AGENDA C-2
Supplemental
OCTOBER 2013

Adak Community Development Corporation

PO Box 1943 Adak, Alaska 99546
(907) 592-2335

September 23, 2013

Eric Olson, Chairman NPFMC
605 W. 4th Avenue. Suite 306
Anchorage, Alaska 99501-2252

Re: C-2 Sea Lion Measures

Dear Chairman Olson,

ACDC supports the Council's preferred alternative and request that it be adopted.

Pollock

Adak has waited since 2004 for a consultation on the Aleutian Island pollock fishery. We believe that the proposed measures in Alternative 5 were responsive to NMFS Protective Resources concerns. Relying on the general principles outlined in the 2010 BiOp and PR's "feedback" letter dated 5/28/13, Alternative 5 should be selected as the preferred alternative for pollock.

Cod

Alternative 5 should be selected for trawl cod, with the inclusion of modified provision from Alternative 2 that would only open directed fishing for trawl cod in 543 in the area between 173° East long. and 174.5° East long. until April 30th and only outside 10 miles from rookeries and outside 3 miles from haulouts.

It is more precautionary than the pre-2010 measures from a cod management perspective because it incorporates setting an Aleutian Island catch limit which is further apportioned based on the survey biomass distribution. Selection of this alternative can be justified as responsive to the principles outlined in the 2010 BiOp and PR's "feedback" letter. It is supported by the new telemetry data and by quantitative data showing the limited degree of overlap in percent of diet, size of prey, depth of fishing vs depth of SSL diving.

The economic analysis in chapter 8 of the EIS, clearly shows Adak's dependence on cod. Within the constraints of conservative management of cod and SSL, National Standard 8 requires mitigation of community impacts to the extent feasible. The Council should find a way to prioritize a base amount of cod for shorebased processing in area 541/542. ACDC has submitted separated comments on community protections under D-1(a).

Atka Mackerel

ACDC supports the preferred alternative, and the comments submitted by the Alaska Seafood Coalition justifying adopting it.

NMFS Response to Comments

NMFS did a very good job of summarizing the comments it received. Those comments were substantive and form the basis for a thoughtful hard look at the range of alternatives in the EIS.

It is unfortunate that so many of NMFS's responses to those comments were non-substantive. The most common phrase in the CAR was "NMFS disagrees," but in many cases the rationale for the disagreement was weak or missing or missed the point of the comment.

To focus on one issue in particular - "overlap" - public comment and outside review on a series of BiOps and related documents have repeatedly asked NMFS to not view "overlap" as a binary question but rather to do a quantitative analysis of the distribution of depths and sizes, etc. in order to compare the distributions and modes. It is obvious that the potential for competition is more or less significant depending on whether overlap is limited to the tails of the distribution or whether in encompasses the modes.

In response to Comment 5-15 NMFS insists there is "considerable overlap" in cod sizes taken by SSL and by the fishery. Then in response to Comment 5-19 NMFS states: "NMFS has not done a quantitative analysis of prey size data to inform the analysis of the effects of the alternatives on Steller sea lion prey." If NMFS hasn't done the analysis (despite years of requests that it do so), it is hard to understand the basis for characterizing the overlap as "considerable."

In response to Comment 5-51 "NMFS disagrees with the comment that it did not take a "hard look" at the exposure analysis" and points the reader to back to sections EIS that were the subject of the commenter's critique.

In response to Comment 5-82 on the lack of analysis of depth overlap and bathymetry, NMFS points to Chapter 3, stating it "provides the location of Atka mackerel and Pacific cod catch in relation to the 200 meter bathymetry in Figures 3-5, 3-6, and 3-9 through 3-16." This can only be called a lame response. These figures do have a rough approximation of the 200 meter curve (and no other bathymetry), but given the scale of the maps and the way catch is aggregated the figures provide very cursory information on depth overlap and bathymetry.

There was one very meaningful response by NMFS to Comment 5-83. NMFS changed a critical sentence to read ""Given the best available information today, NMFS maintains that the fisheries **may compete** with Steller sea lions for fish and thus the focus of the 2014 biological opinion will be on the fisheries for these three species." The original had read "**are likely to compete**." Given that NMFS task is to ensure that fisheries are "not likely" rather than that it "not be plausible" it is reassuring to know that NMFS has not yet made a determination about whether the preferred alternative is likely to cause (limiting) competition that would result in jeopardy.

In response to Comment 5-97 NMFS acknowledges "insufficient information exists to quantify Steller sea lion population effects with various levels of fishing." The EIS leaves the Council in a frustrating position as it grapples with final action to choose an alternative.

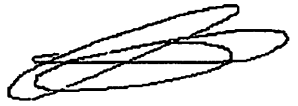
Fortunately the record for making a decision is broader than the EIS alone. The Council has the Reviews of the 2010 BiOp as well as past public comment. Aleutian Island stakeholders, communities and fishing industry, have submitted extensive comments on the draft EIS as well as on

prior BiOps (ACDC has re-submitted our EIS comment under this agenda item) that we incorporate by reference in support the preferred alternative.

The preferred alternative is precautionary and was crafted using a more detailed analysis of the elements and degree of overlap at relevant scales than was provided in the EIS.

Thank you for your consideration of our comments.

Sincerely,



dave fraser
ACDC

Subject: ACDC comments C-2 Steller Sea Lion Measures
From: "dave fraser" <dfraser@olympus.net>
Date: 9/23/2013 9:28 AM
To: <npfmc.comments@noaa.gov>

NPFMC -

Please accept the attached pdf on behalf of Adak Community Development Corporation as part of our comments on agenda item "C-2 Steller Sea Lion Measures" which were submitted to NMFS on July 16th 2013 by dave fraser.

9-23-2013
dave fraser
ACDC

—Attachments:

ACDC Comments SSL DEIS 7-16-13.pdf 1.4 MB

July 16th 2013

Via Email to www.regulations.gov

James W. Balsiger, Ph.D
Administrator, Alaska Region
National Marine Fisheries Service
National Oceanic and Atmospheric Administration
P.O. Box 21668
Juneau, AK 99802

RE: Comments on Draft Environmental Impact Statement for Steller Sea Lion Protection Measures for Groundfish Fisheries in the Bering Sea and Aleutian Islands Management Area

Dear Dr. Balsiger:

Adak Community Development Corporation endorses the comments submitted by the Alaska Seafood Cooperative, Groundfish Forum, et al. As a result of the detailed comments in that letter, we will attempt not to reiterate all the points they made. We have focused our comments on some specific items in Chapter 5 of the DEIS.

SSL EIS page 5-65

In evaluating competition with predators other than fisheries the document acknowledges *"potential competitors may partition the prey resource so that little direct competition occurs"* and that such competition may occur *"only seasonally"* or *"only locally"* and *"may be restricted to certain age classes."* The document is less generous in acknowledging that competition between SSL and fisheries is also partitioned in a manner that limits competition.

SSL EIS page 5-98

Section 5.2.2.1.2, "Prey Size," lacks any quantitative evaluation of the sizes of prey taken by the fishery in the Aleutians. There is detailed data on sizes of cod, mackerel and Pollock taken in AI fisheries available from the NMFS Observer database which could be used to evaluate partitioning based on size. This is particularly relevant to the AI trawl fishery for cod which takes a significantly larger mode of sizes of cod than the mode of sizes taken by SSL.

Section 5.2.2.1.3 "Depth of Foraging and Fisheries" presents a very cursory quantitative evaluation of the depths (both bottom bathymetry and gear depth in the water column) by the fishery in the Aleutians. There is detailed data on both bathymetric depth by location and gear depth of cod, mackerel and pollock taken in AI fisheries available from the NMFS Observer database which could be used to evaluate partitioning based on depth. This section provides some general information on fishing depths, despite the availability detailed observer data, and the presentation of what is known about SSL foraging depths is presented in more detail in tables 5-8 through 5-10 and figure 5-13. The fishery data should be presented in a format more comparable to figure 5-13 which would show the distribution around the

modes of depths by fishery. Based on the available data in the EIS and previous analysis of fishing depths, it is clear that there is significant partitioning based on depths.

SSL EIS page 5-99

5.2.2.1.4 "Rate of Fisheries in Time and Space" states that trawl fisheries had the highest proportion of their catch in cells with high catch rates. However, a comparison of weekly A season catch amounts between trawl and non-trawl gear, shows similar total removals per week by both gear types. As the section concludes *"we cannot determine the relationship between these catch rates and the impacts on prey except that higher catch rates in relation to low prey abundance would be more likely to result in localized depletions."* As long as 'higher catch rates' by trawl gear are occurring where there is 'high prey abundance' that concern should be mitigated, especially if those areas used by the trawl fishery are partitioned from the areas used extensively by SSL.

SSL EIS page 5-105

Section 5.2.2.2 states a premise that seems at odds with multi-species modeling and ecosystem based management: *"...based on prey interaction information available (Section 3.2.4), it is assumed there are no beneficial effects from removal of prey (Lowe, Ianelli, and Palsson 2013). The stock assessment for Atka mackerel includes predation by Pacific cod in the estimate of natural mortality. Pacific cod removals by the Pacific cod fishery are not addressing unrecognized predation on Atka mackerel so Pacific cod harvests are not considered a benefit to Atka mackerel abundance by reducing predation on Atka mackerel."*

If the amount of mackerel that would have been consumed the cod harvested by the fishery exceeds the proportion of those cod that would have been consumed by SSL, then that would seem to be a benefit in net prey availability from an SSL perspective. If one can simply dismiss the benefit to SSL of removing a competitor because the stock assessment includes an estimate of "M", it is equally appropriate to dismiss the potential adverse effect of fisheries competition because the stock assessment includes an estimate of "F".

SSL EIS page 5-35 & page 5-53

Figure 5-11 Figure 5-16 present important graphic information on partitioning by location and bathymetry. Unfortunately, by presenting the maps at this large scale some of the data is lost. However, it is apparent that the SSL locations are dominated by two modes: 1) near-shore, and 2) off-shelf. This is consistent with the analysis of past telemetry work which was dominated by juvenile animals. What is new and important about the new information is that it comes from 5 adult females who had pups at the time they were tagged in the area of most concern (the western Aleutians.)

The data from these 5 adult females needs to be analyzed in detail to compare locations with the underlying bathymetry, as well as comparing dive depths with that bathymetry. Evaluation of the limited portion of 543 proposed as open to the cod trawl fishery under Alt 2 would be greatly enhanced by such an analysis.

The element of Alt. 2 relating to trawl cod in 543 would only open directed fishing between 173° East long. and 174.5° East long. until April 30th and only outside 0–10 nm from both rookeries and haulouts . Based on SSL use of this area, the provision should be modified to allow trawling outside 3 miles from haulouts. According to table 5-46, when viewed in combination with the AIHCA closures, the Alt. 2 option closes 88% of overall 543 CH (and 100% of CH inside 10) to cod trawl

Contrasting the area in 543 that has been used historically by the trawl cod fishery, and the SSL foraging locations as represented by either the raw POP data provided by NMML or the new telemetry data, neither show any significant SSL activity between 50 fathoms and 80 fathom on the plateau between Aggatu and Alaid where the 543 trawl cod fishery occurs. This is an example of partitioning which limits potential competition.

In the figures below I've attempted to focus on that portion of 543 to get better definition of the bathymetry. The green contour line is 50 fathoms, the white contour next to the 1st blue contour is the 100 to 200+ fathoms shelf break. Figure 1 shows the track lines of cod trawl tows by one typical vessel in the 2010 A season cod fishery.

Figure 1

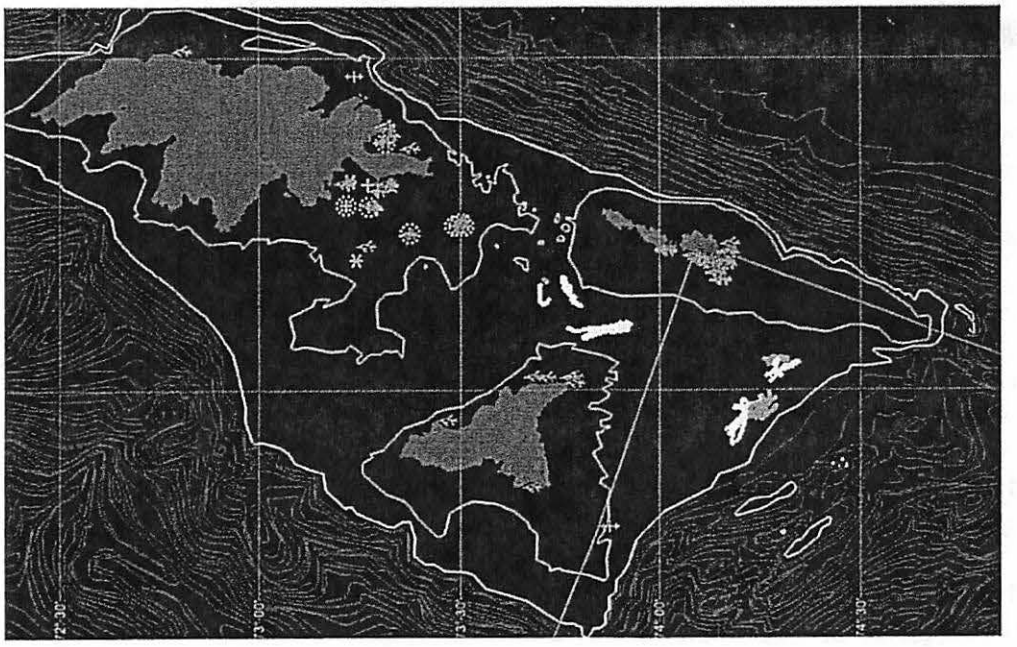


Figure 2, adds the POP database sightings the vast majority of which are outside 1000 fathoms. A handful are at the 100 fathom shelf break on the east edge of the plateau where the 543 trawl cod fishery occurs. Given that the data set covers 1977 to 2012, these amount to less than one sighting per year and none were from post -2000 period during which the 543 trawl cod fishery has been active.

Figure 2

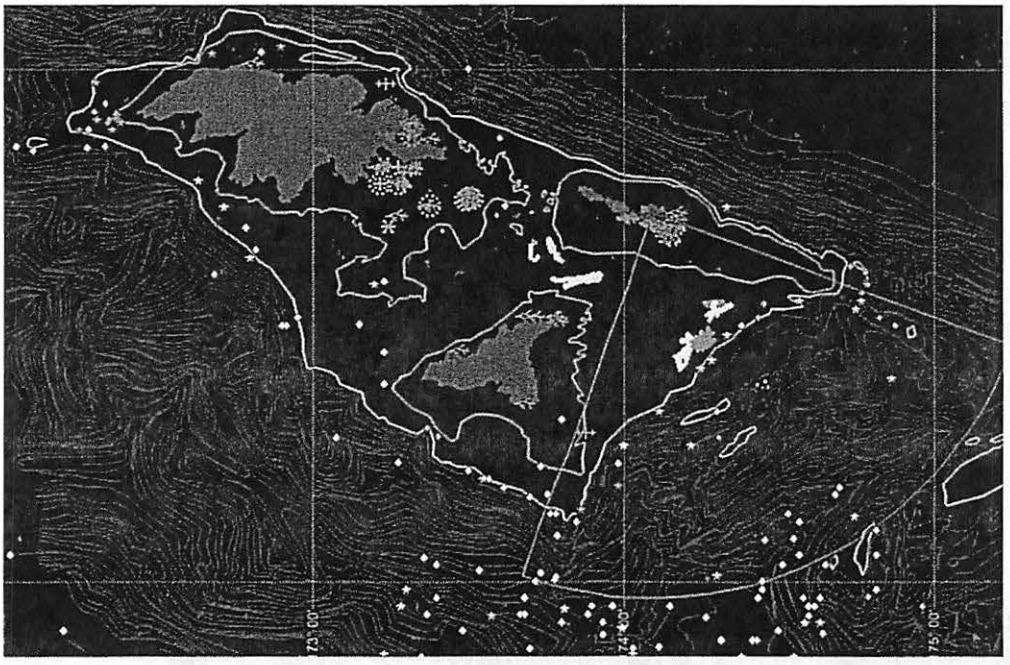


Figure 2 does show a cluster of POP sightings from the 1990s adjacent to the Cape Wrangle rookery, which is consistent with the telemetry data from "=25" as shown in EIS figure 5-16. However, the Cape Wrangle rookery would have a minimum of 10 mile closure to all trawl fisheries under all alternatives.

In the Figure 3 I've taken an excerpt from the EIS figure 5-16 and attempted to put it on roughly the same scale. Despite this telemetry data covering October 2012 to January 2013, during which no fishing was occurring, there is no use of the cod trawl grounds by the telemetered SSL.

Brian Fadely continued to provide weekly updates during 2013. In figure 4 that follows from update # 21 extends the coverage period through April 1st. This update covers the A season (February and March) during which the trawl cod fishery in that area experiences some of the highest cod CPUE's anywhere in the Pacific Ocean. Despite these intense aggregations and the fact that no fishing was occurring in that area in 2013, there was no use of the cod trawl grounds by the telemetered adult females.

While the sample size of tagged adult female SSL is small, the results are consistent with other data showing very little reliance on the mid-shelf as a foraging area for SSL, particularly in the Aleutians.

Figure 3 (Excerpt from EIS figure 5-16)

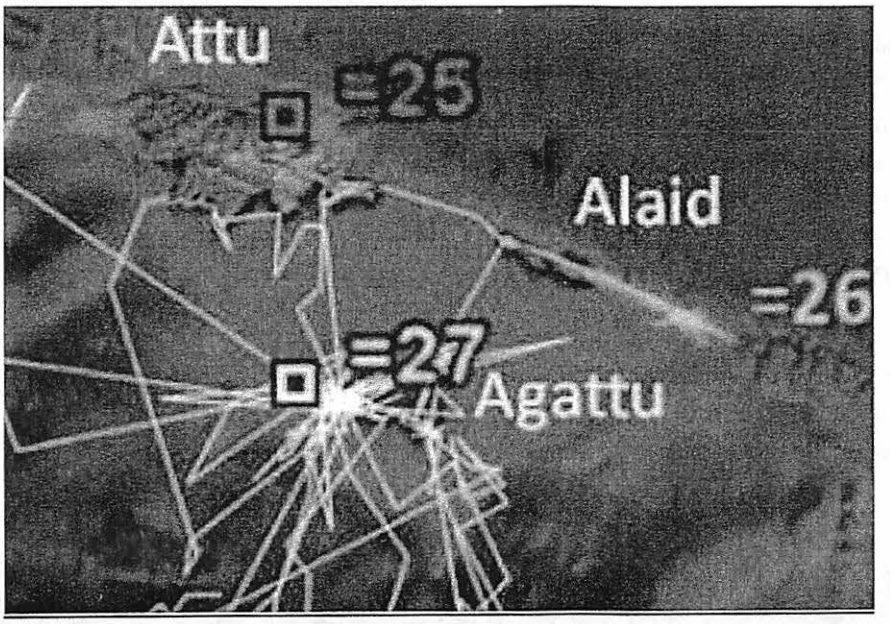
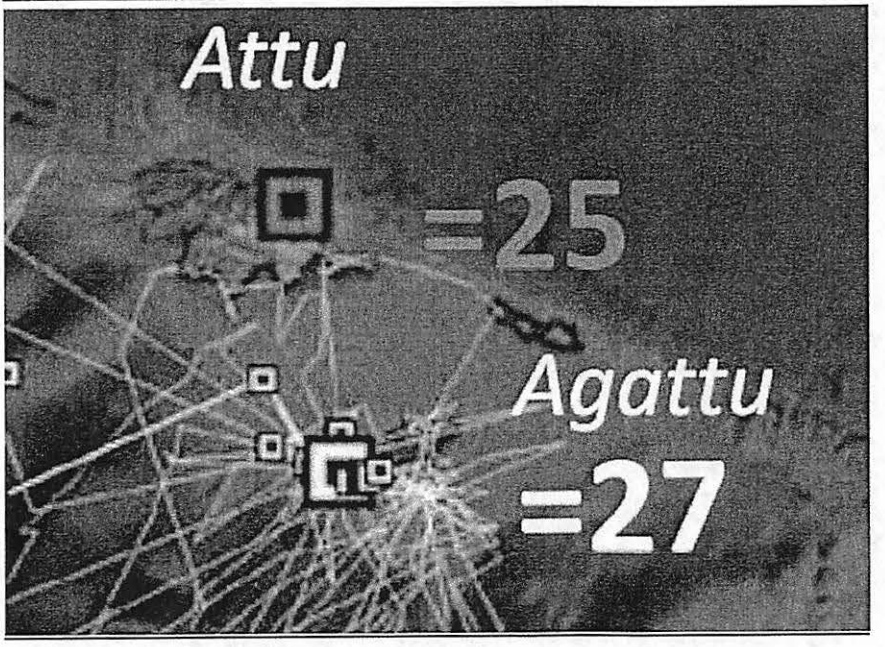


Figure 4 (From Fadely update #21 - through April 1st 2013)



SSL EIS page 5-119

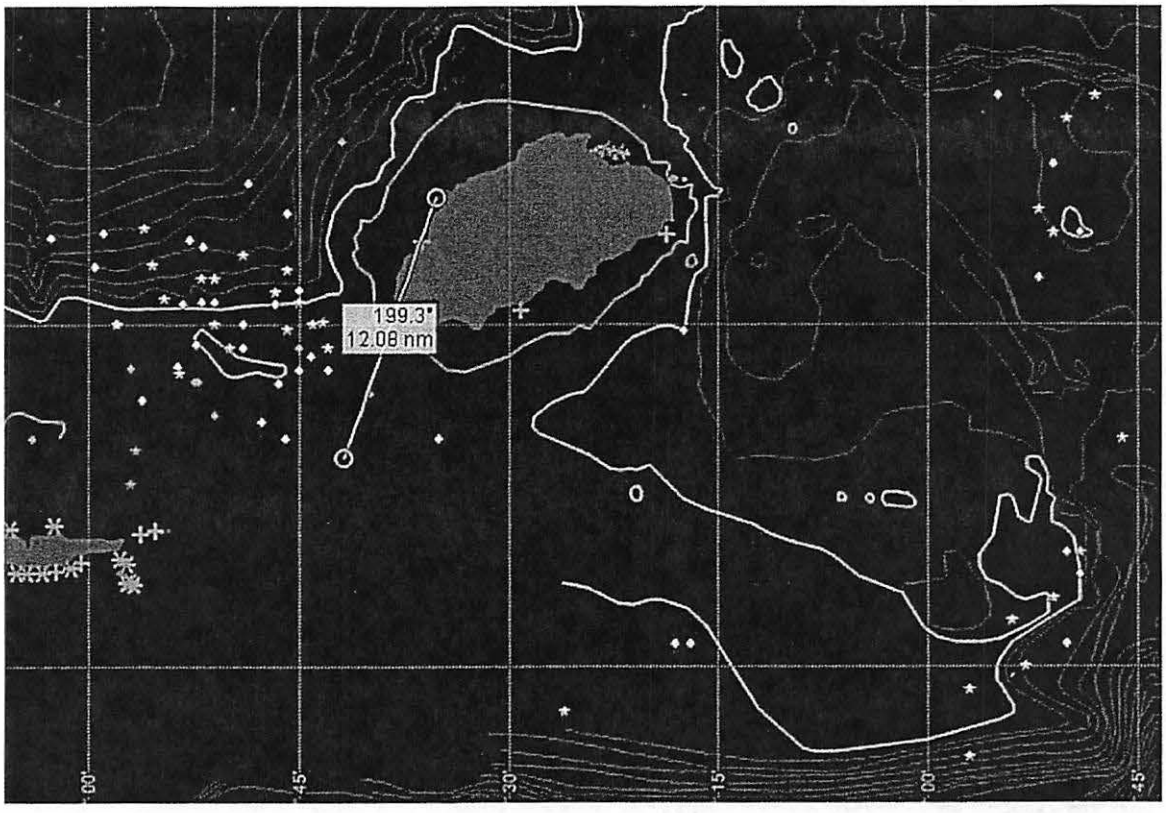
The text suggests that *"the Aleut Corporation...have reallocated their Aleutian Islands pollock TAC to the Bering Sea."* While it is true that the quota has been reallocated to the Bering Sea by NMFS, it is important to note that it is reallocated away from the Aleut Corporation to other entities. (Thus the Aleut Corporation loses the potential benefit associated with the harvest of that quota.)

SSL EIS page 5-121 & 5-156 & Table 5-79

Opening the "Seguam smile" would only open 3% of 541 CH to the mackerel fishery. In discussing the impacts the EIS states: *"Opening this portion of critical habitat from 12–20 nm southeast of Seguam Island, increases the potential for prey availability effects compared to Alternative 1. This portion of critical habitat is near two rookeries and 5 haulouts. Areas of relatively high Steller sea lion encounter rates (based on sightings data from the Platform of Opportunities Database) occur during breeding and non-breeding seasons (Himes Boor and Small 2012) within the area that is proposed to be opened to Atka mackerel fishing. Therefore, increased potential for prey availability effects from this fishery occurs throughout the year."*

This quote from Boor mis-characterizes the data from the POP database. In the following figure I've plotted the raw POP data provided by NMML (represented by diamond and star symbols.) While there were sightings up on the northeast edge of the Amlia flat, there were not any in the "Seguam smile."

Figure 5



SSL EIS page 5-46

Himes Boor and Small (2012) attempted to estimate likely SSL encounter rates by standardizing an effort index for the POP dataset. In the 2010 BiOp, Boor's Baysian statistical analysis of Platform of Opportunity data was referenced in support of extending restrictions beyond the existing zonal

measures as well as outside CH. Subsequently, Boor & Small published a paper which contains the following figure which purports to "identify several previously undocumented areas of *high use* by Steller sea lions."

Figure 6 (from Boor figure 4)

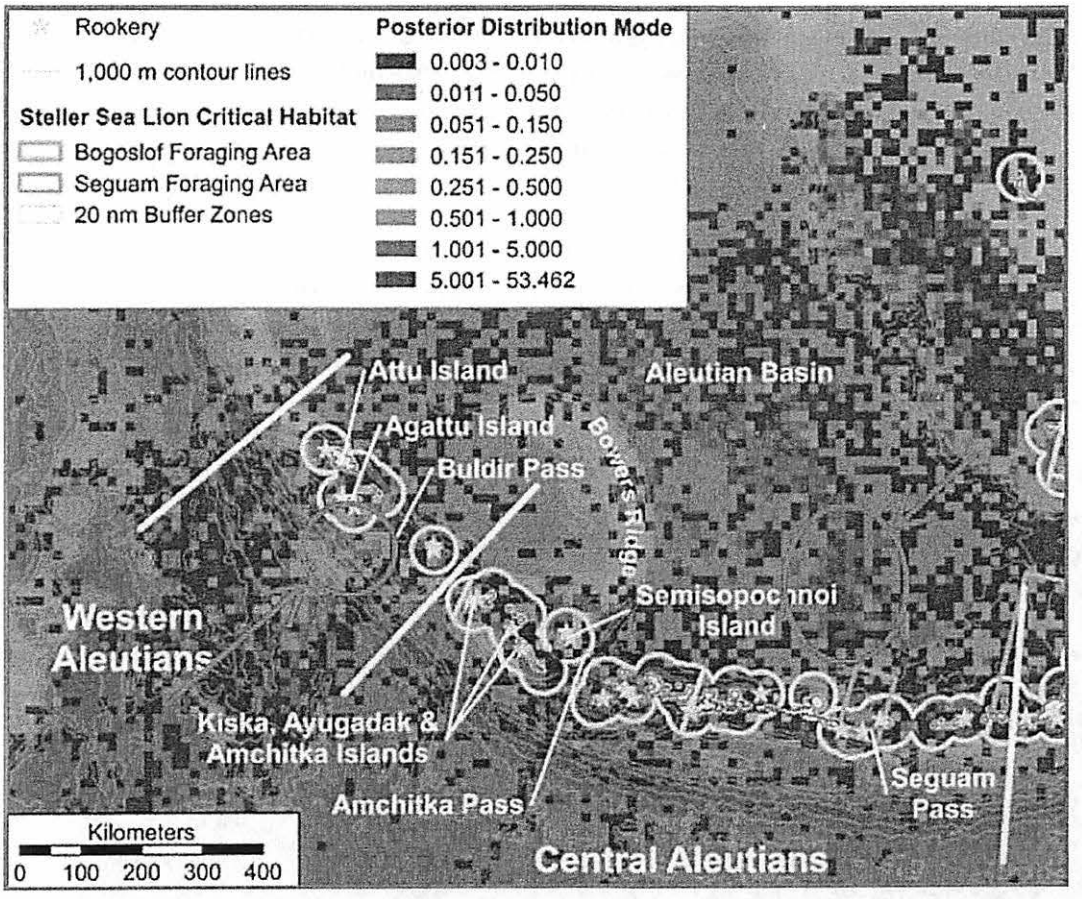


Figure 6 (above) from Boor/Small shows two such 'high use' areas in the Aleutians (which I've circled and indicated by red arrows.)

In comments on the BiOp and in scoping on the EIS, as well as in the course of SSLMC discussions, we have suggested that further analysis of the POP data is needed to determine the merits of the Boor/Small paper and whether it supports the actions taken based on the 2010 BiOp. To evaluate whether POP data reveals anything beyond the distribution of sighting effort, it is necessary to analyze the positive sightings in the context of the "null" observations from the same platforms.

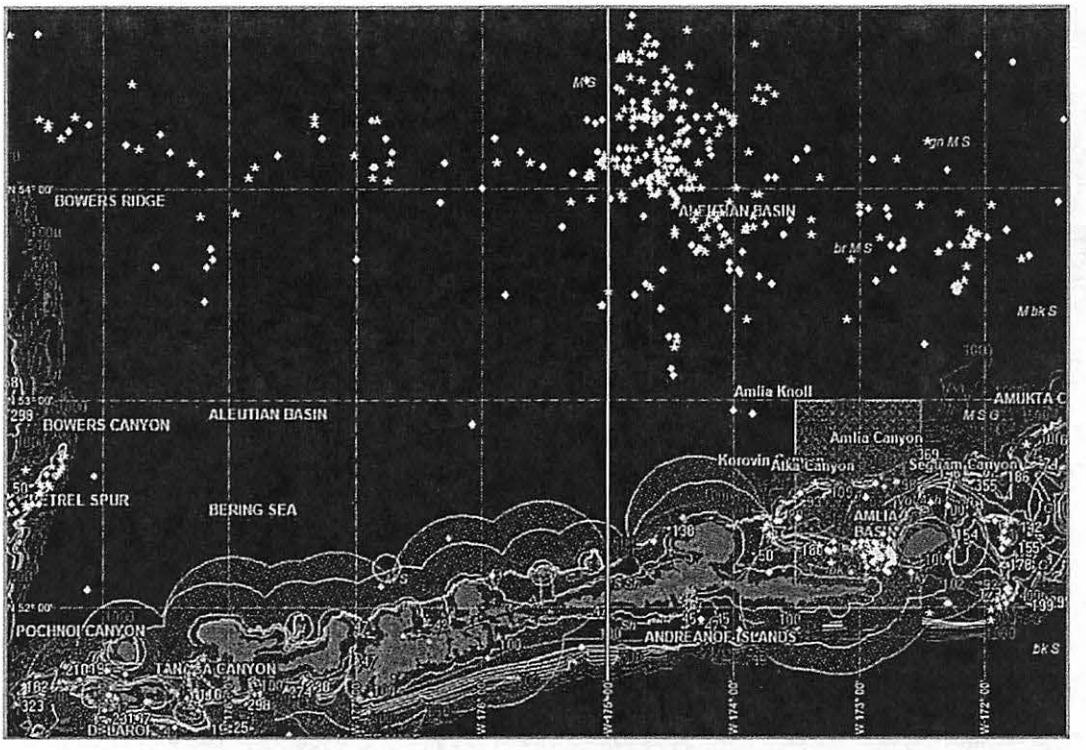
The SSLMC requested the raw POP data from NMFS/NMML. Some of the requested POP data was provided to the committee on Nov. 23rd 2012. However, the data from the observer program was aggregated based on confidentiality issues. This obscured the ability to look at seasonality, or to place POP sightings in the context of the activity in which the platform was engaged.

Much of the observer data was from the foreign fishery observer program. In the past NMFS has taken the position that confidentiality provisions did not extend to the foreign fleets. In a follow up request to NMML we were told: *"There is nothing in the MSFCMA that specifies that information gathered from foreign vessels can be treated differently than information gathered from domestic vessels."* (pers. com. van.helker@noaa.gov).

In 1993, prior to the 1996 amendments to the MS-FCMA, the AFSC did provide "haul" files and "species comp" for all of the foreign fishery observer data from 1979 to 1989 (unfortunately, the observer "species comp" file data was limited to fish and shellfish data and doesn't include the marine mammal sighting.) I've used that foreign fishery observer data to do the following preliminary scoping analysis of the POP data NMML provided to the SSLMC.

In looking through the observer data portion of the POP data provided by NMML, there were 950 records with SSL sightings. Of these, 351 records were from 1984. The foreign fishery observer records for the same year contain 1891 records in the Aleutians west of 170 and south of 55 degrees where pollock was the target. The 1st figure shows the SSL sighting location from the observer data (1984 sightings are in yellow, other years from the 1980's are in blue, 1990's are in red, 2000's are in purple.)

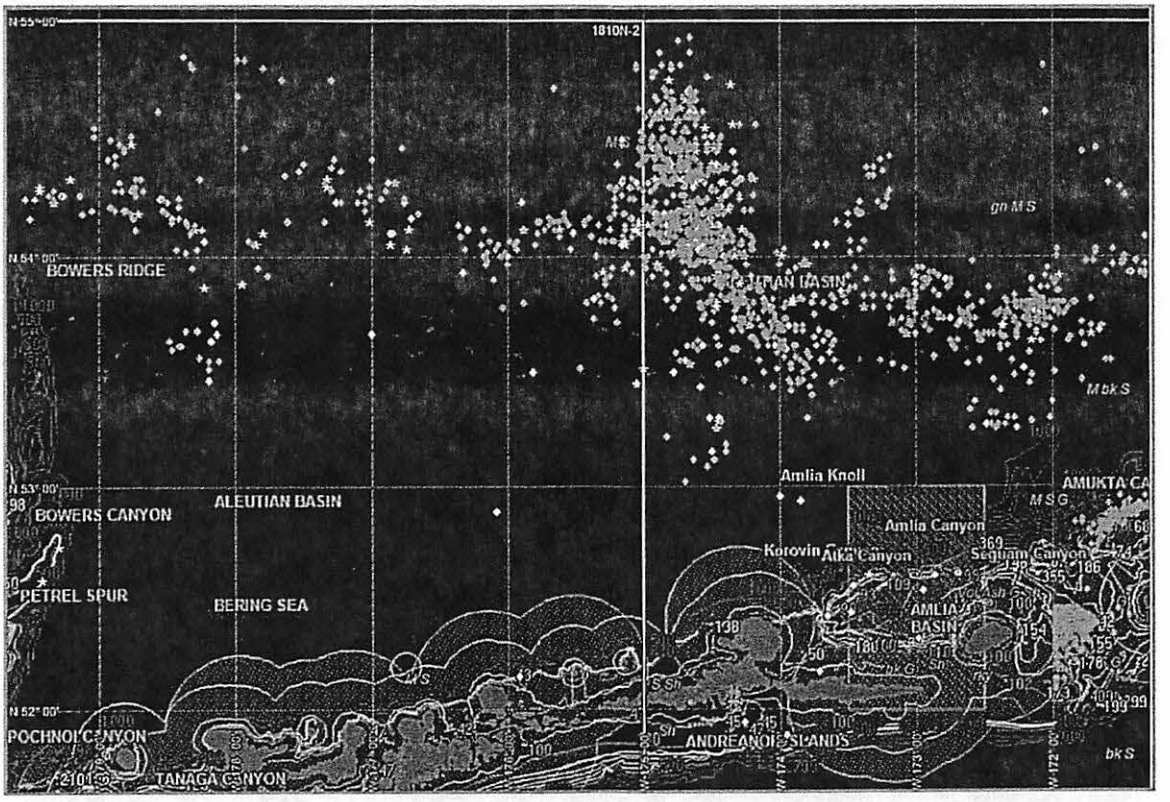
Figure 7



At first glance, the above figure 7 seems to support an inference of 'high use'. However, that inference needs to be examined in the context of the distribution of sighting effort.

In figure 8, I've plotted the 1984 observer data (sighting effort – in green) and the 1984 POP data (sightings – in yellow) over layers of CH and bathymetry (out to 1000 fathoms). Taken together, the two data sets tell more about where fishing occurred than whether SSL were making 'high use' of the area. It tells nothing about the relative use of adjacent areas where there was no fishing, and thus not observer sighting effort. I selected 1984 in the interest of time because it was the year with the most effort and the most sightings.

Figure 8



There is an exception to the confidentiality provision for the domestic observer program for a subset of the observer data providing location, target, bycatch rate data without vessel name or target quantity. I have previously received that data for the 1990s.

In figure 9 below, I've plotted the 1990's pollock target haul locations in green and the 1990's SSL sightings from the POP observer data in red.

By the logic of the Boor/Small paper, CH along the shelf break would appear to be "low use" area. However, we don't know how much time observers in the foreign fishery spent looking for marine mammals in comparison to the tasking of observers in the domestic fishery.

Figure 9

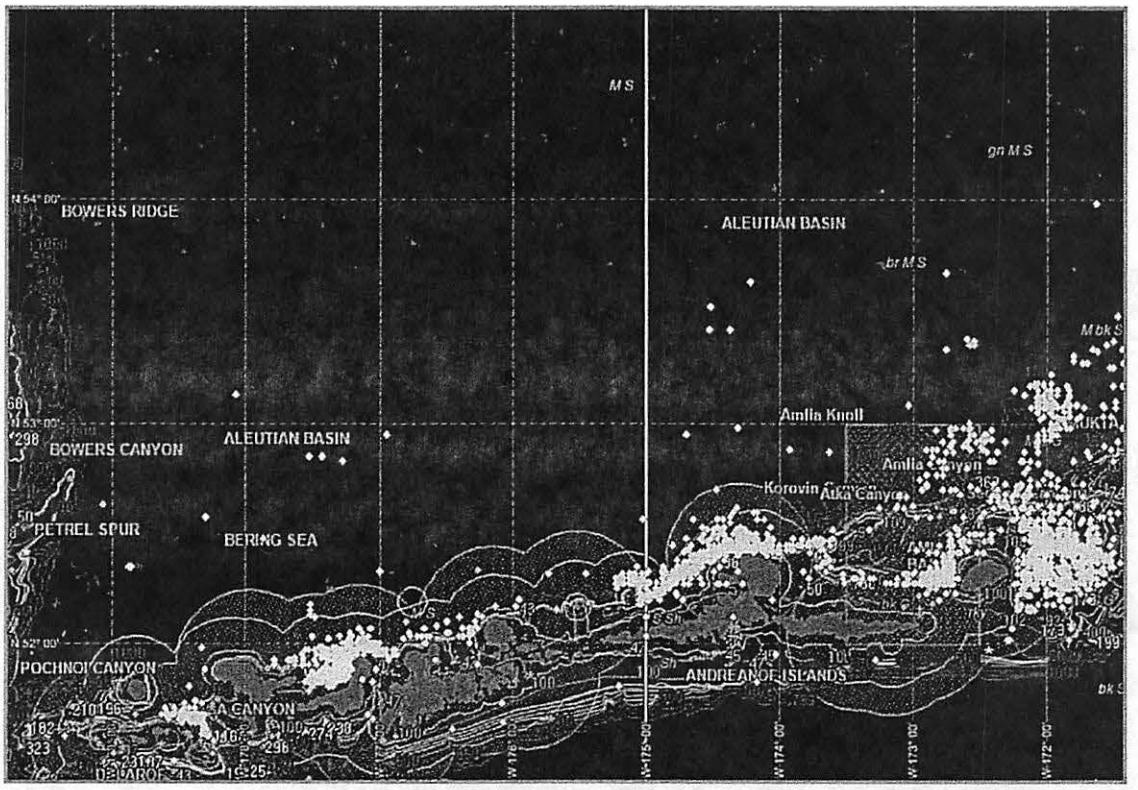
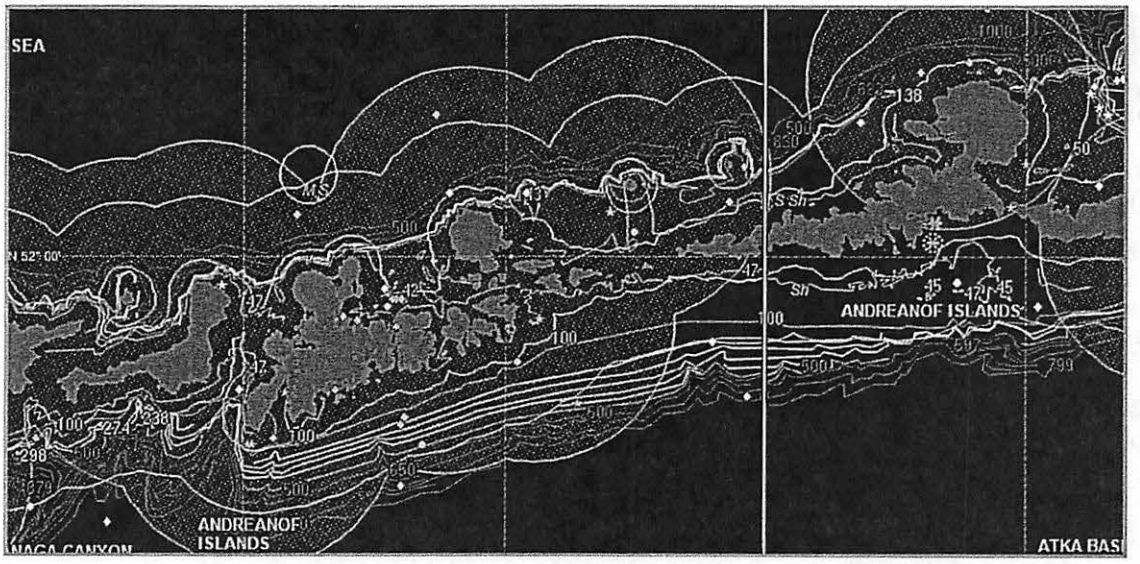


Figure 10 below, is all POP sightings for the Adak area.

Figure 10

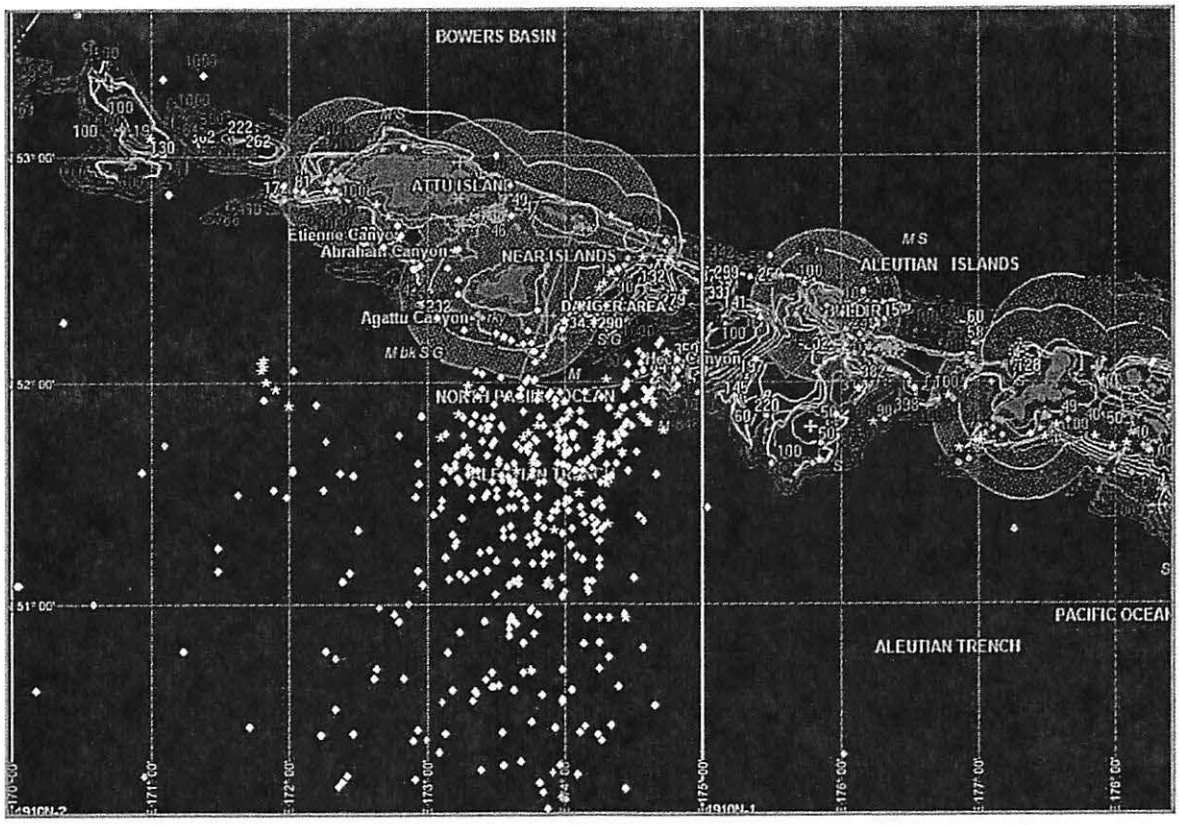


Unfortunately the confidentiality exception doesn't apply to the Atka mackerel fishery data, so we are unable to do a comparison between sighting effort and sightings for that fishery. Due to time constraints, I've also not plotted domestic cod trawl locations. However figure 10 does include sightings from the cod and mackerel fisheries that were entered into the POP database. What we do know is that the cod fishery occurs almost exclusively between 50 and 90 fathoms around Adak and relatively few of the sightings are in that portion of the bathymetry that would justify maintaining the increased closures to the cod fishery in that area under Alterative 1.

Another 'high use' area based on the Boor/Small paper would be south of Aggatu Island. In figure 11 below the non-observer program POP data is shown. The yellow symbols are all from vessel type "514" (mothership catcher vessels). *"All vessels in the 514 category were Japanese and within your area of interest. The 514 category included motherships and catcher boats of various design (saury type, tuna type, and longline type boats). Though their design tended to vary it appeared that salmon was the target species of this fleet and gear-type was gillnet."* (pers. com. van.helker@noaa.gov).

Without more access to the underlying data collection, there is no way to evaluate the intensity of sighting effort.

Figure 11



In summary, it is questionable whether any amount a Baysian statistical manipulation of the POP data set without clear measures of the various types of sighting effort can provide any meaningful identification of SSL "high use" areas.

Alternative 5 - The Preferred Alternative

The DEIS ultimately only provides a rank order for the alternatives. Key analyses which Protected Resources says will be included in a new BiOp are needed for the Council to make a final choice. In light of the Reviews and new information, it is questionable that the JAM conclusion of the 2010 BiOp was appropriate.

However, simply by relying on the general principles outlined in the 2010 BiOp and PR's "feedback" letter dated 5/28/13, Alternative 5 should be selected as the preferred alternative for pollock.

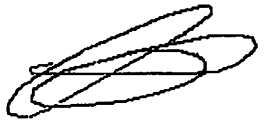
Alternative 5 should be selected for trawl cod, with the inclusion of modified provision from Alternative 2 that would only open directed fishing for trawl cod in the area between 173° East long. and 174.5° East long. until April 30th and only outside 10 nm from rookeries and outside 3 miles from haulouts. It is more precautionary than the pre-2010 measures from a cod management perspective. Again, selection of this alternative can be justified as responsive to the principles outlined in the 2010 BiOp and PR's "feedback" letter, and supported by the new telemetry data.

Conclusion

We reiterate our support of the comments of the Alaska Seafood Cooperative, et al. and the process they recommend of preparing a revised document for release for comment prior to the October NPFMC meeting.

Thank you for considering our comments.

Sincerely,



dave fraser,
Adak Community Development Corporation

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

September 24, 2013

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

RE: Agenda item C-2, Final action on the SSL EIS

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

The North Pacific Fishery Management Council and National Marine Fisheries Service (NMFS) are nearing the completion of an environmental impact statement (EIS) evaluating management changes in the Bering Sea and Aleutian Islands (BSAI) groundfish fisheries. *See* 77 Fed. Reg. 22750 (April 17, 2012). We urge the Council to choose Alternative 1, the No Action Alternative as its preferred alternative.

This 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 in order to ensure compliance with the Endangered Species Act (ESA). Two courts have now rejected all of the plaintiffs' substantive challenges to those measures and found that NMFS complied with the ESA, Magnuson-Stevens Fishery Management and Conservation Act (MSA), and other statutes in making those changes to reduce competition for prey species in the Western Aleutians. The State of Alaska and the fishing companies, however, continue to push their failed arguments in court and, improperly, through this NEPA process. The result has been inefficiency and continued conflict, neither of which further a productive dialogue about how best to manage fisheries.

At this point, it seems clear that ending the judicial proceedings and the potential for court control of management decisions will facilitate the decisionmaking process. To most effectively achieve that goal, the Council should select the No Action Alternative as its final preferred alternative.

As we made clear in previous comments, we believe that any discussion of changes to the current management must take into account explicitly the needs of marine ecosystem. We have suggested alternative measures such as:

- Establishing a maximum yield cap for the Aleutian Islands;
- For prey species in the Aleutian Islands, setting OY so that biomass is predicted to increase to B60 over a 20-year time horizon;
- Modifying the global control rule for prey species so that α is 0.75 and fishing is stopped at B30 for fisheries in the Aleutian Islands;
- Committing to a formal implementation strategy for aspects of the Aleutian Islands Fishery Ecosystem Plan, such evaluating options to incorporate predator needs in the TAC-setting process; and
- Protecting critical habitat, such as areas surrounding rookeries and haulouts in the Pribilof Islands

We continue to support a process that would allow for evaluation and adoption of measures like those. The current EIS process, however, has not done so, and we encourage the Council and agency to conclude it.[1]

Ultimately, triage to stem the continuing decline and failure to recover of the western population of Steller sea lions was clearly justified and necessary. To avoid another emergency, however, we should consider more basic changes in fisheries management to address the shortcomings of a maximum yield approach and allow the Steller sea lion population to recover. Thank you for considering these comments, and we look forward to working with you on this important issue.

Sincerely,

Susan Murray
Deputy Vice President, Pacific
Oceana

1 In comments to NMFS, we made clear that, as written, the Draft EIS does not comply with the law. We hope that the agency will address the deficiencies we identified in the final document.