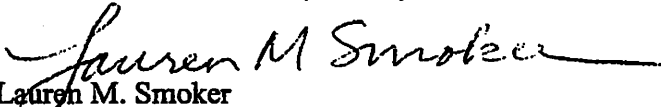




UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 21109
Juneau, Alaska 99802-1109

June 9, 2003

MEMORANDUM FOR: The North Pacific Fishery Management Council

FROM: 
Lauren M. Smoker
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SUBJECT: Request for legal guidance on the Alaska Groundfish PSEIS and the possible effects of the timeline

This memorandum has been prepared at the request of the North Pacific Fishery Management Council (Council). You have asked for legal guidance on two specific questions concerning the Alaska Groundfish Programmatic Supplemental Environmental Impact Statement (PSEIS):

1. What are the possible legal vulnerabilities if the Council is unable to make a recommendation on a particular action by the estimated date for action in the timeline?
2. Can the Council deviate from the selected policy and/or FMP framework?

In order to answer these questions, this memorandum first describes the actions before the Council and NOAA Fisheries in finalizing the PSEIS and the nature of the timeline and its relationship to the PSEIS.

Description of Actions before the Council and NOAA Fisheries

Through the PSEIS, the North Pacific Fishery Management Council (Council) and NOAA Fisheries are analyzing the impacts associated with the continuing authorization and management of the Alaska groundfish fisheries under the current FMP policy statements, as well as the impacts that would result under alternative FMP policy statements. This is a programmatic evaluation of the groundfish fisheries and as such contains alternatives that examine fishery management from different policy approaches. Each alternative contains a policy statement, comprised of an overall management approach and specific management objectives. In order to illustrate a range of potential actions and a range of environmental consequences associated with the policy statement, each alternative also contains an FMP framework. With the exception of Alternative 1, each FMP framework contains two example FMPs that represent the range, or "bookends," of management measures that would be employed to meet the policy statement. For



this PSEIS, both the revised Draft PSEIS and the Final PSEIS will identify a preferred alternative. The preferred alternative will contain the policy statement and FMP framework that represent the policy direction that the Council and NOAA Fisheries wish to pursue. When NOAA Fisheries issues the Record of Decision (ROD) for the PSEIS, the ROD will identify the selected policy statement and the FMP framework.

If a decision is made to continue managing the Alaska groundfish fisheries under the current policy statements (Alternative 1(a)), then no further action is required by the Council or NOAA Fisheries. If a decision is made to manage the Alaska groundfish fisheries under a new policy statement (*i.e.* the selection of an alternative other than Alternative 1(a)), then FMP amendments would be required to incorporate the new policy statement.¹ Under this second scenario, the Council would submit FMP amendments for Secretarial review under section 304(a) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) that would incorporate the new policy statements into the BSAI and GOA FMPs. The FMP amendments would include only the policy statement identified in the ROD.² The selected policy will be implemented upon Secretarial approval of the Council FMP amendment in that the Council and NOAA Fisheries will begin immediately to apply the new fisheries management policy to all actions currently under Council and agency consideration as well as future actions contemplated by the Council and NOAA Fisheries. The Council and NOAA Fisheries will move in the management direction proscribed by the selected policy statement upon Secretarial approval of the FMP amendments. If the FMPs do not currently contain management measures consistent with the selected policy statement, the FMPs will ultimately be amended to contain the specific management measures that conform to the policy statement.

Description and Nature of the Timeline

During the development of the revised alternatives, it was suggested that a timeline be developed. The timeline will contain estimates as to when the Council intends to initiate analysis on various actions and when the Council would likely be able to take final action on those analyses, thus providing estimates as to the entire length of time needed from Secretarial approval of the policy statement to a Council recommendation on current and future actions. The suggestion of a timeline was made in recognition of the fact that the Council and NOAA Fisheries cannot consider all actions simultaneously. The Council and NOAA Fisheries can

¹Alternative 1(a) contains the policy statements explicitly stated within the BSAI and GOA FMPs. Alternative 1(b) is an updated policy statement that represents the current policies of the Council and NOAA Fisheries whether explicitly stated within the FMPs or as evidenced by the management measures that have been adopted by the Council and NOAA Fisheries since the FMP policy statements were included in the FMPs. While the selection of Alternative 1(b) would require an FMP amendment to update the policies currently contained in the FMPs, Alternative 1(b) does not represent a change to the Council's and NOAA Fisheries' current policies.

²The FMP amendments would not include the FMP framework identified in the ROD because the FMP framework illustrates the range of management measures that meet the stated management approach and objectives rather than the specific management measures that the Council and NOAA Fisheries will use to apply its policy statement to the management of the Alaska groundfish fisheries.

examine only a finite number of actions at one time and some actions will take longer than others to develop and analyze. The Council intends to develop this timeline at its June 2003 meeting, to make the timeline available for public review and comment, to revise the timeline at its April 2004 meeting, and to periodically update the timeline thereafter.

None of the alternatives contain a range of potential dates for Council action on the various management measures and the PSEIS does not contain any analysis of the impacts that may result from differing dates for Council action. This is because the length of time that will be needed for the Council to analyze, take public comment, and develop recommendations on various actions under the policy statement is outside the scope of the purpose of and need for the PSEIS. As discussed earlier, the purpose of the PSEIS is to determine an appropriate fisheries management policy for the Alaska groundfish fisheries. The Council can recommend and NOAA Fisheries can select a fisheries management policy without the timeline. All aspects of the policy statement may not be effective immediately but the policy itself will be applied to all Council and NOAA Fisheries actions upon issuance of the ROD (if Alternative 1 is selected) or FMP approval (if an alternative other than Alternative 1 is selected). The policies embodied within the policy statement will be followed by the Council and NOAA Fisheries unless there is a decision to deviate from some aspect of the policy or the policy in its entirety (see later discussion on what happens if a different policy direction is considered by the Council and NOAA Fisheries). While NOAA Fisheries intends to acknowledge the Council's timeline in the ROD, the timeline is not part of the selected policy and will not be part of an FMP amendment implementing the selected policy.

Because the alternatives do not need a timeline in order to meet the requirements of the stated purpose and need, the National Environmental Policy Act (NEPA) does not require its inclusion and examination in each alternative. Additionally, NEPA does not contain a general requirement that a timeline be included in a ROD.³ Under the Magnuson-Stevens Act, FMP amendments that are approved or partially approved by NOAA Fisheries must be implemented by the agency. As discussed earlier, the selected policy will be implemented upon issuance of the ROD or Secretarial approval of the Council FMP amendment as the Council and NOAA Fisheries will begin to apply the new fisheries management policy to all actions currently under Council and agency consideration as well as future actions contemplated by the Council and NOAA Fisheries.

³CEQ regulations require a ROD to: (1) state what the decision was; (2) identify all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives which were considered to be environmentally preferable; (3) identify and discuss all such factors including any essential considerations of national policy which were balanced by the agency in making its decision and state how those considerations entered into its decision; (4) state whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not; and (5) adopt and summarize a monitoring and enforcement program where applicable for any mitigation. 40 C.F.R. 1505.2 and NAO216-6 sec. 4.01t.

What are the possible legal vulnerabilities if the Council is unable to make a recommendation on a particular action by the estimated date for action in the timeline?

The Council has asked what would happen if it failed to meet a date for a particular action within the timeline. Under this hypothetical, the Council would have discovered that the time estimated for completion of a particular action was underestimated and despite the Council's best efforts, more time is needed before the Council can take final action.

In this hypothetical situation, it is unlikely that a violation of NEPA could be alleged as the timeline is not within the scope of the purpose and need for the action and NEPA does not require the inclusion of a timeline in a ROD. The Administrative Procedure Act (APA) provides that a reviewing court can compel agency action unlawfully withheld or unreasonably delayed. 5 U.S.C. section 706(1). Also, the Magnuson-Stevens Act at section 304(c)(1)(A) states that "The Secretary may prepare a fishery management plan, with respect to any fishery, or any amendment to any such plan, in accordance with the national standards, the other provisions of this Act, and any other applicable law, if the appropriate Council fails to develop and submit to the Secretary, after a reasonable period of time, a fishery management plan for such fishery, or any necessary amendment to such a plan, if such fishery requires conservation and management." 16 U.S.C. 1854(c)(1)(A). If the Council fails to meet a deadline within the timeline for a particular action or amends the timeline to extend the amount of time needed to complete a particular action, a legal challenge may be brought against NOAA Fisheries under the APA or the Magnuson-Stevens Act, alleging that there has been an unreasonable delay in addressing an identified conservation and management need, and asking the court to compel agency action.

If such a challenge is brought, the timeline and its attendant explanation as to why the Council developed the schedule as it did will provide a basis for demonstrating that the Council and NOAA Fisheries are acting in a reasonable period of time and are not unreasonably delaying action.⁴ The timeline will provide further evidence that the Council is following the selected policy and is not delaying action unreasonably or failing to act altogether. As such, it would be prudent for the Council to review the timeline periodically to ensure that the Council's actions are proceeding according to schedule. If it appears that the Council will be unable to finish its review and make a recommendation on a particular action within the estimated time, then, in advance of the original estimated completion date, the Council should amend the timeline to reflect the new estimated completion date.

⁴See *Conservation Law Foundation of New England, Inc. v. Franklin*, 989 F.2d 54, 60 (1st Cir. 1993) (finding Magnuson Act unequivocally vests Secretary with discretion to determine whether Council's progress on conservation and management is reasonable); see also *American Oceans Campaign v. Daley*, 183 F.Supp. 2d 1, 14 (D.D.C. 2000) (stating what constitutes "reasonable" amount of time within which council may revise its FMP amendment is solely within Secretary's discretion given absence of any statutory deadline).

Can the Council deviate from the selected policy and/or FMP framework?

After NOAA Fisheries has issued a ROD on the PSEIS, and, if necessary, approved an FMP amendment, the Council may determine that a different policy or aspect of the adopted policy is more appropriate than that contained within the FMP. If this determination is made, the Council and NOAA Fisheries can examine and ultimately adopt a new policy. Likewise, if the Council determines that management measures outside of the range of measures contained in the ROD's FMP framework are more appropriate, the Council and NOAA Fisheries can examine and ultimately adopt those management measures.⁵

If either of these situations occur, the Council and NOAA Fisheries will have to determine the appropriate scope of the analysis given the contemplated changes and whether the action has significant impacts on the human environment such that a supplemental EIS is warranted. Not every change will require a supplemental EIS or an FMP-level programmatic analysis. The change would have to be "significant" within the meaning of NEPA and the CEQ regulations in order to warrant preparation of a supplemental EIS. The Council and NOAA Fisheries may prepare an EA, and if it is determined that the change is environmentally insignificant, NOAA Fisheries may issue a finding of no significant impact.

⁵The movement away from the management measures contained in the adopted FMP framework will likely necessitate an examination of whether a new policy is also under consideration.

KEY:	✓	currently in FMP/regs
	P	not in FMP/regs, but standard practice
	O	analysis initiated, ongoing
	A	to act on measure, Council would initiate analysis
	R	to act on measure, Council would make a priority recommendation to NMFS

PRELIMINARY PREFERRED ALTERNATIVE

Prevent Overfishing:

1. Adopt conservative harvest levels for multi-species and single species fisheries and specify optimum yield.

PPA.1		PPA.2	
- Set ABC < OFL	✓	- Set ABC < OFL	✓
- Sum of TACs has to be within OY range	✓	- Set TAC =< ABC for all targets and "other spp." category	P/A
- B ₂₀ rule for prey species (pollock, P.cod, Atka mackerel)	✓	- No change from PPA.1	✓
- Specify MSSTs for Tiers 1-3	P/A	- Initiate analysis of MSSTs for priority stocks based on the timeframe determined by additional availability of required resources taking into account SSC comments and concerns	R
- Continue to use and improve current harvest control rules to maintain a spawning stock biomass with the potential to produce sustained yields on a continuing basis	O	- Improve collection of biological information necessary to determine spawning stock biomass estimates, particularly for species in Tier 4-5	R
- Set group TAC for "other species".	✓	- Develop criteria for 'splitting and lumping' of species in order to have a consistent approach over as wide a range as possible ('other species', rockfish, non-specified, etc.)	O
- Maintain species categories (target, "other species", PSC and non-specified species)	✓	- Consider breaking sharks and skates and additional groups out of "other species" group for TAC setting	A
		- Develop criteria to bring a non-specified species into a managed category	A
		- Use F ₆₀ for rockfish as proxy for analysis	A?
- Target species closures when harvest limit is reached	✓	- No change from PPA.1	✓
- Species TAC distributed spatially for some BSAI and GOA species	✓	- No change from PPA.1	✓

2. Continue to use existing optimum yield cap for BSAI and GOA groundfish fisheries.

PPA.1		PPA.2	
- Sum of TACs has to be within OY range	✓		
- OY specified as range for BSAI: 1.4- 2.0 mill MT and OY specified as range for GOA: 116,000 - 800,000 MT; BSAI OY cap: if the sum of TAC > 2 mill mt then TAC will be adjusted down	✓	- No change from PPA.1	✓

3. Provide for adaptive management by continuing to specify optimum yield as a range.

PPA.1		PPA.2	
- OY specified as range for BSAI: 1.4- 2.0 mill MT and OY specified as range for GOA: 116,000 - 800,000 MT; BSAI OY cap: if the sum of TAC > 2 mill mt then TAC will be adjusted down	✓	- No change from PPA.1	✓

4. Initiate a scientific review of the adequacy of F_{40} and adopt improvements as appropriate.

PPA.1		PPA.2	
- Conduct F_{40} review and adopt appropriate measures as necessary	✓/O	- Develop, implement and update as necessary, procedures to account for uncertainty in estimating ABC, species-specific production patterns, and ecosystem considerations	O/R

Promote Sustainable Fisheries and Communities:

5. Promote conservation while providing for optimum yield in terms of providing the greatest overall benefit to the nation with particular reference to food production, and sustainable opportunities for recreational, subsistence and commercial fishing participants and fishing communities
6. Develop management measures that, when practicable, increase the efficient use of fishery resources taking into account the interest of harvesters, processors, and communities.

PPA.1		PPA.2	
- Continue development of rights-based mgmt, on a fishery by fishery basis as needed including: (a) IFQs (b) Coops (i) community-based (ii) sector-based (c) CDQs (d) Other community-based programs (e.g., halibut community share program as applied to other species)	O	- Rationalize all fisheries (all GOA, BSAI non-pollock/sablefish) - Ensure CDQ program maximizes benefits in rural communities	O/A

7. Promote management measures that, while meeting conservation objectives, are also designed to avoid significant disruption of existing social and economic structures.
8. Promote fair and equitable allocation of identified available resources in a manner such that no particular sector, group or entity acquires an excessive share of the privileges.

PPA.1		PPA.2	
- Retain existing gear restrictions and allocations. No pot fishing in GOA for sablefish. Sablefish and P. cod allocated by gear in BSAI. Sablefish allocated by gear in GOA.	✓	- Evaluate pot fishing in GOA for sablefish	A
- Continue development of rights-based mgmt, on a fishery by fishery basis as needed including: (a) IFQs (b) Coops (i) community-based (ii) sector-based (c) CDQs (d) Other community-based programs (e.g., halibut community share program as applied to other species)	O	- Rationalize all fisheries (all GOA, BSAI non-pollock/sablefish) - Ensure CDQ program maximizes benefits in rural communities	O/A

9. Promote increased safety at sea.

Preserve Food Web:

10. Develop indices of ecosystem health as targets for management.

PPA.1		PPA.2	
- Develop ecosystem indicators for future use in TAC-setting	O	- Develop and implement, as appropriate, criteria for using key ecosystem indicators in the TAC-setting process	R

11. Improve the procedure to adjust ABCs as necessary to account for uncertainty and ecosystem factors.

PPA.1		PPA.2	
- Develop ecosystem indicators for future use in TAC-setting	O	- Develop and implement, as appropriate, criteria for using key ecosystem indicators in the TAC-setting process	R
- Continue to use and improve current harvest control rules to maintain a spawning stock biomass with the potential to produce sustained yields on a continuing basis	O		
		- Develop, implement and update as necessary, procedures to account for uncertainty in estimating ABC, species-specific production patterns, and ecosystem considerations	O/R

12. Continue to protect the integrity of the food web through limits on harvest of forage species.

PPA.1		PPA.2	
- B ₂₀ rule for prey species (pollock, P.cod, Atka mackerel)	✓	- No change from PPA.1	✓
- No directed fishery for forage fish (forage fish ban, Amendment 36/39)	✓	- No change from PPA.1	✓

13. Incorporate ecosystem-based considerations into fishery management decisions as appropriate.

PPA.1		PPA.2	
- Develop ecosystem indicators for future use in TAC-setting	O	- Develop and implement, as appropriate, criteria for using key ecosystem indicators in the TAC-setting process	R
- Species TAC distributed spatially for some BSAI and GOA species	✓	- No change from PPA.1	✓

Manage, Reduce and Avoid Bycatch and Incidental Catch:

14. Continue and improve current incidental catch and bycatch management program.

PPA.1		PPA.2	
- Set group TAC for "other species". - Maintain species categories (target, "other species", PSC and non-specified species)	✓ ✓	- Develop criteria for 'splitting and lumping' of species in order to have a consistent approach over as wide a range as possible ('other species', rockfish, non-specified, etc.) - Consider breaking sharks and skates and additional groups out of "other species" group for TAC setting - Develop criteria to bring a non-specified species into a managed category	O A A
- Maintain current closed/ restricted areas such as Walrus Island closures, RKC Savings Area, Bogoslof, Pribilof Island closures, nearshore Bristol Bay closures, Kodiak Type I-III areas, EGOA trawl closures, closures for herring and salmon, Sitka Pinnacles, etc.	✓		
- Maintain existing inseason bycatch closures	✓	- Evaluate effectiveness of existing closures.	A
- Maintain PSC limits for herring, crab, halibut, and salmon in BSAI; maintain PSC limit for halibut in GOA	✓		
- Review effectiveness of coop managed PSC reduction	A		
- BSAI: Consider reducing PSC limits for herring, crab, halibut, and salmon to the extent practicable (0-10%) (for purposes of analysis will use 10%)	A	- BSAI: Reduce PSC limits for herring, crab, halibut and salmon to the extent practicable (0-20% for analytical purposes)	A
- GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data	O O/A	- GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data - GOA: consider reducing all PSC by 0-10%	O O/A A
- For those PSC species where annual population estimates exist, explore a mortality rate based approach to setting limits	A	- BSAI/GOA: For those PSC species where annual population estimates exist, explore a mortality rate-based approach to setting limits	A
- Maintain current bycatch and incidental catch restrictions. Full retention of DSR in SEO	✓		
- Maintain coop managed 'hot spot' closures to control	✓		
- Maintain VIP program	✓	- Repeal VIP program	O
- Maintain MRAs	✓	- Repeal or modify MRAs and establish a system of caps and quotas	A

15. Develop incentive programs for incidental catch and bycatch reduction including the development of mechanisms to facilitate the formation of bycatch pools, VBAs, or other bycatch incentive systems.

PPA.1		PPA.2	
		- Incentive program for incidental catch and bycatch reduction, e.g.: (a) Individual Bycatch Quota (b) Harvest Priority (10% of TAC reserved to reward clean fishing) (c) bycatch reduction standards established (d) Coop managed Harvest Priority (0-10% TAC or PSC reserved to reward clean fishing)	A
- Maintain VIP program	✓	- Repeal VIP program	O
		- Repeal or modify MRAs and establish a system of caps and quotas	A

16. Encourage research programs to evaluate current population estimates for non-target species with a view to setting appropriate bycatch limits as information becomes available.

R

17. Continue program to reduce discards by developing management measures that encourage the use of gear and fishing techniques that reduce bycatch which includes economic discards.

PPA.1		PPA.2	
- Review effectiveness of coop managed PSC reduction	A		
- BSAI: Consider reducing PSC limits for herring, crab, halibut, and salmon to the extent practicable (0-10%) (for purposes of analysis will use 10%)	A	- BSAI: Reduce PSC limits for herring, crab, halibut and salmon to the extent practicable (0-20% for analytical purposes)	A
- GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data	O O/A	- GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data - GOA: consider reducing all PSC by 0-10%	O O/A A
- IR/U for Pollock and P. cod, yellowfin and rocksole (BSAI only), shallow water flatfish (GOA only)	✓/O	- Extend to other species as appropriate	A

18. Continue to manage incidental catch and bycatch through seasonal distribution of TAC and geographical gear restrictions.

PPA.1		PPA.2	
- Species TAC distributed spatially for some BSAI and GOA species	✓	- No change from PPA.1	✓
- Maintain current closed/ restricted areas such as Walrus Island closures, RKC Savings Area, Bogoslof, Pribilof Island closures, nearshore Bristol Bay closures, Kodiak Type I-III areas, EGOA trawl closures, closures for herring and salmon, Sitka Pinnacles, etc.	✓		
- Maintain existing inseason bycatch closures	✓	- Evaluate effectiveness of existing closures.	A
- GOA: Identify salmon savings areas and establish PSC limits to manage	A	- Develop appropriate inseason closure areas in GOA to address bycatch of halibut, salmon, and/or crab when PSC cap is reached for that species	A
- Retain existing no trawl zones and fixed gear restrictions. Bottom trawl ban in BSAI for pollock	✓	- BSAI and GOA prohibition on pollock bottom trawl	✓/ A

19. Continue to account for bycatch mortality in TAC accounting and improve the accuracy of mortality assessments for target, PSC bycatch, and non-commercial species.
20. Control the bycatch of prohibited species through PSC limits or other appropriate measures.

PPA.1		PPA.2	
- Maintain existing inseason bycatch closures	✓	- Evaluate effectiveness of existing closures. - Develop appropriate inseason closure areas in GOA to address bycatch of halibut, salmon, and/or crab when PSC cap is reached for that species	A A
- Maintain PSC limits for herring, crab, halibut, and salmon in BSAI; maintain PSC limit for halibut in GOA	✓		
- BSAI: Consider reducing PSC limits for herring, crab, halibut, and salmon to the extent practicable (0-10%) (for purposes of analysis will use 10%)	A	- BSAI: Reduce PSC limits for herring, crab, halibut and salmon to the extent practicable (0-20% for analytical purposes)	A
- GOA: Identify salmon savings areas and establish PSC limits to manage - GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data	A O O/A	- GOA: Establish PSC limits on salmon (for example, NTE a 25,000 fish cap for Chinook and a 20,500 fish cap for 'other salmon'); establish PSC limits on crab and herring based on biomass or other fishery data - GOA: consider reducing all PSC by 0-10%	O O/A A
- For those PSC species where annual population estimates exist, explore a mortality rate based approach to setting limits	A	- BSAI/GOA: For those PSC species where annual population estimates exist, explore a mortality rate-based approach to setting limits	A

Avoid Impacts to Seabirds and Marine Mammals:

21. Continue to cooperate with USFWS to protect ESA-listed species.

PPA.1		PPA.2	
- No directed fishery for forage fish (forage fish ban, Amendment 36/39)	✓	- No change from PPA.1	✓
- Take of more than 4 short-tailed albatross within 2 years triggers consultation in groundfish longline fisheries	✓	- No change from PPA.1	✓
- Longline: Maintain current seabird avoidance measures. Implement measures approved in 2001 when final rule is published	✓	- Longline: Cooperate with USFWS to develop scientifically-based fishing methods that reduce incidental take for all seabird species	A
- Trawl: Evaluate interactions of endangered seabirds with trawl gear	✓	- Trawl: Evaluate avoidance measures for endangered seabirds and implement as necessary.	A

22. Maintain or adjust current protection measures as appropriate to avoid jeopardy to ESA-listed Steller sea lions.

PPA.1		PPA.2	
- B ₂₀ rule for prey species (pollock, P.cod, Atka mackerel)	✓	- No change from PPA.1	✓
- No directed fishery for forage fish (forage fish ban, Amendment 36/39)	✓	- No change from PPA.1	✓
- Species TAC distributed spatially for some BSAI and GOA species	✓	- No change from PPA.1	✓
- Maintain current closed/ restricted areas such as Walrus Island closures, RKC Savings Area, Bogoslof, Pribilof Island closures, nearshore Bristol Bay closures, Kodiak Type I-III areas, EGOA trawl closures, closures for herring and salmon, Sitka Pinnacles, etc.	✓		
- 2002 SSL closures: no fishing in Segum Pass; 3nm no transit zones around rookeries; trawl and fixed gear closures in nearshore and critical habitat areas	✓	- Modify 2002 SSL closures and designation of Critical Habitat as appropriate scientific information becomes available	O/A
- Review cumulative impacts of opening AI pollock fishery	O	- Modify AI SSL closures and designation of Critical Habitat as appropriate scientific information becomes available	A

23. Encourage programs to review status of endangered or threatened marine mammal stocks and fishing interactions and develop fishery management measures as appropriate.

Reduce and Avoid Impacts to Habitat:

24. Review and evaluate efficacy of existing habitat protection measures for managed species.

PPA.1		PPA.2	
		- Review all existing closures to see if these areas qualify for MPAs under established criteria. MPAs could include no-take reserves or have restrictions of specific gear types or specific fisheries or specific time periods	A
		- Evaluate effectiveness of existing closures.	A
		- Develop appropriate inseason closure areas in GOA to address bycatch of halibut, salmon, and/or crab when PSC cap is reached for that species	A
		- Determine extent of adverse effects from fishing, if any. Implement mitigation measures, if necessary.	O

25. Identify and designate EFH and HAPC.

PPA.1		PPA.2	
- Identify and designate EFH and HAPC	✓/O	- Identify and designate EFH and HAPC	✓/O
		- Determine extent of adverse effects from fishing, if any. Implement mitigation measures, if necessary.	O
		- Establish Aleutian Island management area to protect coral/live bottom habitats	A

26. Develop a Marine Protected Area policy in coordination with national and state policies.

PPA.1		PPA.2	
- Executive Order 13158: Initiative establishes MPA Advisory Committee, MPA Center, MPA website, agency tasks and list of existing US MPAs	✓		
- Development and adoption of definitions of MPAs, marine reserves, marine fishery reserves, protected marine habitats etc.	O		
- Develop MPA efficacy methodology including program goals, objectives, and criteria, for establishing MPAs	A		

27. Encourage development of a research program to identify regional baseline habitat information and mapping, subject to funding and staff availability.

R

28. Develop goals, objectives and criteria to evaluate the efficacy and suitable design of marine protected areas and no-take marine reserves as tools to maintain abundance, diversity, and productivity. Implement marine protected areas if and where appropriate.

PPA.1		PPA.2	
- Develop MPA efficacy methodology including program goals, objectives, and criteria, for establishing MPAs	A	- Consider adopting 0-20% of BS, AI, GOA as MPAs and no-take marine reserves (e.g., 5% = no take, 15% = MPA) across a range of habitat types	A
		- Establish Aleutian Island management area to protect coral/live bottom habitats	A

Promote Equitable and Efficient Use of Fishery Resources:

29. Provide economic and community stability to harvesting and processing sectors through fair allocation of fishery resources.

PPA.1		PPA.2	
- Retain existing gear restrictions and allocations. No pot fishing in GOA for sablefish. Sablefish and P. cod allocated by gear in BSAI. Sablefish allocated by gear in GOA.	✓	- Evaluate pot fishing in GOA for sablefish	A
- Continue development of rights-based mgmt, on a fishery by fishery basis as needed including: (a) IFQs (b) Coops (i) community-based (ii) sector-based (c) CDQs (d) Other community-based programs (e.g., halibut community share program as applied to other species)	O	- Rationalize all fisheries (all GOA, BSAI non-pollock/sablefish) - Ensure CDQ program maximizes benefits in rural communities	O/A

30. Maintain LLP program and further decrease excess fishing capacity and overcapitalization by eliminating latent licences and extending programs such as community or rights-based management to some or all groundfish fisheries.

PPA.1		PPA.2	
- Maintain existing restricted access programs (LLP and moratorium, AFA, IFQ sablefish, etc.)	✓		
- Continue development of rights-based mgmt, on a fishery by fishery basis as needed including: (a) IFQs (b) Coops (i) community-based (ii) sector-based (c) CDQs (d) Other community-based programs (e.g., halibut community share program as applied to other species)	○	- Rationalize all fisheries (all GOA, BSAI non-pollock/sablefish) - Ensure CDQ program maximizes benefits in rural communities	O/A

31. Provide for adaptive management by periodically evaluating the effectiveness of rationalization programs and the allocation of access rights based on performance.

Increase Alaska Native Consultation:

32. Continue to incorporate traditional knowledge in fishery management.

PPA.1		PPA.2	
- Develop and implement procedures to incorporate traditional knowledge into fisheries management	○	- Incorporate additional traditional knowledge from research	R

33. Consider ways to enhance collection of traditional knowledge from communities, and incorporate such knowledge in fishery management where appropriate.

PPA.1		PPA.2	
- Develop and implement procedures to incorporate traditional knowledge into fisheries management	○	- Incorporate additional traditional knowledge from research	R

34. Increase Alaska Native participation and consultation in fishery management.

PPA.1		PPA.2	
- Increase consultation with Alaska Native and encourage increased participation	R	- Increase consultation with and representation of Alaska Natives in fishery management	R

Improve Data Quality, Monitoring and Enforcement:

35. Increase the utility of groundfish fishery observer data for the conservation and management of living marine resources.

PPA.1		PPA.2	
		- Improve collection of biological information necessary to determine spawning stock biomass estimates, particularly for species in Tier 4-5	R
		- Improve species identification for non-target species	R
		- Develop uncertainty estimates for target species data	R

36. Improve groundfish Observer Program, and consider ways to address the disproportionate costs associated with the current funding mechanism.

PPA.1		PPA.2	
- Continue existing Observer coverage or modify based on data and compliance needs	✓/○	- Extend to 100% > 60'; CDQ & AFA to stay the same as Alt 1	A
- Modification should be scientifically-based (e.g., random placement, flexibility, variable rate)	○	- Expand/modify observer coverage based on scientific data and compliance needs (applies to all vessels: <60' and ≥ 60')	A
- Industry pays for observer deployment related costs	✓	- Develop and implement alternate funding mechanisms	○
- Explore: (a) Federal contract funding (annual appropriation); use of contract hires vs Federal employees (b) Research Plan (e.g., fee-based) (c) TAC set aside	○	(a) Federal funding (b) Research Plan	

37. Improve community and regional economic impact assessments through increased data reporting requirements.

PPA.1		PPA.2	
- Maintain current reporting requirements (a) AFA requirement that all CPs and motherships to weigh all pollock catch on NMFS approved scales (b) CDQ requirement that all CDQ groundfish catch is to be weighed on NMFS-approved scales	✓	- Explore programs that collect and verify economic data through independent third party (accounting firm/other)	A
		- Collect mandatory economic data reporting by vessels and processors, i.e. earnings, expenditure and employment data	A
		- Collect and verify aggregate economic data through independent third party (e.g. accounting firm)	A

38. Increase the quality of monitoring and enforcement data through improved technological means.

PPA.1		PPA.2	
- Maintain mandatory VMS requirement for Atka mackerel, p.cod, and pollock fleets	✓	- Modify VMS to incorporate new technology and system providers	A

39. Encourage a coordinated, long-term ecosystem monitoring program to collect baseline information and compile existing information from a variety of ongoing research initiatives, subject to funding and staff availability. R

40. Cooperate with research institutions such as the North Pacific Research Board (NPRB) in identifying research needs to address pressing fishery issues. R

41. Work with NPRB and other research entities to develop and prioritize research programs, and seek funding for appropriate research projects to inform the Council as it seeks to meet the goals and objectives of this management approach. R

42. Promote enhanced enforceability.

SAMPLE TIMELINE FOR COUNCIL ACTIONS TO IMPLEMENT POLICY

POLICY GOAL	MANAGEMENT ACTION	2004				2005				2006				2007				2008				2009			
		Apr	Jun	Oct	Dec	Feb	Apr	Jun	Oct	Dec	Feb	Apr	Jun	Oct	Dec	Feb	Apr	Jun	Oct	Dec	Feb	Apr	Jun	Oct	Dec
Prevent Overfishing*	TAC specifications			■	■				■	■				■	■				■	■				■	■
	non-target species management	■	■	■	■	■	■	■	■																
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Promote Sustainable Fisheries and Communities*	[[INSERT ACTIONS FROM PREFERRED ALT]]																								
Preserve Food Web*	ecosystem chapter in SAFE			■	■				■	■				■	■				■	■				■	■
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Manage, Reduce, and Avoid Bycatch and Incidental Catch*	PSC limit specifications			■	■				■	■				■	■				■	■				■	■
	repeal of VIP	■	■	■	■																				
	GOA salmon and crab PSC limits	■	■	■	■	■	■	■	■																
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Avoid Impacts to Seabirds and Marine Mammals*	SSL closure area modifications	■	■	■	■																				
	AI pollock fishery review	■	■	■	■																				
	evaluation of trawl 3rd wire/STA interactions	■	■	■	■	■	■	■	■																
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Reduce and Avoid Impacts to Habitat*	redefinition of EFH	■	■	■	■	■	■	■	■																
	identification/mitigation of adverse effects from fishing	■	■	■	■	■	■	■	■																
	designation of HAPC	■	■	■	■	■	■	■	■																
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Promote Equitable and Efficient Use of Resources*	GOA rationalization	■	■	■	■	■	■	■	■																
	Aieut corporation AI pollock allocation	■	■	■	■																				
	sector allocations for BSAI species	■	■	■	■																				
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Increase Alaska Native Consultation*	reexamination of AP terms of reference	■	■	■	■																				
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								
Improve Data Quality, Monitoring and Enforcement*	new Observer Program funding system	■	■	■	■																				
	[[INSERT OTHER ACTIONS FROM PREFERRED ALT]]																								

* NOTE: Some management actions fit under more than one policy goal, however for the purposes of this timeline, each management action will only appear in one place in order to minimize scheduling confusion.