

8/19/10
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TO: NPFMC,

Foss Maritime

I spoke to Mr. Chairman at the 3:30PM break and although he felt the council understood my intent of "averages" in my testimony, I wanted to clarify a statement. I indicated that we had (union) 125 employees earning a good family wage income between \$50-\$75,000. What I meant to say was the upper echelon wage earners would be in that category. In the union setting employees are prone to lay-off & call back during the slow periods so a fair amount of the employees would not be in the upper earning tier. Without the hard numbers in front of me because of short notice, these wages fluctuate due to a fairly large amount of overtime the employees work when the shipyard is busy. My apologies as I did not intend to mislead Mr. Chairman on the council intentionally.

Regards,

Gene Hawley
Dir. of Shipyard - FOSS

Jay Sterne, PVOA

**Written Statement submitted to the
North Pacific Fishery Management Council
Scientific and Statistical Committee**

August 16, 2010

By

Donald Calkins

In this written testimony to the North Pacific Fishery Management Council I would like to discuss the draft August 2, 2010 Biological Opinion considering authorization of the groundfish fisheries in the Bearing Sea and Aleutian Islands Management area and elsewhere off Alaska. (BiOp). Specifically I am concerned about the use of information provided in a report prepared by myself and others under a Congressional mandate and submitted by North Pacific Wildlife Consulting, LLC (NPWC) with myself as Managing Director. The title of this report as submitted to National Marine Fisheries Service (NMFS) on April 6, 2008 was FIXED – GEAR MARINE MAMMAL INTERACTIONS STUDY. I would like to present to you how this report came to be produced by my company, NPWC, a brief description of the report, and my personal comments on how the report was used in preparation of the BiOp. The opinions expressed in this testimony are those of my own and are not a reflection of opinions of the other authors of the report.

Inception and Funding of the Report

In 2006 the U.S. Congress appropriated funding through NOAA to NMFS for the purpose of conducting an analysis of interactions of the western stock of Steller sea lions with

longline fisheries that target Pacific cod, (*Gadus macrocephalus*) in the Bering Sea and Aleutian Islands. Funding was granted to Texas A&M University Research foundation (TAMU) to administer the investigation. North Pacific Wildlife Consulting proposed a study to TAMU based on “the need for a well-designed scientific investigation that clearly delineates the possible impacts that fixed-gear fisheries may have on marine mammals” as mandated by Congress. The proposal was accepted and TAMU contracted me, doing business as NPWC to put together a team that would gather and analyze available data and prepare a report on the possible indirect effects of fixed gear fisheries on Steller sea lions. I, in turn contracted two other highly qualified and experienced scientists to participate in this effort. Dr. Thomas Loughlin was contracted through his consulting company, TRL Wildlife Consulting to procure reports and survey counts, provide oversight and review of log books and observer data, data preparation and preparation of reports. Dr. Daniel Hennon was subcontracted by NPWC to analyze data extracted from logbooks and observer reports through scientifically valid and acceptable statistical analytical procedures. He was also tasked with providing an estimate of the impact the longline fishing fleet had on the Steller sea lion population and he participated in writing the report.

In order to insure that we would produce a product that could be of value to NMFS, we consulted with key NMFS personnel. Suggestions were provided by NMFS that eventually shaped the analysis and the report. Our initial approach was to utilize both logbook data provided by fishers in the freezer longline fleet and data from the observer program reports which included data on amount, content and location of catch. After reviewing the logbook data and the observer data together it became obvious that the data sets for the most part duplicated each other. For that reason, and because NMFS personnel informed us that they considered the

observer data set to be more accurate, and the observer reports far more realistically fit a procedure to digitize the data for analysis, we elected to use only the observer data set.

Description of the Report

To accomplish our objective of assessing the possible adverse impact on the trajectory of the Steller sea lion population from fishing by the freezer longline fleet, we proposed to test the hypothesis “that the Pacific cod freezer longline fishery did not adversely impact the western population of Steller sea lions through indirect interaction by removing prey (Pacific cod) at the depth and location and of the size and age consumed by sea lions sufficient to cause deleterious effects on sea lion health and condition.” To test this hypothesis we examined NMFS population survey data and NMFS provided fishery observer data to look for relationships. Health and condition of Steller sea lions were not directly examined in this study but were implied using the trends seen in the NMFS counts of SSL. We examined the data that was available to us from the period between 1996 and 2004.

A scientifically acceptable and valid method was used to statistically examine the data. Steller sea lion population counts by year were fit to a spline-type regression model with three parameters. A slope (population trajectory) from the beginning of the study period (1996) to the hinge point was the first parameter, the hinge point was the second parameter, and the third parameter was the slope from the hinge point to the last year of the study (2004). The hinge point was fixed at the year 2000 because a power analysis indicated that three census counts were necessary to estimate the trend. The count data provided six surveys total over the study period so the data were split evenly with three surveys in the period from 1996 to 2000 and three

surveys from the period of 2000 to 2004. Furthermore it is generally agreed (Fritz and Stinchcomb 2005) that the overall population trend in the western stock of Steller sea lions ceased to decline in 2000. We analyzed count data from 44 rookeries across the range of Steller sea lions in Alaska that had sufficient population surveys to estimate separate population trends.

After converting the data in the observer reports to allow analysis, fisheries variables were fit with a similar model. The fishing variables used were the estimated number of fishing events (hauls), the sum of the weight of the hauls, the duration of the time the gear was at fishing depth, and the catch per unit effort (CPU) that occurred within varying distances from each Steller sea lion rookery. Observer coverage varies by vessel type so a simple multiplier was used to correct for observer coverage for each vessel type. We recognized that timing of fish removals could have been important so the fishing data were stratified by season.

Both raw and ranked fishing variables were used (because the fishing data were not normally distributed) to predict Steller sea lion population trend in each time period using simple linear regression. A principal component analysis (PCA) performed on the ranked fishing variables indicated several of the fishing variables were highly correlated. Principal components that accounted for more than 2% of the total variation were included in a multiple linear regression predicting Steller sea lion population trend. All possible models were then compared to determine the models with the highest R^2 . We made several assumptions that were required for this analysis. Most if not all of the assumptions required for this analysis must have been very similar to assumptions that had to be made in formulating the reasonable and prudent alternatives recommended in the BiOp. For this report we assumed the following:

- Tracking the population at individual rookeries using non-pup counts implied that the animals present at the time of the count adequately represented all of the animals that used an individual rookery even though some animals are not present at any given time and that there is not a systematic or geographic pattern associated with animal attendance or presence;
- Animals do not move from rookery to rookery in response to fishing pressure or some other variable;
- Fishing in winter can actually predict abundance of sea lions even though abundance estimates are only generated from survey counts conducted in summer.

We expected one three possible outcomes to our analysis:

1. No relationship between the fixed gear cod fishery variables and the western stock Steller sea lion population trend. This would mean that a) no relationship existed, b) that some essential information was not available to the analysis, or c) that statistical power in this analysis was insufficient to reject the null hypothesis.
2. Negative association between the fixed gear cod fishery and the western stock of Steller sea lion population trend. This would suggest that the Pacific cod longline fishery had impeded or was potentially impeding the recovery of the western stock of Steller sea lions.
3. Positive association between fixed gear sector variable and the population trend of the western stock of Steller sea lion which would indicate that fishing was probably not impeding the recovery of sea lions and that both fishers and sea lions would both do well in highly productive areas and poorly in depleted areas.

Results of our study suggested that rookeries in the vicinity of where longline fishers were successful as indicated by a high CPU but had low effort indicated by numbers of hauls, sum of the weight of the fish removed, and duration of time fishing tended to have slower (or negative) population growth during the period of 1996-2000 and faster or positive population growth in the period of 2000-2004. In both cases the regression correlation coefficient values describing the strength of the relationship were low. There are no ecological reasons why low effort or efficient fishing should have any effect on sea lion population growth trends, let alone a negative and then positive effect within eight years. Given the lack of a consistent, clear result, we conclude that the results are consistent with the hypothesis that longline fishing and Steller sea lion population trends are largely independent of each other.

Comments on Use of the Report by NMFS

My understanding of why Congress provided funding for this report was to provide information useful to NMFS in their efforts to bring the best possible scientific information together when considering fishery regulations to avoid impacting the Steller sea lion populations in Alaska. To that end the team of the three authors who drafted and submitted this report had the best possible credentials to fulfill our goal of conducting this analysis and drawing scientifically valid and defensible conclusion from that analysis. I believe the report is fully defensible and scientifically valid in the methods, results and conclusions as reported. We believe we went to great lengths to provide a report that would be useful to NMFS by consulting often with key personnel in designing the study, procuring the data, conducting the analysis and drawing conclusions. As shown in the ACKNOWLEDGMENTS section of the report, Dr. DeMaster provided editorial comments that helped improve the quality and the validity of the report. However, after submission to the Grants Program Office of the Alaska Region in fulfillment of

the grant to Texas A&M University, we received no feedback or response to the report.

Normally, it has been my experience when submitting a report to fulfill a grant, the report is reviewed and a critique is provided to the authors with editorial suggestions. One could not help but conclude that in the absence of any feedback, the report was accepted as submitted and the conclusions were found to be accurate and representative NMFS opinion.

I assumed that the report would then be given some consideration and be useful to the process of drafting the BiOp. No discussion has been provided in the BiOp that takes this report into consideration. Only one obscure reference is provided that even acknowledges the existence of this report, in a list of work that has been developed on the potential interactions between Steller sea lions and fisheries for pollock, Pacific Cod and Atka mackerel on page 195 of the BiOp. Even in this case the report is inaccurately cited as Calkins 2006 when it was submitted on April 6, 2008.

I believe that the report we produced is a scientifically valid work that contains information that should have been useful to NMFS as a part of the process in formulating recommendations for Pacific cod fishing in the BiOp. As I understand the process, the BiOp is still a working document. I recommend that NMFS reconsider the recommended actions for Pacific cod fishing giving full consideration to and addressing the information provided by this report.

Kenny Down



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North Pacific Fishery Management Council
August 18-19, 2010

August 19, 2010

Public Testimony on Agenda item: B-1(a)
Steller Sea Lion Biological Opinion

Review the Draft SSL BiOp and draft EA/RIR for potential mitigation alternatives

Chairman Olson,

Council members, thank you very much for your time here today and for your consideration of the draft Bi-Op Review.

My Name is Kenny Down; I am here today representing the Freezer Longline Coalition (FLC). The FLC represents a Washington and Alaska based and owned fleet with operations in the Aleutian Islands directly affected by the RPAs in the draft Bi-Op under discussion by the Council at this meeting. This fleet is primarily a Pacific cod single species directed fishery fleet, therefore is nearly fully reliant on Pacific cod.

I want to start by making a statement on our overarching and by far the most concerning issue to our sector. *The insufficient reasoning given in the Bi-Op for the draft RPA to include the hook-and-line fleet.* Including the longliners in these RPA's seems arbitrary and not well supported in the document. We feel a case has not been made that including the longliners in these RPAs contributes in a measurable way to Atka mackerel or P cod availability for the SSL diet. It is our belief that the fishing method employed in the hook and line fleet, and historical patterns of activity, including very low overall catch, clearly show the fleet meets the principles and objectives of the Bi-op under current management measures, and as such longliners should not be included in the RPAs.

I have attached several documents that I will refer to in my discussion, including a FLC backed alternative RPA for the longline fleet. I will be happy to expand on all of these

issues if there are any questions. Background, expansion and citations for all of the following points are detailed in the attachments.

PRIMARY CONSIDERATIONS

- 1.) **The freezer-longliner p-cod catch in the Aleutian Islands is small and spatially dispersed across areas;** there is a small amount of catch coming from all three statistical areas 541, 542, and 543. As a matter of fact the BSAI p-cod hook-and-line fishery is the most spatially dispersed p-cod fishery and by the nature of the gear type is less likely to cause any localized depletions of SSL prey species.
- 2.) **The BSAI fixed gear p-cod fisheries (longline and pot) have the most temporally dispersed seasonal apportionments** of harvest of all gear types with 51% A season and a 49% B season. From 2003 to 2009, the freezer-longline directed p-cod fishery has had effort in 46 of the 52 statistical weeks of the year
- 3.) **The size selectivity of p-cod by longline gear in the BSAI has the least overlap with SSL diet.** Studies indicate 80% of Pacific cod eaten by SSLs are approximately 50 cm in length. The average length fish in the BSAI longline p-cod fishery is 67 cm. Longline gear is more selective for larger cod than other gear types.
- 4.) **The freezer-longline p-cod catch in the Aleutian Islands has dispersed without undue concentration in the winter months.** For 2003-09, only 25% of the harvest occurred in the winter. 75% of the fishery is prosecuted during the time that P cod is not an important food item for the SSL (p-cod frequency of occurrence in the diet is 6%)

SECONDARY CONSIDERATIONS

- 1.) **Pacific Cod Mortality** (discreet mortality rate (no fishing)) AI rate is 29% (From Pcod model, Grant Thompson)
- 2.) **Pacific cod prey on Atka mackerel.**

The 2010 RPA measures incorrectly make the assumption that there is a negative association between longline p-cod fishing and SSL population trends. The freezer longline fixed gear fleet as it currently prosecutes the fishery is not likely to result in appreciable reductions in the likelihood of both survival and recovery of the SSL by reducing its numbers, reproduction, or distribution. Therefore this fleet should not have been included in the RPA's in the draft Bi-Op. We are asking the Council directly to not support the proposed RPA's in the Bi-op documents that include the freezer longline

fleet. What we are asking for is that the Council support the attached FLC alternative RPA that represents our groups understanding of the difficulties faced by the Council and the Agency and is sensitive of the need to bring forth a proposal that clearly meets the principles and objectives of the Bi-Op. If supported by the Council, and accepted by the Agency, the Freezer Longline group would accept this as a necessary management measure. Clearly our group is upset to have been pulled into these RPA's. But as I stated in my early July letter to NMFS."Once you're in the soup it's hard to get out"

The attached alternative RPA is fairly self explanatory so I will concentrate any remaining time on the supporting documentation that this RPA for the fixed gear fleet meets the principles and objectives of the Bi-Op.

I am available for questions and am anxious to bring further clarity to our position and any of the issues testified here today.

Kenny Down
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Freezer Longline Coalition



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Attachment # 1

FLC Comments/Bullets on 2010 SSL Biological Opinion

North Pacific Fishery Management Council

August 18-19, 2010

Freezer longline Coalition

Public Testimony on Agenda item: B-1(a)

Steller Sea Lion Biological Opinion

Review the Draft SSL BiOp and draft EA/RIR for potential mitigation alternatives

Longline gear and longline Method of fishing

1.) **The BSAI p-cod hook-and-line fishery is the most spatially dispersed p-cod fishery and by the nature of the gear type is less likely to cause any localized depletions of SSL prey species, particularly in Critical Habitat.** The 2010 BiOp (Figure 4.31) and the 2001 BiOp (Figure 5.1, p.150) show that in 2000, the BSAI hook-and-line p-cod fishery was the most spatially dispersed gear type (of trawl, pot, and hook-and-line) with the highest proportion of catch in the lowest catch rate “bins” (i.e. hook-and-line p-cod harvest is the most dispersed of pot, trawl, and longline). The 2001 BiOp (p. 149) states, “... *it appears that the nature of the hook-and-line gear is a more dispersed fishery in both time and space – one of the major qualities identified in recent biological opinions that could help avoid jeopardy and adverse modification.*”

Accordingly, the 2001 RPAs were less restrictive on the p-cod longline fishery than other gear types such as cod trawl. NMFS stated in the Q&A (p. 6) that “...*the hook-and-line fishery does fish in a manner that is consistent with the intent to minimize disturbance to the prey field. NOAA Fisheries recognizes that and for that reason, NOAA Fisheries is allowing hook-and-line fishing during periods that other fishing is restricted.*”

However, the draft 2010 RPAs fail to recognize that distinction and incorrectly equates the impacts of trawl and longline gear on cod prey fields in the Aleutian Islands without acknowledging the different characteristics of each gear type. In 541, the RPA measures inexplicably allow more time in winter months for trawl gear in the 10-20 mile area of CH than fixed gear.

2.) **The BSAI fixed gear p-cod fisheries (longline and pot) have the most temporally dispersed seasonal apportionments of harvest of all gear types with 51% A season and a 49% B season.** Under Amendment 85 (BSAI p-cod sector allocations), each sector received a different seasonal apportionment of p-cod harvest with the goal of maintaining an overall 70/30 apportionment (A season/B season) of all-gear BSAI p-cod harvest. The result was the BSAI p-cod fixed gear fisheries (pot and longline) having the most temporally dispersed p-cod fisheries with a 51% A season/49% B seasonal apportionment.

The BSAI trawl CP p-cod sector has 100% A season apportionment (prior to June 10, with 75% Jan 20-April 1 and 25% April 1 – June 10) and a 0% B season apportionment. The BSAI trawl CV p-cod sector has an 85% A season apportionment (prior to June 10, with a 74% Jan 20 – April 1 and 11% April 1 – June 10) and a 15% B season apportionment.

3.) The size selectivity of p-cod by longline gear in the BSAI has the least overlap with SSL diet. The NMFS August 2000 Pacific Cod draft EA estimated that “...on average, 80% of the Pacific cod eaten by SSLs were approximately 50 cm in length.” This estimate was made from bones in scat collected Jan-March 1994-98. At the same time, the average length fish in the BSAI longline p-cod fishery was 67 cm (1997-98 avg.) In the 2009 BSAI P-cod SAFE, the peak length frequency for the 2009 longline fishery (January to May) is 65-70 cm (Table 2.8a, p.54, 2009 BSAI Pacific Cod SAFE) with 93% of the length frequencies greater than 50 cm. The peak length for the trawl fishery in 2009 (January to May) is 60-65 cm (Table 2.7a, p. 51) with 69% of the length frequencies greater than 50 cm. Longline gear is more selective for larger cod than other gear types and has the least amount of overlap with the size selectivity of SSLs.

There is very little information provided in the 2010 BiOp on the size of p-cod consumed by SSLs or the lack of significant overlap with the size of p-cod in the groundfish fisheries. Similarly the Recovery Plan does not reference the average or preferred size of p-cod prey by SSL. The Recovery Plan (p.34) does reference that remains of p-cod up to 60 cm have been found in scat, but fails to mention the number or proportion at that length in the sample. The 2000 NMFS cod EA shows that of 88 p-cod in scats sampled, 89% were less than 60 cm with a mean of 50 cm (and only one sample greater than 70 cm).

The SSL appears to prefer a smaller fish than what is predominately caught in the longline fishery. However this relevant information appears to be lacking in the 2010 BiOp and Recovery Plan. NMFS 2006b (answers to questions) was supposed to answer the following question #24 “*Is there size overlap between sea lion diet and fishery catch? Provide length distribution of fishery catch (by season) for pollock, Pacific cod, and Atka mackerel.*” However, the response by NMFS only addressed the size of pollock consumed by SSLs and did not address p-cod consumed by SSLs. The response did look at size of p-cod in the fishery catch, but only for the trawl sector and not for longline.

NMFS 2006b, in response to question #35, includes an unattributed table that provides size of cod from scat (1995-2005). However, the bin sizes employed in this table have limited utility as the table considers all cod >35 cm (14 inches) as “very large” but are actually very small fish. The source of this table is not cited in NMFS 2006b. Logerwell, Barbeau, and Fritz (2009) provide data as to size of p-cod in scat, but this study considered all cod >26 cm (10 inches) as “very large” – and again, these are actually very small fish. In Table 2.8a of the 2009 BSAI p-cod SAFE, for the length frequency of the January-May longline fishery for 2009, only 0.2% of the fish were less than 36 cm (and 98.8% greater than 36 cm). In the same table, only 0.003% of the fish were less than 27 cm (for longline in Jan-May) in 2009. Of 36,352 length frequencies in 2009 in this table, only one was less than 27 cm.

It should also be noted that the abundance of small p-cod in the EBS appears to be increasing. The 2009 estimate of EBS p-cod biomass is + 4.4% above the 2008 estimate, however the number of fish in the 2009 survey was +50% above the 2008 estimate (Table 2.12b, p. 61, 2009 BSAI p-cod SAFE).

4.) The AI freezer-longline P-cod harvest is overall very low in the Aleutian Islands. In 2009, the AI proportion of p-cod harvest by the freezer-longline sector was 5.8%. In terms of volume of total groundfish catch in Critical Habitat in the combined BSAI, from 1996 to 2004, longliners accounted for only 5.2% of all groundfish removals (Calkins 2006).

5.) The freezer-longliner p-cod catch in the Aleutian Islands is small and spatially dispersed across areas. For 2003-09, the average catch by area was 1925 mt/yr in 541; 909 mt/yr in 542; and 1329 mt/yr in 543. The average annual longline catch in the Aleutian Islands for 2003-09 is 4162 mt/yr.

6.) The freezer-longline p-cod catch in the Aleutian Islands has been temporally dispersed without undue concentration in the winter months. For 2003-09, 26% of the harvest occurred in the winter. From 2003 to 2009, the freezer-longline directed p-cod fishery has had effort in 46 of the 52 statistical weeks of the year (with the exception of 3 weeks in May and three in December). For 2003-09, only 26% of this harvest occurred from November 1 thru February 28 (with 74% of the catch occurring March 1 thru October 31). Also for 2003-09, only 9% of the longline catch in the Aleutians occurred in the November and December time period.

7.) The biomass of p-cod in the Aleutian Islands summer trawl survey is stable. The proportion of biomass of p-cod in the overall groundfish biomass in the AI is historically stable and small (and consistent with the low frequency of occurrence of p-cod in SSL diet). The Aleutian Islands summer trawl survey for p-cod biomass in 2006 is 92,526 mt or 91% of the ten year average (1997-2006), (p. 12, 2009 BSAI P-cod SAFE). The proportion of p-cod biomass to overall groundfish biomass is on average 3% in 543 and 6% in 542 (2002-06 average). In comparison, the proportion of Atka mackerel biomass to overall groundfish biomass is 32% in 543 and 38% in 542 (2002-06 average), (from Tables 1 & 4, *Aleutian Islands Trawl Survey Summary*). Atka mackerel is the dominant species in the total groundfish biomass in the AI and in the diet of SSLs in the AI. P-cod is a very minor component in both the total groundfish biomass of the AI and in the diet of SSLs. The effect of the RPA measures mistakenly assigns equal weight to Atka mackerel and p-cod in the AI.

8.) The number of freezer-longliners participating in the AI p-cod fisheries is small, averaging 7 boats per year (range= 4 to 10). From Table 10-11, p. 10-21, 2010 SSL EA. The highest number of vessels was 10 boats in 2006.

9.) There is no relationship between trends in the WDPS SSL population and the freezer-longline p-cod fishery. Calkins (2006, *Fixed Gear-Marine Mammal Interactions Study*) found that p-cod freezer longline fishery and SSL population trends were independent of each other. This study tested the hypothesis that the p-cod freezer-longline fishery did not adversely impact the western DPS of SSLs through indirect interaction by prey removal of p-cod at the depth, location, size, and age consumed by sea lions sufficient to cause deleterious effects on SSL

population status and trend. No significant or consistent relationships were found between SSL population trends and the freezer-longline p-cod fishery for the time period of 1996 to 2004. The 2010 RPA measures incorrectly make the assumption that there is a negative association between longline p-cod fishing and SSL population trends – where this study found no such relationship exists.

10.) In high density of fish aggregations, longline gear has less of an impact on prey fields than other gear types. SSLs are known to forage on concentrations of prey species. Longline gear is less effective than trawl gear in high concentrations and densities of fish. With increasing fish densities, longline gear meets its saturation level, where the absolute number of fish caught equals the (limited) number of effective hooks. This is a limiting factor in rate of removals as well minimizing the “hole in the prey field”. In comparison, trawl gear is more effective in high concentrations of fish with a higher removal rate as catches will increase in proportion to the increase in fish density. Due to the passive nature of longlining (compared to mobile gear) and the use of attractant bait, longlining is the more effective gear type in lower density or scattered fish populations (*Longlining*, p. 125, Bjordal & Lokkeborg 1996; and Lokkeborg and Borjdal 1992 “*Species and size selectivity in longline fishing: a review*” Fisheries Research, 13 p. 311-322).

Further, underwater observations in Norway have shown that only a small proportion of the fish that are triggered by the bait odor and locate the gear, actually attack the baited hooks and are subsequently hooked (Lokkeborg 1989). These observations indicate that a fairly low fraction (5% to 11%) of the cod and haddock available to longline gear is actually caught. Again, the characteristics of longline gear minimize the effect on the prey field and minimize concentration of harvest.

RPA Measures

The RPA measures ignore the differences between gear types in terms of rate of removal, temporal dispersion, and spatial dispersion. There does not appear to be any justification for RPA measures in 541 where both the pup and non-pup counts have been significantly increasing from 2002-2009 (+43% for pups and +21% for non-pups).

In contrast to the findings in Calkins (2006), the RPA management measures incorrectly assume there is relationship between the freezer-longline cod harvest and trends in SSL population. The rationale provided for the measures may overstate the importance of p-cod in the winter months for SSLs. The RPAs appear to inappropriately equate the importance of p-cod with Atka mackerel, where the BiOp states that the frequency of occurrence of Atka mackerel occurs 96% in summer and 55% in winter. In contrast, p-cod frequency of occurrence is 6% in summer and 26% in the winter (that is, p-cod has one-sixteenth of the frequency of Atka mackerel in the summer, and less than half the frequency in the winter).

No clear citation of the data is provided in the 2010 BiOp for the 26% winter p-cod value. Previous studies (Sinclair and Zeppelin 2002) included p-cod frequency of occurrence in winter SSL scat at 16-17% for Aleutian Islands region. It also appears that there have been no scat

collections in WAI (543) in the winter (from the cited studies in the 2010 BiOp) so it is unclear how the winter SSL frequency of occurrence in WAI was calculated.

The RPAs for p-cod make little distinction between gear types and does not analyze the differences by gear type in magnitude of catch; spatial dispersion of catch; and temporal dispersion of catch. The paper entitled “*Projections of Atka mackerel and Pacific cod catch reductions*” is an oversimplified analysis and addresses only removals – but includes no modeling of rate of removal by gear type, spatial dispersion of removals (inside and outside of CH), and temporal dispersion of removals. If these characteristics (gear type, spatial, and temporal distribution of harvest) are considered not important by NMFS, then seasonal apportionments of harvest and Critical Habitat designations should then be rescinded. However, if these characteristics are important to NMFS, then they should be included in the modeling exercises. Similarly, the paper entitled, “*Aleutian Islands trawl survey biomass summary*” models the expected increase in biomass under “no fishing” in 543. However, no model run is made for any other scenario (half the permissible rate, different gear types, outside of CH only etc). Similarly in 542, only one scenario is modeled, that is fishing at half the permissible rate but no other parameters are modeled.

RPA measures in 541 are not warranted as the SSL population is increasing. The EAI (541) is the only area where the BiOp on p. 101 indicates p-cod is an important SSL prey species. However, in this area the pup counts have increased +43% from 2002 to 2009 and increased +21% from 2005 to 2009 (Figure 3.10 and Table 3.2). In the EAI (541), the non-pup counts (adults and juveniles) have increased 27% from 2002 to 2009, and have increased +7% from 2006 to 2009 (Figure 3.7 and Table 3-1a). These increases do not support the need for RPA measures. The adverse modification finding of the BiOp only references the two areas with declining SSL populations. The fact that SSL population is increasing in an area that has ongoing fishing and where the frequency of p-cod in the SSL winter diet may be higher (21.4% in EAI, 17.2% in CAI, NMFS 2000) suggests the lack of an association between SSL population trends and p-cod fisheries (as put forth by Calkins, 2006).

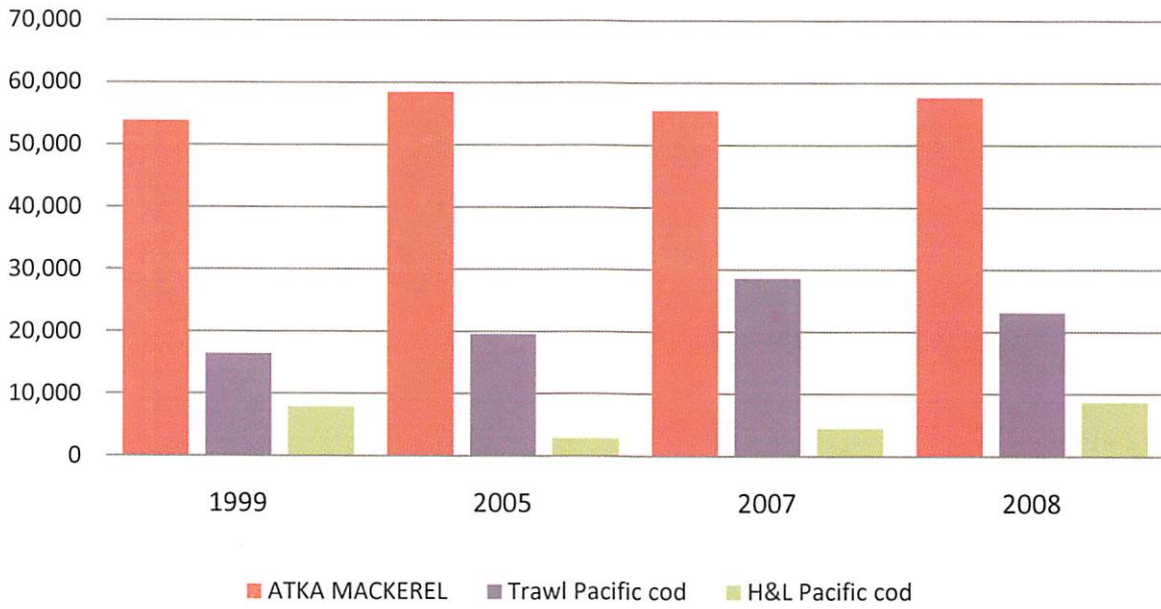
The RPA measures for 541 make no distinction as to characteristics of gear type, and the result is that p-cod trawling has more time to fish in the winter months in the 10-20 mile CH area than fixed gear p-cod. The trawl fishery will have the entire A season to fish in the 10-20 mile CH area while fixed gear will have the truncated B season to fish in the 10-20 mile CH area. This is counter-intuitive to RPAs from the 2001 BiOp and the measures in 542 (where fixed gear is allowed in the 10-20 mile CH area and trawling is not).

The closure of CH in the p-cod A season to longline gear makes little sense as the rationale given is based on SSL diet (26% winter and 6% summer). *The RPA effort to further temporally disperse an already temporally dispersed fishery will result in more concentrated harvest (not less).* Currently 74% of the longline harvest currently occurs in March through October in the AI, and only 9% occurs in November and December. The RPAs may actually concentrate harvest in the early B season.

RPA measures in 542 are not appropriately designed or relevant for the p-cod longline fishery. The relative importance of p-cod to Atka mackerel in SSL diet is not taken into account. The prohibition on fixed gear harvest in the 10-20 mile area of CH in the A season makes limited sense as the temporal dispersion seems to be based on winter/summer diet of SSL (and not A/B seasons). Currently, from 2003-09, the longline p-cod harvest in the AI is already 74% in March thru October. The RPAs may actually concentrate harvest in the truncated B season. The November and December closure addresses a concern that does not appear to exist in the longline p-cod fishery as only 9% of the longline directed p-cod harvest has occurred in these two months (2003-09) for the Aleutians.

RPA measures in 543 are not appropriately designed and have not addressed the P-cod longline fishery in relation to other gear types. The prohibition on fixed gear harvest has not been adequately addressed. The RPA closure to all fishing addresses a concern that does not appear to exist in the longline p-cod fishery. Only 1329 mt/yr are taken by this fleet in 543 (average 2003-09). The 2010 RPA measures incorrectly make the assumption that there is a negative association between longline p-cod fishing and SSL population trends.

Aleutians area, in mt (BIOP data)



BIOP Catch in Aleutian Islands

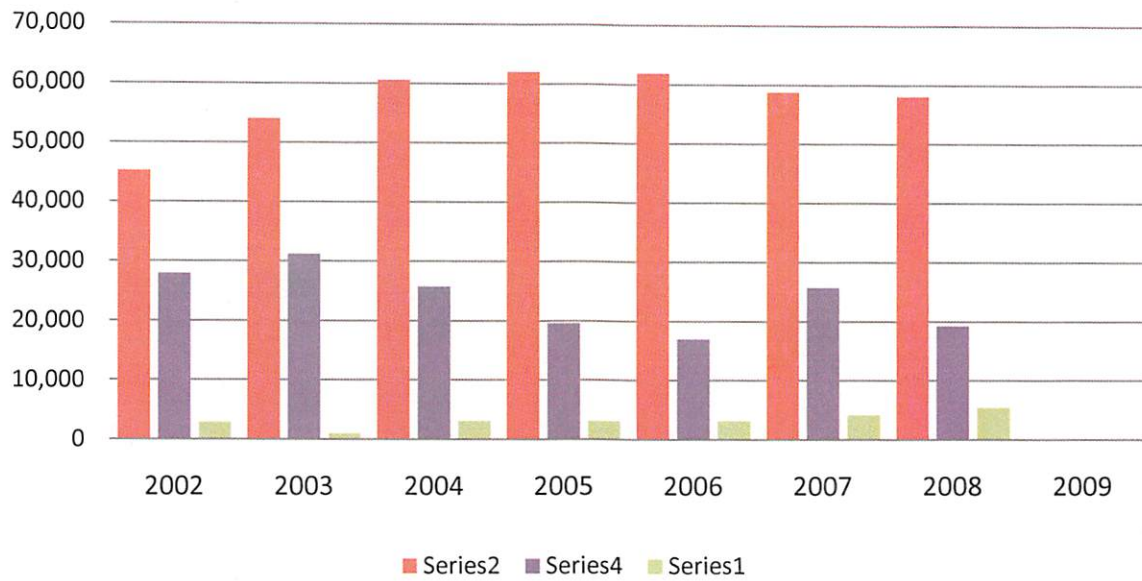
AL IL TRL H&L

ATKA MACKEREL PACIFIC COD

1999	53,856	16,437	7,875
2005	58,455	19,613	2,853
2007	55,541	28,620	4,499
2008	57,642	23,094	8,689

Prepared by FIS using Bi-op Data

Aleutians area, in mt (SAFE data)



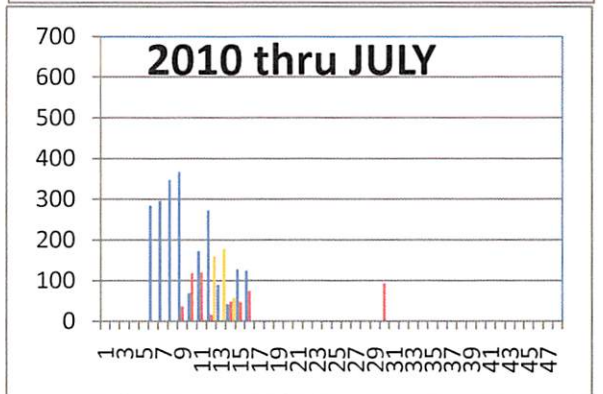
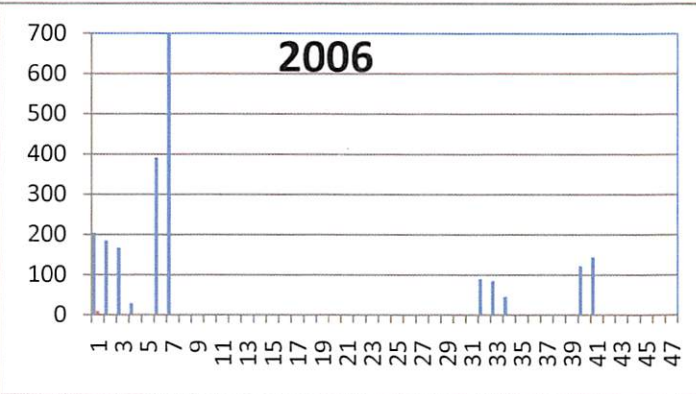
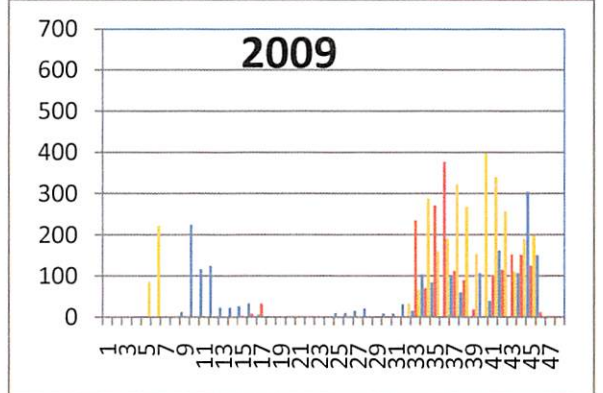
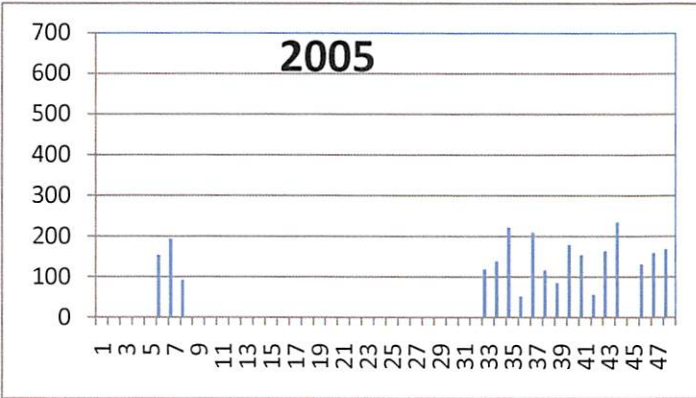
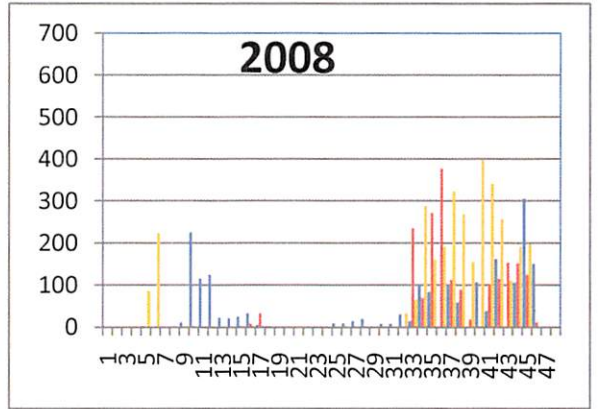
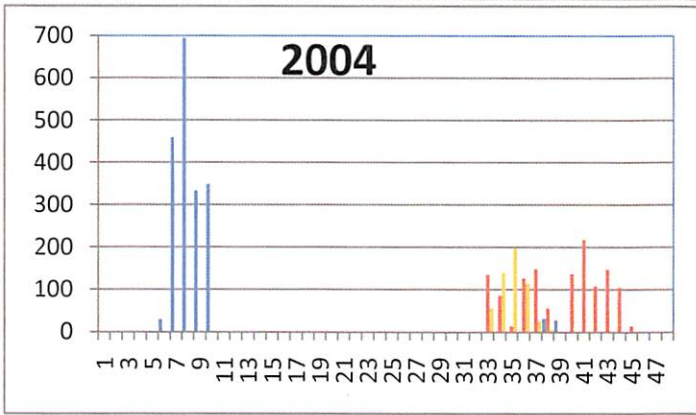
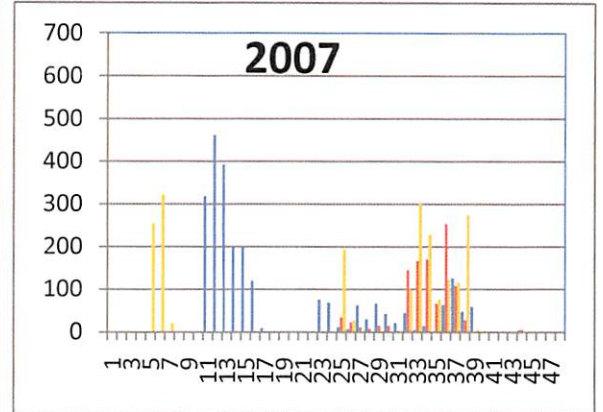
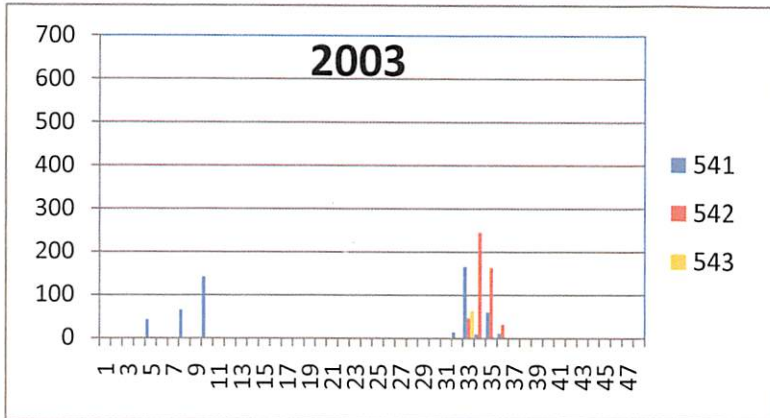
SAFES	TRL	H&L	
AL IL	ATKA MACKEREL	PACIFIC COD	
2002	45,288	27,929	2,865
2003	54,045	31,215	976
2004	60,562	25,770	3,103
2005	62,012	19,613	3,067
2006	61,894	16,959	3,126
2007	58,763	25,727	4,172
2008	58,090	19,291	5,449
2009			

Prepared by FIS using SAFE Report Data

All Hook-and-Line by Week and Area

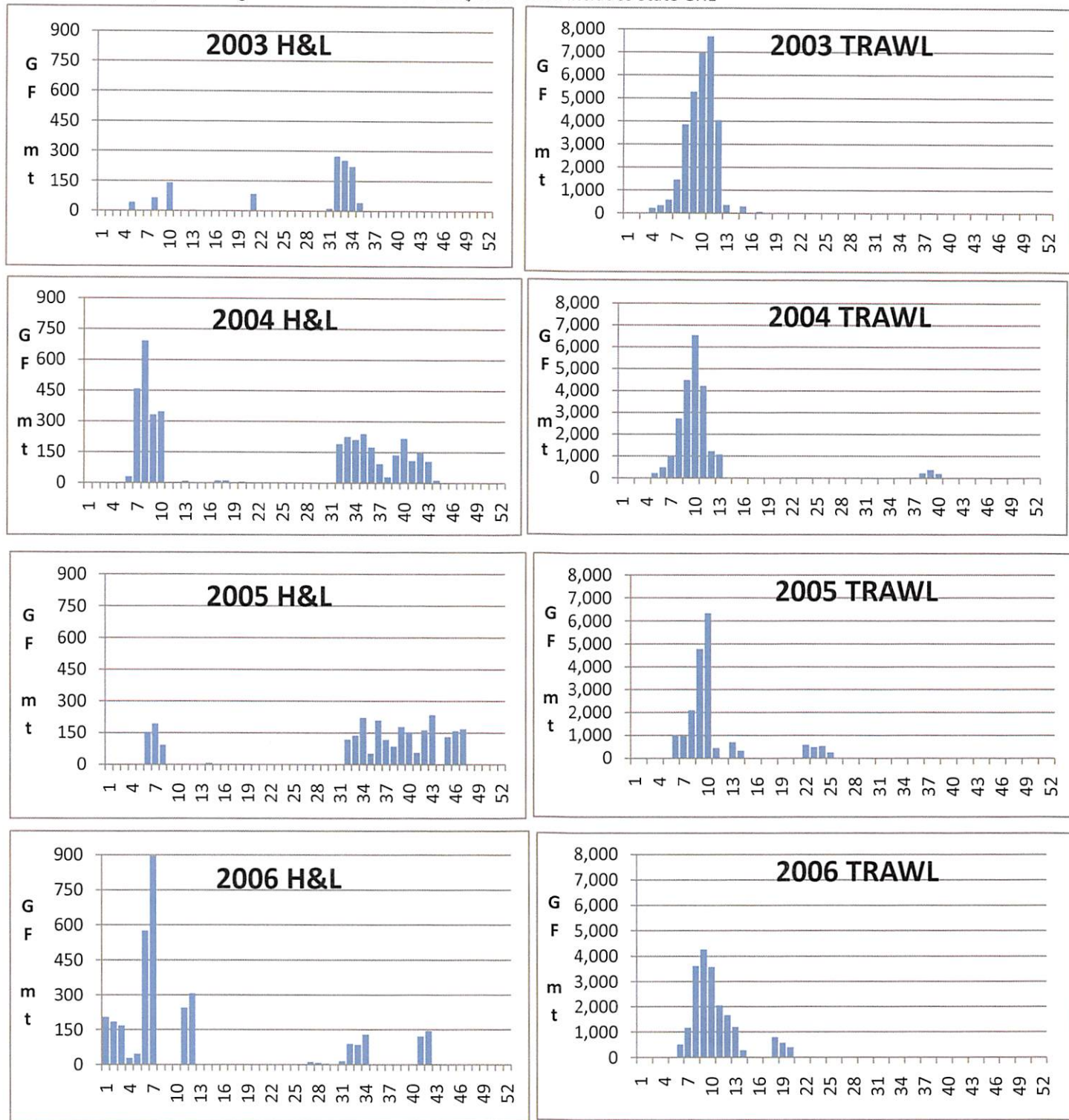
GRAPHS IN THIS COLUMN DO NOT INCLUDE CDQ!

GRAPHS IN THIS COLUMN INCLUDE CDQ



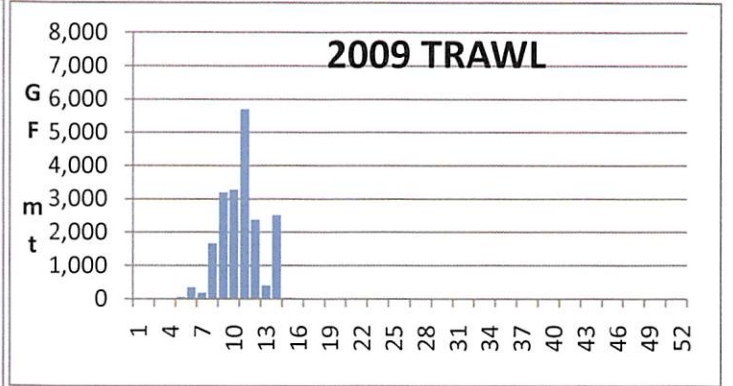
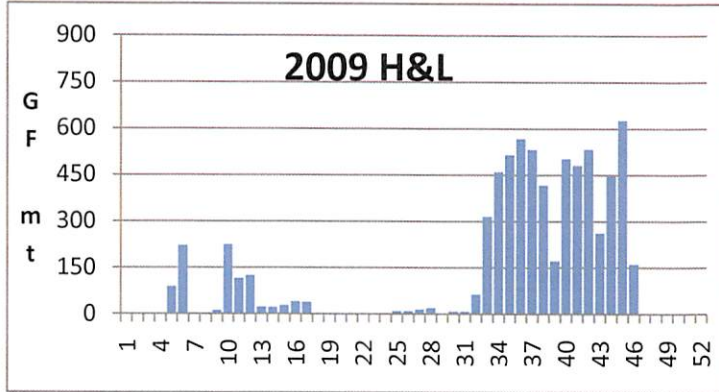
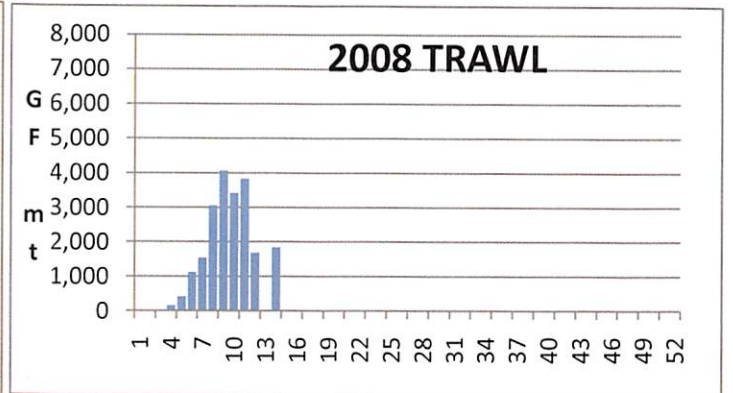
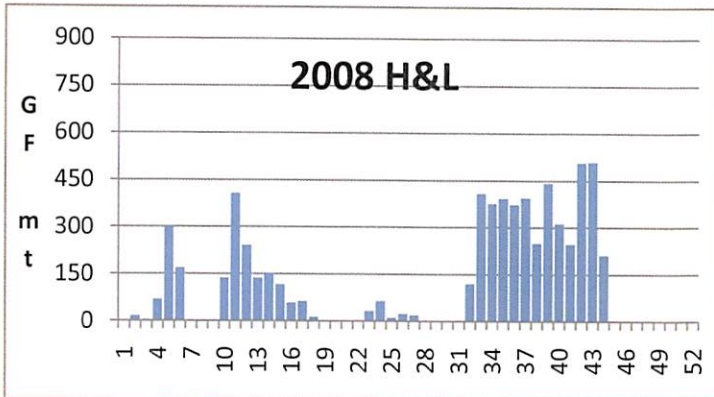
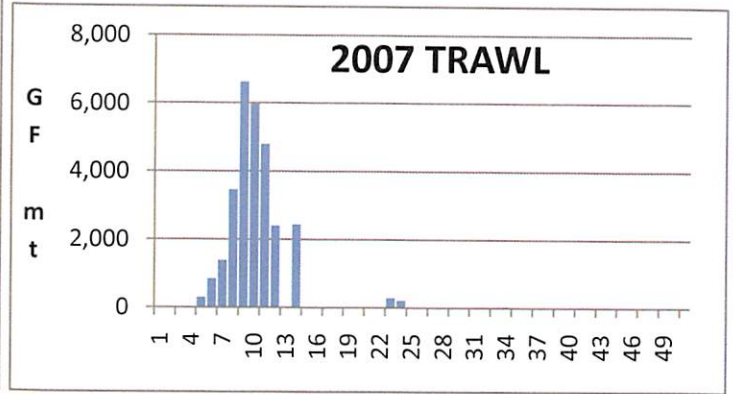
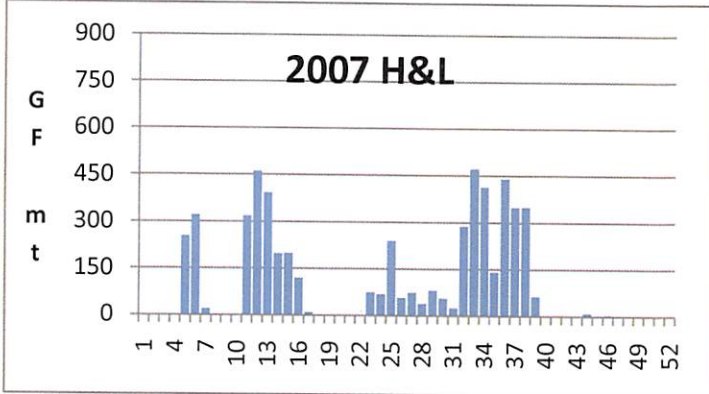
AI Longline/ Trawl Comparison by week

Note: All GF in MT, P. cod target 2007-2009 in cludes CDQ, 2006-2009 includes State GHL



AI Longline/ Trawl Comparison by week

Note: All GF in MT, P. cod target 2007-2009 in cludes CDQ, 2006-2009 includes State GHL





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NPFMC meeting June 2010

June 9, 2010

Public Testimony on Agenda item:*

B. Reports

Protected Species Report

SSL Bi-Op Process

*transcribed August 2010 from audio files of oral testimony given by Kenny Down, Executive Director of the Freezer Longline Coalition

Chairman Olson,

Good Afternoon Council members, my name is Kenny Down I am here today representing the Freezer Longline Coalition.

I would like to address the council here today on some concerns that the BSAI Freezer Longline fleet has on the current processes schedule outlined for the SSL Bi-op release.

The draft was originally scheduled to be released in March, 2010. I understand that was not possible. I further understand the need to release the Bi-op in a reasonable time frame. However the current late July release estimate followed by an August council meeting as reported by the protected resources report, along with potential mitigations measures in place for the 2011 fishery is no longer a reasonable time frame.

1. Is this adequate SSL Bi-Op scientific review and council review?
2. Is this adequate industry review and an opportunity for our own independent expert review?
3. We also have concerns in doing away with CIE terms of review that were part and parcel of the time frame for the March 2010 release.

The Freezer longliners have been through this process and the need for adequate time in the past. One for instance— In Bi-op #3 released Nov 30th 2000 the weekly catch for our fleet was misstated at 10,155 mt per week. That is almost double what we knew to be true. In fact after working with the agency the actual amount turned out to be nearly half that amount at 5600 mt a week. This misstatement in the 2001 Bi-op was not revised (Corrected) until May 8th 2001, 5 months later. This is especially pertinent as the 2001 Bi-op #3 was the 1st time the longline fleet was included in the SSL RPA's. Even more recently numbers (released to the SSL mitigation committee earlier in the year) inside 10 miles from Atka mackerel were misstated as well. As we look at the total take with-in critical habitat, if our number is misstated it effects us, as we have a problem looking at our percentage of that take as whole. That is a current ongoing problem. So

these unintentional misstatements when they occur industry needs the ability (time) to see these corrected. I think we are in a time sensitive crunch. If you read the protected resources report depending on which line you read it is a very compressed, or extremely compressed schedule.

I do understand the need to weigh out protection vs. process, on one hand we need to assume that process does not become so convoluted that it truncates the need for protections. However that is not the case here. Proper process to assume any protection measures are based on a Bi-op that has received proper SSC Review, CIE and outside expert review is completely reasonable. In addition some protection measures are currently in place.

The time line that was outlined in earlier public testimony I do support. This would allow one more thing that hasn't been brought up. There is a non pup count this summer. There have been problems with getting pup and non pup counts in the far west Aleutians where the largest problem is. My understanding it has been weather, permitting problems and runway issues. As far as I know it is set up for this summer. I don't think it would be entirely unreasonable to wait for that pup count to take place and move this process to 2011.

In closing I did fret whether to come before the council and testify on this issue at all. I understand the need for the agency. I understand the difficulty of the council as Mr. Henderschedt brought up earlier in the ability to really do much in the August meeting. I am sincere in my concerns that I feel that the proper public process is important to your group. That this extremely compressed time schedule actual takes something away here in the process and might be unthinking.

Kenny Down
Executive Director
Freezer Longline Coalition



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Suite 202
Seattle, WA 98199

Freezer Longline Coalition
Alternative RPA, for fixed gear vessels fishing with Longline gear in the Aleutian Island.

Agenda item: B-1(a)

Steller Sea Lion Biological Opinion

Review the Draft SSL BiOp and draft EA/RIR for potential mitigation alternatives

Red Line Version using draft SSL Bi-Op RPA from executive summary as template.

RPA for Area 543

Pacific cod fishery

1. Close the directed fishery and prohibit retention of P. Cod in Area 543.

Atka mackerel fishery

1. Close the directed fishery and prohibit retention of Atka mackerel in Area 543.

RPA for Area 542

Groundfish fishery

1. Close waters from 0-3 nm around Kanaga Island/Ship Rock to directed fishing for groundfish by federally permitted vessels.

Pacific cod fishery

1. Close the 0-10 nm zone of critical habitat to directed P. cod fishing by federally permitted vessels using fixed gear year round. Close the 4-10-20 nm zone of critical habitat to directed fishing for P. cod by federally permitted vessels using fixed gear January 1 through June 10.

2. Close the 0-20 nm zone of critical habitat year-round to directed fishing for P. Cod by federally permitted vessels using trawl gear.

3. Prohibit P. cod fishing November 1 through December 31 in Area 542.

Atka mackerel fishery

1. Close the 0-20 nm zone of critical habitat to directed fishing for Atka mackerel by federally permitted vessels year round.

2. Set Atka mackerel TAC for Area 542 to no more than 47% of ABC.

3. Eliminate the HLA platoon system for Atka mackerel harvest.

4. Change the Atka mackerel seasons to January 20 through June 10 for the A season and June 10-November 1 for the B season.

RPA for Area 541

Pacific cod fishery

Federally permitted vessels using fixed gear in area 541 remain under existing management measures.

1. Close the 0-10 nm zone of critical habitat to directed fishing for P. cod by federally permitted vessels using trawl gear year-round.

2. Close the 10-20 nm zone of critical habitat to directed fishing for P. cod using fixed gear by federally permitted vessels January 1 through June 10.

3. Close the 10-20 nm zone of critical habitat to directed fishing by for P. cod using trawl gear by federally permitted vessels June 10 through November 1.

4. Prohibit P. cod fishing November 1 through December 31 in Area 541.

Atka mackerel fishery

1. The available data do not indicate a need to further modify fishery management measures to conserve Atka mackerel forage availability within this fishery management area. However, the elimination of the platoon management system provides an opportunity to further disperse the Atka mackerel seasons to January 20 through June 10 for the A season and June 10 through November 1 for the B season.



John Gauvin

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August 18, 2010

Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RE: Preliminary comments on SSL Biop

Dear Chairman Olson:

The Alaska Seafood Cooperative is in the process of reviewing the draft SSL biological opinion and although our review is not yet completed we would like to take this opportunity to provide the Council with our group's preliminary assessment of some of the scientific underpinnings of the draft biological opinion. Additionally we would like to provide some thoughts on how well the proposed RPAs are supported by the analyses of the Biop and the need for an alternative RPA to accomplish the SSL protection objectives with less impact on fishing and related industries that depend on the Aleutian Islands. Thanks in advance for considering these issues as the Council reviews and develops its own comments on the draft document.

Sincerely,

John Gauvin
Fishery Science Projects Director

Preliminary Issues related to Draft Biological Opinion

In the draft Biological Opinion (Biop), NMFS postulates that the "weight of evidence" indicates that competition between fisheries and Steller sea lions (SSLs) for Atka mackerel and Pacific cod in the western and central Aleutians may compromise availability of food resources for SSLs sufficiently to jeopardize their continued existence or adversely modify their critical habitat. The draft Biop also argues that declines in SSL populations west of 178 require different management measures west of 178 as compared to east of 178.

There has been inadequate time to review this 700+ page document on a complex and controversial subject. However, a preliminary review of the document, taking it at face value, raises significant concerns about the conclusions being drawn. The hypothesis of nutritional stress from the fisheries causing reduced SSL natality does not accurately reflect conditions in Areas 541, 542 and 543; or is based on either weak data or proxy data used to fill in for an absence of area-specific data. Key issues of concern from our preliminary review include:

1. Theory that Aleutian Islands are less productive than other areas: The Biop's conclusion that Aleutian Islands are somehow less productive, less hospitable, and therefore more in need of protection is not well supported. The passes and upwelling features of the Aleutian chain make the area extremely productive in terms of groundfish biomass. The biomass of 1.1 million mt from the Aleutian Island summer trawl surveys is roughly only a fifth that of the Bering Sea but if considered on a spatial basis, the much smaller shelf area (<1000 meters) of the Aleutians means that the amount of groundfish per square kilometer is actually higher. The Biop acknowledges that NMFS had problems interpreting forage ratio data, noting on page 292 that the forage ratio for RCA 1 (western AI), where the SSL decline is greatest, is over 100 times greater than SSL consumption: "Given the long-standing decline in abundance of SSL in RCA 1, it is clear that a high forage ratio alone is not sufficient for understanding trends in abundance." The Biop observes that Atka mackerel production alone is sufficient to meet SSL consumption needs at Seguam, Tanaga and Kiska trawl exclusion zones, yet those are areas where the numbers of SSLs have declined in the last decade.

2. Aleutian Islands catch rate compared to available groundfish biomass: The "catch rate" calculations in the Biop depart from methodologies used in stock assessments and SAFE reports and lead to an unsupported conclusion that the fisheries in the western and central AI remove a very high percentage of the biomass. Chapter 5 of the Biop builds on the Fritz and Logerwell "white paper", which Dr. DeMaster acknowledged (in his SSC and AP presentations) uses highly questionable assumptions in an attempt to calculate catch rates at an extremely small scale. For example, to compensate for the patchy habitat of the Aleutian shelf, the Atka mackerel SAFE report recognizes that trawl surveys catch rates are variable and uses a rolling average of catch rates from the last four surveys to distribute mackerel biomass between AI management sub-areas, setting separate ABC in areas 541, 542, and 543. In contrast, in the Fritz and Logerwell white paper, survey point estimates and linear interpolations between survey years are used to distribute stock assessment biomass between the RCA areas of the Biop. Due to the relatively low 2006 trawl survey catch rates in 2006 in the western portion of the AI and because an AI survey has not occurred since 2006, the resulting effect is that cod and mackerel catches appear as a higher fraction of biomass per RCA than would occur if the SAFE report's stock assessment biomass assignment technique were used. The white paper calculations are the basis of the statement on page 191 of the Biop that western AI Atka mackerel biomass dropped 73% from

2004 to 2006 (because the survey in 2006 showed a drop in biomass). In fact, the stock status report shows a 3% change during this time.

3. Relative importance of areas outside critical habitat in the Central and Western Aleutian Islands: The Biop concludes that SSLs in these areas, unlike SSLs in other Western DPS subpopulations, spend over 22% of their time in the summer foraging outside of critical habitat (and 100% of their time inside critical habitat in winter). In Area 543, this conclusion is based upon telemetry data from three juvenile males from the central Aleutians. Dr. DeMaster cited this data as the reason for the closure of all of Area 543. The agency also points to a paper compiling forty years of observations on platforms of opportunity (POP) (Boor, 2010) but acknowledges that they have asked the author to revise the analysis to look only at data from the last decade, since the current paper includes data from when the entire western DPS population was higher. Even assuming that these two studies indicate that SSL use areas outside critical habitat in areas 543 and 542 to a somewhat higher degree than other subpopulations, the locations used are in extremely deep waters off the shelf. Given that Atka mackerel and cod are species that frequent the relatively shallow waters of the Aleutian shelf (100 to 500 meters), SSL feeding offshore in summer are not feeding on those species, but are likely concentrated on pelagic fishes such as lantern fishes and juvenile salmon.

4. Relative importance of Pacific cod in SSL diets in western and central Aleutians: The case for cod as an important prey species for SSLs is tenuous at best. The Biop relies on scat data to establish the relative importance of prey species in the western and central AI SSL subpopulations. See Table 3.16 (analysis of unpublished NMFS scat collection data). The agency has only 42 scat samples from the winter for the western AI, and thus combines that data with data from the central AI to reach its conclusions—while at the same time concluding that SSL diets vary widely depending on geographical area. In Sinclair and Zeppelin, cod is of low importance in summer and 4th highest (frequency of occurrence) in a total of seven prey items found in scats in winter in at least 11% of the time:

Major prey species in SSL scat Reg. 4 (543-541) in Sinclair/Zeppelin

<u>Season</u>	<u>species</u>	<u>Freq of occur %</u>
Winter (Dec-Apr)	Irish lords (sculp)	12.8%
	Pacific salmon	23.6%
	squid and octopus	11.5%
	Snailfish	11.5%
	rock greenling	21.6%
	Atka mackerel	64.9%
	Pacific cod	16.9%
	Pollock	2.7%
Summer (May-Sept)	Pollock	9.6%
	Atka mackerel	92.6%
	Pacific salmon	15.5%
	squid and octopus	18.2%
	Irish lords (sculp)	4.5%
	Pacific cod	6.5%

Given that the winter cod fishery generally occurs in a short time frame, and in different weeks in different areas, it stands to reason that because cod is only the fourth-ranked component of a varied diet, fishing for cod is unlikely to have a significant effect on SSL foraging in the winter. Consider also that fisheries do not occur for five of the top seven species in the winter SSL scat samples. Finally, during its SSC presentation, NMFS noted that lantern fish, juvenile salmon, and other small pelagic fishes are the likely SSL prey in offshore foraging trips in extreme depths where upwellings and eddies create surface layers. These items are digested and excreted at sea during these long foraging trips and therefore scat samples at terrestrial sites would likely overestimate the importance of shelf groundfish in the overall diet of SSLs.

5. Failure to use available research findings to craft management measures other than shutting down fisheries: The Biop cites in several places (e.g. page 230) the results from Fisheries Interaction Team (FIT) studies that examined the efficacy of trawl exclusion zones in areas 542 and 541 and mackerel fishery catches as a percentage of local biomass of mackerel. These results reflecting field work from 2002-2006 have been published and are potentially useful for crafting mackerel fishing opportunities where localized effects of prey removals are under 5% of local biomass and existing trawl exclusion zones are effective in terms of preventing effects on inside mackerel abundance. Instead, however, the Biop focuses on one of the study areas in 542 (Amchitka) where removal rates were dramatically higher, exclusion zones are not effective, and further extension of the trawl exclusion measures are warranted. The objective should be to allow fishing where available science suggests that fishing will not harm SSL instead of pointing to the one exception as a reason to prohibit all fishing inside critical habitat in the Central Aleutians.

6. Disconnect between the very localized scale of the Biop analyses and of broad sweep of proposed restrictions west of 178: The Biop concludes that vast swaths of fishing areas need to be closed in the Aleutian Islands to rebuild groundfish biomass to eliminate the Biop's judgment/theory that nutritional stress is causing reduced natality in the western and central SSL subpopulations. The projected increases in cod and mackerel due to these closures in the models used in the Biop are highly dependent on the starting points in terms of base year snapshots of biomass from the trawl survey and recruitment of incoming year classes (recruitment is never easy to predict). Available scientific information about where and how SSL use offshore feeding areas and where the effects of inside fishing can be adequately managed have been overlooked or downplayed. Additional alternatives for measures that would mean smaller, more surgical closures and other measures to mitigate potential for competition with SSL should be considered but are not. No explanation is given for why such refined measures were not considered.

All reasonable alternatives for measures that also meet the protection objectives but would possibly mean lesser economic impacts to affected fishermen and support industries need to be included in the Biop and supporting NEPA documents and given full consideration.

Forage Ratio based on biomass per unit area

Data from NMFS Summer Bottom Trawl Survey tech memos –
2007 GOA and EBS surveys, 2002/2004/2006 for Aleutian Islands.

CPUE kg/ha	AI	EBS	Shumagin	Chirikof	Kodiak	Yakutat	WDPS GOA	SEAK
P. cod	15.0	9.8	17.5	4.5	7.9		7.3	2.5
Pollock	16.7	85.7	15.0	13.3	8.0	3.5	9.9	9.7
Atka Mackerel	128.0	0.0	12.3					
Arrowtooth	26.1	9.7	40.5	86.5	83.7	22.8	60.6	38.1
Sculpin	3.1	4.8	1.9					
Aggregate of 5 groundfish prey species	188.9	110.0	87.2	104.3	99.6	26.3	77.8	50.3

Survey biomass est.	AI	EBS	Shumagin	Chirikof	Kodiak	Yakutat	WDPS GOA	SEAK
P. cod	56,931	463,374	114,207	30,701	79,705	1,664	226,277	7,033
Pollock	133,528	4,156,687	97,627	90,580	81,187	19,763	289,157	27,068
Atka Mackerel/hake	795,400	50,343	80,546	1,563	219	6,343	88,671	19,699
Arrowtooth	101,022	482,184	263,856	588,425	849,461	130,526	1,832,268	106,787
Sculpin	15,526	215,872						
biomass aggregate 3	985,859	4,670,404	292,380	122,844	161,111	27,770	604,105	53,800
biomass aggregate 5	1,102,407	5,368,460	556,236	711,269	1,010,572	158,296	2,436,373	160,587
km2 of survey area	56,931	463,374	65,228	68,053	101,489	57,197	291,967	28,038
CPUE in ton/km2 of top 3 groundfish prey species	17.3	10.1	4.5	1.8	1.6	0.5	2.1	1.9
CPUE in ton/km2 of top 5 groundfish prey species	19.4	11.6	8.5	10.5	10.0	2.8	8.3	5.7

Forage Ratios based on approach used in 2001 BiOp.

Area	SSL non pup counts from table 6 & 7 2009 SSL survey memo	Daily ration (lbs per day per SSL)	Annual ration (tons per year per SSL)	Annual pup needs for non-pup count	Bottom trawl survey biomass of 5 top prey groundfish	Forage Ratio
EBS (RCA6)	6,711	40 lbs	6.62	44,444	5,368,460	120.8
AI (RCA1-5)	6,405	40 lbs	6.62	42,417	1,102,407	26.0
GOA	13,473	40 lbs	6.62	89,225	2,436,373	27.3
SEAK	16,985	40 lbs	6.62	112,483	160,587	1.4

daily ration from pg. 292 of 2010 BiOp

Quantifying Overlap –

Dive Depth

Prey Size

Spatial

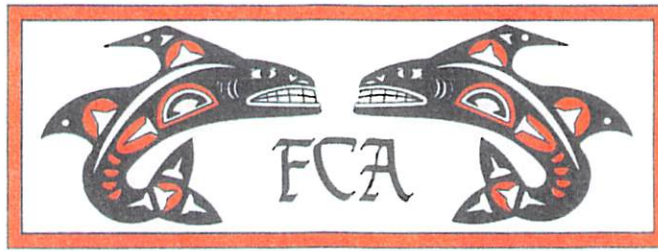
Temporal

One Kind of Overlap – “Maybe Bad”



Another Kind of Overlap – “Not So Likely to Be Bad”





Mr. Eric Olson, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Ste 306
Anchorage, AK 99501-2252

August 19, 2010

Re: SSL Biological Opinion and Environmental Assessment

Dear Chairman Olson:

FCA will lose \$15-20 million in Atka mackerel revenue, a "dead weight loss" that can not be made up in YF sole or any other fishery as indicated in the BiOp. We estimate the equivalent of 125 crew members will be displaced and untold millions of dollars in community related impacts in the form of fuel, food, ship repairs, etc.

The agency neglected to include any suggested forms of impact mitigation proposals for the fishing industry. Maybe an industry RPA should be included in the analysis such as:

- Forgo the anticipated reduction in Am 80 PSC allocations and restore those removed under Am 80 until the RPA's expire.
- Consider opening the Western GOA for Atka mackerel where stock assessments indicate this mackerel is likely an overflow from the Eastern AI and dying of old age.
- Utilize the Atka mackerel tagging study in area 541 to estimate the Biomass.

This Biop process simply does not provide for meaningful public input.

- The purpose of NEPA is to provide for informed decisions made with the benefit of public input.

There is no opportunity for meaningful public input in this process.

- Two weeks is not enough time to review over 1,000 pages of complex analysis that took the agency years to prepare.
- The agency continually changes its mind on what the process is going forward. They just say something "must be done" before

The Fishing Company of Alaska, Inc.

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January 2011 even though this ESA consultation has been on-going since 2006.

- From where we sit, it looks like NMFS has made up its mind and this meeting is just “window dressing”. After the fact input = no input at all.

The agency’s alternative analysis does not comply with the law.
Alternative 4 offered by the AP is a reasonable alternative that must be evaluated in good faith.

- The alternatives under consideration by the agency, as outlined in the draft EA, are totally inadequate and do not comply with NEPA.
 - NEPA requires an agency to “study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources.”
 - NMFS has decided where it wants to come out and narrowed and defined its analysis to get to that result using an unreasonably narrow definition of the proposed action – e.g. the EA considers the RPA in the draft BiOp as the “baseline”.
 - The agency must rigorously explore and objectively evaluate all reasonable alternatives and for alternatives which were eliminated from detailed study, briefly discuss the reasons for their having been eliminated. *The agency must evaluate the alternative put forth by the fleet because it is reasonable and feasible. It cannot summarily dismiss everything other than the RPA in the draft BiOp. The EA does not explain why other options are not feasible ways of protecting SSLs.*
 - The alternatives analysis “should present the environmental impacts of the proposal and the alternatives in comparative form, thus sharply defining the issues and providing a clear basis for choice among options by the decision maker and the public.” The agency must devote substantial treatment to each alternative considered in detail including the proposed action so that reviewers may evaluate their comparative merits. *Here, the EA does not even present all reasonable alternatives, let alone present a meaningful and accurate comparative analysis of their merits.*
- NEPA requires agency decision makers to “have before them and take . . . into proper account all possible approaches to a particular project . . . which would alter the environmental impact and the cost-benefit balance.” *Our alternative would be protective of SSLs in the Aleutians while mitigating*

what will otherwise be devastating social and economic impacts. Therefore, the Council and the agency must give it serious, objective consideration, and if it is eliminated as an alternative, explain why it does not meet the statutory and policy objectives.

This is a significant action that requires an EIS.

- The programmatic Biological Opinion requires preparation of an EIS. When it started this process, the agency said an EIS would be prepared – see Notice of Intent to prepare a Supplemental Environmental Impact Statement on revisions to SSL protection measures. 72 Federal Register 72992 (12/26/2007).
- The EA does not comply with NEPA because it only evaluates the proposed RPA in the BiOp as the “federal action”.
- The issuance of the BiOp and the formulation of a new RPA are actions “significantly affecting the quality of the human environment” requiring an EIS because, among other reasons, it involves issues which are:
 - highly controversial;
 - highly uncertain or involve unique and unknown risks;
 - establish a precedent for future actions with significant effects and represent a decision in principle about a future consideration; and
 - involve effects on an endangered species or its habitat.

There is no justification for using a direct final rule.

- The use of a “direct final rule” is inappropriate and probably illegal in these circumstances because there is no “good cause” to depart from normal rulemaking:
 - There has been no opportunity for informed put input into the action.
 - The action is not ministerial or routine, but instead is highly controversial.
 - To dispense with the normal notice and comment process, the Administrative Procedure Act requires the agency to find that notice and public comment are “impracticable, unnecessary, or contrary to the public interest.” NMFS cannot legitimately make any of those findings in these circumstances.
- To the extent that action is needed before the start of the 2011 fisheries, it should be done through an emergency rule under the Magnuson Act, so that normal rulemaking with full public comment and peer review can take place on a reasonable schedule. This is exactly the type of process that

MSA emergency rules are supposed to be used for – taking temporary action while a full and fair process to formulate a permanent solution can unfold.

Sincerely yours,

A handwritten signature in blue ink, appearing to read "Mike Szymanski". The signature is fluid and cursive, with a large initial "M" and "S".

Mike Szymanski
Government Affairs

cc: NPFMC members

Mike Hyde



Mr. Eric Olson, Chair
North Pacific Fishery Management Council
605 W. Fourth Avenue, Suite 306
Anchorage, AK 99501-2252

13 August 2010

Stellar Sea Lion Biological Opinion

We are writing in response to the draft Biological Opinion and Environmental Assessment that we understand proposes to add significant new restrictions to fishing for Pacific cod and Atka mackerel in the Aleutian Islands, and to ask that you review additional facts as you consider these proposed closures.

At Ivar's we celebrate our 72nd anniversary this month. We've been selling fish and chips featuring Pacific True Cod since the day Ivar opened one of Seattle's first aquariums on Pier 3, (now Pier 54) at the center of the Seattle waterfront. Today we operate more than 60 restaurants throughout Puget Sound, extending east to Spokane, north to Bellingham, and south to Tacoma, with one store in San Jose, California. In today's payroll we will employ more than 1,100 U.S. citizens. Our fish and chips have won every cooking contest, readers' poll, newspaper contest, and cook off. We are proud of our seafood heritage and proclaim it in our advertising: we serve only wild, sustainably managed fish, most from Alaska, the overwhelming portion of our cod caught for us by the U.S.-flagged and owned catcher-processor **Katie Ann** in the Western Aleutian Islands.

So important is the **Katie Ann** to our strategy, that we bring our store managers to the boat every other year to tour it, meet the people who are catching and processing the fish which we sell in our stores (see photo). Each of our stores features a poster showing the **Katie Ann** at sea (attached). The cod from the Western Aleutians are most attractive to us because they tend to be very large, allowing us thick, moist fillets, the most flavorful kind we love to serve our guests. So much do they like them that we served more than two million orders last year to the 5,294,000 people visited our restaurants.

Fish and chips account for about \$10 million of sales, and they are the bestselling item on our menu.

Our program evolved after a decade of development and refinement with American Seafoods and the crew of the **Katie Ann**. They catch, clean, fillet, and freeze our fish within hours of catching, so when we thaw the fish before cutting into service sizes, the fish are better than anyone else's we've ever tested. Both American Seafoods and Ivar's have invested years in this program and our customers taste the depth of that investment with

every fish they dip in our famous tartar sauce. We doubt we will be able to quickly or easily replace this program with other vessels or other fish.

We fear what will happen to the quality of cod and its cost if additional fishing restrictions in the Western Aleutians are implemented. If as a result of these new restrictions the Katie Ann is no longer able to find the large and high quality cod it has harvested for us, there would be a direct adverse impact on our U.S. consumers, U.S. employees and consequently the U.S. economy. This discussion has happened so quickly that our planning for life without cod from Western Alaska has just begun—but first plans are not pretty.

Please consider these factors as you consider the closures and call if we can provide any more data.

Keep Clam,



Bob Donegan
President
www.Ivars.com
206 587 6500

Pacific True Cod
caught by the
Katie Ann
in Alaska
for Ivar's.

Hand Cut and
prepared Fresh.





AMERICAN SEAFOODS COMPANY

Lover's
Since 1938

ALL RAD

Katie Ann
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