vessels claiming catch from the Central Bering Sea (CBS), as the documented fishing levels alone cannot account for the decline.”<sup>10</sup> The spatial distribution of Aleutian Islands pollock was also different during this time frame than it is currently. From 1990 through 1998, more of the catch was concentrated in the central and western Aleutians, whereas currently, catch is more concentrated in the eastern Aleutians.<sup>11</sup> A range of factors could have contributed to the shift in the spatial distribution of pollock observed between the 1990s and now.<sup>12</sup>

Between 1990 and 1998, catcher/processors harvested approximately 73 percent of the Aleutian Islands pollock catch. Catcher vessels harvested the remaining 27 percent of the catch and delivered their catch to facilities in Dutch Harbor/Unalaska and other communities outside of the Aleutians.<sup>13</sup> No Aleutian Islands pollock was delivered to Adak during this period because onshore processing facilities were not operational until 1999. No pollock deliveries were received on Adak prior to 2000.<sup>14</sup>

No shorebased harvesting or processing operations occurred on Adak prior to the late-1990s because the U.S. Navy strictly limited access to Adak to military personnel stationed at Naval Air Facility Adak. The U.S. Navy began maintaining military operations on Adak during World War II. As part of a Base Realignment and Closure process conducted in the 1990's, Naval Air Facility Adak was closed on March 31, 1997.<sup>15</sup> After Naval Air Facility Adak closed, the Aleut Corporation acquired many of the facilities under a land transfer agreement with Department of the Interior and the U.S. Navy.<sup>16</sup> Fishing companies began exploring the feasibility of

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<sup>7</sup> 2016 North Pacific Groundfish Stock Assessment and Fishery Evaluation Reports for 2017 Fisheries: Chapter 1A: Assessment of the Pollock Stock in the Aleutian Islands (2016 Aleutian Islands Pollock Stock Assessment). Barbeaux, S., J. Ianelli., W. Palsson. November 2016., p. 222.

<sup>8</sup> Based on an evaluation of NMFS landings data. Evaluation conducted October 27, 2017.

<sup>9</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 220.

<sup>10</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 221.

<sup>11</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 221.

<sup>12</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 221.

<sup>13</sup> Source: Alaska Region blend database. Analysis conducted October 27, 2017.

<sup>14</sup> Source: NMFS Federal processor permit and blend databases. Analysis conducted October 27, 2017.

<sup>15</sup> Source: Base Realignment and Closure, Former Naval Air Facility Adak Available at:

[https://www.bracpmo.navy.mil/brac\\_bases/other\\_west/former\\_naf\\_adak.html](https://www.bracpmo.navy.mil/brac_bases/other_west/former_naf_adak.html)

<sup>16</sup> Source: Base Realignment and Closure, Former Naval Air Facility Adak Available at:

[https://www.bracpmo.navy.mil/brac\\_bases/other\\_west/former\\_naf\\_adak.html](https://www.bracpmo.navy.mil/brac_bases/other_west/former_naf_adak.html)

establishing harvesting and processing operations in Adak shortly after closure of the U.S. Navy facilities. It took several years before adequate processing infrastructure was established. Significant quantities of groundfish and crab were not processed in Adak until early 2000.<sup>17</sup> In 2001, Adak was incorporated as a second class city under Alaska State law.

## **1999 through 2004**

### Steller Sea Lion Protection Measures

Following a severe, rapid decline in the worldwide population of Steller sea lions, NMFS listed the Steller sea lion (*Eumetopias jubatus*) as a threatened species under the Endangered Species Act of 1973 (ESA) by emergency rule in 1990. In 1993, NMFS designated critical habitat for the species to include (among other areas), the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species.<sup>18</sup> Adequate food resources are an essential component of the Steller sea lion's aquatic critical habitat (58 FR 45269, August 27, 1993). In 1997, NMFS recognized two distinct Steller sea lion populations, and reclassified the western population (west of 144° W longitude) as endangered.<sup>19</sup>

In 1998, a biological opinion, prepared under the requirements of the ESA, concluded that the pollock fisheries in the BSAI and Gulf of Alaska (GOA) were likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat. In response to the 1998 Biological Opinion, the Council recommended and NMFS implemented regulations for the BSAI and GOA pollock fisheries to 1) disperse pollock harvest over an extended period of time and over an extended geographic area; 2) establish pollock trawl exclusion zones around Steller sea lion rookeries and haulouts in the Bering Sea and GOA; and 3) close the Aleutian Islands to directed fishing for pollock. In response to a series of court rulings, NMFS modified Steller sea lion regulations several times between 1998 and 2001.

In 2001, the Council recommended a new suite of Steller sea lion protection measures. NMFS issued a biological opinion on the Council's proposed measures on October 19, 2001. The 2001 Biological Opinion concluded that the BSAI and GOA groundfish fisheries, as modified by the Council's recommended sea lion protection measures, were not likely to jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. NMFS implemented the Council's recommended sea lion protection measures via emergency interim rule in January 2002 (67 FR 955, January 8, 2002). The 2002 emergency interim rule maintained the directed fishing closure for pollock in the Aleutian Islands. NMFS extended the emergency interim rule for the remainder of 2002 on May 16, 2002 (67 FR 34860).

On January 2, 2003, NMFS issued a final rule to open the Aleutian Islands directed fishery outside of Steller sea lion critical habitat and apportioned the harvest of the TAC into two seasons (an early "A season" with 40 percent of the allocation, and a "B season" with 60 percent of the allocation).<sup>20</sup> NMFS did not open a directed Aleutian Islands pollock fishery in 2003 or

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<sup>17</sup> Based on an evaluation of NMFS landings data. Evaluation conducted October 27, 2017.

<sup>18</sup> 58 FR 45269, August 27, 1993

<sup>19</sup> 62 FR 24345, May 5, 1997

<sup>20</sup> 68 FR 204, January 2, 2003.

2004 because the Aleutian Islands pollock TAC was set at 1,000 mt during those years and it was needed to accommodate incidental harvest of Aleutian Islands pollock in other groundfish fisheries.

## **2005 through 2010**

### Section 803 and Amendment 82

The major management change in Aleutian Islands pollock management from 2005 through 2010 was the enactment of section 803 and its implementation through Amendment 82 in 2005.<sup>21</sup> Beginning in 2005, NMFS allocated the Aleutian Islands pollock TAC to provide for incidental harvest amounts in other groundfish fisheries, and allocations to the Western Alaska CDQ Program and the Aleut Corporation.

From 2005 through 2010, the directed pollock fishery allocation to the Aleut Corporation averaged approximately 15,400 mt annually. However, from 2005 through 2010, the total harvest of Aleutian Islands pollock from both the directed fishery and incidental catch averaged only 1,675 mt annually.

In 2005, shortly after the implementation of Amendment 82, two catcher/processors attempted directed fishing for Aleutian Islands pollock, but failed to find commercially harvestable quantities in the areas opened to fishing (i.e., areas not closed due to Steller sea lion protection measures). Less than 200 mt were harvested in this limited directed fishery, and it is unlikely these harvesting efforts were profitable.<sup>22</sup>

In 2006 and 2007, Adak Fisheries LLC, the Aleut Corporation, and the owners and operators of the F/V *Muir Milach* in partnership with the Alaska Fisheries Science Center conducted the Aleutian Islands Cooperative Acoustic Survey Study. This study was designed to test the technical feasibility of conducting acoustic surveys of Aleutian Islands pollock using commercial vessels.<sup>23</sup> NMFS supported this study by providing the researchers with an exempted fishing permit that allowed the F/V *Muir Milach* to undertake a limited amount of directed pollock fishing within specific areas that were otherwise closed to directed fishing under Steller sea lion protection measures.<sup>24</sup>

NMFS has the authority to issue exempted fishing permits to allow fishing that would otherwise be prohibited.<sup>25</sup> A total of 932 mt and 1,100 mt of pollock were harvested under the exempted fishing permit in 2006 and 2007, respectively.<sup>26</sup> Pollock harvested under the exempted fishing permit was processed in Adak.

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<sup>21</sup> Please see the previous section “Statutory and Regulatory Background” for additional detail.

<sup>22</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 220.

<sup>23</sup> Barbeaux, S. J., and D. Fraser. 2009. Aleutian Islands cooperative acoustic survey study for 2006. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-198, 91 p.

<sup>24</sup> The 2006 notice of the application is available at 71 FR 3472, January 23, 2006. NMFS received a separate application for 2007, available at 71 FR 66915, November 17, 2006.

<sup>25</sup> See regulations at §§ 679.6 and 600.745(b) for the procedures for issuing exempted fishing permits.

<sup>26</sup> <https://www.afsc.noaa.gov/REFM/Docs/2016/AIpollock.pdf>

In 2008, the Alaska Fisheries Science Center conducted additional surveys of Aleutian Islands pollock in cooperation with the F/V *Muir Milach*; these surveys harvested less than 10 mt of groundfish, including pollock.<sup>27</sup> No additional directed fishing occurred in 2008. In 2009 the directed pollock fishery in the Aleutian Islands region took 403 mt, and 1,326 mt were taken as bycatch in other fisheries, predominantly the Pacific cod and rockfish fisheries.

Since 2010, processing at Adak has proven problematic. A series of owners have attempted to undertake groundfish processing in Adak, with limited success. The relatively high operational costs at this remote location, and other logistical and financial challenges facing shorebased processing facility operators has limited overall processing of all groundfish resources, including Aleutian Islands pollock.<sup>28</sup> In 2010, only 50 mt were harvested in the directed Aleutian Islands pollock fishery.

### Other Efforts to Support Shorebased Harvesting and Processing in Adak

From 2005 through 2010, the Council, NMFS, and the State of Alaska (State) implemented several programs to promote shorebased harvesting and processing operations in Adak.

In 2005, NMFS implemented the Council's Crab Rationalization Program (70 FR 10174, March 2, 2005). Under the Crab Rationalization Program, NMFS established a catch share program for all of the major crab fisheries in the BSAI. NMFS issued quota shares to eligible harvesters. Each year, a person who holds quota share receives an exclusive harvest privilege (individual fishing quota) for a portion of the annual TAC. NMFS also issued processor quota share under the Crab Rationalization Program that yields an exclusive processing privilege (individual processing quota) to receive a portion of the individual fishing quota. The Crab Rationalization Program allocates 10 percent of the TAC for Western Aleutian Islands golden king crab to a specific entity representing the community of Adak. The Crab Rationalization Program also places geographic delivery requirements on a portion of the remaining Western Aleutian Islands golden king crab TAC that favors processing in Adak and the nearby community of Atka. Since the Crab Rationalization Program was implemented in 2005, the Council has recommended and NMFS has approved regulations that relax the regional delivery requirements for western Aleutian Islands golden king crab because adequate processing capacity in the western Aleutians (specifically in Adak) has not been available in each year to fully process the crab.<sup>29</sup>

In 2006, the State created a Pacific cod fishery within State of Alaska waters in the eastern and central Aleutian Islands. This fishery is exclusively managed by the State and provides harvesting and processing opportunities for vessels and processors based in Adak, and to a lesser extent the nearby community of Atka. The State Pacific cod fishery is managed based on a guideline harvest level that is determined by the State. The State-managed fishery contains

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<sup>27</sup> 2016 Aleutian Islands Pollock Stock Assessment, p. 220.

<sup>28</sup> A recent description of the history of processing operations on Adak can be found in section 2.6.8 of the Final Regulatory Impact Review/ Environmental Assessment for Amendment 113 to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area. September 2016. NMFS/North Pacific Fisheries Management Council. Available at:

<https://alaskafisheries.noaa.gov/sites/default/files/analyses/bsai113rrea.pdf>

<sup>29</sup> See the final rule implementing Amendment 37 to the Fishery Management Plan for Bering Sea/Aleutian Islands King and Tanner Crabs for a more detailed explanation (76 FR 35781, June 20, 2011).

several provisions that provide harvesting and processing opportunities for vessels and processors based in Adak and the nearby community of Atka. Over the years, the State has modified the program to encourage harvesting by smaller vessels operating out of Adak, and delivering to Adak.<sup>30</sup>

From 2006 through 2017, the State has allocated 175,437,844 pounds to the State-managed Pacific cod fishery, and approximately 88,309,000 pounds have been harvested -- or slightly more than 50 percent of the total allocation.<sup>31</sup> The amount of Pacific cod harvested and processed in Adak has varied considerably each year. In recent years, only a small percentage of the Pacific cod allocated to the State fishery has been harvested, and very limited amounts of this harvest have been processed in Adak.<sup>32</sup>

In 2008, NMFS implemented the Amendment 80 Program that specifies that a portion of the Aleutian Islands Pacific ocean perch and Atka mackerel fisheries would be available for harvest by trawl catcher vessels. These vessels may choose to land their catch in Adak or Atka, but are not required to do so (72 FR 52668, September 14, 2007).

In 2009, NMFS implemented Amendment 92 to the FMP (74 FR 41080, September 14, 2009). As part of Amendment 92, NMFS issued new endorsements for trawl catcher vessel licenses to allow vessels to fish in the Aleutian Islands if minimum recent landing requirements in the Aleutian Islands were met. The Council recommended and NMFS approved regulations that assigned new Aleutian Islands area endorsements to provide additional harvest opportunities to non-AFA trawl catcher vessels that were not otherwise eligible to fish in the Aleutian Islands under the existing licensing regulations. Amendment 92 was intended to provide for “additional harvesting and processing alternatives in the Aleutian Islands.”<sup>33</sup>

Figure 2 summarizes key events affecting the Aleutian Islands pollock fishery, and other fisheries in the Aleutian Islands. Figure 3 shows pollock catch in the Aleutian Islands.

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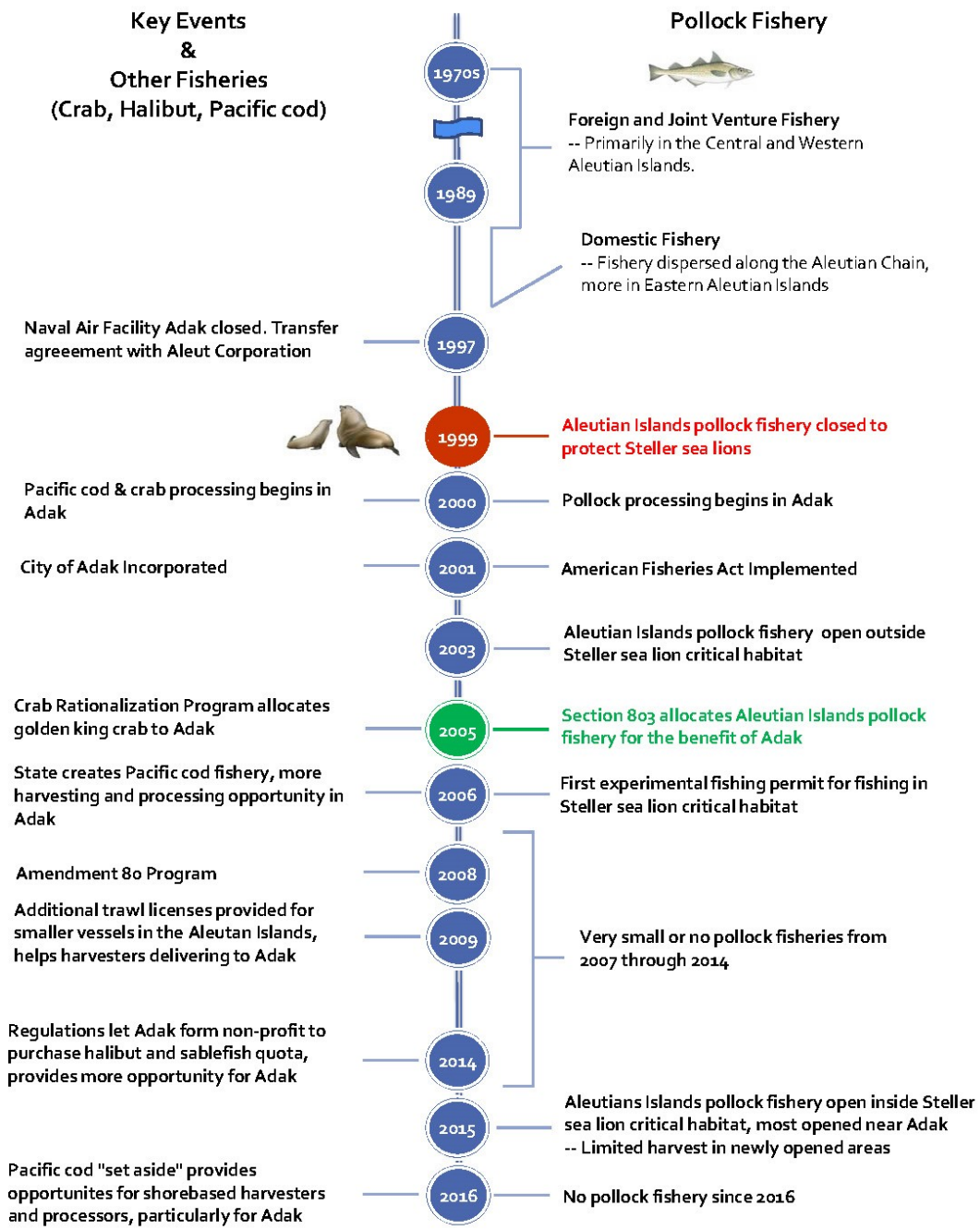
<sup>30</sup> The most recent description of the State-managed Aleutian Islands is available at: <http://www.adfg.alaska.gov/FedAidPDFs/FMR16-07.pdf>

<sup>31</sup> Data provided by Alaska Department of Fish and Game have been aggregated from 2006 through 2017 to ensure the confidentiality of catch data.

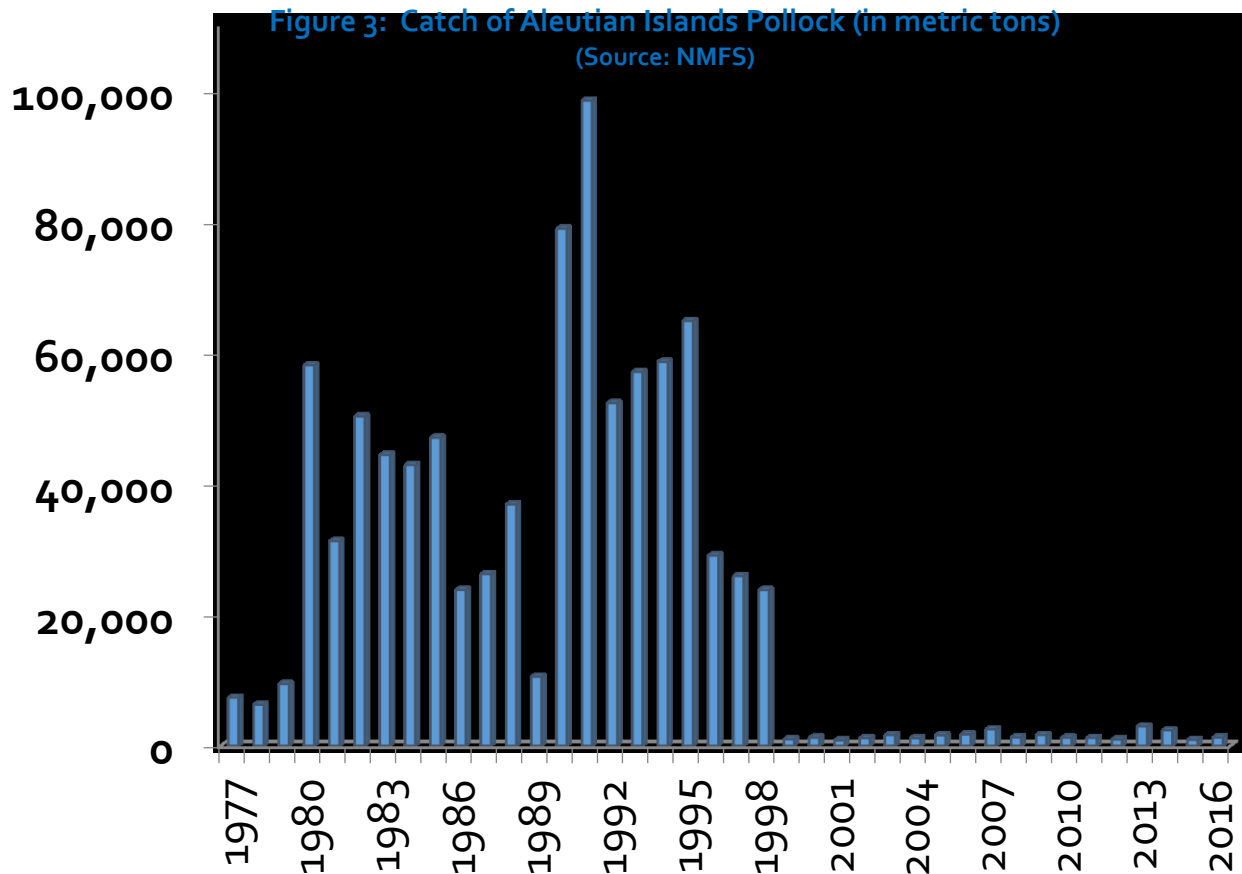
<sup>32</sup> Additional detail is not available due to limitations on the release of confidential catch data.

<sup>33</sup> 74 FR 41084. Additional information on the provisions in Amendment 92 to facilitate fishery operations in the Aleutian Islands, and specifically in Adak is found in the final rule implementing Amendment 92 (74 FR 41080, September 14, 2009) and in the accompanying analytical documents prepared for Amendment 92 and referred to in the final rule.

**Figure 2: Timeline of Key Events Affecting Adak & Aleutian Islands**







### 2011 through 2014

Due to extensive new information on Steller sea lion biology and ecology, generated as a result of the substantial funding provided by the 2001 Appropriations Act (Public Law 106-554), NMFS issued a new, programmatic biological opinion on the effects of the BSAI and GOA groundfish fisheries on the endangered western population of Steller sea lions per the requirements of the ESA on November 24, 2010. The 2010 Biological Opinion concluded that NMFS had not ensured that the groundfish fisheries were not likely to jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The finding was based on the strong continued declines of Steller sea lions in the western Aleutian Islands which was coincident with continued fishing for Atka mackerel (outside of critical habitat) and for Pacific cod inside of critical habitat and limited, new information that suggested sea lions may depend on foraging further offshore than suggested by data available for prior biological opinions. NMFS implemented new regulations in January 2011.<sup>34</sup> These regulations affected only the Pacific cod and Atka mackerel fisheries in the Aleutian Islands, and implemented especially stringent closures for these fisheries in the western Aleutian Islands. The Aleutian Islands pollock fishery was not affected by the new regulations due to the lack of directed fishing effort for pollock from 1999 through 2010.

<sup>34</sup> 75 FR77535, December 13, 2010.

## Other Efforts to Support Shorebased Harvesting and Processing in Adak

In 2014, NMFS implemented Amendment 102 to the FMP and other regulatory amendments (collectively referred to as Amendment 102) to modify the halibut and sablefish individual fishing quota program (79 FR 8870, February 14, 2014). Amendment 102 facilitates greater participation by vessels and processors operating out of Adak by allowing Adak to establish a non-profit organization, a Community Quota Entity, to purchase halibut and sablefish quota share assigned for use in the Aleutian Islands and assign it to specific participants. As part of Amendment 102, NMFS also revised regulations to relax requirements on the size of vessels that can use specific types of halibut quota share. These actions were intended to provide additional fishing opportunities for residents of Adak, and to “minimize adverse economic impacts on this small, remote, coastal community in the Aleutians, and help provide for the sustained participation in the halibut and sablefish IFQ fisheries.”<sup>35</sup> The Community Quota Entity representing Adak has purchased halibut and sablefish quota share. In 2017, holdings by the Adak Community Quota Entity yielded nearly 58,000 pounds of halibut, and nearly 16,000 pounds of sablefish. This halibut and sablefish has been harvested and processed by Adak-based operations since 2015.<sup>36</sup>

### **2015 to Present**

Representatives from Adak, and several fishing industry organizations challenged the adequacy of the environmental assessment NMFS produced to analyze the effects of the 2011 regulations that further restricted fishing in the Aleutian Islands. As a result of this litigation, NMFS completed an Environmental Impact Statement in 2016 that explored alternative methods for managing Atka mackerel, Pacific cod, and the directed fishery for Aleutian Islands pollock to allow for harvest opportunities inside portions of Steller sea lion critical habitat where large concentrations of pollock have been harvested in the past. NMFS completed a Biological Opinion in 2014 which concluded that these revisions to the existing management were not likely to jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. NMFS implemented the revised Steller sea protection measures in January, 2015 which provided for pollock harvest inside Steller sea lion critical habitat in the areas shown in Figure 4 in the Aleutian Islands (79 FR 70286, November 25, 2014).

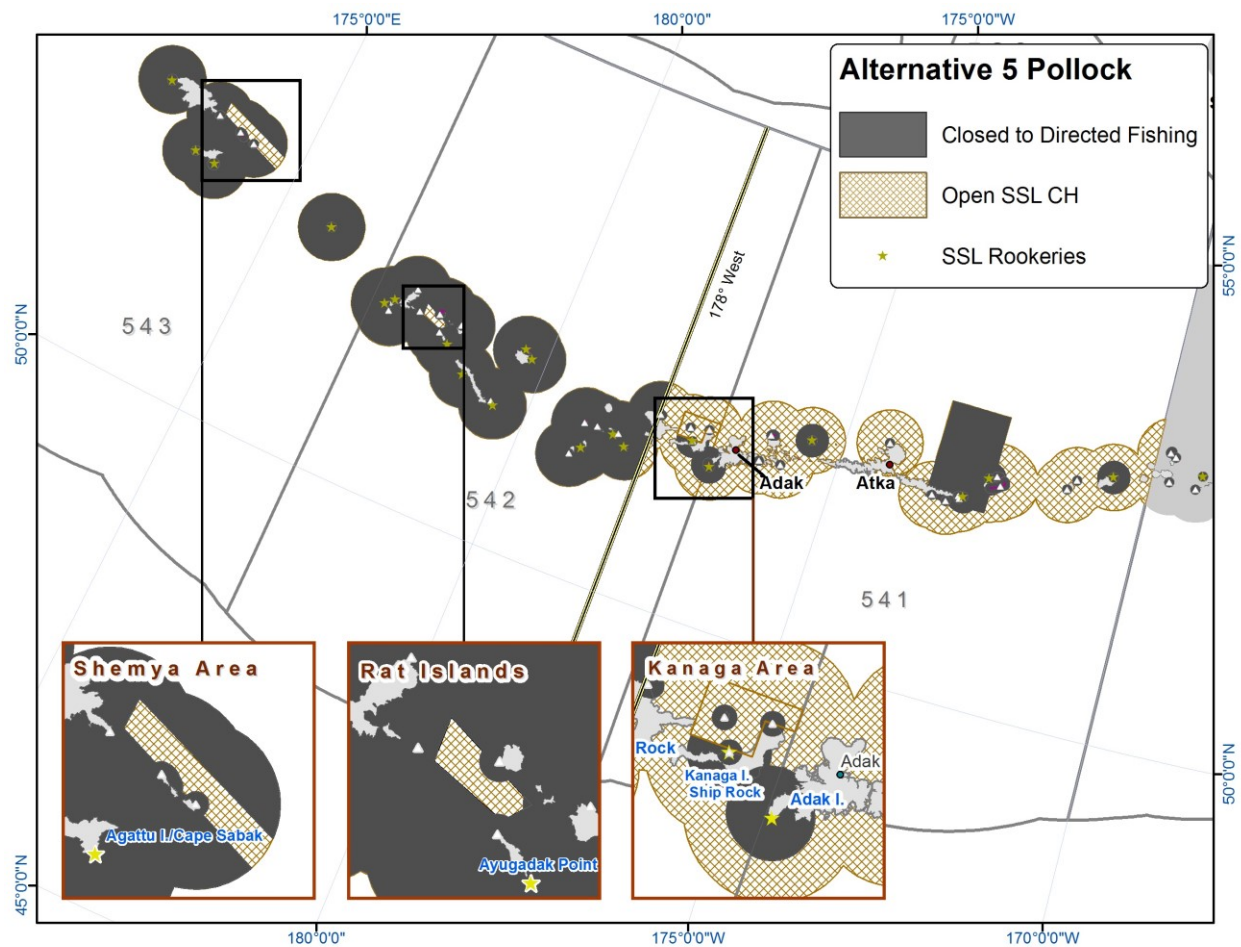
The 2015 Steller sea lion protection measures opened up 72 percent of Steller sea lion critical habitat in the eastern Aleutian Islands that had been previously closed (Area 541 in Figure 4). Most of this newly opened area was near Adak. The 2015 Steller sea lion protection measures opened up 13 percent in the central Aleutian Islands (Area 542 in Figure 4), and 5 percent in the western Aleutian Islands (Area 543 in Figure 3).<sup>37</sup> The Council and NMFS developed these revised Steller sea lion protection measures to provide for opportunities for harvests in the near shore areas near Adak to provide additional harvest opportunities for smaller vessels.

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<sup>35</sup> Amendmen 102 analysis <https://alaskafisheries.noaa.gov/sites/default/files/analyses/finalbsai102rir.pdf>, and Final Rule 79 FR 8870, February 14, 2014.

<sup>36</sup> Data from NMFS Restricted Access Management Program. Provided on October 31, 2017.

<sup>37</sup> See Tables 5-18, 5-19, and 5-20 in: 2014 Biological Opinion for the Authorization of Alaska Groundfish Fisheries under the Proposed Steller Sea Lion Protection Measures. NMFS, Alaska Region, 2014.



**Figure 4. Steller sea lion critical habitat areas open and closed to directed fishing for pollock in the Aleutian Islands under current regulations. (Source: NMFS)**

Although the regulations implemented in 2015 greatly expanded the potential areas for directed pollock fishing near Adak, this has not resulted in additional pollock harvests. In 2015, one catcher/processor attempted directed fishing for pollock. That vessel did not report substantial quantities of pollock harvest, but did note that efforts to harvest pollock resulted in relatively high incidental harvests of rockfish.<sup>38</sup> No vessels registered for an Aleutian Islands directed pollock fishery in 2016 or 2017.<sup>39</sup>

#### Other Efforts to Support Shorebased Harvesting and Processing in Adak

In 2016, NMFS issued a final rule to implement Amendment 113 to the FMP (81 FR 84434, November 23, 2016). Amendment 113 modifies the management of the BSAI Pacific cod fishery to set aside a portion of the Aleutian Islands Pacific cod TAC for harvest by vessels directed fishing for Aleutian Islands Pacific cod and delivering their catch for processing to a shoreside processor located on land west of 170° W. longitude in the Aleutian Islands. This includes any

<sup>38</sup> Additional detail is not provided due to limitations on the release of confidential data,

<sup>39</sup> Data from NMFS Alaska Region Data base. Data provided October 31, 2017.

shoreside processor located in Adak. The harvest set-aside applies only if specific notification and performance requirements are met, and only during the first few months of the fishing year. This harvest set-aside provides the opportunity for vessels, Aleutian Islands shoreplants, and the communities (including Adak) where Aleutian Islands shoreplants are located to receive benefits from a portion of the Aleutian Islands Pacific cod fishery. The notification and performance requirements preserve an opportunity for the complete harvest of the BSAI Pacific cod resource if the set-aside is not fully harvested. A lawsuit challenging the final rule implementing Amendment 113 was filed in 2016 and has not yet been resolved.

### **Potential Mechanisms to Help Adak Receive the Economic Benefits of Its Originally Designated Pollock Allocation**

NMFS has limited authority under the AFA, the Magnuson-Stevens Act, and section 803 to provide additional harvest opportunities to help Adak, Alaska receive the benefits of its originally designated pollock allocation in the Aleutian Islands. For example, NMFS has not identified any existing statutory or regulatory mechanism within its authority that would allow the Council to recommend or NMFS to implement provisions that would allow the Aleut Corporation or Adak to direct the specific persons who would be eligible to directed fish for any amount of Aleutian Islands pollock that is reallocated to the Bering Sea under the provisions of Amendment 82. Section 206 of the AFA governs the allocation of Bering Sea pollock, and NMFS has not identified a mechanism within its existing statutory authority that would allow NMFS to allow representatives of Adak or the Aleut Corporation to modify the current provisions NMFS uses to assign TAC in the Bering Sea.

Given existing statutory requirements, this report focuses on actions that NMFS could take within its existing authority to provide additional harvest opportunities within the Aleutian Islands. This report focuses on the eastern and central Aleutian Islands because those areas are closest to Adak, Alaska and are likely to include larger and more economically viable concentrations of pollock than those found in the western Aleutian Islands based on the most recent stock assessment data.<sup>40</sup> (See Figure 1 for the geographic boundaries of the eastern and central Aleutian Islands relative to Adak).

Most of the areas in the central and western Aleutian Islands currently open to directed pollock fishing are more than 20 nautical miles from shore. Harvesting within 20 nm of shore has been limited to minimize potential interactions with the endangered Steller sea lions in the areas where the population continues to decline. The Aleut Corporation, in coordination with its harvesting partners, has pursued a directed pollock fishery in the eastern Aleutian Islands in several years since 2005. However, none of these efforts resulted in substantial harvests.

As noted earlier in this report, additional areas were opened to the directed Aleutian Islands pollock fishery inside Steller sea lion critical habitat beginning in 2015. These changes in management did not result in significant increases in directed fishery harvests or processing in Adak in 2015, 2016, or 2017 (see Figure 3). Anecdotal reports indicate that pollock was not aggregated in economically viable quantities in those areas where vessels could fish. Potentially, additional harvest opportunities could be provided if additional harvest were allowed within

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<sup>40</sup> 2016 Aleutian Islands Pollock Stock Assessment.

areas currently closed to protect Steller sea lions. At this time, NMFS and potential participants in the Aleutian Islands pollock fishery have no recent commercial harvest data to indicate whether allowing additional harvest opportunities within areas currently closed to fishing would actually result in economically viable harvests that could help the Aleut Corporation, and Adak, to receive the benefits of their Aleutian Islands pollock allocation.

Due to the lack of any sizeable directed fishery harvest since 1999, the only data NMFS currently has available to assess the potential abundance of pollock within areas currently closed to protect Steller sea lions comes from trawl surveys, and the results from the 2006 and 2007 exempted fishing permits. Recent trawl surveys and the results from the 2006 and 2007 exempted fishing permits indicate that pollock may be present in those portions of the central and eastern Aleutians closed to directed pollock fishing, but it is not clear if a directed pollock fishery could be economically viable. We note that data from trawl surveys in 2006 and 2007 may not be representative of the current distribution of Aleutian Islands pollock.

One approach that NMFS could pursue in coordination with Adak, the Aleut Corporation, and the Council is to explore an exempted fishing permit to allow fishing in specific areas of the Aleutian Islands currently closed to directed fishing to determine the distribution and stock composition of Aleutian Islands pollock. This information would be particularly useful to assess whether Aleutian Islands pollock could be economically harvested. This type of approach is consistent with past practice in the North Pacific. NMFS regularly coordinates with fishery participants to develop exempted fishing permits to test management objectives.

We recommend pursuing an exempted fishing permit before undertaking revisions to regulations applicable to pollock in the Aleutian Islands. Regulations that constrain the pollock fishery in the eastern and central Aleutian Islands are complicated. Revisions to the management of the Aleutian Islands pollock fishery have consistently been among the most contentious and complicated management measures undertaken by NMFS and the Council. Since 1999, NMFS and the Council have carefully coordinated in the development of any management measures to ensure those management measures do not jeopardize the continued existence of the western distinct population segment of Steller sea lions or adversely modify its critical habitat.

## **Conclusions and Recommendations**

NMFS has limited authority under the AFA, the Magnuson-Stevens Act, and section 803 to provide additional harvest opportunities to help Adak, Alaska receive the benefits of its originally designated pollock allocation in the Aleutian Islands. One approach that NMFS could pursue in coordination with Adak, the Aleut Corporation and the Council is to explore an exempted fishing permit with the Aleut Corporation, and depending on the results of that exempted fishing permit, consider additional regulatory changes to the management of Aleutian Islands pollock.