

MEMORANDUM

TO: Council, AP, and SSC
FROM: Chris Oliver
Executive Director *Chris*
DATE: November 23, 2012
SUBJECT: Steller Sea Lion Mitigation

ESTIMATED TIME
6 HOURS

ACTION REQUIRED

Identify alternatives for Steller sea lion EIS Analysis.

BACKGROUND

The North Pacific Fishery Management Council's Steller Sea Lion Mitigation Committee (SSLMC) has been meeting regularly since May to develop alternatives for consideration in the 2012 Steller Sea Lion Mitigation Measures EIS. At this meeting, the Council will receive recommended alternatives from the SSLMC and may choose to forward recommended alternatives, modify alternatives, or develop different alternatives for NMFS to evaluate in the EIS. The SSLMC recommend alternatives will be distributed during the meeting.

The scoping period for the SSL Mitigation Measures EIS ended on October 15, 2012. A scoping report was submitted to the Council on November 19, 2012. At this meeting, Ms. Melanie Brown (NMFS SF) will present the scoping report to the Council and is available to answer any questions about the scoping report and progress made to date on the EIS.

NMFS PR is also developing methods to evaluate a proposed action that results from the 2012 SSL Mitigation Measures EIS. NMFS plans to present the methods to the Council and the SSC in April, and may be able to provide a preliminary indication of whether the alternative would result in a jeopardy or adverse modification (JAM) determination. At this meeting, Ms. Brandee Gerke (NMFS PR) is available to discuss the planned evaluation methods and timeline for providing preliminary advice to the Council.



175 South Franklin Street, Suite 418 +1.907.586.4050
Juneau, AK 99801 USA www.oceana.org

November 27, 2012

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

Dr. James Balsiger, Regional Administrator
NOAA Fisheries, Alaska Region
709 West Ninth Street
Juneau, AK 99802-1668

RECEIVED
NOV 27 2012

Re: Agenda Item B-8: Protected Species Report
Agenda Item C-4 Steller Sea Lion Mitigation

Dear Chairman Olson, Dr. Balsiger, and Council Members:

The National Marine Fisheries Service (NMFS) and North Pacific Fishery Management Council have the opportunity now to move toward resolution of the longstanding controversy about how and whether the agency is meeting its obligation to ensure that the Bering Sea/Aleutian Islands (BSAI) groundfish fisheries comply with the Endangered Species Act. NMFS, with advice from, and in consultation with, the Council, is selecting alternatives to be analyzed in an environmental impact statement (EIS) evaluating potential management changes in the BSAI groundfish fisheries. *See 77 Fed. Reg. 22750 (April 17, 2012).* By using this process to move forward with ecosystem-based management, NMFS and the Council could demonstrate the leadership needed to reach a lasting solution that maintains healthy ocean ecosystems, including sustainable fisheries and vibrant communities. Unfortunately, however, the process being undertaken by the Council and endorsed by NMFS appears destined to continue the cycle of controversy and court challenges. Oceana encourages NMFS and the Council to avoid this result by ensuring that an appropriately broad range of alternatives is considered in the EIS, maintaining the appropriate priority on protection of endangered species, and addressing the depletion of cod in the Aleutian Islands.

The Alaska Region of NMFS and the Council have been leaders in the movement toward ecosystem-based management. The ongoing cycle of controversy surrounding the effects on Steller sea lions of removing huge quantities of important prey species is an expensive distraction from those important efforts. That distraction is fueled by those singularly interested in continuing the unsustainable fishing that has resulted in management choices being constrained by the ESA. Taking steps such as developing management measures based on the Aleutian Islands Fishery Ecosystem Plan and finding ways to more effectively consider the needs of top predators in setting catch levels will help avoid having future fishery management decisions limited by the ESA and help break the continuing cycle of controversy. NMFS should focus on making further progress toward ecosystem-based management—and encourage the Council to do the same—rather than appeasing those who are narrowly focused on increasing fishing company profits.

The current EIS process is the result of a broad legal challenge filed by the State of Alaska, head-and-gut trawl companies, and freezer longliners to new measures implemented by NMFS to ensure compliance with the ESA. *See State of Alaska v. Lubchenco*, No. 3:10-cv-00271-TMB, slip op (D. Ak, Jan. 19, 2012). Those new measures were necessary in part because the western population of Steller sea lions has declined precipitously, and the current population represents a decline of approximately 80% since the 1960s. Moreover, the population as a whole is not recovering and continues to decline sharply in the western Aleutian Islands. One likely cause of the continued decline and failure to recover is competition for food with the industrial groundfish fisheries. The federal district court in Alaska rejected all of the plaintiffs' substantive ESA challenges to the new measures designed to reduce competition with Steller sea lions and the underlying Biological Opinion (BiOp) finalized in December 2010. It found that "NMFS made reasoned findings sufficient to establish the required causal link between the proposed action and its jeopardy and adverse modification determinations" and "did not misapply the jeopardy and adverse modification standards," "rely on factors that Congress did not intend it to consider," or "fail[] to consider an important aspect of the problem or failed to articulate a rational connection between its findings and conclusions." *Alaska v. Lubchenco*, No. 3:10-cv-00271-TMB, slip op at 27, 30, 33, 38 (D. Alaska Jan. 19, 2012).

These determinations—reached by NMFS and approved by the court—continue the agency's longstanding conclusion that large-scale groundfish fisheries compete for prey with Steller sea lions. *See* 55 Fed. Reg. 49,204, 49208 (Nov. 26, 1990) (suggesting that "a reduction in availability of pollock, the most important prey species in most areas, is a contributing factor in the decline"). Evidence about the interaction between large-scale fisheries and Steller sea lions has been considered by the agency both in the context of meeting its ESA obligations and otherwise. In each instance, NMFS has evaluated the available information and appropriately rejected the argument from industry that, somehow, removing huge quantities of fish has no effect on sea lions. There is no reason to deviate from this conclusion now, and even if there were some reason for skepticism based on the available information, the ESA specifically requires that such doubt be resolved in favor of protecting endangered Steller sea lions. *See, e.g., Conner v. Burford*, 848 F.2d 1441, 1454 (9th Cir. 1988) (finding that, to the extent that the best available science is equivocal, the agency must respect "Congress' intent to give the benefit of the doubt to the species") (internal quotation omitted).

Given the longstanding history, the validation of the agency's conclusions in the December 2010 BiOp, and the ESA's clear direction, NMFS cannot now simply back away from the protections it deemed necessary in 2010. Certainly, there may be other suites of management changes that could meet the level of protection identified as necessary in the 2010 BiOp, but such management measures would necessarily involve tradeoffs. There is no scientific information about the fisheries or Steller sea lions that could justify new measures simply allowing more fishing without a coincident increase in other protections. In fact, the latest information shows that sea lions continue to disappear from the western Aleutian Islands, tagged sea lions are ranging further to feed than previously expected, and populations of Atka mackerel, cod, and pollock are declining. Thus, it is likely that more protection, not more fishing, is needed.

Nonetheless, it appears that the Council's Steller Sea Lion Mitigation Committee is preparing to advise the Council that it should seek increased fishing in the Aleutian Islands without any corresponding increase in levels of protection. The alternatives currently being discussed by the committee include only changes to current management that would allow more fishing. If implemented, these changes would provide less protection than the alternative forwarded by the

Council in 2010 and ultimately rejected by NMFS. The current proposed alternatives cannot be implemented consistent with the agency's obligations under the ESA; and insistence on pursuing this course will perpetuate the expensive cycle of National Environmental Policy Act (NEPA) review, ESA consultation, and litigation.

Oceana has participated in this process in good faith, including suggesting alternatives on its own behalf and forwarding a proposal from another conservation organization designed to increase protections and, possibly, provide a pathway to consideration of tradeoffs. We have also made clear the problems with the one-sided alternatives being considered by the committee and the need to consider a full range of alternatives in order to comply with the ESA and NEPA. Our suggestions and concerns have been voted down in favor of considering only increased fishing. We are disappointed in this result and encourage the Council and NMFS to reject the committee's recommendations. Ultimately, the Council and NMFS should think carefully about the time, money, and energy dedicated to the Steller Sea Lion Mitigation Committee process over the past seven years and whether the results justify those expenditures.

NMFS should also reconsider the timing and scope of any potential new ESA consultation process. The schedule currently established by NMFS allows the Council to choose a preliminary preferred alternative and then commits the agency to make a decision about reinitiating ESA consultation based on that preliminary preferred alternative and a draft EIS. Given the direction of the Steller Sea Lion Mitigation Committee and the Council's communications, *see* Letter from Eric Olson, Chairman North Pacific Fishery Management Council, to Dr. Jane Lubchenco, NOAA (Oct. 15, 2012), the overwhelming likelihood is that the only result of that process that could comply with the ESA is a new consultation and, because only additional fishing will be proposed, a conclusion that the preliminary preferred alternative results in jeopardy and adverse modification. It also means that the agency will make a decision about whether a new consultation process is required without the benefit of public comment on its draft EIS. NMFS should consider deferring a decision about whether consultation is necessary until it has reviewed comments on the draft EIS and determined whether there is an alternative, other than the status quo, that could be crafted in compliance with the ESA.

NMFS also should revise the language in the purpose and need statement referencing the economic impacts of the conservation and management measures needed to ensure that fisheries are not causing jeopardy to Steller sea lions or adverse modification of their critical habitat. First, the characterization of the existing "Steller sea lion protection measures" in the current draft purpose and need statement as "caus[ing] substantial economic impacts" is overly broad and could be seen as presenting a biased view of the role those protections play. *See* NMFS, Scoping Report 3 (2012), *available at* <http://www.fakr.noaa.gov/sustainablefisheries/sslpm/eis/scopingrpt1112.pdf>. Even with the new protection measures, the BSAI groundfish fisheries have continued to catch almost all of the fish allocated to them, and total catch in BSAI is below the Optimum Yield cap, which is independent of the sea lion protections measures at issue here. *See* 50 C.F.R. § 679.20(a)(1)(A). Thus, while the protection measures may have economic impacts on certain segments of the fisheries, they do not appear to be having a broader economic impact on the groundfish fisheries overall. Moreover, the economic impacts that the agency predicted would be incurred by individual segments of the fishery as a result of the new measures implemented in 2011 have not been fully realized. The Atka mackerel catch was only 24% lower in 2011 and 2012 than it was in 2010. Further, fishing quotas should be expected to fluctuate under a harvest management strategy that attempts to maximize catches over the long term and, in fact, the Atka mackerel quota dropped 47%

between 1996 and 1997 and 26% between 2001 and 2002. See Lowe et al., Assessment of the Atka mackerel stock in the Bering Sea/Aleutian Islands, November 2012 Council Draft, *available at* http://www.afsc.noaa.gov/REFM/stocks/plan_team/BSAIatka.pdf. The Atka mackerel fishery has flourished despite these fluctuations. Ultimately, of course, NMFS and the Council have allowed fisheries to remove more than half of the stocks of important prey species, and any short-term costs may be outweighed by a future in which these stocks remain part of a healthy ocean ecosystem.

Moreover, the draft purpose and need statement includes language creating the clear impression that the agency is seeking to minimize economic impacts as well as prevent jeopardy and adverse modification. Simply put, the agency cannot consider economic concerns on the same footing as meeting its ESA obligations. In particular, NMFS may not “balance the benefit to the species against the economic and technical burden on the industry before approving an RPA.” *Greenpeace v. National Marine Fisheries Service*, 55 F. Supp. 2d 1248, 1267-69 (W.D. Wash. 1999) (rejecting industry’s argument that the chosen RPA was not “economically and technologically feasible”); see also *id.* (“It remains an open question whether this requirement should be interpreted as referring only to whether the RPA is feasible for the agency, or whether it relates to the effects on third parties.”). If there are a series of alternatives, all of which eliminate jeopardy and adverse modification, the agency may consider other factors, including effects on industry. The agency may not, however, consider the two goals as coextensive.

Nothing in the Magnuson-Stevens Act alters the agency’s primary obligation to meet its ESA mandate. Neither National Standard 7 nor its implementing regulations allow NMFS to balance the benefits to sea lions against the costs of necessary protections. Rather, they simply provide another set of factors the agency may consider if there are reasonable alternatives, all of which ensure that fisheries do not cause jeopardy to Steller sea lions or adverse modification of designated critical habitat.

An appropriate modification of the purpose and need would make clear that the purpose of the EIS is to evaluate measures necessary to prevent the BSAI groundfish fisheries from causing jeopardy or adverse modification. In determining how best to meet that obligation, the agency may consider factors that include costs and efficiencies to certain segments of the regulated industry.

Finally, in developing alternatives, the Council and agency must consider new information about Pacific cod and Atka mackerel in the Aleutian Islands. Since 2006, the Council’s Scientific and Statistical Committee (SSC) has recognized that separate catch allocations should be made for Pacific cod in the Bering Sea and the Aleutian Islands. This determination has resulted in part from the increasing evidence that Eastern Bering Sea and Aleutian Islands cod should be managed as separate stocks. Spies (2012) concluded that her study “provides the most comprehensive evidence to date for genetic distinctiveness and lack of gene flow between the Aleutian Islands and Eastern Bering Sea.” That study built on earlier genetic studies including Canino et al. (2005), Cunningham et al. (2009), and Canino et al. (2010). In addition, there is evidence to support the importance of recognizing stock distinctions in management of gadids in general (e.g., Fu and Fanning (2004) and Hutchinson (2008)). In light of all of this evidence, the SSC requested in 2010 that a separate assessment be prepared for Pacific cod in the Aleutian Islands.

The draft assessment presented in 2012 explores four different models for the Aleutian Pacific cod stock. All four models indicate a declining biomass trend, and all four recommend an Acceptable Biological Catch significantly lower than the recent catches in the region. Further, all four models

Oceana letter re: Steller sea lions
November 27, 2012
Page 5 of 5

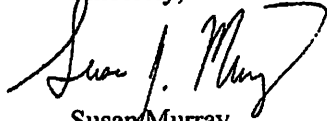
suggest that there's a significant probability that the stock is currently overfished and below even the B20 threshold. Thus, all indicators point to a localized depletion of Pacific cod in the Aleutian Islands and, given the importance of Pacific cod to Steller sea lions, call into question the sufficiency of the current management measures in the Aleutian Islands.

Further, the Atka mackerel population in the Aleutian Islands is on a downward trend, and the recent stock assessment suggests that the Allowable Biological Catches from the previous several years were overly optimistic. The projected age 3+ biomass at the beginning of 2013 is estimated to be 288,936 mt, down about 29% from last year's estimate for 2012. Reductions in Atka mackerel catch were clearly necessary, not only to conserve prey for Steller sea lions, but also to avoid overfishing and maintain the Atka mackerel stock.

In light of all of the information about the Aleutian Islands ecosystem and the effects of large-scale fishing, NMFS and the Council should reject any alternatives that simply allow more fishing and should analyze a process through which the agency and Council would determine how to account for the Aleutian Islands ecosystem as a whole in making management choices. Such a process might take two years and would involve considering revisions to the harvest management strategy for important prey species, including the optimum yield calculation, harvest control rules, and tier system, so that it explicitly incorporates the needs of apex predators. Such a revision might include: a total harvest range for prey species in the Aleutian Islands; rebuilding prey stocks to 60% unfished biomass; managing the Aleutian Islands cod stock separately from the Bering Sea stock; and designing a management experiment that is consistent with the ESA and allows for control areas that would help evaluate the effects of fishing on the marine ecosystem.

Thank you again for your leadership in moving toward ecosystem-based management. The choices you make about how to address the impacts of large-scale commercial fisheries and Steller sea lions could continue that leadership and help break the ongoing cycle of controversy and litigation. We look forward to working with you on this and other important issues related to restoring and maintaining the health, productivity, and biodiversity of the North Pacific marine ecosystem, fishing opportunities, and vibrant coastal communities.

Sincerely,



Susan Murray
Deputy Vice President, Oceana

1. The council expects NFS to produce the EIS consistent with the court order and timelines approved therein, fully incorporating the findings of both independent reviews, and provide full analysis of all controversial issues,
2. The Council expects the EIS to state how alternatives considered and decisions based on it will or will not achieve the requirements of other environmental laws.
3. The Council expects the EIS process will result in reconsultation on a package of fishery measures that, when compared to the 2010 BiOp, better balance the need to protect Steller sea lion populations in the central and western AI, the needs of the groundfish fisheries and fishery dependent communities, using the best scientific information as a foundation, including the results of the peer-review process.
4. The Council forwards the two alternatives developed by the SSLMC for analysis in the EIS, with the following modifications:

In addition, the Council moves a third alternative which consists of the regulations and RPAs for Atka mackerel and Pacific cod in place prior to adoption of the 2011 Interim Final Rule, adjusted to take into account changes in fishery management that have occurred since 2003 (e.g., Amendment 80, etc.), and for walleye pollock, includes the measures contained in SSLMC Alternative 2 to allow a fishery in areas 543, 542, 541.

North Pacific Fishery Management Council, Steller Sea Lion Mitigation Committee recommended alternatives for the 2012 Steller Sea Lion Mitigation Measures EIS.

The Steller Sea Lion Mitigation Committee (SSLMC) recommends that the Council consider the following two alternatives for evaluation in the 2012 Steller Sea Lion Mitigation Measures EIS.

Alternative 1

Atka mackerel

The “platoon” system is replaced by one or more cooperatives.

543

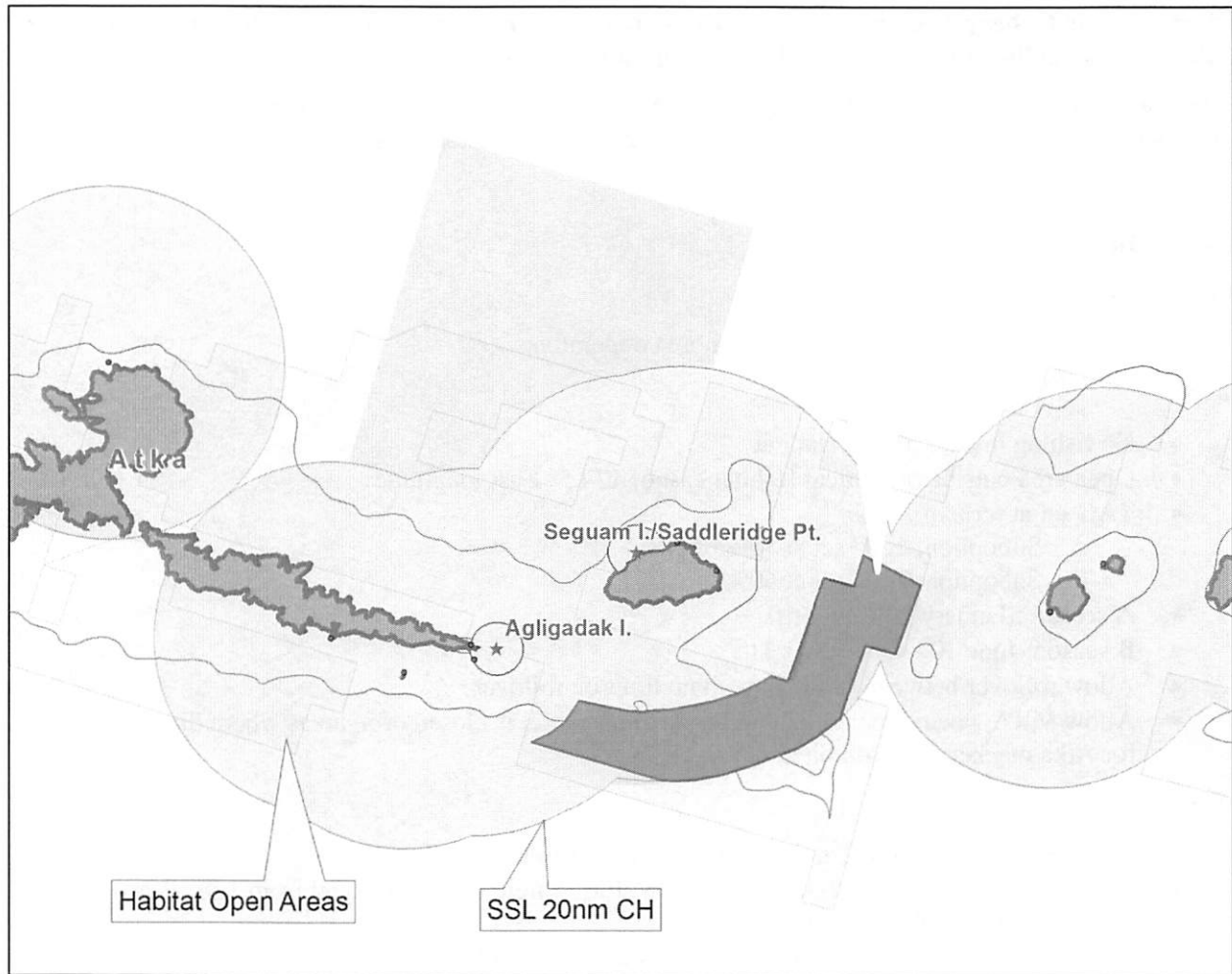
- No fishing inside Critical Habitat
- Open area outside of Critical Habitat east of 174.5° East longitude
- TAC set at 65% of ABC
 - Suboption: TAC set at 50% of ABC
 - Suboption: TAC set at 40% of ABC
- A season : January 20 – June 10
- B season: June 10 – December 31
- Allow rollover between seasons, with no limit on rollover
- Allow MRA when directed fishing for Atka mackerel is closed or in areas where directed fishing for Atka mackerel is prohibited

542

- Apply 2010 SSL closures around rookeries and haulouts (0-10 nm)
- No fishing inside Critical Habitat from 178° East longitude to 180°, and from 178° West longitude to 177° West longitude
 - Alternative: Bering Sea trawl limited access: no fishing inside Critical Habitat
- TAC set at 65% of ABC
- Catch limit inside Critical Habitat established, based on most recent estimates of local biomass (e.g., FIT studies), to maintain harvest \leq 5% of local abundance, but not to exceed 50% of TAC
- A season: January 20 – June 10
- B season June 10 – December 31
- Allow rollover between seasons, all rollover amount to be fished outside CH only
- Limits apply to all sectors

541

- Open a portion of CH area between 12 and 20 nm southeast of Seguam (Map 1-1)
- Bering Sea trawl limited access : no fishing inside CH
- Harvest inside CH limited to \leq 50% of area 541 TAC
- A season: January 20 – June 10
- B season : June 10 – December 31
- Allow rollover between seasons, all rollover amount to be fished outside CH only
- Modify MRA regulations in the Bering Sea portion of 541 to calculate MRA on an offload-to-offload basis, limited to Amendment 80 vessels and CDQ entities



Map 1-1. Seguam Island open area 12-20 nm from Seguam Island SSL site.

Pacific cod

Catch limit in Aleutian Islands is that portion of the Pacific cod stock(s) in the Aleutian Islands, as identified by stock assessment, split between the Aleutian Islands management areas (543, 542, 541) by the 4-survey rolling average of cod occurrence (e.g., for 2013 25% in 543, 75% in 541/542).

543

- Catch limit catch is the AI portion of Pacific cod stock multiplied by the 4-survey biomass proportion for 543

Option 1: Limit to HAL CP and Trawl CP (No Mothership participation)

- Catch limit subdivided between HAL CP and Trawl CP based on ratio of 2006 – 2010 (most recent years before 2011 IFR) catch
- Open CH outside 6 nm from SSL sites for HAL CP
- Open CH outside of 10 nm from 173° East longitude and 174.5° East longitude for Trawl CP
- Seasons
 - HAL: January 1 – November 1
 - Trawl: Jan 20 – April 30
- No more than 2 HAL CP vessels and 2 Trawl CP vessels at one time in the directed fishery

Option 2: Include Mothership participation

- Catch limit subdivided by HAL CP and Trawl CP based on ratio of 2006 – 2010 catch
- Open CH outside of 6 nm for HAL CP
- Open CH outside of 10 nm from 173° East longitude and 174.5° East longitude
- Seasons
 - HAL: January 1 – November 1
 - Trawl: January 20 – April 30
- No more than 2 HAL CP vessels and 2 Trawl CP vessels at one time in the directed fishery

542/541

Catch limit in area 542/541 is limited to the AI portion of the BSAI Pacific cod stock(s), as identified by stock assessment, minus the State waters GHZ and minus the limit for area 543.

Option 1: Limit to HAL CP and Trawl CP, CV (No Mothership participation)

- Catch limit for Fixed Gear CP and Trawl CP is 2006 – 2010 history expressed as a ratio of the total catch in 541/542. Catcher Vessels subject to area 541/542 limit
- Open Critical Habitat 0-20 nm at haulouts for fixed gear
- Open Critical Habitat 3-20 nm at rookeries for fixed gear
- Open Critical Habitat east of 178° West longitude to 174° West longitude for trawl gear
 - Outside 3 nm from haulouts
 - Outside 10 nm from rookeries
- Seasons
 - Fixed gear: January 1 – November 1
 - Trawl CV: January 20 – November 1
 - Trawl CP: January 20 – December 31
- CV delivery
 - Option: Catcher Vessel delivery only to shoreside facility in area 542/541
 - Option: Catcher Vessel delivery to shoreside facility(includes stationary floating processors at single geographic location for 12 months)

Option 2: Include Mothership participation

Catch limit for Fixed Gear CP, Trawl CP, and Mothership (CV delivering to mothership processor) is 2006 – 2010 history expressed as a ratio of the total catch in 541 and 542. Catcher Vessels delivering to shoreside and stationary floating processors subject to area 541/542 limit.

- Open Critical Habitat 0-20 nm at haulouts for fixed gear
- Open Critical Habitat 3-20 nm at rookeries for fixed gear
- Open Critical Habitat east of 178° West longitude to 174° West longitude for trawl gear
 - Outside 3 nm from haulouts
 - Outside 10 nm from rookeries
- Seasons
 - Fixed Gear: January 1 – November 1
 - Trawl CV: January 20 – November 1
 - Trawl CP: January 20 – December 31

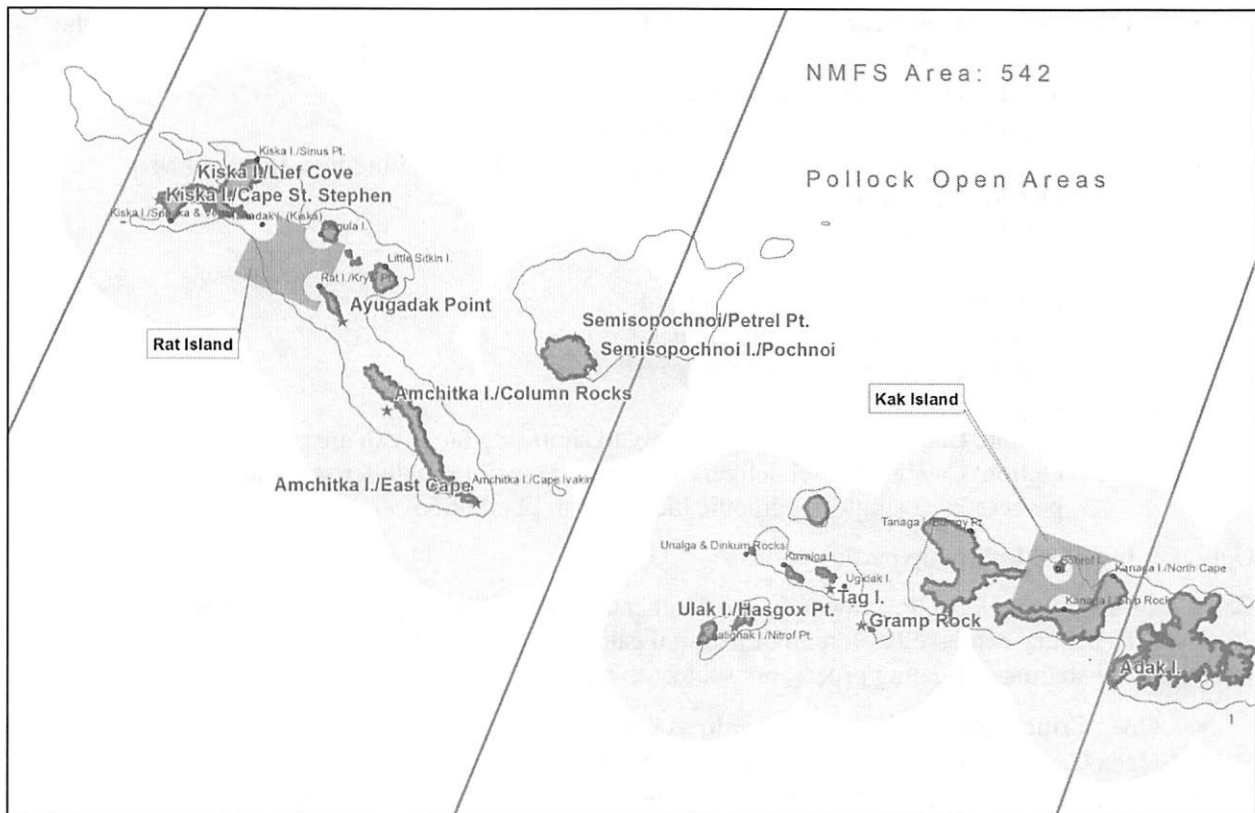
Walleye pollock

543

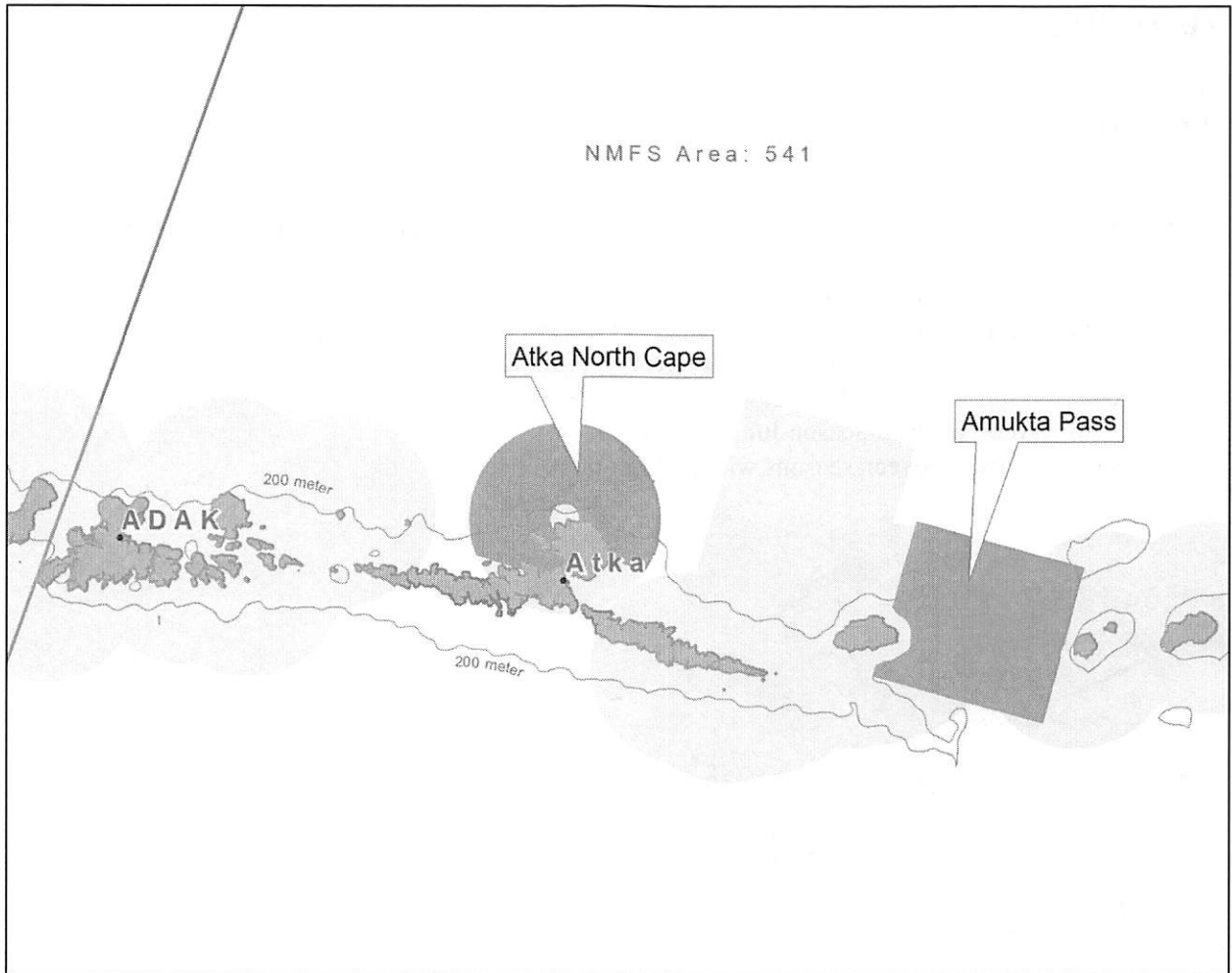
- Prohibit directed fishing for walleye pollock

542/541

- Apportion TAC between 541 and 542 based on the best estimate of total AI biomass ratio using the same methods as applied to Atka mackerel ABC
- Retain A-season catch limit of 40% of ABC
- Catch limit in 541 or 542 cannot exceed corresponding ratio of ABC from survey biomass
- Open portion of Critical Habitat west of 178° West longitude to pelagic fishing outside of 3 nm from Krysi Pt. (Hawadax Island), Tanadak, Segula, and outside 10 nm from Little Sitkin and Ayugadak haulouts (Map 1-2)
- Open Kanaga Sound east of 178° West longitude to pelagic fishing outside 3 nm from haulouts
 - Alternative: limit to vessels < 60 feet (Map 1-2)
- Open portion of Critical Habitat to pelagic fishing around a number of haulouts at Atka North Cape, Amutka Pass / Seguam-southside (Map 1-3)



Map 1-2. Area 542 open areas for walleye pollock under Alternative 1.



Map 1-3. Area 541 open areas for walleye pollock under Alternative 1.

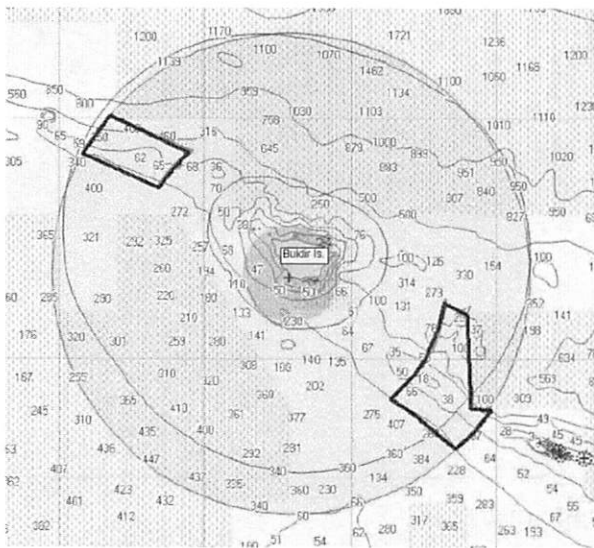
Alternative 2

Atka mackerel

The “platoon” system is replaced by one or more cooperatives.

543

- Open Critical Habitat with the same restrictions that were in place in 2010 during the HLA fishery
 - Alternative: open outside CH
- Open portions of Critical Habitat from 10-15 nm at Buldir Island (Map2-1)
 - Alternative: Close outside CH west of 174.5° E.
- A-season Jan 20 – Jun 10; B-season Jun 10 – Dec 31
 - Alternative: B-season Jun 10 – Nov 1
- Allow rollover between seasons with no limit on rollovers



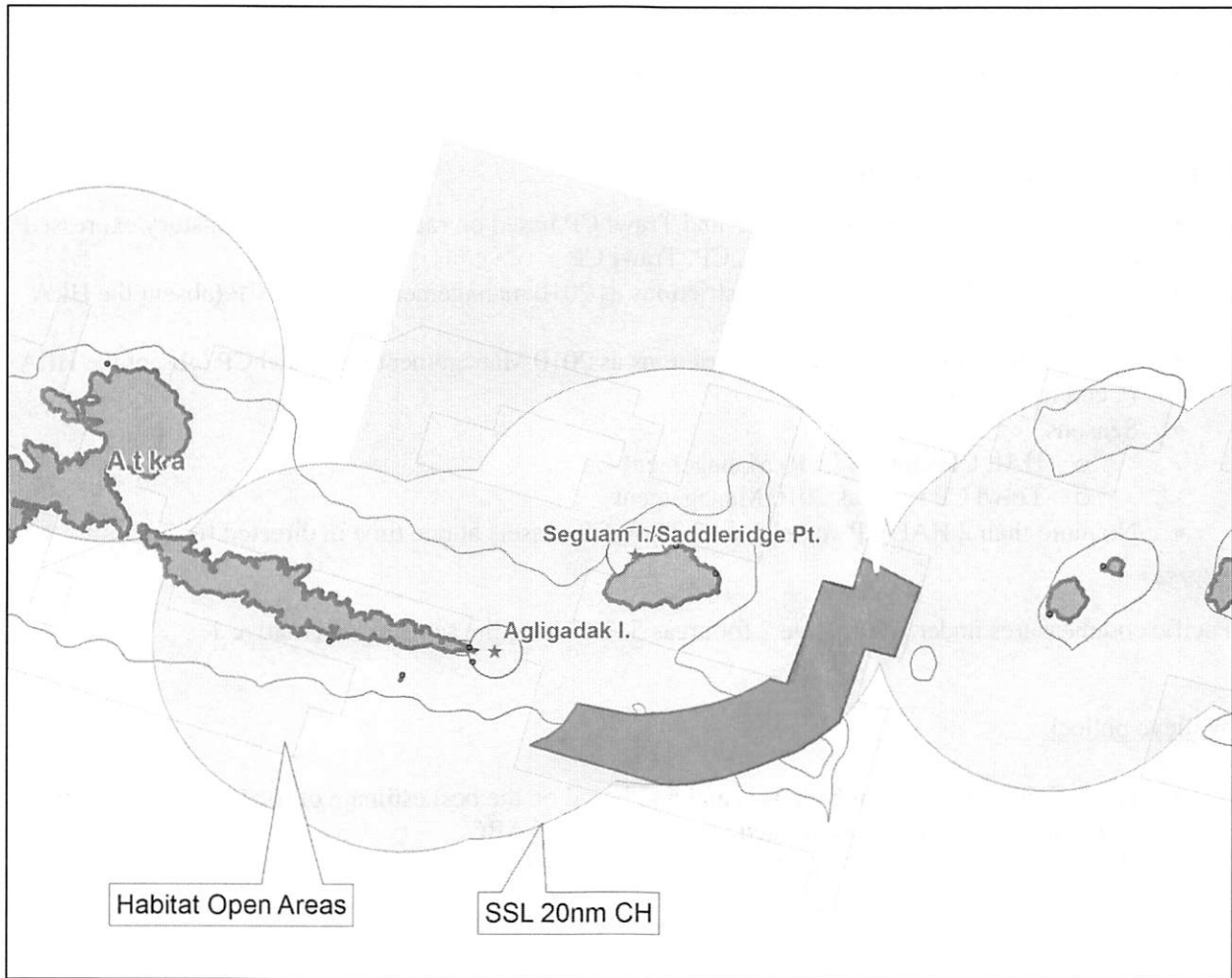
Map 2-1. Buldir Island open areas under Alternative 2.

542

- Open Critical Habitat with the same restrictions as in place in 2010 during the HLA fishery, except maintain closure around Amchitka Island (178°E – 180°)
- A season January 20 – June 10
- B-season June 10 – December 31
 - Alternative: B-season June 10 – November 1
- Allow rollover between seasons with no limit on rollovers

541

- Open a portion of CH 10-20 nm at Seguam (Map 2-2) with no limit to catch inside Critical Habitat
- A season January 20 – June 10
- B season June 10 – December 31
 - Alternative: B-season June 10 – November 1
- Allow rollover between seasons with no limit on rollovers



Map 2-2. Seguan Island open area for Atka mackerel fishing.

Pacific cod

Catch limit in Aleutian Islands is that portion of the Pacific cod stock(s) in the Aleutian Islands, as identified by stock assessment, split between the Aleutian Islands management areas (543, 542, 541) by the 4-survey rolling average of cod occurrence (e.g., for 2013 25% in 543, 75% in 541/542).

543

- Catch limit in area 543 is the AI portion of Pacific cod stock(s), as identified by the stock assessment, multiplied by the 4-survey biomass proportion for 543 (e.g., 25% for 2013)

Option 1: Limit to HAL CP and Trawl CP

- Catch limit subdivided between HAL CP and Trawl CP based on ratio of 2006 – 2010 (most recent years before 2011 IFR) catch
- Open Critical habitat with same restrictions as 2010 management for HAL CP (absent the HLA P. cod restrictions)
- Open Critical Habitat with same restrictions as 2010 management for Trawl CP (absent the HLA P. cod restrictions)

- Seasons
 - HAL CP same as 2010 management
 - Trawl CP same as 2010 management
- No more than 2 HAL CP vessels and 2 Trawl CP vessels at one time in the directed fishery

Option 2: Include Mothership participation

- Catch limit subdivided by HAL CP and Trawl CP based on ratio of 2006-2010 history expressed as a ratio of the total for both HAL CP, Trawl CP
- Open Critical Habitat with same restrictions as 2010 management for HAL CP (absent the HLA P. cod restrictions)
- Open Critical Habitat with same restrictions as 2010 Management for Trawl CP (absent the HLA P. cod restrictions)
- Seasons
 - HAL CP same as 2010 Management
 - Trawl CP same as 2010 Management
- No more than 2 HAL CP vessels and 2 TRW CP vessels at one time in directed fishery

542/541

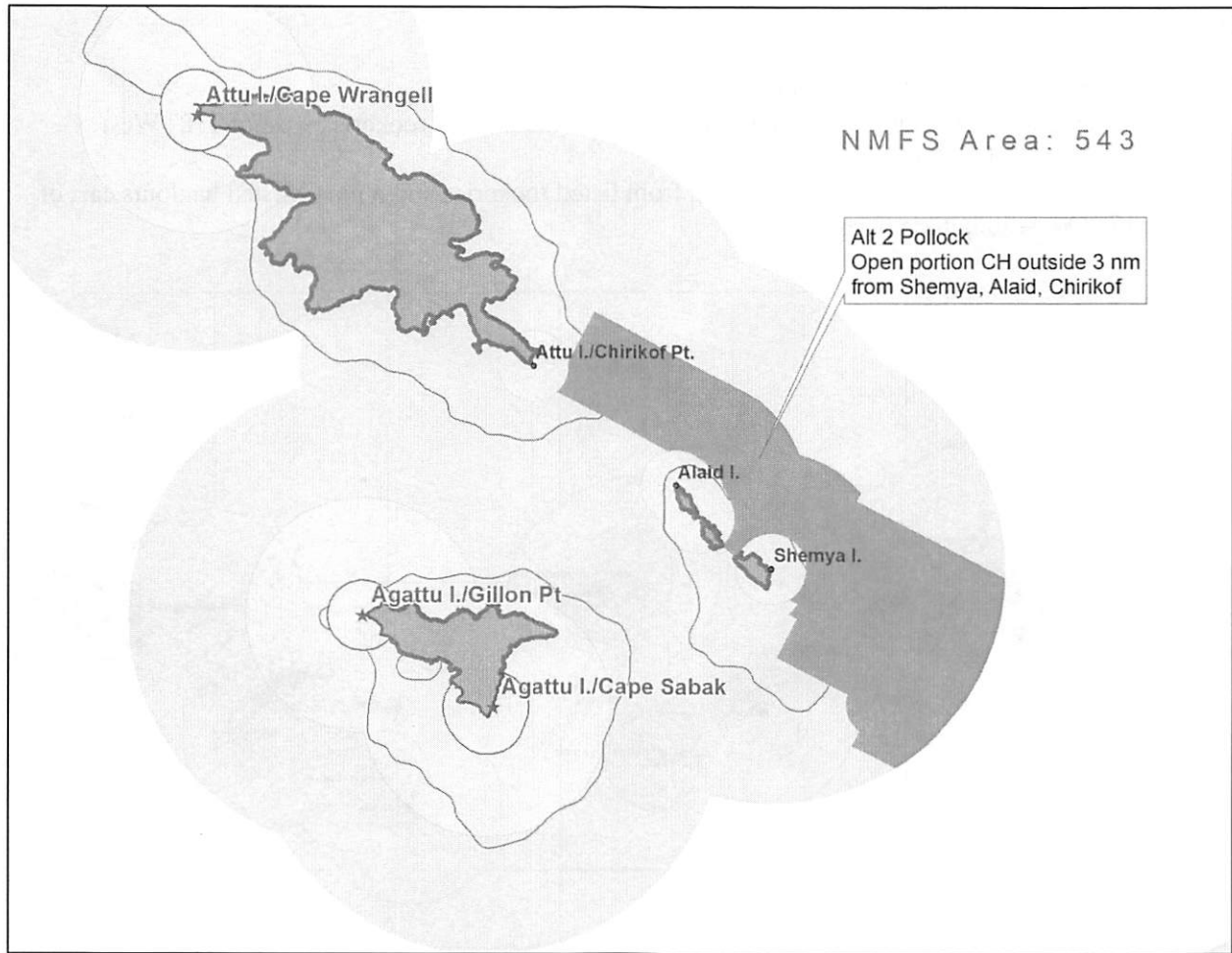
Pacific cod measures under Alternative 2 for areas 542/541 are the same as Alternative 1

Walleye pollock

- Apportion TAC between 543, 541, and 542 based on the best estimate of total AI biomass ratio using the same methods as applied to Atka mackerel ABC.
- Retain catch limit of 40% of ABC harvested in A season

543

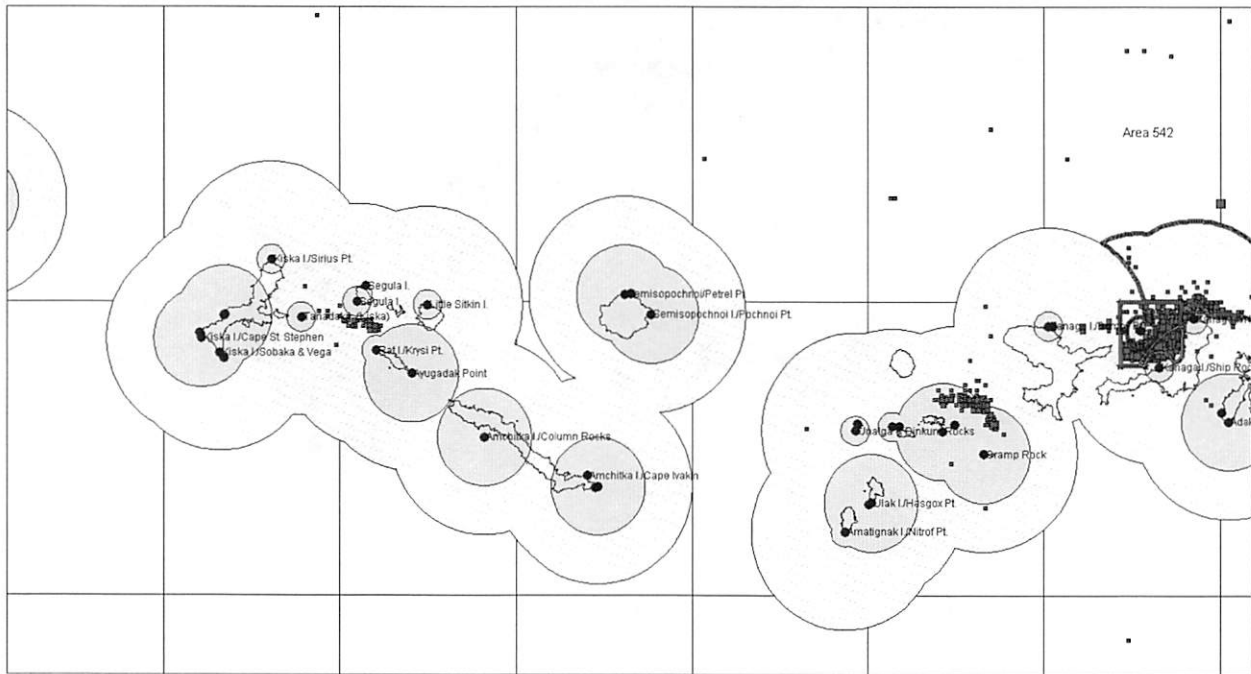
- Open a portion of Critical Habitat outside 3 nm from Shemya, Alaid, and Chirikof haulouts to pelagic trawling (Map 2-3)



Map 2-3. Shemya, Alaid, Chirikof open area.

542

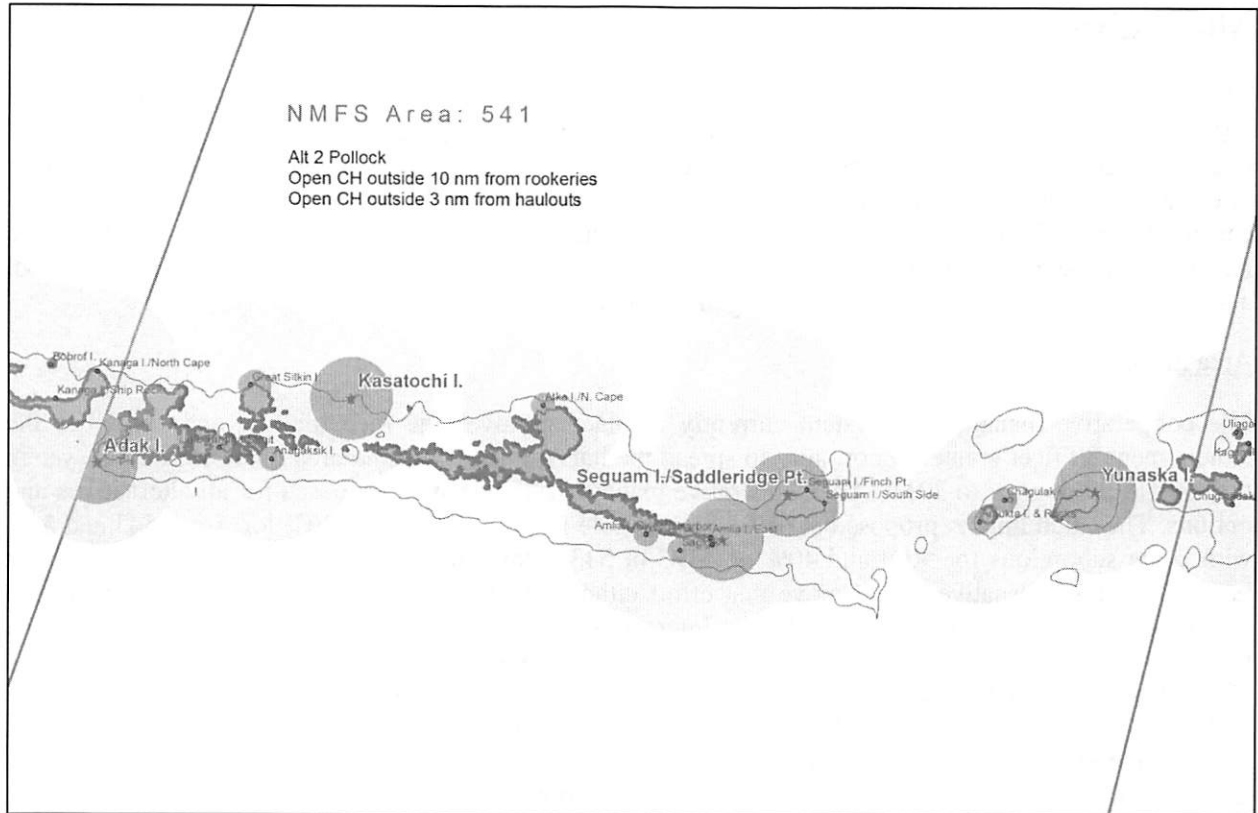
- Open portion of Critical Habitat identified in Alternative 1
- Open Critical Habitat outside of 10 nm of listed haulouts and rookeries west of 178° West longitude (Map 2-4)
- Open Critical Habitat outside of 10 nm from listed rookeries and 3 nm of listed haulouts east of 178° West longitude (Map 2-4)



Map 2-4. Proposed 542 open areas. Three and ten nm closures around haulouts and rookeries are shown in pink, proposed open areas are shown with diagonal hashmarks.

541

- Open portion of Critical Habitat identified in Alternative 1
- Open Critical Habitat to pelagic trawling outside of 10 nm from rookeries and 3 nm from haulouts in area 541 (Map 2-5)



Map 2-5. Proposed 541 open areas. Please note that open areas at Atka North Cape and Segum Pass, as identified in Alternative 1, are not shown on this map, but are intended to be included in Alternative 2.

Alternative 1

Alternative 1 is designed to allow some relief to fishing fleets and communities in the Aleutians from restrictions placed on fisheries for Atka mackerel and Pacific cod by the Interim Final Rule implemented in January 2011. The principle behind Alternative 1 is that recent scientific information and review of information available prior to the development of the 2010 RPA indicates that the management actions enacted by the IFR are unnecessarily restrictive, and that conservation of Steller sea lions (SSL) in the Aleutians can be achieved while allowing additional access to fish resources (Atka mackerel, Pacific cod, and walleye pollock) in some parts of management areas 543, 542, and 541.

Atka mackerel

The cooperative management system currently in place removes the race for fish and provides the Amendment 80 fleet greater opportunity to spread the harvest over time and area than the platoon system that was in place prior to 2011. The cooperative management system is proposed for all alternatives and options. The catch limit is proposed at 65% of Allowable Biological Catch (ABC) for Areas 543 and 542, with some suboptions for 50% and 40% of ABC in 543. Previously, up to 60% of TAC was allowed inside CH, this alternative would move that effort either outside of CH (in 543), or to areas inside CH where recent research by NMFS' Fisheries Interaction Team (FIT) has suggested that the local Atka mackerel biomass is capable of supporting a limited harvest without causing localized depletion. Studies of local biomass, such as studies conducted by FIT have provided information at finer scales than the NMFS management surveys, which are multi-species, multi-objective surveys. Establishing catch limits at 65% of ABC in 542 and limiting inside CH catch to $\leq 50\%$ of TAC is designed to maintain catch at levels less than or equal to 5% of the local biomass, as estimated by FIT studies.

In all AI management areas, the B season is proposed to be extended from November 1 to December 31. This distributes effort over a great portion of the year to avoid potential for causing localized depletion. Allowing rollover between A and B seasons prevents the potential for "peak fishing" at the end of the season, and allowing MRA when directed fishing for Atka mackerel is closed or is prohibited maximizes the retained catch, reducing regulatory discards.

543

In area 543, no fishing is proposed in Critical Habitat (CH), and fishing outside of CH is only proposed for areas east of 174.5° East longitude. This confines the fishery only to those areas with relatively few SSL sites, and restricts the fishery from those areas in 543 with the largest numbers of SSL adults and pups.

542

In area 542, the closed areas in place in 2010 would be reinstated with one additional protection measure, and CH would remain closed around SSL rookeries and haulouts from 0-10 nm. Fishing in CH would be prohibited from 178° East longitude to 180° and from 178° West longitude to 177° West longitude which prohibits fishing near Amchitka, where research has shown that fishing as it occurred before 2011 could affect SSL prey inside of 10 nm, and abundance of mackerel is relatively low compared to other fishing areas in 542. Where fishing in side CH is permitted, catch would be limited to 50% of the 542 TAC, based on recent FIT estimate of biomass, which is designed to be less than or equal to 5% of local abundance. This reduces the likelihood that fishing for Atka mackerel would result in localized depletion.

541

Fishing inside CH is proposed in a limited portion of the area from 12 to 20 nm south of Seguam Island (Map 1-1), but harvest inside CH is limited to 50% of the BS/ 541 TAC. This limited area for inside CH fishing is based on FIT studies that have shown that there is very little exchange between mackerel in the inside areas proximate to the islands around Seguam Pass (inside 12 nm) and mackerel on the outside portion (12+ nm). This new information suggests that Atka mackerel on the outside (beyond 12 nm) area follow bathymetric contours extending from outside CH to the inside area to approximately 12 nm from the SSL sites at Agligidak, Amlia, and Seguam Islands. This alternative would open this limited area inside CH to Atka mackerel fishing to distribute fishing effort from the small area currently open, and help prevent localized depletion without effects on the mackerel most proximate to the SSL sites in the area.

Modifying Maximum Retainable Amount (MRA) regulations in the Bering Sea (BS) portion of the BS/ 541 area to allow calculations based on an offload-to-offload basis would allow more of the BS/541 TAC to be harvested in the BS rather than the area closer to SSL sites. Current MRA regulations make it difficult for fishermen to conduct a BS MRA style fishery. This alternative would allow MRA to be calculated in a manner that has worked for many years for pollock retention for the Amendment 80 sector.

Pacific cod

Pacific cod comprises a relatively small share of the overall groundfish biomass in the Aleutian Islands and makes up a relatively small portion of the SSL diet, as determined by Frequency of Occurrence (FO) in scats collected from SSL sites. Additionally, the size of Pacific cod utilized by SSLs is substantially smaller than the size of cod generally targeted by Pacific cod fisheries. For these reasons, the SSLMC feels that the potential impact of Pacific cod fisheries on the SSL population in the Aleutians is small, and management measures limiting harvest of Pacific cod should be relaxed.

For the Aleutian Islands in general, and specifically for each AI management area, the limit on harvest would be that portion of Pacific cod stock(s) in the Aleutian Islands, as identified by stock assessment, split between the Aleutian Islands management areas (543, 542/541) by the 4-survey rolling average of cod occurrence. For example, for 2013 the proportions would be 25% in 543 and 75% in 541/542 of the Aleutian Islands portion of the combined BSAI stock. If and when the BS and AI are managed as separate stocks, the catch limit for the AI would be determined by the AI stock, and the catch limit for each management area (543, 542/541) would be determined by the relative proportion of the stock in each area. Where a cod fishery occurs in the State of Alaska waters, the federal limit would be reduced by the GHL amount before catch limits are established for the federal fishery in each management area.

Alternatives described below have two options: prohibiting or including mothership participation. Prohibiting mothership participation was considered as a way to increase the economic benefits of the fishery to the Aleutian Islands communities to which Catcher Vessels would deliver cod for processing.

543

Critical habitat would be opened beyond 6 nm for hook and line (HAL) Catcher Processors, and beyond 10 nm from 173° East longitude to 174.5° East longitude for Trawl Catcher Processors. This would reduce the potential for spatial overlap between feeding SSLs and fishing vessels, while protecting CH proximate the SSL sites. Seasons (January 1-November 1 for HAL CP, January 20 – April 30 for Trawl CP), and limiting participation to two HAL CP and two Trawl CP vessels at one time are designed to disperse the catch temporally, again reducing the potential for localized depletion of Pacific cod.

542/541

The Pacific cod catch limit for 542/541 would be the AI portion of the BSAI Pacific cod stock, minus the state waters GH, and minus the limit for area 543. There are again two options for this alternative, prohibiting or including participation of the mothership sector.

Catch is limited for fixed gear CP and trawl CP as their 2006-2010 history, expressed as a ratio of the total catch from 542/541. Trawl catcher vessels would be limited to the area limit, as described above. If motherships are permitted, the processing history of CPs acting as motherships is treated as part of the CP trawl sector limit.

Critical habitat would be opened from 0-20 nm from haulouts, and 3-20 nm from rookeries for fixed gear. For trawl gear, all areas outside or CH would be opened, as well as areas outside of 3 nm from haulouts and 10 nm from rookeries between 178° West longitude and 174° West longitude.

The season for fixed gear would remain from January 1 – November 1, and January 20 – November 1 for Trawl CV. For Trawl CP, the season would begin January 20, and be extended from November 1 to December 31. Extending the season to December 31 would not increase catch, but would avoid regulatory discard of cod taken by trawlers in November and December in tows that occasionally exceed the 20% MRA.

Three options for CV delivery are presented; two if mothership participation is prohibited, and one that allows limited delivery to motherships. If mothership participation is prohibited, one option limits CV delivery only to shoreside facilities in area 542/541, the other allows delivery to shoreside facilities, including stationary floating processors at a single geographic location for 12 months) in any area. Limiting delivery options for CV vessels is intended to increase the economic opportunities for communities in the AI management areas to which CV vessels would delivery cod for processing.

Walleye Pollock

Currently there is no directed fishery for walleye pollock in the Aleutian Islands. However, Section 803 of the Consolidated Appropriations Act of 2004 allocated pollock in the Aleutian Islands to the Aleut Corporation for purposes of economic development of Adak. This alternative would allow some harvest of pollock in the Aleutian Islands, in a manner that is more restrictive than the 2010 RPA for Pacific cod and Atka mackerel in the Aleutians, and more restrictive than pollock measures in the Gulf of Alaska or Eastern BS.

543

Directed fishing for walleye pollock would be prohibited in area 543. This is responsive to the concern that management actions should be more restrictive in areas in which the SSL decline is most severe.

542/541

Catch limit for areas 542 and 541 would be established based on the best estimate of local biomass using the same methods as currently applied to Atka mackerel, and the A season limit of 40% of ABC would be maintained.

A limited portion of CH in areas 542 and 541 would be opened to pelagic fishing. These small areas are identified in maps 1-2 through 1-5 in the Alternative. This limits the potential for spatial overlap between feeding SSL and the pollock fishery to a small part of CH.

Alternative 2

Alternative 2 is designed to allow more extensive relief to fishing fleets and communities in the Aleutians than Alternative 1. It is based on the premise that recent scientific information and review of information available prior to the development of the 2010 RPA indicates that the management actions enacted by the IFR are substantially over-restrictive. Alternative 2 provides additional opportunities for harvest of Atka mackerel, Pacific cod, and walleye pollock in management area 543, 542, and 541.

Atka mackerel

In all areas, the platoon system is replaced by one or more cooperatives. Catch data since Amendment 80 have shown that cooperatives have done a better job of spreading out fishery harvests than the platoon system.

543

Alternative 2 would open CH in area 543, with the same restrictions in place in 2010, before the IFR was implemented. A suboption presented would open only areas outside of CH. Additionally, Alternative 2 would open a portion of CH 10-15 nm from Buldir Island (Masp 2-1). Recent SSL counts at Buldir Island have been very low, in recent years only a few animals have been seen during the NMFS surveys. Opening this small portion of Critical Habitat would help to disperse fishing effort between the offshore fishing areas and areas inside CH where SSL numbers are essentially zero. It is important to note that the SSL decline at Buldir began before the development of a fishery in the area, and closures around Buldir have not affected the decline in the area.

542

This alternative would open CH in area 542 with the same restrictions in place in 2010, but would maintain the closure around Amchitka Island, from 178° East longitude to 180°. This would prohibit directed fishing for Atka mackerel in an area where studies have shown that fishing outside of 10 nm can affect SSL prey inside of 10 nm and abundance of mackerel is relatively low compared to other fishing area in 542.

541

This alternative would open CH in area 541 around Seguam Island (map 2-2), with no limit to catch inside CH. Since the IFR was implemented in January 2011, NMFS Fisheries Interaction Team (FIT) has done considerable research to learn about mackerel movements around Seguam Pass. Results show that there is very little exchange between mackerel in the inside areas proximate to the islands around Seguam Pass (inside 12 nm) and mackerel on the outside portion (12+ nm). This new information suggests that Atka mackerel on the outside (beyond 12 nm) area follow bathymetric contours extending from outside CH to the inside area to approximately 12 nm from the SSL sites at Agligidak, Amlia, and Seguam Islands. This alternative would open part of this area to Atka mackerel fishing to spread out fishing effort and help prevent localized depletion without effects on the mackerel most proximate to the SSL sites in the area.

Pacific cod

Alternative 2 also contains two options, to preclude mothership participation or to allow mothership participation in the Pacific cod fishery in areas 543, 542, and 541. If motherships are permitted, the processing history of CPs acting as motherships is treated as part of the CP trawl sector limit.

543

Alternative 2 would open CH for HAL CP and Trawl CP with the same restrictions in place in 2010. Seasons under alternative 2 would also be the same as under 2010 management.

542/541

Same as Alternative 1

Walleye pollock

543

Alternative 2 would open a portion of CH outside of 3 nm from Shemya, Alaid, and Chirikof haulouts to pelagic trawling. This would limit the potential spatial overlap of pollock fisheries and SSL feeding areas to a small portion of CH around haulouts, but allow a pollock fishery to develop in area 543. Closures around rookeries in 543 would remain at 20 nm.

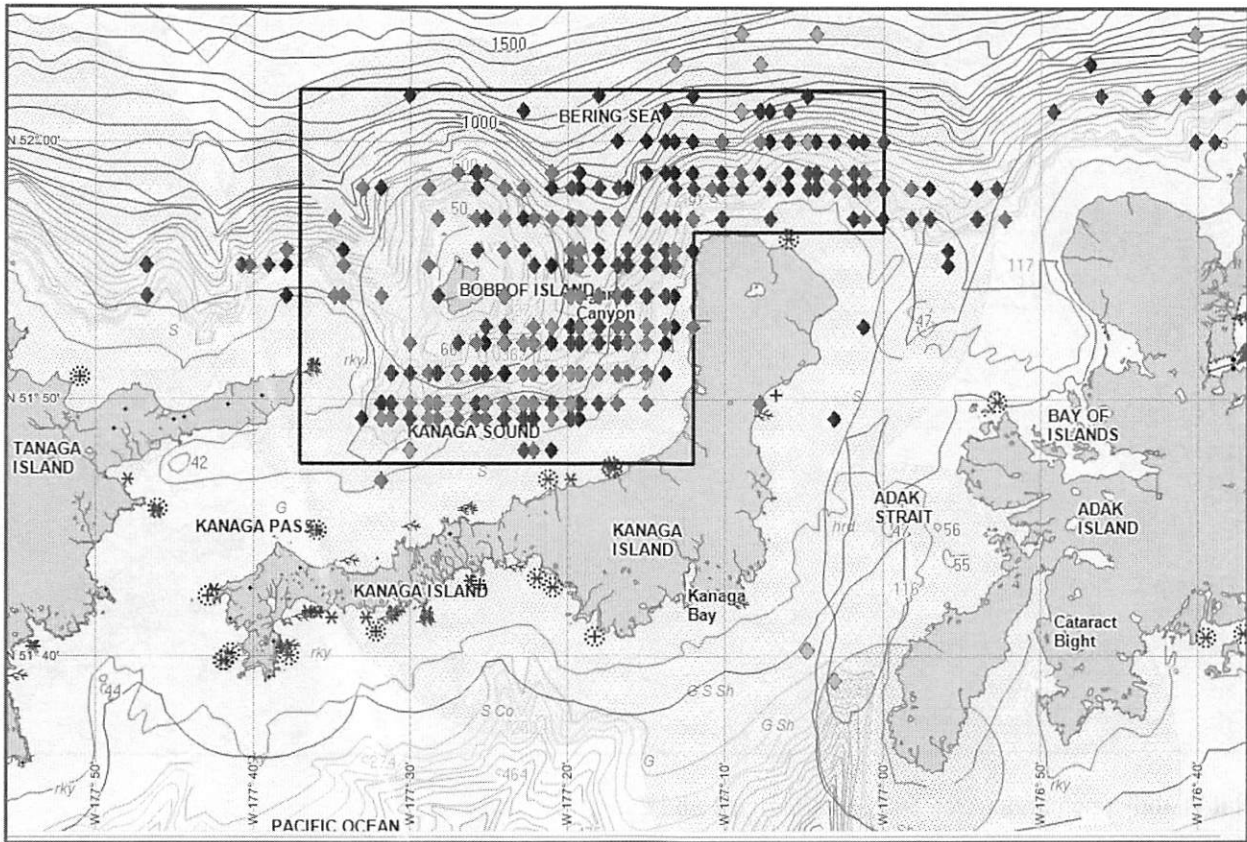
542

Alternative 2 would open a portion of CH outside of 10 nm from haulouts and rookeries west of 178° West longitude, and outside of 10 nm from rookeries and 3 nm from haulouts in areas east of 178° West longitude (Map 2-4). This would limit the potential spatial overlap of pollock fisheries and SSL feeding areas to a small portion of CH, but allow greater opportunity for pollock fishing in area 542.

541

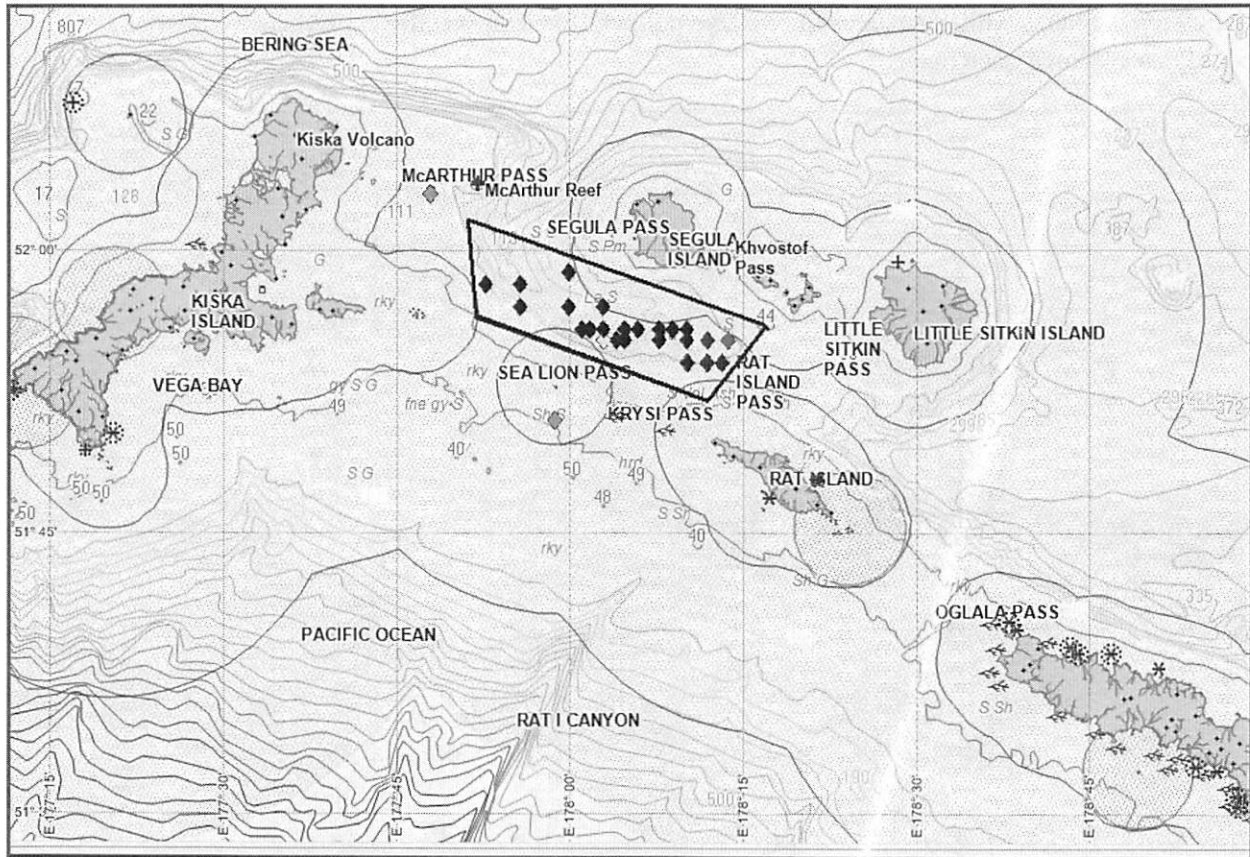
Alternative 2 would open CH outside of 10 nm from rookeries and 3 nm from haulouts in area 541 (Map 2-5). This would limit the potential spatial overlap of pollock fisheries and SSL feeding areas to a portion of CH, but allow greater opportunity for pollock fishing in area 541.

Following are maps with open areas for walleye pollock based on specific coordinates. A list of coordinates follows each map.



Kanaga Sound Open Area. Area 542, Alternative 1 and 2.

- Kanaga 542 box:
- N52 02/W177 37
- N52 02/W177 00
- N51 56.5/W177 00
- N51 56.5/W177 12
- N51 47.5/W177 12
- N51 47.5/W177 37
- N52 02/W177 37



Rat Islands open area. Area 542, Alternative 1 and 2

Rat Islands 542 box:

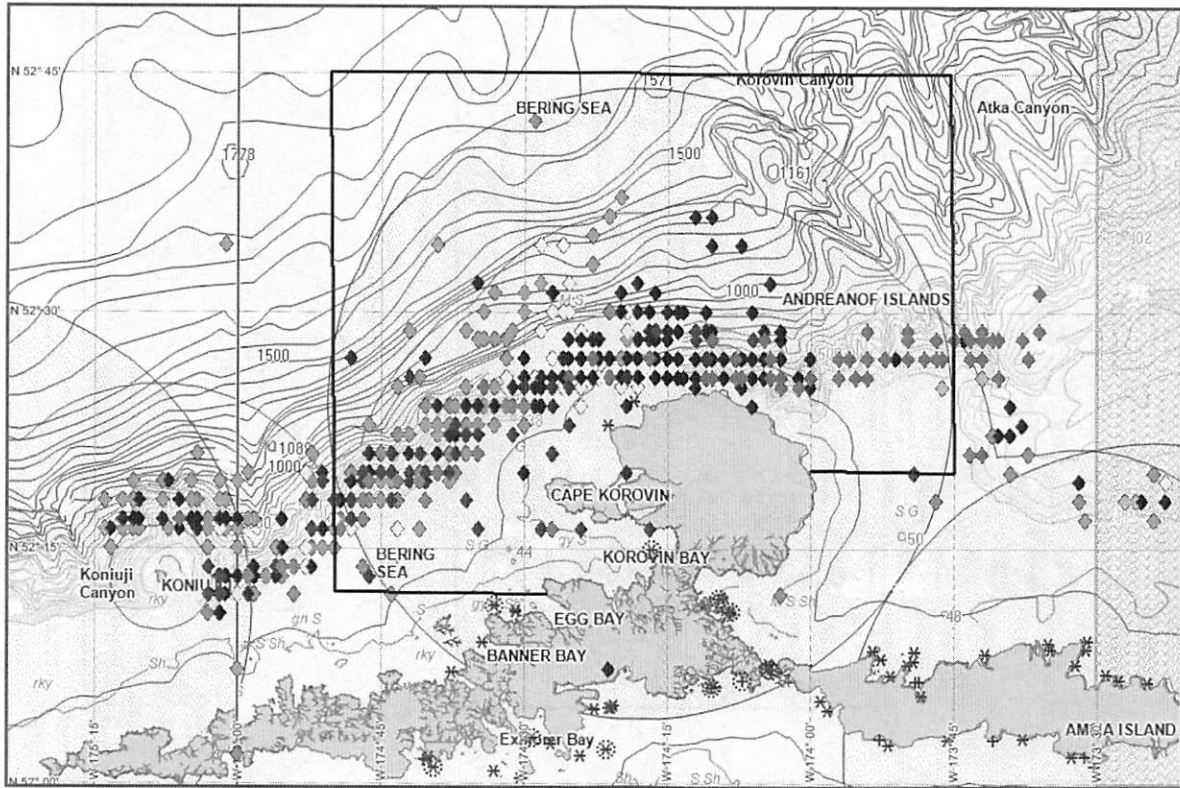
N52 03/E177 51

N51 56/E178 17

N51 52/E178 12

N51 56.5/E177 51.5

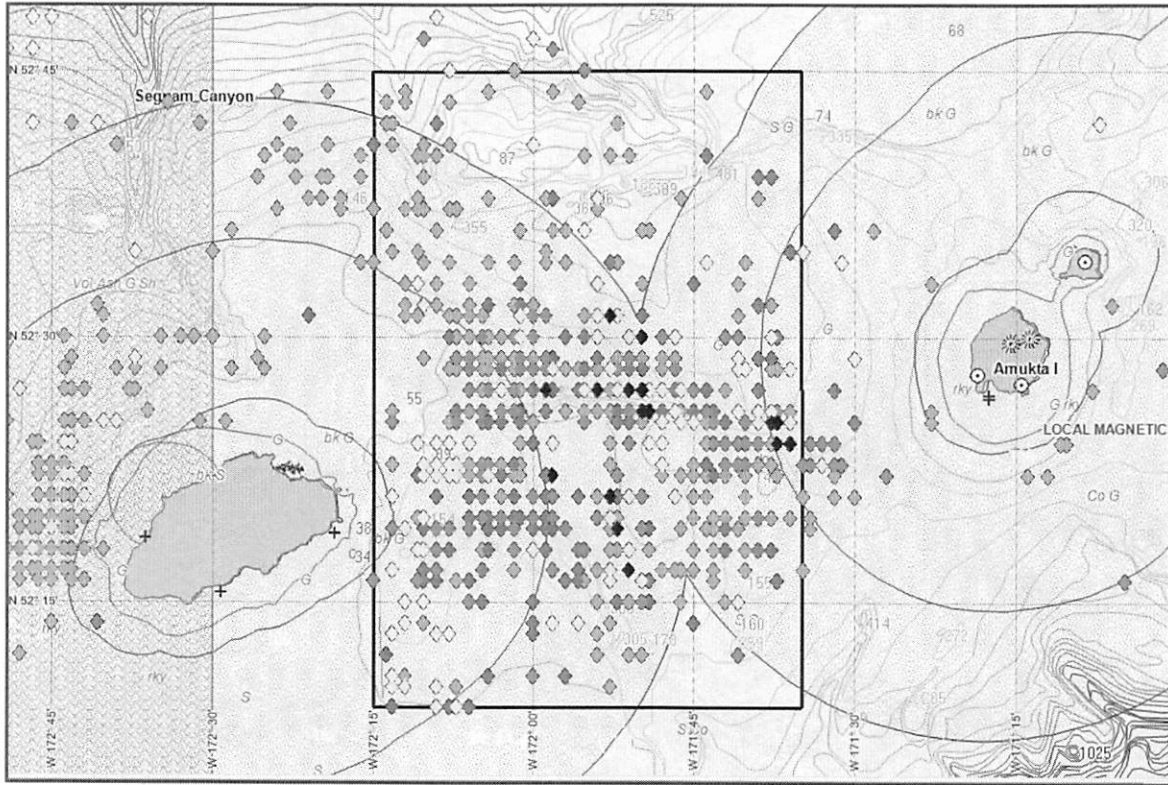
N52 03/E177 51



Atka North Cape Open Area. Area 541, Alternative 1 and 2.

Atka/N. Cape 541 box:

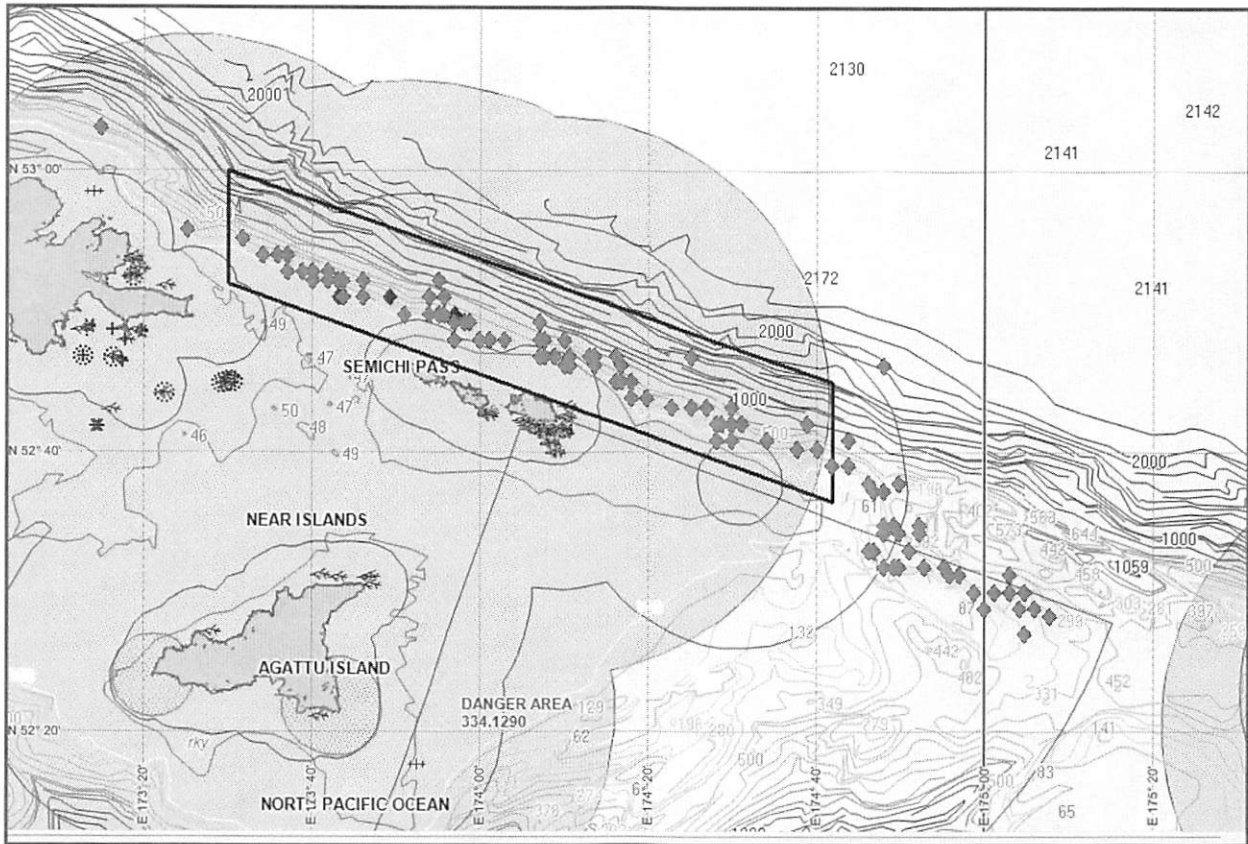
- N52 12/W174 28
- N52 12/W174 51
- N52 45/W174 51
- N52 45/W173 45
- N52 20/W173 45
- N52 20/W174 00



Amukta Pass Open Area. Area 541, Alternative 1 and 2.

Amukta Pass 541 box:

- N52 45/W172 15
- N52 45/W171 35
- N52 09/W171 35
- N52 09/W172 15
- N52 45/W172 15



Shemya Open Area. Area 543, Alternative 2

Shemya 543 box:
N53 00/E173 30
N52 45/E175 42
N52 36.5/E174.42
N52 52/E173 30
N53 00/E173 30

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: C-4 SSL EIS ALTERNATIVES

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
X1	Dave Wood	US Seafoods, LLC
X2	Unda Larsen	Groundfish Forum
X3	Dave Freiser	ACDC
X4	Charl See	Freezer Longline Coalition
X5	Rudy Tsukada	Aleut Enterprise
X6	Frank Kelly	City of UAA last
X7	JOHN GAUWIN	Alaska Seafood Coop
X8	Todd Loomis	Ocean Peace, Inc.
X9	Glen Rees	PSPA
X10	Stephanie Madsen	APA
X11	Glen Tillion	Aleut Coop
12	Jon Warenduk / Mike Levine	Oceanq
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

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



Ph. 206.284.2522
2303 W Commodore Way Suite 202
Seattle, WA 98199
www.freezerlonglinecoalition.com

December 10, 2012

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

Dear Chairman Olson:

Mr. Chairman and members of the Council, my name is Chad See, the Executive Director of the Freezer Longline Coalition (FLC). I'm testifying today to share with you the views of the FLC in regards to Steller Sea Lion (SSL) mitigation efforts proposed to avoid JAM determinations for SSL in the Aleutian Islands, including current actions under way to develop a SSL EIS. It should be noted that I participated only as an observer to the most recent SSL mitigation committee meetings held in November, following my start with the FLC. The FLC has been represented on the committee by my predecessor in this position, Kenny Down.

The Freezer Longline Coalition represents longline catcher processor vessel owner and operators with operations primarily in the Bering Sea and Aleutian Islands. The longline fishery is primarily a Pacific cod single-species directed fishery and, therefore, is nearly fully reliant on Pacific cod. In fact, over 90% of the longline fishery's income derives from directed fishing for Pacific cod. Our membership includes entities who fish for Pacific cod in the Aleutians on a year-around basis. Aleutian-caught Pacific cod is particularly valued by many of our members for its large size relative to those caught in the Bering Sea and GOA and the resultant prices commanded on the market for the catch.

As a participant in the SSL mitigation committee efforts, FLC respects the effort of the committee's chairman to develop a set of viable mitigation alternatives for the EIS that offer necessary, science-based protection measures for Steller Sea Lions while balancing the needs of the affected fisheries. FLC also appreciates the willingness by NMFS officials to work more collaboratively with industry to develop the EIS and future related measures than was experienced with the 2010 BiOp. Should the Council vote to put forward mitigation alternatives to NMFS, we urge the Council and NMFS to ensure that the EIS and future measures take into account the CIE review of the 2010 BiOp and are rooted in the best science available to the agency.

With due respect to the mitigation committee efforts, it is the opinion of the FLC that the Council should take every available action to enact a return to protection measures in place prior to the 2010 BiOp. The 2010 BiOp and subsequent RPAs and Interim Final Rule have been consistently criticized for not being based on the best available science. This includes criticisms raised in the NMFS-commissioned CIE

review on the BiOp and from the director of a study commissioned by NMFS to provide scientific analysis for the BiOp.

- Comments provided by CIE independent peer reviewers in September, 2012 strongly criticize the 2010 BiOp for a lack of scientific evidence to support the conclusions drawn in the BiOp. CIE panel member Dr. Don Bowen stated in his report that, "It is my opinion that findings and conclusions of fisheries effects on SSL are not supported by the evidence presented in the BiOp and that reviewed at the panel meeting in Seattle. There is no direct evidence that by removing fish, these fisheries compete with the western population of SSL in the central and western Aleutians or elsewhere."
- Donald Calkin directed a NMFS-commissioned report titled, "Fixed-Gear Marine Mammal Interactions Study" submitted to the agency in 2008 addressing fixed-gear interactions with Steller Sea Lions. In testimony to the SSC in August 2010, Calkin expressed his concern that based on a review of the 2010 BiOp, "no discussion has been provided in the BiOp that takes this report into consideration. Only one obscure reference is provided that even acknowledges the existence of this report."

The chorus of criticism of the 2010 BiOp raises the question of what, exactly, we are mitigating. Requiring us to develop mitigation proposals to a flawed BiOp roundly criticized as, at best, not based in the best available science ultimately makes little sense. Rather, FLC recommends the Council support a return to the restrictions in place, for all affected species, prior to the 2010 BiOp. We understand carrying out such an action is easier said than done; it is a complex process with little defined path forward. However, given the documented flaws of the current BiOp, not to mention the extreme actions by NMFS to implement the flawed opinion through an Interim Final Rule, we believe it is both necessary and prudent for the Council to take such action.

Thank you for the opportunity to share the views of the FLC on SSL mitigation efforts. I am happy to take any questions you or the committee has on my testimony.

Sincerely,



Chad See
Executive Director
Freezer Longline Coalition
2302 W. Commodore Way
Seattle, WA 98199

Groundfish Forum

4241 21st Avenue West, Suite 302
Seattle, WA 98199
206-213-5270 Fax 206-213-5272
www.groundfishforum.org

December 8, 2012

Eric A. Olson
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501

Re: Agenda Item C-4, Steller sea lion Mitigation

Dear Chairman Olson:

Groundfish Forum (GFF) appreciates the opportunity to comment on the development of the alternatives to be analyzed in the environmental impact statement (EIS) for Steller sea lion mitigation measures. It is important to remember the context in which this issue comes before the Council, and to keep in mind that this EIS is being prepared in order to comply with an outstanding court order issued so that the agency would address specific legal violations.

As you know, GFF was party to one of the three lawsuits challenging the legality of the 2010 Biological Opinion and associated Interim Final Rule. In January 2011, Judge Burgess of the U.S. District Court for the District of Alaska found that NMFS had violated the National Environmental Policy Act (NEPA) by failing to prepare an EIS as part of its 2010 Steller sea lion actions.¹ In his decision, which the government did not appeal, Judge Burgess found “significant scientific differences of opinion, controversy, and uncertainty on potentially significant impacts on the natural and physical environment resulting from the removal of long-standing human intervention in the form of commercial fishing in vast areas of the BSAI.” Judge Burgess also observed that in the 2010 draft Environmental Assessment, “NMFS essentially provided some underlying environmental information for comment – but not its conclusions” and noted that the Council had “expressed frustration with the missing information.” He ruled that NMFS “failed to provide sufficient environmental information for the public to weigh in and inform the agency decision-making process.” Thus, in February 2012, Judge Burgess issued an injunction ordering NMFS to “complete an EIS in accordance with the applicable law and addressing the deficiencies identified in the Court’s Order.”

Given this clear direction by the court, GFF has significant concerns about the procedures being followed by the agency in EIS preparation, as well as the proposed alternatives currently before the Council. Those concerns are briefly outlined below.

¹ The appeal of the district court’s rulings on Endangered Species Act issues has been briefed and argued. The case was submitted to the Ninth Circuit Court of Appeal for decision on December 4, 2012.

EIS and reinitiation of consultation under the ESA

At its October meeting, the Council passed a motion requesting re-consultation, based on the significant new scientific information since the biological opinion was issued, such as that provided by the independent scientific reviews and the post-2010 Steller sea lion surveys. Yet there remains confusion about the interaction between the EIS and any new ESA consultation, and how the two will be coordinated. It is unclear how the EIS will inform any re-consultation process.

Protected Resources has stated the analytic tools and approach by which they will be evaluating RPA alternatives will **not** be included in the EIS but would be part of a later biological opinion. This is inconsistent with NMFS' policy of coordinating and, where practicable, conducting ESA consultations simultaneously with NEPA reviews. Protected Resources has indicated that they might be able to inform the Council as to the analytic approach at the April 2013 meeting (the same meeting the Council is picking a PPA). NMFS has also indicated that they might be able to provide some guidance to the Council as to whether the PPA avoids jeopardy and adverse modification, but not until the June 2013 meeting. The agency essentially is setting up a process where the Council's evaluation of alternatives and development of an RPA will be done in a vacuum (i.e. "*bring us a rock and we will tell you if it is the right rock*"). The potential for making this EIS an empty exercise is obvious.

The November 2012 Scoping Report states on page 10 that the EIS will "reference much of the Steller sea lion biological and status information and fisheries effects descriptions provided in the FMP Biological Opinion" which "may be the best scientific information available regarding Steller sea lions, their critical habitat, and fisheries interactions" and notes that this information will be incorporated by reference.

The scientific information and analytical approaches (weight of evidence for example) that will be the basis for evaluating the potential impacts from the proposed alternatives needs to be explicit and clear in the EIS. This is especially true for the analyses in the 2010 Biological Opinion if they are to be used to evaluate these impacts given the new information provided by the independent scientific reviews and subsequent Steller sea lion surveys. The agency must explicitly acknowledge that it will consider information that became available *after* the close of the administrative record for the 2010 Biological Opinion. NEPA requires EIS preparation based on current information. This EIS is not an excuse for a "do over" to reach a predetermined conclusion, using information that should have been analyzed in 2010 but was not.

For this EIS to comply with NEPA and the Court's order, the methods, tools and performance standards that are to be used to assess the impacts of the alternatives in it must be consistent with those used to evaluate a possible jeopardy/adverse modification determination. We request the Council to clarify with NMFS that the EIS will include the same information, analytical approaches, and scope/level of analysis that will be used in reinitiated consultation.

EIS Scoping

We have significant concerns about the proposed content of the EIS as outlined in the November 2012 Scoping Report. The major issues are outlined below.

- Purpose and Need Statement. The purpose and need statement has been much revised by NMFS (and improved) since the first draft. The language does not pre-suppose that fisheries are causing adverse harm to sea lions but refers to “potential” for jeopardy (although the document does presume that the fisheries “compete for prey” with sea lions). However, it needs to be further revised to clarify that the proposed action is to authorize fisheries for Atka mackerel, Pacific cod, and pollock in the Aleutian Islands and manage those fisheries pursuant to measures that prevent jeopardy and/or adverse modification of critical habitat of the wDPS of Steller sea lions. To comply with NEPA, the ESA and Judge Burgess’ orders, this action must take a hard look at the findings and conclusions of the 2010 Biological Opinion and new scientific information that may modify the previous Section 7 analyses and determinations, as well as the management measures in the Interim Final Rule.
- Independent Scientific Peer Reviews. A major criticism of the scoping report is the lack of explicit consideration given to the CIE reviews (commissioned by NMFS) and the Independent Scientific Review (ISR) convened by the states of Alaska and Washington, and specifically, the statistical studies. By all appearances, NMFS is giving little to no consideration to the CIE review. These two reviews provide significant new scientific information that fundamentally change what constitutes the “best scientific information” available to assess any potential effects of fishing on Steller sea lions.

The only references to the CIE reviews are found on page 11. The CIE review was part of the original Biological Opinion process (8/10/2010 letter to NPFMC; 8/6/2010 NMFS news release; and 12/8/2010 NMFS news release) but is excluded in the description of the biological opinion process on page 1-2 and is excluded in the section “Areas of Controversy”. The CIE review and ISR are cursorily included in the section on “Related Documents” (p. 8-11). This includes a very short summary of the ISR conclusions but does not include any summary of the CIE and ISR reviews. The scoping report merely states that “the CIE reports were considered by NMFS in the development of this EIS and for future biological opinions.”²

- Review of Controversial Issues. Judge Burgess specifically directed NMFS to analyze and consider controversial issues so that the public could understand their reasoning and “weigh in.” Yet from the scoping report, it is impossible to discern that the CIE found:
 - The conclusions of the Biological Opinion are not supported by scientific evidence and are largely based on qualitative statements and opinions rather than science.
 - The weight-of-evidence approach is weak, speculative, and does not support the conclusions of the Biological Opinion.

² The use of the words “were considered” is troubling as these are future actions (the EIS analysis and new Biological Opinion) that have yet to occur.

- There is little to no evidence for nutritional stress and specifically none for fishery-induced nutritional stress.
- The RPAs are not justified, nor relevant, and have little utility.
- There was a lack of critical review of studies on the correlation between fisheries and Steller sea lions, and these studies provide no evidence for the hypothesized negative effects of fishing.
- Identification of fisheries of concern and exposure overlap with Steller sea lions is poorly justified, unclear, poorly constructed, and based on incomplete and unreliable estimates.
- The presentation of overall Steller sea lion population status in the Biological Opinion is fragmented and poor. The simplest index of population status and trends is pup counts.
- Alternative theories for Steller sea lion population decline were given little consideration in the Biological Opinion and were subject to the author(s)'s bias.

The Council should *again* recommend that the EIS include an analysis of the potential impacts of fishing on sea lions, their prey, and critical habitat, and incorporate the findings and recommendations of the CIE and ISR reviews into this analysis. Such an analysis is required in order for the EIS to meet the order to "take a hard look at the environmental effects" of the Interim Final Rule and each of the alternatives. Council should also request that the EIS include a stand-alone summary of the CIE and IFR reviews of the 2010 Biological Opinion – and a point by point response to the issues raised by these reviews. Without these analyses, the EIS will NOT be based on the best scientific information, and the decisions that flow from the EIS analysis will not be based on the best scientific information either.

We appreciate the Council's continued hard work on these difficult and complex issues.

Sincerely,



Todd M. Loomis
President, Groundfish Forum