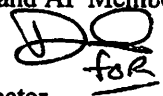


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director

ESTIMATED TIME (all D-1 items) 8 HOURS
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DATE: May 29, 2012

SUBJECT: Groundfish Issues – Review comments and reports on Programmatic Groundfish SEIS

ACTION REQUIRED

- (f) Review comments and reports on Programmatic Groundfish SEIS; action as necessary

BACKGROUND

Attached for review is a discussion paper about updating the 2004 Groundfish PSEIS (**Item D-1(f)(1)**). The Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (PSEIS; NMFS 2004) is a comprehensive review of the BSAI and GOA groundfish fisheries, which evaluated the cumulative changes in the management of the groundfish fisheries since the implementation of the Fishery Management Plans around 1980, and considered a broad array of policy-level programmatic alternatives. On the basis of the analysis, the Council adopted a groundfish management policy with management approach statement, and 9 policy goal statements, with 45 accompanying objectives. The management policy is included in full in Appendix 1 to the discussion paper.

Once a year, the Council conducts a review of the management policy objectives to assess how they are being implemented, and see whether changes are warranted¹. This review occurred most recently at the February 2012 meeting, when the Council also reviewed a discussion paper identifying factors that may influence the timing for supplementing or updating the 2004 Groundfish PSEIS. It has been eight years since the PSEIS was published, and at some point, the NEPA analysis will need to be supplemented. The February 2012 discussion paper suggested an approach to help the Council decide whether the time is right to update the PSEIS, which recommended soliciting input from its stakeholders.

At the February 2012 meeting, the Council had a long discussion about the need for revising the 2004 Groundfish PSEIS, and requested several additional items to assist in its consideration. The Council has asked for input from several sources to inform their discussions:

- stakeholder input on whether the existing groundfish management objectives continue to be relevant, or are in need of revision;
- SSC scientific guidance on whether we understand the environmental impacts of the groundfish management program today, and the continued relevance of the analysis in the 2004 Groundfish PSEIS; and
- examples of how an updated PSEIS could address efficiencies in our analytical or regulatory process.

¹ Note that changes to the policy objectives require an FMP amendment.

This discussion paper incorporates the additional input requested by the Council. Section 2 addresses considerations for supplementing the 2004 PSEIS, including a short summary of the history of the 2004 Groundfish PSEIS, and guidance on preparing a new PSEIS. The section also describes the benefits of having a NEPA-compliant programmatic SEIS in place, and the risks of not having one, and other ways in which the 2004 PSEIS is currently used in the Council's management process.

Sections 3 and 4 provide the stakeholder and SSC feedback that was requested by the Council at the February meeting. A stakeholder listening session was held during the March/April Council meeting, and is summarized along with written comment in Section 3. The SSC also evaluated the continuing relevancy of the PSEIS at the March/April meeting, and their minutes on this topic are excerpted in Section 4. Finally, Section 5 provides some discussion of the Council's options for moving forward with respect to this issue. There are also several appendices included with this discussion paper, which are largely reference materials that have been included in previous presentations on this subject.

Discussion about Updating the Groundfish FMP Programmatic SEIS May 2012

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1 Introduction

The Council developed its groundfish management policy in 2004, following a comprehensive review of the BSAI and GOA groundfish fisheries. The *Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement* (2004 PSEIS; NMFS 2004) evaluated the cumulative changes in the management of the groundfish fisheries since the implementation of the Fishery Management Plans (FMPs) around 1980, and considered a broad array of policy-level programmatic alternatives. On the basis of the analysis, the Council adopted a management approach statement, and 9 policy goal statements, with 45 accompanying objectives. The management policy is included in full in Appendix 1.

Once a year, the Council conducts a review of the management policy objectives to assess how they are being implemented (Appendix 2), and see whether changes are warranted.¹ This review occurred most recently at the February 2012 meeting, when the Council also reviewed a discussion paper identifying factors that may influence the timing for supplementing or updating the 2004 PSEIS. It has been eight years since the PSEIS was published, and at some point, the current NEPA analysis will need to be

¹ Note that changes to the policy objectives require an FMP amendment.

supplemented. The February 2012 discussion paper suggested an approach to help the Council decide whether the time is right to update the PSEIS, which recommended soliciting input from its stakeholders.

At the February 2012 meeting, the Council had a long discussion about the need for revising the 2004 PSEIS, and requested several additional items to assist in its consideration. The Council has asked for input from several sources to inform their discussions:

- stakeholder input on whether the existing groundfish management objectives continue to be relevant, or are in need of revision;
- SSC scientific guidance on whether we understand the environmental impacts of the groundfish management program today, and the continued relevance of the analysis in the 2004 PSEIS; and
- examples of how an updated PSEIS could address efficiencies in our analytical or regulatory process.

This discussion paper incorporates the additional input requested by the Council. Section 2 addresses considerations for supplementing the 2004 PSEIS, including a short summary of the history of the 2004 PSEIS, and guidance on preparing a new PSEIS. The section also describes the benefits of having a NEPA-compliant programmatic SEIS in place, and the risks of not having one, and other ways in which the 2004 PSEIS is currently used in the Council's management process.

Sections 3 and 4 provide the stakeholder and the Council's Scientific and Statistical Committee (SSC) feedback that was requested by the Council at the February meeting. A stakeholder listening session was held during the March/April Council meeting, and is summarized along with written comment in Section 3. The SSC also evaluated the continuing relevancy of the PSEIS at the March/April meeting, and their minutes on this topic are excerpted in Section 4. Finally, Section 5 provides some discussion of the Council's options for moving forward with respect to this issue. There are also several appendices included with this discussion paper, which are largely reference materials that have been included in previous presentations on this subject.

2 Considerations for supplementing the 2004 PSEIS

2.1 What triggers the need to prepare an EIS?

NEPA requires that an environmental impact statement (EIS) be prepared on proposals for legislation and other major federal actions significantly affecting the quality of the human environment (40 CFR 1502.3). EISs are also prepared: (1) when the proposed action is novel, (2) when there is controversy in the underlying science used to understand the impacts of the alternatives, or (3) when the potential impacts are unknown. Courts have also found that significant scientific differences of opinion, controversy, and uncertainty require preparation of an EIS.²

2.2 What is a programmatic EIS?

A 'major Federal action' includes adoption of official policy, formal plans, programs, and specific projects (40 CFR 1508.18). When the EIS addresses a policy, plan or program, it is called a programmatic EIS or PEIS. PEISs should focus on broad federal proposals and be timed to coincide with meaningful points in planning and decision making. Preparing a PEIS presents an opportunity to evaluate cumulative

² *State of Alaska v. Lubchenko*, No. 3:10-CV-00271-TMB, order requiring plaintiffs to prepare an EIS at 8 n.36 (D. Alaska, filed March 5, 2012). See footnote 36.

impacts of past, present, and reasonably foreseeable future actions under the program or within a geographical area. NEPA's legal requirements for a PEIS are the same as those for an EIS.

2.3 What triggers the need to prepare a supplemental EIS?

NEPA requires agencies to prepare a supplemental EIS (SEIS) to either draft or final EISs if the agency (1) makes substantial changes in the proposed action that are relevant to environmental concerns; or (2) there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). An agency need not supplement an EIS every time new information comes to light. Not every change requires the preparation of an SEIS; only those changes that cause effects which are significantly different from those already studied require supplementary consideration.³ The Supreme Court explained that "an agency need not supplement an EIS every time new information comes to light after the EIS is finalized. To require otherwise would render agency decision-making intractable."⁴

An SEIS is required if the new information is sufficient to show a proposed or remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered.⁵ If a subsequent related federal action occurs, and new information indicates that that subsequent action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, an SEIS must be prepared.⁶

2.4 What is the history leading to the 2004 PSEIS?

The Council and NMFS prepared EISs for the original Bering Sea and Aleutian Islands (BSAI) and Gulf of Alaska (GOA) groundfish FMPs, finalized in 1981 and 1979, respectively. In March 1997, NOAA Fisheries issued a Notice of Intent to prepare an SEIS on "the Federal action by which total allowable catch specifications and prohibited species catch limits in the groundfish fisheries that are conducted in the Bering Sea and Aleutian Islands Area and the Gulf of Alaska are annually established and apportioned." (62 FR 15151, March 31, 1997). NMFS explained why the SEIS was needed:

The fisheries have evolved [] through the Council process including FMP amendments, regulations, and continued compliance with other Federal laws and executive orders. The frequencies of marine mammal, marine bird, and fish species in the biological assemblage present now are different from frequencies that existed and were displayed in [the EISs prepared for the original FMPs]. Several marine species have been listed under the Endangered Species Act, some of which may be affected by fishery management actions. New information about the ecosystem, impacts of the fisheries, and management tools has become available since the EISs were prepared (62 FR 15152, March 31, 1997).

Given these changes and new information, NMFS stated that the SEIS would incorporate the following:

... the amendments to the FMPs; the annual process for determining the [total allowable catch] TAC specifications; and the public processes for in place for implementing new regulations, revising existing ones, and incorporating new information. ... The SEIS will analyze the process

³ See Davis v. Latschar, 202 F.3d 359, 369 (D.C. Cir. 2000).

⁴ See Marsh v. Oregon Natural Resources Council, 490 U.S. 360, 373 (1989); Oregon Natural Resources Council v. Marsh, 845 F.Supp. 758, 766-69 (D. Ore. 1994), *aff'd in part, reversed in part*, Oregon Natural Resources Council v. Harell, 25 F.3d 1499 (9th Cir. 1995)

⁵ Marsh 490, at 374. Colorado Environmental Coalition v. Dombeck, 185 F.3d 1162, 1177-78 (10th Cir. 1999), Nat'l Resources Defense Council v. Lujan, 768 F. Supp 870, 885-89 (D.D.C. 1991)

⁶ See Marsh, 490 U.S. at 374.

by which annual TAC specifications and prohibited species catch limits are determined, together with the procedures for implementing changes to those processes. The processes encompass decisions about location and timing of each fishery, harvestable amounts, exploitation rates, exploited species, groupings of exploited species, gear types and groupings, allocations, product quality, organic waste and secondary utilization, at-sea and on-land organic discard, species at higher and lower trophic levels, habitat alterations, and relative impacts to coastal communities, society, the economy, and the domestic and foreign groundfish markets. Effects of these decisions are manifested over many years in multifaceted social and biological arenas. Inherent in implementing groundfish fisheries management regime are commitments to provide in-season management, enforcement, monitoring, stock assessment, and summary analyses. In addition to evaluating the no Action Alternative, the SEIS will include a full range of alternatives and discussions of their potential impacts on the biological and socioeconomic environments. ... (62 FR 15152, March 31, 1997).

Other than the general description alternatives quoted above, no specific alternatives were identified in the Notice of Intent.

NOAA Fisheries issued a Final SEIS in December 1998 (hereinafter "1998 SEIS"). The 1998 SEIS stated that the attainment of MSA goals and NEPA regulations require a periodic evaluation of the impacts of the BSAI and GOA groundfish fisheries on: (1) the stocks of fish taken as catch and bycatch in the groundfish fisheries; (2) protected species including marine mammals and seabirds; (3) other components of the BSAI and GOA ecosystems; (4) habitat; and (5) those who benefit from consumptive and non-consumptive uses of the living marine resources of the BSAI and GOA.⁷ The 1998 SEIS updated the scientific information known about the North Pacific ecosystem, and analyzed this information by considering a range of alternative total allowable catch (TAC) levels: (A) the status quo method of setting TAC levels annually, for each species complex, within the optimum yield (OY) range based on the biological status of the species and "other ecological and socio-economic aspects of the fisheries"; (B) setting TAC levels at the lower end of the OY range; (C) setting TAC levels at the upper end of the OY range; and (D) no directed groundfish fishing. The SEIS did not consider how new information about the affected environment related to other aspects of the fisheries that the FMPs regulate, such as time and area closures, gear restrictions, bycatch limits of prohibited species, and allocations of TACs among vessels delivering to different types of processors groups, gear types, and qualifying communities.

2.5 Why did the court determine a programmatic SEIS was needed?

The adequacy of the 1998 SEIS was challenged in U.S. district court.⁸ The plaintiffs argued that NEPA required NMFS to prepare an SEIS that included alternatives commensurate with the broad scope of the FMPs.⁹ Because the 1998 SEIS analyzed the new information under a range of alternatives dealing with only one particular aspect of the FMPs – TAC levels – the plaintiffs argued that the scope of the 1998 SEIS was impermissibly narrow.¹⁰ By narrowing the range of alternatives to those specifically dealing with TAC levels rather than the FMPs as a whole, the plaintiffs argued that NMFS failed to take the requisite "hard look" at the environmental consequences of the agency action, the FMPs.¹¹ NMFS argued that the agency properly defined the scope of the SEIS and considered an adequate range of alternatives.¹²

In July 1999, the court ruled that the 1998 SEIS was impermissibly narrow and thus legally inadequate

⁷ 1998 SEIS, at 2.

⁸ *Greenpeace v. National Marine Fisheries Service*, 55 F.Supp. 2d 1248 (W.D. Wash. 1999).

⁹ *Id.*, at 1270.

¹⁰ *Id.*, at 1271-72.

¹¹ *Id.*, at 1272.

¹² *Id.*

under NEPA, and remanded the document back to NMFS for additional analysis, directing the agency to produce a “programmatically” SEIS.¹³ Briefly stated, the court determined a broad programmatic SEIS that fairly evaluated the dramatic and significant changes that occurred in the groundfish fisheries in North Pacific ecosystem was required by NEPA “[i]n light of the significant changes to the FMPs and the new information about the broad range of issues” covered by the regulations managing the fisheries.¹⁴ Because the 1998 SEIS narrowly focused its analysis on TAC levels, the court determined that it was not sufficiently broad.¹⁵

In reaching this conclusion, the court first determined that the action under review in the SEIS should have been the FMPs and the numerous regulations managing the groundfish fisheries. The court noted that the FMPs constituted major federal actions requiring an EIS,¹⁶ that NMFS seemed to acknowledge that an SEIS to the original EISs was necessary under both the “substantial changes to the action” and the “significant new information” prongs of 40 CFR 1502.9(c),¹⁷ and that the level of detail necessary in an SEIS is directly related to scope of federal action under NEPA review.¹⁸ Because the FMPs as a whole were the proposed action about which there were significant new circumstances and to which substantial changes had been made, an SEIS that examined only one aspect of the FMPs, TAC levels, was insufficient to satisfy the requirements at 40 CFR 1502.9(c). The court also found that the SEIS lacked any explanation of why and how analysis of TAC levels “results in a practical analysis” of the impact of the fisheries, as governed by a myriad of regulations.¹⁹ The court’s determination that the SEIS must be treated as a broad, programmatic analysis of the FMPs as a whole lead directly to its conclusion that the range of alternatives considered in the 1998 SEIS was inadequate.²⁰

The court also determined that NEPA regulations at 40 CFR 1508.7 and 1508.27(b)(7) required NMFS to prepare an analysis that thoroughly examined the cumulative effects of the changes that had occurred to the FMPs.²¹ The court concluded that the “vast changes to the FMPs have reached the threshold of ‘cumulatively significant impact on the human environment,’ thereby requiring preparation of an SEIS addressing these vast changes.”²²

In summary, the court stated that NEPA requires NMFS to analyze the ways in which the groundfish fisheries affect the North Pacific ecosystem, and to provide decision-makers and the public with a document that will help further informed decision-making as to the consequences of the FMPs.²³ The 1998 SEIS, by focusing its analysis only on TAC levels, did not fulfill this mandate.²⁴

2.6 Will the Council and NMFS have to prepare a new PSEIS at some point?

As stated in numerous court decisions, federal agencies have a continuing duty to gather and evaluate new information relevant to the environmental impacts of its actions and to review the continuing vitality of an EIS in light of changing conditions.²⁵ As stated in *Friends of the Clearwater v. Dombeck*:

¹³ *Id.*, at 1273.

¹⁴ *Id.*

¹⁵ *Id.*, at 1275.

¹⁶ *Id.*, at 1257.

¹⁷ *Id.*, at 1271.

¹⁸ *Id.*, at 1276.

¹⁹ *Id.*, at 1275.

²⁰ *Id.*, 1274.

²¹ *Id.*, at 1273-74.

²² *Id.*, at 1274.

²³ *Id.*, at 1276.

²⁴ *Id.*

²⁵ See *Warm Springs Dam Task Force v. Gribble*, 621 F.2d 1017, 1023-1024 (9th Cir. 1980); *Monarch Chemical Works v. Exon*, 452 F.Supp 493, 500 (D.C. Neb. 1978). See also *Southern Oregon Citizens v. Clark*, 720 F.2d 1475, 1480 (9th Cir. 1983). This continuing duty is especially relevant where the original EIS covers a series of actions continuing over a decade. ... In general, an EIS concerning an ongoing action more than five years old should be carefully examined to determine whether a supplement is

“...[A]n agency that has prepared an EIS cannot simply rest on the original document. The agency must be alert to new information that may alter the results of its original environmental analysis, and continue to take a “hard look at the environmental effects of [its] planned action, even after a proposal has received initial approval. It must “ma[ke] a reasoned decision based on ... the significance or lack of significance – of the new information,” and prepare a supplemental EIS when there are “significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.” “If there remains major Federal action to occur, and the new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered, a supplemental EIS must be prepared.”²⁶

The court in *Friends of the Clearwater* also stated: “As we have admonished, “Compliance with NEPA is a primary duty of every federal agency; fulfillment of this vital responsibility should not depend on the vigilance and limited resources of environmental plaintiffs.”²⁷ It is the agency, not an environmental plaintiff, that has a “continuing duty to gather and evaluate new information relevant to the environmental impact of its actions,” even after release of an EIS.

The Supreme Court has held that supplementation of an EIS is necessary only if there remains major Federal action to occur.²⁸ As the court in *Defenders of Wildlife v. Bureau of Ocean Energy Management, Regulation, and Enforcement* stated that:²⁹

Although the case law is not uniform, a reasonable, helpful formulation of the “major Federal action” test provides that if “the actions remaining to the [agencies] ... are purely ministerial, or if the agencies have no discretion that might usefully be informed by further environmental review, then there is no major federal action and no SEIS must be prepared.” *Hammond v. Norton*, 370 F.Supp.2d 226, 255 (D.D.C.2005) (citing *Citizens Against Rails-to-Trails v. Surface Transp. Bd.*, 267 F.3d 1144, 1151 (D.C.Cir.2001)); see also *Southern Utah Wilderness Alliance v. Office of Surface Min. Reclamation and Enforcement*, 2008 WL 4912058, *12 (D.Utah Nov. 14, 2008) (no “major federal action” requiring supplemental EIS where agency “retained no discretion to decide whether the projects should go forward or to determine the terms and conditions of the projects’ approval”).

Because fisheries management is dynamic – the FMPs are regularly amended to adjust fisheries management based on new circumstances, and new information on the environment and the impacts of fishing on the environment is continually being developed – and because the Council and the agency have broad discretion to manage fisheries consistent with the requirements of the MSA, the Council and the agency have a continuing duty to gather and evaluate new information relevant to the environmental impacts of its actions and to review the continuing vitality of its PSEIS in light of changing conditions.³⁰

needed); *Senville v. Peters*, 327 F.Supp.2d 335, 355-56 (D. Vt. 2004) – An agency’s duty to take a hard look at the environmental consequences of its proposed action does not end with publication of an EIS. NEPA imposes an ongoing obligation to supplement EISs if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts. The decision whether to prepare an SEIS is similar to the decision whether to prepare an EIS in the first place. Major federal action, plus new information that shows “that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered,” dictates the preparation of an SEIS. *Marsh* 490, 360-61. The parties do not dispute that the proposed action is major, nor that there is new information. At issue is whether the new information results in impacts that are significantly different in degree or in kind from the impacts previously considered.

²⁶ Quoting *Marsh* 490 U.S. at 374.

²⁷ *City of Davis v. Coleman*, 521 F.2d 661, 667 (9th Cir. 1975), see also *Coalition for Canyon Preservation v. Bowers*, 632 F.2d 774, 779 (9th Cir. 1980)

²⁸ *Norton v. Southern Utah Wilderness Alliance* 542 U.S. 55, 72-73 (2004)

²⁹ 791 F.Supp.2d 1158 (S.D.Ala. May 23, 2011)

³⁰ NEPA requires an agency to continue evaluating a project’s environmental effects, even after preparation of an initial EIS. From *Greenpeace Decision* at 1259; see also *Chemical Weapons v. U.S. Department of Army* 935 F. Supp. 1206, 1217-19 (D. Utah

When the changes and the information is significantly different in degree or in kind from the impacts previously considered, the Council and the agency must prepare a supplement to the PSEIS.

2.7 How does the Council and NMFS decide when it is time to initiate a new PSEIS?

The passage of time alone does not trigger the need for a supplement. However, CEQ advises in its Forty Most Asked Questions that an EIS over five years old should be carefully scrutinized to determine whether there are changes in the action or the affected environment:

Question No. 32: Supplements to Old EISs. Under what circumstances do old EISs have to be supplemented before taking action on a proposal?

A. As a rule of thumb, if the proposal has not yet been implemented, or if the EIS concerns an ongoing program, EISs that are more than 5 years old should be carefully reexamined to determine if the criteria in Section 1502.9 compel preparation of an EIS supplement.

If an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts, an SEIS must be prepared for an existing EIS so that the agency has the best possible information to make any necessary substantive changes in its decisions regarding the proposal (40 CFR 1502.9(c)).

To determine if an SEIS is necessary at this time, the Council and NMFS could first conduct a “non-NEPA” evaluation of the PSEIS. This evaluation would result in a supplementary information report (SIR), similar to the SIR NMFS prepares annually for the groundfish harvest specifications. A SIR is a tool to evaluate the need to prepare a new EIS to supplement a previous EIS. Courts have upheld the use of SIRs and similar non-NEPA evaluation procedures for the purpose of determining whether new information or changed circumstances require the preparation of a supplemental EIS.³¹ The SIR would discuss each of the considerations for an SEIS: changes to the action, new information, and new circumstances; and whether these changes are significant and relevant to environmental concerns and the impacts of the proposed action. Depending on the results of this analysis, the Council and NMFS may determine that the triggers for supplementing the PSEIS have not been met and therefore a new PSEIS is not necessary at this time. On the other hand, the SIR may provide the detailed information from which to determine that a new PSEIS should be prepared. Note that if the SIR does determine new information or circumstances are significant, the Council or NMFS must prepare a supplemental EIS; a SIR cannot serve as a substitute.³²

Alternatively, the Council may choose to initiate the development of an environmental assessment which, like a SIR, could be used to determine if the PSEIS requires supplementation. The Council could also choose to move straight to initiating the development of a supplemental EIS. Factors that the Council may wish to consider in its decision include:

1996) (preliminary injunction denied on allegations of new information with respect to EIS on chemical weapons disposal facility; in this case, the daily operation will itself constitute major Federal action that would require a supplemental EIS if new information is sufficient to show that the remaining action will affect the quality of the human environment in a significant manner or to a significant extent not already considered).

³¹ *Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000), *Marsh v. Oregon Natural Resources Council*, 490 U.S. 360, 383-85 (1989), *Laguna Greenbelt, Inc. v. United States Dep't of Transp.*, 42 F.3d 517, 529-30 (9th Cir 1994), *Price Rd. Neighborhood Ass'n v. United States Dep't of Transp.*, 113 F.3d 1505, 1510 (9th Cir. 1997)

³² *Idaho Sporting Congress, Inc. v. Alexander*, 222 F.3d 562, 566 (9th Cir. 2000)

- A SIR is not a NEPA document, therefore the Council would retain some flexibility in defining the public participation process as well as general timing issues.
- A SIR could help inform the Council if it chooses to consider whether to revise the objectives, policy statements, or overall management approach for the groundfish fisheries found in the current FMP and NEPA analysis.
- A SIR could also inform the public and serve as a useful focal point for further discussions with the Council.
- Since a SIR cannot serve as a substitute for a proper NEPA document, an EA or supplemental EIS, once final, would ensure NEPA compliance.
- An EA or an SEIS would require a proposed action, purpose and need, and a reasonable range of alternatives and the related NEPA requirements for these documents.

If the Council chose to move forward with a SIR, it would need to:

- Evaluate the changes to the action, federal groundfish fisheries management, since the 2004 PSEIS using readily available information synthesized into a complete picture of today's fishery management so that it could be compared to the fishery management regime described under the preferred alternative in the PSEIS.
- Identify the new information available and new circumstances since 2004 by summarizing the new information in the SAFE reports, recent analytical documents (EAs, EISs, and biological opinions), and any other sources.
- Evaluate whether the changes in the action, new information, and the new circumstances are significant and relevant to environmental concerns and the impacts of the proposed action by assessing whether the impacts predicted in the PSEIS for the preferred alternative are still valid given these changes since 2004.

As a general example, one of the impacts predicted for the preferred alternative in the PSEIS is that it would prevent overfishing of target stocks through precautionary harvest policies. The SIR would look at all of the changes in management and the harvest strategies, new information in the stock assessment, survey, and fishery data, and new circumstances to determine if today's groundfish fishery management still prevents overfishing of target stocks through precautionary harvest policies. If it is determined that the changes do not alter the conclusions in the PSEIS relevant to preventing overfishing, the SIR could conclude that the changes are not significant relevant to environmental concerns and do not have a bearing on the proposed action or its impacts and that supplementation of this portion of the PSEIS is not needed. To be clear, however, the SIR would need to undertake a similar evaluation of each impact and conclusion predicted for the preferred alternative in the PSEIS, based on current information.

A SIR would enable the Council and NMFS to evaluate new information and make a reasoned determination whether it is sufficiently significant to require formal supplementation under NEPA. Courts have upheld an agency's decision not to supplement if it is reasonable. The reasonableness of an agency's decision not to supplement depends on 'such factors as the environmental significance of the new information, the probably accuracy of the information, the degree of care with which the agency considered the information and evaluated its impact, and the degree to which the agency supported its decision not to supplement with a statement of explanation or additional data.'³³ The court plays the limited role of determining, under the foregoing standards, whether the new information is so significant that it would be irresponsible, arbitrary, and capricious for the agency not to act on it. However, the court would determine whether the new information presents a 'seriously different picture of the likely environmental consequences of the proposed action' than the picture already considered. Resolution of

³³ Oregon Natural Resources Council v. Marsh, 845 F.Supp. 758, 766-69 (D. Ore. 1994)

this dispute involves primarily issues of fact requiring deference to the informed discretion of the responsible agency.”³⁴

2.8 What efficiencies are gained by doing an EIS?

EISs are major undertakings, and the process to determine whether or not to supplement an existing EIS also requires substantial effort and analysis. However, as explained above, NEPA analysis is required for major federal actions and once an EIS is completed, there is a continuing duty to make sure the analysis is relevant in light of new information, circumstances, or changes in the proposed action. Once an EIS is completed for a proposed action and that action is implemented, the EIS is useful for subsequent related actions and for understanding the impacts of specific actions in the larger context. Having an EIS can greatly streamline future NEPA analyses using tools described in the CEQ regulations. Appendix 3 describes existing AKR EISs and efficiencies gained in subsequent NEPA analyses. A comprehensive programmatic EIS can also allow other efficiencies for future NEPA analyses, such as tiering, incorporation by reference, or in applicable instances, allowing for categorical exclusions (see short summaries of these actions below).

The 2004 PSEIS implemented a change to the groundfish management policy. Each subsequent action to implement the policy has been evaluated in a separate NEPA document. The PSEIS provides the baseline for conducting NEPA analysis for groundfish management actions. NMFS and Council staff incorporate by reference the information in the PSEIS, and update as necessary in the NEPA analysis for a specific action. This allows the subsequent NEPA document to focus on recent information and information relevant to the action, without a large amount of background information, or a re-analysis of the status quo. Also, the PSEIS provided a comprehensive analysis of the cumulative effects and past actions that are relied on for groundfish action EAs.

Tiering

Tiering means the coverage of general information in a PEIS with subsequent narrower EISs or EAs incorporating by reference the general discussions from the PEIS and concentrating solely on the issues specific to the subsequent project-specific action (40 CFR 1508.28, 40 CFR 1500.4(i), 1502.4(d) and 1502.20). Federal agencies are encouraged to tier NEPA analysis to avoid repetition of issues and to focus on the issues for decision at each level of review.

The Council on Environmental Quality (CEQ) regulations encourage agencies preparing NEPA documents to “tier their environmental impact statements to eliminate repetitive discussions of the same issues and to focus on the actual issues ripe for decision at each level of environmental review.” Specifically, 40 CFR 1502.20 states the following:

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in the broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action (40 CFR 1502.20).

In 40 CFR 1508.28, the CEQ regulations further define tiering as “the coverage of general matter in broader environmental impact statements ... with subsequent narrower statements or environmental

³⁴ Oregon Natural Resources Council v. Marsh, 845 F.Supp. 758, 766-69 (D. Ore. 1994)

analyses incorporating by reference the general discussions and concentrating solely on the issues specific to the statement subsequently prepared.” This section of the CEQ regulations further notes that tiering is appropriate “when the sequence of statements or analyses is ... from a program, plan, or policy environmental impact statement to a program, plan, or policy statement or analysis of lesser scope or to a site-specific statement or analysis.”

Incorporation by reference

An EIS can incorporate by reference material from other sources (40 CFR 1502.21). Incorporated material must be cited and summarized in the EIS and must be publically available. Information that is not publically available may not be incorporated by reference into an EA or EIS.

Categorical Exclusion

NOAA Administrative Order 216-6 (NAO 216-6) sets forth requirements for implementing and documenting Categorical Exclusions (CEs). Section 5.05 provides information on the general requirements for CE's. Section 6.03 provides specific guidance on the use of CE's for various types of actions undertaken by NOAA. For example, Section 6.03a.3 provides guidance regarding CE's for management plan amendments (i.e., FMP Amendments).

As defined in Section 6.03a.3(b)(1) of NAO 216-6, a proposed action would be categorically excluded from the need to prepare an Environmental Assessment or an EIS if the proposed action is a minor change to a previously analyzed and approved action and the proposed change has no effect individually or cumulatively on the human environment.

2.9 To what risks might the Council and NMFS be subject if a NEPA-compliant programmatic SEIS is not in place?

It is a statutory requirement to comply with NEPA. The primary means of enforcing NEPA is through lawsuits brought by concerned private citizens, interest groups, and state and local agencies.³⁵ Plaintiffs typically ask for declaratory judgments establishing the government's NEPA obligations or a writ of mandamus ordering specific agency action to comply with NEPA.³⁶ Plaintiffs may also seek preliminary injunction:

If a preliminary injunction is granted, courts will enjoin some or all project activities pending NEPA compliance, and may order appropriate NEPA documents to be prepared. ... Most courts decide to grant a preliminary injunction by balancing ... the plaintiff's probability of success on the merits of the claim, the harm to the plaintiff if the injunction is denied versus the harm to the defendant if it is granted, and whether the public interest would be served by granting the injunction. Courts may also be asked to issue a permanent injunction In some cases, a court may find a NEPA violation but deny an injunction based on equitable principles.³⁷

It should be noted that if a court does order a new NEPA document be prepared, the court will set the schedule, likely with input from both parties, but that such a schedule might not be favorable for the Council or NMFS.

³⁵ Ronald E. Bass, et al., *The NEPA Book, A step-by-step guide on how to comply with the National Environmental Policy Act*, 172 (2nd ed. 2001)

³⁶ *Id.* at 178.

³⁷ *Id.*

3 Stakeholder input on groundfish management policy

3.1 Council request to stakeholders

While the decision about whether the time is right to revise the 2004 PSEIS will take into account many different factors, the Council identified one important element as whether the Council wants to change the objectives, policy statements, or overall management approach for the groundfish fisheries. In February 2012, the Council opted to solicit comment from stakeholders on this topic. The Council scheduled a listening session at the April Council meeting, and also indicated that written comments submitted to the Council office would be accepted until May 1, 2012. Staff was directed to compile any comments offered by members of the public at the listening session, or submitted in writing, into a report for the Council at the June meeting.

The Council solicited comments on the following questions for stakeholders:

- Are the Council's current groundfish management approach, policy goal statements, and objectives still relevant?
- How is the Council doing relative to achieving its groundfish management objectives?
- Are there new objectives that ought to become part of the groundfish management policy?

3.2 Feedback from stakeholders

On March 29, the Council hosted a stakeholder listening session to ask for stakeholder input on whether the existing groundfish management objectives continue to be relevant, or are in need of revision. Twenty-seven people attended (Appendix 4). Staff compiled comments from stakeholders present at the listening session, as well as one written comment submitted to the Council by the May 1, 2012 deadline. The written comment has also been included in the briefing material as public testimony on this agenda item.

The comments are synthesized into two categories: general considerations for the Council with respect to revising the PSEIS, and position statements by individuals or representatives of organizations about the continued relevancy of the groundfish management policy objectives, and the timing or format of a revised PSEIS.

Summary of general considerations for the Council with respect to a revised PSEIS

- The Council should decide early on whether the revised PSEIS will be limited to a policy outcome, or will be packaged with a specific action (such as authorizing harvest specifications).
- A revised PSEIS should compare the status quo baseline analyzed in the 2004 PSEIS with the status quo baseline today.
- How do other Council/Regions approach Programmatic EISs to meet NEPA requirements? Do they do PEISs for their FMPs? If not, investigate whether there are other vehicles that allow them to meet their NEPA requirements.
- It would be useful to see the origin of the 5-10 year case law guideline that was cited during the development of the 2004 PSEIS.
- In order to inform what kind of analysis would best serve the Council's needs, develop a white paper that considers a) what has changed since the last PSEIS and b) what new tools and models are available to analyze fishery impacts.

- Consider identifying indices of change as a way to track whether the PSEIS is in need of revision in future (refinement of exercise that the SSC has gone through at this meeting).
- Consider waiting to revise the PSEIS until the BSIERP and/or GOA IERP Management Strategy Evaluation and other modeling outcomes are available.
- As part of this process, the Council and agency should consider whether and how the goals and objectives from the 2004 PSEIS process have been implemented.
- Take advantage of the expertise of the various stakeholders and committees, including the SSC and the Ecosystem Committee, to allow a broad, inclusive approach to this issue

Position statements on relevancy of objectives, and timing/format of a revised PSEIS

The following statements were offered by stakeholders either at the listening session on March 29, 2012, or were submitted as written comment by the May 1, 2012 deadline.

Donna Parker, Arctic Storm

- The PSEIS is useful to the Council as a strategic policy document, and allows a debate of how the Council should look to the future. The Harvest Specifications EIS informs the public about the best available information on a specific action. A revised PSEIS should not be combined with a specific action, such as authorizing harvest specifications, but should be a stand-alone evaluation that allows a public discussion of policy, but is not an action-forcing document.
- I think that the structure of a revised PSEIS, and whether it is packaged with a specific action (such as harvest specifications), is a fundamental issue that needs to be decided early on. It is critical to figuring out how to move forward with a revised PSEIS.

Stephanie Madsen, At-sea Processors Association

- We don't think the Council's objectives or the structure of the PSEIS need to be changed.
- We acknowledge that the data in the 2004 PSEIS is old, and the focus should be on how to update the data in the document.

Mike Szymanski, Fisherman's Finest

- The PSEIS should be revised, sooner rather than later. The court-ordered process for the first PSEIS was excruciating; the ramifications for not having an up-to-date programmatic were costly. We don't want to run the risk of getting into that position again. There have been significant events that have shaped and changed the fisheries (e.g., Amendment 80, freezer longline, GOA rockfish).
- So I encourage that we get started on revising the PSEIS, so that we don't end up with having to do it on a short timeline.

Kenny Down, Freezer Longline Coalition

- The Council's groundfish management objectives are still relevant.
- The Council is meeting its objectives well.
- We don't have any new objectives to suggest as additions to the Council management policy.

Merrick Burden, MCA

- It would be useful to look at what has changed since the last PSEIS and what new tools or models are available for analysis. This should drive whether we initiate a programmatic review, or a PEIS. Without this analysis, it is premature to say we need a PSEIS.

Susan Murray, Oceana; Andrew Hartsig, Ocean Conservancy; Jackie Dragon, Greenpeace [written comment]

- We support a programmatic review of the objectives and impacts of the ongoing management of fisheries in the North Pacific.
- The review should begin with an understanding of the food web, and an evaluation of Council and agency decisions on that food web.
- The review should not be limited to groundfish fisheries, but should also include the FMPs for crab, scallops, and salmon. A programmatic review is the ideal way to begin to evaluate ways to move toward an ecosystem-based approach.
- The Council and NMFS should use this opportunity to evaluate broader ways to measure impacts and to consider objectives that would protect and maintain the health, productivity and resilience of the marine ecosystem while providing for ecologically sustainable fisheries and vibrant communities.
- This approach will help the agency remain in compliance with NEPA and other statutory obligations.
- Choose a suitable comparative baseline in order to fully evaluate the impacts of the fisheries on the North Pacific ecosystem. The analysis should start with a picture of an unfished North Pacific ecosystem and evaluate the changes that have and will be caused to that ecosystem.

Questions from the stakeholder listening session

Many questions were posed by stakeholders at the March 29 listening session. The questions were answered by Diana Evans, Council staff, and Gretchen Harrington, NMFS Alaska Region staff. To the extent that they may be helpful in characterizing the concerns of stakeholders, a summary of questions and answers is included below.

- 1) Has there been discussion of including authorization of the TAC process in with the revised PSEIS?
Yes. NMFS recognizes that the 2007 Harvest Specifications EIS will need to be supplemented at some point and has considered whether it would streamline the process to analyze of the impacts of the groundfish harvest strategies along with a comprehensive analysis of the impacts of the groundfish fisheries. Each year, NMFS analyzes whether the 2007 Harvest Specification EIS needs to be supplemented and, so far, no new information indicates that an SEIS is necessary at this time.
- 2) Other than the harvest specifications, have there been any other actions suggested that might be melded into a revised PSEIS?
NMFS staff have not identified any other actions that may be combined with a programmatic analysis. However, PEISs lay the analytical foundation for future actions and, as the Council evaluates the 2004 PSEIS, it may identify actions that would be appropriate to analyze in the new PSEIS.
- 3) Is the scope of this PSEIS only the BSAI and GOA groundfish FMPs? What about interactions with the Crab, Scallop, or Salmon FMPs?
At this point, the scope of a new PSEIS would be the same as the 2004 PSEIS, which was to analyze the impacts of the Council's management policy and objectives for the BSAI and GOA FMPs.
- 4) If the Council wanted to move forward with revising the data in the PSEIS, but did not want to make a structural change to the groundfish policy, how could they proceed?
The Council could update the information in the PSEIS as a separate type of document, for example using a similar process as with the EFH 5-year review. The chapter on the Affected Environment

could be updated as a standalone document. The Council should consider both new information, and whether new analytical methods exist for evaluating impacts. However, to be an EIS, the document must have a proposed action, a purpose and need for that action, and analyze a reasonable range of alternatives. A document that only updates and revises the data in the 2004 PSEIS would not be an EIS.

- 5) Will a revised analysis compare the status quo of today with the status quo that was analyzed in the 2004 PSEIS? A lot has changed in that time period, it would be useful to see how the impact of the fisheries has changed over that time period.

Yes.

- 6) How much does the Council get to drive the bus on determining how to proceed with revising the PSEIS? Could we end up three-quarters of the way down the road with an approach, only to find that NOAA headquarters sends back the document with a requirement to expand the range of things that are considered?

For the Secretary to issue a Record of Decision, an EIS must meet applicable requirements. The Council determines how to proceed and develops the proposed action, the purpose and need, and a reasonable range of alternatives to meet that purpose and need. However, developing an EIS is an iterative process that involves the input and expertise from Council, NMFS Alaska Region, NOAA General Counsel, and NOAA Policy, Planning, and Integration. In the course of this iterative process, every attempt would be made to identify any potential pitfalls early in the process, so that the Council can modify its analysis to ensure that the applicable requirements are being met.

- 7) Are there any case studies at other Councils for programmatic triggers other than an FMP? If not all Councils have PEISs, it would be worth investigating whether there are other vehicles that allow the other Councils to meet their NEPA requirements.

This question was not answered during the listening session. Section 2 addresses requirements with respect to the 2004 PSEIS. Appendix 5 provides a summary of other programmatic NEPA documents that have been produced by NMFS. PEISs are widely used by other agencies, such as the US Forest Service and BOEM. NEPA requires EISs for major federal actions and the CEQ regulations define actions as adoption of policies, plans, programs, and projects.

- 8) My recollection is that Judge Zilly was the first person to bring up the concept of a Programmatic EIS, responding to the plaintiff's arguments that a comprehensive look at the fisheries was required.

This comment was not answered during the listening session. See discussion in Section 2.4.

- 9) Relative to when we should begin this programmatic analysis, given that the Council's schedule is always busy, could you give us a better sense of the 5-10 year case law guideline that has been discussed?

This comment was not answered during the listening session. Section 2.7 provides further guidance on this issue.

- 10) What would the timeline be for completing a revised PSEIS, if the Council were to go ahead?

In the meeting materials prepared for the February 2012 Council meeting, a discussion was included about milestones associated with initiating a revised PSEIS. On that schedule, the earliest completion date for the revised PSEIS was mid-2014, that is, a little over two years from now.

4 SSC input on continuing applicability of 2004 PSEIS analysis

In order to provide a different perspective on the question of whether the Council should consider revising the 2004 PSEIS, the Council requested that the SSC provide scientific guidance on the continued relevance of the analysis in the 2004 PSEIS, and whether, in combination with other more recent environmental assessments, the Council is able to understand the environmental impacts of the current groundfish management program. Sections 4.1 and 4.2 describe the context and background of the Council's request for SSC evaluation, as it was presented to the SSC. The SSC provided a detailed review of these questions in their minutes, which are excerpted in Section 4.3.

4.1 Council request to the SSC

The Council is considering whether the time is right to revise the 2004 PSEIS. The decision will take into account many different factors, including (but not limited to):

1. consideration of how fisheries management has changed since the objectives and analysis were originally prepared,
2. how environmental conditions affecting the fisheries have changed,
3. the status of the fish stocks and other marine life,
4. whether new information has become available which may indicate the necessity for revised analyses, and
5. whether the Council wants to change the objectives, policy statements, or overall management approach for the groundfish fisheries.

The purpose of a programmatic review is to allow decision makers to understand environmental impacts of the program as a whole, in this case the BSAI and GOA groundfish fishery management program. Typically, the Council and NMFS are presented with specific management problems, for which they develop alternatives and adopt solutions. This can result in the implementation of a series of individual management changes, which are each fully analyzed, but which, cumulatively, may change the management program in ways that are not captured in the individual analyses.

Question for the SSC: do we understand the environmental impacts of our groundfish management program today?

To answer this question, it may be helpful to consider separately the influence of any change in the environment, and the effect of the fisheries on the environment.

1. Has the environmental state of the Bering Sea, Aleutian Islands, or Gulf of Alaska changed significantly since the baseline that was analyzed in the 2004 PSEIS? For example, have there been either abrupt shifts (e.g., climate regime change), or long term trends (beyond the expected range of interannual variability) that have resulted in significant change to the environment?
2. Have the cumulative impacts of the groundfish fishery management program on the BSAI or GOA environment changed significantly since the baseline analyzed in the PSEIS, in ways beyond what has been described in subsequent analyses? For example, have there been increases in habitat disturbance from a change in the intensity or spatial distribution of fishing effort; or increases in bycatch or prohibited species catch; or increases in marine mammal and seabird interference?

4.2 Background documents provided to the SSC

Staff prepared various briefing documents to assist with the SSC’s review. Appendix 6 highlights Council documents that evaluate groundfish and environmental conditions. The SSC also received briefing material on the changes in groundfish management since 2004 (Appendix 7), as well as a short primer on the 2004 PSEIS (Appendix 8). Additionally, staff provided a summary of major environmental analyses of the groundfish management program that have occurred, beginning with the 2004 PSEIS (Table 1).

Table 1 Major environmental analyses of the groundfish management program

Subject of review document	Project / analysis ¹
BSAI and GOA groundfish management programs as a whole	2004 Alaska Groundfish Fisheries PSEIS
Fishing effects on benthic habitat	2005 Essential Fish Habitat EIS 2010 EFH 5-year Review (<i>no associated NEPA analysis</i>)
Groundfish harvest levels and management categories	2007 Alaska Harvest Specifications EIS 2008-2012 annual Supplemental Information Reports 2010 Annual Catch Limit amendment that assessed groundfish species and placed them in either target or ecosystem component categories (EA)
Proposed new management measures that change fishing patterns	<p><u>Catch share programs</u> Central GOA Rockfish Pilot program, and revised program (2005, 2010; EAs) BSAI Amendment 80 (2007; EA)</p> <p><u>Area closures</u> AI and GOA EFH and HAPC closures (analyzed in 2005 EFH EIS) BS habitat conservation areas (2007)(EA) Crab protection area near Kodiak closed to trawling (2010; EA)</p> <p><u>Bycatch restrictions</u> Revised Chinook salmon PSC limits for BS pollock fishery (2009; EIS) New Chinook salmon PSC limits for GOA pollock fishery (2011; EA)</p> <p><u>Gear modifications</u> Sweep elevation requirement for BS flatfish fishery (EA) Salmon excluder for BS pollock fishery (voluntary, analyzed with 2009 PSC limits)</p>

¹ Note, the year listed below indicates the date of Council final action on the analysis. The environmental data that was used in the environmental analysis will generally be from the preceding year.

4.3 SSC discussion at the March/April 2012 Council meeting

The following section is excerpted from the minutes of the March 26-28, 2012 meeting of the SSC, in Anchorage, Alaska.

The SSC agrees that it is a useful exercise to consider the impacts of Council action in a comprehensive manner and to periodically review the progress toward implementing the stated goals of the PSEIS. The SSC noted that there are at least 3 reasons to update the PSEIS:

1. To ensure that the environmental impact assessment reflects our current understanding of the implications of federal actions regarding groundfish fishing to enable NMFS and the Council to tier off the findings of the PSEIS when conducting Environmental Assessments,
2. To review NPFMC performance relative to the stated goals of the adopted PSEIS alternative, and

3. To assess whether there is a better or more effective way to manage Alaskan groundfish resources and to update the PSEIS objectives to reflect any new priorities.

The SSC considers the first two reasons for updating to be high short-term priorities. Review of the briefing materials shows that the NPFMC has made considerable progress towards achieving the goals and objectives of the preferred alternative. The SSC recommends that if the NPFMC elects to update the PSEIS, they may wish to request a review of what issues and concerns would require Council action. This proved to be an effective approach for the EFH 5-year review.

The SSC discussed the questions posed by the NPFMC and provides the following responses:

1. **How has fisheries management changed since the objectives and analysis were originally prepared?** As documented in the briefing materials, the NPFMC management has approved several amendments that are consistent with the goals and objectives identified by the PSEIS (see the list prepared by NPFMC staff in D-1(c)(5) [Appendix 2]).
2. **How have environmental conditions affecting the fisheries changed?**
 - a. Since passage of the PSEIS, environmental conditions have varied. In the EBS, 2000-2005 were characterized as warm years while 2006-present were cold years; similar environmental variations were observed in the GOA. In the EBS, shifts in ocean temperature coincided with shifts in lower trophic level production, which impacted the productivity and distribution of some groundfish stocks. Similar to the period in the early 1970s, the recent pattern of sea ice retreat in the EBS shows more year to year coherence than was observed in the 1980s and 1990s (although the early 1970s were cold years). The range of these variations in the EBS fall within the range expected based on the observed time series (see excerpts from the ecosystem SAFE chapter, page 9). While future climate conditions are expected to be affected by climate change, it appears that interannual and decadal climate variability continue to be the dominant climate pattern in the region.
 - b. Changes in fishery impacts can also be considered a change in the environment. The spatial and temporal distribution of groundfish fisheries has changed in response to NPFMC management actions. These changes together with technical innovations (such as the halibut excluder) may have altered the environmental impact of fishing and, in some cases, the efficiency of some fisheries.
 - c. In the last decade, many whale populations (e.g. gray, humpback and fin) have increased dramatically after being depleted by whaling. These increases in abundance have the potential to alter lower trophic level energy pathways in the region.
 - d. Piscivorous flatfish (arrowtooth flounder and Pacific halibut) populations have continued to increase and may be impacting the mortality rate of forage fish and juvenile pollock. This interaction was discussed in the current PSEIS.
3. **Has the status of the fish stocks and other marine life changed?**
 - a. The status of groundfish stocks has not changed substantially (no new stocks are overfished or subject to overfishing).
 - b. The decline in the eastern portion of the western DPS of SSLs appears to have stabilized. However, the western portion of the western DPS of SSLs continues to decline.
 - c. Northern fur seal populations on the Pribilof Islands have exhibited a declining trend of approximately 5% per annum, while increases at Bogoslof have slowed and do not compensate for the larger declines at the Pribilofs. Conservation measures may come into play in the future.

- d. Short-tailed albatross appear to be recovering slowly and, as this population recovers, existing incidental take standards may require modification to sustain fisheries without impeding the rebuilding of the albatross population.
 - e. Tanner crab was recently listed as overfished and Pribilof blue king crab remains in an overfished status. Council action to rebuild these stocks may impact groundfish fisheries.
 - f. Arrowtooth flounder and Pacific halibut populations in the Gulf of Alaska and Bering Sea have increased in the last decade. The size at age of Pacific halibut is declining. These changes suggest that the carrying capacity for Pacific halibut in the GOA may be limiting, resulting in shifts in the population dynamics of this population.
- 4. Has new information become available which may indicate the necessity for revised analyses?**
- a. The NSF/NPRB BEST/BSIERP and NPRB GOAIERP programs are providing new information regarding mechanisms underlying species interactions within the GOA and BSAI ecosystems. Models are beginning to emerge that synthesize current knowledge of processes influencing the distribution and abundance of marine life in the Bering Sea. Extensions of these models will inform the Council with respect to the expected performance of management actions under changing environmental conditions. In the near term, results could be used to inform estimates of growth, mortality (natural or predation), and survey/fishery catchability and selectivity. These improvements to stock assessments fall within those anticipated in the PSEIS. It is too early to determine whether the modeling tools developed will reveal a need for re-evaluation of the overall management strategy for these stocks.
 - b. Changes in ice extent and season in the northern Bering Sea and Arctic Ocean are having impacts on the distribution and behavior of cetaceans and pinnipeds (especially benthic foraging and ice-dependent species), as well as lower trophic levels and patterns of productivity. The progression of these changes and the resultant direct and indirect impact of fishing activity are not well understood. Changes may not be linear or incremental.
 - c. As noted above, improvements in the status of listed seabird populations may require a re-evaluation of the incidental take standards under Section 7. Likewise, if northern fur seals continue to decline, or if ice seal conservation status changes (ringed and some DPSs of bearded seals are proposed as threatened) the Council may need to re-assess the fisheries interactions with these species. Finally, NMFS is evaluating critical habitat designations for northern right whales, which may impact groundfish fisheries in the region.
 - d. Substantial changes to the Observer Program are expected to take place within the next two years. These changes are expected to improve the quality of catch estimates in the future. These changes will not necessitate a change in management strategy.
- 5. Does the Council want to change the objectives, policy statements, or overall management approach for the groundfish fisheries?**
- a. The SSC notes that:
 - i. The AFSC will be exploring the implications of incorporating stock-specific uncertainty buffers through an ACL analysis.
 - ii. The NPFMC and AFSC will be developing an EIS for Steller Sea Lion protection measures.

- iii. The NSF/NPRB BEST/BSIERP program will provide an assessment of the performance of various harvest control rule possibilities using different projection models with multiple levels of complexity, including multispecies models.
- iv. In the last decade, fisheries scientists have endeavored to assess the status of global marine fish stocks. Recent studies have used these global assessments to evaluate the performance of different management strategies. These papers may reveal useful information to the NPFMC if it elects to expand the scope of the PSEIS to include alternative management scenarios.

The SSC also considered the NPFMC's overarching question "**Do we understand the environmental impacts of our groundfish management program today?**"

- The NPFMC posed two sub-questions relative to this overarching issue. Question 1 focused on changes to the environment. Our responses to the questions listed above addressed this issue. Question 2: *Have the cumulative impacts of the groundfish fishery management program on the BSAI or GOA environment changed significantly since the baseline analyzed in the PSEIS, in ways beyond what has been described in subsequent analyses?* The SSC does not know of a significant change in the cumulative effects of fishing that has not been described in subsequent analyses. In the previous PSEIS, the NPFMC acknowledged that it was not possible to fully understand cumulative environmental impacts of groundfish management. The previous PSEIS identified several key sources of uncertainty and data gaps that impeded the ability to comprehensively understand the cumulative effects of groundfish fishing on the marine ecosystem. Many of these sources of uncertainty and data gaps still exist. The SSC recognizes that the current state of knowledge has improved since the last PSEIS and the Council has taken actions to address several of the environmental impacts identified in the 2004 assessment. While the knowledge base for decision making has improved, unknowns will continue to exist and conclusions will continue to be uncertain. Thus, the Council should expect that the existing knowledge will provide a better, but still incomplete, basis for evaluating the cumulative effects of fishing in a similar manner to the previous PSEIS.

5 Options for Council action

At this meeting, the Council is scheduled to have a comprehensive discussion of the 2004 PSEIS and whether it is in need of revision. This discussion paper has provided further information on legal requirements for having a NEPA-compliant programmatic SEIS, and the benefits, in terms of analytical efficiency (Section 2). Stakeholders have also provided feedback on the continued relevancy of the groundfish management policy (Section 3). None of the stakeholder comments identified problems with the current suite of objectives, however there was some feedback about the advantages of updating the 2004 PSEIS, and considerations were offered about the structure of such a review.

The SSC also evaluated the continuing relevancy of the PSEIS at the March/April meeting (Section 4). The SSC highlights some specific areas which merit further investigation in determining whether there are significant changes to the environmental state of the BSAI and GOA since the baseline analyzed in the 2004 PSEIS, but concludes that they do not know of a significant change in the cumulative effects of fishing that has not been described in previous analyses.

In deciding how to address this agenda item, the Council has three options. **First, the Council can choose to take no action at this time.** No obvious change or new information has yet been identified as unequivocally triggering the need for supplementation. However, the material presented in this discussion paper seems to suggest that some course of action is required. NEPA regulations identify that an EIS must

be supplemented if an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts (40 CFR 1502.9(c)). Case law affirms that agencies have a duty to continue evaluating a project's environmental effects, even after the preparation of the initial EIS. The SSC has identified areas where further evaluation may be required in order to conclude that there have not been significant changes to the environmental state of the BSAI and GOA. **Given the case law and SSC comments, it appears that some action is warranted at this time.**

Second, the Council could initiate a new PSEIS. Table 2 lays out the milestones that would be associated with a new PSEIS. A possible timeframe is also suggested, to give some idea of the length of the proposed process, although this should be very loosely interpreted, and could be shorter or longer depending on the nature of the analysis and the remainder of the Council's workload. The Council would need to articulate a preliminary intent and alternatives for the analysis, as is required for the Notice of Intent to Prepare an EIS, under NEPA. The Council may be in a position to move ahead with alternatives, or they could choose to again solicit input from its staff and stakeholders, this time on the scope and structure of the supplemental analysis, and the range of alternatives.

Table 2 Milestones and possible timeframe for initiating a revised PSEIS

Council milestones	Other actions and milestones	Possible timeframe
Council identifies a preliminary scope and structure for PSEIS 2, and strawman alternatives		June or October 2012
	NMFS issues a Notice of Intent to Prepare an EIS, formal scoping period begins, and comments are solicited	
	Staff prepares report on comments	
Council considers scoping comments, approves PSEIS 2 alternatives for analysis		February 2013
	Staff prepares initial review draft of PSEIS 2	
Council reviews draft PSEIS 2, potentially identifies preferred alternative, releases to public		October 2013
	Staff makes any changes, publishes draft EIS	
	Draft EIS public comment period	45-60 days
	Staff prepares report on comments	
Council reviews public comments, takes final action		April 2014
	Staff finalizes and publishes EIS, mandatory cooling off period	
	NMFS prepared Record of Decision	August 2014

Third, the Council could evaluate more comprehensively whether either of the two requirements for supplementing an EIS have been met with respect to the PSEIS:

- if an agency has made a substantial change in a proposed action that is relevant to environmental concerns, or
- if there are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

As discussed in Section 2, there is an accepted mechanism for conducting such an evaluation through a non-NEPA document. NMFS uses a similar mechanism annually for the authorization of the groundfish harvest specifications, through the supplemental information report (SIR). The SSC's discussion would be a starting point for such an evaluation, and further investigation would be required for the potential

changes that have been identified. One suggestion would be to reevaluate the conclusions from the PSEIS in light of new information, to see whether there are likely to be changes to the impacts. Section 2.7 provides a general example of what would be included in such an evaluation.

If the evaluation found that none of the conclusions from the PSEIS have been invalidated, then no further action would be required by the Council or NMFS. The 2004 PSEIS would continue to provide NEPA compliance for the groundfish FMPs. If the evaluation is unable to substantiate the conclusions of the PSEIS, based on substantial changes in the proposed action relevant to environmental concerns, or significant new circumstances or information, then a further NEPA analysis would be required. This could take the form of a new, comprehensive PSEIS, or a more focused supplement to the 2004 PSEIS addressing the areas where it has been proven to be deficient. If a new NEPA analysis is required, it is likely that any analysis that has been undertaken through the evaluation will be able to be folded directly in to the new NEPA analysis, reducing the workload for that document.

If the Council is interested in pursuing this third option, it would behoove us to design an analysis that can also provide benefits and management efficiencies. For example, if the programmatic SIR provides updated information on the current fisheries baseline, it could be incorporated by reference with the 2004 PSEIS when analyzing proposed groundfish management actions in future EAs. There will likely need to be further internal discussions about how the document is to be structured, and a proposed outline for analysis developed, which could be brought back for Council approval at a future meeting. Table 3 provides a rough guide of the milestones and possible timeline of the evaluation option. Again, this should be interpreted very loosely, depending on the nature of the analysis and the remainder of the Council's workload.

Table 3 Milestones and possible timeframe for initiating an evaluation of the 2004 PSEIS

Council milestones	Other actions and milestones	Possible timeframe
Council initiates an evaluation of the 2004 PSEIS		June 2012
	Staff prepares an analytical outline for the SIR	
Council approves analytical outline		October 2012
	Staff prepares initial review draft SIR	
Council reviews draft SIR		June 2013
	Staff makes any changes	
Council reviews final draft SIR, decides whether further action is warranted		
IF NO SIGNIFICANT CHANGES ARE FOUND, no further action.		
IF AREAS OF SIGNIFICANT CHANGE ARE IDENTIFIED, Council initiates a subsequent NEPA analysis, which will be subject to the normal process.		October 2013
	NMFS prepares determination concurring or disagreeing with Council conclusion	

Appendix 1 BSAI and GOA groundfish management policy

The Council's management policy is in the BSAI and GOA groundfish FMPs. The policy is excerpted below.

2.2 Management Approach for the BSAI [GOA] Groundfish Fisheries

The Council's policy is to apply judicious and responsible fisheries management practices, based on sound scientific research and analysis, proactively rather than reactively, to ensure the sustainability of fishery resources and associated ecosystems for the benefit of future, as well as current generations. The productivity of the North Pacific ecosystem is acknowledged to be among the highest in the world. For the past 25 years, the Council management approach has incorporated forward looking conservation measures that address differing levels of uncertainty. This management approach has in recent years been labeled the precautionary approach. Recognizing that potential changes in productivity may be caused by fluctuations in natural oceanographic conditions, fisheries, and other, non-fishing activities, the Council intends to continue to take appropriate measures to insure the continued sustainability of the managed species. It will carry out this objective by considering reasonable, adaptive management measures, as described in the Magnuson-Stevens Act and in conformance with the National Standards, the Endangered Species Act (ESA), the National Environmental Policy Act, and other applicable law. This management approach takes into account the National Academy of Science's recommendations on Sustainable Fisheries Policy.

As part of its policy, the Council intends to consider and adopt, as appropriate, measures that accelerate the Council's precautionary, adaptive management approach through community-based or rights-based management, ecosystem-based management principles that protect managed species from overfishing, and where appropriate and practicable, increase habitat protection and bycatch constraints. All management measures will be based on the best scientific information available. Given this intent, the fishery management goal is to provide sound conservation of the living marine resources; provide socially and economically viable fisheries for the well-being of fishing communities; minimize human-caused threats to protected species; maintain a healthy marine resource habitat; and incorporate ecosystem-based considerations into management decisions.

This management approach recognizes the need to balance many competing uses of marine resources and different social and economic goals for sustainable fishery management, including protection of the long-term health of the resource and the optimization of yield. This policy will use and improve upon the Council's existing open and transparent process of public involvement in decision-making.

2.2.1 Management Objectives

Adaptive management requires regular and periodic review. Objectives identified in this policy statement will be reviewed annually by the Council. The Council will also review, modify, eliminate, or consider new issues, as appropriate, to best carry out the goals and objectives of this management policy.

To meet the goals of this overall management approach, the Council and NMFS will use the Alaska Groundfish Fisheries Programmatic Supplemental Environmental Impact Statement (PSEIS) (NMFS 2004) as a planning document. To help focus consideration of potential management measures, the Council and NMFS will use the following objectives as guideposts, to be re-evaluated, as amendments to the FMP are considered over the life of the PSEIS.

Prevent Overfishing:

1. Adopt conservative harvest levels for multi-species and single species fisheries and specify optimum yield.
2. Continue to use the 2 million mt optimum yield cap for the BSAI groundfish fisheries. [Continue to use the existing optimum yield cap for the GOA groundfish fisheries.]
3. Provide for adaptive management by continuing to specify optimum yield as a range.
4. Provide for periodic reviews of the adequacy of F_{40} and adopt improvements, as appropriate.
5. Continue to improve the management of species through species categories.

Promote Sustainable Fisheries and Communities:

6. Promote conservation while providing for optimum yield in terms of the greatest overall benefit to the nation with particular reference to food production, and sustainable opportunities for recreational, subsistence, and commercial fishing participants and fishing communities.
7. Promote management measures that, while meeting conservation objectives, are also designed to avoid significant disruption of existing social and economic structures.
8. Promote fair and equitable allocation of identified available resources in a manner such that no particular sector, group or entity acquires an excessive share of the privileges.
9. Promote increased safety at sea.

Preserve Food Web:

10. Develop indices of ecosystem health as targets for management.
11. Improve the procedure to adjust acceptable biological catch levels as necessary to account for uncertainty and ecosystem factors.
12. Continue to protect the integrity of the food web through limits on harvest of forage species.
13. Incorporate ecosystem-based considerations into fishery management decisions, as appropriate.

Manage Incidental Catch and Reduce Bycatch and Waste:

14. Continue and improve current incidental catch and bycatch management program.
15. Develop incentive programs for bycatch reduction including the development of mechanisms to facilitate the formation of bycatch pools, vessel bycatch allowances, or other bycatch incentive systems.
16. Encourage research programs to evaluate current population estimates for non-target species with a view to setting appropriate bycatch limits, as information becomes available.
17. Continue program to reduce discards by developing management measures that encourage the use of gear and fishing techniques that reduce bycatch which includes economic discards.
18. Continue to manage incidental catch and bycatch through seasonal distribution of total allowable catch and geographical gear restrictions.
19. Continue to account for bycatch mortality in total allowable catch accounting and improve the accuracy of mortality assessments for target, prohibited species catch, and non-commercial species.

20. Control the bycatch of prohibited species through prohibited species catch limits or other appropriate measures.
21. Reduce waste to biologically and socially acceptable levels.

Avoid Impacts to Seabirds and Marine Mammals:

22. Continue to cooperate with U.S. Fish and Wildlife Service (USFWS) to protect ESA-listed species, and if appropriate and practicable, other seabird species.
23. Maintain or adjust current protection measures as appropriate to avoid jeopardy of extinction or adverse modification to critical habitat for ESA-listed Steller sea lions.
24. Encourage programs to review status of endangered or threatened marine mammal stocks and fishing interactions and develop fishery management measures as appropriate.
25. Continue to cooperate with NMFS and USFWS to protect ESA-listed marine mammal species, and if appropriate and practicable, other marine mammal species.

Reduce and Avoid Impacts to Habitat:

26. Review and evaluate efficacy of existing habitat protection measures for managed species.
27. Identify and designate essential fish habitat and habitat areas of particular concern pursuant to Magnuson-Stevens Act rules, and mitigate fishery impacts as necessary and practicable to continue the sustainability of managed species.
28. Develop a Marine Protected Area policy in coordination with national and state policies.
29. Encourage development of a research program to identify regional baseline habitat information and mapping, subject to funding and staff availability.
30. Develop goals, objectives and criteria to evaluate the efficacy and suitable design of marine protected areas and no-take marine reserves as tools to maintain abundance, diversity, and productivity. Implement marine protected areas if and where appropriate.

Promote Equitable and Efficient Use of Fishery Resources:

31. Provide economic and community stability to harvesting and processing sectors through fair allocation of fishery resources.
32. Maintain the license limitation program, modified as necessary, and further decrease excess fishing capacity and overcapitalization by eliminating latent licences and extending programs such as community or rights-based management to some or all groundfish fisheries.
33. Provide for adaptive management by periodically evaluating the effectiveness of rationalization programs and the allocation of access rights based on performance.
34. Develop management measures that, when practicable, consider the efficient use of fishery resources taking into account the interest of harvesters, processors, and communities.

Increase Alaska Native Consultation:

35. Continue to incorporate local and traditional knowledge in fishery management.
36. Consider ways to enhance collection of local and traditional knowledge from communities, and incorporate such knowledge in fishery management where appropriate.
37. Increase Alaska Native participation and consultation in fishery management.

Improve Data Quality, Monitoring and Enforcement:

38. Increase the utility of groundfish fishery observer data for the conservation and management of living marine resources.
39. Develop funding mechanisms that achieve equitable costs to the industry for implementation of the North Pacific Groundfish Observer Program.
40. Improve community and regional economic impact costs and benefits through increased data reporting requirements.
41. Increase the quality of monitoring and enforcement data through improved technology.
42. Encourage a coordinated, long-term ecosystem monitoring program to collect baseline information and compile existing information from a variety of ongoing research initiatives, subject to funding and staff availability.
43. Cooperate with research institutions such as the North Pacific Research Board in identifying research needs to address pressing fishery issues.
44. Promote enhanced enforceability.
45. Continue to cooperate and coordinate management and enforcement programs with the Alaska Board of Fish, Alaska Department of Fish and Game, and Alaska Fish and Wildlife Protection, the U.S. Coast Guard, NMFS Enforcement, International Pacific Halibut Commission, Federal agencies, and other organizations to meet conservation requirements; promote economically healthy and sustainable fisheries and fishing communities; and maximize efficiencies in management and enforcement programs through continued consultation, coordination, and cooperation.

Appendix 2 Management measures that have been implemented under the 2004 groundfish policy

The following section evaluates the Council's management actions since the completion of the Groundfish PSEIS in 2004. The Council's groundfish policy (the approved, preferred alternative from the Groundfish PSEIS) is structured with 9 goal statements, each supported by specific objectives. For each goal statement and set of objectives, we identify the relevant FMP and regulatory amendments implemented over the last eight years, as well as other management steps that the Council has taken with respect to these goals. The discussion in this section is not necessarily comprehensive, as each amendment may be fit to many of the Council's goals and objectives. Rather, it is intended to provide an overview of the major management changes of the last eight years, and how they compare to the management objectives that the Council set for itself in 2004.

Additionally, we have also looked back to the example FMPs that illustrated the preferred alternative analyzed in the Groundfish PSEIS. Given the Council's actions of the last eight years, the current groundfish management program does now fall within the range of example FMPs that were analyzed in the Groundfish PSEIS.

Each of the sections below identifies one of the Council's policy goals. The specific objectives, sometimes abbreviated, linking to that policy goal are listed in a box at the beginning of the section. If the objectives are also linked to a specific item on the Council's workplan³⁸, that is noted also.

Prevent Overfishing

Adopt conservative harvest levels
Use existing OY caps.
Specify OY as a range.
Periodic reviews of F40, and adopt improvements
Improve management through species categories (on workplan)

FMP amendments related to this goal statement

- revisions to the harvest specifications process (B48/G48)
- moved skates to target category (G63)
- biologically-based specifications for GOA 'other species' category (G69, G79)
- amendments to bring FMPs in line with annual catch limit requirements, including moving other species into target category, and creating an ecosystem component category (B95, G87)

Regulatory amendments related to this goal statement

- Annual specifications for setting harvest levels

Other management actions related to this goal statement

- Regular CIE reviews for stock assessments and harvest strategies
- Upcoming discussion paper to consider grenadiers in the FMP

³⁸ In order to track the implementation of the various management objectives over time, the Council developed a workplan to prioritize issues for consideration. The first draft of the workplan was developed in June 2004, and it has since been once revised, in February 2007. The Council is updated on the status of this workplan at each meeting.

Promote Sustainable Fisheries and Communities

Promote conservation while providing for OY
Promote management measures that avoid social and economic disruption
Promote fair and equitable allocation
Promote safety

These considerations are applied to all management actions

Preserve Food Web

Develop indices of ecosystem health (on workplan)
Improve ABC calculations to account for uncertainty and ecosystem
Limit harvest on forage species
Incorporate ecosystem considerations in fishery management

Other management actions related to this goal statement

- Uncertainty and ecosystem considerations taken into account during stock assessment and harvest specifications
- Ecosystem indices reported and assessed in annual ecosystem SAFE report
- Development of the Aleutian Islands Fishery Ecosystem Plan
- Development of ecosystem synthesis reports for the Bering Sea and the Aleutian Islands ecosystem areas

Manage Incidental Catch and Reduce Bycatch and Waste

Continue and improve current incidental catch and bycatch program (on workplan)
Develop incentive programs for bycatch reduction (on workplan)
Encourage research for non-target species population estimates (on workplan)
Develop management measures that encourage techniques to reduce bycatch (on workplan)
Continue to manage incidental catch and bycatch through seasons and areas
Account for bycatch mortality in TAC accounting (on workplan)
Control prohibited species bycatch through PSC limits (on workplan)
Reduce waste to biologically and socially acceptable levels

FMP amendments related to this goal statement

- Groundfish retention standard (B79) - *upcoming regulatory amendment to remove*
- Bering Sea Chinook salmon bycatch restrictions (B84, B91)
- Trawl sweep elevation requirement in the Bering Sea flatfish fisheries (B94)
- GOA area closures to reduce Bairdi crab bycatch (G89) – *Council approved, not yet implemented*
- Establishment of PSC limits for Chinook salmon in the GOA pollock fishery (G93) – *Council approved, not yet implemented*

Regulatory amendments related to this goal statement

- Upcoming regulatory amendment to remove the groundfish retention standard
- Annual specifications for setting prohibited species limits
- Revisions to MRAs
- Revision to regulations for prohibited species donation program and fishmeal

Other management actions related to this goal statement

- Upcoming amendment for trawl sweep elevation in the Central GOA flatfish fisheries
- Upcoming amendment on GOA halibut bycatch

- Upcoming amendment for Bering Sea chum salmon bycatch
- Upcoming discussion paper on PSC limits for Chinook salmon in non-pollock GOA trawl fisheries
- Upcoming discussion paper on BSAI halibut bycatch
- Upcoming discussion paper on BSAI crab bycatch
- Council encourages research through annual research priorities
- NMFS and observer program work on improving statistical methods for bycatch accounting (as part of National Bycatch Report initiative)

Avoid Impacts to Seabirds and Marine Mammals

Continue to protect ESA-listed and other seabirds
Maintain or adjust SSL protection measures (on workplan)
Encourage review of marine mammal and fishery interactions
Continue to protect ESA-listed and other marine mammals (on workplan)

Regulatory amendments related to this goal statement

- Revisions to seabird avoidance measures, including in Area 4E
- Revisions to Steller sea lion closures for pollock and cod fisheries in the GOA
- Revisions to Steller sea lion closures for atka mackerel and cod fisheries in the Aleutian Islands

Other management actions related to this goal statement

- Council receives protected species report at each meeting, monitoring issues with seabirds and marine mammals

Reduce and Avoid Impacts to Habitat

Review and evaluate efficacy of habitat protection measures for managed species (on workplan)
Identify EFH and HAPC, and mitigate fishery impacts as necessary (on workplan)
Develop MPA policy
Encourage research on baseline habitat mapping (on workplan)
Develop goals and criteria for MPAs; implement as appropriate (on workplan)

FMP amendments related to this goal statement

- HAPC (B65/G65) and EFH (B78/G73) amendments, and associated fishery area closures in the GOA and AI
- Bering Sea Habitat Conservation (B89) with area closures for non-pelagic trawling
- Trawl sweep elevation requirement in the Bering Sea flatfish fisheries (B94)
- Update to EFH information with findings from the 2010 EFH 5-year review (B98/G90) – *Council approved, not yet implemented*

Other management actions related to this goal statement

- Upcoming amendment for trawl sweep elevation in the Central GOA flatfish fisheries
- Upcoming amendment for designating skate nurseries as HAPC
- Discussion paper resulting from EFH 5-year review to look at groundfish impacts on crab EFH (especially red king crab in southwestern Bristol Bay)
- Discussion of a Northern Bering Sea Research Area Research Plan
- Council considering nominating Alaska MPAs to national MPA center register
- Council encourages research through annual research priorities

Promote Equitable and Efficient Use of Fishery Resources

*Provide economic and community stability through fair allocation
Maintain LLP and initiate rights-based management programs (on workplan)
Periodically evaluate effectiveness of rights-based management programs
Consider efficiency when adopting management measures (on workplan)*

FMP amendments related to this goal statement

- Sector allocations for Pacific cod in BSAI and GOA (B85, G83); fixed gear endorsement in GOA (G86)
- Sector allocations for 3 flatfish species, POP, and Atka mackerel in BSAI, head and gut cooperative; vessel replacement and cooperative formation revisions (B80, B90, B93, B97)
- Latent licenses rescinded (B92/82, G86)
- Cooperative program for rockfish in central GOA (G68); program revisions (G78, G85); new program authorized (G88)
- IRJU rescinded in GOA for shallow water flatfish (G72)
- Single geographic location amended for pollock motherships (B62, G62)
- IFQ B quota share holders can fish on any size vessel (G67)
- AI pollock to the Aleut Corporation (B82)

Regulatory amendments related to this goal statement

- BSAI fixed gear parallel fishery management measures
- Minor revisions to AFA, CDQ, IFQ, rockfish programs
- GOA pollock trip limits

Other management actions related to this goal statement

- Permit fee authorization (all FMPs)

Increase Alaska Native Consultation

*Incorporate local and traditional knowledge into fishery management
Consider ways to enhance local and traditional knowledge collection
Increase Alaska Native participation in fishery management (on workplan)*

Other management actions related to this goal statement

- Community outreach and consultation policy adopted by Council in 2008
- Community committee helps prioritize outreach (currently focused on BSAI chum salmon analysis)
- Website redesigned to include a rural outreach component

Improve Data Quality, Monitoring, and Enforcement

*Increase utility of observer data (on workplan)
Develop equitable funding mechanisms for the NPGOP (on workplan) ...
Increase economic data reporting requirements (on workplan)
Improve technology for monitoring and enforcement (on workplan)
Encourage development of an ecosystem monitoring program
Cooperate with NPRB to identify needed research
Promote enforceability
Coordinate management and enforcement programs with Federal, State, international, and local partners*

FMP amendments related to this goal statement

- Observer program restructuring (B86/G76) – *approved by Council, not yet implemented*
- Remove dark rockfish from FMP, allow management by State of Alaska (B73/G77)

Regulatory amendments related to this goal statement

- Electronic reporting, online accounting
- Changes to VMS requirements (required for sablefish in BS, no longer required for dinglebar lingcod in GOA)
- Repeal of vessel incentive program
- Changes to observer program to provide flexibility in deployment and improve operational efficiency
- Bering Sea Chinook salmon bycatch economic data collection

Other management actions related to this goal statement

- Upcoming discussion paper on VMS use and requirements
- Council's economic data collection committee
- Video monitoring is being explored as a tool for monitoring and enforcement
- Council encourages research through annual research priorities, cooperates with NPRB
- Council initiated and participates in Alaska Marine Ecosystem Forum, as well as maintaining other relationships with partner entities

Appendix 3 Existing Alaska Region environmental impact statements, and their usage

TAC-Specification SEIS (1998)

In 1998, NMFS prepared an SEIS for the Groundfish Total Allowable Catch Specifications and Prohibited Species Catch Limits Under the Authority of the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska. The purpose of the SEIS was to provide an evaluation of the impacts of the groundfish fisheries through an analysis of alternative TAC levels and provide an updated baseline of environmental and economic information to use in assessing future regulatory actions. The SEIS was challenged under NEPA in Federal Court and remanded to the agency for inadequacies in scope and failure of the agency to prepare timely FMP level supplemental EISs. The 2004 PSEIS was then prepared in response to the court order. The scope of the analysis in the 2004 PSEIS was expanded to include all actions and harvest management activities in the two fishery management plans.

Steller Sea Lion Protection Measures Final SEIS (2001)

This SEIS evaluates alternatives to mitigate potential adverse effects as a result of competition for fish between Steller sea lions under a no action alternative as well as other alternatives that would substantially reconfigure these fisheries. In 2000, a Biological Opinion prepared under Section 7 of the Endangered Species Act on all aspects of these fisheries concluded that fisheries for pollock, Pacific cod, and Atka mackerel, jeopardize the continued existence of Steller sea lions and adversely modify their critical habitat due to competition for prey and modification of their prey field. The fisheries must be modified and brought into compliance with all federal laws. Several alternative fisheries management proposals have been developed. Changes in management measures vary the degree and direction of impacts the fisheries have on marine mammals, seabirds, prohibited species, target fish species, and the marine habitat. The changes also have impacts on fishers, processors, and coastal communities. Enforcement considerations and management complexity are inextricably tied to regulations. Impacts are disclosed, both significantly positive and significantly negative as required by the National Environmental Policy Act. A biological opinion prepared according to the Endangered Species Act was included for the preferred alternative.

Efficiencies – This SEIS was used to support subsequent changes to the Steller Sea lion protection measures through CEAs or EAs that incorporated information from the SEIS by reference.

Final EIS for American Fisheries Act Amendments 61/61/13/8 (2002)

On October 21, 1998, the President signed into law the American Fisheries Act (AFA) which mandated sweeping changes to the conservation and management program for the pollock fishery of the Bering Sea and Aleutian Islands (BSAI) and to a lesser extent, affected the management programs for the other groundfish fisheries of the BSAI, the groundfish fisheries of the Gulf of Alaska, the king and Tanner crab fisheries of the BSAI, and the scallop fishery off Alaska. Under the Magnuson-Stevens Act, the Council prepared Amendments 61/61/13/8 to implement the provisions of the AFA in the groundfish, crab and scallop fisheries off Alaska. The purpose of these amendments is to incorporate the relevant provisions of the AFA into the FMPs and establish a comprehensive management program to implement the AFA. This EIS served as the central environmental document for management measures developed by the National Marine Fisheries Service and the North Pacific Fishery Management Council to implement the provisions of the AFA. (<http://alaskafisheries.noaa.gov/sustainablefisheries/afa/eis2002.pdf>)

Alaska Groundfish Fisheries Final Programmatic SEIS (2004)

A programmatic SEIS (PSEIS) was prepared to evaluate the fishery management policies embedded in the BSAI and GOA groundfish FMPs against policy level alternatives. NMFS issued a Record of Decision for the Final PSEIS on August 26, 2004, effectively implementing a new management policy that is ecosystem-based and more precautionary when faced with scientific uncertainty. The PSEIS provides comprehensive information on the marine resources in the EEZ off Alaska and the impacts of groundfish fisheries on those resources.

(<http://www.alaskafisheries.noaa.gov/sustainablefisheries/seis/default.htm>)

Efficiencies – Each subsequent action to implement the policy needs to be examined in a separate NEPA document. The PSEIS provides the baseline for conducting NEPA analysis for groundfish management actions. NMFS and Council staff incorporate by reference the information in the PSEIS and update as necessary in the NEPA analysis for a specific action. This allows the subsequent NEPA document to focus on recent information and information relevant to the action without a large amount of background information. Also, the PSEIS provided a comprehensive analysis of the cumulative effects and past actions that is relied on for groundfish action EAs.

Bering Sea Aleutian Islands Crab Fisheries Final EIS (2004)

The Crab EIS analyzes the impacts of the crab fisheries on the human environment. Crab EIS discloses the effects of the crab fisheries and the Crab Rationalization Program on the physical and biological environment (including effects on benthic species and habitat, essential fish habitat, the ecosystem, endangered species, marine mammals, and sea birds). The Crab EIS concludes that for all of the components of the environment analyzed, the direct and indirect effects of the crab fisheries and the Crab Rationalization Program are not significant based on the best available scientific information.

(<http://www.fakr.noaa.gov/sustainablefisheries/crab/eis/default.htm>)

Efficiencies – Because the EIS analyzed the specific components of the Crab Rationalization Program, subsequent actions that modify the Program can either be categorically excluded from the need to prepare and EA or EIS, or, if the new action has the potential for environmental impacts, then a focused EA can be prepared. The EA can tier from the Crab EIS to focus the analysis on the issues ripe for decision and eliminate repetitive discussions. Examples of tiered EAs include those prepared for issuing two pools of Tanner crab quota share, new overfishing definitions, and annual catch limits. The EAs detail the specific impacts of the proposed action and include relevant and recent information since the EIS was published. Like with the PSEIS, the Crab EIS provided a comprehensive analysis of the cumulative effects of past actions that is relied on for crab action EAs.

Final EIS for Essential Fish Habitat Identification and Conservation in Alaska (2005).

This document evaluates alternatives for three separate actions. These actions include describing essential fish habitat (EFH), identifying a means to identify Habitat Areas of Particular Concern (HAPC), and minimizing the adverse effects of Council-managed fishing on EFH. The EFH EIS provides a thorough description of EFH, as well as a discussion of the past and present effects of different gear types on EFH.

(<http://www.alaskafisheries.noaa.gov/habitat/seis/efheis.htm>)

Efficiencies – The EFH EIS provides a comprehensive review of the impacts of fishing on EFH and that analysis and the conclusions on the impacts of fisheries on EFH are tiered from to understand the impacts of subsequent specific actions on EFH.

Alaska Groundfish Harvest Specifications Final EIS (2007)

This EIS provides decision makers and the public with an evaluation of the environmental, social, and economic effects of alternative harvest strategies for the federally managed groundfish fisheries in the GOA and the BSAI management areas. The EIS examines alternative harvest strategies that comply with federal regulations, the BSAI FMP, and the Magnuson-Stevens Act. These strategies are applied to the best available scientific information to derive the total allowable catch estimates for the groundfish fisheries. The EIS evaluates the effects of different alternatives on the resource components of the BSAI, which include target species, non-specified species, forage species, prohibited species, marine mammals, seabirds, essential fish habitat, ecosystem relationships, as well as, economic aspects of the BSAI fisheries. (<http://www.alaskafisheries.noaa.gov/analyses/specs/eis/default.htm>)

Efficiencies – This EIS is used for the annual harvest specification process, most recently for the 2012/2013 harvest specifications. Each year, NMFS prepares a SIR that evaluates the need to prepare an SEIS for the groundfish harvest specifications. The SIR also provides information to preliminarily determine whether an SEIS may be necessary for the following year's harvest specifications. Each SIR is posted on the NMFS Alaska Region web page at <http://alaskafisheries.noaa.gov/analyses/specs/eis/default.html>.

Bering Sea Chinook Salmon Bycatch Management Final EIS (2009)

This EIS provides decision-makers and the public with an evaluation of the environmental effects of Bering Sea pollock fishery and alternative measures to minimize Chinook salmon bycatch in that fishery. The alternatives analyzed in this EIS generally involve limits or “caps” on the number of Chinook salmon that may be caught in the Bering Sea pollock fishery and closure of all or a part of the Bering Sea to pollock fishing once the cap is reached. These closures would occur when a Chinook salmon bycatch cap is reached, even if the entire pollock total allowable catch has not yet been harvested. (http://alaskafisheries.noaa.gov/sustainablefisheries/bycatch/salmon/chinook/feis/eis_1209.pdf)

Efficiencies – Information from this EIS is being incorporated by reference into the EA being prepared for Bering Sea Non-Chinook Salmon PSC Management Measures.

Appendix 4 Persons attending the Council's stakeholder listening session

Persons attending the March 29, 2012 Stakeholder Listening Session included the following:

Anne Vanderhoeven
Bill Tweit
Dave Fraser
Diana Evans
Donna Parker
Duncan Fields
Ed Richardson
Elizabeth Wiley
Frank Kelty
Glenn Merrill
Glenn Reed
Gretchen Harrington
Jackie Dragon
John Gauvin
John Henderschedt
Jon Warrenchuk
Julie Bonney
Kenny Down
Kris Norosz
Lori Swanson
Matt Upton
Melanie Brown
Merrick Burden
Mike Szymanski
Sarah Melton
Stephanie Madsen
Tom Enlow

Appendix 5 Other NMFS Programmatic NEPA documents

West Coast Salmon Harvest Programmatic EIS (2003)

NOAA Fisheries Service released its Final Programmatic Environmental Impact Statement (FPEIS) for Pacific Salmon Fisheries Management off the Coasts of Southeast Alaska, Washington, Oregon, California, and in the Columbia River Basin in November 2003.

Salmon fishery management is complex, but, in general, NOAA Fisheries seeks to implement fisheries that are consistent with a variety of statutory and legal obligations related to resource conservation, socioeconomic benefits associated with resource use, and treaty trust obligations. Fishery plans are developed annually within the context of framework plans to meet the year-specific circumstances related to the status of stocks affected by the fisheries.

This FPEIS evaluates different ways to balance these objectives, and different strategies that can be used that may provide better solutions for meeting the obligations and objectives of the respective framework plans. The alternatives considered in this FPEIS are programmatic in nature and are designed to provide an overview of fishery management methods and strategies that can be implemented as part of the annual planning processes. (<http://www.nwr.noaa.gov/Salmon-Harvest-Hatcheries/Salmon-Fishery-Management/Salmon-Hrvst-Pgrmtc-EIS.cfm>)

Programmatic EIS on the Marine Mammal Health and Stranding Response Program (MMHSRP) (2009)

NMFS has the authority, delegated from the Secretary of Commerce, to take stranded marine mammals under Section 109(h) of the Marine Mammal Protection Act (MMPA) (16 U.S.C. 1379) and to establish and manage the Marine Mammal Health and Stranding Response Program (MMHSRP) under Title IV of the MMPA (16 U.S.C. 1421 et seq.). The MMHSRP includes: the National Marine Mammal Stranding Network; the Marine Mammal Unusual Mortality Event Program; the National Marine Mammal Tissue Bank and Quality Assurance Program; marine mammal health biomonitoring, research, and development; the Marine Mammal Disentanglement Network; the John H. Prescott Marine Mammal Rescue Assistance Grant Program; and information management and dissemination. This Final Programmatic Environmental Impact Statement (FPEIS) analyzes the potential environmental impacts of implementing the MMHSRP activities contained in the proposed action and alternatives. (<http://www.nmfs.noaa.gov/pr/health/eis.htm>)

Programmatic EA Research Activities Conducted by the Coral Reef Ecosystem Division, Pacific Islands Fisheries Science Center, National Marine Fisheries Service, Honolulu, Hawai'i (2010)

This Programmatic Environmental Assessment (PEA) considers the potential environmental effects of the program of activities conducted by the Coral Reef Ecosystem Division (CRED), Pacific Islands Fisheries Science Center (PIFSC), National Marine Fisheries Service (NMFS). The CRED program includes a range of activities to improve our understanding of coral reef ecosystems, as mandated by the Coral Reef Conservation Act of 2000, which is currently under reauthorization. (http://www.pifsc.noaa.gov/nepa/CRED_Programmatic%20Environmental%20Assessment_Final.pdf)

Programmatic EIS for Hawaiian Monk Seal Recovery Actions (2011)

NMFS is the Federal agency responsible for management of Hawaiian monk seals under the Endangered Species Act (16 United States Code [U.S.C.] 1531 et seq.) and the Marine Mammal Protection Act (16 U.S.C. 1361 et seq.). As part of their management responsibilities, NMFS funds and conducts research and enhancement activities on endangered Hawaiian monk seals in the Northwestern Hawaiian Islands

and Main Hawaiian Islands. NMFS proposes to implement research and enhancement actions identified in the Hawaiian Monk Seal Recovery Plan (NMFS 2007), with the goal of conserving and recovering the species. This PEIS provides decision-makers and the public with an evaluation of the environmental, social, and economic effects of the proposed program and alternatives to the proposed action. The agency's recommended Preferred Alternative (Alternative 4) encompasses a broad scope of research and enhancement activities that would yield greater survival benefits to the species over the long-term than would be expected under the other alternatives.

(<http://www.nmfs.noaa.gov/pr/permits/eis/hawaiianmonkseal.htm>)

Appendix 6 Council documents evaluating groundfish and environmental conditions

Groundfish SAFE reports

The Council's annual Groundfish Stock Assessment and Fishery Evaluation (SAFE) report provides a detailed analysis of the status of groundfish stocks each year. No groundfish species is currently, nor has been, overfished or subject to overfishing, since the analysis that was conducted in the Alaska Groundfish Fisheries Programmatic SEIS. Figure 1 and Figure 2 are summary plots from the 2011 Groundfish SAFE reports, illustrating the status of age-structured Gulf of Alaska (GOA) and Bering Sea and Aleutian Islands (BSAI) species, using the most recent year's catch, and the projected spawning biomass for the year to come.

Ecosystem Assessment in the annual Groundfish SAFE report

The Alaska Fisheries Science Center prepares an appendix to the annual SAFE reports³⁹ which provides a comprehensive overview of environmental conditions in the BSAI and GOA on an annual basis. The appendix includes an ecosystem assessment for the Bering Sea, Aleutian Islands and Gulf of Alaska, as well as various data series that are ecosystem status and management indicators.

AFSC staff have developed a format for reporting various indices over time, and comparing the most recent five years against the historical record for each indicator. Although the correct pages from the source document are referenced, they are not included as part of this discussion paper. The first section of the NPFMC Ecosystem Considerations appendix includes abbreviated report cards for the Eastern Bering Sea and the Aleutian Islands (pp 1-6; a report card for the GOA is being prepared in 2012), as well as an executive summary of recent trends (pp 7-21). Figure 6, on page 9 of the report, shows climate indices for the North Pacific, including the Pacific Decadal and Arctic Oscillations, and an eastern Bering Sea ice retreat and cold pool volume indices. All of these are within one standard deviation of the historical mean for the data set. Figure 7-8 (pp 12-13), Figure 9-10 (pp 15-16), and Figure 11 (p 17) show ecosystem indices for the groundfish fishery regions. For almost all of the indices shown, the five year mean is within one standard deviation of the historical mean for the data set. Exceptions in the Bering Sea, are the residual northward displacement index, which shows an increase above the historical mean, and the residual depth displacement index, which shows a decrease. Also, the coastal water zooplankton biomass mean increased well above the historic trend in 2008, and the St Paul northern fur seal pup count has continued to decrease in recent years. Conversely, Bogoslof has seen an increase (above the historical mean) of northern fur seal pups. Figures 12, 13, and 14 (pp 19-21) illustrate fishery indices for the Bering Sea, Gulf of Alaska, and Aleutian Islands. Once again, the five year mean is generally within one standard deviation of the historic mean. There has been a reduction in structural epifauna nontarget catch in the Bering Sea, a reduction in discards in the Aleutian Islands, and a reduction in the number of observed pelagic trawls in the GOA, compared to the historic mean.

2010 EFH 5-year review

Additionally, the 2010 EFH 5-year review⁴⁰ (NPFMC and NMFS 2010) evaluated changes in fishing impacts on habitat from the period analyzed in the EFH EIS (and incorporated by reference in the PSEIS) and the subsequent five-year period. Total trawl fishing effort decreased in all regions for pelagic and non-pelagic trawling, between the period analyzed in the EFH EIS (1998-2002) and the subsequent period

³⁹ Zador, S. ed. 2011. Ecosystem Considerations for 2012. North Pacific Fishery Management Council. Anchorage, AK 99501.

⁴⁰ NPFMC and NMFS. 2010. Essential Fish Habitat (EFH) 5-year Review for 2010 Summary Report: Final. April 2010. <http://www.fakr.noaa.gov/habitat/efh/review.htm>

(2003-2007). The report included figures plotting both the average fishing intensity, by five year period, as well as the difference in intensity between periods.

The principal shifts in fishing intensity are summarized in the following paragraphs. Although the correct color figures from the source document are referenced, they are not included as part of this discussion paper.

Bering Sea trawl: There has been no radical shift in the distribution of nonpelagic trawl fishing intensity in the Bering Sea from the period 1998-2002 to the period 2003-2007 (Color figure 1). The large area of the central Bering Sea that was subject to particularly high bottom trawl intensity in 1998 - 2002 received moderately lighter intensity from 2003 - 2007. Four principal areas were subject to increased bottom trawl intensity; 1) along the northwest border of the Pribilof Islands Habitat Conservation Zone, 2) off of Kuskoquim Bay, 3) along the southern border of the King Crab Protection Zone and 4). Most of the increases were moderate, though 2 of 8 blocks in the 4th area along the western side of the Nushagak Peninsula (inner Bristol Bay) had strong increases. The area of high intensity effort north of Akutan Island, Unimak Pass and Unimak Island remained a high intensity area. Many of the shifts within that area registered as moderate or strong changes because of the high absolute levels of fishing intensity. The central Bering Sea showed a pattern of higher intensity in pelagic trawling around a central area of lower intensity near the border of management areas 509 and 513 (Color figure 6). Decreases in fishing intensity occurred on the west side of the Nushagak Peninsula, off of Kuskoquim Bay, northeast of St George Island, and Pervenets Canyon to the far northwest. Intensity dropped in the area north of Akutan Island, Unimak Pass and Unimak Island, while there were increases on the southwest and eastern sides of that area.

Aleutian Islands trawl: There was a trend of decreases in bottom trawl fishing throughout the region, from the 1998-2002 period to the 2003-2007 period, with moderate decreases noted in the Adreanof Islands and Petrel Bank, as well as throughout the western portions of Rat Islands (Color figure 11). Stronger increases in intensity occurred around Buldir Island and west of Tanaga, with moderate increases found in the Near Islands. Pelagic trawling in the Aleutian Islands decreased from 416 blocks fished in the first period, mainly on the 541/518 (Bering Sea) border, to only 16 blocks fished in the most recent period. Fishing intensity for pelagic trawl fisheries in the Aleutian Islands is currently very minor. Consequently, maps are not included for Aleutian Islands pelagic trawl.

Gulf of Alaska trawl: Moderate decreases were seen in intensity of nonpelagic trawl fishing throughout the region, from the earlier (1998-2002) time period to the later (2003-2007), with overall blocks fished decreasing by approximately 40% (Color figure 16). Largest drops in intensity occurred near Chiniak and south of Chirikof Island with moderate increases in intensity to the northwest of Chirikof Island and south of Ugak Island. Very minor changes in intensity were seen in pelagic trawling in the GOA, with moderate increases in Shelikof Strait, but decreases in intensity in most Kodiak nearshore waters, as well as in isolated areas of 610 and 620 (Color figure 21).

Figure 1 Summary status of age-structured Gulf of Alaska species relative to 2011 catch levels (vertical axis) and projected 2012 spawning biomass relative to B_{MSY} levels (horizontal axis). Note that the 2011 MSY level is defined as the 2011 catch at F_{OFL} .

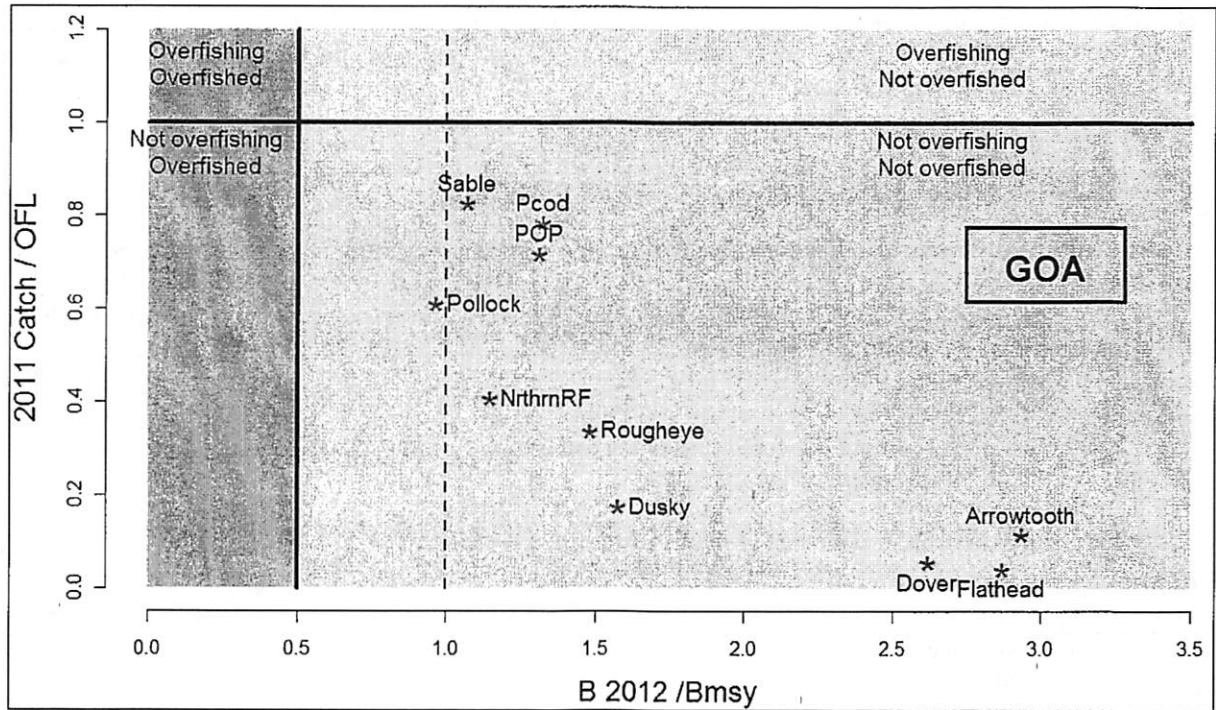
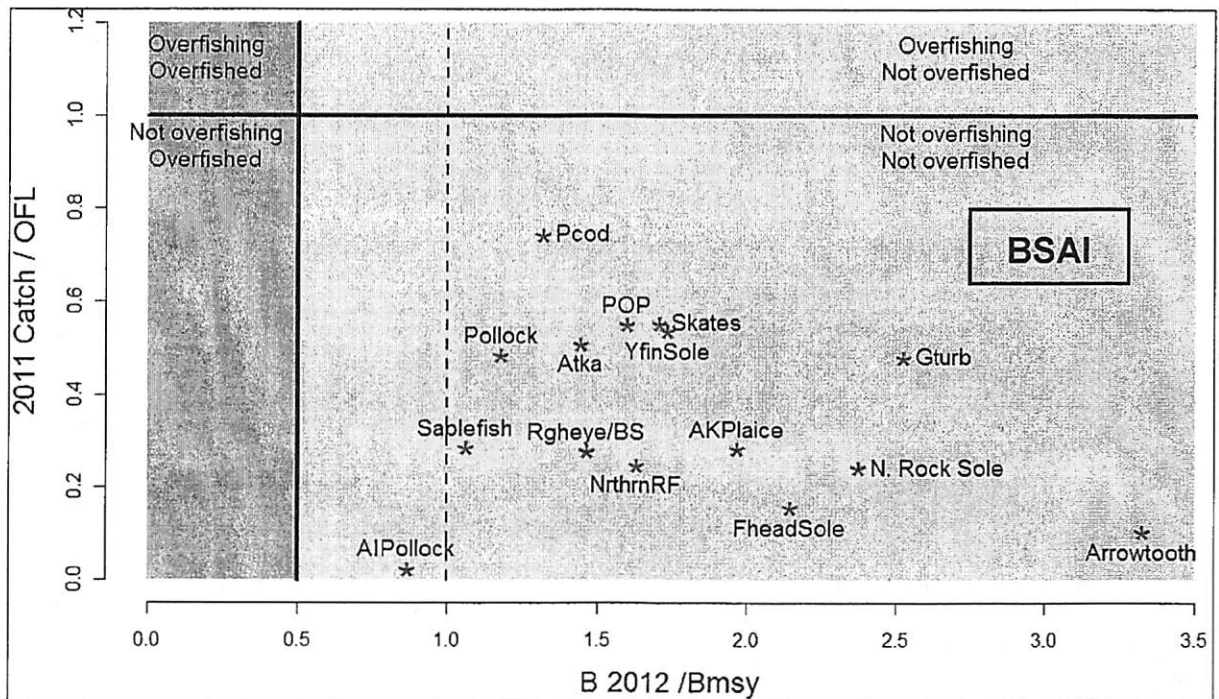


Figure 2 Summary status of age-structured Bering Sea and Aleutian Islands species, as measured by 2011 catch level relative to OFL (vertical axis) and projected 2012 spawning biomass relative to B_{MSY} levels (horizontal axis).



Appendix 7 Changes in groundfish management since 2004

Since the adoption of the groundfish management policy in 2004, the Council has continued to make changes to its groundfish management program. The changes that have occurred to date can be witnessed in the FMP and regulatory amendments that have been implemented over this time period. Additionally, there have also been national changes affecting the groundfish management program over the last five years. The Magnuson-Stevens Act was reauthorized in 2006, and contained provisions that have affected the groundfish management program to some extent (for example, annual catch limits and provisions governing the development of limited access privilege programs).

Table 4 lists the groundfish FMP amendments that have been implemented from 2004 to the present time, as well as those for which the Council has taken final action, but regulations are still being developed. The Council has recommended 22 amendments to the BSAI FMP since the adoption of its groundfish management policy in April 2004, and 20 amendments to the GOA FMP. Additionally, four BSAI and four GOA amendments had been adopted by the Council prior to April 2004, but had not yet been implemented at the time of the writing of the PSEIS. Table 5 provides a synthesis of the major regulatory amendments that have been implemented during the same time period. Between the two lists, the major changes in groundfish management are captured.

Table 4 BSAI and GOA Groundfish FMP amendments since 2004

BSAI amd	GOA amd	Action	Date of Council action	Effective date of amd
48	48	Revisions to the annual harvest specification process for groundfish	2003	2004
62	62	Single geographic location	2002	2009
	63	Move skates to the target species category	2003	2004
65	65	Identify habitat areas of particular concern, and harvest control measures	2005	2006
	67	IFQ – allow category B quota share to be fished on a vessel of any length, in any area	2005	2007
	68	Rockfish pilot program	2005	2006
	69	Change total allowable catch specification for the 'other species' category	2005	2006
71		CDQ – allow limited non-fishing investments, CDQ oversight, and 3-year allocation cycle (<i>superseded by provisions of the revised Magnuson-Stevens Act</i>)	2002	--
73	77	Remove dark rockfish from the FMP	2007	2009
	72	Rescind retention requirements in shallow water flatfish fishery	2003	2008
78	73	Revise essential fish habitat descriptions, harvest control measures	2005	2006
79		Groundfish retention standard (suspended as of 2011)	2003	2008
80		Sector allocation and cooperative for head and gut groundfish catcher processors	2007	2007
81	74	Revised management policy	2004	2004
82		Allocation of Aleutian Islands pollock total allowable catch to the Aleut Corporation	2004	2005
83	75	Housekeeping updates to the FMP	2004	2005
84		Exempt certain vessels from salmon bycatch savings area closures	2005	2007
85		Pacific cod sector allocations	2006	2008
86	76	Observer program restructuring	2006	--

BSAI amd	GOA amd	Action	Date of Council action	Effective date of amd
87		CDQ eligibility (<i>superseded by provisions of the revised Magnuson-Stevens Act</i>)	2006	--
88		Aleutian Islands Habitat Conservation Area boundary adjustment	2007	2008
89		Bering Sea habitat conservation measures	2007	2008
90	78	Allow post delivery transfers for Amendment 80 cooperatives (BSAI 90) and rockfish program (GOA 78)	2007	2009
91		Revise PSC limit for salmon bycatch, rescind savings areas	2009	2010
	79	Set allowable biological catch and overfishing level specifications for the 'other species' category	2008	2008
92	82	Rescind latent trawl gear licenses	2008	2009
93		Modify rules for Amendment 80 cooperative formation	2010	2011
94		Require gear modification to trawl sweeps for nonpelagic trawl vessels targeting flatfish	2009	2010
	83	Pacific cod sector allocations	2009	2012
	85	Remove BSAI stand down provision for catcher processors participating in rockfish pilot program	2008	2009
	86	Add a Pacific cod fixed gear endorsement to GOA licenses	2009	2011
95		Move skates from the other species to the target species category	2010	2010
96	87	Revise FMP species to fit either in target or ecosystem component categories, describe current practice for setting annual catch limits and using accountability measures	2010	2010
97		Allow vessel replacement for Amendment 80 vessels	2010	--
	88	Central GOA Rockfish Program: allocate exclusive harvest privileges to trawl vessels for Pacific ocean perch, pelagic shelf rockfish, and northern rockfish	2010	2011
	89	Establish area closures around Kodiak for GOA Tanner crab protection	2010	--
98	90	Update EFH descriptions and associated information, and impacts of non-fishing activities on EFH, and extend timing of HAPC process to correlate with the EFH 5-year review	2011	--
	93	Establish PSC limits for Chinook salmon in the Central/Western GOA pollock fisheries, and require full retention of salmon	2011	--

Note: '--' = action has not yet taken place

Table 5 Major regulatory amendments for the BSAI and GOA groundfish fisheries since 2004

Note: does not include regulatory amendments that implement FMP amendments, or are temporary, interim, corrections or clarifications

Subject	Action	Effective date of amendment
Harvest specifications	2004 BSAI and GOA harvest specifications	2004
	2005-2006 BSAI and GOA harvest specifications	2005
	2006-2007 BSAI and GOA harvest specifications	2006
	2007-2008 BSAI and GOA harvest specifications	2007
	2008-2009 BSAI and GOA harvest specifications	2008
	2009-2010 BSAI and GOA harvest specifications	2009
	2010-2011 BSAI and GOA harvest specifications	2010
	2011-2012 BSAI and GOA harvest specifications	2011
	2012-2013 BSAI and GOA harvest specifications	--

Subject	Action	Effective date of amendment
Catch restrictions	remove a harvest restriction on the HLA Atka mackerel fishery in the Aleutian Islands	2004
	full retention of demersal shelf rockfish and donation rules	2004
	allow processors to use the offal from halibut and salmon intended for the prohibited species donation program for commercial products (fish meal)	2004
	adjust the maximum retainable allowance (MRA) enforcement period for BSAI pollock from enforcement at anytime during a fishing trip, to enforcement at the time of offload	2004
	revise the MRAs for groundfish in the GOA arrowtooth flounder fishery	2009
	repeal groundfish vessel incentive program	2008
	GOA pollock trip limits	2009
	revise the MRAs for groundfish in the BSAI arrowtooth flounder fishery	--
	remove groundfish retention standard requirements	--
	BSAI fixed gear parallel fishery management measures	2012
Bering Sea AFA pollock fishery	remove the expiration date of regulations implementing the AFA	2004
CDQ	simplify the processes for making quota transfers, for authorizing vessels as eligible to participate in the CDQ fisheries, and for obtaining approval of alternative fishing plans	2005
	regulation of harvest	--
BSAI and GOA IFQ sablefish fishery	allow quota share holders in 4C to fish in either 4C or 4D	2005
	IFQ cost recovery fee reform	2006
	exclude tagged halibut and sablefish catches from IFQ account deduction	2006
	allow transfers of quota share for medical reasons; require VMS for vessels harvesting sablefish in the BSAI; allow category B catcher vessel quota share for Southeast Outside District sablefish to be fished on catcher vessels of any length	2007
	allow processing of non-IFQ species on a vessel with B, C, or D shares onboard	2008
	allow longline pot gear in Bering Sea during June, allow mobilized military personnel to make temporary IFQ transfers	2008
	IFQ online access to IFQ account information	2008
GOA rockfish pilot program	revise central GOA rockfish fisheries program monitoring and enforcement provisions	2007
	extension of central GOA rockfish program under MSA	2008
seabirds	revise seabird avoidance measures in the hook-and-line fisheries off Alaska to reduce incidental catch of the short-tailed albatross and other seabird species	2004
	revise seabird avoidance measures to strengthen gear standards for small vessels and eliminate certain unnecessary requirements	2008
	eliminate seabird avoidance requirements for vessels less than or equal to 55 ft LOA in 4E	2009
SSL	revise SSL protection measures for the GOA pollock and Pacific cod fishing closure areas near four SSL haulouts and modify the seasonal management of pollock harvest in the GOA	2005
	Revises SSL protection measures for the Aleutian Islands Atka mackerel and cod fisheries	2010
	Designate critical habitat for the Cook Inlet beluga whale	2011

Subject	Action	Effective date of amendment
Research areas	reopen the Cape Sarichef Research Restriction Area in the BSAI to directed fishing for groundfish	2006
	close Chiniak Gully Research Area to all commercial trawl fishing from August 1 to September 20, 2006-2010	2006
Observer program	provide flexibility in the deployment of observers	2004
	electronic reporting for vessels – ATLAS (at-sea observer communication system requirements)	2004
	technical amendment extending the North Pacific observer program beyond 2002	2004
	revise requirements facilitating observer data transmission and improve support for observers (ATLAS 2)	2006
	observer sunset date removal	2007
	Improve operational efficiency of the Observer Program and collected data	2010
reporting requirements	make effective the collection of information under the AFA amendments	2004
	exempt groundfish catcher processors and motherships with operational VMS from check-in check-out requirements	2008
	implement new electronic groundfish catch reporting system, the Interagency Electronic Reporting System (IERS), and its data entry component, eLandings	2009
	exempt vessels using dinglebar gear from the requirement to use VMS	2009
	Miscellaneous recordkeeping and reporting revisions, incl to e-Landings,	
	BS Chinook salmon bycatch economic data collection	--

Appendix 8 Short primer on 2004 Groundfish PSEIS

History of the 2004 Groundfish PSEIS

In late 1990s, NMFS and the Council realized that they needed to take a broader view of the cumulative effects of their management decisions. Typically, the Council addresses a management problem by developing specific solutions. Staff analyzes alternatives to determine their direct effects in a variety of contexts, and the Council shares that analysis with the public prior to making a decision and forwarding that recommendation to the agency and the Secretary of Commerce for final review and approval.

Beginning in 2000, the Council and NMFS conducted a comprehensive, programmatic environmental review of the BSAI and GOA groundfish fishery management plans. The analysis evaluated the management of Alaska's groundfish fisheries from a policy-level perspective, with alternatives ranging from a more aggressive harvest management policy to a highly precautionary one. Each management policy was illustrated and framed with a range of management measures within which the Council would intend to implement the alternative. Published as a final programmatic supplemental environmental impact statement (PSEIS) in June 2004, this document serves the Council and NMFS as the overarching EIS in support of federal authorization of the groundfish fisheries off Alaska. It also described the physical, biological and human environment; every fishery and gear type; and scientific data gaps and research needs.

In April 2004, the Council used this PSEIS as the basis for amending its FMPs to incorporate a new policy statement that communicates its intent to take a more precautionary approach to fishery management decision-making when faced with scientific uncertainty. The Council now routinely reviews its policy goals and objectives when making decisions and when developing its annual workplan.

One aspect of the 2004 PSEIS that made its preparation particularly challenging was that approximately 25 years of management decisions had to be evaluated as a cumulative whole. Both FMPs had over 80 plan amendments that had to be reviewed and analyzed, and the management program had changed substantially during the time period, from a fishery with a large foreign participation, to an exclusively domestic one. The next time it is appropriate to revisit the Council's management policy, and supplement the Alaska groundfish PSEIS, it should be more straightforward, as an environmental baseline has been established, and the new analysis will focus on the actions taken by the Council and NMFS since then.

What the 2004 analysis addressed

The Federal action that was analyzed in the 2004 Groundfish PSEIS was the authorization of the groundfish fisheries under the existing management program. There were four policy-level alternatives included in the PSEIS, from which the Council crafted a fifth, preferred alternative. For each alternative, a management approach statement was developed, with accompanying objectives. Example FMPs were included to illustrate how the Council might implement each policy alternative with specific management measures. For all alternatives except the status quo, the policy alternative was illustrated with two example FMPs, which were intended to indicate the range of management measures that might fall within the implementation of that alternative. Although the example FMPs were important to illustrate how a management policy might operate in practice, the adoption of the policy itself was the immediate outcome of the PSEIS. It was intended that the Council would undertake subsequent amendments to fully implement the new management policy, as illustrated in the example FMPs, over the next five to ten years.

Table 6 Alternatives analyzed in the 2004 Groundfish PSEIS

Alternative	Description	Example FMP bookend(s)
Alternative 1	Continue Under the Current Risk Averse Management Policy	<u>FMP 1</u> -- 2002 BSAI and GOA Groundfish FMPs
Alternative 2	Adopt a More Aggressive Harvest Management Policy	<u>Example FMP 2.1</u> -- constraints removed (remove buffer between ABC and OFL, no OY cap, repeal all closures except SSL measures, no PSC or gear restrictions, repeal all catch share programs except AFA and CDQ, repeal observer program and VMS) <u>Example FMP 2.2</u> -- remove OY cap, repeal any bycatch reduction incentives and restrictions except for PSC limits or IR/IU, including seabird avoidance requirements
Alternative 3	Adopt a More Precautionary Management Policy	<u>Example FMP 3.1</u> -- formalize $ABC \geq TAC$ in FMP, move sharks and skates into target category and develop criteria for all species in 'other species' category, accelerate efforts to develop ecosystem indicators for use in TAC-setting, develop MPA methodology and evaluate efficacy of existing closures, formal procedures to increase Alaska Native participation in management, 0-10% reduction in existing PSC limits, and establish them for salmon/crab in the GOA, improve observer program <u>Example FMP 3.2</u> -- incorporate uncertainty correction into ABC estimation, specify OY separately for each stock rather than for groundfish complex, incorporate stock-specific reference points (e.g. $F_{60\%}$ rather than $F_{40\%}$ for rockfish), move stocks from 'other species' category, close 0-20% of EEZ as an MPA to protect full range of habitats, no bottom trawl for pollock in GOA, comprehensive rationalization of all fisheries, existing PSC limits reduced by 10-30%, GOA salmon and crab PSC limits established, 100% observer coverage on vessels > 60'
Alternative 4	Adopt a Highly Precautionary Management Policy	<u>Example FMP 4.1</u> -- increase buffer between OFL and ABC ($F_{75\%}$ for Steller sea lion prey species and for rockfish, reduce $max F_{ABC}$ for stocks based on the lower bound of a confidence interval surrounding the survey biomass estimate), set OY for each stock rather than for the groundfish complex, designate 20-50% of EEZ as no-take marine reserve covering full range of habitats (including AI special management area for coral, and spawning reserves), reduce PSC limits and bycatch by 30-50%, 100% observer coverage on vessels > 60' and 30% coverage on all other vessels, mandatory VMS <u>Example FMP 4.2</u> -- no fishing until target fisheries can be shown to have no adverse effect on the resource and its environment
Preferred Alternative	Adopt a conservative, precautionary approach to ecosystem-based fisheries management	<u>Example FMP PA.1</u> -- formalize $ABC \geq TAC$ in FMP, use harvest control rules to maintain spawning stock biomass, accelerate efforts to develop ecosystem indicators for use in TAC-setting, develop MPA methodology, consider 0-10% reduction of BSAI PSC limits, establish PSC limits or other measures in GOA for salmon, crab and herring, continue rights-based management as needed, formal procedures to increase Alaska Native participation in management <u>Example FMP PA.2</u> -- incorporate uncertainty correction into ABC estimation, periodically review OY caps to determine their relevancy, develop and implement criteria for use of ecosystem indicators in TAC-setting, develop appropriate harvest strategies for rockfish, develop criteria to manage target and non-target species consistently, re-examine existing closures, consider adopting MPAs (0-20% of EEZ to protect full range of habitats, including as AI management area for coral), no bottom trawl for pollock in GOA, reduce existing PSC limits 0-20%, establish PSC limits in GOA for salmon, crab and herring, comprehensive rationalization of all fisheries, increase consultation with and representation of Alaska Natives in fishery management, improve observer coverage on all vessels, mandatory economic data collection

Data used in the PSEIS analysis

The data used in the analysis of biological impacts for groundfish stocks was largely based on 2002 stock assessments, using data from the 2001 and 2002 surveys. For some other seabird and marine mammal species, the most recent assessment data may have been from 2000. For the economic analysis, the most recent year included in the detailed fishery analysis was 2001. This was the basis on which the draft PSEIS was prepared, and issued for public comment in 2003. Some adjustments were subsequently made during the preparation of the Final PSEIS, to take into account more recent information. For example, the results from the new model for assessing impacts of fishing on essential fish habitat were incorporated in the analysis. In general, however, the most recent information in the document dates from 2000 to 2002.



GREENPEACE



AGENDA D-1(f)
Supplemental
JUNE 2012

May 1, 2012

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

RECEIVED

MAY 18 2012

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

RE: Programmatic evaluation of the impacts of the Bering Sea/Aleutian Islands and Gulf of Alaska fisheries on the ocean ecosystem

Dear Chairman Olson, Mr. Oliver, and Dr. Balsiger:

Thank you for seeking comments on the impacts of the ongoing management of the North Pacific groundfish fisheries and the related management objectives established by the North Pacific Fishery Management Council (Council) and National Marine Fisheries Service (NMFS). The Council and NMFS currently are considering revisions to the Programmatic Supplemental Environmental Impact Statement (PSEIS) which was completed in 2004 in response to litigation. *See, e.g., Greenpeace v. National Marine Fisheries Service* (W.D. Wash. 1999). Both the Council and agency are to be commended for taking a proactive approach to this issue and for giving serious consideration to the large-scale impacts of commercial fisheries on the ecosystem. This approach continues the leadership role played by the Council and NMFS in moving toward healthy ocean ecosystems that include sustainable fisheries and supports vibrant communities. This leadership has included preparing the Aleutian Islands Fishery Ecosystem Plan, implementing the Arctic Fishery Management Plan, limiting the expansion of bottom trawling, and, more recently, taking necessary steps to protect endangered Steller sea lions.

A review of the objectives and impacts of the ongoing management of fisheries in the North Pacific should continue this demonstrated commitment to the ocean ecosystem. It should begin with an understanding of the food web and an evaluation of Council and agency decisions on that food web. It also should not be limited to groundfish fisheries but should also include the fishery management plans (FMPs) for crab, scallops, and salmon. Scientists, managers, and others have recognized that fisheries management must expand its focus from single species to an ecosystem-based approach. A programmatic review is the ideal way to begin to evaluate ways to move in that direction. Thus, the Council and NMFS should use this opportunity to evaluate broader ways to measure impacts and to consider objectives that would protect and maintain the health, productivity and resilience of the marine ecosystem while providing for ecologically sustainable fisheries and vibrant coastal communities.

This approach will help the agency remain in compliance with the National Environmental Policy Act, which "is intended to help public officials make decisions that are based on an understanding of environmental consequences, and take actions that protect, restore, and enhance the environment." 40 C.F.R. § 1500.1(c). An environmental impact statement, like the 2004 PSEIS "is more than a disclosure document" and is to "be used by Federal officials in conjunction with other relevant material to plan actions and make decisions." 40 C.F.R. § 1502.1. It is, therefore, "an action-forcing device to insure that the policies and goals defined in the Act are infused into the ongoing programs and actions of the Federal Government." *Id.* As part of this process, the Council and agency should consider whether and how the goals and objectives from the 2004 PSEIS process have been implemented and consider mechanisms to ensure that action is taken to implement any changes made or new objectives put in place through this process.

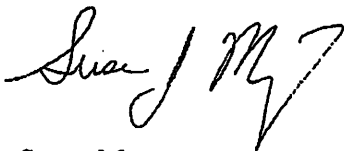
An evaluation of the impacts of fisheries on the ecosystem as a whole may also assist the agency and Council as they seek to remain in compliance with other statutory obligations, including the Endangered Species Act, which has as its first stated purpose "to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved." 16 U.S.C. 1531(b). A broad approach is consistent with the steps that the Council and NMFS have already taken toward ecosystem-based management.

As NMFS and the Council move forward with this process, it is important that they choose a suitable comparative baseline in order to fully evaluate the impacts of the fisheries on the North Pacific ecosystem. In that regard, the analysis should start with a picture of an unfished North Pacific ecosystem and evaluate the changes that have and will be caused to that ecosystem. Similarly, the Council and agency must ensure that they consider all impacts, including synergistic and cumulative effects on the ecosystem, and that they consider an appropriate range of alternatives that includes specific changes to current management.

A broad, inclusive approach is appropriate to this issue. To that end, we encourage the Council and NMFS to take advantage of the expertise of the various stakeholders and committees, including the Science and Statistical Committee and the Ecosystem Committee as they prepare this analysis.

Thank you for considering these comments, and we look forward to working with you on this issue.


Sincerely,



Susan Murray
Senior Director, Pacific
Oceana



Andrew Hartsig
Director, Arctic Program
Ocean Conservancy



Jackie Dragon,
Senior Oceans Campaigner
Greenpeace

PUBLIC TESTIMONY SIGN-UP SHEET

Agenda Item: D-1 (f) PSEIS

	NAME (PLEASE PRINT)	TESTIFYING ON BEHALF OF:
1	Stephanie Madson	
2	Jon Warrendunk	Oceana
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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.