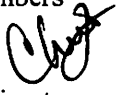


MEMORANDUM

TO: Council Members
FROM: Chris Oliver 
Executive Director
DATE: September 23, 2004
SUBJECT: Aleutian Islands Pollock Fishery

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Review request from NMFS to reconsider the Council's June decision on AI pollock and take action as necessary.

BACKGROUND

At its June 2004 meeting, the Council approved Amendment 82 to the BSAI groundfish fishery management plan to provide for management of an AI pollock fishery and to allocate the pollock TAC to the Aleut Corporation. This Council action was taken in response to mandates in a Congressional Bill (now PL 108-199). The Council's final motion on AI pollock is attached as Item C-1(a)(1).

Since the June meeting, NMFS has determined that this issue requires further Council action, and has outlined their concerns in a letter to the Council dated September 21, 2004 (Item C-1(a)(2)). NMFS is recommending that separate pollock TACs for the AI and Bering Sea subareas be adopted by the Council during the specifications process, and that the Western Alaska CDQ directed fishing allowance (10 % of the AI and the Bering Sea TACs) be subtracted from each subarea TAC before apportionment to the respective target fisheries. A second issue is NMFS' concerns over the appropriateness of establishing in regulations Council policy on how it allocates TACs within the 2 million mt OY cap and "funds" the AI pollock TAC.

NMFS staff will be available to further explain the issues and to answer questions.

Note: The NMFS letter references several documents; these documents are attached:

- Section 206(a) of the American Fisheries Act (Item C-1(a)(3))
- Section 803 of the Congressional Bill (now PL 108-199) and Senator Stevens floor language on that bill (Item C-1(a)(4))
- A NMFS AK Region staff discussion paper dated January 2004 on considerations for allocating AI pollock to the Aleut Corporation (Item C-1(a)(5))

North Pacific Fishery Management Council, June 2004 Meeting, Agenda Item C-4 Aleutian Islands
Pollock

Final Motion June 11, 2004

1.0 Allocation Size

Starting in 2005:

1. Annual ITAC:

- (a) When the AI ABC is equal to or more than 19,000 mt, the AI ITAC shall equal 19,000 mt.
- (b) When the AI ABC is less than 19,000 mt, the AI ITAC shall be no more than the ABC.

2. The ICA shall be deducted from the annual ITAC.

3. Seasonal Apportionments:

The A season apportionment of the DPF shall be the lesser of

- (a) no more than 40% of the ABC or
- (b) the annual ITAC after subtraction of the ICA.

The total harvest in the A season (DPF and ICA) shall not exceed 40% of the ABC.

The B season apportionment will be equal to the annual ITAC minus the ICA and minus A season DPF.
The B season apportionment may be further adjusted by rollover of unharvested A season pollock.

2.0 Allocation Mechanism

- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock ITAC. Any unused pollock ITAC from the AI fishery will be rolled back to the EBS pollock ITAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock DPF is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

3.0 Monitoring Vessel Activity

- 3.2 "Increased monitoring" alternative. This alternative would have several components (not options).
These include:

1. The Aleut Corporation must notify the NMFS Alaska Region with a list of which vessels are authorized by it to fish in the Aleutians; notification must be at least 14 days prior to the anticipated start of fishing. The NMFS RAM Division will verify each vessel's eligibility (FFP, ADF&G number, USCG fishery endorsement, length, or AFA status) and provide to the Aleut Corporation a list of qualified vessels and the date fishing may commence. These vessels must carry documentation showing they have RAM approval and Aleut Corporation permission;
2. Catcher vessels are prohibited from fishing for pollock in the Aleutian Islands if pollock harvested in the Bering Sea or GOA are on board. Also, catcher vessels are prohibited from fishing for pollock in the Bering Sea or GOA if Aleutian Islands pollock are on board;
3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
4. AI pollock may only be delivered to a shoreside processor or stationary processor which has an approved Catch Monitoring Control Plan or to one or more AFA qualified vessels, as permitted by legislation.
5. The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance. The Aleut Corporation shall be responsible for designating a person as a quota manager for pollock catch accounting; this person shall report to NMFS Sustainable Fisheries Division with weekly pollock catch summaries.
6. Vessels < 60 feet shall take a Cadre observer if provided by NMFS. The < 60 ft. vessel observer cadre restriction is waived under this program. Vessels < 60 feet that take an observer must comply with the safety provisions in 50 CFR 679.50(g)(1)(ii).

4.0 Small Vessels

- 4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce to the fishery vessels under 60 feet LOA.

The Council will review the observer issue associated with vessels < 60 ft. concurrent with the June 2006 economic report review.

5.0 Economic Development Report

- 5.2 Require the Aleut Corporation to submit an annual economic development report to the Council, similar to the AFA coop reports. A draft report will be due in December and a final report will be due in February.

- 5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At its June 2006 meeting, the Council shall review the AI pollock fishery performance, including how the money was spent, information on harvest success, Chinook salmon bycatch, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock ITAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

6.0 Chinook Salmon Bycatch

- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count against the BSAI Chinook salmon bycatch caps.
- 6.3 The Chinook salmon bycatch cap of 700 applies to the AI Chinook Salmon Savings Area closure only.



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

*National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668*

**AGENDA C-1(a)(2)
OCTOBER 2004**

September 21, 2004

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

RECEIVED
SEP 23 2004
N.P.F.M.C.

Dear Madame Chair,

In June 2004, the Council adopted Amendment 82 to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). Amendment 82 would revise the FMP by establishing a management framework for the Aleutian Islands (AI) directed pollock fishery. During our preparation of the draft amendment language and regulations for Amendment 82, we identified two concerns with the Council's motion, one of which requires reconsideration by the Council. Depending on Council action in October, we believe that regulations implementing Amendment 82, if approved, could be effective by mid February 2005.

The Consolidated Appropriations Act of 2004 (Pub. L. 108-199) requires that the AI directed pollock fishery be fully allocated to the Aleut Corporation for economic development in Adak, Alaska. Proposed Amendment 82 and its implementing regulations would provide for the allocation of pollock to the Aleut Corporation and for the management of the pollock fishery. Our first concern with the Council's motion addresses how the Western Alaska Community Development Quota (CDQ) directed fishing allowance for BSAI pollock is established. We believe that the Council must reconsider its motion to clarify this issue. Our second concern is the appropriateness of establishing in regulations Council policy on how it allocates the total allowable catch amounts (TACs) within the two million mt optimum yield (OY) and "funding" of the AI pollock TAC.

CDQ directed fishing allowance. Section 206(a) of the American Fisheries Act (AFA) requires that "10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian Islands management area be allocated as a directed fishing allowance" to the CDQ program. When Pub. L. 108-199 was enacted in January, we prepared a discussion paper for the Council that raised issues concerning the interactions of Pub. L. 108-199 and the AFA. Initially, we believed that the entire CDQ pollock directed fishing allowance (i.e., 10 percent of the "BSAI pollock TAC") would need to be harvested in the Bering Sea subarea because Pub. L. 108-199 required that 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." Subsequently, NOAA General Counsel



determined that by definition under the AFA, the CDQ portion of the "BSAI pollock TAC" is not considered part of the "directed pollock fishery." Therefore, while Pub. L. 108-199 prohibits the AFA directed pollock fishery in the AI, it does not prohibit CDQ groups from harvesting a portion of their directed fishing allowance in the AI.

In June 2004, NMFS staff presented a strategy for apportioning the BSAI pollock TAC to accomplish Council policy guidance that the AI pollock TAC should be funded in whole or in part by a commensurate reduction in the BS pollock TAC and in a manner that would not reduce the CDQ pollock directed fishing allowance. Based on this presentation and potential confusion on whether or not an AI CDQ pollock fishery is authorized under Pub. L. 108-199, the Council assumed that the AI pollock allocation to the Aleut Corporation would not be reduced to provide for an AI CDQ pollock directed fishing allowance. Although the Council's motion did not directly prohibit a CDQ pollock directed fishing allowance in the AI subarea, it also did not fully take into account the potential situation when the sum of the BSAI TACs (minus the AI pollock TAC) is below the two million mt OY. If some or all of the AI pollock TAC is funded from the difference between the sum of the BSAI TACs and the two million OY, that portion must be reduced by 10 percent for the CDQ pollock directed fishing allowance in the AI subarea to maintain compliance with the AFA. Thus, even the Council's June motion would result in a CDQ pollock directed fishing allowance in the AI when the sum of TACs is less than the two million mt OY.

Based on the above considerations, we recommend that separate TACs for the AI and BS subareas be adopted by the Council during the annual harvest specifications process. These separate TACs would give rise to separate AI and BS CDQ pollock directed fishing allowances, rather than a combined CDQ pollock directed fishing allowance for the BSAI that would be harvested only in the BS. This modification meets NMFS' management needs by facilitating the specification of pollock fishery allocations and the management of the CDQ pollock directed fishing allowance without special consideration of whether or not the sum of TACs equal OY. It ensures that the pollock harvest is distributed between the AI and BS subareas consistent Steller sea lion protection measures and any future changes in pollock stock abundance, and maintaining consistency with AFA provisions for the CDQ pollock directed fishing allowance.

This approach also maintains the Council's intent to not reduce the BSAI CDQ pollock directed fishing allowance as a result of the Aleut Corporation allocation. However, it also means that the Aleut Corporation's directed pollock fishery would be reduced by the AI CDQ pollock directed fishing allowance in a manner that was not clear when the Council took action in June 2004 (see Enclosures 1 and 2). If the Council desires more control in the future regarding where the CDQ pollock directed fishing allowance is harvested, consistent with status of pollock stocks and Steller sea lion protection measures, then additional analysis, Endangered Species Act (ESA) section 7 consultation, and rulemaking would be required.

Regulatory provisions for funding of the AI pollock TAC. NOAA-GC has agreed that the Council's motion on how to "fund" the AI pollock TAC and any associated reallocation of TACs within the two million mt OY could be reflected in the FMP for policy guidance as the Council

develops future TAC recommendations. However, NOAA-GC also has recommended that this policy not be established in regulations because NMFS should not regulate the Council in how it makes individual TAC allocation recommendations. Rather, NMFS will act on those recommendations within the authority under the Magnuson-Stevens Act and other applicable law. Thus, we would look to the Council to continue to develop separate TAC recommendations for pollock in the BS and AI subareas. We would then specify the CDQ pollock directed fishing allowance, incidental catch allowance and directed pollock fishery allocation(s) for each subarea. Although provisions for funding the AI pollock TAC would not be established by regulations, the Council policy as modified above would be in its FMP amendment as follows:

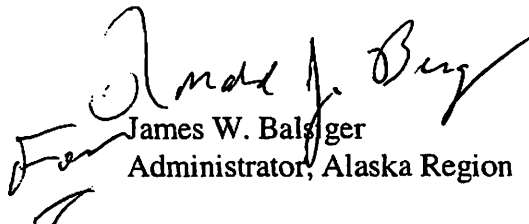
When the combined BSAI groundfish fishery recommended TACs, without the AI pollock recommended TAC, are equal to the two million mt BSAI OY, the recommended TAC for AI pollock would be funded by reducing the recommended BS pollock TAC. When the sum of other recommended BSAI groundfish TACs is below the two million mt BSAI OY, the recommended AI pollock TAC would be funded in whole or in part from the difference between the sum of all other BSAI groundfish TACs and the OY. If the difference is only large enough to fund part of the allocation, the remainder of the funding would come from the BS pollock TAC.

To facilitate the Council's reconsideration of its June motion, we have enclosed a proposal to revise specified sections of the motion language to address the issue concerning how the CDQ pollock directed fishing allowance would be specified (Enclosure 3). The revised text only pertains to the sections of the June motion titled: *Allocation size*, *Allocation mechanism*, and *Economic Development reports*. In each of these sections, proposed changes are noted in bold type. Under *Allocation Size*, the specification of a CDQ pollock directed fishing allowance in the AI subarea is clarified. Further, A season CDQ pollock harvest is added to the total harvest for the A season harvest limit to clearly state the Council's intent to limit all harvest in the A season to 40 % of the ABC and to maintain consistency with ESA informal consultation completed on this action. In the *Allocation Mechanism* and *Economic Development reports* sections, the term ITAC is revised to TAC because the development of the AI pollock TAC would include the CDQ and ICA amounts for the AI subarea and would not be only for the directed pollock fishery.

2005 Implementation Strategy and Future Actions: For the interim and final harvest specifications in 2005, NMFS will prohibit the AI directed pollock fishery until the management provisions for the AI directed pollock fishery become effective under Amendment 82. Any AI pollock TAC recommended by the Council under the provisions of proposed Amendment 82 will be included in the interim and final harvest specifications to allow the Regional Administrator to open the AI directed pollock fishery if and when the regulations for Amendment 82 are effective. This prohibition is authorized by the Pub. L. 108-199 and the associated draft proposed rule, which requires that only those who are selected by the Aleut Corporation and approved by NMFS may participate in the AI directed pollock fishery.

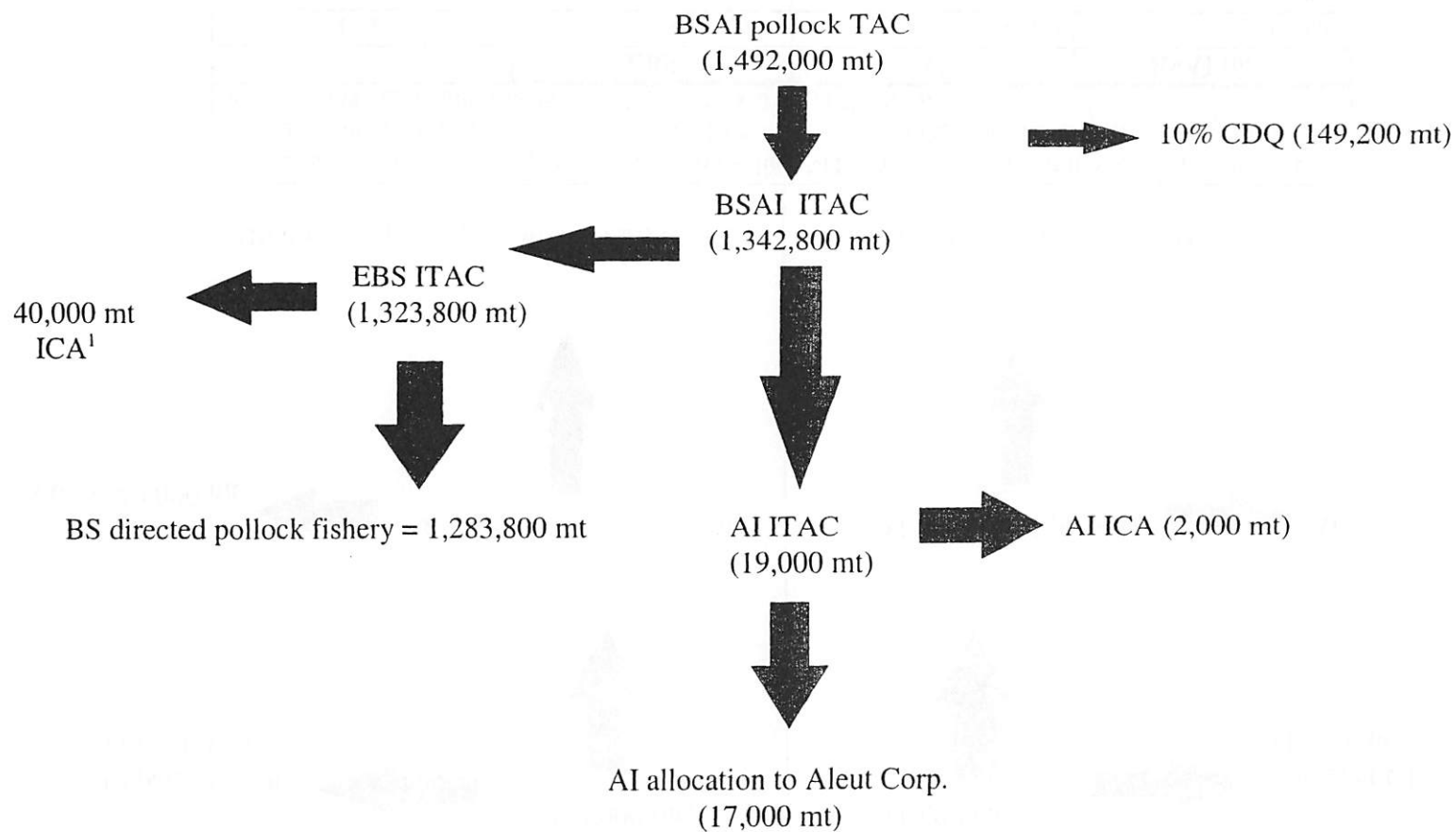
The rulemaking for Amendment 82 will proceed as quickly as possible after the Council's recommendation in October. We will pursue a waiver of the 30-day delayed effectiveness period for the final rule, which is required under the Administrative Procedure Act. If this waiver is granted, the final rule may be effective in mid February, and the AI directed pollock fishery may be opened at that time.

Sincerely,


James W. Balsiger
Administrator, Alaska Region

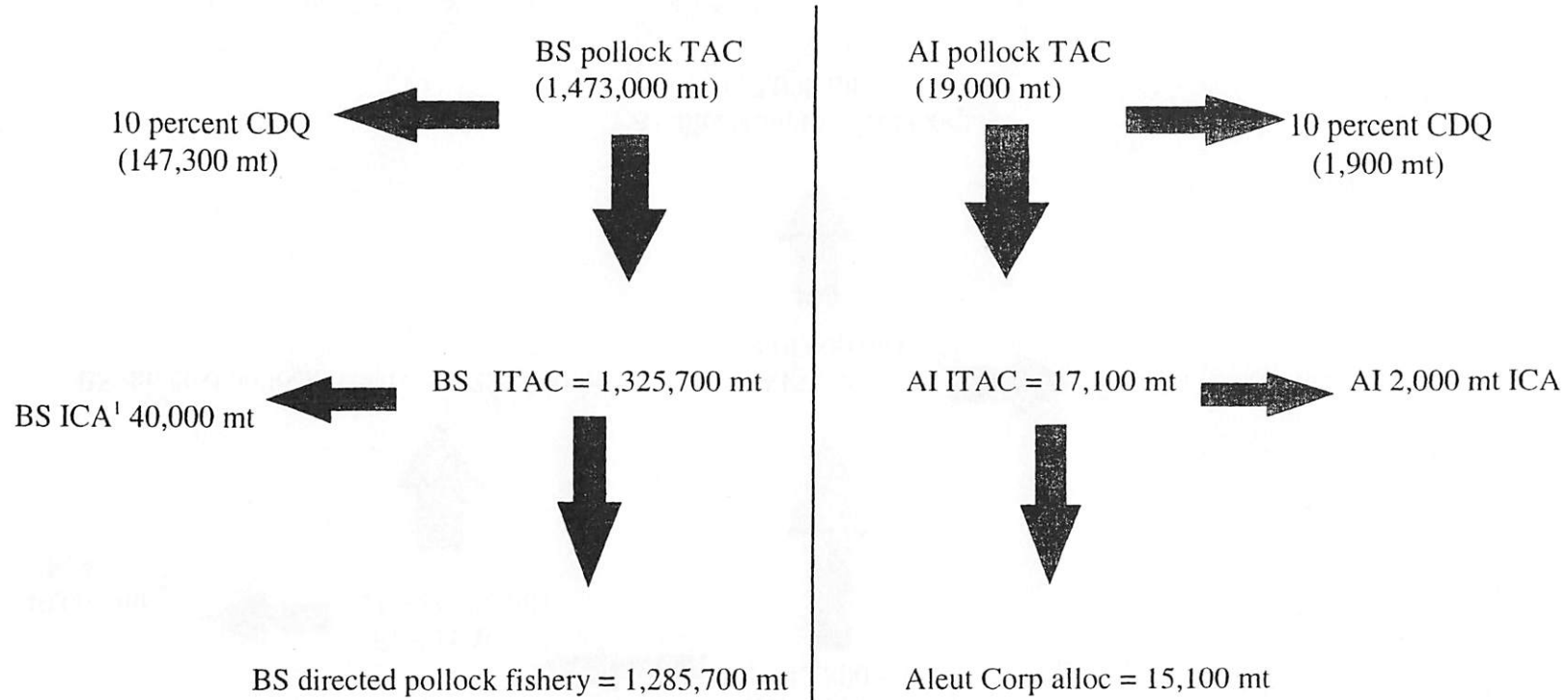
Enclosures (3)

Enclosure 1: Council's June 2004 motion.



¹ICA = incidental catch allowance

Enclosure 2: NMFS's proposed modified method – assumes the Council would have to adjust the BS TAC downward to account for the AI TAC – Council arrives at separate BS and AI TACs as it normally would, with additional TAC limits and “funding” considerations for AI pollock under the two million OY cap. This process increases the AFA directed pollock fishery and reduces the Aleut Corp allocation by an amount equal to the AI CDQ directed fishing allowance.



The Council intends to keep within the two million MT OY, and to reduce the EBS pollock TAC enough to create the AI TAC. Thus, if the EBS TAC would otherwise have been 1,492,000 (as it was in 2004), it would now be $1,492,000 - 19,000 = 1,473,000$ mt.

	EBS	AI	BSAI total
TAC	1,473,000	19,000	1,492,000
CDQ	147,300	1,900	149,200
ITAC	1,325,700	17,100	1,342,800
ICA	40,000	2,000	42,000
DPF	1,285,700	15,100	1,300,800

¹ ICA = incidental catch allowance

Enclosure 3 - Proposed revisions to the Councils's June Motion on AI pollock
(revisions noted in **bold**)

Allocation Size

Starting in 2005:

1. Annual TAC

- (a) When the AI ABC is equal to or more than 19,000 mt, the AI TAC shall equal 19,000 mt.
- (b) When the AI ABC is less than 19,000 mt, the AI TAC shall be no more than the ABC.

2. **The AI pollock CDQ directed fishing allowance shall be established as 10 percent of the AI TAC. The remaining amount will be termed the initial TAC (ITAC)²**

3. The ICA shall be deducted from the annual ITAC.

4. Seasonal Apportionments

The A season apportionment of the DPF shall be the lesser of

- (a) no more than 40% of the ABC or
- (b) the annual ITAC after subtraction of the ICA

The total harvest in the A season (DPF, CDQ, and ICA) shall not exceed 40% of the ABC.

The B season apportionment will be equal to the annual ITAC minus the ICA and minus A season DPF. The B season apportionment may be further adjusted by rollover of unharvested A season pollock.

Allocation Mechanism

2.2 The ~~pollock allocation to the AI fishery~~ **AI pollock TAC** will be funded by a reduction in the EBS pollock TAC. Any unused pollock ITAC from the AI fishery will be rolled back to the EBS pollock ITAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock **TAC DPF** is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

Economic Development Report

5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At its June 2006 meeting, the Council shall review the AI pollock fishery performance, including how the money was spent, information on harvest success, Chinook salmon bycatch, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

²The CDQ pollock directed fishing allowance is seasonally apportioned 40/60 between the A/B seasons, respectively, under 50 CFR 679.23(e)(2)

1527

clusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term "North Pacific Council" means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term "offshore component" means all vessels not included in the definition of "inshore component" that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area;

(11) the term "Secretary" means the Secretary of Commerce; and

(12) the term "shoreside processor" means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

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 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)).

Appendices

A1. Appropriations rider

Section 803 of Title VIII of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 2004, requires that any directed pollock fishery in the Aleutian Islands Subarea of the Bering Sea and Aleutian Islands (BSAI) be allocated to the Aleut Corporation to be fished by it, or by its authorized agents. Allocations under this section are to be used for the economic development of Adak, Alaska. The section identifies the classes of vessels that may be used to fish these allocations. The section allows allocations in excess of the BSAI optimum yield of 2 million metric tons.

Text of the Section 803

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, 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.).

A2. Senator Stevens' floor language

[Congressional Record: January 22, 2004 (Senate)] [Page S129-S157] From the Congressional Record Online via GPO Access [wais.access.gpo.gov] [DOCID:cr22ja04-16] AGRICULTURE, RURAL DEVELOPMENT, FOOD AND DRUG ADMINISTRATION, AND RELATED AGENCIES APPROPRIATIONS ACT, 2004--CONFERENCE REPORT

The PRESIDING OFFICER. The senior Senator from Alaska.

[[Page S150]]

In an effort to gradually establish a small boat fleet in Adak, subsection (b) of section 803 provides that during the years 2004 through 2008, up to 25 percent of the Aleutian 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 section 208 of Title II of Division C of Public Law 105-277. Establishing a small boat fleet will be critical for the economic diversification of Adak and the revenues generated from the use of the Aleutian Islands pollock allocation will allow for greater investment opportunities in this community. For purposes of implementing this section, section 206 of the American Fisheries Act (AFA) is redefined so that the allocations in section 206(b) of the AFA should only apply to the Bering Sea portion of the directed pollock fishery.

Subsection (c) of section 803 codifies one of the longest standing conservation and management measures of the North Pacific Fishery Management Council, the 2 million metric ton cap for groundfish in the Bering Sea. The optimum yield for groundfish in the Bering Sea and Aleutian Islands Management Area shall not exceed 2 million metric tons. Upon the recommendation of the North Pacific Council and approval of the Secretary of Commerce, and only if consistent with the conservation and management goals and requirements of the Magnuson-Stevens Fishery Conservation and Management Act, the allocation of Aleutian pollock for economic development in Adak, may be in addition to the 2 million metric ton optimum yield. This treatment of the Aleutian Islands pollock allocation would only be during the 2004 through the 2008 fishing years, but only if harvests in excess of the cap do not result in overfishing and then only to the extent necessary to accommodate a directed pollock fishery in the Aleutian Islands and should not adversely affect the current participants in the Bering Sea pollock fishery in the near term. Eventually this pollock allocation will come under the combined optimum yield for all groundfish in the Bering Sea and Aleutian Islands 2 million metric ton cap by taking proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary to accommodate the establishment of the Aleutian Island pollock fishery. Subsection (d) of section 803 allows the North Pacific Fishery Management Council to recommend and the Secretary to approve an allocation of Aleutian Islands pollock to the Aleut Corporation for the purposes of economic development in Adak pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act. The North Pacific Council should consider pollock allocations given to the various groups that participate in the Community Development Quota program to recommend a reasonable amount of the Aleutian Islands pollock to the Aleut Corporation for purposes of economic development in Adak and in no case should this amount exceed 40,000 metric tons. Nothing in this section requires the North Pacific Council to open the Aleutian Islands pollock fishery. The Council should not take any action in regards to this fishery which would require a new consultation under the current biological opinion or Endangered Species Act covering Steller sea lions.

Section 804 of Title VIII--Alaskan Fisheries prohibits any Regional Fishery Management Council or the Secretary from approving any fishery management plan or plan amendments to allocate or issue individual processing quota or processor share in any fishery of the United States other than the crab fisheries of the Bering Sea and Aleutian Islands.

Section 803
Aleutian Islands Pollock Allocation to the Aleut Corporation
Considerations for Implementation

Prepared by:
NMFS, Alaska Region Staff
January 2004

Section 803 of Title VIII of the Consolidated Appropriations Act, 2004, requires that any directed pollock fishery in the Aleutian Islands Subarea of the BSAI be allocated to the Aleut Corporation to be fished by it, or by its authorized agents. Allocations under this section are to be used for the purposes of the economic development of Adak, Alaska. The section identifies the classes of vessels that may be used to fish these allocations. The section allows these allocations in excess of the BSAI optimum yield of 2 million metric tons. The Council has requested NMFS to provide an overview as to how this allocation might be implemented in 2004, if the legislation passes.

Text of the Section 803

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, 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 approved 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 for the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.).

Analysis of Section 803

Following is a discussion of the subsections of Section 803. Table 1 provides an overview of some general implementation questions, assuming that this legislation would be implemented either by initiating an FMP amendment for 2005 and beyond or through an emergency rulemaking process in 2004 followed by a subsequent FMP amendment.

Subsection (a) Aleutian Islands pollock allocation

This subsection provides that effective January 1, 2004, and thereafter, the directed pollock fishery in the Aleutian Island (AI) subarea of the BSAI Management Area shall be allocated to the Aleut Corporation, or its authorized agent. The effective date obviously has passed without authorizing legislation. The Council has concluded its recommendations for the 2004 harvest specifications, specifying the full 2 million mt Optimum Yield (OY) in a manner that does not authorize any directed fishery for AI pollock.

Based on historic harvest patterns of AI pollock, the high value roe pollock fishery can be prosecuted through early spring (March - May). Beyond that time period, roe bearing pollock are not available, or are not economically viable. Little interest appears to exist to fish for AI pollock during the B season (June 10 - Nov 1); however, that could change depending on the perspective of the eligible participants.

General Implementation Approaches.

Two general approaches are available to implement this section and are discussed more fully below. First, the Council could develop and recommend an emergency rule (ER) in an attempt to provide some fishing opportunities in 2004 and develop a subsequent FMP amendment and rulemaking to implement the measures for 2005 and future years. Second, the Council could proceed directly to developing an FMP amendment and rulemaking for 2005 and beyond. No time line is specified in the legislation under paragraph (d) and some discretion exists as to when, and how, this legislation would be implemented. At this point, NMFS is not endorsing one

approach over the other from a legal perspective. However, logistic and timing issues associated with an ER should be carefully assessed by the Council before staff resources are committed to this approach. We note that the Council already has tasked staff to develop an analysis that assesses the impacts of an AI pollock fishery for initial consideration in June. The Council may need to reassess the suite of alternatives being developed in this analysis, as well as timing for initial review, in response to new legislation.

Approach 1: An ER and subsequent FMP amendment and rulemaking

The roe fishery would occur within two to four months of the passage of this legislation. An ER would still require Council direction and analysis before it could be implemented. Based on previous experience, NMFS seriously questions whether the development and review of an ER and attendant EA/RIR and other documentation could be completed within a time frame that would authorize a directed AI pollock fishery during the 2004 roe season.

If this bill were enacted early in 2004, the Council would need to make recommendations to provide for an allocation to the Aleut Corporation consistent with other provisions of this section, specifically subsections (c) and (d). Subsection (c) stipulates that the optimum yield shall not exceed 2 million mt; however, an AI pollock allocation to the Aleut Corporation may be in addition to the OY 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 ...)." This would require the Council to analyze the effects of the action, address a suite of unanswered policy questions which are described in Table 1, and adhere to the MSA (and NEPA) requirements to review the potential economic and biological effects of the action, which is typically done through the EA/RIR analytical process.

We believe the Council could build a record for an ER based on the unanticipated statutory requirement to establish an AI directed pollock fishery for the economic development of Adak that could justify waiver of notice and comment for "good cause" under the Administrative Procedure Act (APA). This would make it possible to implement a 2004 directed AI pollock fishery through an ER. In addition to an adequate basis for "good cause" waiver, NMFS still must analyze the suite of environmental, social, and economic effects of this action (see Table 1). The process of addressing the unanswered policy questions, analyzing their effects, and developing adequate monitoring and enforcement measures could require several months to complete.

If enacted, the effective date of this legislation is January 1, 2004, and thereafter. The directed AI pollock fishery does not exist now, and subsection (d) provides that an allocation for a directed AI pollock fishery must be recommended and approved. The statutory language does not specify a time line or require a 2004 allocation. An ER likely would not be implemented until after the roe season. Under the circumstances, the Council may want to consider whether staff resources are better spent developing an ER that may have little value, or focusing on the timely development in 2004 and implementation of an FMP amendment by 2005.

If the Council decides to recommend an emergency rule in February, it would need to make a number of decisions and justify them based on criteria in the legislation, as well as under the MSA. These decisions are presented in Table 1 and include:

- The amount of pollock to be allocated to the AI directed fishery;
- Whether this allocation would be specified under or over the BSAI OY;
- Whether the AI pollock allocation would only be for the "B" season, assuming the Council agrees with NMFS that the likelihood of an A season allocation is remote;
- If the allocation is within the BSAI OY, how would the existing harvest specifications be respecified; and
- What vessels and processors would be eligible to participate in the fishery, i.e., whether or not to simplify the 2004 catch accounting measures by prohibiting the participation of non AFA eligible vessels.

Approach 2: Develop an FMP Amendment

Regardless of whether an ER is implemented in 2004, the Council and NMFS would need to develop an FMP amendment in 2004 to implement the statute in 2005 and beyond. An ER is limited in duration, and regulations for future fisheries would need to be developed through an FMP amendment process. This process would need to be initiated in addition to any ER that the Council may recommend, with the same analytic requirements and policy questions to be addressed, but with the additional time required for notice and comment rulemaking. Table 1 provides additional detail on this approach.

If a 2005 AI pollock allocation to the Aleut Corporation is to be authorized through the normal harvest specification process, final Council action on the FMP amendment would have to be scheduled for June 2004 to have the rulemaking package completed in time for the 2005 interim harvest specifications that start out the fishing year. If final Council action were delayed until October 2004, the interim harvest specifications for the 2005 directed AI pollock fishery would have to be implemented by ER. Almost all the policy questions that would need to be addressed for an ER would also need to be addressed in the FMP amendment.

The advantages of initiating an FMP amendment are that the allocation of a directed AI pollock fishery could be incorporated into the usual TAC specification process, the time line for completing an FMP Amendment rulemaking process could provide for a fishery in 2005, and the suite of policy questions that must be addressed could be responded to over a longer period of time than under an ER time frame.



Additional Issues Concerning Subsection (a)

Subsection (a) specifies that directed pollock allocations in the Aleutian Islands be allocated to the Aleut Corporation. This would supercede Section 206(a) of the American Fisheries Act which requires that "...10 percent of the [TAC] of pollock in the [BSAI] shall be allocated as a directed fishing allowance to the western Alaska community development program..." If this bill language becomes law, NMFS would revise the regulations to remove the 10% allocation of

AI pollock TAC to a CDQ reserve because all of this pollock would be specifically required to be allocated to the Aleut Corporation and no pollock in the AI subarea would be allocated to the CDQ Program. NMFS also would have to amend the BSAI FMP to provide for the allocation to the Aleut Corporation.

Subsection (b) – Eligible vessels

This subsection lists the classes of vessels that would be eligible to participate in a partnership with the Aleut Corporation to harvest any allocation established under Subsection (a). Note that any allocation of pollock to the Aleut Corp would require a catch accounting program similar to that required of the AFA pollock offshore and inshore cooperatives. Further, new provisions likely would need to be developed to account for small vessel harvests under the Aleut Corp. allocation. Similarly, any shoreside processing of pollock would have to comply with a shoreside catch monitoring plan developed by the Aleut Corporation and approved by NMFS before fish could be delivered. These provisions likely would need to be included in any emergency rulemaking that allowed for small vessel harvests or shoreside delivery of pollock, as well as in any final rule implementing an FMP amendment.

Subsection (b) specifies that AFA vessels would be eligible to harvest AI pollock allocated to the Aleut Corporation. This section also implies that vessels 60 feet or less length overall (LOA) with a “valid fishery endorsement” could also participate in this fishery. The language is unclear about what is intended by the term “fishery endorsement.” Presumably, this endorsement would be an LLP endorsement currently issued to qualified vessels under the LLP regulations. No vessels less than or equal to 60' LOA, however, possess an LLP with a trawl endorsement in the AI subarea. Vessels less than or equal to 60' LOA that fish exclusively within State waters are not required to possess an LLP. If a “fishery endorsement” were interpreted as an LLP endorsement, vessels 60' LOA and under, which are not required to have an LLP endorsement, possibly could still form partnerships with the Aleut Corporation. This condition would exist only in State waters that were open to pollock trawl vessels and pollock could be effectively harvested exclusively within State waters.

Additionally, this subsection establishes limits on the amount of pollock that may be harvested by vessels 60' LOA or under through 2013. The first provision says that no more than 50% of the allocation may be harvested by these vessels through 2013; the second provision says that at least 50% of the allocation must be harvested by these vessels in 2013 and beyond. The result, is that exactly 50% of the allocation must be harvested by these vessels in 2013. This may not be an issue as, in subsequent years the subsection requires 50% of the allocation be harvested by small (vessels 60' LOA and under) and 50% by AFA vessels.

Given the apparent lack of vessels less than or equal to 60' LOA that would qualify to participate in this program in 2004, implementing regulations that would allow only AFA qualified vessels to form partnerships with the Aleut Corporation may be appropriate, particularly under a 2004 ER, and assume that subsequent regulations would be required to establish eligibility criteria and catch accounting standards for smaller vessels. This could simplify the analysis and reduce the time required to prepare an emergency rule, if such a rule were prepared, for a 2004 fishery

during the B season. Vessels under 60' LOA could be incorporated under a final rule implementing a longer term FMP amendment once the Council develops recommendations for a more complete catch accounting program.

Subsection (c) – Groundfish OY

This subsection establishes the current OY for BSAI groundfish as a 2.0 million mt level that cannot be increased by future FMP amendment. Harvests could exceed this level during the next 4-year period only if necessary to provide for the Aleut Corp AI pollock allocation in a manner that would not adversely affect current fishery participants. The Council could choose to pursue an alternative for an FMP amendment that would not allow for harvests to exceed the OY during the next 4-year period.

Subsection (d) – Management and allocation

This subsection requires the Council to recommend and the Secretary to approve an allocation of AI pollock to the Aleut Corporation for the purposes of economic development in Adak. The subsection does not specify the level or amount of the pollock allocation, but it requires approval pursuant to the MSA. Therefore, the Council and NMFS would need to provide a clear rationale, including the appropriate analysis, for the level of harvest recommended and approved.

Table 1: Implementation Approaches and Policy Considerations for Section 803.

Issue	<u>Approach 1</u> Emergency Rule for 2004 & Subsequent FMP Amendment for 2005	<u>Approach 2</u> FMP Amendment process for 2004/2005
NEPA Requirements	<p>An emergency rule requires a NEPA analysis and this analysis would need to be completed before the ER could be implemented. A separate analysis would need to be prepared for the subsequent FMP Amendment. Two separate rulemaking packages would have to be prepared.</p> <p><u>Potential Policy Question:</u> NMFS believes at this point that the appropriate NEPA document would be an EA. If the EA were unable to conclude a FONSI on the preferred alternative, an EIS would have to be considered.</p>	<p>A NEPA analysis would be required for an FMP amendment.</p> <p><u>Potential Policy Question:</u> Same</p>
Other Analytical Requirements	<p>An IRFA is not required for an ER, but would be for a future FMP Amendment. All other analytical requirements would need to be addressed in both the ER and the FMP Amendment rule.</p>	<p>All the usual analytical requirements would need to be addressed.</p>

Issue	<u>Approach 1</u> Emergency Rule for 2004 & Subsequent FMP Amendment for 2005	<u>Approach 2</u> FMP Amendment process for 2004/2005
Allocation of AI pollock	<p>An ER would require the Council to specify the amount of allocation and possibly revise the designation of the "unspecified species" category, or revise the 2004 harvest TAC specifications – this requires additional rulemaking and revision to the analyses.</p> <p>Alternatively, the Council would have the ability to recommend harvests in excess of the 2 million MT OY cap, but would need to analyze the effects on other fishery participants. In both cases the Council would need to recommend the allocation and provide a rationale for that allocation.</p> <p><u>Unanswered Policy Questions:</u> How much pollock would be allocated? When would the fishery operate? How would other species in the 2004 harvest specification be affected by any changes to the allocations?</p>	<p>The allocation to AI pollock could be considered in the context of other species and in the 2005 TAC setting process. The 2 million mt OY cap would not need to be exceeded to accommodate a directed AI fishery. The Council would need to recommend the allocation and provide a rationale for that allocation.</p> <p><u>Unanswered Policy Questions:</u> Same</p>

Issue	<u>Approach 1</u> Emergency Rule for 2004 & Subsequent FMP Amendment for 2005	<u>Approach 2</u> FMP Amendment process for 2004/2005
Monitoring & Enforcement	<p>NMFS would need to establish regulations for catch reporting and monitoring.</p> <p><u>Unanswered Policy Questions:</u> Would all aspects of this program be implemented in the ER, or would only certain elements be implemented, if so, which elements would not be implemented? What shoreside requirements would be required at ports that receive AI pollock? Would deliveries be restricted to Adak or specific ports? Would observers be required on vessels fishing both AI and BS pollock to ensure proper catch accounting? Would vessels need to be specified prior to the fishing season? Would the partnership agreement need to be submitted for review and approval prior to fishing?</p>	<u>Unanswered Policy Questions:</u> Same, with the exception of the first question.
Steller Sea Lion Restrictions	<u>Unanswered Policy Questions:</u> How would the allocation be distributed to ensure that it adheres to existing restrictions?	<u>Unanswered Policy Question:</u> Same
Other Fishery Participants	<u>Unanswered Policy Questions:</u> How would "adverse effect" be measured? Would these criteria be developed by the Council and submitted as a recommendation to NMFS?	<u>Unanswered Policy Questions:</u> Same
Vessels under 60' LOA	<u>Unanswered Policy Question:</u> There is no clear definition of a "fishery endorsement"	<u>Unanswered Policy Question:</u> Same
"For the purposes of economic development" pursuant to the MSA	<u>Unanswered Policy Question:</u> What obligations, if any, are placed on NMFS to monitor the relationship between allocation and development?	<u>Unanswered Policy Question:</u> Same

Public Testimony Sign Up Sheet

Agenda Item C-1 (a) AI Pollock

	NAME (PLEASE PRINT)	AFFILIATION
1	Sandra Moller	AEC
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NOTE to persons providing oral or written testimony to the Council: Section 307(1)(I) of the Magnuson-Stevens Fishery Conservation and Management Act prohibits any person "to knowingly and willfully submit to a Council, the Secretary, or the Governor of a State false information (including, but not limited to, false information regarding the capacity and extent to which a United State fish processor, on an annual basis, will process a portion of the optimum yield of a fishery that will be harvested by fishing vessels of the United States) regarding any matter that the Council, Secretary, or Governor is considering in the course of carrying out this Act.



0-100) H L P-1000

Proposed revisions to the Council's June Motion on AI pollock
(revisions noted in **bold**)

Allocation Size

Starting in 2005:

1. Annual TAC

- (a) When the AI ABC is equal to or more than 19,000 mt, the AI TAC shall equal 19,000 mt.
- (b) When the AI ABC is less than 19,000 mt, the AI TAC shall be no more than the ABC.

2. **CDQ directed fishing allowance.**

Calculation: The BSAI CDQ Pollock directed fishing allowance shall be an amount of pollock equal to ten percent of the sum of the BS Pollock TAC plus the AI Pollock TAC. This amount shall be deducted from the BS TAC to derive the BS directed pollock fishery allocations as follows:

$$\text{BS TAC} - 0.1(\text{AI TAC} + \text{BS TAC}) - \text{BS ICA} = \text{BS directed pollock fishery allocation}$$

Because the BSAI CDQ pollock directed fishing allowance is deducted from the Bering Sea TAC, the CDQ fishery only will be authorized in the Bering Sea subarea

3. **The AI pollock ICA shall be deducted from the annual AI pollock TAC.**

4. Seasonal Apportionments

The A season apportionment of the DPF shall be the lesser of

- (a) no more than 40% of the ABC or
- (b) the annual TAC after subtraction of the ICA

The total harvest in the A season (DPF and ICA) shall not exceed 40% of the ABC.

The B season apportionment will be equal to the annual TAC minus the ICA and minus A season DPF. The B season apportionment may be further adjusted by rollover of unharvested A season pollock.

Allocation Mechanism

2.2 The ~~pollock allocation to the AI fishery~~ **AI pollock TAC** will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock ITAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock ~~TAC DPF~~ is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

Economic Development Report

5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At its June 2006 meeting, the Council shall review the AI pollock fishery performance,

C-1(a) 10/7 9:15 am
10:06 am
Balsiger motion

M/S (Nelson)

(not voted on)
Bundy gave substitute motion.

including how the money was spent, information on harvest success, Chinook salmon bycatch, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.