


MEMORANDUM

TO: Council, SSC, and AP Members

FROM: Clarence G. Pautzke
Executive Director 

DATE: June 1, 1998

SUBJECT: Groundfish Overfishing Definitions

ESTIMATED TIME 2 HOURS

ACTION REQUIRED

Final review of amendment to modify the definitions of the overfishing level and acceptable biological catch.

BACKGROUND

National Standard 1 states that conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery for the United States fishing industry. The Sustainable Fisheries Act (SFA), which amended the Magnuson-Stevens Act in 1996, contained several provisions that affected National Standard 1, though the standard itself was not changed. The SFA added a definition of "overfishing" and "overfished," changed the definition of "optimum," required that each fishery management plan specify objective and measurable criteria for identifying when a fishery is overfished and added a section on identifying and rebuilding overfished fisheries.

To bring our groundfish plans into compliance with the new provisions of the Act, Grant Thompson at the Alaska Fisheries Science Center drafted the EA/RIR that examines alternative definitions of the overfishing level and acceptable biological catch, in accordance with the guidelines and revisions suggested by the SSC in April. This plan amendment proposal considers two alternatives:

Alternative 1: No change.

Alternative 2: MSY is consistently treated as a limit rather than a target.

An executive summary of the analysis is attached as Item D-1c(1).

Executive Summary

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) contains a number of provisions pertaining to the content of fishery management plans (FMPs) and a requirement that all FMPs be updated so as to be consistent with those provisions by October 11, 1998. In addition, the Magnuson-Stevens Act requires the Secretary of Commerce to establish advisory guidelines, based on the Magnuson-Stevens Act's "National Standards," to assist in this process. A draft of these National Standard Guidelines (NSGs) was published as a proposed rule on August 4, 1997 and the final rule was published on May 1, 1998. Because the NSGs were written for a general audience, the National Marine Fisheries Service (NMFS) decided to supplement them with a more technically oriented report containing examples of methods that might be used to satisfy the NSGs (Restrepo et al. *in press*).

With regard to the definitions of the overfishing level (OFL) and acceptable biological catch (ABC) presently contained in the FMPs for the groundfish fisheries of the Bering Sea and Aleutian Islands Region (BSAI) and the Gulf of Alaska (GOA), the Magnuson-Stevens Act, the NSGs, and the Restrepo report indicate a significant policy shift in terms of the treatment of maximum sustainable yield (MSY). Specifically, it is now clear that MSY should be treated as a limit rather than a target. This means that "limit" harvest strategies (such as the rules used to specify OFL) should result in a long-term average catch that approximates MSY, and that "target" harvest strategies (such as the rules used to specify ABC) should result in catches that are substantially more conservative than the limit. Tiers 2-4 of the current definitions could be interpreted as treating MSY as a target rather than a limit.

This plan amendment proposal therefore considers two alternatives:

Alternative 1: No change.

Alternative 2: MSY is consistently treated as a limit rather than a target.

The impacts of the alternatives were analyzed by calculating what changes, if any, would have been required in the 1998 total allowable catch (TAC) levels had Alternative 2 been in place at the end of 1997. Under Alternative 2, no changes in TAC would have been required. Thus, neither of the alternatives is likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.

North Pacific Fishery Management Council
Transcription of Council Discussion
Area/Seasonal Apportionment of BSAI Atka Mackerel
June 14, 1998

NOTE: To save time and space, the formality of seeking and receiving recognition from the Chair, and addressing the Chair at the beginning of each statement, has not been transcribed.

Tape 48

Joe Kyle: I would move the AP minority report, which would encompass an 'A' and 'B' season split, 10% annual increases in Area 542 and 543, using '98 as a baseline where 5% and 15%, respectively, were caught out in 542 and 543, so that in year 1999 you would be at 15 and 25%, and that that would have a target that would expire in the year 2003 for Area 543, when you would attain 60%, and the year 2004 for Area 542. I'd also incorporate in the motion that in Area 541, the sea lion rookery in Seguam be expanded to 20 miles, year-round, instead of just the 10, and I think that would be an adequate measure and a very dramatic measure for Area 541. And, if I can get a second I'll speak to my motion.

Earl Krygier: Second.

Rick Lauber: It's been moved and seconded, it's a final action; we need it in writing. Time for a break anyway, so. . .

Krygier: Clarification. Does this also include like the vessel monitoring. . . are you going to include that?

Kyle: No, I think that's a separate activity that NMFS and the Coast Guard need to work on and bring to us when they're ready to implement something like that. I don't have any objection to it, it's just that I didn't include it.

Lauber: O.K., we'll take a break and see if we can get this typed up.

Lauber: Council will come to order. Mr. Pennoyer.

Steve Pennoyer: I think there are probably a couple of friendly amendments, and maybe some that aren't as much, so maybe I can try first with a friendly amendment. . .

Lauber: I understand there's a substitute motion going to be made, so I have no idea what's in it and I don't know whether your amendments might be in it already, and it's being typed, so if I could cut down on the typing, I'll allow Ms. Behnken to explain what she's going to do.

Linda Behnken: My guess is this is going to be ruled a substitute motion rather than just an amendment because it affects both the percentages and initial starting point. So, I'll offer it and then maybe the Chair can give a rule. I would move that we reduce the amount of removals in critical habitat by 20% in the first year and then set a goal of 40% , taken in critical habitat, and 60% taken outside; that that target be reached in four years in both areas, 542 and 543.

Lauber: I don't have the original motion, so. . .

[I believe Dave Hanson said it was a substitute motion, but couldn't hear him.]

Behnken: So, if that is a substitute motion, I think Helen has it on the wall there, and it would be Alternative 3, Option 2, and in Area 542 in 1999, 25% would be taken outside critical habitat; in Area 543, 35% would be taken

outside critical habitat. We reach the target in four years which means in 542, we have a 12% reduction per year, just dividing it up evenly, and in 543, it's an 8%, or change per year, whichever way you're looking at it. In Area 541 would be the same as Mr. Kyle's motion, with A/B split on the quota, or on the seasons, and the 20-nautical mile year-round closure around Seguam. And, I'm not sure this is part of Mr. Kyle's motion or not, but I would definitely intend that the Council review the appropriateness of this action on an annual basis. And, if I have a second, I'll speak to that.

Pennoyer: Second.

Behnken: I think we had very persuasive and good testimony about the impacts to the industry and I'm not insensitive to that, but I also think that as a Council we're the only ones that can speak for the sea lions and we have to approach this from that perspective, that our first responsibility is to take care of the sea lions, not just to meet Section 7 review, but to be responsive to the decline we're seeing in an endangered species at a very critical time. The analysts had recommended to us that we get to a target of 40% in critical habitat, 60% outside critical habitat in one year. As their compromise, to try and work with the industry, they had suggested that they could maybe live with getting there in two years, with a 20% change each year. What I proposed takes that first strong initial step that they had told us was imperative, and then gets us to that target in four years, trying again to be responsive to some of the effects to the industry.

Pennoyer: I'm going to speak in support of the motion. I wanted to just give a couple reasons. If it's a substitute motion, I was going to ask . . . it is a substitute? Well, then first I'd ask if the maker of the motion would consider the inclusion of a VMS requirement for fishing for Atka mackerel in the Bering Sea/Aleutians as part of the motion?

Behnken: I'd accept that as a friendly amendment.

Pennoyer: Then, I had a couple of other comments. I, too, think the industry has done a very good job in working with us and I think that in trying to figure out how to do this and live up to obligations that the Council and the Agency have under ESA and then the Magnuson Act, and at the same time try and assure that we're going to do the right thing. For that reason, I strongly believe the annual review discussion is very pertinent. I think rather than a sunset as wasn't proposed by Mr. Kyle, but had been by others, it goes away unless you approve it; what you need is a system that has it keep on going unless it shows you should do something different. I'm not totally sure the diagnostics are going to show us exactly what that is, but we are going to come back to you in September and December with a more overall holistic look at the sea lion question. That may tell us to do some different things and if that happens we can always make changes. But the fact of the matter is, sea lions have gone down. There's been a very substantial decline that is still continuing, and this is a marine mammal, but I will tell you, I've worked in fisheries a lot of years. We have a lot of cases where we don't understand what regime shifts have done to populations, and we've still gone ahead and made management measures. Shrimp in the Gulf of Alaska had always been a sore point when I worked for Fish & Game, but we closed down bays; the shrimp went away anyhow. King crab in the Bering Sea. We've adopted closures and intense exploitation rate reductions and a very stringent recovery plan without knowing exactly why they did it, or what's keeping them there. Pollock is one we deal with all the time. We've been through several regime shifts on pollock just from looking at the information, we still have to go ahead and deal with what we have available. And I think what we've got here is a situation where we do have a serious decline and obligations to look at it that go beyond this litigation question. We have a management obligation to look at sea lions, as much as we've got an overfishing definition in the Magnuson Act. It isn't simply there because you've got to pick up a book and find a formula, it's there because it supposedly allows us to enable a resource to continue at some MSY level. MSY for sea lions is certainly not the level they're at right now. So, I think it's incumbent on us to take action. The other question that comes up continuously here is well, why is it happening here. Well, it's not just happening here. We have had closed areas in effect for a while overall, mostly for pollock and pollock areas. The expansions were in pollock areas, the ten miles were overall, but we are evaluating those, and frankly there probably are going to be changes required. I think one of the last thoughts I'll probably leave you with is that sea lions are in decline now, but we have no forecast it's going to get better. I mean, we're looking at a situation where recent pup counts indicate that our

adult counts will probably decline. We don't know that; we have to wait and see what happens. But there's nothing out there on the horizon that says it's happened. So, taking more measures is—I think a legitimate and prudent action and them being significant is a prudent action and in this case it jumps out at us ahead of some other things because we do have some indications that localized depletion does occur. We had the SSC report quoted to us several times, I'll quote back, too, that "estimated decline," this is in Atka mackerel catches, "can be quite substantial, up to 94%, therefore the Atka mackerel fishery may have a large effect on fish abundance in some areas at some times." . . . [Change to Tape 49]. . . Not conclusive, but certainly it's better than some of the information we've got, let's say, in all the discussions we had on the CVOA, currently, and other areas. So, I think there's a need to take pretty strong action here, to take it in an initial fashion but then not to lose track of the fact that we need diagnostics, we need research. I'd like to see more focused research. I'd like to see some of the research dollars focused within the agency in appropriations we get. I think some of these things are becoming clearer and clearer they ought to happen. I think we will see them happen, but I think we've got to take the initial action. Thank you.

Kyle: I certainly appreciate Ms. Behnken and Mr. Pennoyer's comments. However, I'm going to oppose the motion, and the primary reason I'm going to oppose the motion is because the SSC told us, in their evaluation, as we're looking at this alternative and I'm going to quote from it, "The SSC recommends that the Council use extreme caution," not caution, 'extreme' caution, "if it chooses to implement this option. In other Council fisheries the general goal is to set catch limits in proportion to available biomass. Because relative biomass distribution for Atka mackerel is so uncertain there is not a good scientific basis for making an adjustment until better survey information is available. Indeed, if fish are sedentary and fishermen currently distribute effort in proportion to biomass, then the allocation could actually exacerbate the situation by fishing the outside population component at too high a rate with potential downstream effects on future recruitment if that component makes a major contribution towards spawning." This proposal that's before us right now would represent a 500% increase in the outside harvest in Area 542, because we're going from 5% to 25% as I understand the motion. In Area 543, the percent of increase is less because we're going from 15% to 35%, as I understand the motion. And I just think that's pushing way too much effort into the outside area in year one when we don't really know scientifically what that's going to do to us and I think it's way outside the bounds of the SSC's comment that we use extreme caution in shifting effort outside the historical areas.

Wally Pereyra: I'm going to oppose the motion also. And, the reason for my opposing it is that I am quite concerned that there is, I think, observational information we have from the fishery that leads me to believe that this is not a problem from the fishery itself; that there's something else that's operating here. And the reason I feel that is that when we saw the map of the area around Kiska where the fishery took place the area of the fishery was quite small relative to the total area of critical habitat that was available to Steller sea lions. I didn't have a way of accurately estimating what that was, but I would hazard guess that it's less than 10% and that, coupled with the fact that there are not observations of Steller sea lions in the area of the fishery, indicates to me that the Steller sea lions are foraging in other areas, that this area is a subset of the critical habitat, is really not that significant. That gives me some concern, that we are sort of racing around to solve a problem that we don't know what the answer is to, so this is something we can do something about, so let's go ahead and do it. I'm not opposed to doing something that's reasonable, but I think that we've gone a little bit beyond reasonableness. The other thing is, the analysis that was used, I'm not going to argue that there's not some localized declines occurring, but I think that the analysis that was used exaggerated those declines to where it put people in a state of panic. And one of the examples, as I asked Mr. Szymanski, if your biomass was driven down to 94% of its initial biomass, would you keep fishing, and he said, no, you'd be absolutely out of your mind to do something like that. There's no way you could possibly survive. Particularly so, I think, in the case of the Atka mackerel fishery where you're not able to use echo sounders to target your fishery on aggregations so that you can stay and keep fishing at a fairly reasonable level and then you get to the last school and it drops off. This isn't the case with Atka mackerel. Atka mackerel is a species which occurs down on the bottom, it's not something you can see on the echo sounders, so the fishery tends to be somewhat independent of where the micro-aggregations might be in the area where they're fishing. I'm also concerned about some of the use of data here. These tows, these rockfish tows, where the amount of Atka mackerel is greater than 20%, those tows are included in the analysis and I think that tends to bias it on the downside. The fishermen were not really targeting on Atka mackerel; Atka mackerel

is an incidental species which is taken. That I think tends to accelerate the decline and so that, I think, may be one of the reasons why we have this alarming rate of decline which probably is not that severe. I'm also concerned about some of the suggestions in the SSC 's minutes that indicate they also have concerns about the use of a Leslie analysis in this kind of a situation and that some of the assumptions may be violated. That, I think, are some of the key points I wanted to make in addition to those that were made by Mr. Kyle.

Lauber: Counselor, did you have something that might be appropriate before we have any further comment?

Lauren Smoker (NOAA-GC): Yes, I think I do, Mr. Chairman. I'd like to point out that the substitute motion and also I believe the main motion include a component that would close the area around the Seguam rookery in 541 to a year-round closure, 20 nautical miles out. As far as I can tell, the analysis does not include that as an alternative, so I think that it would be appropriate for the makers of the motion to discuss the reasons for that component and also other Council members to discuss what they think about that particular provision.

Lauber: In other words, you're not saying it can't remain in there, but it has to have some justification by comments or some other way.

Smoker: That's right. All of the other components, I believe, have been discussed within the analysis, that you have read and that has been talked about also in public testimony. But that particular provision was not part of the analysis before the Council now.

Dave Fluharty: I think with respect to either the current motion or the earlier one, I think that I'd like to propose a friendly amendment, and that is, in concert with the annual review I would recommend that National Marine Fisheries Service conduct research, including with other parties, and especially with industry, to develop a research plan that would guide assessments of the effects of these management measures, by area, so that we actually get a sense of not only the distribution of biomass relative to the TAC that we set, but other diagnostic measures that would help to focus research and certainly to point out the need for additional funding and resources to be put into this so that we can actually determine the effects as best we can of these measures and maximize the learning that we can have by area from these measures.

Behnken: That's a very friendly amendment.

Lauber: It's been incorporated.

Pennoyer: I had another, I hope, friendly amendment, too. From a technical standpoint, we need to exempt the Atka mackerel jig fishery in the Bering Sea/Aleutians because 541 includes the Bering Sea, and if we don't do that, then the jig fishery is further split up and its 2% is probably not an issue.

Lauber: Can you two prepare this in writing so that we can. . .

Pennoyer: I think the Secretary is going to do that and put it on the screen.

Lauber: Are you getting these, Helen?

[several people talking; can't hear response]

Behnken: Mr. Chairman, that's a friendly amendment.

Lauber: O.K., fine. But I'm just concerned that we have to have this in writing and so . . .

[more miscellaneous comments]

Lauber: So, Helen, will you let me know if you do not get this flurry of friendly. . .

[can't hear response]

Dennis Austin: I had a question of clarity. It might help us for the future if the reference to the A/B season split is noted in the motion, and I assume because the reference is to Alternative 3, we're talking 50/50, is that correct?

Behnken: Alternative 3 spells that out, but it's a 50/50, A/B split in the TAC, and talks about the subareas and also identifies the target inside and outside critical habitat as 40% inside/60% outside.

Austin: And, second, I wanted to speak to Dr. Fluharty's friendly amendment. I think the fishermen have pointed it out and I know the SSC has pointed it out very emphatically that we are remiss in our management if we simply take action without any follow-up to see if in fact the action achieves its objective. We've got a unique situation here where the industry is cooperating to the nth degree and wants to be part of that research, so it only follows that we do in fact put together an industry/scientist workshop so that everybody has ownership. We've seen, I think, a learning by the scientists from the interaction with the industry so that they're not just paper scientists but they actually also have picked up greater understanding of the dynamics of the fishery and their science therefore is improved. Obviously, the fishermen interacting with the science gather a better understanding of why things are being done, so we need to take advantage of that. And, the SSC was very emphatic in emphasizing that so I think Dr. Fluharty's friendly amendment was right on target and I would hope that we would follow up.

Dave Hansen: As a member of the Recovery Team, I'm a little bit disappointed by what I've seen here. We had quite a bit of discussion about Atka mackerel. The Recovery Team was not in agreement that changes in the Atka mackerel fishery was going to help the sea lion. I believe our statement was "might" and there was a lot of discussion that the statement should really be "should not harm." I'm not sure that the Recovery Team, and I'm not going to speak for the Team at all, but I'm just not sure that the Team would agree that the last proposal that's in front of the Council would meet that same criteria. I guess I'm disappointed that we haven't seen a better display of what's going on out there. In questioning Lowell yesterday it appears that these areas where there's localized depletion, or what we may call localized depletion, are roughly 12½ square-mile areas, something of that nature, just rough math. I would think that we should be seeing a display of these areas, the critical habitat, with observer data, tow-by-tow data, to show how big are these areas, how many are there, what percentage of the area is potentially even been depleted. We don't have any of that stuff in front of us. Seems like. . . the Team has mentioned a whole gamut of things to be looked at out there, but the whole focus is on Atka mackerel. The Team has commented that other fisheries are occurring in the area, nobody's even looking at them. We're focusing everything here, which may not in the end be what we really should be doing for sea lions. But I would hope in the Section 7, and the next time this comes in front of the Council, we see a lot better display of what areas are supposedly being depleted, where are they, what percentage of the total area is being impacted -- a much better view of what supposedly is going on out there, to make a judgement.

Behnken: I think those are some very helpful comments from Mr. Hanson, but I would say that the analysis has identified very clearly that Atka mackerel is the major prey item of Steller sea lions in the area and I'm not in any way presupposing that we won't do more for Steller sea lions. But it seems, 'til we get to this point, we got to this point yesterday in inshore-offshore; we're at this point now of saying, well, let's not think that we're really taking care of Steller sea lions 'cause there's other fisheries in the area and there's other problems we have to think about and at some point in the future we're going to deal with it all. We have about as good information in front of us now as I think we can get, about the link between a fish and Steller sea lions and their prey needs in a critical area, and I don't think we can hide behind forever that some point in the future we're going to have all the answers and be able to make all the right choices. That's not. . . we're dealing with an endangered species and unfortunately I don't think we have that much flexibility. I have tried to respond to the extent I feel we can within the parameters set by our marine mammal people to the industry in taking four years to get there. I know it's going to be very difficult, but at this point we're dealing with an endangered species, it's the whole precautionary approach, the burden of proof, can't be left on the sea lion.

Pereyra: Another aspect of the Steller sea lion-Atka mackerel relationship, I think, has to do with the total biomass of Atka mackerel themselves and the data indicates that we've had probably somewhere in the order of

magnitude change in biomass over the past maybe 20 years or so and that change in biomass is much more significant than any changes we might see that are associated with the fishery here. And, I would dare say that if in fact there was a relationship there, we should have seen some response to the Atka mackerel population to those changes in biomass. Biomass happens to be at sort of an average level, maybe a little bit higher level now than it was in the very early 80s, so again, I have some concerns that the data don't necessarily correlate all the way through on this hypothesis that we're looking at. In the process of doing this, if we don't do it carefully, we may actually make the Atka mackerel fishermen themselves the endangered species here. The market right now is in a very critical situation. I think that the AP's motion that we initially had on the table, that Mr. Kyle put out, I think was a responsible motion. I think it spoke to the issue, it was done in a way in which we could look at changes and see whether in fact we have the kinds of relationships that we're concerned about here. Because if we don't, then I think that the substitute motion is substantially beyond what I would consider to be a reasonable and prudent way to proceed, as the SSC has advised us to proceed. Another area that I'm concerned about and that is the area of foraging, foraging behavior of Steller sea lions and whether or not there is in fact a density-foraging success relationship here. I would think that that should be an absolutely top priority area of research. Granted, it's going to be very hard to get at, but I think that that should be a very top priority because that will tell us whether in fact we should be concerned. We can measure depletions, we can show depletions, and so forth. But in fact if the Steller seal lions are foraging much the same way I might forage in my pantry, where. . . I might go shopping every week and a half, two weeks. After I've gone shopping the pantry's pretty full, but if you'll look at me you'll see I haven't starved, I mean, the density of food in my pantry drops down significantly but I'm a fairly adaptive forager and I find ways. . . there's always a can of beans in the back or some pasta that I can put with some spaghetti and make something that'll work. And, again, I'm not trying to make this into an amusing exercise, it's not, it's a very serious exercise, but I wanted to use it to show that, again, this relationship between foraging behavior and foraging success with density I think is a very critical one and . . . We haven't really had any indication that I've seen, any data come forward that shows that we have a situation where Steller sea lions in the Central and Western Aleutians are in fact in a starved situation. I haven't seen any data that would indicate that, so . . .

Robin Samuelson: I'd like to ask the maker of the motion, reading the AP minutes, and they recommend a recent average of 542, 5%, and 99, 10%, 543, 15%, boosted up to 30%, and reading through the information, I'm kind of teetering on this one, but I can't see the. . . enlighten me to see the justification in 542 to an increase of 25%.

Behnken: I guess where I started was not with the AP motion, but with the recommendations from our marine mammal scientists and the people who prepared the analysis for us. Their preference was that we go to 40% in critical habit, 60% outside, in the first year. And as a compromise if the Council felt that an incremental step was necessary to compensate or to try and mitigate some of the impacts to the industry, that we go 20% in two years. They also emphasized the importance of two things. One was setting that target of the 40/60 in those two areas, 542, 543. And, the other was that the initial step be substantive enough that we can start to make a difference for Steller sea lions for one, or to alleviate the pressure to ensure that the fishery is not inhibiting their recovery, and also that it be measurable, that we be able to look back in a few years and establish whether we have indeed produced the positive effects we're all after by these changes. And I think that's in line with the experimental approach that's been recommended to us by the SSC. So, I slipped a little bit on reaching the target, going to four years from two, but from what I've heard and what the analysis includes, to me that initial step of 20% is critical.

Pennoyer: I'd also remind the Council that the initial recommendation, even if split into two years, was from an 80/20 average rather than from 95%, so this recommendation is still less than the initial step and the initial step would have been, although it's certainly more than had been proposed by the AP's substitute motion. The second thing is that, I understand, Mr. Pereyra, about beans and chili cans and so forth, but this Atka mackerel is a, quote good fish, unquote; I'll put that in quotes because I'm not sure exactly what that is, but it's an oily fish, high food value, high part in the diet and while a variety of diet is good and necessary, there's been nothing to convince us that there's the variety or the abundance of other fish available to Steller sea lions. Atka mackerel are a major part of the diet, they're an important part of the diet, and while we've had other testimony about different, herring, or other things might be more valuable than maybe pollock, it's a matter of degree. And in this case, they're quote, good fish, unquote. Thank you.

Fluharty: I think that consistent with sort of an adaptive or experimental approach we have to do something that produces a measurable impact. We've commenced on this exercise. I think that if we don't use it to obtain information, precisely the kinds that Dr. Hanson's talking about and Wally's talking about, answers to these questions, and I think this approach will get us there faster so that we can either say that we've proved that the fishery's not having an effect, or that the fishery is having an effect. I think we need to do that. There are a number of things that I would add to the list that Dr. Hanson has pointed out of things that we really need to have before us to see some of these things, mostly things that would help put this in context. What are the other fisheries; what are the nutritional needs in aggregate, by area, for Steller sea lions; what is available in that ecosystem. We're treating this. . .and I think by necessity, we're limited by the information we have to almost a single-species approach in terms of looking at Atka mackerel, per se, and we really need the broader context and I think the only way we're going to get it is through a concerted research effort that has some management measures associated with it that help us to gain that information. And so while I'm sympathetic with the cautious approach that the SSC has recommended, they're also recommending that we run this as an experiment, and this will produce more information. Thank you.

Krygier. This is a little troubling. I listened to the arguments, the discussion at the SSC and I look at their recommendation. It isn't often that they suggest extreme caution in taking an action. That's very strong language from the SSC. I'm very perturbed that that's the type of language that they're using and yet the analysts themselves are saying, no, move ahead in a more definitive manner. I know that the Sea Lion Recovery Team, as Dr. Hanson suggested, was cautious about this. They additionally when they made their recommendations about critical habitat they didn't suggest blanket closed areas around all these, they suggested succinct closures, and specifically areas like Seguam Pass, that was an area that they said needed particular protection and that was their original recommendation. So, the areas like Seguam Pass do need protection. When you look at the area that we did close, that NMFS did choose to close as critical habitat, the blanket closures and then you look at the areas that are now open for fishing, half of that area, and in fact more than half that area, is not even available to fish, so it's already closed and protected, 10 miles in those, and some of those areas are closed up to 20 miles during most of the fishing. The remaining area that is being fished is very small, and I'm concerned that when you look at what we do know about the distribution of the Atka mackerel, places like the Petrol Banks, very small area, some of the only remaining area to fish on, and what we might cause as far as local depletion there if we move too fast without assessing what we're doing.

Lauber: Well, Counselor, maybe I missed it, but I haven't heard anybody that has touched on your point, your notes pick up anything that I missed?

Smoker: No, sir, I haven't heard anything either.

[Change to Tape 50]

Lauber: All right. I'd just caution you if you want to leave that in there, see it show up in the end, you'd better start talking about it.

Pereyra: Well, I'm not going to talk about Seguam because there's no data in the document with which to make comments on it, but I did want to go back. . .

Lauber: But, there is in the motion, that's the problem.

Pereyra: Yes, I understand that. I did want to go back to Mr. Pennoyer's earlier comment, and that is I'm not arguing that Atka mackerel is not an important food for Steller sea lions, I'm not arguing that at all. It's obvious that it is, and it's a fatty species and I'm sure that it is very important. But, what I'm arguing is that as the density of Atka mackerel goes down, I don't see anything that indicates that somehow their feeding success drops in some linear or some declining exponential manner. There's nothing to indicate that. If in fact that were happening, we would see precipitous declines and, vice versa, increases in Atka mackerel populations in response to changes in the total biomass of Atka mackerel. We don't see that. In fact, there's some indication that they

actually are going in different directions. So, I just don't think the relationship is there that is causing us to take this rather drastic measure. I think, again, the initial motion I think is the way to go and I will not support the substitute motion, but I will support the initial motion.

Pennoyer: Whether we get to it here or later, Seguam, too, in the 'B' season, I think the rationale for that is the same as there is for Seguam in the 'A' season, and if the harvest comes out of the 'B' season, then protection measures needed at that time of year would be presumably the same as they are now or when the fishery takes place, so that's my presumption as a defense for the need to do the closure in the 'B' season. I guess, I heard what Mr. Hanson said, and I've heard everybody else, the need for diagnostics and looking at things. We promise that we will come back to you this fall and do a more holistic look and I think it includes this as well. That has persuaded me that the one-year jump, or even the two-year jump may not be the way we want to go. I mean, we may go next year and decide we want to take an even bigger jump. We have that option before us. What we're saying here is, we're going to start out with, we think, a meaningful measure that does make a significant change in the first year. We have some certainty that it continues in that direction unless we have good reason to do otherwise. That sends a totally different message than sunsets or doing it over six or seven years in very, very small increments. And, I understand that even a six or seven year proposal could be changed; we could get there and say, well, we've decided it needs to be faster or slower, whatever, or something different. We could go with closures; we could look at sea lion rookery closures around some of the major rookeries in the Aleutians, like Kiska, that right now don't have the closure. That's all in the future options to look at and right now what I think what we're talking about is taking a significant step now and as we go on and examine this over some period of time. We're not talking about one year, we're not talking about two years; we're talking about four years. If you bite off the very small increments and you get out to six years or more, I think that sends a very wrong message. I don't think that's actually our intent. Thank you.

Austin: When the FCMA process, which the Council gets its authority, was constructed, I think the founders anticipated this exact problem. Where we were going to get testimony that we would have trouble digesting, that we would get conflicting testimony, and they established the SSC. As a result of that, I put a lot of weight on the SSC's recommendations. Mr. Kyle read a conclusion of the SSC, but I think that conclusion may be being misunderstood. In my mind, the SSC said the science is such that there is not a conclusive case being made either way, either that the action of the Council that we're contemplating would help the Steller sea lions, or that it would hurt the Steller sea lions. And, when they talk about the hurting part of it, their concern that our actions in shifting our fishery will in fact cause loss of the Atka mackerel population itself, not that this action which should be as proactive and I think is a precautionary approach, will have a direct impact or not on the Steller sea lions when it may have an unknown, undetermined impact on the status of Atka mackerel. And, as a result of that of uncertainty relative to the Atka mackerel's status, that they cautioned us to take an extreme cautionary approach which I think the original is and this one could be judged obviously not to be as precautionary. One of the things that comes out of the precautionary approach is that you take a reasoned and reasonable initial step, but do it in a way that you have some opportunity to measure it. If you do it in one year, you're going to have the opportunity to measure that effect, but by the time you measure it, if in fact it's a negative effect the damage isn't retrievable. The other extreme of that is, the incremental 10% because you get to the 60/40 in the years 2003, 2004, in contrast to what I think the substitute motion you get there in the year 2002. That gives you one to two more years to detect that the actions you've taken is in fact detrimental rather than positive to the Atka mackerel resource upon which both the fishery and Steller sea lions seem to be. . . well, obviously the fishery; the question is out on the Steller sea lions. But it gives you a greater opportunity to detect that change, so I think we're just talking about the size of the initial steps and which is more precautionary from the Atka mackerel's perspective as opposed to the Steller sea lion and trying to balance that. When you get to the 541 scenario, I think it is in fact an application of that same management process because in looking at the maps we had on the wall and given all the problems with the size of the dots, and etcetera, what you saw was two-thirds of the fishery is already outside of the 20-nautical mile closure and so the SSC's cautionary approach wouldn't come into play as much, where the other areas you're talking about 85%, 95% inside and if you take major large steps the shift of the fishery to the small population that is in that outer area could be very severe. I think somebody mentioned 500% increase. That is not true of the 541; the 541 is in fact because of the construct of the fishery in the first place, is already in that mode so I think it's defensible from what the staff has already presented us.

Behnken: I'll be brief, I know we've been around a couple times. I wanted, though, to also address the action I've proposed for 541 only to say that in our recommendations from the analysts, they had been looking for a 80/20 split averaged across three areas; that also gave us an option of 0/100 for inside and outside critical habitat, but if the action taken in 541 extending the Seguam rookery closure out 20 nautical miles, we significantly place the fishery outside critical habitat which brings us closer to the 80/20 for all areas that they had recommended and since that closed area was a measure the industry supported it seemed to me a sort of least painful way to move us in that direction.

Samuelsen: I'd like to offer an amendment, Mr. Chairman. The amendment will be: The A/B season split shall not apply to the CDQ fishery, and the CDQ fishery shall not fish in the critical habitat area.

Krygier: Second.

Behnken: I would accept that as a friendly amendment. If I could ask for a clarification. I just wanted to make sure that Mr. Samuelsen intended to completely prohibit CDQs from the critical habitat area or if you intend to have them live by the same percentage split, between critical habitat and non-critical habitat as the open access fishery.

Samuelsen: No, we will be prohibited from entering the critical habitat area.

Smoker: I would just like to also suggest to the Council that they might want to discuss this particular portion of the motion as well because this, again, is not part of the alternatives and the maker of the amendment may want speak to it again.

Samuelsen: It's always been my philosophy that when there's a conservation problem the burden of conservation should be split amongst the participants and because we have a CDQ fishery, I don't think the CDQ fishery should be held to a different standard than the people in the open access fishery. The comments provided to us by Larry Cotter representing three or four of the CDQ groups stress the importance that it was economically unfeasible for the CDQ groups because there's six different CDQ groups in three different areas and with the low amount of quota going to the CDQ groups, some of them would be leaving their quota on the table. I think this provides the CDQ groups an avenue to go out and harvest their CDQ allocation of Atka mackerel and at the same time share in the burden of conservation.

Kyle: I already stated that I was going to oppose this substitute motion and again I guess I don't understand the friendly amendment here because, while I absolutely share your concern about CDQs getting some privilege that other fishermen don't have, and that was sort of what the group testified to was, that we should be exempted from all these provisions. I think by your motion that was accepted as a friendly amendment you've actually put CDQs to be held to a higher and more stringent standard than the rest of the industry. And, I think, as we know this fishery is small for CDQs and so marginalized over three areas, that to only be able to take it outside the critical habitat more restrictive than any the rest of the fishery will have to endure.

Pennoyer: . . . Just a clarification, when we talk about the A/B season, my assumption is we're talking about basically the pollock A/B season dates, the analysis states that, starting September 1, the 'B' season ending November 15th; I presume we're talking about the A/B season dates?

Behnken: That's correct, Mr. Chairman.

Lauber: Part of this may be in the record from the last meeting, but you may recall I asked some questions about what kind of age fish the sea lions fed on and so forth. We know that they prefer, of course, small pollock, usually before they enter the exploitable biomass, one and two-year fish and so forth. I was thinking with this, the comment we have I believe with the exploitation rate of the exploitable biomass is around 11%. . . and that of course is out of the exploitable biomass which they don't enter until they're three and four years old. Nobody wants to catch the little ones. So, that doesn't consider certainly the one and two and many of the three-year old

fish. And, the biomass is weight, not numbers, so if we relate this to numbers of fish we know that in pollock that the commercial fishery removes less than 1% of the numbers of fish in the Bering Sea, of the pollock count, less than 1%. The rest of it goes to other prey birds, and so forth. That's of course in pollock. We don't have a lot of studies in this, but relate that to this, the pollock exploitation rate is roughly double what the Atka mackerel exploitation rate is, so assuming, and I certainly should be allowed to assume a hell of a lot since it seems like everybody else is, assuming that everything else is equal of pollock in the Atka mackerel fishery, that we are certainly removing far less than 1% of the numbers of Atka mackerel, maybe a half a percent or less of the numbers of Atka mackerel are taken in the Atka mackerel commercial fishery. And, we may not be removing far less of that number of fish that they like to eat; we may not be taking much of their fish that they want to eat at all. Just an observation that I'd like at least to put on the record to put the issue in perspective, that in numbers of fish that are available for sea lions, the commercial fishery is likely, very likely, to not be really a factor.

Pereyra: That's an interesting line of inquiry that you're suggesting here. In going one step further, the adult Atka mackerel population, which is really the focus of our concern here, they are by and large outside of the range of the young pups and so forth, at least based upon some studies I've seen, where I think it was 30 or 50 meters or something like that, was their maximum diving depths. So, obviously these younger Atka mackerel which we aren't even considering here, which may be more pelagic in their existence, are probably more important as a prey item. Just another afterthought.

Lauber: Well, you do it with the benefit of knowledge of having a Doctorate in marine fisheries; I did mine with the benefit and knowledge of a Doctorate in law, so I'm doing pretty good, I think, for not knowing much about it--back of envelope. . .[unintelligible]. . .calculations.

Krygier: I'm not sure if this is a friendly amendment or just amending this last portion, about the CDQ amendment. I listened to Larry Cotter's dis. . .what he was proposing, and I think Robin may have. . .anyhow, I'd like to. . .what I think it should say is, it should exempt the CDQ groups from the A/B season split, but abide by the critical habitat percentages, and I don't know how to do that as an amendment; I'm little lost in the Robert's Rules of Order and that type of thing, but do I do that as a friendly amendment, Dr. Hanson?

Samuelson: Accepted, Mr. Chairman.

Lauber: State it again.

Krygier: That we would exempt the CDQ fishery from the A/B season split, but they would abide by the critical habitat percentages that the Council adopts. So, if there's a 60/40 split, they'd abide by that.

Austin: I was just curious if the maker of the original motion now sees that this is fulfilling his principle of sharing the burden of conservation?

Samuelson: Yes, I did get a little mixed up there. I think we will be sharing in the burden of conservation and it's up to this Council to define that burden of conservation, we're about ready to vote on here.

Lauber: Is there any further discussion? Are you ready for the. . .probably one of the most friendly-amended motions that we've had for many meetings. Let's see how friendly the vote goes for this friendly motion. Call the roll:

Clarence Pautzke:	Dr. Fluharty	Yes
	Mr. Kyle	No
	Mr. O'Leary	No
	Mr. Pennoyer	Yes
	Dr. Pereyra	No
	Mr. Samuelsen	Yes
	Mr. Austin	No
	Ms. Behnken	Yes
	Mr. Krygier	Yes
	Dr. DeHart	Yes
	Mr. Lauber	No

Pass.

Lauber: Count again.

Pautzke: I had six to five. I had Ms. Behnken, Mr. Krygier, Dr. DeHart, Dr. Fluharty, Mr. Pennoyer and Mr. Samuelsen voting in favor.

Lauber: Correct.

Pennoyer: Just a last comment, because I think we need to set this straight with everybody, including the industry. All the parts of this motion that deal with diagnostics and working with people I think are very, very important and having taken this step. . .I've heard people say, well you do something, and then it's not evaluated. This focus, in particularly the Atka mackerel fishery, but also in all the fisheries is there. We have a responsibility; we have declared sea lions endangered; it's been six years since we first put the closed areas into place. The focus and the research focus and our effort to keep that focus is there and our intent is to come back to this Council and revisit this issue with the Council and the industry and the Sea Lion Recovery Team and anybody else that we need to do it with, and bring in the type of data as we get it that you've requested back to you. So, I think that's a commitment and I think that's a commitment we're going to keep.

Douglas DeHart: A comment on that, Steve. While I obviously supported this motion because I felt that we needed to take a significant step at this time, I share the frustration of Mr. Hanson and others that we don't have very clear criteria and frankly I'm skeptical that in the next several years we'll be able to produce information on the reaction of Steller sea lion population that's going to give us very much insight to these actions, so my own expectation is that NMFS will develop much clearer criteria on objectives for local depletions of Atka mackerel and a clearer research plan in cooperation with industry about how we determine whether those criteria are being met or not because those are the only quantifiable objectives here that I think we're going to be able to assess in the near term, so that's what I'm looking for.

Pennoyer: I agree completely with that and while we may not understand all the ecosystem dynamics, there are needs to understand winter distribution of fish and sea lions, for example, that are more directly applicable here. And it is our intent to work with the industry and try and do that. So, we've adopted some certainty of things that we want to happen; that is amendable. And, I think we would try and come in with information to discuss how that ought to be amended if it should, and not just here. I think that applies to the range-wide questions in the Bering Sea and in the Gulf of Alaska as well. Thank you.

Krygier: I'd make a motion that National Marine Fisheries Service put together that comprehensive package on Steller sea lions and bring it to us at the October meeting.

O'Leary: Second.

Lauber: Any objection?

Pennoyer: Not an objection, but a qualification. I think we've already said what our plan was, and our plan was by the October meeting to tell you basically, "what the plan is," in terms of how we're proceeding. But I think the comprehensiveness of that hadn't been intended until the December meeting, so with the qualification there's only so many things you're going to do. . . in the summer, the final diagnostics are probably not something you're going to get done in the next three months.

O'Leary: There's something I don't want dropped through the cracks here, Mr. Chairman. While we're talking about plans and National Marine Fisheries Service coming back to us with that. At the beginning of this discussion there was also a suggestion that a letter be written to National Marine Fisheries Service. I took that to mean on behalf of the Council. The action the Council just took here is going to have a very significant impact on industry and the ability of National Marine Fisheries Service Region to be able to do the job that we're asking them to do, is going to depend in large part on industry cooperation. But it's also going to be dependent on National Marine Fisheries Service in Washington, DC, coming up with the resources necessary to provide to the Region to do the job we need to do. So I would very much appreciate that if we could direct a letter to National Marine Fisheries Service in Washington, DC apprising them of the action we've just taken and make in the strongest terms a request to have the funding needed and to complement what the industry is willing to come forward with, given the hit they're taking here.

Behnken: I'll second that.

Lauber: Any objection?

Pennoyer: I concur with the sentiment entirely. I'll probably have to abstain from a funding request to headquarters, but just for the record.

Lauber: Abstention is noted. Motion passes.

Fluharty: I think one of the things that we need to keep in mind is, as we assess these measures, those measures can roll back the other way. I think we've taken a significant step and have asked industry to do things that are important to obtain information. And in a sense we're accepting that we are changing the burden of proof around here and if we find that the fishery is not having an effect, we will not continue, at least I will not continue on the progressive changes. I don't know whether we can expect to find those things out, but I think it needs to be noted that what we learn could bring us back the other way.

Samuelson: I feel the same way as Dr. Fluharty. This wasn't an easy vote for me, talking to participants in the industry, and I would hope that the Agency and fishermen get together as soon as possible, come up with a course of action. I don't want to be sitting here two years down the road and we don't have any better data, or even a year from now. I think we'll reverse the decision because of the lack of information, the lack of the Agency coming out and participating with the fishermen, so I just want to put that on record.

Lauber: This is getting closely bordering on comments and explanations of a person's vote, and I don't allow that, after the vote. So, if you have a motion to make, or there's something that you need to put on the floor, but the vote's done unless you want to reconsider, make your comments on the motion prior to the vote.

Hanson: I'd also like the National Marine Fisheries Service to consider putting whatever plans they put together, the research and what have you, in front of the Steller Sea Lion Recovery Team some way next fall. The Recovery Team ordinarily doesn't meet in the spring which means this would be planned and already being implemented before the Recovery Team could give its opinion and I think the Recovery Team should have some role in this. So I'd request they look at an option of trying to do that sometime this fall.

Pennoyer: Our intent on the whole. . . my answer to Mr. Krygier's previous motion was not that we weren't going to try to get as much as we could, but I think we want to do that. We want to go out to industry, we want to go out with the Sea Lion Recovery Team and then we want to bring something to the Council, and doing all of that

in a final package by October I think is not going to be possible. But we'll get as much as we can and then follow it up with a more concerted effort for the December TAC-setting meeting.

Lauber: All right, anything else under this agenda item, D-1(b)? Then we'll take a break and then come back on license limitation, I think is next, C-4. . . [Change to Tape 51]

Lauber: Council will come back to order. We have people that have reservations on a plane at 1:30 with the appropriate check-in time and apparently there are several of them on this category. If they don't make this flight all the planes for the next couple of days are booked up and so they can't get out. I was wondering if you would care to, we need to know now, roll in that testimony and then, whatever it's on, and then go into LLP and delay lunch a little bit, 12:30 or something like that. What's your pleasure? Mr. Krygier?

Krygier: I'd like to reconsider my last vote, on the. . .

Lauber: Well, there goes the ball game. Catch your plane, fellas. O.K., motion to reconsider has been made by Mr. Krygier who voted on the prevailing side.

Pereyra: Second.

Lauber: It's been moved and seconded. You ready for the question? Call the roll on the. . .

Kyle: So, an affirmative vote is that we would bring it back?

Lauber: Affirmative vote would bring the Behnken substitute motion as amended back up. Call the roll.

Pautzke:	Mr. Kyle	Yes
	Mr. O'Leary	Yes
	Ms. Salveson	No
	Dr. Pereyra	Yes
	Mr. Samuelsen	Yes
	Mr. Austin	Yes
	Ms. Behnken	No
	Mr. Krygier	Yes
	Dr. DeHart	Yes
	Dr. Fluharty	Yes
	Mr. Lauber	Yes

Pass.

Lauber: Now you have before you the amended motion on Atka mackerel that was passed. What's your pleasure?

Krygier: I'd like to amend the initial change in the area 542, which went from the 5% to the 25% to 5 to 20% as far as initial change and we'd continue with the rest of the areas remain the same.

Pereyra: Second.

Lauber: Been moved and seconded.

Behnken: Just clarification., So, in 542, we start at 20% instead of 25%, are you maintaining all other aspects of the motion in that in four years we are to the target, therefore the changes are. . . I haven't worked out, but, we make it to the target in four years?

Krygier: That's correct.

Behnken: Thank you.

Lauber: Any further discussion on the amendment to the motion? Any objection to the amendment to the motion? Hearing none, it passes. Any further amendments to the motion? Are you ready for the question on the motion? Call the roll on the motion.

Pautzke:	Mr. O'Leary	No
	Mr. Pennoyer	Yes
	Dr. Pereyra	No
	Mr. Samuelson	Yes
	Mr. Austin	Yes
	Ms. Behnken	Yes
	Mr. Krygier	Yes
	Dr. DeHart	Yes
	Dr. Fluharty	Yes
	Mr. Kyle	No
	Mr. Lauber	No

Pass.

[End of discussion on this agenda item]