

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence Pautzke  
Executive Director



ESTIMATED TIME  
1 HOUR

DATE: November 26, 2001

SUBJECT: Steller Sea Lion Issues

**ACTION REQUIRED**

Receive report on Alaska Board of Fisheries actions and agency response from NMFS.

**BACKGROUND**

The Alaska Board of Fisheries met on November 13 and 14 in Anchorage. One of the issues discussed was their response to the Council's October action relative to fishery management changes designed to protect Steller sea lions. Council staff and ADF&G, and NMFS staff provided background presentations to the Board.

A summary of the Board's actions is attached (Item C-9(a)). Essentially, the Board delegated authority to ADF&G to mirror federal regulations adopted for pollock, cod, and mackerel fisheries. In addition, haulouts of Cape Barnabas and Caton Island would be open to fishing with pot gear within 0-3 nm. The season for Pacific cod in the Chignik area would begin on March 1. These regulations sunset on December 31, 2002. The Board's motion also requested the Council to include these options in the trailing amendment package.

Comparison of measures adopted by the Council and by the Board of Fisheries.

<u>Area</u>	<u>Council Action</u>	<u>Board Action</u>
Cape Barnabas	0-3 nm open to jig gear 0-3 nm closed to trawl & fixed gear	0-3 nm open to jig gear 0-3 nm open to pot gear
Caton Island	0-3 nm open to jig gear 0-3 nm closed to trawl & fixed gear	0-3 nm open to jig gear 0-3 nm open to pot gear
Chignik Area	Open State waters cod fishery seven days after closure of directed Federal season in Central Gulf	open state fishery on March 1

Item C-9(b) contains NMFS's response to the Board's recommendations.

**ALASKA BOARD OF FISHERIES**  
**SUMMARY OF ACTIONS**  
**STATE WATER GROUND FISH and OPILIO CRAB SEASON DATES**  
November 13 – 14, 2001  
Anchorage, Alaska

DESIGNATED REPORTER: Joe Chythlook

*This summary of actions is for information purposes only and is not intended to detail, reflect or fully interpret the reasons for the Board's actions.*

State Waters Groundfish Fisheries

**PROPOSAL NO. 499**

**ACTION: Carried as amended**

**DESCRIPTION:** Create a new management plan for managing the parallel groundfish fisheries in state waters.

**AMENDMENTS:** Delegate authority to commissioner to open and close seasons and areas in state waters by emergency order for Pacific cod, pollock, and Atka mackerel as necessary to match federal regulations that address fishing restriction in state waters for the purpose of protecting Steller sea lions. This includes authority to adopt gear restrictions, vessel size limits and monitoring and enforcement measures. Additionally, if the commissioner exercises this authority, two areas must be opened to pot gear (in addition to the already allowed jig gear): The area described in the federal fishery as the closed area surrounding the Cape Barnabas haul out, and the area described in the federal fishery as the closed area surrounding the Caton Island haul out. This regulation sunsets December 31, 2002.

**DISCUSSION:** The board received information from ADF&G and National Marine Fisheries Service (NMFS) concerning important areas to protect (haul-outs and rookeries), data including the number of observations of sea lions in these areas, and requirements of the Endangered Species Act. NMFS provided input about the RPA committee process, used by the North Pacific Fishery Management Council, and how it evaluated and measured effects on critical habitat areas of the sea lions in order to avoid the "jeopardy bar," which is jargon for the determination that activities in these areas risk adverse modification to critical habitat or otherwise inhibit recovery of sea lions. NMFS answered questions about how areas were designated as haul-outs and/or rookeries, the unknowns about movement of sea lions in and around the Gulf of Alaska, and details about interactions between pups and mothers.

The board discussed the high degree of uncertainty as to the science that the current federal plan is based upon, including the unproven theory that the decline of western Steller sea lions is caused by nutritional stress. The board focused on two small areas, Cape Barnabas near Kodiak and Caton Island south of the Alaska Peninsula, where all data show that sea lions are not present in either area during the months that a winter P. cod fishery would occur. Then the board discussed gear that is used in P. cod fisheries, and selected one gear type, pots, that can be used in the two small haul-out areas. Pots were selected because they catch smaller amounts of fish. Jig gear is already allowed there by federal regulation, and the board disallowed trawl and longline gear because it is more efficient gear.

Earlier communication between the board and NMFS staff indicated that, if the board made a small change within the state parallel fisheries from protections imposed on the adjacent federal fisheries, it would not change the overall assessment as to whether

jeopardy occurs within interpretation of the Endangered Species Act. The board believes that adopting the federal plan with this fairly limited action to allow pot gear in two small areas is prudent, a small number of fish will be taken, this small catch is important to local people in coastal communities who are dependent on it, and that this action is consistent with the board's mandate for the orderly development of fisheries in state waters.

**PROPOSAL NO. 407**

**ACTION: Carried as amended**

**DESCRIPTION:** Amend the state Pacific cod management plans to address state waters groundfish fisheries as necessary for the purpose of protecting Steller sea lions.

**AMENDMENTS:** Open the Pacific cod season in the Chignik Area on March 1, 2002. This regulation sunsets December 31, 2002.

**DISCUSSION:** NMFS indicated that changes to state waters groundfish fisheries will not present a problem in meeting standards for protecting Steller sea lions. The board set the date for the season to reflect the dates when the buyer for Pacific cod is in the area. The board believes the RPA committee measures passed by the NPFMC and NMFS were not representative of the Chignik fishery. The present TAC level was deemed appropriate.

Opilio Season Dates

**PROPOSAL NO. 426**

**ACTION: Failed**

**DESCRIPTION:** Change fishing season opening to noon, March 15.

**DISCUSSION:** The board did not find a compelling reason to change the season at this time. The arguments for changing the season include weather-related safety and weather-related bycatch concerns. The arguments against changing the season include the allocative aspects, and that a later season puts fishermen right on top of the reproductive season for the crab. The board characterized the industry as already suffering and any changes to the season could go against stabilizing the fishery. The board concluded that changing a season date on such a short notice could also disrupt people's plans to participate.

**PROPOSAL NO. 427**

**ACTION: No Action**

**DESCRIPTION:** Change fishing season opening to noon, March 15.

**DISCUSSION:** No action based on action taken on proposal 426.

**PROPOSAL NO. 428**

**ACTION: No Action**

**DESCRIPTION:** Change fishing season opening based on GHL.

**DISCUSSION:** No action based on action taken on proposal 426.

**PROPOSAL NO. 429**

**ACTION: No Action**

**DESCRIPTION:** Change fishing season opening based on GHL.

**DISCUSSION:** No action based on action taken on proposal 426.

**SUMMARY:** The board also announced that, given action on these four proposals, the season dates for opilio fishing would not be considered during the March 2002 board meeting.

**PETITION**

**ACTION: Failed**

**DESCRIPTION:** Find emergency exists in Alitak Bay for set gillnet salmon fishermen on the south end of Kodiak Island.

**DISCUSSION:** The board found that the request for an emergency did not meet the petition criteria set out in regulation.

Miscellaneous Business

**DEMERSAL SHELF ROCKFISH**

The department staff brought to the board's attention an error in the regulations concerning closed waters for directed fishing for demersal shelf rockfish in three areas in Southeast Alaska. This regulation was inadvertently omitted during the 1999-2000 board cycle when the regulations were revised to accommodate full retention of rockfish. The board will generate a proposal and distribute it for public comment. Regulatory action will be scheduled for the March 2002 meeting.



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

November 27, 2001

RECEIVED  
NOV 28 2001  
N.P.F.M.C

Mr. Clarence Pautzke  
Executive Director  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501-2252

Dear Clarence,

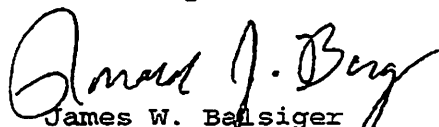
At its December 2001 meeting, the North Pacific Fishery Management Council (Council) is scheduled to receive a report on the Alaska State Board of Fish (BOF) action concerning Steller sea lion protection measures in State waters, as well as a response from NMFS on the BOF action. The attachment to this letter provides a summary of the BOF action and NMFS's response.

In summary, the BOF action would allow additional fishing by vessels using pot gear within 3 nm of two haulouts in the Gulf of Alaska. Although additional exemptions to Steller sea lion protection measures are in the "wrong direction" with respect to what the Council was attempting to accomplish, the additional adverse effect of the BOF action is considered minimal and will not change the conclusions of the October 2001 biological opinion.

The BOF action generated some concern within the fishing industry based on our discussion with the BOF about potential impacts of the BOF's action. Although the BOF action would result in additional adverse effects, those effects would be insignificant when considering the endangered western population of Steller sea lions as a whole, which is the perspective used by the Council and NMFS in developing the protection measures adopted by the Council at its October 2001 meeting. Therefore, the BOF action will not impede NMFS's approval of the Council's October action.

We do, however, have concerns about the compounding effects of the trailing amendments that would implement additional exemptions from seasonal harvest restrictions or protection zones. These trailing amendments were proposed at the Council's October meeting. Continual eroding of the SSL protection measures without new scientific information to support such action will be closely assessed by NMFS in the environmental assessment prepared for these proposed actions.

Sincerely,

*For*   
James W. Balsiger  
Administrator, Alaska Region



Attachment

## Attachment

At its November 13-14 meeting, the Alaska State Board of Fish (BOF) reviewed the North Pacific Fishery Management Council's recommendation for Steller sea lion protection measures and the expectation by NMFS and the Council that the BOF would mirror these protection measures in State waters during the time period that the federal fisheries for pollock, Atka mackerel and Pacific cod were open. These measures generally would consist of fishery or gear specific directed fishing closures within 3, 10, or 20 nautical miles of Steller sea lion rookeries or haulouts.

The BOF response generally was supportive and, except as provided below, provided authority to the Commissioner of the Alaska Department of Fish and Game (ADF&G) to open and close seasons and areas in State waters by emergency order as necessary to match federal regulations that address fishing restrictions in State waters for the purpose of protecting Steller sea lions. The two exceptions would allow directed fishing for Pacific cod with pot gear between 0-3 nm of the Caton Island and Cape Barnabus haulouts. The action considered in the October 2001 Biological Opinion on the proposed Steller sea lion protection measures would allow vessels using jig gear to fish within 3 nm of these two haulouts, but would have closed these 0-3 nm zones to vessels using other gear types, including pot gear. Thus, the BOF action would provide for additional pot gear fishing within critical habitat that was not considered as part of the federal action assessed in the October 2001 Biological Opinion.

The BOF took this action based on the fact that other haulouts adjacent to these sites would remain open to pot gear fishing under federal regulations; few Steller sea lions have been observed at the Caton Is. and Cape Barnabus haulouts and the animals that have been observed have been adults; and these two sites are not rookeries. Hook-and-line gear was not exempted because this gear type is not authorized in the State-managed Pacific cod fishery due to bycatch concerns and the BOF's desire to design an exemption that closely reflected State management philosophy of the cod fishery in State waters. The BOF exemptions, as well as ADF&G authority to mirror federal protection measures in State waters, would sunset at the end of 2002 to allow the BOF to evaluate any new information and to allow coordination with the Council if any changes in the federal protection measures are proposed for 2003.

The BOF also adjusted the 2002 season start date for the state-managed Pacific cod fishery in the Chignik area from 7 days after the closure of the federal Pacific cod fishery to March 1. This action would address concerns by Chignik area fishermen that federal

protection zones would preempt their ability to fish in March when market conditions are most optimum.

The following table shows the amount of fishing effort near Caton Island and Cape Barnabus in 1999 and 2000. This information is based on fish ticket data and assumes that the harvest of fish in an ADF&G statistical area is evenly dispersed in the area surrounding the haulouts. It is possible that harvest is not evenly dispersed in a statistical area and more or less harvest may come from the 0-3 nm areas around these haulouts. All of the pot harvest in the State waters during the time period that the federal fishery is open around these haulouts is from vessels less than 60 feet length overall.

**Pacific Cod Pot Harvest in the State Parallel Fishery in 1999 and 2000**

Haulouts	1999		2000	
	Amount in mt	% of State Harvest	Amount in mt	Percent of State harvest
Caton Island	12	8 %	7	3%
Cape Barnabus	30	75 %	11	40 %

This data suggests that the additional total amounts of removal anticipated from opening these two sites (18 mt based on 2000 data) is relatively insignificant. Further, section 5.3.1.6 of the October 2001 BiOp indicated that pot gear removals typically do not reflect high catch rates that might aggravate concerns about localized depletion of prey. For these reasons, these pot closure exceptions should have minimal effects on Steller sea lions

The State managed Pacific cod fishery in the Chignik area historically has opened seven days following the closure of the directed federal season in the Central Gulf of Alaska. The exception adopted by the BOF will allow the state managed fishery to open earlier than in previous years. The State managed Pacific cod fishery in the Chignik area opened March 21 in 1999 and March 11 in 2000 and 2001. The State parallel fishery that operates off the federal TAC would be closed under State regulation with the opening of the State managed fishery. The BOF changed the opening date to allow Chignik jig and pot fishermen maximum opportunity to harvest cod during better market conditions earlier in the year. The State managed Pacific cod pot fishery is limited to 60 pots while the parallel fishery has no pot limit. The rate of harvest will continue to be limited by the 60 pots per vessels restriction, and the total

amount taken will continue to be managed under the State's guideline harvest limit.

The BOF delayed action on requiring vessels to carry VMS units, but intends to take up this issue at its March 2002 meeting when more information hopefully is available on whether federal money will be available to help purchase required equipment. Federal regulations would not require operable VMS units until June 2002, giving the BOF time to be responsive to federal requirements.

In conclusion, NMFS believes that additional effects that would occur from the BOF actions would be sufficiently small as to not change the determinations of the October 2001 BiOp. As such, no further mitigating measures would be needed as a result of the BOF actions to address jeopardy and adverse modification concerns beyond those already addressed in the 2001 Biological Opinion.



November 28, 2001

David Benton, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252

RECEIVED  
NOV 28 2001  
N.P.F.M.C.

RE: 2002 Steller Sea Lion RPA Proposal and Small-Boat Fixed-Gear

Mr. Chairman,

At the October Council meeting in Seattle, members of the fishing public from Unalaska/Dutch Harbor and Chignik appealed to the Council to exempt certain fixed-gear vessels <60 ft. length from closure areas in the proposed 2002 Steller sea lion RPA. These exemptions would allow longline, pot and jig vessels <60' to fish for cod in portions of closed Area 9 (Bogoslof District) and Area 4 (Chignik). The Council voted to reject such proposals, arguing that these last-minute modifications would jeopardize the ability of the Council's RPA to survive judicial review.

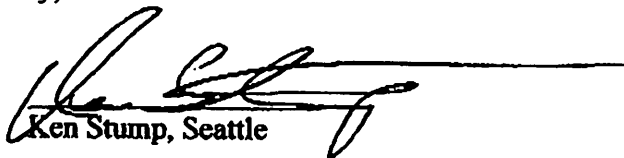
The vessels in question are small and few in number, their catches miniscule relative to the total cod catches in any area. They were not represented or consulted during the Council RPA Committee's negotiations, but they are affected by decisions that shut them out of accustomed fishing grounds. By stark contrast, the proposed 2002 RPA certainly *does* protect the interests of the trawl industry sectors that take the lion's share of the groundfish TACs and who would be permitted to take most of their catch from areas of sea lion critical habitat.

In short, the Council's proposed RPA rewards the dominant trawl industry sectors and penalizes the smallest of the small vessels using the cleanest gear types with the lowest impact on the environment.

The Council's proposed plan attempts to turn back the clock to a time before there were RPAs, therefore discussing exemptions to an inadequate and illegal RPA is moot. NMFS must go back to the drawing board and design an adequate RPA that protects Steller sea lion critical habitat from the vessels that account for the vast majority of the catches. If areas of critical habitat are to be opened to groundfish fishing under a future RPA, it is the smallest vessels using the lowest-impact gears that should be first in line for consideration, not last.

The Chignik and Unalaska/Dutch Harbor fixed-gear cod fishermen are a case in point.

Sincerely,

  
Ken Stump, Seattle

TONY KNOWLES, GOVERNOR

**DEPARTMENT OF FISH AND GAME**

BOARD OF FISHERIES

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JUNEAU, ALASKA 99802-5526  
PHONE: (907) 465-4110  
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NOV 28 2001

**N.P.F.M.C**

David Benton, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave., Suite 306  
Anchorage, AK 99501

Re: Board of Fisheries\NPFMC Protocol

Dear Mr. Benton:

The Alaska Board of Fisheries is very concerned about the Steller sea lion related federal regulatory process that took place in the 14 months prior to the board's November 13-14, 2001 meeting. Although at our recent meeting we approved virtually all of the North Pacific Fishery Management Council's recommended closures for state waters, we did so without benefit of consultation during development of the Reasonable and Prudent Alternatives (RPAs), under threat of large scale fisheries closures, and with great skepticism about the underlying operative assumptions of the National Marine Fisheries Service's biological opinion. The board's actions will sunset in one year.

It is troubling that the sea lion protective draft Supplemental Environmental Impact Statement (SEIS) and the Section 7 Biological Opinion (August 2001 BiOp, or BiOp4) presumes, throughout the document, parallel sea lion related regulatory restrictions in state waters. The State of Alaska is not under the same Endangered Species Act constraints that restrict actions by a federal agency, and the agency should not conjecture that the state will act in a particular manner. To date, NMFS has not met with the board to discuss the underlying assumptions for the Biological Opinion, limitations on the Endangered Species Act's application to state actions, or alternative approaches appropriate for state waters.

The board understands that the council was forced to approve emergency measures last January so that the federal fisheries off Alaska could continue. We also appreciate the time constraints placed on the council by NMFS to RPAs for the 2002 fisheries. Nevertheless, the board's consideration of regulations for the parallel fishery would have benefited greatly from consultation prior to the completion of the RPA committee work.

The State of Alaska has appointed its own Steller Sea Lion Restoration Team (ASSLRT). The team has produced a substantial report evaluating BiOp3 which is also applicable, in all but a few details, to BiOp4. The Board of Fisheries affirms the conclusions of the ASSLRT report and anticipates that, in future discussions regarding fisheries regulations protecting Steller sea lions, this report will provide foundational information for board actions.

Thank you in advance for your consideration of the board's concerns regarding this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Ed Dersham", with a long horizontal flourish extending to the right.

Ed Dersham, Chairman   
Alaska Board of Fisheries

DECEMBER 2001

Supplemental



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

*National Marine Fisheries Service*

P.O. Box 21668

Juneau, Alaska 99802-1668

November 27, 2001

**RECEIVED**  
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Clarence Pautzke  
Executive Director  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501-2252

Dear Clarence,

Thank you for your letter summarizing the North Pacific Fishery Management Council's final action on Steller sea lion protection measures. You also reiterated the Council's request to NMFS to explore federal funding options for subsidizing a vessel monitoring system (VMS) to facilitate the monitoring and enforcement of these protection measures. We have forwarded this request to NMFS Headquarters and intend to provide you a report at the Council's February meeting on what level of funding, if any, might be expected.

The Council also requested that NMFS provide a discussion paper for its February meeting on procedures NMFS would use if a VMS unit ceases to function on a vessel. This information verbally has been provided to the Council by NMFS Enforcement. However, we understand the Council's interest to review a written statement of NMFS enforcement policy on this issue and it will be provided as requested.

Last, your letter noted the Council's request to NMFS to provide a preliminary evaluation from the perspective of the Endangered Species Act of the consequences of proposed trailing amendments to the Steller sea lion protection measures that generally are intended to provide relief from seasonal harvest restrictions or closure areas. The Council desired that these consequences be assessed on each individual element as well as the possible combinations of the elements. Instead, we suggest that potential effects on Steller sea lions and their critical habitat be included as part of the environmental assessment prepared on the Council's proposed actions. We are prepared to help draft this analysis and can discuss the timing and staff resources necessary to accomplish this task relative to existing workload priorities.

Sincerely,

*James W. Balsiger*  
For **James W. Balsiger**  
Administrator, Alaska Region

cc: William T. Hogarth, Ph.D.  
Jeff Passer, NMFS Enforcement

