

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke  
Executive Director



ESTIMATED TIME  
1 HOUR

DATE: October 6, 1999

SUBJECT: Steller Sea Lions

**ACTION REQUIRED**

- (a) Status of litigation, emergency rules for 1999, and amendments for 2000.
- (b) Status of RPAs and discuss need for court-ordered revisions.

**BACKGROUND**

This is mainly going to be a NMFS update on the Steller sea lion issue. The Council last considered this issue in June when it took final action on a suite of measures to protect sea lions in 2000. The actions are summarized in item C-6(a), an excerpt from the June newsletter. Item C-6(b) is a notice published by NMFS on July 7 for the 1999 pollock B and C seasons.

On July 9, U.S. District Court Judge Thomas S. Zilly issued a ruling supporting the NMFS determination of jeopardy for the pollock fishery, and no jeopardy for the Atka mackerel fishery. The Reasonable and Prudent Alternatives (RPAs) were found to be arbitrary and capricious because they were not justified under the prevailing legal standards and the record did not show that they were reasonably likely to avoid jeopardy. Just as importantly, the judge found that NEPA requires preparation of a programmatic SEIS analyzing the environmental impacts of the fishery management plans as a whole on the North Pacific ecosystem. This last issue is covered under agenda item C-7.

On July 19, the plaintiffs filed a proposed order of remand calling for intensive analysis and implementation of management measures to ensure that pollock fisheries avoid jeopardizing Stellers and any adverse modification of critical habitat, and requiring NMFS to show how the measures temporally and spatially disperse the fisheries and protect rookeries and haulouts.

On August 6, NOAA GC met with Judge Zilly and he remanded the December 1998 Biological Opinion back to NMFS, directing them to explain how the revised RPAs will avoid the likelihood of jeopardy or adverse modification of critical habitat. If revised RPAs are determined to be necessary, NMFS needs to file them by October 15<sup>th</sup>, and within three days of that date, they need to be filed with the court and served on all parties. The Court scheduled a status conference for October 29, 1999, at 9 a.m., to determine the parties' intent to pursue further motions and relief in this action, including challenges to the remanded 1998 Biological Opinion. The remand order was sent to you in a Council mailing on September 3<sup>rd</sup>.

NMFS will report on its activities since early August and how the Council should be involved in the next few months in developing protective measures for Steller sea lions.

### Steller Sea Lion Measures

The Council reviewed and adopted a series of measures intended to provide protection for Steller sea lions for the remainder of 1999 and for 2000 and beyond. As with previous actions taken by the Council, these measures respond to the Reasonable and Prudent Alternatives (RPAs) stemming from the recent Biological Opinion issued by NMFS. The June meeting actions closely mirror those actions taken last December, but include further restrictions on pollock fisheries in the Gulf of Alaska (GOA) and Bering Sea/Aleutian Islands (BSAI). For example, further restrictions on total removals from Critical Habitat (CH) areas were approved, as well as extended stand-down periods between fishing seasons in the BSAI and modified haul-out closures in the GOA. The specific motion approved by the Council is included as Attachment 2 to this newsletter. Staff contacts are David Witherell or Chris Oliver.

June 1999

**Council Actions on Steller Sea Lion Measures*****General Considerations***

- November 1 to January 19 closure in BSAI with extension to GOA
- Seasonal caps at 30% of annual TAC
- 40/60 split in BSAI between A1/A2 and B/C seasons
- Rollovers allowed consistent with seasonal cap and areal apportionments (CHCVOA)
- Retain closure of Aleutians area

***Gulf of Alaska*****Season dates and TAC apportionments**

Season	TAC Apportionment	Start Date	Close Date
A	30%	Jan 20	Mar 1
B	15%	Mar 15	May 31
C	30%	Aug 20	Sep 15
D	25%	Oct 1	Nov 1

**Provide for a seasonal exclusive area requirement for catcher vessels fishing between the BSAI and GOA**

Catcher vessels would be prohibited from engaging in directed fishing for pollock in both the BSAI and GOA during the following season pairs:

Bering Sea A1	GOA A
Bering Sea A2	GOA B
Bering Sea B	GOA C
Bering Sea C	GOA D

with exemption for vessels less than 125' in areas 620 (east of 157 degrees) and 630 (area 610 still exclusive).

**Trip limits in the GOA*****Catcher Vessel Trip Limits***

Option 2: 300,000 lb trip limit for W, C and E Gulf of Alaska

(Council intent is that this be managed such that the average of all trips over a season be less than 300,000 lbs)

***Tender vessel trip limits***

Option 4 (as amended): 600,000 lb trip limits for tender vessels in area 610 and 620 west of 157° with a prohibition on tendering in areas 620 east of 157°, 621, 630, 631 and 640.

## Spatial dispersion in the GOA

Separate TAC in Shelikof Strait with proportionate reduction in TACs for areas outside the Strait in the A and B seasons only.

## Pollock no-trawl zones in the GOA

Implement RPA proposed pollock trawl exclusion zones with eight existing exemptions (as amended below).

- a. Pt. Elrington, Rugged Island and The Needles would be closed to pollock fishing May 1 - January 20.
- b. Sea Lion Rocks would stay open with a 60 ft boat limit.
- c. Spitz Island and Mitrofanina open Jan 20 - April 30 and Sept - Nov 1 with a 60 ft boat limit.

The Council also passed two motions:

- (1) request NMFS to monitor removals from the 8 areas and report no later than February 2000 on rates of removal and provide any recommendations stemming from that information, and
- (2) to write a letter to the BOF summarizing all Council actions related to this agenda item, and request any appropriate complementary actions, and express support for proposed BOF action with regard to 40% reduction in Prince William Sound.

## *Bering Sea*

### Temporal Dispersion Package

#### *Inshore Sector Seasons*

A1 season — Jan 20 - Feb 15

Stand-down 7 days

A2 season — Feb 22 - April 17

B season 1999 — August 1 until quota achievement

B-C stand-down 7 days inside CH/CVOA

B season 2000 and forward — June 1 start date for co-ops (August 1 for open access)

C season — B closure, plus 7 days till Nov 1.

#### *Mothership Sector Seasons*

A1 and A2, single season — Feb 1 - April 15

No stand-down between A1 and A2; no stand-down outside CH/CVOA with max daily catch rate of 2,000 mt. from Feb. 15-22.

B and C season, single season — Sept 1 - Nov 1

#### *Catcher Processor Sector Seasons (including 7 catchers)*

A1 season — Jan 20- Feb 15

Stand-down 7 days in CHCVOA; no stand-down outside CHCVOA with max daily catch rate of 2,000 mt from Feb 15-22.

A2 season — Feb 22-April 17

B season — July 10 - August 31

No stand-down

C season — Sep 1- Nov 1

#### *CDQ Sector Seasons*

A1 and A2 single season — Jan 20 - April 15

Stand-down 7 days in CHCVOA; no stand-down outside CHCVOA with max daily catch rate of 2,000 mt from Feb 15-22.

B and C season — April 15 - Nov 1

NOTE: Council intent with regard to maximum daily catch rates is that NMFS, in consultation with industry, may adjust maximum daily catch rates for each sector to comply with RPAs. (i.e., option is to agree to that maximum daily catch rate throughout the A1/A2 seasons, or take the stand-down). This only applies to outside CH/CVOA stand-downs. Inside CH/CVOA stand-downs remain.

Pollock Allocation RPAs Package

AFA Allocations Apply.

*Seasonal Allocations by Sector*

Seasonal TAC apportionments

	A1	A2	B	C
Inshore	27.5%	12.5%	30%	30%
C/P	27.5%	12.5%	30%	30%
Mothership	40%		60%	
CDQ	45%		55%	

*Area Allocations by Sector*

CH/CVOA Percentages 1999

	A1	A2	B	C
Inshore	56%	56%	45%	63%
C/P	33%	33%	0%	0%
Mothership	50%		0%	
CDQ	82.5%		56%	

CH/CVOA Percentages 2000

	A1	A2	B	C
Inshore	56%	56%	27%	45%
C/P	33%	33%	0%	0%
Mothership	50%		0%	
CDQ	82.5%		37%	

NOTE 1: Phase-in reduction in total B/C season CHCVOA removals (B season 25% in 1999 and 15% in 2000 - C season 35% in 1999 and 25% in 2000).

NOTE 2: B to C rollovers permitted but not to exceed 30% directed pollock allocation in any season

## General

1. No pollock allocation east and west of 170° west, north of CH/CVOA.
2. No buffer zone north of CH/CVOA.
3. Catcher vessels less than or equal to 99 ft length overall (LOA) would be exempt from CH/CVOA closure from September 1 through March 31 unless the percentage cap for inshore sector has been reached. NMFS will manage in a manner intended to leave enough remaining quota within CH/CVOA sufficient to support fishing by vessels less than or equal to 99 ft. LOA for the duration of the current inshore sector opening..
4. *Sarichef Steller sea lion haulout*  
20-mile closure year round.
5. Request NMFS to have a report on adaptive management strategies for review at the December 1999 Council meeting, and conduct a workshop related to that effort in late summer or early fall.

INFORMATION BULLETIN (99-63)  
Sustainable Fisheries Division  
907-586-7228

July 7, 1999  
4:15 p.m.

**NMFS PROVIDES ADVANCE NOTICE OF STELLER SEA LION PROTECTION  
MEASURES FOR THE POLLOCK B AND C SEASON FISHERIES OFF ALASKA**

The National Marine Fisheries Service (NMFS) is preparing an emergency rule extension to continue to implement Steller sea lion protection measures for the pollock fisheries off Alaska, according to Steven Pennoyer, Administrator, Alaska Region, NMFS. This emergency rule extension was recommended by the North Pacific Fishery Management Council (Council). NMFS intends the emergency rule extension to be effective until December 31, 1999. The purpose of this bulletin is to provide advance notice of technical revisions to the original emergency rule so that the affected public has opportunity to prepare for these regulatory changes. This bulletin is for informational purposes only. Do not rely on it to guide you in compliance with the upcoming regulatory changes.

**Original Emergency Rule.** NMFS published an emergency interim rule implementing reasonable and prudent alternatives in the Federal Register on January 22, 1999 (64 FR 3437), amended on February 17, 1999 (64 FR 7814) and February 25, 1999 (64 FR 9375), and effective through July 19, 1999. The preamble to the original emergency interim rule provides a detailed description of the purpose and need for the action. This emergency rule extension will revise the original emergency rule and also will amend the 1999 Bering Sea and Aleutian Islands Management Area (BSAI) final harvest specifications (64 FR 12103) published on March 11, 1999. This extension would not revise conservation measures implemented for the pollock fishery in the Western and Central Regulatory Areas of the Gulf of Alaska (W/C GOA).

**Revisions to the Emergency Rule.** This action would make the following two changes to the original emergency rule: (1) a correction to the mothership B/C season dates, and (2) the addition of spatial dispersion measures to limit critical habitat/catcher vessel operation area (CH/CVOA) catch. The original emergency rule contained incorrect B and C season harvest dates for the mothership sector. The emergency rule will be corrected to comport with the Council's December 1998 recommendation for a combined B/C season from September 1 through November 1. This emergency rule extension would revise the original rule to include overall CH/CVOA catch limits of 25% in the B season and 35% in the C season. These catch percentages are achieved using an allocation formula recommended by the Council that would exclude the catcher/processor (C/P) and mothership sectors from the CH/CVOA during the B and C seasons, and would proportionally reduce the CH/CVOA catch percentages for the inshore and CDQ sectors to achieve the overall B and C season catch objectives. The inshore sector would have a CH/CVOA limit of 45 percent during the B season and 63 percent during the C season. The CDQ sector would have a CH/CVOA limit of 56 percent for its combined B/C season.

Pollock season dates and CH/CVOA sector allocations for the second half of 1999. The emergency rule as extended would provide the following season dates and CH/CVOA limits for the second half of 1999.

Inshore (BSAI):      B season: August 1 - September 15 (45% inside CH/CVOA)  
                          C season: September 15 - November 1 (63% inside CH/CVOA)  
                          No stand down between B and C seasons for inshore sector

C/P sector (BSAI):    B season: August 1 - September 15 (no fishing in CH/CVOA)

C season: September 15 - November 1 (no fishing in CH/CVOA)  
No stand down between B and C seasons

Mothership (BSAI): B season: September 1 - November 1 (no fishing in CH/CVOA)  
mothership sector has a single B season with no C season

CDQ sector (BSAI): B season: April 15 - December 31 (56% inside CH/CVOA)

W/C (GOA): C season: September 1 - closure due to TAC attainment  
(610 - 630) D season: 5 days after C season closure - November 1

Note that the D season for 610, 620, and 630 will likely start on different dates because the start date of the D season in each area is a sliding date that is 5 days after the closure of the C season in that area.

Revised 1999 Specifications. To allow the Bering Sea pollock fisheries to continue after July 19, 1999, this emergency rule will revise the 1999 BSAI final specifications for pollock to include CH/CVOA limits for the B and C season.



# MIDWATER TRAWLERS COOPERATIVE



MTC

880 SE Bay Blvd  
P.O. Box 2352  
NEWPORT, OREGON 97365

RECEIVED  
SEP 28 1999  
N.P.F.M.C

Ms. Sue Salverson  
Deputy Regional Director  
NOAA/NMFS  
PO Box 21688  
Juneau, AK 99802

September 23, 1999

Dear Ms. Salverson,

My apologies for not directing my letter of September 21 to you as well as Mr. Steve Pennoyer, and added apologies for misspelling Mr. Kent Lind's name.

This letter is a follow up to the letter of September 21. I had mentioned in that letter my worries about pushing boats of less than 99 ft. LOA well outside of the CH/CHOA closure areas.

Since then I have queried member boat owners and skippers about fishing outside of the area along side of much larger boats with much larger carrying capacity.

Almost to a man, the members have stated unequivocally that they will not do so. There is too much risk involved at that time of year. You must remember that MTC's boats in the Bering Sea average from 80 to 98 ft. in length.

I believe their statements are well founded. One added note, I realize that NFMS had thought that market place forces within the co-ops would solve these problems. I don't believe they would. Again, you must remember that in most instances the relative share of these MTC vessels in a co-op will be quite a bit less than the larger vessels.

If you add the fact that the small boats will have to either discount or sell their fishing shares you will then have a situation of a forced decision, not by market pressure, but rather, of concern over a safety issue. And that decision will then force a sale at much less than market value of their shares, or result in boats fishing outside the CVOA because they can't afford the market discount potentially resulting in loss of life.

Again, I as I stated in my letter of September 21, the Council has passed on their recommendation twice which I quoted verbatim in my earlier letter.

I note that in a recent interview with National Fisherman Ms. Penny Dalton, the Assistant Administrator for Fisheries of NMFS, stated that she wanted increased dialogue with the fishing industry and we are treating this issue with you in that spirit. We are grateful for the attention you have shown even though we are not all the way home yet.

We would hope that NMFS would recognize the genuine safety plea that we make as well as actions that would agree with NPMFC intentions. We do want to work with you in coming up with a program that would meet both of the needs cited above.

Thank you for your interest.

Sincerely yours,

A handwritten signature in cursive script that reads "R. Barry Fisher".

R. Barry Fisher

Cc: Ms. Penelope Dalton  
Richard Lauber  
Bob Mace  
MTC Directors

Captain R. Barry Fisher, President



# MIDWATER TRAWLERS COOPERATIVE

880 SE Bay Blvd  
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NEWPORT, OREGON 97365

RECEIVED  
SEP 24 1999  
N.P.F.M.C

MTC

Mr. Steve Pennoyer  
NOAA/NMFS  
PO BOX 21688  
JUNEAU, AK 99802

September 21, 1999

RE: STELLAR SEA LION SAFETY MEASURE FOR SMALL VESSELS (VESSELS  
LESS THAN OR EQUAL TO 99 FT. LOA)

I am writing to you regarding an apparent decision by Mr. Kent Hind and Ron Berg of your office that runs contrary to an AP recommended and a Council adopted safety provision for small vessels within the pollock co-ops.

I am enclosing Lyle Yeck's original letter of July 8, 1999 as well as Mr. Ron Berg's letter of July 30, to Lyle Yeck. MTC is concerned about two issues. The first is the patented inability of vessels less than 99 ft. LOA to get far out into the Bering Sea and secure their "co-op share". I also do not believe that the larger co-op boats would establish a TAC set aside on their own.

Safety is paramount. I fished a small boat in the Bering Sea for several years with the Russian-American Joint Ventures. We were fishing cod and because of the proximity of shelter we were able to fish at times between very hard weather. The small pollock boats should be exempted from the CH/CHOA closure from Sept 1-March 31 so as to provide them with the same safety margins.

The small catcher boat in the pollock coops are provided with safety measures in accord with MTC's proposal, which the AP recommended and the Council adopted.

I can see no real reason for not following the Council's adopted language. If Council actions are going to be overturned by the regulatory agency why do we need Councils?

Thank you for your time and interest.

Sincerely yours,

R. Barry Fisher

Cc: Ms. Penelope Dalton  
Rick Lauber  
MTC Directors

Captain R. Barry Fisher, President

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# MIDWATER TRAWLERS COOPERATIVE

880 SE Bay Blvd  
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NEWPORT, OREGON 97365

MTC

July 8, 1999

Mr. Steve Pennoyer  
NOAA/NMFS  
P. O. Box 21668  
Juneau, AK 99802

RE: STELLAR SEA LION SAFETY MEASURE FOR SMALL VESSELS (VESSELS LESS THAN OR EQUAL TO 99 FT. LOA)

Dear Mr. Pennoyer:

At the last Council meeting, the AP recommended and the Council adopted, as part of the Stellar Sea Lion measures, the following *safety* provision for small vessels:

Catcher vessels less than or equal to 99 ft. LOA would be exempt from CH/CVOA closure from September 1 through March 31, unless the percentage cap for the inshore sector has been reached. NMFS will manage in a manner intended to leave enough remaining quota within the CH/CVOA sufficient to support fishing by vessels less than or equal to 99 ft. LOA for the duration of the current inshore sector opening.

I am concerned because it is my understanding that NMFS is considering delegating to the co-ops the responsibility for making provision for this safety issue for vessels less than 99 ft. in length, once co-ops are formed. I do not believe that this was the intent of the AP, or for that matter, the Council, when this matter was originally adopted. One of the concepts of establishing a set aside for the small vessels inside the CH/CVOA, was to spread the cost of that set aside across the entire remaining fleet so that the impact to the larger vessels overall would be minimal. However, the result will be just the opposite if this matter is delegated to the co-ops, and as a result the small vessels that the provision is intended to protect will suffer adverse consequences, specifically:

1. If it is left to each co-op to establish a set aside for the small vessels which are members of that co-op, the result will be that the cost of having small vessels in the co-op will be borne only by the larger vessels in each particular co-op. Historically, most of the smaller vessels have fished for only one of the eligible processors and, therefore, the cost of the safety exemption for small boats will be borne primarily by the larger vessels in that single co-op. This result is not equitable.

2. The smaller vessels which are eligible for this exemption will have difficulty joining in other co-ops if that co-op must set aside a portion of its quota for these vessels inside the CVOA. The larger vessels will likely resist the addition of these smaller vessels to their co-op under these circumstances where the entire cost of the smaller vessel is borne by the individual co-op rather than spread across the fleet as a whole.

Captain R. Barry Fisher, President

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Page 2  
Mr. Steve Pennoyer  
July 8, 1999

Therefore, it is extremely important that NMFS re-examine this issue and establish a procedure to spread the cost of the safety exemption for vessels less than 99 ft. across the fleet as a whole, rather than impose the entire cost just on the individual co-op to the extent its membership includes these small vessels. This could be accomplished, as to those vessels participating in co-ops, as follows:

A. For each applicable season, NMFS will, in the ordinary course of business, establish a quota which may be harvested by the inshore sector from the CH/CVOA. As part of NMFS efforts in establishing the overall quotas for each co-op, NMFS will be establishing a percentage of the TAC for each catcher vessel by co-op.

B. NMFS could then set aside, from the total CH/CVOA co-op quota, that amount which is equal to the TAC for that season which the small vessels are eligible to harvest, with the sum remaining being divided between the co-ops, based on the overall catch history of the over 99 ft. CVs in each co-op. Then there would be added to each co-op's share of the CH/CVOA quota, the small CV set aside for the under 99 ft. CVs that are members of each respective co-op.

C. Only vessels less than 99 ft. would be eligible to harvest the set aside quota and, to the extent it is not harvested, it would be carried forward to the next season. For example, some of the smaller vessels may only be fishing in B or C Season and, therefore, the set aside would be carried forward season by season so that when they do fish their share of the Bering Sea pollock quota, that there will be sufficient set aside in the CH/CVOA for them to participate within the near shore areas for safety reasons.

D. It can still be left to the co-ops to manage the quota inside and out of the CVOA, including the set aside for the small CVs. What is not possible is to expect the co-ops, on an individual co-op basis, to set aside, at the cost of only the members of the individual co-op, extra quota inside the CVOA for small CV members.

I am sure that we probably didn't consider all the issues that your staff might need to resolve to accomplish Council and AP intent, however, I am sure if we work together we can find a way to make this work. This exemption for vessels equal to or less than 99 ft. is a very important *safety issue*. It should be one of the benefits of rationalization and anything that is done that diminishes its effectiveness is likely to result in unnecessary loss of life. Additionally, the benefit will come at small cost to industry if it is administered industry wide, rather than imposing the costs on individual co-ops. Hopefully, we can work together to accomplish the objectives of this *safety exemption*.

Thank you.

Sincerely,

  
Lyle Yeck  
Vice President



UNITED STATES DEPARTMENT OF COMMERCE  
National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
P.O. Box 21668  
Juneau, Alaska 99802-1668

July 30, 1999

Lyle Yeck  
Midwater Trawlers Cooperative  
880 SE Bay Blvd  
PO Box 2352  
Newport, Oregon 97365

Dear Mr. Yeck:

Thank you for your letter regarding the Critical Habitat/Catcher Vessel Operational Area closure exemption for inshore catcher vessels less than or equal to 99 ft length overall. You expressed concerns about how NMFS will incorporate this measure into the management program for American Fisheries Act (AFA) inshore co-operatives.

At this point, we have not made final decisions on either Steller sea lion or AFA regulations for the years 2000 and beyond. Our intent is to issue separate proposed rules this October that will lay out both our proposed Steller sea lion management measures and our proposed AFA regulations. The public will have the opportunity to comment on both actions prior to the issuance of final rules in December 1999.

While we have been able to accommodate a 99 ft exemption within the context of the current open access pollock fishery, we have serious reservations about your proposal to create a co-op sector TAC set aside for vessels less than or equal to 99 ft. We believe that the AFA inshore co-op program will provide co-ops and fishermen with the flexibility to address issues such as safety without the need for government intervention, and that decisions about when and where individual vessels will fish are best left to the co-ops themselves. However, we will consider your proposal carefully as we develop proposed regulations for inshore co-ops. We encourage you to review and comment on our proposed regulations once they are published.

Sincerely,

Steven Penoyer  
For Administrator, Alaska Region

