


MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver   
Executive Director

ESTIMATED TIME 6 HOURS
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DATE: May 19, 2004

SUBJECT: Aleutian Islands Pollock Fishery

**ACTION REQUIRED**

Review revised draft EA/RIR and take final action on Amending the BSAI FMP to Allocate Pollock Quota to the Aleut Corporation for an Aleutian Islands Fishery.

**BACKGROUND**

During its February 2004 meeting, the Council reviewed recent Congressional action (2004 Consolidated Appropriations Act (CAA)), sponsored by Senator Stevens, that would require the Council to allocate TAC to the Aleut Corporation for a directed Aleutian Islands pollock fishery. The pollock allocation would be for economic development in Adak. The Council tasked staff with preparation of NEPA documentation for initial review at its April 2004 meeting. In April, the Council reviewed an initial draft EA/RIR for an FMP amendment to provide for an Aleut Corporation AI pollock fishery. After hearing comments from the SSC, AP, and public, the Council added a decision element and several alternatives, and asked that the EA/RIR be revised for final review and final action at its June 2004 meeting.

NMFS and Council staff have prepared a revised EA/RIR that responds to the specific elements in the Council's February and April motions. The EA/RIR was sent out for public review on May 20, 2004. At this meeting, the Council will receive additional comments from the SSC, AP, and public, and will select its preferred set of alternatives. This will allow sufficient time for the rulemaking and FMP amendment process so that the AI pollock fishery can be authorized for the 2005 fishing season.

There are six main decisions the Council will need to make in approving the AI pollock fishery. Each of the six decisions has several alternatives, each of which is based on the Council motions and the language in the CAA or in Senator Stevens' floor language. The decision elements and their alternatives are attached as Item C-4(a).

The EA/RIR provides an analysis of each of these elements and alternatives, a cumulative effects analysis, and a Regulatory Impact Review. The Executive Summary of the EA/RIR is attached as Item C-4(b). The analysts have determined that any of the alternatives selected under each decision element have either unknown or insignificant impacts on the quality of the human environment.

The Council also asked its Steller Sea Lion Mitigation Committee (SSLMC) to review options for changing SSL protection measures in the Aleutian Islands area so that small vessels might operate more safely and efficiently in the Aleut Corporation pollock fishery. In making this request, however, the Council informed the public that it does not intend to consider any actions on this issue that may trigger the need for formal Section 7 consultation under the Endangered Species Act. The SSLMC met April 26 to evaluate a proposal for changes in AI SSL protection measures, and discussed the proposal with NMFS Office of Protected Resources staff (the SSLMC meeting minutes are attached as Item C-4(c)). No conclusions or recommendations were reached, since the committee and NMFS have only had time to take an initial review of the elements in the proposal. The SSLMC and NMFS believe that further informal discussions on this issue should continue so that opportunity for evaluation of new data and discussion of options and alternatives might be possible. For example, there are new data being developed on SSL feeding habits in the AI region that may be available in the near future and may be helpful in understanding the role pollock and other species play in the diets of AI SSLs.

Finally, the Alaska Fisheries Science Center (AFSC) has developed a model that the SSLMC hopes to consider using in evaluating possible future proposals for changes in SSL protection measures. This model would be a new tool to compare how proposed changes in groundfish fishing practices might affect Steller sea lions. The AFSC and the SSLMC would like to have the SSC review the technical aspects of this model, and Lowell Fritz from the AFSC will present the conceptual approach to the SSC at this meeting. After hearing SSC comments, the AFSC plans to further develop the model and will present it to the Council at a future meeting.

NMFS and Council staff are available to answer questions. The full motion from the April meeting is below:

**Aleut Corporation Pollock Fishery in the Aleutian Islands**  
**Council's Revised Decision Elements and Alternatives**  
**April 2004 Meeting**

**1.0 Allocation size**

1.1 No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.

1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation and in no case should this amount exceed 40,000 mt.

1.3 The Council shall allocate a combined AI Incidental Catch Allowance and Directed Fishing Allowance equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% A season and 60 % B season apportionment required by the Steller sea lion protection measures.

1.4 Beginning in 2005, and until changed, the annual AI pollock TAC shall be the lesser of 15,000 mt or 40% of the AI pollock ABC. One hundred percent of the Directed Fishing Allowance shall be available for harvest in the pollock A season.

## 2.0 Allocation mechanism

2.1 No action: no regulatory changes

2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC if necessary to remain under the 2 million mt OY cap. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year.

2.3 The pollock allocation to the AI fishery will be funded by taking proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species if necessary to remain under the 2 million mt cap. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year.

2.4 The pollock allocation to the AI fishery will be funded as described above in Alternative 2.3 but exempting the BSAI sablefish IFQ fishery from the proportional reduction.

2.5 If possible, the AI Directed Fishing Allowance (DFA) is to be funded from the difference between the sum of the BSAI groundfish fishery TACs and the BSAI OY cap. No allocation to the AI DFA shall be made from a groundfish fishery TAC unless the difference between the sum of the groundfish fishery TACs and the OY cap is not large enough to fund the AI DFA. If this difference is not large enough to fund the AI DFA, 10% of the allocation to the AI pollock DFA shall be taken from the BSAI rock sole ITAC, 10% from the BSAI yellowfin sole ITAC, and 80% from the Eastern Bering Sea (EBS) pollock ITAC. No later than June 10 (start of the B season), unused AI A season pollock DFA, and the entire AI B season DFA, shall be rolled back to the EBS pollock fishery.

## 3.0 Monitoring vessel activity

3.1 Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulations).

3.2 "Increased monitoring" alternative. This alternative would have several components (not options). These include:

1. Aleut Corporation must let the NMFS Alaska Region know which vessels are authorized by it to fish in the Aleutians, and these vessels must carry documentation showing they have such permission;
2. If a catcher vessel authorized by the Aleut Corporation fishes in the Aleutians at any time during a trip, all pollock landed by that vessel when the trip ends will be deemed to be Aleutian Islands pollock and debited against the Aleut Corporation quota;
3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
4. AI pollock may only be delivered to a shore plant with a Catch Monitoring Control Plan;
5. The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance.

3.3 "Observer" alternative. All the requirements of Alternative 3.2 would apply and would require all catcher vessels to have 100% observer coverage.

#### 4.0 Small vessels

4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce to the fishery vessels under 60 feet LOA.

4.2 Defer small vessel participation until a later date 2 (2006) or 5 (2007) years from 2004 to allow for development of a management program.

#### 5.0 Economic development report mandate

5.1 No action: do not require an annual report to the Council.

5.2 Require an annual report to the Council.

5.3 Require an annual report comparable to CDQ reports.

5.4 At its June 2006 meeting, the Council shall review the AI pollock fishery performance, including information on harvest success, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

(Alternative 5.4 could be combined with either 5.1, 5.2, or 5.3.)

#### 6.0 Chinook salmon bycatch

6.1 No action: AI pollock fishery Chinook salmon bycatch would count against the BSAI Chinook salmon bycatch caps.

6.2 Chinook salmon bycatch in the AI pollock fishery would not count against the BSAI Chinook salmon bycatch caps.

*New handout*

AGENDA C-4(a)  
JUNE 2004

## **Allocation of Future Aleutian Islands Pollock Specifications to the Aleut Corporation**

### Decision Elements and Alternatives

#### **1.0 Allocation size**

1. No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.
- 1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program, in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation, and in no case should this amount exceed 40,000 mt.
- 1.3 The Council shall allocate a combined AI Incidental Catch Allowance and Directed Fishing Allowance equal to the lesser of the TAC generated from the ABC for that year or 40,000 mt. The DFA shall be subject to the 40% "A" season and 60% "B" season apportionment required by the Steller sea lion protection measures.
- 1.4 Beginning in 2005, and until changed, the AI pollock "A" season DFA shall be the lesser of 15,000 mt or 40% of the AI pollock annual TAC after subtraction of the ICA. No part of the annual DFA shall be allocated to the "B" season.

#### **2.0 Allocation mechanism**

- 2.1 No action: no regulatory changes
- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.3 The pollock allocation to the AI fishery will be funded by taking equal proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.4 The pollock allocation to the AI fishery will be funded as described in Alternative 2.3 but the procedure for calculation of TAC exempts the BSAI sablefish IFQ fishery from the

proportional reduction and rollback. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

- 2.5 The pollock allocation to the AI fishery will be funded by a 10% reduction in the BSAI rock sole fishery ITAC, a 10% reduction in the BSAI yellowfin sole fishery ITAC, and an 80% reduction in the EBS pollock fishery ITAC. No later than June 10, unused A season AI pollock DFA, and the entire B season AI pollock DFA, shall be rolled back to the EBS pollock fishery. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

### 3.0 *Monitoring vessel activity*

- 3.1 Status quo (this option imposes only those monitoring and enforcement measures that would be required if there were no change in regulation).

- 3.2 "Increased monitoring" alternative. This alternative would have several required measures (not options). These include:

1. The Aleut Corporation must notify the NMFS Alaska Region with a list of which vessels are authorized by it to fish in the Aleutians; notification must be at least 14 days prior to the anticipated start of fishing. The NMFS RAM Division will verify each vessel's eligibility (FFP, ADF&G number, USCG fishery endorsement, length, or AFA status) and provide to the Aleut Corporation a list of qualified vessels and the date fishing may commence. These vessels must carry documentation showing they have RAM approval and Aleut Corporation permission;
2. Catcher vessels are prohibited from fishing for pollock in the Aleutian Islands if pollock harvested in the Bering Sea or GOA are on board. Also, catcher vessels are prohibited from fishing for pollock in the Bering Sea or GOA if Aleutian Islands pollock are on board;
3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
4. AI pollock may only be delivered to a shoreside processor or stationary processor which has an approved Catch Monitoring Control Plan;
5. The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance. The Aleut Corporation shall be responsible for designating a person as a quota manager for pollock catch accounting; this person shall report to NMFS Sustainable Fisheries Division with weekly pollock catch summaries.

- 3.3 "Observer" alternative. Option 3.3a: All the requirements of Alternative 2 would apply; in addition, all catcher vessels would be required to have 100% observer coverage. Option 3.3b: All of the requirements of Alternative 2 would apply; in addition, all catcher vessels would be required to have 30% observer coverage while operating in the Aleutian Islands and at least one trip by each participating vessel would have to be observed.

#### **4.0 *Small vessels***

- 4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce vessels under 60 feet LOA.
- 4.2 Defer small vessel participation until a later date 2 (2006) or 5 (2007) years from 2004 to allow for development of a management program.

#### **5.0 *Economic development report mandate***

- 5.1 No action: do not require the Aleut Corporation to submit a report to the Council or NMFS.
- 5.2 Require the Aleut Corporation to submit an annual report to the Council.
- 5.3 Require the Aleut Corporation to submit an annual report to NMFS or the State of Alaska comparable to the annual reports submitted by the CDQ groups.
- 5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At the June 2006 meeting, the Council shall review the AI pollock fishery's performance, including information on harvest success, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

#### **6.0 *Chinook salmon bycatch management***

- 6.1 No action. Chinook salmon bycatch in the AI pollock fishery would count against the BSAI Chinook salmon bycatch cap.
- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count toward the Chinook salmon bycatch cap in the BSAI.
- 6.3 A new 360 Chinook salmon bycatch cap is set for the AI pollock fishery which, when attained, results in closure of the AI Chinook Salmon Savings Area only.

**REVISED DRAFT**

**ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW**

**for Amendment 82 to the BSAI FMP and regulatory amendments  
to allow the allocation of future Aleutian Islands pollock harvest  
to the Aleut Corporation as required by Public Law 108-199**

June 2004

**Lead Agency** National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Alaska Regional Office  
Juneau, Alaska

**Responsible Official** James W. Balsiger  
Regional Administrator  
Alaska Regional Office

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**Abstract:** This document contains an Environmental Assessment and a Regulatory Impact Review that analyze the potential impacts of an FMP amendment and regulations to allocate any future Aleutian Islands pollock harvest to the Aleut Corporation, as required by Section 803 of the 2004 Consolidated Appropriations Act (PL 108-199). This document also contains a Regulatory Flexibility Act (RFA) draft certification that this action will not have a significant impact on a substantial number of small entities. The analyses in this document address the requirements of the National Environmental Policy Act, Executive Order 12866, and the RFA.



## **Executive Summary**

### **What is this action?**

The action is to allocate pollock quota to the Aleut Corporation for an Aleutian Islands directed pollock trawl fishery for the purposes of economic development in Adak. This action was mandated by a recent U.S. Congressional action, PL 108-199, the 2004 Consolidated Appropriations Act. Six decision elements necessary for implementation of the action, each with two or more alternatives, are analyzed in this document. An Environmental Assessment/Regulatory Impact Review (EA/RIR) is the appropriate level of analysis to support taking action. The decision elements are allocation size, allocation mechanism, fishery monitoring, to delay or not delay entry of small vessels, economic development reporting, and Chinook salmon bycatch management. The document concludes that none of the decision elements or alternatives would have a significantly adverse effect on the quality of the human environment.

In February 2004, the North Pacific Fishery Management Council (Council) heard public comment and received comments from its Advisory Panel and Scientific and Statistical Committee. Some comments have suggested alternative means for accomplishing the goals, and some comments have suggested that certain alternatives may have adverse impacts. The analysis in this EA/RIR, however, concludes that the proposed action will not have adverse impacts that can be considered significant. The following summarizes the analysis contained in this EA/RIR.

This executive summary is divided into five parts:

- Background
- What are the alternatives?
- Environmental Assessment
- Regulatory Impact Review
- Regulatory Flexibility Act considerations

### **Background**

The U.S. Congress, in Section 803 of the Consolidated Appropriations Act of 2004 (HR 2673)(CAA), now Public Law 108-199, required that future directed fishing allowances of pollock in the Aleutian Islands be allocated to the Aleut Corporation.<sup>1</sup> Only fishing vessels approved by the Aleut Corporation or its agents would be allowed to harvest this allowance. In turn, the Aleut Corporation was only allowed to contract with vessels under sixty feet long, or with listed AFA vessels, to harvest the fish. The allocation was made to the Aleut Corporation for the purpose of furthering the economic development of Adak.

In February 2004, the Council passed a motion requesting an analysis of options that might be incorporated into an FMP amendment to create a structure within which such an allocation could be made.<sup>2</sup> It was the Council's intent that this analysis be presented to it in April 2004, in order that the Council could make a final decision on the amendment in June 2004. The Council reviewed a draft EA/RIR at its April 2004 meeting and added several additional alternatives, and a new decision element with two alternatives, to the suite of decision elements for this action. The Council intends to review

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<sup>1</sup>The text of Section 803 may be found in Appendix A.1.

<sup>2</sup>The text of this motion may be found in Appendix A.3.

the analyses of all decision elements and alternatives in this revised draft EA/RIR and take final action in June 2004.

This document is an Environmental Assessment/Regulatory Impact Review (EA/RIR) providing environmental, economic, and small entity analyses of this proposed action. This document also includes a "Factual Basis for Certification" as an appendix. The "factual basis" provides grounds for saying that a substantial number of small entities will not be affected by this action, and that, therefore, an initial regulatory flexibility analysis is not required under the Regulatory Flexibility Act (RFA). This document addresses the analytical requirements of the National Environmental Policy Act (NEPA), Presidential Executive Order 12866 (EO 12866), and the RFA.

The U.S. Congress has determined that establishing a small boat fleet in the community of Adak will be critical for the economic diversification of that community (PL 108-199). Congress has further determined that this economic benefit can be gained through a direct apportionment of pollock quota to the Aleut Corporation to be used for economic development in Adak.<sup>3</sup> Congress' intent is that the Aleut Corporation, or its agent, will initially partner with large vessels (from a pool of vessels approved for the BSAI pollock fishery under the American Fisheries Act) and small vessels < 60 feet length overall (LOA) to fish their apportionment, but gradually develop and partner with a larger small vessel fleet to harvest pollock. Eventually, by the year 2013, Congress intends that 50 percent of the Aleut Corporation pollock apportionment will be fished by partner vessels under 60 feet LOA, and 50 percent will be fished by partner AFA vessels. Revenues generated from the use of the Aleutian Islands pollock apportionment will allow for greater investment opportunities in Adak.

Congress has mandated that, if the Council provides for an Aleutian Islands directed pollock fishery, all total allowable catch (TAC) quota must be apportioned to the Aleut Corporation. This quota is to be fished with permission of the Aleut Corporation. Congress also specified that the Council could apportion this TAC over and above the 2 million mt Optimum Yield (OY) cap in the Bering Sea/Aleutian Islands groundfish fisheries which, based on longstanding policy, has never been exceeded by the Council. But Congress also mandated that, should the Council choose to exceed the OY cap for the purposes of apportioning pollock to the Aleut Corporation, the OY cap could be exceeded only for the fishing years 2004 through 2008.

In February 2004, the Council approved proceeding with an analysis of possible environmental effects of such a fishery, with the intent of opening an AI pollock fishery in 2005. The Council's motion is in Appendix A.3. The Council clearly determined that it did not want to provide for this AI pollock fishery by apportioning TAC over the 2 million mt OY cap. The Council directed staff to develop an EA/RIR/IRFA with which the Council will evaluate the effects of this fishery and make a decision. At its April 2004 meeting, the Council further expanded the types of analyses it wishes to evaluate, and passed a motion adding a new decision elements and several alternatives to some of the decision elements. The text of the Council's April 2004 motion is provided in Appendix A11.

The Council requested an evaluation of (1) different approaches to determining levels of TAC apportionment, perhaps using the current CDQ apportionment formula as a guideline, possibly with a requirement that no AI apportionment would exceed 40,000 mt; (2) alternative methods for calculating the Aleut Corporation apportionment so as to remain under the OY cap, with an evaluation of how unused TAC from this fishery might be rolled back to other groundfish fisheries in the BSAI; (3) alternative approaches to monitoring catch in the fishery to be created; (4) whether to provide for a small vessel component of this fishery in 2004 or defer this decision to 2006 or 2009; (5) whether to require

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<sup>3</sup>The Aleutian Islands subarea includes federal management areas 541, 542, and 543. These, along with the location of Adak and other information, are shown in Figure 1.1-1.

an annual report from the Aleut Corporation on how the pollock apportionment was used for economic development in Adak, and (6) whether or not Chinook salmon harvested as bycatch in the AI fishery would count against the Chinook bycatch cap in the Bering Sea pollock fishery. With respect to decision element 2 above, the Council stated that, in the future, the allocation to the AI pollock fishery would be "funded" first from any difference between the sum of all BSAI groundfish fishery TACs and 2 million mt, if any, and if not, then from the chosen alternative under this decision element.

The Council further stated its intent to not take any action that might trigger the need for a formal Section 7 consultation under the Endangered Species Act. The Council specifically tasked its Steller Sea Lion Mitigation Committee (SSLMC) to review options for changing SSL protection measures in the AI to allow small vessels to operate more safely and efficiently. The SSLMC met April 26, 2004, to consider options for changing SSL regulations in the AI region, but did not develop a specific recommendation at this time; rather, it intends to continue informal consultations with NMFS to determine whether such a change in regulations might be possible under the Council's stated constraints. Thus, the issue of safety and efficiency of small vessel operations in the proposed AI pollock fishery as it relates to options for changing SSL protection measures will be addressed after further consideration by the SSLMC and the Council, and is not part of the Council's decision in this action.

### **What are the alternatives?**

#### **1.0 Allocation size**

1. No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.
- 1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program, in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation, and in no case should this amount exceed 40,000 mt.
- 1.3 The Council shall allocate a combined AI Incidental Catch Allowance and Directed Fishing Allowance equal to the lesser of the TAC generated from the ABC for that year or 40,000 mt. The DFA shall be subject to the 40% "A" season and 60% "B" season apportionment required by the Steller sea lion protection measures.
- 1.4 Beginning in 2005, and until changed, the AI pollock "A" season DFA shall be the lesser of 15,000 mt or 40% of the AI pollock annual TAC after subtraction of the ICA. No part of the annual DFA shall be allocated to the "B" season.

#### **2.0 Allocation mechanism**

- 2.1 No action: no regulatory changes
- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

- 2.3 The pollock allocation to the AI fishery will be funded by taking equal proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.4 The pollock allocation to the AI fishery will be funded as described in Alternative 2.3 but the procedure for calculation of TAC exempts the BSAI sablefish IFQ fishery from the proportional reduction and rollback. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.5 The pollock allocation to the AI fishery will be funded by an amount that is 10% from the BSAI rock sole fishery ITAC, 10% from the BSAI yellowfin sole fishery ITAC, and 80% from the EBS pollock fishery ITAC. No later than June 10, unused "A" season AI pollock DFA, and the entire "B" season AI pollock DFA, shall be rolled back to the EBS pollock fishery. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

### 3.0 Monitoring vessel activity

- 3.1 Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulation).
- 3.2 "Increased monitoring" alternative. This alternative would have several required measures (not options). These include:
1. The Aleut Corporation must notify the NMFS Alaska Region with a list of which vessels are authorized by it to fish in the Aleutians; notification must be at least 14 days prior to the anticipated start of fishing. The NMFS RAM Division will verify each vessel's eligibility (FFP, ADF&G number, USCG fishery endorsement, length, or AFA status) and provide to the Aleut Corporation a list of qualified vessels and the date fishing may commence. These vessels must carry documentation showing they have RAM approval and Aleut Corporation permission;
  2. Catcher vessels are prohibited from fishing for pollock in the Aleutian Islands if pollock harvested in the Bering Sea or GOA are on board. Also, catcher vessels are prohibited from fishing for pollock in the Bering Sea or GOA if Aleutian Islands pollock are on board;
  3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
  4. AI pollock may only be delivered to a shoreside processor or stationary processor which has an approved Catch Monitoring Control Plan;
  5. The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance. The Aleut Corporation

shall be responsible for designating a person as a quota manager for pollock catch accounting; this person shall report to NMFS Sustainable Fisheries Division with weekly pollock catch summaries.

- 3.3 "Observer" alternative. Option 3.3a: All the requirements of Alternative 3.2 would apply; in addition, all catcher vessels would be required to have 100% observer coverage. Option 3.3b: All of the requirements of Alternative 3.2 would apply; in addition, all catcher vessels would be required to have 30% observer coverage while operating in the Aleutian Islands and at least one trip by each participating vessel would have to be observed.

#### 4.0 Small vessels

- 4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce vessels under 60 feet LOA.
- 4.2 Defer small vessel participation until a later date two (2006) or five (2009) years from 2004 to allow for development of a management program.

#### 5.0 Economic development report mandate

- 5.1 No action: do not require the Aleut Corporation to submit a report to the Council or NMFS.
- 5.2 Require the Aleut Corporation to submit an annual report to the Council.
- 5.3 Require the Aleut Corporation to submit an annual report to NMFS or the State of Alaska comparable to the annual reports submitted by the CDQ groups.
- 5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At the June 2006 meeting, the Council shall review the AI pollock fishery's performance including information on harvest success, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if adjustments to the AI pollock TAC may be appropriate in light of Section 803 of the CAA and Senator Stevens' floor language.

#### 6.0 Chinook salmon bycatch management

- 6.1 No action. Chinook salmon bycatch in the AI pollock fishery would count against the BSAI Chinook salmon bycatch cap.
- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count toward the Chinook salmon bycatch cap in the BSAI.
- 6.3 A new 360 Chinook salmon bycatch cap is set for the AI pollock fishery which, when attained, results in closure of the AI Chinook Salmon Savings Area only.

### **Environmental Assessment**

An Environmental Assessment (EA) was prepared for this action to address the statutory requirements of the NEPA. The purpose of the EA is to predict whether the impacts to the human environment resulting from the action will be "significant," as that term is defined under NEPA. If the predicted impacts from the

preferred alternatives are found not to be significant, and those alternatives are chosen, no further analysis is necessary to comply with the requirements of NEPA.

The determination that the Council's chosen alternatives will not significantly adversely impact the human environment is called a "Finding of No Significant Impact" or FONSI. The finding is recommended by the Council and NMFS Alaska Region and is approved by NMFS Headquarters. In reality, the Secretary of Commerce in consultation with the Council is the authority. When the Council chooses its preferred elements in this action, and these have been determined to not result in a significant impact on the quality of the human environment, NMFS prepares a short document to that effect, a FONSI. The FONSI outlines the reasons why the action will not significantly impact the human environment, the selection of the alternatives for the action, and why preparation of an Environmental Impact Statement is not required. The FONSI would end the NEPA process for this action. A FONSI would be prepared after the Council makes its recommendations during the June 2004 meeting and after NMFS' review of the EA/RIR and determination that a FONSI is appropriate.

An EA must consider whether an environmental impact is significant. Significance is determined by considering the contexts (geographic, temporal, societal) in which the action will occur, and the intensity of the action. The evaluation of intensity should include consideration of the magnitude of the impact, the degree of certainty in the evaluation, the cumulative impact when the action is related to other actions, the degree of controversy, and violations with other laws.

Four significance assignments are made in this EA. These are:

*Significantly adverse (S-)*: Significant adverse effect in relation to the reference point and based on ample information and data and the professional judgement of the analysts who addressed the topic.

*Insignificant impact (I)*: Insignificant effect in relation to the reference point; this determination is based on information and data, along with the professional judgement of the analysts, that suggest that the effects will not cause a significant change to the reference point condition.

*Significant beneficial (S+)*: Significant beneficial effect in relation to the reference point and based on ample information and data and the professional judgement of the analysts who addressed the topic.

*Unknown (U)*: Unknown effect in relation to the reference point; this determination is characterized by the absence of information and data sufficient to adequately assess the significance of the impacts, either because the impact is impossible to predict, or because insufficient information is available to determine a reference point for the resource, species, or issue.

The significance of impacts of the actions analyzed in this EA were determined through consideration of the following information as required by NEPA, NOAA Administrative Order (NOA) 216-6, Section 6 and 50 CFR Section 1508.27:

*Context*: The setting of the proposed action is the groundfish fisheries of the BSAI. Any effects of these actions are limited to these areas. The effects of the action on society, within these areas, is on individuals directly and indirectly participating in the groundfish fisheries and on those who use the ocean resources. Because the action affects the management of groundfish fisheries in the BSAI, which may have direct and indirect societal effects, this action may have effects on society as a whole or regionally.

*Intensity*: Listings of considerations to determine intensity of the impacts are in 50 CFR § 1508.27 (b) and in the NOA 216-6, Section 6. Each consideration is addressed below in order as it appears in the regulations.

**Adverse or beneficial impact determinations for marine resources, including sustainability of target and nontarget species, damage to ocean or coastal habitat or essential fish habitat, effects on biodiversity and ecosystems, and marine mammals:**

Each of the alternatives for the six decisions faced by the Council was evaluated for significance with respect to the following potential direct and indirect impacts:

- Pollock stock
- Other target species and fisheries
- Incidental catch of other and non-specified species
- Incidental catch of forage species
- Incidental catch of prohibited species
- Steller sea lions
- Other marine mammals
- Seabirds
- Habitat
- Ecosystem
- State managed and parallel fisheries
- Social and economic effects

The criteria used to determine significance for each of these impacts are described in detail in Section 4.1. The evaluations of direct and indirect significance may be found in Sections 4.2 to 4.7. These evaluations are summarized in Tables 6.0-1 to 6.0-6. The evaluation of the cumulative effects for significance may be found in Chapter 5. The cumulative effects significance evaluations are summarized in Table 5.0-1.

In general, these alternatives were found to have insignificant effects with respect to the range of potential impacts. There were two exceptions. Monitoring alternative 3.1 (status quo) was found to have “unknown” effects with respect to pollock fishing mortality, other target species and fisheries, incidental catch of other and non-specified species, incidental catch of forage species, and incidental catch of prohibited species. While pollock mid-water trawling is a relatively clean fishery, and bycatch of these species classes were expected to be not significant, monitoring issues connected with Alternative 3.1 raised sufficient uncertainty about NMFS’ ability to monitor mortality and mortality rates, that these impacts were given an “unknown” significance rating. (See Section 4.4.2). Monitoring alternative 3.2 (observer requirements) was found to have “unknown” effects with respect to the economic impacts on operating costs, net returns, and safety. This alternative requires observer coverage on small vessels (under 60 feet in length). This would be an adverse effect on small vessel operating costs and economic viability, but the significance of the effect is unknown.

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**Public health and safety**

Subsequent actions by the Council to create an Aleutian Islands DFA may have safety implications if trawlers under 60 feet LOA find it difficult to operate safely outside of the SSL protected areas. The CAA requires the AI pollock harvest to be allocated 50 % to vessels less than 60 feet in length starting in 2013. Many knowledgeable observers have noted the dangers of fishing in this area. A small vessel (under 60 feet in length) fleet, required to operate twenty miles from shore by SSL protection measures during a winter fishery, raises particular concerns. The current action does not create an allocation or, by itself, permit pollock fishing in the AI. A subsequent Council decision would be required for that. For this reason, Alternatives 1.1 to 1.4 were rated “insignificant” with respect to safety. Nevertheless, it is important to keep the safety issue in mind if the fishery develops. Safety issues are addressed in analysis of annual specifications. The monitoring alternative 3.3, which would place observers on vessels under 60 feet,

creating unknown safety implications by potentially increasing the number of persons on small vessel in the AI.

#### **Cultural resources and ecologically critical areas:**

These actions take place in the geographic areas of the Bering Sea and Aleutian Islands, generally from 3 nm to 200 nm offshore. The land adjacent to these areas contains cultural resources and ecologically critical areas. The marine waters where the fisheries occur contain ecologically critical areas. Effects on the unique characteristics of these areas are not anticipated. Evaluations of impacts on habitat and on ecosystems were evaluated and found to be "insignificant."

#### **Controversiality:**

These actions deal with management of the groundfish fisheries. Differences of opinion exist among various industry, environmental, management, and scientific groups on the appropriate levels of TAC to set for various target species and in particular fishery management areas. Two aspects of the current action may be controversial. The Council has chosen to make potential AI pollock allocations from within the BSAI OY of 2 million mt. Because the OY is currently fully utilized for the TACs of other species, this means that an AI allocation will require a reduction in the TACs for other species. This creates distributional issues that may be controversial. One of the monitoring alternatives, 3.3, involves observer requirements on vessels under 60 LOA. Observers have not been required before on vessels of this size in the GOA or BSAI. This proposal may be controversial.

Many persons are concerned about the environmental impacts associated with reopening a pollock fishery in the Aleutian Islands. This could be a source of controversy. The current action does not create an allocation of pollock in the Aleutian Islands. The allocation of pollock for a directed fishery would be done each year during the annual specifications process. The effects of an AI pollock directed fishery would be analyzed each year during the harvest specifications development. This action is an amendment to the BSAI FMP to establish the management framework for an AI pollock directed fishery, if it is created by the Council, to be allocated to the Aleut Corporation. The controversiality of the action will depend on how these issues are resolved before final action is taken.

#### **Risks to the human environment, including social and economic effects:**

Risks to the human environment associated with groundfish fisheries are described in detail in the revised Draft PSEIS (NMFS 2003b). Because of the mitigation measures implemented with every past action, it is anticipated that there will be no significant adverse impacts to the human environment beyond that disclosed in the Draft PSEIS (NMFS 2003b) or the Steller Sea Lion Protection Measures SEIS (NMFS 2001b). No significant adverse impacts to the human environment were identified for the alternatives evaluated in this EA. As noted above, monitoring Alternative 3.2 (observer requirements) was found to have "unknown" effects with respect to the economic impacts on operating costs, net returns, and safety. This alternative requires observer coverage on small vessels (under 60 feet in length). This would be an adverse effect on small vessel operating costs and economic viability, but the significance of the effect is unknown.

#### **Future actions**

Future actions related to this action may result in impacts. The action under consideration, an amendment to the BSAI FMP and supporting regulations meant to provide a structure within which future AI pollock DFAs could be allocated to the Aleut Corporation, in itself has no impact on specifications. It does not create a TAC or DFA for AI pollock, and it does not affect existing BSAI TACs for other species. A



subsequent decision by the Council during the annual specifications process will be required each year, in order to provide an AI pollock directed fishery. With the requirement to allocate a portion of the pollock harvest to vessels less than 60 feet, a potential future action may reduce some closure areas required by the Steller sea lion protection measures. This may result in more potential for the introduction of rats onto rat free islands which may lead to an adverse effect on seabird colonies. For all future actions, appropriate environmental analysis documents (EA or EIS) will be prepared to inform the decision makers of potential impacts to the human environment and to implement mitigation measures to avoid significant adverse impacts.

**Cumulatively significant effects, including those on target and nontarget species:**

The EA evaluated cumulative impacts in Chapter 5. Chapter 5 reviewed eight past, present, and reasonably foreseeable future actions that could combine with the impacts of the actions considered here to have a combined effect on the quality of the human environment. These factors were:

- The annual specifications process
- The AI Steller Sea Lion population trajectory
- Development at Adak
- Other regional development
- State managed fisheries
- Changes in SSL protection measures
- Other ESA issues
- Evolving understanding of pollock stock structure in the Aleutians.

The cumulative effects analysis conclusions are summarized in Table 6.0-7. The cumulative effects analysis did not find that the alternatives would have significant incremental impacts when added to other past, present, or reasonably foreseeable future actions. Alternatives 3.1 and 3.3 had unknown direct and indirect effects and therefore, the cumulative effects were also unknown for target and nontarget species harvest and socioeconomic effects.

**Districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places:**

This action will have no effect on districts, sites, highways, structures, or objects listed or eligible for listing in the National Register of Historic Places, nor cause loss or destruction of significant scientific, cultural, or historical resources. Because this action is 3 nm to 200 nm at sea, this consideration is not applicable to this action.

**Impact on ESA listed species and their critical habitat:**

ESA listed species that range into the fishery management areas are listed in Table 6.0-8. An FMP level Section 7 consultation was completed for the groundfish fisheries in November 2000 (NMFS 2000d) for those species under the jurisdiction of NMFS. This document is limited to those species under NMFS jurisdiction and covers most of the endangered and threatened species which may occur in the action area, including marine mammals and Pacific salmon.

Listed seabirds are under the jurisdiction of the USFWS which has completed an FMP level BiOp (USFWS 2003a) and project level BiOp (USFWS 2003b) for the groundfish fisheries. Both USFWS BiOps concluded that the groundfish fisheries and the annual setting of harvest specifications were unlikely to cause the jeopardy of extinction or adverse modification or destruction of critical habitat for ESA listed seabirds.

Under the FMP level BiOp (NMFS 2000d), the western distinct population segment of Steller sea lions was the only ESA listed species identified as likely to be adversely affected by the groundfish fisheries. A subsequent biological opinion on the Steller sea lion protection measures was issued in 2001 (NMFS 2001b, Appendix A, Supplement June 19, 2003). The 2001 BiOp found that the groundfish fisheries conducted in accordance with the Steller sea lion protection measures were unlikely to cause jeopardy of extinction or adverse modification or destruction of critical habitat for Steller sea lions.

No consultations are required on this action at this time because based on the best available information, the proposed actions will not modify the actions already analyzed in previous BiOps, are not likely to adversely affect ESA listed species beyond the effects already analyzed, and the incidental take statements of ESA species are not expected to be exceeded. Summaries of the ESA consultations on individual listed species are located in the section 3.0 with accompanying tables from the Draft PSEIS under each ESA listed species' management overview (NMFS 2003a).

### **Violations of Federal, state, or local laws or requirements for the protection of the environment**

This action poses no known violation of Federal, State, or local laws or requirements for the protection of the environment. Implementation of this action would be conducted in a manner consistent, to the maximum extent practicable, with the provisions of the Alaska Coastal Management Program within the meaning of section 30(c)(1) of the Coastal Zone Management Act of 1972, and its implementing regulations

### **Introduction and spread of nonindigenous species**

This action may affect the introduction or spread of nonindigenous species into the AI; however these impacts were analyzed in Section 4.2 and were determined to be not significant. The concern here would be the accidental introduction of rats on an island in the Aleutian Islands region that currently is not rat infested through a vessel loss. It is possible that a larger group of small vessels will begin to fish the AI pollock allocation, and most areas available for fishing would be beyond 20 nm offshore, subjecting these small vessels to greater opportunity for exposure to severe weather conditions. The impacts on the ecological relationships on such an island could be greatly changed; if burrow nesting birds were present, that species likely could be eventually eradicated due to rat predation. If this occurred on an island with a significant breeding population of that species, this could have large impacts. However, the likelihood of such an event is small, there is already other vessel traffic in the area to which the AI pollock vessels would be a small addition, and heightened awareness in the region would likely improve rat prevention for vessels participating in the AI pollock fishery.

### **Comparison of Alternatives**

#### *Allocation Size*

Four alternatives were examined for the "allocation size" decision (Table 6.0-1). Alternative 1.1 was a no action alternative. Alternative 1.2 would add language in the FMP amendment directing the Council to consider CDQ allocations when making the AI pollock allocation, and in no case to make an AI pollock allocation greater than 40,000 mt. Alternative 1.2 may constrain future AI pollock allocations in the short run, should ABCs be higher than the 40,000 mt cap. In the longer run, it would be possible for the Council to amend the FMP to relax the constraint. The proposed language directing the Council to consider CDQ program allocations when making Aleut Corporation allocations is consistent with a wide range of potential pollock allocations to the Aleut Corporation. Alternative 1.3 essentially sets a 40,000 mt cap on the amount of DFA the Council would apportion to the AI pollock fishery, and Alternative 1.4 similarly sets a maximum, in this instance 15,000 mt. Either 1.3 or 1.4 DFAs could be less than these maxima. The latter two alternatives give industry an earlier sense of what the AI allocation might be, perhaps facilitating

industry negotiations and reducing acrimony during the specifications process. No alternative relating to allocation size would have significant impacts on the environment.

### *Allocation Mechanism*

The Council has chosen to make AI pollock allocations count against the BSAI OY (Table 6.0-2). Thus, an increase in AI pollock TAC will reduce one or more other BSAI TACs. Four alternatives were considered: (2.1) no action - no FMP or regulatory changes; (2.2) fund AI pollock TACs from EBS pollock TAC; (2.3) fund AI pollock TAC equiproportionally from all other BSAI TACs; (2.4) fund AI pollock TAC as in (2.3), except that there would be no reduction in BSAI sablefish TACs; and (2.5) fund the AI allocation by reducing the BSAI yellowfin and rock sole fishery TACs and the EBS pollock TAC, rolling back unused and B season TAC to the EBS pollock fishery. The different allocations will generally have relatively small impacts on TACs. An AI pollock allocation of 40,000 mt is only two percent of the BSAI OY, and less than 3% of the current BSAI pollock TAC of 1,492,000 mt. Environmental impacts would be insignificant. This issue does have distributional implications, particularly 2.5 which reduces two sole fisheries and the EBS pollock fishery TACs while potentially "giving back" TAC only to the EBS pollock fishery.

### *Monitoring*

Three monitoring alternatives were considered: (3.1) no action - no additional monitoring measures; (3.2) a heightened monitoring alternative with five elements; and (3.3) an "observer" alternative that adds observer requirements to the elements in Alternative 3.2 (Table 6.0-3). The "no action" alternative was rated with unknown significance over concerns with the monitoring of catch and for concerns over estimates of fishery mortality for various species in this new fishery, taking place in a remote area, under monitoring rules that are less comprehensive than those for other BSAI pollock fishing. The "observer" alternative was rated "unknown" for potential economic impacts. Observers may be expensive for small vessels and may reduce the economic viability of the small vessel fleet in this area. Moreover, placing observers on small vessels may put more persons at risk in case of an accident.

### *Small Vessel Entry*

The Council considered a provision in the FMP that would prevent fishing by vessels under 60 feet LOA for two or five years (Table 6.0-4). Alternative 4.1, the "no action" alternative, would not have added this language. This action alternative, Alternative 4.2, appears to provide few benefits, at the risk of interfering with Aleut Corporation development plans. Initially it was thought that making arrangements for small vessels might delay the introduction of the program. Effects from both alternatives were insignificant. However, whether or not this provision for deferring entry of small vessels is in the FMP, the Aleut Corporation would not be able to introduce small vessels unless acceptable monitoring arrangements were made. In this case, the Aleut Corporation could contract with AFA vessels to harvest its allocation until such time as the provisions were made to accept small catcher vessel deliveries.

### *Economic Development Reporting*

The Council considered requiring the Aleut Corporation to report on the ways it had used its allocation to advance the development of Adak (Table 6.0-5). Alternative 5.1, no action (no report), Alternative 5.2, a basic report, Alternative 5.3, a CDQ-style reporting requirements were considered, and Alternative 5.4, a provision for a June 2006 report to check on the fishery performance to see if adjustments should be made. The reporting requirement has no environmental implications. It may have economic implications if it helps ensure that the Aleut Corporation use of the pollock allocation is advancing the distributional goals of Congress. No legal obligation exists to monitor Aleut Corporation use of the allocation for development.

A basic report could be provided at relatively low cost. A CDQ-style report could be expensive to produce, and for NMFS or the State of Alaska to fully evaluate - plus it would contain confidential data to which the Council would not have access. Because the Aleut Corporation could draw on existing reporting activities, it is believed that it could produce a detailed report at less additional expense than the average cost for CDQ reports.

### *Chinook Bycatch*

The Council considered proposals to address potential problems with Chinook bycatch (Table 6.0-6). Alternative 6.1 would require Chinook bycatch in the AI pollock fishery to count against the BSAI pollock Chinook bycatch cap. If Chinook bycatch in the AI is high, particularly early in the year, the Chinook Salmon Savings Areas would close, perhaps prematurely, having economic costs to vessels that have to then move and fish elsewhere. A second alternative, 6.2, would exempt the AI fishery from the cap and savings area closure process. This would have little impact other than potentially allowing larger bycatch of Chinook to occur. It also would set a precedent of allowing a fishery to be prosecuted without a Chinook bycatch avoidance incentive. Alternative 6.3 would set a Chinook bycatch cap of 360 fish for the AI pollock fishery. Here the incentive would be to keep bycatch low or the AI Chinook savings area would close, perhaps having economic cost to the fleet. None of these alternatives would have adverse environmental impacts.

**Summary of Significance Determinations for Decision 1 Alternatives: Effects of Allocation Size (Table 6.0-1).**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>				
<b>Issue</b>	<b>Alternative 1 (no action)</b>	<b>Alternative 2</b>	<b>Alternative 3</b>	<b>Alternative 4</b>
	<b>No action. TAC set through specifications process.</b>	<b>Guidance for TAC from CDQ fisheries (~25,000 mt) with 40,000 mt cap.</b>	<b>DFA 40,000 mt or less.</b>	<b>DFA 15,000 mt or less, with "A" season fishery only.</b>
Pollock stock	I	I	I	I
Other target species and fisheries	I	I	I	
Incidental catch of other and nonspecified species	I	I	I	I
Incidental catch of forage species	I	I	I	I
Incidental catch of PSC	I	I	I	I
Steller sea lions	I	I	I	I
Other marine mammals	I	I	I	I
Seabirds	I	I	I	I
Habitat	I	I	I	I
Ecosystem	I	I	I	I
State-managed and parallel fisheries	I	I	I	I
Socio-economic	I	I	I	I

**Summary of Significance Determinations for Decision 2 Alternatives: Effects of Allocation Mechanism. (Table 6.0-2)**

Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown					
Issue	Alternative 1 (no action)	Alternative 2	Alternative 3	Alternative 4	Alternative 5
	No action. No fishery.	TAC "funded" from Bering Sea pollock fishery	TAC "funded" from BSAI groundfish fisheries equi-proportionally	TAC "funded" from BSAI groundfish fisheries equiproportionally, excluding IFQ sablefish fishery	TAC "funded" by an amount that is 10% from yellowfin sole, 10% from rock sole, and 80% from EBS pollock TACs, with rollback to EBS pollock
Pollock stock	I	I	I	I	I
Other target species and fisheries	I	I	I	I	
Incidental catch of other and nonspecified species	I	I	I	I	I
Incidental catch of forage species	I	I	I	I	I
Incidental catch of PSC	I	I	I	I	I
Steller sea lions	I	I	I	I	I
Other marine mammals	I	I	I	I	I
Seabirds	I	I	I	I	I
Habitat	I	I	I	I	I
Ecosystem	I	I	I	I	I
State-managed and parallel fisheries	I	I	I	I	I
Socio-economic	I	I	I	I	I

**Summary of Significance Determinations for Decision 3 Alternatives: Effects of Monitoring Vessel Activity (Table 6.0-3)**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>			
<b>Issue</b>	<b>Alternative 1 (no action)</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
	<b>No action. Status quo monitoring and enforcement</b>	<b>Increased level of monitoring</b>	<b>Increased level of monitoring plus 100 % observer coverage on C/Vs and 30% option.</b>
Pollock stock	U	I	I
Other target species and fisheries	U	I	I
Incidental catch of other and nonspecified species	U	I	I
Incidental catch of forage species	U	I	I
Incidental catch of PSC	U	I	I
Steller sea lions	I	I	I
Other marine mammals	I	I	I
Seabirds	I	I	I
Habitat	I	I	I
Ecosystem	I	I	I
State-managed and parallel fisheries	I	I	I
Economic and socio-economic	I	I	I/U

**Summary of Significance Determinations for Decision 4 Alternatives: Effects of Small Vessel Entry Date (Table 6.0-4)**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>		
<b>Issue</b>	<b>Alternative 1 (no action)</b>	<b>Alternative 2</b>
	<b>No action. No delay in entry of vessels &lt; 60 feet LOA</b>	<b>Delay entry of small vessels 2 or 5 years from 2004</b>
Pollock stock	I	I
Other target species and fisheries	I	I
Incidental catch of other and nonspecified species	I	I
Incidental catch of forage species	I	I
Incidental catch of PSC	I	I
Steller sea lions	I	I
Other marine mammals	I	I
Seabirds	I	I
Habitat	I	I
Ecosystem	I	I
State-managed and parallel fisheries	I	I
Economic and socio-economic	I	I



**Summary of Significance Determinations for Decision 5 Alternatives: Effects of Economic Development Reporting (Table 6.0-5)**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>					
<b>Issue</b>	<b>Alternative 1 (no action)</b>	<b>Alternative 2</b>	<b>Alternative 3</b>	<b>Alternative 4</b>	<b>Alternative 5</b>
	<b>No action. No fishery.</b>	<b>TAC “funded” from Bering Sea pollock fishery</b>	<b>TAC “funded” from BSAI groundfish fisheries equi-proportionally</b>	<b>TAC “funded” from BSAI groundfish fisheries equiproportionally, excluding IFQ sablefish fishery</b>	<b>TAC “funded” by an amount that is 10% from yellowfin sole, 10% from rock sole, and 80% from EBS pollock TACs, with rollback to EBS pollock</b>
Pollock stock	I	I	I	I	I
Other target species and fisheries	I	I	I	I	
Incidental catch of other and nonspecified species	I	I	I	I	I
Incidental catch of forage species	I	I	I	I	I
Incidental catch of PSC	I	I	I	I	I
Steller sea lions	I	I	I	I	I
Other marine mammals	I	I	I	I	I
Seabirds	I	I	I	I	I
Habitat	I	I	I	I	I
Ecosystem	I	I	I	I	I
State-managed and parallel fisheries	I	I	I	I	I
Socio-economic	I	I	I	I	I

**Summary of Significance Determinations for Decision 6 Alternatives: Effects of Chinook Salmon Bycatch Management (Table 6.0-6)**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>			
<b>Issue</b>	<b>Alternative 1 (no action)</b>	<b>Alternative 2</b>	<b>Alternative 3</b>
	<b>No action. Chinook bycatch counts against BSAI cap.</b>	<b>Chinook bycatch does not count against BSAI cap.</b>	<b>New 360 Chinook salmon bycatch cap for AI pollock fishery.</b>
Pollock stock	I	I	I
Other target species and fisheries	I	I	I
Incidental catch of other and nonspecified species	I	I	I
Incidental catch of forage species	I	I	I
Incidental catch of PSC	I	I	I
Steller sea lions	I	I	I
Other marine mammals	I	I	I
Seabirds	I	I	I
Habitat	I	I	I
Ecosystem	I	I	I
State-managed and parallel fisheries	I	I	I
Socio-economic	I	I	I

Cumulative effects summary for this action (Table 6.0-7)

Environmental Component	Alternatives																				
	1.1	1.2	1.3	1.4	2.1	2.2	2.3	2.4	2.5	3.1	3.2	3.3	4.1	4.2	5.1	5.2	5.3	5.4	6.1	6.2	6.3
Pollock	I	I	I	I	I	I	I	I	I	U	I	I	I	I	I	I	I	I	I	I	I
Other target	I	I	I	I	I	I	I	I	I	U	I	I	I	I	I	I	I	I	I	I	I
Other and Non-specif	I	I	I	I	I	I	I	I	I	U	I	I	I	I	I	I	I	I	I	I	I
Forage sp	I	I	I	I	I	I	I	I	I	U	I	I	I	I	I	I	I	I	I	I	I
PSC	I	I	I	I	I	I	I	I	I	U	I	I	I	I	I	I	I	I	I	I	I
Steller sea lions	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Other mar mamm	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Seabirds	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Habitat	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Ecosystem	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
State fisheries	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I	I
Socio-econ	I	I	I	I	I	I	I	I	I	I	I	U/I	I	I	I	I	I	I	I	I	I

**ESA listed and candidate species that range into the BSAI or GOA groundfish management areas (Table 6.0-8).**

Common Name	Scientific Name	ESA Status
Blue Whale	<i>Balaenoptera musculus</i>	Endangered
Bowhead Whale	<i>Balaena mysticetus</i>	Endangered
Fin Whale	<i>Balaenoptera physalus</i>	Endangered
Humpback Whale	<i>Megaptera novaeangliae</i>	Endangered
Right Whale	<i>Balaena glacialis</i>	Endangered
Sei Whale	<i>Balaenoptera borealis</i>	Endangered
Sperm Whale	<i>Physeter macrocephalus</i>	Endangered
Steller Sea Lion (Western Population)	<i>Eumetopias jubatus</i>	Endangered
Steller Sea Lion (Eastern Population)	<i>Eumetopias jubatus</i>	Threatened
Chinook Salmon (Puget Sound)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Lower Columbia R.)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Upper Columbia R. Spring)	<i>Oncorhynchus tshawytscha</i>	Endangered
Chinook Salmon (Upper Willamette .)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Snake River Spring/Summer)	<i>Oncorhynchus tshawytscha</i>	Threatened
Chinook Salmon (Snake River Fall)	<i>Oncorhynchus tshawytscha</i>	Threatened
Sockeye Salmon (Snake River)	<i>Oncorhynchus nerka</i>	Endangered
Steelhead (Upper Columbia River)	<i>Onchorynchus mykiss</i>	Endangered
Steelhead (Middle Columbia River)	<i>Onchorynchus mykiss</i>	Threatened
Steelhead (Lower Columbia River)	<i>Onchorynchus mykiss</i>	Threatened
Steelhead (Upper Willamette River)	<i>Onchorynchus mykiss</i>	Threatened
Steelhead (Snake River Basin)	<i>Onchorynchus mykiss</i>	Threatened
Steller's Eider <sup>1</sup>	<i>Polysticta stelleri</i>	Threatened
Short-tailed Albatross <sup>1</sup>	<i>Phoebastria albatrus</i>	Endangered
Spectacled Eider <sup>1</sup>	<i>Somateria fischeri</i>	Threatened
Kittlitz Murrelet <sup>1</sup>	<i>Brachyramphus brevirostris</i>	Candidate
Northern Sea Otter <sup>1</sup>	<i>Enhydra lutris</i>	Candidate

<sup>1</sup>The Steller's eider, short-tailed albatross, spectacled eider, Kittlitz murrelet, and northern sea otter are species under the management jurisdiction of the U.S. Fish and Wildlife Service. For the bird species, critical habitat has been established for the Steller's eider (66 FR 8850, February 2, 2001) and for the spectacled eider (66 FR 9146, February 6, 2001). The northern sea otter has been proposed as a candidate species by USFWS (November 9, 2000; 65 FR 67343). The Kittlitz murrelet has been proposed as a candidate species by USFWS (69 FR 24875, May 4, 2004).

### Regulatory Impact Review

This RIR is required by Presidential Executive Order (E.O.) 12866. Separate sections in the RIR evaluate the costs and benefits of the alternatives for each of the six decisions faced by the Council.

#### *Allocation size*

The Council faces a decision on whether or not to provide guidance in the FMP on the appropriate size of future AI pollock allocations to the Aleut Corporation. Four alternatives were considered for this decision. Under Alternative 1.1, the FMP would contain no language constraining Council decisions with respect to the appropriate Aleut Corporation allocation. Under Alternative 1.2, the Council would be constrained in two ways. First, it would have to consider the allocations received by the CDQ groups in setting the Aleut

Corporation allocation. Second, it could not provide a directed pollock fishery in the Aleutians with a TAC greater than 40,000 mt. Alternative 1.3 would set a maximum 40,000 mt DFA, and Alternative 4 would set a maximum DFA of 15,000 mt and would not provide for a "B" season.

The action alternatives would have the following potential effects:

- Alternatives 1.2, 1.3, and 1.4 could, but would not necessarily, restrict the Council's freedom of action in some future years, leading to lower AI pollock DFA allocations than there might otherwise be.
- If allocations were constrained, the Aleut Corp and its affiliated entities would receive lower revenues (depending on market and price effects). This would be particularly the case for Alternative 1.4.
- If allocations were constrained, other BSAI fishery TACs would be higher than they otherwise would have been and revenues to fleets exploiting those TACs would be somewhat higher.
- For a number of reasons, it is impossible to predict actual revenue impacts (depending on market and price effects)
- The action has no direct impacts, only indirect impacts so far as it constrains future Council decision making. While constraint language in the FMP may constrain short term decisions by the Council, it would not necessarily constrain medium to long term decisions, because the Council could amend the FMP to relax them.

The choice of a cap on the allocation to the Aleut Corporation has distributional significance. The Council has chosen to treat the AI pollock allocation to the Aleut Corporation as one of the allocations to be made within the BSAI optimum yield. Therefore, unless the sum of the TACs for other species are less than the OY, any allocation to the Aleut Corporation will be associated with smaller TACs for other species in the BSAI. The extent to which this would impact other fisheries would depend on choices made by the Council with respect to the funding of the allocation. These choices are discussed in the next section. The 40,000 mt cap on Aleut Corporation allocations places a limit on decreases in the amounts of TAC for the other BSAI fisheries; a 15,000 mt cap would limit these decreases more so.

#### *"Funding" the allocation*

Section 803 incorporates into statute the Council's longstanding BSAI OY limit of two million mt, but allows the Council to create AI pollock allocations in addition to the OY for the years 2004 to 2008. At its February 2004 meeting, the Council determined to include any AI pollock allocations in the OY. For this reason, unless the sum of the TACs for other species are less than the OY, an AI pollock allocation to the Aleut Corporation will require reductions in one or more other groundfish fishery TACs. The Council must decide whether to provide itself future direction on the appropriate approach to TAC setting, and, if so, what sort of direction to provide.

Five principal alternatives, one of which has a significant optional element, are evaluated for this decision. These are: 2.1 - No action - FMP is not amended to provide the Council with direction on future approaches; 2.2 - The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year; 2.3 - The pollock allocation to the AI fishery will be funded by taking proportional reductions in the TACs for each of the existing groundfish fisheries in the BSAI. Any unused pollock TAC from the AI fishery will be rolled back to the fisheries from where it originated in the same proportions. This should occur at the earliest time in the calendar year; 2.4 - Exempt the BSAI sablefish IFQ fishery from the proportional reduction; and 2.5 - Fund the allocation by reducing the TACs of the EBS pollock fishery and the TACs of the BSAI yellowfin and rock sole fisheries, rolling back to just the EBS pollock fishery all of the "B" season AI allocation and any unused "A" season AI allocation. The

Council has said that these methods are only to be used if the sum of the TACs is equal to the OY. If the sum of the TACs is less than the OY, the AI allocation is to be funded out of the unallocated OY.

Under Alternative 2.1, the “no action” alternative, the FMP would not be modified. Under these circumstances, the language of the FMP (for example, with respect to CDQ allocations) would be in conflict with the statutory language in Section 803. Therefore, this is not a viable alternative.

The funding decision is fundamentally a distributive decision. It is a decision about the fishing fleet sectors that will bear the burden of providing the Aleutian Islands TAC. Under Alternative 2.2, the AI pollock allocation would be funded by the AFA fishery. Some of the AFA operations will participate in the AI pollock fishery, so the sector may receive revenues offsetting some of the loss, however, this will not be evenly distributed among AFA operations. Under Alternative 2.3, all fleet sectors in the BSAI (other than the AI pollock fleet) will fund the allocation. At current TAC levels, the AFA would continue to fund 75% of the allocation. The pollock share of the BSAI OY was at its lowest in recent years in 1999, when it was about 50%. At 1999 levels the AFA pollock fishery would have funded half of the allocation. Under Alternative 2.4, funding would be shared by all BSAI fleet sectors except for the IFQ sablefish fishery. Funding allocations and impacts are very similar for most fleets under Alternatives 2.3 and 2.4.

The way the funding is carried out can also affect the distribution of benefits between CDQ and non-CDQ groups. Under some scenarios, funding can be allocated before the definition of fishery TACs. Since CDQ group allocations are defined as percentages of TACs, CDQ groups would effectively contribute under this approach, since they would be receiving percentages of smaller TACs. Alternatively, the allocations could be deducted from fishery ITACs following the calculation of CDQ and unspecified reserves. In this instance, CDQ groups would not contribute to funding.

BSAI fisheries are currently subject to a wide range of management regimes. Some of these, such as the AFA cooperatives, the CDQ groups and the sablefish IFQ program, represent rationalized fisheries in which operations have the freedom to harvest fish quotas in a relatively efficient manner. Other fisheries have not been rationalized, and fishing operations harvest the fish under arrangements that approximate open access fisheries. Rationalized fisheries are likely to produce relatively high net returns for the participants involved. Open access fisheries are subject to competitive dissipation of fishing rents through excessive entry. Net returns are likely to be relatively smaller in these latter fisheries. As a result, it is likely that allocations made from non-pollock fisheries involve the movement of fishery quota from operations with relatively lower net returns to operations with relatively higher net returns. This is likely to be a temporary effect. Under the proposed BSAI FMP Amendment 80 (“Sector allocations and cooperatives”), most BSAI groundfish fisheries may move to more rationalized operating arrangements in a few years.

The Aleut Corporation may not be able to harvest its allocation in a year. The fishery will generally be taking place 20 miles from shore because of the SSL protection measures. However, the last directed fisheries, prior to 1999, took place within 20 miles to a great extent. There is uncertainty about the extent to which vessels will be able to catch the pollock allocation outside of 20 miles. Moreover, there is uncertainty about the ability of vessels under 60 feet LOA to operate successfully outside 20 miles. SSL protection measures mandate that no more than 40% of the DFA be taken in the lucrative “A” season roe fishery. There is uncertainty about whether the Aleut Corporation will have an interest in catching and marketing large volumes of pollock in the “B” season. Since BSAI fishery allocations are at the OY, and since the Council has chosen to include the AI pollock allocation within the OY, an AI pollock allocation, whether it is caught or not, means a reduced allocation for other fishermen. The Council has included “rollback” provisions in its proposal to return pollock DFA that the Aleut Corporation may be unable to use to the fisheries that originally funded the allocation.

Before the reallocation is effective, a DFA or TAC amount may be reached and could result in unnecessary closures and disruption within the fishing industry. Once the fishery for a species is closed to directed fishing, only maximum retainable amounts (MRAs) of that target species may be retained in other fisheries open to directed fishing. The amount of a target species that is caught could possibly move a target species to a prohibited species status which requires that all subsequent catch be discarded. Both of these cases may require mandatory discards, which may pose an economic loss to the industry and increase waste.

Fisheries that are completely utilized would be vulnerable to closures because many of the DFAs or TACs would be reached before the roll back. If a fishery has been closed to directed fishing and then the reallocation to increase TACs occurs, the remaining uncaught DFA or TAC may not be large enough to support a directed fishery and therefore TAC may remain unharvested, representing a potential economic loss to the industry.

In some instances, fisheries occur in the winter and spring, but not in the summer or fall. Two examples include the rock sole fishery, and the trawl fishery for Pacific cod. In these instances, there would be no ongoing fishery that could take advantage of the roll back, at least under current operational scenarios.

Roll back may be affected by the specifications method chosen for funding the AI pollock DFA. One option under consideration would define TACs after OY had been set aside for a directed AI pollock allocation. If AI funding were deducted from the BSAI species ABCs before TACs for different species were specified, there may technically be no specific TAC that should receive the roll back amount. No deductions would have been made from any specific TAC to fund the AI pollock fishery. The Council might address this issue in the annual specifications process by recommending a list of roll back percentages, specifying how much of any given roll back should be added to each species TAC. If a roll back of a given amount were to take place, the list would identify precisely how much each TAC should get. Alternatively, the roll back could be to the unspecified reserves, a list could be published as guidelines, and in season managers could make roll backs as appropriate.

Alternative 2.4 exempts the sablefish IFQ fishery from original allocation. The sablefish fishery in the BSAI operates under an individual fishing quota (IFQ) program. This program divides the annual sablefish TAC among the individual fishermen with permits to fish for a specified quota of sablefish. The fishermen have considerable discretion about how to fish for their own quota during the course of the year. Each has a known allocation, and may fish throughout the year at their own pace. The benefits of an IFQ program flow from this certain knowledge about the size of the allocation. If a portion of the sablefish TAC was used to create an AI pollock allocation, with a commitment to return unused quota to the sablefish fishery at some unknown time late in the season, fishermen would lose the ability to plan the harvest of their individual quota during the course of the year. This would reduce the benefits of the IFQ program for sablefish.

Sablefish IFQ roll back creates difficult administrative problems which would disrupt sablefish fishing during the year. It is likely that the sablefish fishery would have to close for a brief period of time. Each year, the annual IFQ allocation and permit computation requires that the fishery be closed to harvesting/landing for a minimum of 30 days between allocation periods. This is necessary to allow landings for each permit holder to be identified, overages and underages of IFQ catch to be identified, and for transfers of quota share to be completed. The roll back of unused AI pollock DFA to the sablefish fishery would only affect a subset of the total QS holders: those who hold EBS or AI quota share. However, this would still require that all existing IFQ accounts be frozen and recomputed because many more permits are interdependent as a result of transfer activity. The required cessation of sablefish fishing in the BSAI, and of BSAI QS transfers to accommodate a roll back, is most likely to come in the period from late spring to mid-summer, when weather and logistics are most amenable to sablefish fishing in this area.

Alternative 2.5 would provide for an AI pollock TAC of 10% each from the BSAI yellowfin and rock sole fishery TACs and 80% from the EBS pollock TAC. Only an "A" season would be permitted, and all "B" season and any unharvested "A" season DFA would be rolled back to the EBS pollock fishery. This program would reduce three fishery TACs in the Bering Sea but would "refund" part of the EBS pollock fishery's component of the AI pollock TAC back to the EBS pollock fishery. Currently, the EBS pollock TAC is about 75% of the BSAI OY, and an 80% contribution level, with an assured partial return, would have a small economic impact on that fishery. The two sole fisheries would realize a greater economic impact as neither could participate in the roll back.

### *Monitoring harvest*

Three monitoring and enforcement objectives are considered in this EA/RIR. These are:

- (3.1) Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulation;
- (3.2) "Increased monitoring" alternative. This alternative would have several components (not options). These include: (1) Aleut Corp must let the NMFS Alaska Region know which vessels are authorized by it to fish in the Aleutians, NMFS will provide the Aleut Corporation with a list of eligible vessels, and the participating vessels must carry documentation showing they have such NMFS approval and Aleut Corporation permission; (2) Catcher vessels authorized by the Aleut Corp to fish in the Aleutians may not have on board pollock from the Bering Sea or GOA, and vessels fishing in the GOA or Bering Sea may not have AI pollock on board; (3) AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels); (4) AI pollock may only be delivered to a shoreside processor or stationary processor with an approved catch monitoring control plan; (5) The Aleut Corporation will be responsible for keeping its' harvests and its' agents' harvests within the AI pollock directed fishing allowance and shall designate a quota manager who shall report catch data to NMFS weekly; and
- (3.3) "Observer alternative. All the requirements of Alternative 2 would apply; in addition, under Alt 3, all catcher vessels would be required to have 100% observer coverage, with an option for only 30% coverage for these vessels.

Alternative 3.1, the status quo alternative, imposes no new monitoring requirements. Vessels under 60 feet in length, and AFA vessels, would only be subject to current regulatory requirements. This imposes no additional costs on industry or managers.

Alternative 3.2, described above, imposes five new monitoring and enforcement requirements in addition to those described in Alternative 3.1. These extensions, with estimates of their benefits and costs, are summarized below.

Under the first monitoring and enforcement element for Alternative 3.2, the Aleut Corporation would be responsible for managing the vessels participating in the AI pollock fishery. This will include determining that the vessel has the appropriate permits and meets the requirements of the statute for participation. The Corporation will also be responsible for notifying NMFS about the identities of eligible vessels, and of changes in the list. The Aleut Corporation will provide a letter to the NMFS Alaska Region with a list of approved vessels enclosed before the beginning of the fishery. The Aleut Corp will be required to provide each approved vessel with a letter of authorization for participation in the AI pollock fishery. Vessels will be prohibited from fishing for pollock in the AI unless they have a valid, authorized letter on board. It will be the responsibility of the vessel owner/operator to ensure their authorization is valid before fishing.



Monitoring and enforcement will be facilitated if NMFS knows, in advance, which vessels are authorized to fish for pollock in the Aleutian Islands, and which are not. Requiring vessels to carry documentation stating that they have Aleut Corporation authorization to fish for pollock in the Aleutian Islands will facilitate the efforts of USCG enforcement boarding efforts. Additionally, enforcement agents who are tracking VMS data will have information on which vessels harvesting pollock are allowed to fish within the Aleutian Islands. These measures would be of some benefit to the Aleut Corporation, as it would facilitate NMFS identification of vessels fishing for pollock without Aleut Corporation authorization.

Current plans involve imposing two regulatory obligations on the Aleut Corporation. It must notify the NMFS Alaska Region of vessels authorized to fish in the AI pollock fishery prior to entry by those vessels into the fishery, and it must provide those vessels with documentation that they can carry, indicating that they have been authorized to participate in this fishery. NMFS will incur costs for collecting data and processing the paperwork. Aleut Corporation costs to notify NMFS and provide documentation to vessels are expected to be relatively small. NMFS estimates that these will be under \$200. Most of the cost will be labor costs associated with preparing the letters. The information for these should be available to the Corporation following its negotiations with its affiliated fishing firms.

The second monitoring and enforcement element would prohibit CVs from fishing for pollock in the AI if pollock from the Bering Sea or GOA are on board, and CVs would be prohibited from fishing for pollock in the Bering Sea or GOA if AI pollock are on board. As described in Statute, the Aleut Corporation may choose to contract with AFA vessels to harvest part of their allocation. By definition, these vessels would also be able to harvest pollock in the Bering Sea. Catcher vessels that participate in these fisheries may mix multiple hauls in recirculating salt water tanks for transport back to the plant where the fish are processed. Under these circumstances, if a catcher vessel chose to fish in both the Bering Sea and the Aleutian Islands on the same trip, it would be very difficult for managers to deduct fish from the proper quota. Furthermore, vessel operators may have incentives to misreport the portion of fish harvested in each area, and these circumstances may be difficult to track and enforce. For these reasons, if a catcher vessel enters the Aleutian Islands area at any time during a trip, no pollock from elsewhere may be on board. Compliance with this requirement should not present a significant operational or economic burden to participating catcher vessels, and is a reasonable requirement on the part of the Agency to assure attainment of conservation and management objectives.

Catcher vessels, that may have been fishing for pollock in the GOA or EBS before entering the AI to fish for Aleut Corporation pollock will have to put into port and offload their product before entering the Aleutians. Similarly, vessels fishing in the Aleutian Islands fishery will have to offload any Aleutian Islands fish before entering the AFA fishery.

The third element would extend the scale, sampling station, and observer coverage requirements to all catcher processors and motherships. Observer and catch weighing requirements for AFA-listed catcher processors apply, whenever the vessel is fishing for groundfish off Alaska. However, catcher processors less than 60 feet, and the Ocean Peace (the only unlisted AFA vessel catcher processor) are not required to meet these requirements when fishing for non-AFA pollock. However, at this time, there are no trawl vessels under 60' capable of processing at-sea and endorsed to do so. Thus, NMFS does not anticipate that these regulations will have any additional impact except to the extent that the Ocean Peace voluntarily chooses to participate in this fishery.

The use of at-sea scales and observer work stations in the pollock fishery gives NMFS and the industry accurate and reliable catch data. AFA-listed catcher processors and motherships must currently weigh all groundfish caught off Alaska. Unlisted AFA vessels and CPs under 60 feet are not required by regulation to have the same monitoring measures as AFA listed CPs. On AFA catcher-processors, every haul is observed, all catch is weight by approved flow scales, a motion compensated platform scale is available for

the exclusive use of the observer, and each vessel is required to have an approved observer sampling station. Since an unlisted AFA CP, or any CP under 60 feet LOA that processes at sea, has reduced observer coverage requirements, and may offload at sea, there is no way to determine if product is from the EBS or the AI. By requiring these AFA equivalent monitoring measures on CPs under 60 feet, and unlisted AFA vessels, managers have the ability to account for catch. This creates a more enforceable program.

Any CP under 60 feet or unlisted AFA vessel seeking to participate in the AI pollock fishery must ensure every haul is observed, all catch is weight by approved flow scales, a motion compensated platform scale is available for the exclusive use of the observer, and each vessel is required to have an approved observer sampling station. This will impose costs in the form of equipment acquisition and maintenance, observer coverage, and factory modifications. There would also be additional paperwork and reporting requirements. NMFS will incur costs as it must approve the scales and observer sampling station. However, NMFS does not anticipate that any of these vessels will participate in this fishery.

The fourth element would require all fish harvested in the Aleutian Islands to be delivered to a shoreside processor or stationary floating processor which is operating under an approved catch monitoring and control plan (CMCP). All shoreside or stationary floating processors which process AFA pollock are required to operate under an approved CMCP. This element extends this requirement to any shoreside or stationary floating processor that process pollock harvested in the Aleutian Islands. Each CMCP would be required to address a variety of performance standards. NMFS anticipates that this alternative would extend these requirements to one additional facility.

Currently, a processor accepting deliveries of AFA pollock must have a CMCP approved by NMFS. The regulations provide minimum requirements for the CMCP, including an observer sampling station, an MCP for the observer, and a plan for communicating with the observer. The onus is on the plant to develop a CMCP within the published guidelines. NMFS approves the CMCP. This plan ensures that deliveries can be effectively monitored and that delivery weights will be accurately reported. These plans also help ensure more accurate and reliable reporting by the processor and enable NMFS and the industry to more efficiently resolve reporting discrepancies.

Paperwork Reduction Act (PRA) estimates of the cost of creating a new CMCP are \$8,000 for the firm and \$1,000 for NMFS. Subsequently, CMCPs must be modified as changes are made in plant operations or layout. Costs associated with a modification of a plan would be less than the costs of creating the original. One processing firm in Adak is expected to incur these costs. Additionally, the plant would be required to incur equipment costs and any costs that may result from changes to the plant in the course of complying with CMCP guidelines. Depending on the layout of the existing plant, modifications to the catch-weighing system, the observer work area, or the layout of the plant could be necessary. These costs are difficult to predict but would probably range between \$10,000 and \$70,000.

The fifth element will place responsibility on the Aleut Corporation for not catching more pollock than are allowed under the AI pollock directed fishing allowance. The Corporation would be subject to fines if it or its agents exceeded the DFA. The monitoring procedures discussed under this alternative would allow NMFS to monitor compliance.

This provision should improve control of harvest, and reduce the potential of exceeding the AI pollock DFA. The Aleut Corporation or its agents will contract with fishing operations to harvest and deliver pollock. The Corp., or its agents, will be in a position to monitor catches almost as they occur. The Corp. will have the ability to slow harvests as the directed fishery allocation is approached, and to end harvests when it has been reached. Penalties for overage will give the Corp. or its agents an incentive not to exceed the DFA. NMFS will continue to monitor catches and deliveries through its normal monitoring systems and will have the right and responsibility to close the fishery if that is necessary to protect the stocks.. Costs

appear to be minimal. This approach makes use of catch and delivery monitoring procedures that would be undertaken by the Aleut Corp, its agents, and NMFS.

Under Alternative 3.3, catcher vessels would be required to carry 100% observer coverage. NMFS commonly uses an estimated daily contract rate of \$355/observer to estimate private observer costs. This cost estimate includes \$30 per day towards travel expenses, but doesn't include an estimated \$15/day for food provided by the vessel. In addition, these fishing operations incur economic and operational impacts that are not directly reflected in the money they must spend on observer coverage. For example, fishing vessel operators may have to alter their sailing plans and schedules to pick up or drop off observers; the observers take up limited (and valuable) space on vessels which (especially in the class of vessels under 60 feet) may be at a premium. That is, provisions must be made to accommodate the necessary work of the observer on deck (e.g., observing gear setting and retrieval, recording and sampling of catch and bycatch). The observer also occupies "living space" aboard, which otherwise could have housed additional crew members. These operational impacts may be reflected in both increased operating expenses and reduced harvests and revenues. It is not possible, with available information, to quantify these effects, but they may represent a substantial additional cost of operation for this smallest class of vessels.

The discussion above was predicated on a set of costs that reflect experience in the current 100% and 30% observed fleets. There are a number of reasons to believe that the costs of supplying certified observers to the small boat fleet (which, as noted, has heretofore been exempted from observer coverage requirements) will be higher, on average, than the costs of supplying observers to the larger vessel fleet. These may include, among others:

- Observers are likely to find the working and living conditions more difficult on the smaller boats; they will have fewer amenities, more restricted living and working space, and may not be as safe as when assigned to larger vessels. Wages may have to be higher to continue to attract sufficient numbers of qualified observers to meet the new demand associated with extending coverage requirements to this segment of the industry. These higher wage costs (should they emerge) are not reflected in the present estimates.
- Moreover, the logistical expenses are likely to be higher to supply observers for these small boats. Small vessels are expected to be operating out of the port of Adak. Adak is remote and transportation costs to and from Adak are high, making it more expensive to get the observers to their assigned vessels
- Smaller vessels tend to take shorter (but more frequent) trips than their larger counterparts, in these fisheries. This means that observers will spend more time transferring between operations (and perhaps locations), as each deployment is made for a shorter "trip" duration. The logistical and transportation costs are thus likely to be higher, per unit observer coverage, than under present conditions.
- It may be harder for observer provider companies to supply observers to small operations in a timely manner; thus, fishermen may lose fishing time and revenues due to an inability to obtain the required observer coverage.
- Costs for the vessel associated with carrying an observer may be high. Smaller vessels have less living space and working space than larger vessels. A vessel that is required to carry an observer may find that it must displace a crew member in order to accommodate the observer. This may increase the amount of work for each remaining crew member, lower the overall productivity of the vessel, and ultimately, lengthen the trip.

A further consideration is that the Council has never before required observer coverage on vessels less than 60 feet in length. This action would establish a precedent, and impose observer coverage requirements (and costs) on the AI pollock fleet that are not imposed on other vessels under 60 feet fishing elsewhere in the GOA and BSAI.

The benefit of the observer coverage requirement is the improvement in the monitoring of fishing vessel harvests at sea. Under the Alternatives 3.1 and 3.2, the only catch data for unobserved catcher vessels will be the landings records prepared when the catcher vessel delivers to a shoreside plant, mothership, or catcher processor. These records may differ from actual catches by the amounts of discards or unreported events (e.g., gear loss, bird or marine mammal strikes). By placing an observer on these vessels, fisheries managers may verify at-sea discards as reporting on the fish ticket, obtain additional biological sampling, and monitor marine mammal and seabird interactions.

This may not be a large potential benefit in this fishery. Pollock fishing is a "clean" fishery with relatively small amounts of incidental catch. Pollock fishermen tend not to routinely discard fish at sea (historically, <2% of total catch), although intermittent discards undoubtedly take place. These vessels will, in addition, operate under all prevailing regulations, including IR/TU, which "prohibits" discarding of pollock and Pacific cod). However, under these conditions, the value of the information on discards and unreported events may not be large.

There would be similar effects under a 30% observer coverage option, but less onerous to the fleet economically.

#### *Delay entry of small vessels*

The proposed action would ban participation of vessels less than 60 feet LOA from participating in this fishery for two or five years. The "no action" alternative is to not put any restriction on small vessel activity into the FMP.

The proposed amendments to the BSAI FMP and regulations are meant to provide a framework within which an allocation of AI pollock may be given to the Aleut Corporation. It may be that elements of the framework can be put in place faster for AFA catcher-processors and motherships than for catcher vessels under 60 feet. For example, under monitoring and enforcement Alternative 2, shoreside plants accepting pollock deliveries must have a catch monitoring and control plan in place. Given the short time frame for this action, it may not be possible to accomplish that by January 2005.

The Aleut Corporation is planning to provide fishing opportunities in 2005, to catcher vessels under 60 feet LOA, if the fishery is opened that year. The boats that would fish are most likely vessels that are currently fishing for Pacific cod in the area. A provision in the FMP that explicitly delays the entry of small vessels for from two to five years, until monitoring and management issues unique to this class of vessel are resolved, may impose some cost on the Aleut Corporation and those small vessels in a position to enter the fishery.

It seems likely that the gains from this provision to delay entry of vessels under 60 feet LOA could be small. The provisions that may prevent small vessels from fishing are those in Alternatives 3.2 and 3.3 under the decision on monitoring. These impose conditions on the fishery that parties can either meet or not meet. If a plant with a catch monitoring or control plan is required, but not available, small vessels would not be able to make landings. They would be prevented from making these landings whether or not the FMP contained language that prevented them from entering the fishery. If small vessels were required to carry observers under Alternative 3.3, they could not participate in the fishery unless they had observers. Again, this would not depend on provisions in the FMP. In both of these instances, AFA vessels that met the conditions applicable to their class of vessel could participate in the fishery, even if the smaller vessels could not.

The action alternative appears to impose costs without creating benefits.

### *Economic Development Mandate*

Section 803(d) states that the allocation is "...for the purposes of economic development in Adak, Alaska..." The Council's February 2004 motion, under the heading "Economic Development Mandate" requests the evaluation of an option to "Require an annual report to the Council along the lines of CDQ reports."<sup>4</sup> The purpose of such a report would be to allow the Council to monitor the Aleut Corporation's use of their allocation, to assure it is used to promote the economic development of Adak. Four alternatives are considered in the RIR: (1) no reporting requirement, (2) require an annual report to the Council with no confidential information, (3) require an annual report to either NMFS or the State with elements equivalent to the reports provided by CDQ groups, or (4) require a mid-year (June) 2006 report to the Council so that the Council could consider adjustments to the fishery, as appropriate.

The clearest benefit of a reporting requirement would be the contribution it would make to insuring the advancement of Congresses' distributional goals in making this allocation. The pollock allocation to the Aleut Corporation may be thought of as a lump sum grant to the Corporation for the purpose of the economic development of Adak. This grant will change the constraints faced by the corporation, and may change its allocation of resources. The possibility exists that the corporation may misuse the allocation, by utilizing resulting revenues for purposes unrelated to the development of Adak. To the extent that these are possibilities, and to the extent that monitoring by the Council can detect potential problems, this requirement might help advance Congresses' distributional objectives.

However the Council is not under any legal obligation to monitor the Aleut Corporation's use of the allocation to promote Adak development. The Aleut Corporation has made a significant commitment and investment in the economic development of Adak. It's subsidiary, the Aleut Enterprise Corporation, was formed to manage the corporation's business development projects in Adak. This suggests a congruence of interest between Congress and the Corporation with respect to community development goals and objectives.

Finally the "economic development" purpose of the Aleut Corporation is very broad and could encompass almost any activity funded or undertaken by the Aleut Corporation in or for Adak. Allocations would not necessarily have to be used to generate income for the Aleut Corporation, or result in investments or payment of ongoing operating costs. For example, allocation may be made to owners and operators of vessels under 60 feet in overall length at concessionary terms in order to encourage them to deliver to, or homeport their vessels in Adak. The Corporation may choose to allow crew members or skippers who choose to live in Adak, or enroll their children in local schools, exclusive access to some of the Aleut Corporation allocations in order to encourage the development of a community there. A reporting requirement that sought to be definitive, would have to be extremely comprehensive.

The two action alternatives, reporting non-confidential information, and CDQ-style reporting, would impose costs of the Aleut Corporation and on the Council and NMFS or the State. Under Alternative 5.2, it probably would take a limited amount of effort for the Aleut Corporation to provide a general description of how it was using the pollock allocation for economic development in Adak. In fact, the corporation probably would have to provide such a general descriptive document for its own use in informing board members and shareholders in the existing annual report process for the corporation itself. A general report to the Council would not add to the administrative cost for NMFS to administer the AI pollock allocation, because the report would not be submitted to NMFS and NMFS would not have oversight responsibilities for the economic development aspects of the allocation to the Aleut Corporation. The Council would incur limited costs associated with receiving, photocopying, and allocating time during a Council meeting to address the annual report.

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<sup>4</sup>Section 803 and the Council's motion may be found in Appendices A.1 and A.3.

Alternative 3 requires reports from the Aleut Corporation similar in scope to those required from CDQ groups. Section 4.6 of the EA provides a description of the elements one might expect in a report of this scope. This alternative would provide the highest level of monitoring of whether the Aleut Corporation was using the AI pollock allocation in a manner the Council judged to be consistent with the requirements of the statute. However, it also would be the most costly option to the Aleut Corporation, its affiliated business partners, and NMFS or the State.

### *Managing Chinook salmon bycatch*

The sixth decision element addresses potential problems with Chinook bycatch. Alternative 6.1 would require Chinook bycatch in the AI pollock fishery to count against the BSAI pollock Chinook bycatch cap. If Chinook bycatch in the AI is high, particularly early in the year, the Chinook Salmon Savings Areas could close, possibly imposing economic costs on AFA pollock vessels that must move to another area, to continue fishing. Catcher vessels may face larger costs from this than catcher/processors, because they are more dependent on proximity to port to deliver their product, and because catcher/processors are excluded from the CHSSA during the fall fishing season in any event, and would not be affected by a closure during that time. Chinook bycatch levels in a potential AI pollock fishery are uncertain; it is not clear if they will be of a larger magnitude than the reductions in Chinook bycatch in the BS, as TACs there are reduced to fund the AI allocation. Associated with this uncertainty is the potential for earlier BS CHSSA closure and increased operating costs.

A second alternative, 6.2, would exempt the AI fishery from the cap and savings area closure process. This may potentially allow a larger bycatch of Chinook to occur. It also would set a precedent of allowing a fishery to be prosecuted without a Chinook bycatch avoidance incentive. This approach would reduce the uncertainty faced by AFA pollock fishing operations.

Alternative 6.3 would set a Chinook bycatch cap of 360 fish for the AI pollock fishery. This rate is approximately equal to the produce of the historical 1991-1998 Chinook bycatch rate in the AI (0.024 Chinook per metric ton) and a 15,000 mt funding allocation for the Aleutians. Under this alternative, if the AI pollock fishery reached its Aleutian's cap, the AI portion of the CHSSA would close, but the BS portion of the CHSSA would not be affected. AFA operations could continue to fish in the BS portion of the CHSSA until the BSAI cap was met. Chinook caught during ongoing fishing in the AI outside of the AI CHSSA would continue to count against the BSAI cap. This approach would provide a certain amount of protection against high AI bycatch to AFA fishermen; if the AI cap were reached, an AI area believed to have historically high Chinook bycatch rates would be closed. However, once the area is closed, non-AFA AI fishermen have less incentive to take steps to reduce bycatch.

### **Regulatory Flexibility Act considerations**

The Regulatory Flexibility Act (RFA) was passed in 1980, and substantially amended in 1996. The purpose of the act is to require agencies to consider the impacts of their actions on small entities. The Small Business Administration (SBA) guidelines for the implementation of the act state:

“The Regulatory Flexibility Act...requires agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The RFA applies to a wide range of entities, including small businesses, small not-for-profit organizations, and small governmental jurisdictions.” (SBA, 2003, page 1)

SBA's RFA guidelines state that:

"If, after conducting an analysis for a proposed or final rule, an agency determines that a rule will not have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify. The certification must include a statement providing the *factual* basis for this determination, and the certification may be published in the *Federal Register* at the time the proposed or final rule is published for public comment." (SBA, 2003, page 8)

NMFS has conducted a preliminary examination of the probable implications of the proposed FMP amendment for small entities, and has found that it will not have a "significant economic impact on a substantial number of small entities..." Appendix A5 reviews the factual basis for this conclusion.

Section 803(a) of the Consolidated Appropriations Act of 2004 (CAA) requires that "Effective January 1, 2004 and thereafter, the directed fishery for pollock in the Aleutian Islands Subarea (AI) of the BSAI ...shall be allocated to the Aleut Corporation..Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by Section 307 of the Magnuson-Stevens Fishery Conservation and Management Act..."

For the purposes of the RFA, the Aleut Corporation is best characterized as a holding company. A holding company is "... a company that usually confines its activities to owning stock in and supervising management of other companies. A holding company usually owns a controlling interest in the companies whose stock it holds."<sup>5</sup> The Aleut Corporation carries out most of its significant activities through a variety of other companies whose stock it holds. These include the Aleut Enterprise Corporation, the Adak Reuse Corporation, SMI International Corporation, Tekstar, Inc, Akima Corporation, Aleut Real Estate L.L.C., and the Alaska Trust Company. (Aleut Corp Annual Report, pages 29-30).

The Aleut Corporation is a large holding company entity under the SBA criteria. Aleut Corporation revenues ranged from about \$72 million in 2001 to about \$49 million in 2003. SBA small entity criteria at 13 CFR 121.201 provide a small entity threshold for "Offices of Other Holding Companies" of \$6 million.<sup>6 7</sup>

The vessels used to fish for the subject pollock allocation are expected to "co-op" with the Aleut Corporation (since the latter is responsible for dispersing the component shares of the block allocation to individual local fishing operation). If that is approximately the structural organization, then all those vessels "allocated" a working share of the Aleut Corporation's TAC are "affiliates" of the larger group and are not "small entities", themselves, for RFA purposes. Under SBA guidelines, entities affiliated with large entities are considered large entities for the purpose of an RFA analysis. This criterion means that entities which contract with the Aleut Corporation to harvest or process its allocation of AI pollock are large entities within the meaning of the RFA. Thus the vessels under 60 feet and the AFA vessels that fish this allocation on behalf of the Aleut Corporation must be considered "affiliates," and thus large entities within the meaning of the RFA.

The decisions identified as (1), (3), (4), and (5) in Section 2.1 (allocation size, monitoring, delay vessels < 60 feet, reporting) of the EA are only expected to directly regulate entities which would harvest or process

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<sup>5</sup>(Definition accessed at <http://www.incorporating-online.org/Definition-holding-company.html> on February 25, 2004).

<sup>6</sup>This is sector NIACS Subsector 551, NIACS code 551112. "Other" holding companies is in contrast to "Offices of Bank Holding Companies." 13 CFR 120.201 accessed at <http://www.blm.gov/nhp/news/regulatory/CFR/13CFR121.201.html> on February 25, 2004.

<sup>7</sup>Section 803 "requires" the Aleut Corporation to contract with AFA boats to harvest some (or all, initially) of the pollock allocation. Once they enter into a cooperative agreement, that "entity" is large (i.e., because all its AFA partners are "large", as documented in AFA, and the Aleut Corporation is "large" by affiliation).

the Aleut Corporation allocation of AI pollock. Since, as noted above, these entities are affiliated with the Aleut Corporation, they are all considered large within the meaning of the RFA. Thus, these FMP decisions will not affect any directly regulated small entities. It is NOAA Fisheries' policy that only adverse impacts accruing to "directly regulated" entities, as a result of an action, are appropriately the subject of the RFA. (The RIR, however, treats all economic and socioeconomic impacts, whether direct, indirect, or tangential, without regard to entity size.)

Council decision (2) will establish a "mechanism" by which the AI allocation is "funded," in order that it be contained under the 2 million ton total BSAI groundfish OY. This action will not actually reapportion the various TACs to fund AI pollock. It will simply establish the process by which subsequent action in the annual specifications process will apportion the 2 million ton OY.

The potential "direct effects" on small entities, attributable to funding the AI pollock allocation will be treated during the annual specifications process, an action which always contains an IRFA. This is appropriate, because it is not until the specifications are set that any adverse impacts may actually be "defined" (i.e., TAC shares allocated). The AI Pollock proposed action imposes "no" adverse impacts on any entity, large or small. Rather, it establishes a "process" which will be followed by the Council and NMFS when setting the species/fishery TACs, at which time all attributable impacts to small entities will be assessed, as required by RFA.

To illustrate the point, note that the Council is free to set the TAC at zero, or any number above zero (presumably up to the AI pollock ABC), according to the legislation. If it selects zero, no TAC will be allocated from other fisheries, and there clearly are "no significant adverse effects on a substantial number of small entities." If it selects some "non-zero", but very small TAC (which is within its purview), say 100 mt, there clearly are "no significant adverse impacts...". This logic extends continuously until some, as yet undefined, point at which an amount of AI TAC "does" create a "significant adverse impact..." (unless the funding source is EBS pollock, wherein there are no small entities). However, it is the "setting" of all the annual TACs (AI pollock and its funding sources), and not the mechanism "for" setting, which will result in those impacts, and permit an analysis which has the potential to identify the likely number, distribution, and attributes of the entities impacted. The Council won't actually "set" the TAC amounts until it has the recommended ABCs for the coming fishing year.



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**North Pacific Fishery Management Council  
Steller Sea Lion Mitigation Committee  
April 26, 2004 Meeting**

**Minutes**

The Steller Sea Lion Mitigation Committee (SSLMC) convened April 26, 2004 at the Alaska Fisheries Science Center in Seattle. Some members of the Committee and the public tied in to this meeting via telephone. Chairman Larry Cotter reviewed the agenda (attached). Bill Wilson reviewed the Council's charge to this committee: review SSL<sup>1</sup> protection measures in the Aleutian Islands region to determine whether changes can be made in SSL protection measures to allow small pollock trawlers to operate more safely and efficiently. Wilson noted that the Council explicitly does not want to take any action that would result in reinitiation of formal Endangered Species Act Section 7 consultation.

Members attending this meeting were: Chairman Larry Cotter and members Dave Benson, Julie Bonney, Shane Capron, Tony DeGange, Doug DeMaster, John Gauvin, Terry Leitzell, Chuck McCallum, Matt Moir, Farron Wallace, and John Winther. Bill Wilson attended as NPFMC staff. Brandee Gerke attended from NMFS Protected Resources Division.

**SSL Research Update**

Doug DeMaster reviewed the status of several research projects under way that focus on fishery interactions with SSLs.

1. 2004 is a normal SSL count year. The Southwest Fisheries Science Center, National Marine Mammal Laboratory (NMML), and ADF&G will use a new photogrammetric technique for counting pup and non-pup SSLs in June and July 2004. Large format cameras will take vertical, high resolution photos of rookeries and haulouts, and animal counts will be made from these photos. In the past, oblique photos were used; scientists believe they possess adequate data to calibrate the photogrammetric count method so that these counts can be directly compared with past counts made using oblique photography.
2. Killer whale surveys will occur in several regions of Alaska in 2004. The Alaska Sea Life Center and the North Pacific Universities Marine Mammal Research Consortium both have killer whale projects under way for 2004. The NMML will conduct killer whale surveys in the western Alaska Peninsula and eastern AI region, focusing on photo identification and collection of biopsy samples for genetic studies and to determine transient or resident ecotype. The Alaska Fisheries Development Foundation will deploy remote cameras at some SSL rookeries to document SSL reactions to killer whale presence. John Winter reported that AFDF plans to deploy hydrophones on one of his vessels to collect

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<sup>1</sup> The Steller sea lion Distinct Population Segment (DPS) discussed in these minutes is the western DPS unless otherwise noted.

acoustic information on killer whale vocalization during their depredation of longline catch.

3. The NMFS fishery interaction studies have experienced large budget cuts, although the AFSC plans to continue in 2004, at a reduced level, the Pacific cod studies in the AI region, the pollock studies near Kodiak, and the Atka mackerel studies in the Aleutians. During August and early September, the AFSC will survey distribution of pollock before and after a fishing event in Barnabas Trough and in an unfished control site in Chiniak Trough. The Pacific cod study will continue in 2004 (March/April, September) and 2005 (January and March/April) to examine relative change in cod CPUE (measured by pot fishing off a chartered research vessel) before and after fishing in sites where commercial trawling was prohibited (control) and allowed (impacted). The Atka mackerel study will occur in the Seguam Pass, Amchitka Island, and Tanaga Pass areas where previously-tagged Atka mackerel will be recovered to help identify their abundance, distribution, and movement patterns with respect to SSL trawl exclusion zones.

### **Status of Council's EA/RIR on Aleut Corporation Pollock Fishery**

Wilson provided an update on the alternatives being analyzed in the EA for a proposed Fishery Management Plan amendment that provides for a directed Aleutian Islands pollock fishery by the Aleut Corporation. The Council made some changes in the alternatives during their April meeting. These changes include two additional methods for determining allocation size, one additional alternative for "funding" the allocation, and an additional alternative for providing an economic report on the fishery. The Council also added a sixth decision element with two alternatives that address whether or not Chinook salmon bycatch in the AI pollock fishery would count against the BSAI pollock fishery Chinook salmon bycatch cap and savings areas. Wilson also noted some modifications made by the EA team, based on NOAA Enforcement and US Coast Guard input, to one of the fishery monitoring alternatives. The revised decision elements and alternatives are attached.

### **Proposed Changes to SSL Protection Measures in the Adak Area**

Proposal Presentation: Terry Leitzell, on behalf of the Aleut Corporation and Icicle Seafoods, Inc. (the Aleut Corporation's partner and designated agent for the proposed AI pollock fishery), presented a draft proposal for changes in the pollock and Pacific cod closed areas in the Adak area (see attached). Leitzell reported that his group considered two main criteria in developing this proposal: 1) to increase fishing opportunity close to Adak for improved safety for small vessels and to enhance good product quality, and 2) to provide fishing opportunity in an area where historic pollock catches were high. Leitzell acknowledged assistance provided by Dave Fraser who has fishing experience in the area.

Leitzell proposes that the Council approve opening two areas for directed pollock fishing by AFA-qualified vessels <125 feet LOA and /or <60 foot LOA vessels during the A season. To offset the amount of area to be opened, the proposal includes a

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complementary closure of another area to Pacific cod fishing. Details of the proposal are included in the attached materials. To summarize:

1. Two new open areas:
  - a) Reduce the size of the pollock fishery closures in Kanaga Sound. This will involve reducing the size of closed areas around three SSL haulouts to 3 n mi (Kanaga/North Cape, Kanaga/Ship Rock, and Bobrof Island), and opening an area within the 20 n mi closure around the Adak/Lake Point-Cape Yakak rookery.
  - b) Reduce the pollock closure at the Atka/North Cape SSL haulout from 20 n mi to 3 n mi.

2. One new closure:

Enlarge the Pacific cod trawl fishery closure at the Atka/North Cape SSL haulout from 3 to 10 n mi.

Leitzell noted that the proposal recognizes the potential impacts of the new open areas and the new closed area on SSLs. The proposal considered SSL diet data, SSL pup and non-pup counts in the area and in the region, and data on SSL prey fields (specifically information on the stock status for Atka mackerel, Pacific cod, and pollock).

The SSLMC discussed various elements of the proposal including the anticipated number of vessels likely to participate, how the proposed new open areas might be affected if a Habitat Area of Particular Concern is designated in the area, how the proposal might affect cod fishing in the area proposed for closure, and the proposed restrictions on size of vessels allowed to participate in terms of pollock removal rates. The Committee also discussed whether this proposal might trigger a formal ESA Section 7 consultation.

NMFS Initial Review: Shane Capron provided some information relevant to considering this proposal and its potential effects on SSLs (see attached). Capron indicated the proposal contained a good presentation of the suggested changes and a good review of data to support the proposal. Capron noted that NMFS, Division of Protected Resources, has only been able to provide a general review of the proposal. A more thorough review by PR is necessary to provide a conclusion on the potential effects of this proposal on SSLs.

Capron noted that the western SSL DPS continues to decline in parts of its range, particularly in the western Aleutian Islands area. The decline seems to be occurring in a gradient, with the rate of decline increasing from east to west. Capron reviewed available SSL diet data, noting that geographic and seasonal diet composition is still not well understood and the data are inconclusive. But it appears that in some areas, pollock are important, and in some other areas pollock occur with lower frequency in SSL diets. For example, scat sampling indicate pollock occur at around 1.6% in SSL diets in the central AI, but at 62% in the eastern AI area. Capron suggested that one interpretation for the

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reduced decline in the eastern AI is the higher prevalence of pollock in the diet of SSLs in this region. (Note: the data reported in the Leitzell proposal, cited from Sinclair and Zeppelin 2002, are for the period 1990-1998.)

New SSL diet data not previously published were provided in Table 4 of Capron's handout. Data from SSL scat samples are provided for Adak, Amlia, and Kasatochi. Pollock occur at a higher frequency in SSLs from Adak and Amlia Islands. Capron also noted the uncertainty in pollock stock composition in the Aleutian Islands, and referenced the review of the AI pollock stock as contained in the Council's AI pollock fishery EA. Pollock stock assessment biologists may suggest a break at 174 degrees W and define available harvest biomass in two areas, east and west of 174 degrees. Both of the proposed new open areas are west of 174 and may be affected by any changes the Plan Team might recommend regarding the pollock stock structure in the AI area. Capron also noted that both proposed open areas are essentially the same high harvest areas considered in the previous Biological Opinion and closure of these and other areas was part of the process in developing the current SSL protection measures.

Capron concluded that PR would require more time to give a thoughtful response to this proposal. Discussions could continue on an informal basis to further explore available data on SSL diet and potential impacts of prey removals in the AI region, and perhaps fine tune or revise this proposal such that it ultimately would not result in a jeopardy or adverse modification finding. The Committee should further explore some of the data that suggest a change in prey composition around the Adak area; west of Adak, SSLs tend to have a higher proportion of Atka mackerel and less pollock in their diets, while east of Adak pollock are more prominent and Atka mackerel less; to what extent might this be related to SSL population trends in smaller subareas of the wSSL DPS? More data are needed to explore these kinds of relationships, and more time is required for discussions between the SSLMC, NMFS, and PR. Capron recommended discussions continue along this path on an informal basis and see what might evolve from this process.

Capron also noted that the 6-year closure of the Aleutian Islands to pollock fishing (1999 – 2004) has set up an experiment along the lines of the experimental approach suggested by the National Research council's recommendations. This closure has established part of an experiment from which data might be evaluated to test hypotheses about fishing effects on SSLs. To what degree has the AI pollock stock biomass changed over this time period? How might any changes in prey fields have affected SSLs during this time period? Since SSL scat samples are available for both prior to and during this closure, we have an opportunity to explore possible effects of a large closure on the pollock stock and SSL diet. Capron suggested we take advantage of this to further the scientific understanding of potential fishery effects on SSL populations.

The SSLMC also suggested looking at this issue with some alternative openings/closures that might provide the same or similar benefit to small pollock trawlers yet not impact P cod fisheries. The Committee also suggested evaluating historic pollock CPUE data for an indication of total removals per unit of time; is the removal rate in a specific

geographic area an issue RE: SSL recovery? Capron noted that removal volumes is a concern, and that some CPUE data sets are spotty and may not lend insights; however, further exploration of such issues will be necessary. John Gauvin noted that the historic AI fishery was somewhat opportunistic in nature, and a directed fishery as contemplated for the future might be prosecuted differently.

Conclusion: The SSLMC proposes to continue informal consultations with NMFS PR to explore the Aleut Corporation proposal and possible alternative actions that might provide the desired benefit (increased pollock trawling opportunity near Adak) and yet minimize impacts on SSLs and remain under the jeopardy bar. This will likely be an iterative process involving a give and take process of sharing data and exploring options. NMFS PR recommends continuing in this fashion. The SSLMC will likely meet at least once over the next several months, after NMFS has the opportunity to complete their technical review. The SSLMC will report the results of the informal consultations on this proposal to the Council at their October 2004 meeting. The SSLMC will not suggest any action that would trigger reinitiation of formal ESA Section 7 consultation on SSL protection measures.

### **Analytical Tools**

Cotter recounted the need for some kind of tool or analytical model that would help the SSLMC evaluate the effects of a proposed action on SSLs. The SSLMC had requested that NMFS develop such a tool, if possible, during their June 2003 meeting; at that meeting NMFS reported that the BUMP model would not be acceptable to the SSC and that another approach would be necessary.

Doug DeMaster reported that NMFS has been working on another "tool" that the SSLMC and NMFS might use to evaluate proposed changes in fishing practices that might affect SSLs. DeMaster provided the Committee with some conceptual information on two different models (see attached). Model 1 consists of the following elements:

- 1) Western SSL rookery trend counts for 1991-2000 and 1991-2002 to characterize three main patterns of trajectories
- 2) Assumes that one of 5 possible population trajectories will apply to a given rookery through 2006 absent a change in fishing practices
- 3) Allows for the trajectory of a given rookery to change (improve or worsen) depending on the change in fishing practices
- 4) Evaluates the overall impact of fishing practice changes by a) comparing the estimated SSL population size in 2006 assuming no change in fishing practices to b) the estimated population size in 2006 under a set of new fishing practices.

Model 2 consists of the following elements:

- 1) Considers the most recent SSL survey data from haulouts and rookeries
- 2) Assigns to each rookery or haulout a determination as to whether the animals are present or absent in the breeding season and outside the breeding season

- 3) Identifies classes of fishing practices, and assigns a relative weight to each in terms of potential impacts on SSLs based on average prey removal rates
- 4) Evaluates overall impact as the sum of all the changes that would lessen SSL protection measures minus the sum of all changes that would increase SSL protection measures. This is done by multiplying the number of SSLs potentially impacted in a given season by the relative weight assigned to a class of fishing practice change (changes that worsen protection are positive, changes that lessen protection are negative).

The SSLMC noted that both model approaches involve summing of numerical scores and indexing fishing practices, SSL count trends, etc. and suggested that the models be discussed with the SSC at their June 2004 meeting. If the SSC believes either or both models have merit in evaluating potential changes in SSL protection measures, they be further developed and brought back to the SSC and Council at their October meeting and then used by the SSLMC in future evaluations. The SSLMC noted that it is important to develop a tool for evaluating various proposals for SSL protection measure changes such that alternatives may be evaluated so that no net loss can be clearly measured. The Committee is very supportive of the NMFS model approaches discussed at this meeting and urge the SSC and Council to support their further development.

North Pacific Fishery Management Council  
**Steller Sea Lion Mitigation Committee Meeting**  
Alaska Fisheries Science Center, Seattle  
April 26, 2004

**AGENDA**

This meeting is being convened to review the Council's charge to have the Steller Sea Lion Mitigation Committee (SSLMC) consider changes to the SSL protection measures in the Aleutian Islands to allow small pollock trawlers to operate more safely and efficiently in the proposed Aleut Corporation pollock fishery. This meeting will be available to members of the Committee and the public via teleconference. The call-in number is 907-789-6622. The meeting is in the National Marine Mammal Lab conference room, Building 4 at the AFSC.

April 26 – 9:00 AM – 5:00 PM

1. Introductions and opening remarks (Cotter)
2. Council motion on Aleut Corp AI pollock fishery and charge to the SSLMC (Wilson)
3. Update on the EA/RIR on Aleut Corp AI pollock fishery (Wilson)
4. Industry proposals for SSL protection measure changes in the Aleutian Islands
5. NMFS Protected Resources position on AI SSL protection measures (Capron)
6. Update on AFSC fishery interaction studies, AI SSL counts, and other related research (DeMaster)
7. Discussion and recommendations from SSLMC to the Council
8. Future activities of the SSLMC
9. Action Items, Closing Remarks (Cotter)

Contact Bill Wilson at the Council offices if you have questions (907-271-2809) or [bill.wilson@noaa.gov](mailto:bill.wilson@noaa.gov).

**FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL**  
**North Pacific Fishery Management Council**

**Name of Proposer:** The Aleut Corporation, Aleut Enterprise Corporation,  
and Icicle Seafoods, Inc..

**Date:** April 12, 2004

**Contacts:** Sandra Moller, phone 907-562-5444.  
Terry Leitzell, phone 206-281-5372.

**Fishery Management Plan:** BSAI Groundfish.

**Brief Statement of Proposal:**

The proposal is to open two discrete inshore areas in the Aleutian Islands for directed pollock fishing by AFA-qualified catcher vessels less than 125' LOA and by vessels less than 60' LOA during the pollock A Season. **The full proposal and supporting materials are attached.**

**Objectives of Proposal: (What is the problem?)**

Recent federal legislation directs that an allocation of Aleutian Islands pollock be made to The Aleut Corporation for the economic development of Adak, Alaska. Steller sea lion protection regulations prohibit directed pollock fishing in Steller sea lion Critical Habitat in the Aleutians, essentially eliminating safe fishing areas for smaller vessels. The proposal would provide two areas for pollock fishing that are safe and within reasonable running time of Adak.

**Need and Justification for Council Action: (Why can't the problem be resolved through other channels?)**

The sea lion regulations are Magnuson-Stevens Act regulations under the jurisdiction of the North Pacific Fishery Management Council and the National Marine Fisheries Service.

**Foreseeable Impacts of Proposal: (Who wins, who loses?)**

The proposal would open some areas currently closed to pollock fishing, providing opportunities for some smaller pollock trawlers. Since some cod fishing area restrictions may be expanded as an offset to any possible negative effects on sea lions, cod trawlers working near Adak would have smaller grounds. In some cases, the vessels gaining pollock grounds and losing cod grounds may be the same vessels.

**Are there Alternative Solutions? If so, what are they and why do you consider your proposal the best way of solving the problem?**

Different areas could be opened to pollock fishing. The areas in the proposal are the most likely to provide safe fishing grounds while limiting negative impacts on the prey field for sea lions.



**Supportive Data & Other Information: What data are available and where can they be found?**

The attached detailed discussion provides data and references.

**Offsetting Measures. What protection measures might be increased in the region to offset the proposed action?**

The proposal would increase the trawl cod closure at Atka/North Cape from the current three miles to ten miles.

**Signature**

## **Attachment to Proposal to Open Two Small Areas in the AI to Pollock Fishing**

### **A. Proposal.**

#### **New Open Areas.**

1. **Kanaga Sound.** Reduce pollock closures in Kanaga Sound to open a small area for midwater trawling by vessels under 125' LOA. The new open area would be within a box with the following coordinates:

- West of 177' 13"
- East of 177' 34"
- North of 51' 47"
- South of 52' 00"

The 20-mile closures at three haulouts would be reduced to three miles—Kanaga/North Cape, Kanaga/Ship Rock, and Bobrof Island. The 20-mile pollock closure from the haulout at Tanaga/Bumpy Point would remain at 20 miles except within the box. The 20-mile pollock closure at the rookery at Adak/Lake Point-Cape Yakak would remain at 20 miles except within the box (in that section of the arc where it intersects the Kanaga/North Cape and Kanaga/Ship Rock three-mile circles).

2. **Atka/North Cape.** Reduce the pollock closure at the Atka/North Cape haulout from 20 nm to 3 nm.

#### **New Closure**

Expand the trawl cod closure at Atka/North Cape from 3 nm to 10 nm.

### **B. Supporting Arguments.**

#### **1. SSL Diet in the Central Aleutians.**

Pollock is not an important component of Steller sea lion diet in the Central Aleutians (Yunaska to Kiska) during winter months (December to April), not even making the top ten species by frequency of occurrence (FO) in scat samples. Sinclair and Zeppelin did extensive diet studies by collecting and analyzing scat samples from thirty-one haulouts in the winter months across the range of the western population. The work covered the period from 1991-2000 and is cited in both the 2001 Biological Opinion and the 2001 Supplemental EIS on Steller sea lions.

The study found that pollock FO in the period 1990-1998 was only 1.6% and only 2.7% in 1990-2000. Atka mackerel dominated in both periods at 68.9% and 64.9% respectively. Other significant species were salmon (23.6% in 1991-2000), cod (16.9% in 1991-2000), Irish lord (12.8% in 1991-2000), and cephalopods (13.1% in 1990-1998). Several other species were in the single digits, but higher than pollock. (See 2001 Biological Opinion, pages 10-11, Figure 4.7a, and Tables 3.4 and 4.5a; note: Region 4 in the Sinclair-Zeppelin study is the Central Aleutians—see 2001 SEIS Figs. 3.1-9 and 3.1-8, and pp. 3-8 to 3-15).

The proposal recommends changes only in pollock closures and only in the winter months during the pollock A Season. The area covered by the proposal is closed to Atka mackerel fishing for the entire year, thus eliminating any fishing competition with sea

lions for their dominant prey species. For other species in their diet, sea lions in the Central Aleutians are obviously opportunistic feeders, taking moderate amounts of salmon, cod, Irish lord, and cephalopods. Pollock and numerous other species are included infrequently.

Finally, expansion of certain cod trawl closures will reduce any potential fishing competition for cod, a species with a moderate frequency of occurrence almost ten times as high as the FO for pollock.

## **2. SSL Population Trend in the Central Aleutians.**

The Supplement to the 2001 Biological Opinion (June 19, 2003, p.3) states that the western stock of Steller sea lion non-pups (adults and juveniles) increased from 2000 to 2002 by 5.5%, the first increase in twenty years. The non-pup count increased in the five of the six western stock sub-regions, including the Central Aleutian Islands area between Yunaska and Kiska. The Western Aleutian Islands sub-region decreased dramatically by 23.7%. That area covers from the Russian maritime boundary to Kiska Island, about 200 miles west of Adak. (See June 19, 2003 Supplement to the 2001 Biological Opinion, pp.2-3, Figure I-1, and Table I-2).

In the Central Aleutians near Adak (Adak is in the middle of the sub-region), the relevant haulouts and rookeries increased by substantially more than the 1.1% general increase of non-pups and the pup decrease in the 2000-2002 period (Sease and Gudmundson, December 2002 and NMML Adult Sea Lion Count Database). The changes are as follows:

### **Atka/North Cape Proposal**

Atka/North Cape haulout: 224 non-pups compared to 60 in 1999 and 38 in 1994.

Kasatochi I. rookery: 529 non-pups compared to 390 in 2000. 302 pups compared to 247 in 1998.

The Kasatochi rookery is about 50 nm west of the Atka/North Cape haulout and would continue to be protected to 20 nm for pollock. The non-pup and pup counts for Kasatochi are the highest since the 1980's. This area appears to have sustained growth in the Steller sea lion population for over 10 years.

### **Kanaga Sound Proposal**

Adak (Lake Point-Cape Yakak rookery): 821 non-pups; down from 874 in 2000, but up from 683 in 1998. 363 pups, up from 340 in 1998.

Kanaga/Ship Rock: 242 non-pups, up from 156 in 2000 and 164 in 1998.

Kanaga/North Cape: 12 non-pups, down from 25 in 2000 and 34 in 1996.

Bobrof Island: 28 non-pups, up from 0 in 2000 and 13 in 1998.

Tanaga/Bumpy Point: 26 non-pups, up from 18 in 2000 and 17 in 1998.

The Adak rookery is affected by this proposal only north of Kanaga Island where the 20 nm-circle goes beyond the island. Given the size of the island and the length required to circumnavigate it from the rookery, opening the pollock fishery in Kanaga Sound north of Kanaga Island probably will have little or no effect on the sea lions. Except for 2000, both non-pup and pup counts at the rookery are up significantly over the mid to early 90's. Three of the four haulouts affected show substantial increases in 2002 with the highest counts since the early 1990's. The non-pup count at the four affected haulouts show a 35% increase in 2002 over 2000 (increase of 109 non-pups from 199 to 308).

### **3. Prey Field of Pollock, P. Cod, and Atka Mackerel**

**Atka Mackerel.** Atka mackerel, the top prey species for sea lions, received a 6% increase in the ABC for 2004, with increases in each of the three management areas (541,542,543). The plan team and the Council's Scientific and Statistical Committee approved the increase because of a strong 1999 year class and several conservative factors included in the assessment (2004 SAFE, p. 732 and SSC 12/03 Minutes, p.16). Directed fishing for mackerel in sea lion critical habitat is prohibited east of 178 west, meaning that no directed mackerel fishery may occur in either of the proposal areas—Kanaga Sound and Atka/North Cape.

**Pollock.** The pollock biomass in the Aleutians west of 174 degrees west is stable and has been increasing since 1997 (2004 SAFE, p. 852). The 2002 Aleutian Islands Bottom Trawl survey showed a 3+ biomass of 330,000 mt and a female spawning biomass of 160,000 mt (2004 SAFE, p. 839). The maximum ABC from those numbers would be 67,400 mt, but the 2004 Report recommended a reduction to 39,400 mt as a conservative approach. Since The Aleut Corporation will be requesting only an A Season allocation for 2005, the maximum TAC would be 15,760 mt or 40% of the ABC (or of a different ABC if it is changed). Because of Steller sea lion temporal restrictions, the allocation may cover both the A and B Seasons, but the B Season allocation will be rolled back to the Bering Sea fisheries as soon as possible during the year.

Historically, the domestic pollock fishery (1989-2002; bycatch only 1999-2002) caught most of its pollock in four areas: Kanaga Sound, NW of Atka/North Cape, Seguam Pass and north along the 170 west line (2004 SAFE, p. 870). In 1995-1998, Kanaga Sound and Atka/North Cape were the areas of concentration, with a one-season fishery pursued near Attu in 1998 (Staff Analysis for February 2004 Council Meeting, Appendix C, Figure 6). In three of the last four years of the directed pollock fishery (1995-1997), the great majority of the pollock catch occurred in Area 542 Central Aleutians (57%, 67%, 65%) with most of the remainder caught in Area 541 (Kanaga Sound is in 542 and Atka/North Cape is in 541)(2004 SAFE, p.858). Consequently, the pollock biomass appears to have been concentrated in the areas of the proposal during the winter season. Given that concentration and a probable effective TAC of only 40% of a conservative ABC, the proposed pollock removals are unlikely to have an impact on sea lions.

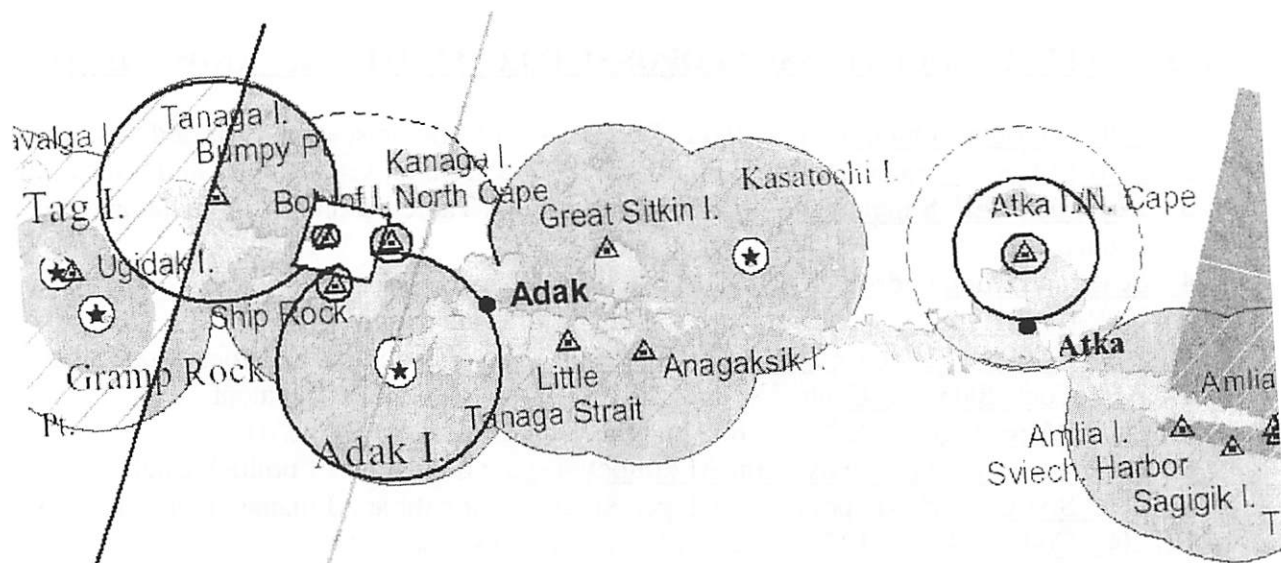
**Pacific Cod.** Cod is managed as a single stock through the BSAI area, with a consistent ratio between the Bering Sea and Aleutians of about 86%/14% (2004 SAFE, p.132). Although the cod stock is below historic highs, it has been stable in the period 1998-2004 with a survey biomass estimate in the 520,000 mt to 620,000 mt range. For

2004, the Plan Team recommended an ABC of 223,000, the same as for 2004, which is 25% below the maximum ABC. The cod TAC for 2004 was increased about 4% by the Council. The cod fishery is spread along the Aleutians with concentrations around Adak and Atka, and in recent years near Attu.

April 12, 2004

**LIST OF REFERENCES IN SSL PROPOSAL FOR ALEUTIAN ISLANDS POLLOCK**

1. 2001 Biological Opinion: pp. 10-11, Tables 3.4 and 4.5a on scat analysis and SSL diet.
2. 2001 SSL SEIS: pp. 3-8 to 3-15, Figures 3.1-9 and 3.1-8 on scat analysis and SSL diet.
3. June 2003 SEIS Supplement: pp.2-3, Figure I-1 and Table I-2 on SSL population trend counts.
4. Sease and Gudmundson on SSL Surveys, 12/2003: on SSL counts.
5. NMML SSL Adult Count Database: on SSL counts at specific sites.
6. 2003 SAFE, p. 732 and SSC 12/03 Minutes, p.16: on Atka mackerel stock assessment.
7. AI Pollock 2003 SAFE: pp. 839 and 852 on AI pollock stock assessment.
8. 2003 SAFE: Figure 1A.2 on p. 807 on areas of pollock catch in the AI.
9. February 2004 Staff Analysis on AI Pollock: Figure 6 on areas of pollock catch.
10. 2003 SAFE: p. 858 on pollock catch percentages in the three AI management sub-areas.
11. 2003 Cod SAFE: pp. 127, 131, and 132 on cod stock assessment.



SSL Proposal  
4/7/2004

Yellow=new trawl cod closure  
Dotted lines=previous pollock closures

### **3 Status of Steller sea lions in the Aleutian Islands**

#### **3.1 Counts and trends in the Aleutian Islands Area**

The latest information on the status of the species can be found in the Supplement at Tables I-1 and I-2. The most recent non-pup count in 2002 yielded 26,602 animals in the western DPS in Alaska (at 259 sites). A detailed description of these counts can be found in Sease and Gudmundson (2002). The next range wide survey is scheduled for the summer of 2004.

The western Aleutian Islands sub-population continues to be the area of most concern for NMFS. A map of these sub-population areas can be found in Sease and Gudmundson (2002; their Figure 1). Non-pup counts have declined from 4,920 in 1991, to just 1,199 animals in 2002 (Table 1). Although all other sub-populations in the western DPS increased from the 2000 to the 2002 count, the western Aleutian Islands area group decreased by 27.3% in just two years (Table 1). In the central Aleutian Islands, the sub-population has decreased by 21.5% since 1991, with a small increase from 2000-2002 of 35 animals. The central population appears to be somewhat stable from 1996 through today at around 7,000 non-pups. The cause of the steep decline during the past decade in the Aleutian Islands subarea, especially the west, is unknown. However, there is some speculation that animals in the far western Aleutian Islands may be ranging into Russian territory and are being taken in herring fisheries. Some branded animals from the U.S. part of the population have been observed to be taken in those fisheries.



**Table 2.** Counts of adult and juvenile (non-pup) Steller sea lions observed at all surveyed rookery and haul-out sites for seven subareas of Alaska during June and July aerial surveys from 1991 to 2002, including overall percent change from 1991, 1998, and 2000 to 2002 and estimated annual rates of change from 1991 to 2002 (reprinted from Sease and Gudmundson 2002).

Year	Gulf of Alaska			Aleutian Islands			Kenai to Kiska (n=220)	Western stock (n=259)
	Eastern (n=27)	Central (n=52)	Western (n=35)	Eastern (n=55)	Central (n=78)	Western (n=12)		
1991	4,812	7,872	5,338	5,285	<b>8,959</b>	4,920	27,454	37,186
1992	4,386	7,462	5,495	5,711	<b>8,302</b>	4,531	26,970	35,887
1994	3,989	6,788	5,717	5,875	<b>7,617</b>	3,367	25,997	33,353
1996	2,585	5,744	5,722	5,967	<b>7,170</b>	3,407	24,603	30,595
1998	2,230 <sup>1</sup>	5,022	5,850	5,837	<b>7,671</b>	2,865	24,380	29,475 <sup>1</sup>
2000	2,353	4,817	4,568	4,996	<b>7,000</b>	1,650	21,381	25,384
2002	3,182	4,805	5,023	5,358	<b>7,035</b>	1,199	22,221	26,602
Percent change								
2000-2002	+ 35.2	< 1	+ 10.0	+ 7.2	< 1	- 27.3	+ 3.92	+ 4.80
1998-2002	+ 42.7	- 4.3	- 14.1	- 8.2	- 8.3	- 58.2	- 8.86	- 9.75
1991-2002	- 33.9	- 39.0	- 5.9	+ 1.4	- 21.5	- 75.6	- 19.06	- 28.46
Estimated annual rates of change: 1991 to 2002								
Annual change	-5.7	-5.0	-1.1	-0.5	-1.9	-12.2	-2.2	-3.4
Upper 95 % C.I.	+0.1	-3.6	+1.1	-- <sup>2</sup>	-0.7	-8.1	-1.4	-2.4
Lower 95 % C.I.	-11.5	-6.4	-3.2	-- <sup>2</sup>	-3.2	-16.2	-3.0	-4.4
P	0.054	< 0.001	0.263	0.489	0.012	< 0.001	< 0.001	< 0.001

<sup>1</sup> 1999 counts substituted for sites in the eastern Gulf of Alaska not surveyed in 1998.

<sup>2</sup> No 95% C.I. reported for P= 0.489.

Although this summary of population trends is important, and describes how the larger population is changing over time, investigation of what is happening at specific sites has value in understanding some of the more dynamic changes that occur within these regional areas. The proposal provides some background on the changes at specific sites (section 2). For example, 8 of 10 rookeries in the western DPS which saw non-pup declines by more than 5% were located west of Adak. In the western region,

pup counts were down by 39% from 1998-2002 and is the only region where non-pup numbers continue to decrease, indicating a continued decline that may reach as far as Adak (Sease and Gudmundson 2002). We could also look into the winter distribution of sea lions (Sease and York 2003), which in general shows more movement than the summer distributions and less fidelity to rookery sites.

### 3.2 Prey identification using scat collections

Our knowledge of Steller sea lion prey use is largely through the collection and analysis of scat samples (Sinclair and Zeppelin 2002). In Section B.1 of the proposal, the frequency of occurrence (FO) of pollock in scat samples is discussed in relation to other prey items. This discussion needs some clarification due to various errors in some of the documents being cited and in some incorrect citations being used. For a description of Aleutian Island areas related to sea lions see Sease and Gudmundson (2002), their Figure 1 (e.g., central Aleutian Islands, eastern Aleutian Islands areas). For a description of areas described in relation to foraging characteristics see Sinclair and Zeppelin (2002), their Figure 5.

First, the citation (in the proposal) for scat information in the 2001 BiOp should read Table 3.4 (see Table 1 below). That table cites Sinclair and Zeppelin submitted and the dates 1991-2000 for the data collection. However, those dates were incorrect, it should read 1990-1998, the white paper that it cites is based on those dates. The final Sinclair and Zeppelin paper (2002) published in the Journal of Mammalogy includes a FO of 2.7% for pollock in the winter in area 4 (e.g., central and western Aleutian Islands). In the 2000 BiOp (the proposal cites the 2001 BiOp incorrectly) table 4.5a reports for the same time period 1990-98, an FO of 1.6% just for the central Aleutians in winter which is a subset of the Area 4 (cited in later BiOps and in Sinclair and Zeppelin 2002; see Table 2 below).

**Table 1.** Percent frequency of occurrence of prey items in scat recovered from Steller sea lion scat collected in winter (December - April, 1990-1998; Sinclair and Zeppelin 2002).

Prey Species	Range (n=3762)	Region 3	Region 4
Pollock	63.2	59.1	2.7
Atka mackerel	16.1	24.7	64.9
Pacific cod	27.7	19.6	16.9

**Table 2.** Percent frequency of occurrence of prey items in scat recovered from Steller sea lion scat collected in winter (December - April, 1990-1998; NMFS unpublished data). Reprinted from the 2000 BiOp (their Table 4.4a).

Prey Species	Range (n=1685)	EAI	CAI
Pollock	62.4	62.7	1.6
Atka mackerel	16.5	21.7	68.9
Pacific cod	27.2	21.4	17.2

With those clarifications in mind, the results indicate that the average FO of pollock in the diet of central Aleutian Islands area sea lions from 1990-1998 was low, and that Atka mackerel appears to have been the primary food source for sea lions (i.e., found in 64.9% of scats). Sinclair and Zeppelin (2002) point out that although some of the food items had a low FO when averaged across all samples, some had higher occurrences when looked at during specific seasons or at specific sites (see Sinclair and Zeppelin 2002 their Appendix 1). Specifically, areas within the eastern Aleutian Islands area seem to be more dependent upon pollock (e.g., FO of 67.2% from December - April; 2000 BiOp Table 4.4a). Below, in Table 3, the FO is provided for various sites near Adak in the central Aleutian Islands (Sinclair and Zeppelin 2002; their Appendix 1). Pollock ranked among the top three prey species at both Kasatochi Island (summer) and at Ulak Island (winter), both of which are rookeries.

**Table 3.** Percent frequency of occurrence of prey items in scat recovered from Steller sea lion scat at various sites near Adak Island (Sinclair and Zeppelin 2002). Samples were collected during the summer except for one set of samples collected at Ulak during the winter (as marked).

Site	No. of scats	First	Second	Third
Kasatochi	153	Atka 76	Sal 48	Pol 38
Adak - Lake Pt.	86	Atka 98	Sal 23	Ceph 19
Gramp Rock	59	Atka 98	Ceph 32	Sal 24
Tag	99	Atka 99	Ceph 20	P. cod 5
Ulak	105	Atka 100	Ceph 41	Pol 10
Ulak (winter)	31	Atka 71	Greenling 29	Ceph 23

Beyond the published literature, some data are available on scats collected since 1998 in the central Aleutian Islands area near Adak. Table 4 describes the prey items found in scats at Adak, Amlia, and Kasatochi in 1999 and 2000. At Adak, Atka mackerel was again the number one prey item found in 81% of the scats, with salmon second at 65%, and pollock third at 24%. For Amlia, Atka mackerel was again most frequently found in 93% of the scats, sand lance second at 52%, and pollock and Pacific cod tied for third at 34%. At Kasatochi, the diet was somewhat different dominated more by Pacific cod (40%), salmon (25%), and Atka mackerel (20%) while pollock was found in 5% of the scats. In these samples pollock was much more important in the diet than the average values reported above and likely represent

the local availability of prey as well as the variability in sampling times. Other samples from Tag, Gramp, Adak, and Amlia taken in 2002 are being analyzed now and may be available later this summer if further consultation is necessary.

**Table 4.** Recent scat samples collected in the Adak/Atka region of the Aleutian Islands subarea (NMML unpublished data). Results are reported as the percent frequency of occurrence and all prey items found in over 5% of the samples are shown.

Site	Adak - Lake Point
Collection Date	06/27/99
Number of Scats	39
<b>ATKA MACKEREL</b>	<b>81</b>
<b>SALMON</b>	<b>65</b>
<b>POLLOCK</b>	<b>24</b>
CEPHALOPOD	16
ROCKFISH SP	11

Site	Amlia - Sviech. Harbor
Collection Date	09/06/00
Number of Scats	30
<b>ATKA MACKEREL</b>	<b>93</b>
<b>SAND LANCE</b>	<b>52</b>
<b>POLLOCK</b>	<b>34</b>
<b>PACIFIC COD</b>	<b>34</b>
IRISH LORD SP	21
GADID(NH)	17
SALMON	17
DOGTH.LAMPFISH	14
SAND FISH	14
POLYCAETE UNID	10
CEPHALOPOD	7

Site	Kasatochi - N. Point
Collection Date	03/12/99
Number of Scats	20
<b>PACIFIC COD</b>	<b>40</b>
<b>SALMON</b>	<b>25</b>
<b>ATKA MACKEREL</b>	<b>20</b>
<b>CEPHALOPOD</b>	<b>20</b>
SNAILFISH SP	20
UNIDENT FISH	20
IRISH LORD SP	15
SKATE	15
ROCK GREENLING	10
SMOOTH TONGUE	10
POLLOCK	5
ROCKFISH SP	5

In summary, pollock is an important prey item for Steller sea lions in the Aleutian Islands, especially in the eastern portion of the area and in other locations where pollock may be available in relatively small

aggregations. The variability of pollock in the diet of sea lions is likely to be linked to the availability of the prey and may have a similar pattern as the fishery over the last decade. For example, many fishing locations (including those proposed in this action) are known to intermittently contain fishable densities of pollock. If you averaged fishery catch data out over Alaska State statistical areas across the Aleutian Islands you would probably get a very small catch rate, however, from Figure 2 we know that in local areas the catch amounts can be substantial. Our ability to collect scat samples in the Aleutian Islands, especially in winter, has been limited due to the difficulty in conducting research there.

It is also worth noting that sea lions in the western Aleutian Islands have been declining at the highest rate and yet they have the least amount of pollock in their diet (2000 BiOp, their Table 4.5b). Also from the 2001 BiOp, we know that the ratio of prey biomass available to the biomass consumed by sea lions is the lowest in the Aleutian Islands, and may be lower than what is optimal for their survival (Supplement, their Table III-8).

#### 4 Status of prey for Steller sea lions in the Aleutian Islands

The latest information on Aleutian Islands pollock stock status can be found in the 2003 stock assessment (Barbeaux et al. 2003) and in the March 2004 draft EA for Amendment 82 for the BSAI (EA).

The time series of pollock biomass in the Aleutian Islands is provided in Figure 1 below. In the late 1990's the biomass was in decline, then after 1999 it began increasing. A similar, but more dramatic pattern is seen in the survey biomass results (Table 5), with an increase from 128,060 mt of pollock from 2000 to 356,617 mt in 2002. Issues of stock structure are thoroughly described in the EA, with two major points: (1) generally, the near shore biomass of pollock (critical habitat) is a different stock than the offshore biomass of pollock found off the continental shelf break, and (2) the stock assessment authors did not consider biomass east of 174° W because it is likely that that biomass is part of the Bogoslof population or is linked to it in some way that is not well understood.

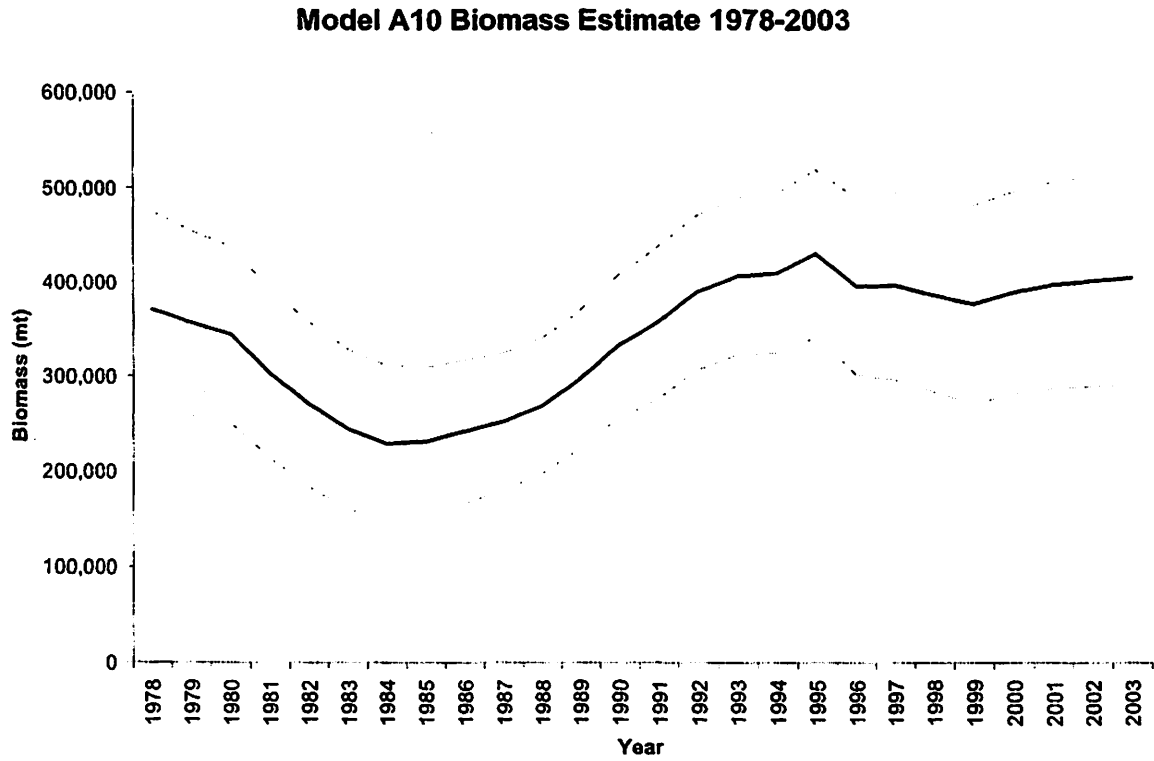
One question that we might ask is whether the recent increase in pollock biomass in the Aleutian Islands might be due to the lack of a commercial fishery for pollock in the last 5 years? This is an issue that could be further explored. The opening of a fishery inside critical habitat might have implications to the upward trend in biomass, especially given the stock dynamics of pollock in the Aleutian Islands. The Aleutian Islands pollock closure provides a unique situation to observe possible changes in predator prey relationships, changes in sea lion demographics, and possible changes in the pollock stock itself.

The nature of the pollock fishery in the Aleutian Islands region has varied considerably since 1977 due to changes in the fleet makeup and in regulations. During the late 1970s through the 1980s the fishing fleet was primarily foreign. In 1989, the domestic fleet began operating in earnest and has continued in the Aleutian Islands region until 1999 when the Council recommended closing this region for directed pollock fishing due to concerns for Steller sea lion recovery.

From 1987 through 1994 between 80% and 100% of the annual catch was taken from the NRA area east of 174°W. The highest annual catch in the Aleutian Islands area was in 1991 with 98,000 tons, 99% of which was removed from the NRA area east of 174°W, mostly from Amukta Pass. Catch at age data reveal that for 1983 through 1994 the Aleutian Islands catch was largely composed of the 1978 year class (Barbeaux et al., 2003). In 1995 the fishery shifted west and from 1995-1997 the majority (80%-100%) of the annual catch was removed from the NRA area west of 174°W. Most of the annual catch from 1995-1997 was removed from the shelf area north of Adak, Kanaga, and Tanaga Islands in INPFC area 542. In 1998 the fishery shifted farther west and the majority (66%) of catch was removed from around Buldir Pass in INPFC area 543. Since 1998 all pollock catch in the Aleutian Islands area has been as bycatch (~1,000 tons annually), primarily in the Pacific cod and Atka mackerel fisheries. Observed pollock catch has been relatively uniformly distributed within the NRA.

Through the 1990s, in the area west of 174°W the fishery was concentrated largely in two areas; northwest of Adak Island and northwest of Atka Island (see Figures 2 and 3). In Figure 2 the two general areas that the proposal would open are circled, which coincides with the two areas of relatively high fishing through the 1990s.

**Figure 1.** Time series of pollock biomass in the NRA region west of 174° W from Model A10 with approximate 95% confidence intervals (from Amendment 82 EA, their Figure 3.2-3).

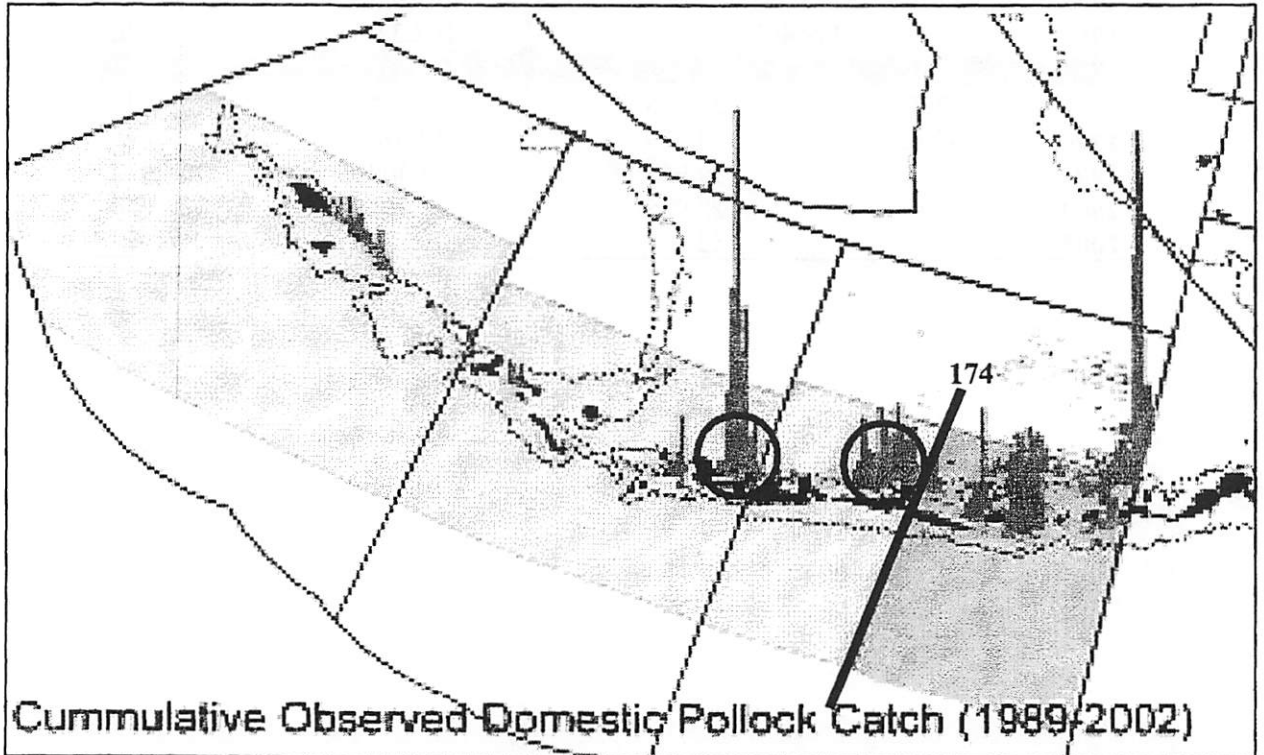


**Table 5.** Pollock biomass estimates from the Aleutian Islands Groundfish Survey, 1980-2002 (from Amendment 82 EA, their Table 3.2-4).

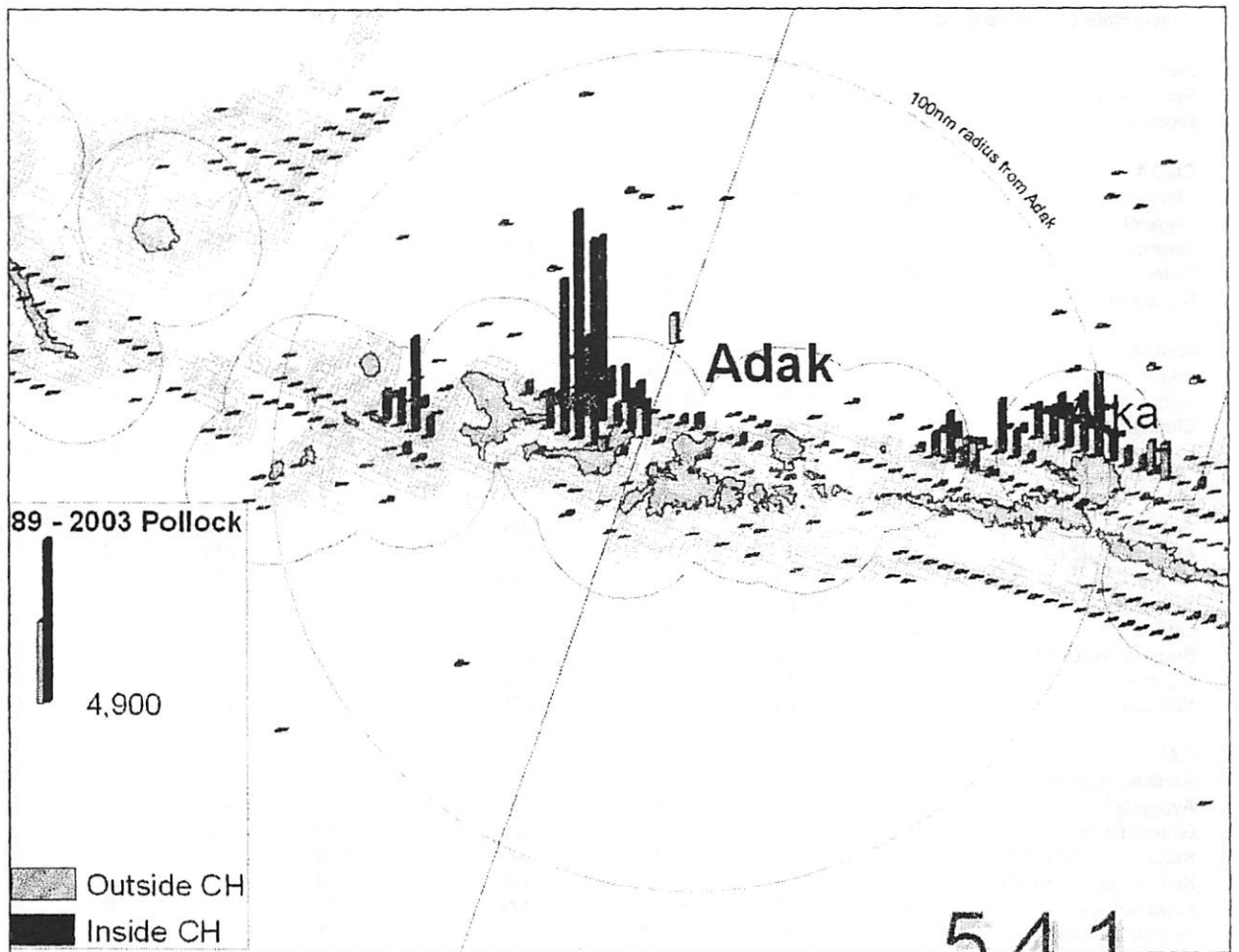
	Aleutian Islands Region		Unalaska-Umnak area (~165W-170W)	Combined
	NRA West (174W-170E)	NRA East (170W-174W)		
<b>1980</b>	243,695		56,732	300,427
<b>1983</b>	495,775		282,648	778,423
<b>1986</b>	439,461		102,379	541,840
<b>1991</b>	83,337	53,865	51,644	188,846
<b>1994</b>	47,623	29,879	39,696	117,199
<b>1997</b>	57,577	39,935	65,400	158,912
<b>2000</b>	76,613	28,985	22,462	128,060
<b>2002</b>	121,915	53,368	181,334	356,617



**Figure 2.** Cumulative observed domestic pollock catch in the Aleutian Islands Area from 1989 through 2002 (from March 2004 draft EA on Aleutian Islands pollock fishery changes, their figure 3.2-2). The two red circles show the historic fishery areas that would be open under the proposal. The dark black line represents 174 West, with the area east of that recommended to be closed by the stock assessment authors for pollock.



**Figure 3.** Locations of observed pollock catches near Adak, 1989-2003



Model 1

Projection Year	2006	Population Scenarios							
		I	II	III	IV	V			
		Factors Used to Multiply Difference in Slopes							
		161%	133%	105%	90%	55%			
	Type	Slope 1991-2002	Slope 1991-2000	2002					
TOTAL				14,290	16,313	15,271	14,290	13,208	12,207
Annual Rate of Change since 2002					3.31%	1.66%	0.00%	-1.97%	-3.94%
<b>EGOA</b>									
Seal Rocks	A	-2.19%	-3.83%	768	904	844	787	759	697
Wooded	A	-11.50%	-14.72%	396	409	358	312	290	245
<b>CGOA</b>									
Chirikof	A	-10.69%	-14.45%	320	370	317	270	248	204
Chowiet	A	-3.05%	-4.63%	582	655	614	574	554	510
Marmot	A	-7.07%	-9.66%	848	949	852	763	721	629
Outer	A	-6.39%	-6.48%	226	177	177	176	176	175
Sugarloaf	A	-5.26%	-6.72%	736	745	701	659	638	591
<b>WGOA</b>									
Atkins	A	-2.00%	-2.35%	560	545	538	530	525	516
Chemabura	B	-1.27%	-1.19%	496	484	482	481	469	467
Clubbing Rocks	A	-1.95%	-2.61%	830	848	825	803	791	765
Pinnacle Rock	A	-1.17%	-2.50%	1,034	1,209	1,144	1,081	1,049	979
<b>EAI</b>									
Adugak	B	-4.99%	-4.51%	201	209	205	201	172	168
Akun/Billingshead	D	2.61%	2.86%	275	245	243	240	239	236
Akutan Cape Morgan	A	-2.29%	-3.03%	783	695	674	653	642	617
Bogoslof	A	-4.90%	-6.86%	357	429	396	364	349	315
Ogchul	B	-7.16%	-6.38%	105	94	91	88	69	66
Sea Lion Rock (Amak)	C	1.72%	0.17%	507	564	529	496	479	442
Ugamak	A	-1.72%	-4.44%	984	1,526	1,363	1,214	1,143	991
Yunaska	A	-5.46%	-7.40%	276	280	258	238	228	206
<b>CAI</b>									
Amchitka/Column Rock	B	-10.52%	-10.16%	71	52	52	51	45	44
Ayugadak	A	-7.05%	-8.86%	182	174	162	150	144	131
Gramp Rock	A	-1.86%	-2.81%	600	736	708	680	666	633
Kasatochi/North Point	E	1.48%	-1.18%	529	1,107	991	885	834	726
Kiska/Cape St Stephen	B	-8.03%	-7.10%	126	143	137	132	98	93
Kiska/Lief Cove	B	-7.42%	-5.69%	174	253	235	218	125	114
Seguam/Saddleridge	A	-1.10%	-2.48%	666	810	765	721	699	651
Semisopchnoi/Pochnoi	A	-12.89%	-14.35%	70	61	58	54	53	49
Tag	B	-2.91%	-2.68%	279	301	298	295	274	271
Ulak/Hasgox Point	B	-6.62%	-5.50%	481	508	485	462	322	304
<b>WAI</b>									
Agattu/Cape Sabak	B	-12.84%	-10.47%	307	369	335	302	141	124
Agattu/Gillon Point	B	-9.13%	-8.15%	258	216	207	199	145	138
Attu/Cape Wrangell	B	-10.06%	-8.35%	264	246	229	213	123	112

**Population Scenarios**

Population Size in Projection Year Given:

- I Increase at 2000-2002 rate
- II Increase at half of 2000-2002 rate
- III No Change in Total N
- IV Decrease at half of 1991-2002 rate
- V Decrease at 1991-2002 rate

Steller Impact of Fisheries Tool -SIFT

(version 1.0 25 April 04)

- Step 1 Assign each rookery or haulout as a year-round or seasonal use area based on counts over last 6 years.
- Step 2 Assign combinations of gear type and spatial use to classes of Potential Impact (consistent with 2000 and 2001 Biops)
- Step 3 Assign point values to classes of Potential Impact (consistent with average removal rates of gear type)
- Step 4 Trade-off Analysis
- identify haulouts or rookeries a change in fishing practices would affect
  - identify the seasons a change in fishing practices would affect
  - for each specific change in fishing practice, assign a class of impact to the appropriate haulouts or rookeries
  - for changes in fishing practices that increase potential impacts, the class is considered positive
  - for changes in fishing practices that decrease potential impacts, the class is considered negative
  - determine the net impact of all proposed changes as the sum of the product of Class of impact and # of animals
- Ste 5 Evaluation No loss in protection - net change is less than 0  
Loss of protection - net change is greater than 0

- Assumptions:
1. The potential impact of a change in fishing practices is independent of trends in the local abundance of SSL
  2. The relative impact of a given change in fishing practices is accurately reflected in the point value assigned to that class
  3. The relative impact of two or more changes in fishing practices can be predicted by a linear combination of effects
  4. The relative impact of a change in fishing practices is independent of location within the range of the wSSL
  5. The relative impact of a change in fishing practices can be predicted based on whether the impact would occur in the BS or non-BS
  6. The wSSL population is only affected by fishing practices that remove pollock, Pacific cod, or Atka mackerel
  7. Other ???

- Key Issues:
1. The relative point values assigned to each class of potential impact by a change in fishing practices
  2. The number of years used to determine whether a rookery or haulout was used year-round or seasonally
  3. The ability to properly weight the impacts of a change in fishing by using the most recent survey data for a given haulout or rookery
  4. Other ?????

Model 2 - 1

Site #	(May - Sept) # of animals in Breeding Season	(October - April) # of animals outside Breeding Season	Fishing Impact Breeding Season	BS Points	Fishing Impact non-Breeding Season	nBS Points	Total Pt Change
1	0	225					
2	1400	500			F	1250	
3	35	0			J	0	
4	0	85	I	0			
5	800	115	-I	-20000			
...							
135	0	600			J	30000	
				-20000			
						31250	11250

Pts	Class	Description
0	A	no effect
0.25	B	jig and pot gear 10-20 nm in CH
0.5	C	jig and pot gear 3-10 nm in CH
1	D	jig and pot gear inside of 3 nm in CH
1.25	E	long line gear 10-20 nm in CH
2.5	F	long line gear 3-10 nm in CH
5	G	long line gear inside of 3 nm in CH
12.5	H	trawl gear 10-20 nm in CH
25	I	trawl gear 3 -10 nm in CH
50	J	trawl gear inside 3 nm in CH

**Evaluation: the proposed changes would result in a loss of net protection for the wSSL**

Model 2-2

**PROWLER FISHERIES**P.O. Box 1364  
Petersburg, Alaska 99833Phone (907) 772-4835  
Fax (907) 772-9385

May 27, 2004

REC

MAY 28 2004

N.P.F.M.C.

Stephanie Madsen, Chair  
NPFMC  
605 W 4<sup>th</sup> Avenue, Suite 306  
Anchorage, AK 99501-2252**Re: C-4 – Final Action: Amendment 82 - Aleutian Island Pollock Allocation**

Dear Ms. Madsen and Members of the Council,

Prowler Fisheries operates freezer-longliners that fish primarily for p-cod, sablefish, and turbot, i.e. non-pollock groundfish. The proposed allocation of Aleutian Island pollock has the potential to have impacts on those that participate in non-pollock fisheries particularly in the following areas:

- 1.) Possible impacts from redistribution of SSL mitigation measures and/or initiation of a formal consultation on the biological opinion.
- 2.) Source of the allocation.
- 3.) Effect on the overall BSAI TAC setting process.

In addressing these potential impacts to existing fisheries, the Council motion from Feb 04 states (emphasis added), *"In development of this amendment, the Council will be cautious that any opening of a directed AI pollock fishery is accomplished in full compliance with all applicable law and not disruptive to existing fisheries to the extent practicable."*

**Steller Sea Lions**

The Council Feb 04 motion is very clear as to the possibility of initiation of a formal consultation as a result of the proposed action, *"The Council will avoid taking any action in regards to this fishery which would likely result in an adverse effect requiring a formal consultation under the Endangered Species Act."*

However, in an informal consultation process, there still exists the potential for other fisheries to be impacted in the course of opening/closing areas and/or fisheries in order to accommodate some change in SSL mitigation measures. The proposal that is presently under consideration at the SSL Mitigation Committee involves the expansion of pollock trawl areas and reduction of cod trawl areas. The SSLMC suggested that the proposers look *"...at this issue with some alternative openings/closures that might provide the same or similar benefit to small pollock trawlers yet not impact p-cod fisheries."* This informal consultation process will be ongoing but it should be stated that the cod longline sector has no desire to have additional SSL restrictions placed on its fishery in order to accommodate an expanded pollock trawl fishery. The burden of conservation should be proportional to the impacts of each fishery.



Frozen at Sea Longline Caught Fish

### Source of Allocation

This is a pollock allocation issue and accordingly the allocation should come from within the pollock sector (if necessary to stay under the OY cap). This is a simple and equitable solution for this allocation and rollback mechanism. Taking proportional reductions out of all BSAI groundfish fisheries is complex, inequitable, and inconsistent with previous Council actions.

- 1.) Directed fishing for pollock in the BSAI is limited to AFA vessels. Some portion of the AFA vessels will have the opportunity to participate in the AI pollock fishery (although paying a royalty). Nonetheless, some portion of the AFA vessels will derive a benefit from the AI fishery. Non-AFA and non-pollock vessels will derive no benefit from the AI pollock fishery.
- 2.) Alternative 2.2 is the simplest funding mechanism. (p. 168) *"The relationship between these TAC and DFA calculations, and the other parts of the proposed specifications, would depend on the "funding" alternative chosen by the Council. The simplest case is given under Alternative 2.2, in which the funding is slated to come from the pollock fishery."*
- 3.) Alternatives 2.3 (and 2.4) are very complex. (p. 171) *"Alternative 2.3 funds the AI allocation with equal proportional reductions in the TACs of all other BSAI groundfish fisheries. This alternative affects approximately 80 groundfish TACs and 71 groundfish sideboards, and may effect 176 CDQ allocations."*
- 4.) Rollback mechanisms in Alternatives 2.3 and 2.4 (for uncaught "A" or "B" season) will be complicated. (p. 171) *"The fisheries that would experience the highest impact under this alternative [2.3] are the IFQ sablefish, pollock, Pacific cod, Atka mackerel and CDQ fisheries because of their complex allocations."*
- 5.) The rollback mechanisms in Alt 2.3 and 2.4 may not be timely for all fisheries and could result in unnecessary closures and disruption within the fishing industry. (p. 171) *"Fisheries that are completely utilized would be vulnerable to closures because many of the DFAs and TACs would be reached before the roll back.....therefore, TAC may remain unharvested, representing an economic loss to the industry."*
- 6.) Many of the incidental and non-target species TACs are already fully utilized or are small in size. These TACs have the potential to become a constricting or a limiting factor in fisheries (example: rockfish). Further TAC reductions will only exacerbate this situation.
- 7.) In resolving allocation issues for a species or a fishery, the Council has always stayed within that species or fishery. For example, in the halibut and sablefish longline IFQ fisheries, CDQ groups received 20% of sablefish IFQs in the BS and AI and 20% to 100% (by area) of the halibut IFQs (4B=20%, 4D=30%, 4C=50%.

and 4E=100%). Other gear groups (including trawl sablefish) did not have to "fund" the increased allocations (which are well above the 7.5% multi-species allocation to CDQ). Likewise under AFA and crab rationalization, the increased allocation to CDQ groups came from within those fisheries (and not funded by all fisheries).

While the floor language does provide some guidance as to the "funding" of the allocation, the floor language is not binding. The statute and the floor language clearly leave many elements of this allocation to the discretion of the Council. The floor language clearly recognizes the discretionary authority of the NPFMC in terms of: a.) whether there should be any allocation at all, b.) the size of the allocation (using CDQ guidance), and c.) the decision whether to go over the OY cap for a specified period of time (which is also referenced in statute).

The Council has already exercised its discretionary authority by choosing not to even analyze going over the OY cap. The source of "funding" the TAC is also within the discretionary authority and judgment of the NPFMC as well. It should also be noted that the statutory language has a reference to the intent of implementing this allocation "*...without adversely affecting current fishery participants.*"

#### **Effect on the BSAI TAC Setting Process**

Allocation method Alternative 1.4 is the alternative that reduces the uncertainty to the TAC setting process the most. It defines the upper end of the possible size of the allocation and eliminates the need for a "B" season rollover. However, there may still be a need for a rollover of unused "A" season.

Thank you for this opportunity to comment.



Gerry Merrigan  
Government Affairs  
Prowler Fisheries



## Groundfish Forum

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Seattle, WA 98199  
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June 1, 2004

Ms. Stephanie Madsen, Chairman  
North Pacific Fishery Management Council  
605 West 4<sup>th</sup> Ave.  
Anchorage, AK 99501  
FAX: 907-271-2817

RECEIVED  
JUN - 1 2004  
N.P.F.M.C.

Re: Agenda Item C-4: Aleutian Islands Pollock

Dear Madam Chair,

Groundfish Forum is a trade organization representing 19 'head-and-gut' trawl catcher processors which target non-pollock species in the Bering Sea, Aleutian Islands and Gulf of Alaska. We are writing you regarding the possible Aleutian Islands pollock fishery for the community of Adak.

We support both the Council and Senator Stevens' intent to provide Adak with a means to support and benefit their community. The Aleutian Islands pollock ABC indicates that the stocks are able to support a fishery for Adak. Existing pollock vessels have expressed an interest in harvesting the fish in exchange for payments which will help develop a processing facility for smaller vessels in the future, although there is some question about the ability to harvest this fish outside 20 miles, as required under sea lion protection regulations.

Our concern is with how this fishery will be funded, and to what extent. The Council has stated very clearly that it does not intend to exceed the 2.0 million metric ton MSY cap for the Bering Sea and Aleutian Islands, so any fish which are allocated to the Adak fishery will have to come out of existing (fully utilized) fisheries. Given the track record of this project, we feel it is incumbent on the Council to allocate an initial amount of fish which will allow the participants to 'prove up' their ability to prosecute the fishery while not stranding TAC which could be used by other fisheries.

At the April 2004 meeting, the Council voted to analyze three alternatives for funding the Adak pollock allocation: 1) taking this fish out of the existing pollock TAC; 2) taking fish from all TACs proportionally, and 3) taking 80% from pollock, 10% from yellowfin sole and 10% from rock sole, with any uncaught fish returning only to the pollock fishery.

The third alternative should be dismissed at the start. It is blatantly unfair, taking fish away from the flatfish fisheries to benefit the pollock fisheries. Mr. Anderson, who introduced this alternative, justified it because in his opinion flatfish fisheries 'catch too

much crab.' We could go on at length about the fact that crab PSC levels are biologically insignificant, that most crab caps are not reached anyway, and so on – but that really is beside the point. This is an issue of how to fund the Adak pollock fishery, not how to address crab bycatch in flatfish fisheries.

The second alternative would reduce TACs for all fisheries. This would make sense if somehow all fleets could benefit from the allocation, or if none of the existing fleets benefited. The fact is, however, that the allocation to Adak will be harvested by existing pollock vessels for at least the next several years, and up to 50% of the allocation could be harvested by these existing vessels in perpetuity. Vessels in other BSAI fisheries will not be able to participate in this allocation now or in the future. Why should these vessels fund additional TAC for the pollock fleet?

The only fair and reasonable alternative is to fund the Adak pollock allocation entirely from the pollock TAC. This will likely still result in concessions from other fleets during the TAC-setting process, but at least it will be done by negotiations rather than an up-front re-allocation of TAC from one user group to another.

We feel especially strongly about this because the H&G fleet, in particular, has already made very significant concessions to the pollock fleet. For the past two years, we have agreed to set flatfish TACs *below the historic catch levels* to accommodate increases in the pollock TAC, with the understanding that the reserves would be used to fund the expected shortfalls in our fisheries. The rock sole fishery closed on TAC on April 1<sup>st</sup> this year. Alaska plaice closed April 10<sup>th</sup>. The directed yellowfin sole fishery will close within the next week, before the start of the Council meeting (rather than late September to November as in past years). Our fleet is facing a very serious shortage of fish specifically because we agreed to allow the pollock TAC to increase.

Vessels in the H&G fleet will be forced to either tie up or pursue new fisheries during much of the second half of this year. What rationale can possibly justify taking even more TAC from this fleet to give to the pollock fishery?

In short, the Adak fishery is an allocation of pollock, which will be fished by existing pollock vessels. It should be funded by the existing pollock TAC.

Thank you for the opportunity to comment on this issue.

Sincerely,



T. Edward Luttrell  
Executive Director

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April 27, 2004

Ms. Lisa Lindeman  
 NOAA General Counsel  
 National Marine Fisheries Service  
 709 West Ninth Street  
 Post Office Box 21109  
 Juneau, Alaska 99802

SENT VIA FAX

Re: Aleutian Islands Pollock Allocations

Dear Ms. Lindeman:

We are writing to express the At-Sea Processors Association's position with respect to certain issues involving future Aleutian Islands pollock allocations to the Aleut Corporation. As you know, Section 803 of the Consolidated Appropriations Act of 2004, Public Law 108-99 ("Section 803") requires that all future directed fishing allowances of AI pollock be allocated to the Aleut Corporation. At a recent meeting of the North Pacific Fishery Management Council (the "Council"), the National Marine Fisheries Service ("NMFS") was asked to provide an opinion on the role that the legislative history of Section 803 should play in guiding the Council's decisions with respect to how much pollock should be allocated to the Aleut Corporation and how such allocations should be funded against the two million metric ton cap mandated by Section 803. For the reasons set forth below, the At-Sea Processors Association believes that the Council is obligated to interpret and apply Section 803 in a manner that is consistent with the clear guidance set forth in the statute's legislative history:

Introduction and Background

Fisheries in the Bering Sea Aleutian Islands ("BSAI") Management Area fall under the jurisdiction of the North Pacific Fishery Management Council (the "Council"). The BSAI Management Area is composed of the Bering Sea ("BS") and the Aleutian Islands ("AI") subareas. 50 C.F.R. § 679.2. Each year, the Council establishes the total allowable catch for the BS and AI pollock fisheries. Pursuant to Section 206 of the American Fisheries Act (the "APA"), the total allowable catch for BS and AI pollock

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is allocated as directed fishing allowances among various harvesting sectors. Since 1999, the Council has made directed fishing allowances for BS pollock, but has prohibited directed fishing for AI pollock.

Section 803 requires that all future directed fishing allowances of AI pollock be allocated to the Aleut Corporation. Although Section 803 directs the Council to recommend an AI pollock allocation to the Aleut Corporation "for purposes of economic development in Adak, Alaska," the statute does not provide specific guidance or limitations regarding the appropriate size of future AI pollock allocations to the Aleut Corporation. The legislative history of Section 803, however, states that the Council should consider the size of pollock allocations under the western Alaska community development quota program (the "CDQ Program") in recommending a "reasonable amount" of AI pollock to be allocated to the Aleut Corporation. 150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens). The legislative history also indicates that an allocation of AI pollock to the Aleut Corporation should in no case exceed 40,000 metric tons. *Id.* A question thus arises as to what extent the Council is bound by the guidance and limitations contained in the legislative history in recommending an allocation of AI pollock to the Aleut Corporation pursuant to Section 803.

A question also arises as to how AI pollock allocations made pursuant to Section 803 should be funded against the 2 million metric ton cap mandated by Section 803. The Council is currently considering two options for funding future AI pollock allocations: (1) reducing the Eastern Bering Sea pollock total allowable catch; or (2) taking proportional reductions in the total allowable catch amounts from each of the existing groundfish fisheries in the BSAI, without regard to species. See Draft Environmental Assessment/Regulatory Impact Review for an Amendment to the BSAI FMP and regulatory amendments to allow the allocation of future Aleutian Islands pollock specifications to the Aleut Corporation as Required by Statute, at 3 (March 2004). The language of Section 803 is silent on this issue. However, the legislative history of Section 803 states that AI pollock allocations will be funded "by taking proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary to accommodate the establishment of the Aleutian Island pollock fishery." 150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens). The

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Council must therefore decide how much weight, if any, should be given to the legislative history in evaluating the options for funding future AI pollock allocations.

**Role of Legislative History In Determining the Size of Future AI Pollock Allocations**

Although the legislative history of Section 803 is not binding in and of itself, a court reviewing the Council's interpretation of Section 803 would likely consider whether the Council's interpretation is consistent with the legislative history of the provision. Because the legislative history contains clear guidance with respect to how the amounts of future AI pollock allocations should be calculated, an allocation that contradicts or ignores this guidance could be invalidated by a court.

Subsection (a) of Section 803 requires that all future directed fishing allowances of AI pollock be allocated to the Aleut Corporation, stating:

Effective January 1, 2004 and thereafter, the directed pollock fishery in the Aleutian Islands Subarea (AI) of the BSAI (as defined in 50 CFR 679.2) shall be allocated to the Aleut Corporation (incorporated pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.)). Except with the permission of the Aleut Corporation or its authorized agent, the fishing or processing of any part of such allocation shall be prohibited by Section 307 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1857), subject to the penalties and sanctions under Section 308 of the Act (16 U.S.C. 1858), and subject to the forfeiture of any fish harvested or processed.

Subsection (d) of Section 803 directs the Council to "recommend . . . an allocation under subsection (a) to the Aleut Corporation for purposes of economic development in Adak, Alaska pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.)." However, Section 803 does not specify an amount of AI pollock to be allocated to the Aleut Corporation, and does not provide any guidance or limitations concerning how the appropriate size of future AI pollock allocations to the Aleut Corporation should be calculated.

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Despite the statute's silence on this issue, the legislative history for Section 803 does contain specific guidance concerning the calculation of future AI pollock allocations. The Conference Report for the Consolidated Appropriations Act of 2004 includes the floor statement made by Alaska Senator Ted Stevens with respect to Section 803. With regard to the size of future AI pollock allocations to be made under Section 803, Senator Stevens stated:

The North Pacific Council should consider pollock allocations given to the various groups that participate in the Community Development Quota program to recommend a reasonable amount of the Aleutian Islands pollock to the Aleut Corporation for purposes of economic development in Adak and in no case should this amount exceed 40,000 metric tons. Nothing in this section requires the North Pacific Council to open the Aleutian Islands pollock fishery.

150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens). The legislative history for Section 803 suggests that Congress intended for the Council to consider the size of the allocations made under the CDQ Program in establishing a "reasonable amount" of AI pollock to allocate to the Aleut Corporation. The legislative history also indicates that Congress did not intend for any AI pollock allocation to the Aleut Corporation to exceed 40,000 metric tons. Id.

In determining the appropriate size of future AI pollock allocations to the Aleut Corporation pursuant to Section 803, the Council must decide what weight, if any, should be given to the legislative history associated with Section 803. In analyzing this issue, it is useful to consider the standard by which a court would review the Council's interpretation of Section 803.<sup>1</sup>

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<sup>1</sup> Because the Secretary of Commerce must approve the Council's recommendation, a court would technically be reviewing NMFS's interpretation of the statute, as reflected in the regulations NMFS would promulgate to implement the Council's recommendation. For simplicity's sake, however, this letter will analyze the issue as if a court were reviewing the Council's interpretations.

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Courts review the validity of an agency's construction of a statute under the two-step analysis announced by the Supreme Court in Chevron U.S.A. v. Natural Resources Defense Council, Inc., 467 U.S. 837 (1974). Under this analysis, courts first determine whether "Congress had an intention on the precise question at issue." *Id.*, at 843, n.9. If Congress' intent is clear based on the unambiguous language of the statute, no further inquiry is necessary. *Id.* at 843. See also United States v. Alaska, 503 U.S. 569, 575 (1992). If, however, the statute is silent or ambiguous with respect to the issue posed, Chevron directs courts to determine whether Congress has implicitly or explicitly delegated to the agency the authority to resolve the ambiguity and, if so, whether "the agency's answer is based on a permissible construction of the statute." Chevron, 476 U.S., at 843. An agency's interpretation is "permissible" so long as it is "reasonable in light of the Act's text, legislative history, and purpose." Grand Canyon Air Tour Coalition v. F.A.A., 154 F.3d 455, 466 (D.C. Cir. 1998) (quoting Southern Cal. Edison Co. v. FERC, 116 F.3d 507, 511 (D.C. Cir. 1997); see also Chevron, 467 U.S., at 845 (courts will not disturb an agency's reasonable accommodation of conflicting policies committed to the agency's care by statute "unless it appears from the statute or its legislative history that the accommodation is not one that Congress would have sanctioned.") (quoting United States v. Shimer, 367 U.S. 374, 382, 383 (1961)).

The question to be addressed here is how to establish the size of future AI pollock allocations to the Aleut Corporation. Applying the Chevron analysis, one must first consider whether Congress' intent with respect to this issue is clear from the language of the statute. The language of Section 803 is completely silent on the issue of how much AI pollock should be allocated to the Aleut Corporation. Because the statute is silent on this issue, the inquiry proceeds under the second step of the Chevron analysis.

Under the second step of the Chevron analysis, a court would consider whether Section 803 delegates to the Council the authority to resolve the question. Subsection (d) of Section 803 states that the "Council shall recommend and the Secretary shall approve an allocation . . . to the Aleut Corporation . . . pursuant to the requirements of the Magnuson-Stevens Fishery Conservation and Management Act." A court would likely view this language as expressly delegating to the Council the authority to establish the size of the allocation.

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The question would then become whether the Council's interpretation of the statute is "reasonable in light of the Act's text, legislative history, and purpose." Grand Canyon Air Tour Coalition, 154 F.3d, at 466. The agency's interpretation will be rejected only if it is unreasonable or contrary to clear Congressional intent. United States v. Mead Corp., 533 U.S. 218, 226-27 (2001) (citing Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)). In construing a statute, legislative history is generally recognized as "an instructive source, indicative of what the legislature intended." Singer, Norman J. Statutes and Statutory Construction, § 48:04 (6<sup>th</sup> ed. 2000). Courts generally "look to the legislative history for guidance when the enacted text was capable of two reasonable readings or where no one path of meaning was clearly indicated." Id., § 48:01.

In this case, while the statute is silent, the legislative history of Section 803 indicates a clear Congressional intent to limit future AI pollock allocations to the Aleut Corporation to 40,000 metric tons or less. 150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens). In addition, the legislative history specifically directs the Council to "consider pollock allocations given to the various groups that participate in the Community Development Quota program to recommend a reasonable amount of the Aleutian Islands pollock to the Aleut Corporation for purposes of economic development in Adak . . ." Id. This suggests that Congress intended for the Council to establish a "reasonable" allocation of AI pollock to the Aleut Corporation by referring to the amounts of pollock that have been allocated to the various CDQ communities and/or CDQ Groups under the CDQ Program. Therefore, in establishing an appropriate AI pollock allocation for the Aleut Corporation, the Council might consider:

- The amount of BS pollock that has been allocated to other CDQ Groups (treating the Aleut Corporation either as part of AFICDA or as its own separate group)
- The amount of BS pollock per capita that has been allocated to each CDQ Group
- The amount of BS pollock per capita that has been allocated to individual CDQ communities within CDQ Groups



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- The amount of BS pollock that has been allocated to each CDQ community in relation to the per capita income (or some other indicia of economic activity) for each community

The legislative history of Section 803 also suggests that the Council should consider the same evaluation criteria used by the State of Alaska in making allocation recommendations for the CDQ Program. These evaluation criteria include:

- The population of the community
- The economic conditions in the community
- The size of the allocation requested and the proper allocation necessary to achieve the milestones and objectives as stated in the Community Development Plan
- The degree, if any, to which the project is expected to develop a self-sustaining local fisheries economy, and the proposed schedule for transition from reliance on an allocation to economic self-sufficiency

6 AAC § 93.040.

If the Council interprets Section 803 in a manner that contradicts or ignores the Congressional intent expressed in the legislative history, a court is likely to conclude that the Council's interpretation is invalid. For example, suppose the Council, acting pursuant to Section 803, recommended an AI pollock allocation to the Aleut Corporation in the amount of 50,000 metric tons. A court reviewing the Council's action would first consider whether Section 803 speaks directly to issue of how much pollock should be allocated to the Aleut Corporation. Because the statute is silent on this issue, the court would next consider whether the statute delegates authority to the Council to resolve the question. Assuming the court finds such a delegation of authority, the court would then consider whether the 50,000 metric ton allocation is consistent with Congress' intent in enacting Section 803. The court would likely look to the legislative history for Section 803 as evidence of Congress' intent. Because the legislative history specifies that the AI pollock allocation authorized by Section 803 should "in no case . . . exceed 40,000 metric tons," a court would likely conclude that a

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50,000 metric ton allocation is contrary to Congress' clear intent, and therefore invalid. 150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens).

In sum, the legislative history for Section 803, while not binding in and of itself, is relevant to the determination of how Section 803 should be interpreted and applied by the Council. A court reviewing the Council's interpretation of Section 803 would likely consider whether the Council's interpretation is consistent with the legislative history of the provision. Because the legislative history contains clear guidance with respect to how the amounts of future AI pollock allocations should be calculated, an allocation that contradicts or ignores this guidance would be at risk of being declared invalid by a court.

#### Role of Legislative History in Determining How to Fund Future AI Pollock Allocations

Section 803 is silent as to how the AI pollock allocations authorized by Section 803 are to be funded. However, the legislative history of Section 803 contains explicit guidance on this issue. Under the Chevron analysis employed in reviewing an agency's interpretation of a statute, a court would likely consider whether the Council's interpretation of Section 803 is consistent with the Congressional intent reflected in the legislative history. Therefore, an allocation mechanism that contradicts the mechanism set forth in the legislative history could be invalidated by a court.

The Council is in the process of deciding whether to fund future AI pollock allocations by either (a) reducing the total allowable catch in the Eastern Bering Sea pollock fishery, or (b) reducing the total allowable catch amounts in all BSAI groundfish fisheries. In choosing an appropriate allocation mechanism for funding future AI pollock allocations, the Council must consider what weight, if any, to give to the guidance contained in the legislative history of Section 803.

Similar to the analysis set forth above, a court would apply the Chevron doctrine in evaluating the validity of the Council's decision on this issue. Because the language of Section 803 is silent on how to fund future AI pollock allocations, a court would proceed, under step two of the Chevron analysis, to consider whether Section 803 delegates to the Council the authority to resolve the question. Subsection (c) of Section 803 caps the optimum yield for groundfish in the BSAI Management Area at 2

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million metric tons, but does not state how the 2 million metric tons are to be allocated among the various fisheries in the BSAI Management Area. Given the Council's expertise in establishing harvest limits, a court would likely conclude that Section 803 delegates to the Council the authority to decide how the 2 million metric ton limit will be allocated among these fisheries.

Proceeding under step two of the Chevron analysis, a court would next consider whether the Council's interpretation of Section 803 is "reasonable in light of the Act's text, legislative history, and purpose," or whether it is contrary to clear Congressional intent. Grand Canyon Air Tour Coalition, 154 F.3d, at 466; see also United States v. Mead Corp., 533 U.S. 218, 226-27 (2001) (citing Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 (1984)). Here, the legislative history speaks directly to the issue before the Council, stating that future AI pollock allocations should be funded "by taking proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary . . . ." 150 Cong. Rec. S153 (daily ed. Jan. 22, 2004) (statement by Sen. Stevens). The legislative history provides a clear indication that Congress intended for future AI pollock allocations to be funded by reducing the total allowable catch amounts in all BSAI groundfish fisheries. Therefore, because the legislative history specifies that future AI pollock allocations should be funded through proportional reductions in the harvest limits for all BSAI groundfish fisheries, a court would likely conclude that funding AI pollock allocations through a reduction in the harvest limit for the Eastern Bering Sea pollock fishery is contrary to Congress' clear intent, and therefore invalid.

#### Conclusion

In implementing Section 803, the Council must make decisions on two important points: (1) how much AI pollock to allocate to the Aleut Corporation, (2) how such an allocation will be funded against the 2 million metric ton cap. The language of Section 803 is silent on these issues. However, the legislative history of Section 803 directly addresses and answers these two questions. Under the Chevron analysis employed by courts in evaluating an agency's interpretation of a statute, the Council's interpretation of Section 803 could be invalidated if it is contrary to the clear Congressional intent reflected in the legislative history. Therefore, the Council should

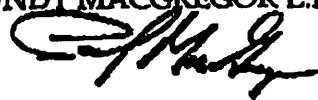
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be guided by the legislative history of Section 803 in deciding how much pollock to allocate to the Aleut Corporation and how such an allocation should be funded.

Thank you in advance for your consideration of this issue.

Very truly yours,

MUNDT MACGREGOR L.L.P.



Paul MacGregor

PM:emb

cc: Dr. James W. Balsiger  
Mr. John Lepore  
Mr. Jonathan C. Pollard

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C-4 AI Pollock

	NAME (PLEASE PRINT)	AFFILIATION
1 ✓	Gerry Jones	Yukon Delta (CDO)
2 ✓	Stephen Toufen	Groundwell Adak Electric Utility
3 ✓	Gloria McMoran	Producers Fisheries <b>PASSED</b>
4 ✓	MARtha m A LAVANSKY	The Alcat Corp.
5 ✓	Sandra Moller	AEC
6 ✓	Uwee Tutjakoffsk	City of Adak
7 ✓	DREW PAUSE	UCB
8	<del>Renwick Stewart</del>	<del>AKTA -</del>
9 ✓	Donna Parker	<del>AKTA -</del> HSCC
10 ✓	Lori Swanson / <sup>(not present CAP)</sup> ED LUTTRELL	GROUNDWISH FORUM
11 ✓	Paul McGee	Ad Sea Fisheries Assoc. <b>PASSED</b>
12 ✓	Thom Smith	APCA
13 ✓	Beth Stewart	AEB
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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.

6/10/04 11:50 am  
Complete SSC  
Draft minutes

**DRAFT  
MINUTES  
SCIENTIFIC STATISTICAL COMMITTEE  
June 7-9, 2004**

The Science Statistical Committee met June 7-9, 2004 at the Benson Hotel in Portland, Oregon.  
Members present:

Rich Marasco, Chair  
George Hunt  
Sue Hills  
Farron Wallace  
David Sampson

Gordon Kruse, Vice Chair  
Doug Woodby  
Terry Quinn  
Pat Livingston  
Seth Macinko

Keith Criddle  
Ken Pitcher  
Franz Mueter  
Steve Hare

**C-2 DPSEIS**

The SSC received staff presentations by Diana Evans and Steve Davis on this agenda item. No public testimony was received.

**C-2 (a) Develop workplan for addressing management policy actions**

The SSC considered the research needed to implement PSEIS policy objectives in the preferred alternative and identified the following high priority research items:

- Continued work to define and implement an improved system for non-target species management including observer-related issues,
- More effort by stock assessment scientists to incorporate ecosystem considerations into individual stock assessments,
- Research to define ecosystem-level reference points, which would necessitate improvements to predator-prey data and multi-species and ecosystem models and improved links to bottom-up processes,
- Research to evaluate present OY ranges, MSSTs for priority stocks, improvements in spawning stock biomass estimates for species in Tiers 4-5 and continued evaluation of harvest policies,
- Programs to review status of endangered or threatened marine mammal stocks and fishing interactions, and
- Research program to identify regional baseline habitat information and mapping.

**C-2 (b) Groundfish FMP revisions**

The SSC commends staff on their efforts to standardize the outline and format of different FMPs. The revised FMPs provide well structured and readable documents with excellent sections on the most pertinent characteristics of major stocks, fisheries, and fishing communities. While originally intended as a housekeeping amendment, the SSC concurs with others that this is a good time to review the document in its entirety and make changes as necessary. The majority of SSC concerns were in regard to definitions and specifications of OY, MSY, TAC, ABC, overfishing definitions, and harvest control rules in sections 3.2.1 and 3.2.2 of the FMP. Because of the importance of these issues, the SSC wishes to conduct a more thorough review of these sections before final action is taken. To this end, a SSC subcommittee consisting of Rich Marasco (chair), Terry Quinn, Gordon Kruse, Pat Livingston, Franz Mueter, and Farron Wallace was established and will conduct a review prior to the next council meeting.



In addition, the SSC noted a number of issues that may require either substantive changes or minor reorganization. The SSC recommends that the following changes be performed and a thorough review of the FMPs and language be conducted before final action.

- A rewrite of the procedures for setting TACs to clarify the Council process for annual TAC-setting and the role of the SSC in the Council process (see also specific suggestions below).
- An expansion of section 3.10 on Council review of the FMP. Currently, this section singles out management objectives (3.10.2), EFH components (3.10.3), and PSC catch limits (3.10.3, BSAI only) for periodic review. However, periodic review of all critical components of the plan should be performed on a regular basis. The SSC suggests that a schedule be developed to specify when, how often, and by whom other components of the FMP are reviewed, including MSY/OY definitions and specification, overfishing criteria, procedures for setting TACs, stock definitions, restrictions, and monitoring and reporting requirements.
- If possible, a mechanism to update section 4.1.2 on the status of stocks should be developed. Staff noted that any changes require an amendment to the FMP. SSC suggested updating stock status on the NPFMC website and reference the website in the FMP.
- The amount of habitat information in the FMP far exceeds information on the biology and dynamics of stocks, which is far more relevant to current management. The SSC suggests, if possible, shortening detailed habitat information and deleting Appendix I unless required by law.
- Current MSY and OY definitions and specifications are outdated and confusing. Moreover, the current definition of OY in GOA FMP, section 3.2.1.1. (*[OY]..is prescribed as such on the basis of the MSY from such fishery, as modified by any relevant economic, social, or ecological factors*), is inconsistent with the MSA, which reads: ... *as reduced by any relevant economic, social, or ecological factors*. The SSC subcommittee will review modifications suggested by Grant Thompson (Notebook, Item C-2(b)2).
- The organization seems to be fitting for easily updating the appendices when new information arrives, though some more thought might be given to including sections of the SEIS that provide overviews of non-fishing and cumulative impacts or threats to resources and to more clearly outline the other institutional components that may be involved in managing human activities in these ecosystems and what the SEIS said were some of the most important threats that might need to be considered.

A number of minor modifications were suggested, including:

- Chapter 2.2, Management approach, lacks a clearly identified policy statement. The 3<sup>rd</sup> sentence in section 2.2 appears to contain the Council's key policy statement. The SSC suggests changing the sentence to read: *"The Council's policy is to apply judicious and responsible fisheries management practices, based on sound scientific research and analysis ..."* and to highlight or move this statement to the beginning of the policy section.
- As noted in SSC minutes from April 2004, the jurisdictional authority with regards to finfish managed by the State of Alaska should be more clearly identified. This is covered in some detail in section 5.4. We suggest including the current section 3.1.2.1 on state regulation of demersal rockfish assemblage under section 5.4 and inserting a general statement with regard to stocks managed jointly with the State or by the State of Alaska in section 3.1.2. A table listing the agency that has jurisdiction of each stock/area combination may be helpful.
- The SSC suggests providing a brief rationale for important quantities specified in the FMP. For example:
  - The TAC of the other species category is set to 5% of the combined TACs for target species without a clear justification
  - Parameter 'a' under Overfishing Criteria (3.2.2) is set to default value of 0.05 without rationale.

- Section 3.2.3.1 of the GOA FMP is confusing because it combines the rebuilding plan for POP with a general procedure for setting TACs. The SSC suggests deleting the discussion regarding rebuilding of POP stocks as well as adding a general procedure for setting TACs (steps 1-3 in section 3.2.3.1) to the BSAI FMP.
- Section 3.2.3.3 of the GOA FMP, which specifies a reserve amount of 20%, should be reconciled with Table ES-2, which specifies a reserve amount of 15%.
- Section 3.3.1 of GOA FMP, which states that vessels less than 26' will be exempt from LLP should be reconciled with Table ES-2 (vessels less than 32').
- GOA FMP has a section on vessel safety (3.8.3), which presumably should be in the BSAI FMP as well.
- Table ES-2 in the GOA FMP should include definition of MSY, as in BSAI
- Some of the species descriptions in the GOA FMP refer to BSAI region (e.g. distribution of rock sole) and should be updated to reflect life history of species in the GOA.
- Section 4.1.1 (GOA FMP): Rock sole is listed as single species, should be northern (*L. polyxystra*) and southern (*L. bilineata*) rock sole.
- GOA FMP, Tables D.1.b/c: replace BSAI in title with GOA
- Section 4.2.3.2 in BSAI was written for GOA, not BSAI, and should be deleted or updated.
- BSAI FMP, section 4.3.2 lists ex-vessel value of GOA groundfish catch (p.85), should be BSAI groundfish catch.
- Boiler plate language needs updating in some sections so that it reflects the present and not initial implementation of each amendment
- Need referencing of the  $F_{40\%}$  review and inclusion of the historical review of the Council process contained therein
- Description of fishing communities needs updating and AFSC sociologist Jennifer Sepez may have information on Alaskan fishing community profiles. It also seems non-Alaskan communities have been ignored.
- Sometimes it is made clear what the source of the information was while other times it is not, making it unclear how recent some of the information was.
- Insufficient consideration of the role of climate in influencing ecosystem processes and species production is included in the descriptive parts of the FMP dealing with climate.
- Elements required of Fishery Ecosystem Plans might also be included in these plans more explicitly.
- A listing of other FMPs that are in place in the region would also be informative to readers of these FMPs.

Differences between the two plans that should be minimized are:

- Table ES-2 for BS makes clear that non specified species are not included in OY but GOA does not
- Table ES-2 for BSAI does not include mention of the fishing year as GOA does in section on time and area restrictions
- Table 3-1 in BSAI lists some main groups of nonspecified species, GOA has no mention of non specified species in its table
- OY definitions differ between the two FMPs. Definition of BSAI OY does not seem to match the way OY is implemented in BSAI (as a range in which individual ABCs are not exceeded) p11 BSAI, p12 GOA
- No TAC definition was included in the BSAI FMP, p11
- There was no mention of PSC limits in the TAC setting procedures of Section 3.2.3 of BSAI, p. 14
- GOA FMP has section 3.6.3.3 on size limits (p.31) which was not contained in BSAI FMP.

- Appendices: GOA FMP is missing a section on marine mammals, neither has a section on seabirds

### **C-3 HAPC**

The SSC heard a report from Cathy Coon (NPFMC) summarizing the HAPC problem statement, purpose and need for action and a proposed set of HAPC alternatives and management measures from which the Council will select for further analysis in an EA. Staff has prepared draft sections of the EA/RIR/IRFA that included the Table of Contents, environmental consequences of the alternatives, and recommended methodology to evaluate the potential effects of HAPC management measures. John Kurland (NMFS) gave a review of public comments and summarized the next steps and timeline to finalize the EFH EIS. Public comment was heard from Whit Sheard (Ocean Conservancy) and Susan Murray (Oceana).

The SSC had a number of specific comments and recommendations for development of the EA/RIR/IRFA during the April Council meeting and requested the analysts consider these when preparing the document. To evaluate the effects of proposed HAPC management measures, analysts proposed using GIS methods to spatially intersect proposed HAPC areas with the State catch areas to calculate the difference in area size. This ratio is then applied to the State area catch data to estimate the amount of foregone catch if fishing is restricted in the proposed HAPC area. The SSC does not endorse this approach because the spatial resolution of summarized catch data will not likely be sufficient to adequately measure any effect if fishing is restricted. The SSC recommends, if possible, maintaining the spatial resolution of the available information so that catch can be distributed in a more precise manner. In addition, analysts are encouraged to explore other sources of information including survey and other fishery information datasets to augment the analysis. If analysts find that confidentiality limits restrict inclusion of the fisheries data, the SSC recommends that they attempt to gain waivers from the fishers to facilitate the analysis.

#### **Specific comments on the EA**

- There needs to be a clearer distinction between areas of "HAPC designation-only", which do not have any associated management measures, and HAPC areas that include restrictions. The figures and tables are not consistently labeled as to which sites are HAPC designation-only.
- Evaluation of the alternatives should explicitly assess the effect of shifting fishing effort out of areas where bottom contact is prohibited to nearby areas, especially areas that received "HAPC designation" status.
- The crafting of the "hybrid" regions in the Aleutian Islands included a subjective delineation of one-mile no bottom contact regions ("buffers") around six coral garden sites. The hybrid regions are all smaller than the regions proposed by NMFS for no bottom contact. Justification given for the one-mile buffer is lacking and the SSC recommends that further analysis on the appropriate size of the buffer be undertaken.
- A great deal of research on the impacts of fishing has been conducted worldwide. Much of this research bears some similarity to the proposed HAPC areas, including cold water corals and tropical coral reefs. The SSC suggests that the EA review these impacts and place Alaska within this larger global context.
- The size of the Cape Ommaney HAPC (Action 2, Alternative 3) was reduced substantially by the Technical Subcommittee in order to allow continued fishing along the 100-meter contour. The

SSC notes that the reduced area, upon which submersible dives demonstrated the presence of corals, is part of a larger geographic feature that may also support similar coral structures. Evidence for the similarity in geographic structure was provided by sidescan sonar and this was not available to the Technical Subcommittee at the time of its meeting. The SSC recommends that the size of the Cape Ommaney HAPC be revisited.

- The SSC is concerned that the broad use of HAPC designation (i.e., without explicit accompanying management measures) will result in a glut of areas for which further research is suggested but no commitment is made. Many of the areas recommended for HAPC designation were identified on the basis of "anecdotal information". It is imperative that firm commitments are made to conduct research on these areas such that future actions are based on relevant science. For example, some changes to the observer program could be explored to help facilitate data collection and research in these areas.

#### EFH Comments

- The Council needs to clarify its habitat policy in regards to "no net loss" (the Council's 1988 habitat policy statement explicitly states a "no net habitat loss" goal).
- The SSC supports the suggested modifications to Alternative 5B of the EFH EIS.
- The SSC supports the use of both type and site designation, which allows for a broader range of management measures to be used in protection of EFH.

Since there will be an on-going need for the consideration of EFH and HAPC issues for the foreseeable future, it would be prudent to develop an overall strategy for identifying areas of importance and to initiate data collection necessary to make well-informed decisions. Data requirements would drive a variety of fisheries and oceanographic research that could provide information on important marine habitats. Additionally, use of existing information should be fully explored. For example, multi-beam and side scan sonar provides a means to create detailed imaging of sea floor, bathymetry and habitat. This technology is widely used today and it may be possible to merge existing habitat maps into a comprehensive database for Alaskan waters. Development of habitat models may extend the value of habitat maps such as models now being attempted for AI corals. The SSC believes that the funding and implementation of such a research program is essential if both fishers and fish habitat are to be protected.

#### C-4 Aleutian Island Pollock

The SSC received a detailed presentation from Bill Wilson (staff) and Ben Muse (NMFS) on the EA/RIR/IRFA to establish an allocation of the Aleutian Islands pollock TAC to the Adak Corporation. Because the main issue here is an allocation issue within the constraints of existing harvest control rules and protections, the main task of the SSC is to review the scientific content of the document and highlight any scientific issues of importance. The document is comprehensive and contains careful descriptions of the alternatives, issues, information sources, and analyses.

The SSC notes the following considerations should be examined:

1. Observer coverage should be maintained at least at the same level as found in other fisheries. In addition, if an appreciable portion of the allocation is to be taken by small vessels under 60', then it will be necessary to have at least 30% coverage of this sector.

2. No matter which "funding" mechanism is selected, it should be ascertained that TAC remains below ABC for any groundfish stock. The current funding mechanisms appear to meet this condition, but it needs to be verified under all conditions.

3. Some evaluation of the precision of bycatch estimation for chinook salmon should be made.

4. The SSC recommends against the allocation alternative 1.3<sup>C</sup> that sets TAC equal to ABC. Alternative 1.4<sup>C</sup> that sets TAC as a fixed function of ABC is also problematic (but less so, because TAC is set much lower than ABC). This specification would set a new precedent that has not been done for any other groundfish specification and may have important negative consequences. The Council's flexibility in setting the AI pollock TAC to account for uncertainty and risk would be removed. The optimal harvest for this stock that determines the TAC may need to be based on ecological or economic considerations not considered in determining ABC. Further, the stock assessment for AI pollock is highly uncertain, and consequently, requiring TAC to be equal to ABC will increase the risk to the AI pollock stock, with potential impacts on Steller sea lions and other ecosystem components. For these reasons, the Council should retain its ability to adjust TAC.

5. In order to improve the AI pollock assessment, the AI pollock survey needs improvement. In particular, better knowledge of the off-bottom portion would provide a better idea of total pollock biomass in this region.

6. The resumption of a fishery in the Aleutians will obviously change the spatial nature of pollock removals compared to the complete closure of this area since 1999. Further clarification is needed for the rationale for determining whether this spatial change is significant or not. The document states that spatial concerns are not an issue for an annual catch near 15,000 mt but may be an issue for a catch near 40,000 mt.

In accordance with the NRC's recommendation for examining the ecosystem effects of fishery removals on SSL, the SSC proposes that when the pollock fishery in the Aleutian Islands reopens, a research program be established to test hypotheses concerning the effects on upper trophic level predators of fishing for pollock. This fishery provides an opportunity to determine how changing the rate of pollock removals will influence the local distribution and abundance of adult pollock (local depletion hypothesis), the abundance, pupping rate and foraging distribution of SSL (prey depletion hypothesis), the reproductive success of seabirds (indices of forage fish abundance and availability, prey quality hypothesis) and the distribution and abundance of forage fish, including age-0 and age-1 pollock. These objectives can be achieved by conducting appropriately timed and thorough surveys of seabird colonies and sea lion rookeries and haulouts, as well as quantitative acoustic surveys of fish distribution and abundance. To account for bottom-up effects that could affect pollock and forage fish distribution and abundance, the SSC recommends measuring physical processes, nutrient availability, and standing stocks of phytoplankton and zooplankton. The program should be a closely integrated, interdisciplinary study that is closely focused on the region to be fished or potentially fished, including inshore waters. The duration of the study should be a minimum of five years to allow observations under the variety of conditions reflecting interannual variation in climate patterns.

### **C-8 CDQ Program**

The SSC received a presentation from Obren Davis (NMFS) on the draft EA/RIR for the proposed regulatory amendment to modify aspects of the Community Development Quota (CDQ) program. There was no public testimony on this agenda item.

The SSC suggests that the draft EA/RIR be revised to address a number of deficiencies before it is released for public review. First, the vocabulary employed throughout the document leads to unnecessary confusion for many readers. For example, there are numerous instances where it is not clear whether the text is referring to limitations that will be applied at the individual CDQ group level or on an aggregate CDQ program-wide level (references to managing "at the CDQ reserve level" or to "non-allocated CDQ reserves" may be understood within NMFS to refer to program-wide accounting but are simply confusing to many readers including the SSC).

Second, the SSC requests that a diagram depicting the CDQ allocation accounting process (under both the status quo and the alternatives) be included in the document.

Third, the draft problem statement is opaque and confusing. In fact, the SSC was unable to determine the precise nature of the problem alleged to be occurring. If, as suggested in the middle of the draft problem statement (p. 4), "the problem. . . is that existing CDQ regulations may not be structured to allow CDQ groups to fully utilize their CDQ target allocations," then the SSC recommends that the document include a discussion of specific examples where the CDQ groups have failed to harvest their allocations. To the extent possible, this discussion should identify the specific causal factors involved in producing these harvest shortfalls and the net economic losses associated with these harvest shortfalls.

Fourth, the two alternatives presented in the document are actually sub-options under a single alternative (i.e., the alternative of managing allocations of "non-target" species at a program-wide level as opposed to the status quo approach of managing these allocations on an individual group basis). Staff indicated that the shift to program-wide accounting of non-target species harvests is not likely to lead to harvest overruns of these species because aggregate harvests (i.e., across all six CDQ groups) have never approached the overall program allocations for non-target species. The SSC is concerned that this outcome may be precisely the result of the demands placed on individual groups to be individually accountable for all of their harvests. Removing the constraint imposed by the demands of individual accountability could reduce the incentive to avoid bycatch and lead to aggregate harvests that are higher than those witnessed in the past under the old incentive regime.

The proposed alternative essentially transfers the responsibility for staying within non-target allocations to NMFS. The SSC is concerned that the shift away from individual accountability represents a fundamental shift away from the rationale underlying all of the Council's various "rationalization" programs including the CDQ program. Arguably, programs built on appeals to markets and individual accountability should use markets and individual accountability to handle the kinds of management issues raised in the document. On one hand, the CDQ program appears to be doing just that (using markets and individual accountability) under the status quo (staff indicated that the CDQ groups regularly trade allocations in advance to ensure that allocations are in fact harvested). The SSC requests that two additional alternatives be added to the analysis. Specifically, an alternative that allowed for post-harvest transfer of non-target species allocations could potentially provide additional flexibility to the groups while retaining accountability (and the incentive structure) at the individual group level. A different alternative to consider would allow harvest overages of non-target species to be rolled over and applied to the subsequent year limits.

Fifth, the species contemplated for permanent designation as non-target species under the current Alternative 2 (what the SSC suggests is better labeled as Alternative 1, Option 2) should be specifically identified to allow for meaningful public comment.

Sixth, the current draft does not adequately consider the potential impacts of the proposed changes on the non-CDQ fisheries and on the fishery resource. As noted above, the document largely relies on faith to predict that harvest overruns will not occur under an aggregate accounting system. If however, overruns

do occur, the document is quiet on the implications for the non-CDQ fisheries and the fishery resources involved. Further, the document is vague on how, precisely, NMFS will attempt to constrain these aggregate harvests (the explanation on p. ES-2 that NMFS would specify additional management measures "as needed" is insufficient.) and the document does not discuss what would happen, in terms of accountability, in the event of a harvest overage. Nor does the document provide a justification for shifting the cost of compliance from the users to the agency; that is, a transferal of compliance costs from those who benefit directly from exploitation of the public resource to the taxpayers at large (and the resource itself). Under the current regime, staff indicated that fines can be levied on individual CDQ groups. Under the aggregate accounting scheme proposed, it is unclear whether any party will be held accountable since responsibility has been shifted to NMFS.

### **C-9 SSL Mitigation Measures**

The presentation was divided into two parts. First, Lowell Fritz (NMML) presented preliminary information on a new analysis tool. Then Bill Wilson (Council staff), Scott Miller, Kristin Mabry, and Steve Lewis (NMFS Juneau) presented the EA/RIR/IRFA for the proposed changes to SSL measures in the GOA. Public testimony was taken from Julie Bonney (AGFDB) and Chuck McCallum.

*New Analysis Tool.* Lowell Fritz briefed the SSC on a conceptual model or "tool" to be used to evaluate if a proposed package of proposals would result in a "net loss" in protection of SSLs. This tool would be used for proposals to trade off open and closed areas rather than proposals such as TAC rollovers. The tool would use weighted rankings based on the type of fishery, the distance from the SSL site, the season of the impact, and the number of SSLs at the affected site. The SSC was shown hypothetical examples of how it could work, the limited scope in which it is intended to be used, and areas in which more work is needed, such as justification for assigned weights. The SSC suggested several refinements to the tool such as adding elements for seasonality, length of time of the fishery, using transformed numbers instead of raw counts, spatial considerations, disturbance, cumulative effects, and presence of alternate prey. Lowell Fritz and Shane Capron (NMFS Juneau, PR) explained that this tool is seen as useful for sifting through proposals until the next formal Section 7 consultation is conducted, and is expected to be used in the SSLMC as a way of evaluating whether a package of proposals result in no net loss of protection for SSL. The informal consultation on the proposed package would then look at the other additional issues the SSC mentioned in qualitative ways.

The "tool" appears to be very similar to the "bump" analysis that was used in previous SSL analyses, and the SSC has not changed its concerns with this kind of analysis, e.g., summing over arbitrary ranks. However, the SSC also recognizes the need for such a tool for coarse sifting among proposed changes to mitigation measures. The SSC was pleased to see at least a partial list of assumptions and recommends development of a complete list, along with a clear statement of the purposes for which the tool is intended. Although the SSC recommends further development of the tool, this in no way implies that the SSC has had adequate time for review of this method as it was handed out at the meeting. We will look forward to a more developed version for review prior to the October meeting.

### *SSL GOA Mitigation Measures EA/RIR/IRFA.*

Mitigation measures contained in the EA/RIR/IRFA included a reduction in the area closed to pollock trawling around the Puale Bay haulout, a closure out to 20 nm to pollock trawling around the Cape Douglas/Shaw Island haulout, a reduction in the area closed to Pacific cod pot fishery around the Kak Island haulout, opening Pacific cod pot fishing to the shoreline around Castle Rock, removal of the stand-down periods between the A and B and C and seasons in the GOA pollock trawl fishery, and change in

the method for rolling over the unharvested pollock TAC in the western and central GOA pollock trawl fishery. The SSC finds it difficult to advise the Council on these proposals. This is because of the lack of data and the uncertainty associated with how both the SSLs and fishery will be affected by the proposed changes.

SSL protection measures established through the Biological Opinion process are based on the assumptions that SSLs in the western population are "food limited" and that some fisheries, particularly those for pollock, Pacific cod, and Atka mackerel can contribute to food limitation, primarily through localized depletion near rookeries and haulouts. Although there is considerable uncertainty as to the role of food limitation in SSL decline and lack of recovery, protective measures, primarily in the form of closures near these sites, were established to mitigate these assumed effects.

During the October 2003 meeting, National Marine Fisheries Service and members of the SSL Mitigation Committee introduced the concept of passing regulations that would increase fishing opportunity among other regulations that would provide SSL protection equal to that lost by the liberalization. This concept, dubbed "no net loss," was to be the standard used to evaluate alternative regulatory changes involving SSL protection measures.

Proposals opening additional areas around the Puale, Kak, and Castle haulouts and the additional closure around the Cape Douglas/Shaw Island haulout may not meet the "no net loss" standard, if it was applied, primarily because winter surveys have not detected SSLs at the Cape Douglas/Shaw Island site during the period it would be closed and because very low pollock harvests have occurred in this area. However, the SSC recognizes that these proposals involve a small number of haulout sites occupied by a relatively small number of SSLs and any effect on the overall western population would likely be impossible to measure. Further, regarding other considerations, the proposal to open Castle Rock to the shoreline to fishing for Pacific cod with pots raised concerns about possible disturbance to SSLs using this haulout.

The original intent of stand-downs between seasons was to ensure that there would not be one fishing pulse with high catch rates. However, this goal is accomplished by having separate seasons. While there could be a redistribution of the catch temporally, it is unlikely to be significant.

The original intent of the method for rolling over of under-harvested Pollock TAC in the GOA, as with the stand-downs, is to prevent the concentration of harvest in space and time. Current regulations actually allow very large roll-overs that are contrary to the original intent of limiting the amount to 5% of the annual TAC by area, or in other words 20% of any seasonal quota. While there could be a redistribution of the catch in time and space, it is unlikely to be significant.

The SSC is concerned about the apparent inconsistent use of the no net loss standard. Comments from Shane Capron during presentation of the new analysis tool (see first part of this section) indicated that although the tool is designed to evaluate no net loss, a Section 7 consultation will take into account additional factors. The proposed development of a new no net loss analytical tool, reported by Lowell Fritz at this meeting, adds to the confusion about the types of information and procedures to be used by NMFS and the Council to evaluate potential changes to SSL mitigation measures in the future. The no net loss standard may not be the only consideration, but clarity and consistency is needed.

The SSC had questions regarding the fisheries analysis contained in the EA/RIR/IRFA. The spatial resolution of the summarized catch data was not sufficient to adequately measure the effects of closing and area to fishing. Only a few vessels recorded harvest in some of the potentially affected areas and confidentiality limits restrict inclusion of these data. For many years examined, there were no harvests recorded. This lack of historical fishing appears to contradict the emphasis on local fleet reliance on these areas. Public testimony indicated that more fishery activity took place in the Chignik area than was



indicated in the analysis, however, there may still be too few boats fishing in an area to be able to report the catch. The fishery analysis is severely constrained to report meaningful effects on harvest and revenue. Because of this the analysts had to treat the potential effects of the alternatives in what was called "a qualitative way" but several SSC members suggested that a qualitative analysis could and should have been more rigorous even considering the large uncertainties when such small areas are considered.

The SSC recommends that any changes in SSL protection measures be used as an opportunity to examine how changing fishery effort and distribution may affect SSLs. The study should include surveys of pollock and Pacific cod before and after the fishery to determine if prey depletion occurred. Additionally effort should be made to determine if the change in fishing effort is accompanied by changes in the number of SSLs present during summer and winter, and if possible if there are detectable changes in SSL diet.

#### **D-1 Scallop FMP**

Diana Stram (NPFMC staff) provided a discussion on the initial review draft EA/RIR/IRFA for amendment 10 to the FMP for the scallop fishery off Alaska. Public testimony was provided by Teressa Kandianis (North Pacific Scallop Co-op). The SSC recommends that the document be augmented to address the following issues before it is released for public review:

- Include data and a discussion of historic and recent trends in the inflation-adjusted exvessel and first-wholesale prices of scallops.
- Include data and a discussion of the full history of landings from the Alaska fishery, and a corresponding time series of US and World landings.
- Include a discussion of where catches have been off-loaded, the relative importance of scallop landings to regional economic activities in those ports, and how off-loading patterns might change under the proposed alternatives.
- Revise the document to eliminate confusing references to "statewide waters" and instead use terms such as "State waters", "Federal waters inside Cook Inlet", "Federal waters outside Cook Inlet", etc.
- If possible, include a breakeven analysis of the current fishery and a projection of changes that could be anticipated under the alternatives.

#### **D-4(b) Crab Overfishing Definition**

The SSC received a report on the Crab Plan Team (CPT) meeting of May 18-19 by Diana Stram and Doug Pengilly (ADF&G, CPT Chair). Jack Turnock (NMFS) gave a presentation on progress by a NMFS-ADF&G working group toward development of revised overfishing definitions for BS/AI crab. Gary Painter (Bering Sea Fisheries Research Foundation) provided public testimony.

Principal topics discussed at the CPT meeting included implications of the data quality act on the Crab Plan Team, survey catchability studies for snow crab, industry-funded augmentation to the NMFS annual trawl survey, updates on crab rationalization, and a report on overfishing working group progress. The CPT seeks guidance from the Council as to whether the CPT should continue their spring meeting in the future in addition to their usual fall meeting. CPT members felt that the spring meeting was a useful venue to discuss important crab issues, because there is often insufficient time to do so at their fall

meeting that tends to focus on stock assessments and fishery management. The SSC continues to support the CPT meeting in spring, as long as there are sufficient issues to justify this meeting.

Original consideration of crab overfishing definitions occurred in April and June 1998. The SSC had several concerns about the overfishing definitions at that time. First, numerical values were used, instead of frameworking a general procedure. Second, there was not always more conservatism with less information. Third, there were differences between definitions between the groundfish and the crab FMPs that did not seem to be necessary. Because the CPT was planning to review the crab definitions every five years, the SSC accepted the proposed definitions.

At the February 2004 Council meeting, the SSC heard a report on the progress of the NMFS-ADF&G working group. At that time, the SSC requested that the working group focus on a careful evaluation of crab overfishing definitions, including a more formalized procedure for setting overfishing levels, such as the tier system used for groundfish. At the present meeting, an outline of such a tier system for crab was presented. The plan for further analysis, including simulation modeling, appears reasonable to the SSC and resolves many of the issues raised in 1998.

The SSC offers the following comments to the crab working group:

- Under tier 2, the scalar  $F_{\text{target}}/F_{\text{pmsy}}$  is used to buffer the difference between ABC and OFL. The SSC was confused by the use of the proxy  $F_{\text{pmsy}}$  when an estimate of this value  $F_{\text{msy}}$  is available. Part of the SSC's concern may be semantic. Perhaps it would be better to define the scalar in terms of a limit reference point ( $F_{\text{lim}}$ ), as in the National Standard Guidelines, and then to assign  $F_{\text{pmsy}}$  as the available reference point for  $F_{\text{lim}}$ .
- Consider whether there is evidence for density dependence in biological parameters, such as growth and maturity. If so, consider including these in the analysis.
- The SSC supports the three alternatives presented (status quo, numerical values for overfishing definitions fixed in the FMP, and overfishing definitions frameworked in the FMP). These alternatives will foster an analysis of the timing and review process for stock assessment relative to overfishing on an annual basis. The SSC notes that the timing of decision-making and the overall process differ between crab and groundfish, so that there may be reasons for having fixed numerical values instead of a framework in the crab FMP.
- One weakness of constant harvest control rules for rapidly fluctuating stocks is that they may not efficiently adapt to changing conditions. The SSC would like to see an evaluation of a harvest control rule that recognizes fluctuations between different periods of productivity and the possibility of implementing a switching rule between overfishing reference points. This evaluation could consider the prospects of both higher reference points during periods of greater productivity, as well as the need to constrain harvest to avoid potential stock depletion during the next phase of low productivity.
- The working group should explicitly consider whether parameter  $\beta$ , the biomass below which fishing is curtailed, is also defined to be the MSST. If it is also the MSST, then the National Standard Guidelines require that a rebuilding plan be established within one year. However, a crab stock could be classified as overfished and in need of rebuilding one year, but be totally rebuilt one or two years later, independent of any management measures. This volatility in crab populations could thus create a chaotic management environment requiring continual attention to revising rebuilding plans. The SSC has learned that MSST may be of lesser importance in new National Standard Guidelines, so defining an explicit MSST may not be necessary.
- The SSC recognizes a pressing time frame for completion of this overfishing analysis, and encourages the working group to work efficiently and to provide routine updates on progress to the CPT and SSC.

#### **D-4(c) Salmon Excluder Report**

John Gauvin (Pollock Industry Contractor) and Craig Rose (NMFS AFSC) provided the SSC with an overview of their work to develop a salmon excluder device for the pollock trawl fishery and evaluate its effectiveness. Field trials with two versions of the device, conducted during fall 2003 and winter 2004, were somewhat successful at releasing chum and chinook salmon (about 12% escapement) without simultaneously releasing large quantities of pollock (about 2-4% escapement). The SSC commends the investigators for their hard work at developing a new technology for reducing salmon bycatch.

#### **D-4 (d) Steller Sea Lion/Pacific Cod Localized Depletion Study.**

The SSC received a report on a study conducted by the NMFS Fishery Interactions Team in the Bering Sea near Unimak Pass designed to evaluate whether the trawl fishery in this area resulted in localized depletion of Pacific cod. The logical extension of this research would be that findings of localized depletion by the fishery could have adverse effects on SSLs if the population was nutritionally limited during this time of year. Pacific cod are an important prey of SSLs during winter in many areas.

The study used pot gear in an experimental area where a Pacific cod trawl fishery occurred and in a control area (SSL protection area) where trawling was prohibited. The study plan included a pre-fishery pot index survey in both the experimental and control areas and a second survey in both areas that occurred immediately after the fishery. Comparisons were then made of the rates of change (slope) of the index between the experimental and the control areas during the sampling periods. The localized depletion hypothesis would be supported by findings that rate of change (slope) between the two time periods in the experimental and control were significantly different (either greater rate of decline or lower rate of increase in the experimental area). High variability in catch rates by the pot gear limited the study's ability to detect small changes in catch rates but power analyses suggested that the study could detect catch rate differences of about 20% or greater.

This study was conducted during both 2003 and 2004. Weather and equipment limited the effectiveness of the surveys in 2003. Index values were lower in both the control and experimental area during the late fishery surveys. The study was repeated in 2004 and the field operation was much smoother. In 2004 index values were higher in both the control and experimental areas during the late fishery surveys. Rates of change were similar (although in opposite directions) between control and experimental areas during both years. These results did not detect localized depletion due to the trawl fishery.

Ancillary data including tag returns, size compositions of catches, and reproductive status of catches suggested substantial movement of Pacific cod occurred throughout the study period. This finding complicated interpretation of the study results in relation to localized depletion. It may be that there is substantial turnover of Pacific cod in the study region during the fishing season which would largely mask short-term localized depletion. It may also be that the cod population is large enough that localized depletion could not be detected on the time scale of the experimental design.

The SSC was favorably impressed with the design and execution of the study. There was substantial support for continuation of the work. There was also support for relocating the research to another location where Pacific cod movements would likely be less dynamic thus allowing more definitive interpretation of the results.

#### **D-4(e) Seabird EFP**

Kim Dietrich (Washington Sea Grant) and Thorne Smith (North Pacific Longline Association) provided the SSC with an overview of the request from the Washington Sea Grant Program for an exempted fishing permit (EFP) to evaluate the effectiveness of using weighted groundlines to reduce seabird bycatch in the longline fishery. There was no public testimony. The EFP is needed to waive the requirement for streamers while setting longline gear. The new experiment, which builds on previous work that evaluated the use of streamers and weighted groundlines, will compare the performance of three gear configurations: (1) gear with an un-weighted groundline without paired streamer lines, as the control; (2) gear with an un-weighted groundline and paired streamer lines; and (3) gear with an integrated-weight groundline without paired streamer lines. The SSC commends this collaborative work between Washington Sea Grant and the industry to develop technologies to reduce seabird bycatch. The SSC recommends that the Council grant the EFP. The experiment seems well designed and should provide sufficient information to gauge whether the integrated-weight groundline or the paired streamer lines provide greater reductions in seabird bycatch. If time and resources permit, the investigators should consider testing a treatment that has both the integrated-weight groundline and the paired streamer lines to explore possible added benefits from combining the two seabird avoidance measures.

6/10/04 noon  
AP Rpt C-4

## C-4 Aleutian Islands Pollock

### Allocation

Starting in 2005, the annual AI pollock TAC will be the lesser of 75% of the ABC or 20,000 mt. The annual AI TAC cap (20,000 mt) will be increased 30 % in each of the two following years (26,000 mt in 2006 and 33,800 mt in 2007) but will be set no more than 75 % of the ABC. The AI annual TAC in the 2008 and beyond will be equal to no more than 33,800 mt or 75 % of the ABC, whichever is less.

The A season DPF will be 40 % of the ABC or equal to the annual TAC, whichever is less. The total harvest in the A season ( DPF and ICA) will not exceed 40 % of the ABC.

The ICA will be deducted from the annual TAC.

The B season DPF will equal the annual TAC minus the A season DPF and minus the ICA.

### Allocation Mechanism

2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

### Monitoring Vessel Activity

3.2 "Increased monitoring" alternative. This alternative would have several components (not options). These include:

1. The Aleut Corporation must notify the NMFS Alaska Region with a list of which vessels are authorized by it to fish in the Aleutians; notification must be at least 14 days prior to the anticipated start of fishing. The NMFS RAM Division will verify each vessel's eligibility (FFP, ADF&G number, USCG fishery endorsement, length, or AFA status) and provide to the Aleut Corporation a list of qualified vessels and the date fishing may commence. These vessels must carry documentation showing they have RAM approval and Aleut Corporation permission;
2. Catcher vessels are prohibited from fishing for pollock in the Aleutian Islands if pollock harvested in the Bering Sea or GOA are on board. Also, catcher vessels are prohibited from fishing for pollock in the Bering Sea or GOA if Aleutian Islands pollock are on board;
3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
4. AI pollock may only be delivered to a shoreside processor or stationary processor which has an approved Catch Monitoring Control Plan; Clarify to include CPs.
5. The Aleut Corporation will be responsible for keeping its harvests and its agents' harvests within the AI pollock directed fishing allowance. The Aleut Corporation shall be responsible for designating a person as a quota manager for pollock catch accounting; this person shall report to NMFS Sustainable Fisheries Division with weekly pollock catch summaries.
6. Vessels  $\leq$  60 feet shall take a Cadre observer if provided by NMFS.

### Small Vessels

4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce to the fishery vessels under 60 feet LOA.

**Economic Development Report**

- 5.2 Require an annual report to the Council, similar to the AFA coop reports. A draft report will be due in December and a final report will be due in February.
- 5.4 At its June 2006 meeting, the Council shall review the AI pollock fishery performance, including information on harvest success, chinook salmon bycatch, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

**Chinook Savings**

- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count against the BSAI Chinook salmon bycatch caps.

*Motion passed 14/2.*

*The above motion with clarifications was included in the minutes after the original motion, which passed 17/0, was reconsidered.*

6/10/04 3pm

NPFMC ENFORCEMENT COMMITTEE REPORT  
June 8, 2004

The Council's Enforcement Committee met with the following persons in attendance: Roy Hyder (Chair); Jeff Passer (NOAA Enforcement); Al McCabe (USCG); Garland Walker (NOAA GC); Sue Salvesson (NOAA SF); Herman Savviko (ADFG); Chris Oliver (NPFMC staff).

Other attendees included: Greg Busch and Andy Schroeder (USCG); Jim Balsiger; Rachel Baker; Jon McCracken; David Witherell; Bubba Cook; Bill Wilson; Ben Muse; Melanie Brown; Jon Kurland; Dave Wood; Teressa Kandianis; Joe Childers; Bill Karp

A summary of the discussions follows, with recommendations as noted:

Aleutian Islands Pollock allocations

The Committee reviewed the Executive Summary of the analysis focusing on key issues associated with monitoring and enforcement. The Committee concurs with the required provisions as recommended in the analysis (3.2 – increased monitoring alternative), including the provision to disallow mixing of AI Pollock with BS or GOA Pollock by catcher vessels, regardless of observer coverage levels on these vessels (noting that observer coverage does not alleviate a host of other monitoring issues associated with mixing fish). Regarding the key issue of observer coverage for vessels under 60' (in the event the Council chooses to allow under 60' vessels to participate at the outset), the Committee recommends that a 30% coverage requirement be applied. Discussion by the Committee noted that some information is necessary relative to harvests by these vessels, for both management and enforcement aspects of the fishery, given that up to 50% of the harvest could be taken by these vessels in the future. However, 100% coverage is likely unnecessary to obtain such information, particularly given the costs and other factors associated with a 100% requirement. The 30% requirement would be applied relative to days fished in the AI Pollock fishery (as opposed to all fisheries in which these vessels might participate). Additional safety benefits of an observer requirement were also noted by the Committee. Existing VMS requirements for pollock-endorsed vessels are presumed to apply.

Enforcement Precepts paper

The Committee reviewed an enforcement precepts paper in April, which contained general provisions related to enforceability of regulations. This paper is intended to advise managers and analysts when developing management programs, relative to monitoring and enforcement aspects. NOAA Enforcement and USCG representatives recommended, and the Committee concurred, that they update the precepts paper to include recommendations from the Committee's April report. The revised paper also will include an addendum that provides a succinct overview of issues typically associated with traditional enforcement measures, e.g. closed areas, closed seasons, trip limits, gear restrictions, etc. The revised precepts paper will be widely distributed to Council and agency staff, and will be presented to the Council, SSC, and AP at the October Council meeting.

HAPC alternatives

The Committee reviewed changes made to the boundaries of some proposals, either in the staff discussion paper or via the Council Committee for proposal #8. Generally, the Committee reiterates its earlier recommendations that proposed areas should be geographically defined, they

should not be of irregular shape, and that they should specify which gear types are and are not allowed. The enforcement community recognizes that multiple factors were considered in the development of HAPC #8, of which minimum size of the HAPC is but one factor. While the small size of HAPC #8 may diminish the effectiveness of its enforcement, other positive factors such as use of straight lines, clear management measures and diminished incentives to set gear in the modified proposal for HAPC #8. The diminished incentives worked out through industry participation, which excluded a large portion of the original proposal, was an integral component of the overall acceptability and appears consistent with the Council's intent to avoid core fishing areas.

An attached matrix of enforcement issues relative to each of the 23 original proposals is intended to provide the Council a summary reference document. As proposals are further developed or modified, this matrix will be updated.

#### Retention pools

The Committee again reviewed issues associated with the concept of retention pools as a mechanism to comply with requirements of Amendment 79 (minimum groundfish retention standards). Regarding terminology, the Committee recognized that 'retention pools' as proposed, in reality are a form of cooperative, and pose many of the same issues relative to requirements/agreements necessary to effect individual or collective accountability. The Committee concurs that participation in such a retention pool would require compliance with the scale and observer requirements proposed under Amendment 79. As an analysis of alternatives for retention pools is developed, the Committee may have additional comments.

#### Observer role in enforcement

The Committee generally discussed the issue of the observer's role relative to enforcement (vs scientific sampling for example), noting increased concerns relative to some duties and reports generated by observers. As with previous discussions by the Enforcement Committee (and in discussions by the Observer Committee), it was recognized that many observer duties relative to compliance monitoring are the result of regulations and requirements developed through Council management programs, and that observer sampling duties are often difficult to differentiate as to 'enforcement' uses vs scientific uses. It was also noted that some tasks specifically required by observers (such as MARPOL or marine mammal interactions or safety violations) do fall outside the duties directly associated with fishery management and science. After additional discussion the Committee determined that no further action by the Committee is necessary at this time.



6/10/04 11am  
C-4 H/O by  
Staff

**SUPPLEMENT TO  
REVISED DRAFT**

**ENVIRONMENTAL ASSESSMENT/REGULATORY IMPACT REVIEW**

**for Amendment 82 to the BSAI FMP and regulatory amendments  
to allow the allocation of future Aleutian Islands pollock specifications  
to the Aleut Corporation as Required by Public Law 108-199**

June 2004

**Lead Agency** National Oceanic and Atmospheric Administration  
National Marine Fisheries Service  
Alaska Regional Office  
Juneau, Alaska

**Responsible Official** James W. Balsiger  
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**Parts of the supplement**

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Potential AI Pollock Fishery Rockfish Bycatch.....20

Use of Video Technology to Place of Observers .....21

## **Appendix A9 EA/RIR Revisions Since April 2004 Council Meeting**

This appendix describes the main changes, additions, and clarifications have been made in this document since it was reviewed by the Council in April 2004.

### **1 Decision Elements and Alternatives**

The Council added one new decision element addressing Chinook salmon bycatch management, which has two alternatives. The Council also added alternatives to decision elements addressing allocation size, allocation mechanism, and economic development reporting. These alternatives have been integrated into the document and their effects on the human environment analyzed.

The description of the Alternatives in Chapter 2 has been modified in light of SSC comments to add a discussion of "Market Alternatives Considered but not Analyzed Further." These market alternatives included purchase of harvest shares for Aleut Corporation use, and compensation to AFA catcher vessels for reduction in pollock harvest shares by forgiveness or partial forgiveness of AFA related loans.

### **2 Environmental Assessment**

The text that deals with TAC apportionment has been modified to clarify how CDQ allocations are made relative to how the AI pollock allocation would be made. The text has been revised to reflect that CDQ apportionments are made off the top, first, and then the AI pollock apportionment would be made from the remaining TAC.

The text has been modified to emphasize, particularly in Chapters 4.2 through 4.7, the implications of adopting a change in geographic boundary of the AI pollock stock. The Plan Team is considering a recommendation to consider the eastward boundary of the AI pollock stock at 174 degrees West. The text has been modified in many places to discuss potential effects of changing the AI pollock stock definition.

The significance criteria for evaluating impacts of the proposed action on pollock stocks, other and non-specified species, forage fish species, and other marine mammals have been changed, and based on these changes the text in Chapters 4.2 through 4.7 has been modified where appropriate.

The section on effects of the proposed action on other marine mammals has been expanded, addressing particularly several SSC comments on this section. The section on Steller sea lions also has been modified to recognize the role historic large industrial whaling may have played in killer whale predation dynamics in the North Pacific.

In Chapters 4.2 through 4.7, and elsewhere where appropriate, the text recognizes that bycatch rates and patterns exhibited in the past in the AI region may not be comparable to actual rates and patterns that may be experienced in this area in the future given that the future fishery will be prosecuted by vessels of different size, horsepower, and gear configuration.

In Chapter 4.2 and in some other locations, the text addressing impacts of the proposed action on seabirds recognizes the serious consequences of rat introduction to Aleutian islands not currently infested. The text also was expanded in some sections to more clearly recognize the potential adverse impacts of lost fishing gear on marine mammals through entanglement and subsequent injury or mortality.

The beginning of Section 4.3 has been revised to add a review of statutes and FMP elements that might affect funding decisions, particularly with respect to CDQ contributions to funding. Alternative approaches to funding are described under which CDQ groups may or may not contribute to funding the AI pollock allocation.

Two existing tables have been replaced by a series of 14 tables showing the metric tonnage impacts on BSAI fishing fleets associated with the funding alternatives has been added to Section 4.3. These tables show the impacts on non-CDQ and CDQ operations. The tables show impacts by funding alternative for different potential AI pollock allocation sizes. Estimates are made for the species categories used in specifications. Estimates are made for base years in which BSAI pollock TAC accounted for about half, and about three-quarters, of the 2 million mt OY. For scenarios under which CDQ groups might contribute to funding, tables are provided showing potential impacts on CDQ groups. Existing tables in this section describing PSC impacts associated with harvests in funding fisheries have been extensively revised.

In response to a request from the SSC, text has been prepared which discusses monitoring and enforcement issues and discusses the potential for video monitoring of AI pollock trawling activity, as a complement to or substitute for more expensive observer coverage. This material is included in this supplement, and will be added to Section 4.4.1.

Decision element 3.0, monitoring and enforcement, has been revised based on additional input from NOAA Enforcement, the U.S. Coast Guard, and Sustainable Fisheries (AK Region). Some alternatives were changed to clarify the intent of the proposed monitoring requirements. The analysis of effects of the alternatives under 3.0 were modified appropriately.

Several other AP and SSC suggestions for improving the document were evaluated and changes made in the document where appropriate.

In response to a request from the AP, a detailed discussion on the potential impact of AI pollock rockfish bycatch on directed rockfish fisheries has been prepared. This material is included in this supplement, and will be added to Section 4.2 at page 104.

A new Section 4.7 has been added, to discuss the impacts of a decision element on excluding AI pollock Chinook PSC bycatch from the BSAI Chinook cap. The Council requested an evaluation of this new decision element in April 2004.

### **3. Regulatory Impact Review**

The Regulatory Impact Review has been revised, where necessary, to address new alternatives identified by the Council in April 2004. These revisions include the addition of a new Section 7.13 titled "BSAI Chinook PSC cap."

In response to a request from the AP, a discussion on the impact of funding on the ability of AFA catcher vessels to repay the loan provided them under the terms of the AFA, has been added. This may be found at the foot of page 292. Note that a discussion of potential market approaches to funding has been added in Chapter 2 at page 16. This discussion was not repeated in the RIR.

The analysis of the potential gross revenues and royalties that may accrue to the Aleut Corporation has been elaborated with the addition of a new Table 7.7-1, which provides revenue estimates under a range of different assumptions about potential directed fishing allowances in the AI.

The analysis of the impacts of the alternatives on revenues to fishing operations was elaborated considerably with the addition of three summary tables (7.1-1 to 7.8-3) and ancillary text. These tables provide estimates of the impacts of funding alternatives 2.2 to 2.5 on non-CDQ inshore sector gross revenues, non-CDQ catcher/processor gross revenues, and CDQ operation gross revenues, under different assumptions about AI pollock allocation sizes. Estimates are provided by aggregate species groups.

#### **4 Other Changes**

The entire text has been reviewed and edited for clarity, and the introductory materials and Executive Summary have been changed to reflect changes in the document.

A brief explanation has been added to describe the NEPA process for how an Environmental Assessment may conclude with a Finding of No Significant Impact (FONSI).

The Council directed its Steller Sea Lion Mitigation Committee to meet and discuss the potential to change SSL protection measures in the AI region to provide improved opportunity for small vessels to operate more safely and efficiently. The SSLMC met April 26, and the results of this meeting are incorporated into the document and the SSLMC meeting minutes have been appended.

Several new appendices have been developed and added including this summary of changes in the document, the SSLMC meeting minutes, the Council's April 2004 motion that added elements and alternatives to the analysis, and PSC bycatch rates tables.

**Supplement to the AI Pollock EA/RIR: Analysis of the Council's April**

## Allocation Size Alternatives

The following discussion will be added to Section 4.2 as a new sub-section 4.2.3. Appropriate text will be added at the front of Section 4.2, telling the reader that this section is there.

### 4.2.3 Analysis of the allocation size alternatives in the Council's April motion

In April 2004 the Council adopted a motion requesting analysis of two additional alternatives that address the size of allocation for the AI pollock fishery. The intent of this motion was to provide two alternatives that would establish the specific size of the allocation to this fishery so that industry would know the approximate magnitude of the TAC prior to industry negotiations. In the review of this motion, the Council's intent was interpreted by the analysts preparing this EA/RIR and phrased as Alternatives 1.3 and 1.4 which are analyzed in the preceding section (4.2.2). Upon reflection on the phraseology differences between the analysts' interpreted alternatives and the very specific language in the Council motion, some differences are evident. Thus, an analysis of the specific wording in the Council motion is provided in the following materials.

This section, which is provided as an addendum to the revised draft EA/RIR, provides the NEPA analysis of these alternatives. Alternatives 1.3 and 1.4, analyzed in the preceding section are similar to, but not identical to, the following two alternatives. This section introduces the alternatives from the Council motion, discusses issues they raise with respect to the Steller sea lion BiOps, contrasts the Council's alternatives with the alternatives described in the preceding section, and provides a NEPA analysis of these alternatives. These alternatives will be called Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> (see further discussion below).

#### *The Council's April Motion*

In April 2004, the Council specified the following alternatives for analysis in the EA/RIR regarding the limitation on the allocation of AI pollock:

1.3 The Council shall allocate a combined Aleutian Islands ICA and DFA equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% A season, 60% B season allocation required by the SSL protection measures.

1.4 Beginning in 2005, and until changed, the annual Aleutian Islands pollock TAC shall be the lesser of 15,000 mt or 40% of the AI pollock ABC. One hundred percent of the Directed Fishing Allowance (DFA) shall be available for harvest in the pollock "A" season."

In the remainder of this section, these alternatives will be described as 1.3<sup>C</sup> and 1.4<sup>C</sup>, to indicate that these are the Council motions, and to distinguish them from Alternatives 1.3 and 1.4 that were analyzed in section 4.2.2.

The purpose of these alternatives was to establish a fixed amount of AI pollock allocation from the overall BSAI TAC amounts in November to facilitate industry negotiations on distribution of TACs under the OY for the following fishing year. Alternative 1.3<sup>C</sup> caps the amount of the annual TAC (ICA + DFA) at no more than 40,000 mt. If the ABC is below 40,000 mt, the TAC would be the ABC. Alternative 1.4<sup>C</sup> caps the amount of TAC at no more than 15,000 mt, but the TAC may be lower if 40 percent of ABC is less than 15,000 mt.

In the initial analysis of the Council's motion and these alternatives, two Endangered Species Act (ESA) concerns were identified:

1. These alternatives require the Council to set TAC equal to ABC or a fixed proportion of ABC, even if the Council determines that a directed fishery is not appropriate based on ecological, social, or economic concerns. In either alternative, the Council would not be able to recommend a TAC well below ABC, as currently is done in the AI pollock fishery. The Council's informed decision making process in recommending TAC is compromised with these alternatives. This may not be consistent with the decision making process in the preferred alternative of the Programmatic groundfish SEIS.

2. By requiring the TAC to be set equal to ABC or a fixed proportion of ABC, the usual harvest specifications process would be bypassed. The 2000 and 2001 Steller sea lion protection measures BiOps analyzed the effects of the groundfish fisheries on Steller sea lions, taking into account the process currently used to develop ABC and TAC recommendations.

As a result of these concerns, the analysts developed wording for Alternatives 1.3 and 1.4 to alleviate concerns over these ESA issues, but at the same time preserve what was believed to be the intent of the motion. These two alternatives, then, were analyzed in Section 4.2.2. However, upon further reflection, Alternatives 1.3 and 1.4 did not fully comport with the intent of the Council to have a fixed amount of TAC for the AI pollock fishery, but were similar to the Council's motion alternatives and addressed the issues initially identified above. Upon further analysis, NMFS determined that Alternative 1.3<sup>C</sup>, if implemented with Alternative 2.5, and Alternative 1.4<sup>C</sup> would not pose the ESA consultation concerns initially identified. Thus, the premise for adjusting the wording of the motion that established Alternatives 1.3 and 1.4 is not believed to be sufficient to rule out the viability of the Council's original phraseology.

#### *Contrast Between the Council Motion Alternative 1.3<sup>C</sup> and Alternative 1.3*

Alternative 1.3 as analyzed in the revised draft EA/RIR reads "The Council shall allocate a combined AI ICA and DFA equal to the lesser of the TAC generated from the ABC for that year or 40,000 mt. The DFA shall be subject to the 40% "A" season and 60% "B" season apportionment required by the Steller sea lion protection measures." Alternative 1.3 is similar to the Council's motion (1.3<sup>C</sup>), which is, "The Council shall allocate a combined Aleutian Islands ICA and DFA equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% A season, 60% B season allocation required by the SSL protection measures."

There are, however, two substantive differences between these two alternatives. First, the

Council's motion (Alternative 1.3<sup>C</sup>) set the sum of the ICA and DFA equal to the ABC or 40,000 mt, whichever was less. The wording of Alternative 1.3 made the sum of the ICA and DFA equal to the TAC or 40,000 mt, whichever was less. Alternative 1.3 creates the possibility that the TAC might be less than the ABC, and ends the direct dependence of the ICA and DFA on the ABC. This direct dependence was meant to prevent annual industry TAC negotiations from becoming more difficult with the introduction of the AI pollock allocation.

Second, the Council's Alternative 1.3<sup>C</sup> potentially allocates a larger directed fishing allowance to the Aleut Corporation than Alternative 1.3. Under the Council motion, so long as the ABC is less than 40,000 mt, the sum of the DFA and ICA will be equal to the ABC. Under Alternative 1.3, so long as the ABC is less than 40,000 mt, the sum of the DFA and ICA (TAC) may be *less than*, or equal to, the ABC.

#### *Contrast Between the Council Motion Alternative 1.4<sup>C</sup> and Alternative 1.4*

Alternative 1.4 reads "Beginning in 2005, and until changed, the AI pollock "A" season DFA shall be the lesser of 15,000 mt or 40% of the AI pollock annual TAC after subtraction of the ICA. No part of the annual DFA shall be allocated to the "B" season." The Council's motion (1.4<sup>C</sup>) is: "Beginning in 2005, and until changed, the annual Aleutian Island pollock TAC shall be the lesser of 15,000 mt or 40% of the AI pollock ABC. One hundred percent of the Directed Fishing Allowance (DFA) shall be available for harvest in the pollock "A" season."

There are, however, substantive differences between the Council's motion and Alternative 1.4.

The alternative in the Council motion (1.4<sup>C</sup>) incorporates language in the FMP that makes TAC a determinate function of ABC. This was meant to prevent annual industry TAC negotiations from becoming more difficult with the introduction of the AI pollock allocation. Under the Council motion the AI pollock allocation would be a known quantity and not subject to negotiation. That is, the amount of the allocation would be known as soon as the stock assessment process that develops a recommended ABC is completed. This is not the case with Alternative 1.4, in which the TAC could be the subject of industry negotiations.

Another difference is that the Alternative in the Council motion would not create a "B" season allocation. But it would make it possible for the Aleut Corporation to use unfished "A" season allocation in the "B" season if it chose. The language in 1.4 prevents the Aleut Corporation from doing this. Under 1.4, pollock allocation that is not fished in the "A" season cannot be rolled over to the "B" season.

And another difference is that, since the alternative in the Council motion does not create a "B" season allocation, no "B" season roll back is possible. This means that the Council's Alternative 1.4<sup>C</sup> and Alternative 2.5 would be incompatible. Alternative 2.5 requires a roll back of the "B" season allocation. Alternative 1.4 creates an annual DFA and allocates 40% of it to the "A" season. The remaining 60% of the DFA would have to be rolled back to the funding fisheries. This would happen immediately in the final specifications. Alternative 1.4 is, therefore, consistent with Alternative 2.5.



Alternatives 1.4 and 1.4<sup>C</sup> have somewhat different implications for the size of the allocation to the Aleut Corporation. The calculations are shown in Table 4.2.3-1, below. In general, Alternative 1.4 makes it possible for the Council to allocate somewhat more fish to the Aleut Corporation (depending on the size of the TAC it chooses). The potentially larger allocations under 1.4 range between 1,200 mt and 2,200 mt for ABCs between 10,000 mt and 40,000 mt. At a 40,000 mt ABC, the Aleut Corporation could receive 2,200 more metric tons under Alternative 1.4 than under Alternative 1.4<sup>C</sup>. Using a royalty value of \$304 per metric ton in the “A” season, this could be as much as \$670,000.

**Table 4.2.3-1: Comparison of allocation sizes under Alternatives 1.4 and 1.4<sup>C</sup> and under different assumptions about ABC levels (measured in metric tons)**

Alternative 1.4				Alternative 1.4 <sup>C</sup> (Council’s original language)			
ABC	TAC	ICA	DFA	ABC	TAC	ICA	DFA
10,000	10,000	2,000	3,200	10,000	4,000	2,000	2,000
20,000	20,000	2,000	7,200	20,000	8,000	2,000	6,000
30,000	30,000	2,000	11,200	30,000	12,000	2,000	10,000
40,000	40,000	2,000	15,200	40,000	15,000	2,000	13,000
50,000	50,000	2,000	15,200	50,000	15,000	2,000	13,000
60,000	60,000	2,000	15,200	60,000	15,000	2,000	13,000

Notes: TAC under 1.4 is assumed to equal the ABC and is thus the highest TAC the Council could choose in each year. The ICA is subtracted from this to give an annual DFA. The “A” season allocation is 40% of the annual DFA; the remainder is rolled back. Under 1.4<sup>C</sup> the TAC is 40% of the ABC. Subtracting the ICA leaves the DFA. Fish unused in the “A” season could be used in the “B” season.

For these reasons, therefore, while Alternatives 1.4 and 1.4<sup>C</sup> are very similar, they have different implications and are not the same.

*The TAC Setting Process and Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> :*

The first step in the harvest specifications process is intended to identify the level of catch that allows the maximum yield while protecting the target stock from overfishing. The next step is to consider the ABC and OFL in the context of ecological, social, and economic factors related to the fish stock. TAC is set less than or equal to the ABC as necessary to account for ecological, social, and economic factors for the management area. The following is the description of the ABC and TAC development from the 2000 BiOp.

ABC and OFL are first recommended by the stock assessment authors, who evaluate the biological state of the fished stock and its tolerance for fishing. Their recommendations are summarized in Stock Assessment and Fishery Evaluation (SAFE) reports. SAFE reports provide the Council with “a summary of information concerning the most recent

biological condition of stocks and the marine ecosystems in the fishery management unit and the social and economic condition of the recreational and commercial fishing interests, fishing communities, and the fish processing industries. They summarize periodically, the best available scientific information concerning the past, present, and possible future condition of the stocks, marine ecosystems, and fisheries being managed under Federal regulation” (50 CFR § 600.315(e)(1)). Each SAFE report must be scientifically based and should contain (50 CFR § 600.315(e)(2-3)).

- (1) information on which to base harvest specifications,
- (2) a description of the maximum fishing mortality threshold and the minimum stock size threshold for each stock or stock complex, along with information by which the Council may determine (a) whether overfishing is occurring or any stock is overfished, and whether overfishing or overfished conditions are being approached, and (b) any measures necessary to rebuild an overfished stock.

Each report may also contain “additional economic, social, community, essential fish habitat, and ecological information pertinent to the success of management or the achievement of objectives of each FMP” (50 CFR § 600.315(e)(4)).

The BSAI FMP (p. 287) and GOA FMP (p. 20) require the following minimum contents of the SAFE reports.

- (1) Current status of Bering Sea and Aleutian Islands area groundfish resources, by major species or species group.
- (2) Estimates of MSY and ABC.
- (3) Estimates of groundfish species mortality from nongroundfish fisheries, subsistence fisheries, and recreational fisheries, and differences between groundfish mortality and catch, if possible.
- (4) Fishery statistics (landings and value) for the current year.
- (5) The projected responses of stocks and fisheries to alternative levels of fishing mortality.
- (6) Any relevant information relating to changes in groundfish markets.
- (7) Information to be used by the Council in establishing prohibited species catch limits (PSCs) for prohibited species and fully utilized species with supporting justification and rationale.
- (8) Any other biological, social, or economic information which may be useful to the Council.

The stock assessments and recommendations are reviewed by the BSAI and GOA groundfish plan teams, which consist of members from the Alaska Fisheries Science Center, ADF&G, the Washington Department of Fisheries, the U.S. Fish and Wildlife Service, the International Pacific Halibut Commission, and the University of Alaska at Fairbanks. The plan teams then prepare their recommendations to the Council's Advisory Panel and Scientific and Statistical Committee, and the main body of the Council. The Council's Scientific and Statistical Committee has final authority for determining whether a given item of information is "reliable" for the purpose of determining ABCs and OFLs, and may use either objective or subjective criteria in making such determinations.

## TAC

Based on the reviews and recommendations of the stock assessment authors, the plan teams, the Scientific and Statistical Committee, and the Advisory Panel, the Council then considers the ABC and OFL levels for each stock, and pertinent ecological, social, and economic information to determine a total allowable catch (TAC) for each stock or stock complex under the BSAI and GOA FMPs.

The TAC for a specific stock or stock complex may be sub-divided for biological and socio-economic reasons according to percentage formulas established in FMP amendments. For particular target fisheries, TAC specifications are further allocated within management areas (eastern, central, western Aleutian Islands; Bering Sea; eastern, central, western GOA; Figs. 2.4 and 2.5), among management programs (open access or community development quota program), processing components (inshore or offshore), specific gear types (trawl, non-trawl, hook-and-line, pot, jig), and seasons according to regulations.

The 2000 and 2001 Steller sea lion protection measures BiOps considered the effects of the groundfish fisheries on Steller sea lions in context of the complete ABC to TAC process, as described above. ABC and TAC determinations are separate processes with the development of TAC dependent on and limited by the ABC. These processes permit consideration of a range of important issues specific to ABC and TAC. The process that determines TAC determines the magnitude of fishery effects on the target species, listed species, critical habitat, and the ecosystem. The reductions in the biomass and prey availability are a direct consequence of the TAC-setting process. The long-term reduction in standing biomass with all its ecological consequences follows directly from the catch in accordance with the TACs.

Under Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup>, TAC is determined by formula from ABC. The AI pollock fishery would be subject to annual analysis in the specifications EA (which includes (a) analysis of the impacts on Steller sea lions and ESA considerations, and (b) a detailed SAFE chapter on the AI pollock fishery (as an appendix) along with other fisheries. However, the Council would lose its normal discretion to respond to considerations raised in the EA, and by the plan teams and the SSC, through TAC adjustments in the annual specifications. The Council and NMFS

would not lose all ability to respond; if circumstances required it, ecosystem considerations could be introduced as an ABC consideration, or NMFS could change the TAC with an emergency rule. In the longer term the Council could adopt a new FMP amendment. However, these are more difficult ways to address any problems. The linking of the TAC and the ABC in a deterministic way is a change that was not contemplated in the 2000 and 2001 SSL BiOps.

When the annual ABC is less than 40,000 mt, Alternative 1.3<sup>C</sup> requires the Council to recommend a TAC that is equal to the ABC. During years when the annual ABC is estimated to be less than 37,500 mt, Alternative 1.4<sup>C</sup> would require the setting of TAC at 40 % of ABC. In both of these cases, the requirement to set TAC at the ABC or a percentage of the ABC may be less protective of Steller sea lions and contrary to the 2000 and 2001 BiOps. These alternatives are a departure from the current TAC setting process and may allow for more removal of prey species than anticipated in the 2000 and 2001 BiOps. In years of low ABC, these alternatives require the Council to recommend TAC at a higher level than may have been done if ecological, social, and economic concerns were considered. Requiring the setting of TAC at the ABC or at 40 percent of the ABC, regardless of ecological, social, and economic concerns, may lead to harvest levels that would remove more prey than the normal TAC-setting process. The 2000 and 2001 BiOps considered the effects of the groundfish fisheries in the context of the Council's unlimited ability to adjust TAC from the ABC.

Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> cap the amount of TAC that may be recommended. Under Alternative 1.3<sup>C</sup>, with Alternative 2.5 and its associated roll back of the "B" season TAC, it is much less likely that there would be adverse effects for Steller sea lions. The roll back ensures that the total amount of harvest in the Aleutian Islands area will be at a relatively low level. Under Alternative 1.4<sup>C</sup>, in years when the annual ABC is more than 37,500 mt, it would be unlikely that there would be adverse effects on Steller sea lions because the harvest would be capped at 15,000 mt, regardless of the size of the ABC over 37,500 mt. This would limit the impact that the pollock fishery would have on the pollock prey availability for Steller sea lions.

#### *Harvest Control Rule and the Alternatives:*

The Harvest Control Rule (HCR) established by the Steller Sea Lion Protection Measures may also be a concern under these alternatives. The 2001 BiOp provides the following explanation of the HCR:

The setting of TAC for the pollock, Pacific cod and Atka mackerel fisheries would be based on a global control rule which is modified from the one detailed in the FMP biological opinion[2000 BiOp]. The allowable biological catch (ABC) for pollock, Pacific cod, and Atka mackerel in the BSAI and GOA would be reduced when the spawning biomass is estimated to be less than 40% of the projected unfished biomass. The reduction would continue at the present rate established under the tiers described in the groundfish FMPs, but when the spawning biomass is estimated to be less than 20% of the projected unfished biomass, directed fishing for a species would be prohibited.

The potential problems discussed above under Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> are reduced by the

HCR, which requires the Regional Administrator to stop all directed fishing if the spawning biomass is at or below 20 percent of the unfished spawning biomass.<sup>1</sup> The rate of adjustment of ABC under the HCR at and below the  $B_{20}$  level continues to follow the present rate established under the tiers described in the groundfish FMPs. This continuation of the rate of reduction of ABC below  $B_{20}$  results in the ABC still being specified at the level determined appropriate under the HCR, even though directed fishing may be prohibited. The Plan Team may recommend an ABC that supports bycatch only if the biomass is equal to or below  $B_{20}$ <sup>2</sup>, but the ABC may be adjusted by the SSC to a level appropriate for the fish stock, without consideration of the directed fishery closure. It was intended that the directed fishery closure would be established by the setting of TAC.

If the ABC were  $\leq B_{20}$  under Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup>, the Council could be required to set TAC at 40 percent of the ABC even though the Regional Administrator likely would take action to close the directed fishery, regardless of the Council's TAC recommendation. The Council would be unable to make an informed decision about the appropriate level of TAC (such as recommending TAC at bycatch levels when the spawning biomass reaches or is below  $B_{20}$ ). The Council may be put into the awkward situation of recommending a TAC that could support a directed fishery at the same time conditions prohibiting a directed fishery exist. By requiring a TAC recommendation based on ABC or a percentage of ABC and without consideration of the HCR or other ecological factors, the Council would not be able to be proactive in management recommendations.

This may be addressed if the Council amended Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> to incorporate the HCR in the recommendation of TAC when the spawning biomass is at or below  $B_{20}$ .

#### *2000 and 2001 BiOp Concerns*

While Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> both involve the deterministic relationship between TAC and ABC, under certain circumstances these impacts may be mitigated sufficiently to avoid the need for formal Section 7 Consultation under the ESA.

Alternative 1.3<sup>C</sup> was introduced with Alternative 2.5 in the Council motion. Among other features, Alternative 2.5 requires the roll back of all of the "B" season DFA, and unused "A" season DFA, no later than June 10. Since Alternative 2.5 can materially change the impact of Alternative 1.3<sup>C</sup>, Alternative 1.3<sup>C</sup> must be evaluated with and without Alternative 2.5. If Alternative 1.3<sup>C</sup> is adopted without Alternative 2.5, the TAC cap would be 40,000 mt. This TAC cap is larger than any Aleutian Islands pollock ABC since 1996 (see Table 3.2-1). ABCs ranged from 23,800 mt to 39,400 mt during this period. This means that under 1.3<sup>C</sup>, TAC would

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<sup>1</sup>50 CFR 679.20(d)(4) "Harvest Control Rule for pollock, Atka mackerel and Pacific cod. If a biological assessment of stock condition for pollock, Atka mackerel, or Pacific cod with in an area projects that the spawning biomass in that area will be equal or below 20 percent of the projected unfished spawning biomass during a fishing year, the Regional Administrator will prohibit the directed fishery for the relevant species within the area. ...."

<sup>2</sup>Dr James Ianelli, Personal Communication, May 27, 2004. Alaska Fisheries Science Center, Seattle, WA.

have been set equal to ABC in each year from 1996 to 2004. Even though the seasonal apportionment of harvest would still apply (40/60 split), the ABC of pollock could still be taken from the Aleutian Islands subarea during the fishing year. Given that the Western Aleutian SSL sub-population continues to be the one of most concern for NMFS, the combination of deterministic linkage and high cap is sufficient cause for concern to require formal consultation for this alternative.

In years when the AI pollock ABC is more than 40,000 mt under Alternative 1.3<sup>C</sup> with Alternative 2.5, or 37,500 mt under Alternative 1.4<sup>C</sup>, the amount of harvest is capped and would likely be less than the current TAC setting process allows. Because of the limitation on harvest in either situation, no adverse effects on Steller sea lions beyond effects analyzed in the 2000 and 2001 BiOps are likely. In years when the AI pollock ABC is below 40,000 mt under Alternative 1.3<sup>C</sup> or 37,500 mt under Alternative 1.4<sup>C</sup>, the effects of setting TAC will be analyzed in the annual harvest specifications analysis to determine if an adverse effect at the amount of harvest is likely. The 2000 and 2001 BiOps recognized that TAC may be set at the ABC level.

The issue of relationship between TAC and ABC remains if Alternative 1.3<sup>C</sup> is adopted in conjunction with Alternative 2.5, or if Alternative 1.4<sup>C</sup> is adopted. This conclusion is contingent on Council clarification that the alternatives are consistent with the harvest control rule (HCR) under the BiOp, which provides that there would be no directed fishery for pollock biomass under B<sub>20</sub>. However, for a combination of Alternatives 1.3<sup>C</sup> with 2.5, the maximum DFA (assuming a 2,000 mt ICA) is 15,200 mt and for Alternative 1.4<sup>C</sup> the TAC is capped at 15,000 mt. Under Alternative 1.3<sup>C</sup> with Alternative 2.5, the combined ICA and DFA would be about 28% below the lowest ABC (assuming a 2,000 mt ICA) in the period from 1991 to 2004, while under Alternative 1.4<sup>C</sup> the TAC would be about 37% below the lowest ABC from that period. Thus, in each of the years during this period, the TAC would have been bound significantly below ABC by the alternative. Given this mitigating factor and the annual NEPA process for the annual harvest specifications, the harvest control rule, and the 2 million OY cap, the derivation of TAC based on a percent of ABC is not likely to cause an adverse effect under current biomass conditions, and formal consultation is not necessary for either a) Alternative 1.3<sup>C</sup> implemented with Alternative 2.5 or b) Alternative 1.4<sup>C</sup>.

#### *NEPA Significance Analysis of the Council's Alternative 1.3<sup>C</sup>*

Alternative 1.3<sup>C</sup> differs from other alternatives that set the amount of the allocation of the AI pollock fishery under consideration. Alternatives 1.1 and 1.2 do not set a TAC, but allow the Council to determine future TACs in the course of the annual specifications process. Alternative 1.2 imposes some constraints on the Council's decisions into the FMP. Alternative 1.3<sup>C</sup> incorporates a formula in the FMP that determines the TAC once the ABC for the fishery is known. TACs will be equal to the ABC or 40,000 mt, whichever is less. Moreover, Alternative 1.3<sup>C</sup> was introduced in tandem with funding Alternative 2.5. Funding Alternative 2.5 includes a provision for a required roll back of the "B" season AI pollock allocation, and any unused "A" season allocation, no later than June 10. Thus, if 1.3<sup>C</sup> is adopted in combination with 2.5, it will have considerably different effects than if it is not. Alternative 2.5 requires the roll over of the entire "B" season allocation. In combination with Alternative

2.5, Alternative 1.3<sup>C</sup> would produce a maximum “A” season AI pollock directed fishing allocation of 15,200 mt. (Assuming a 40,000 mt ABC, TAC=ABC, 2,000 mt ICA, and “A” season DFA equal to 40% of the DFA. The calculations are illustrated in Table 4.2.3-2.). This combination would have potential impacts that would be very similar to those under Alternative 1.4<sup>C</sup>.

Thus, it has been necessary to evaluate Alternative 1.3<sup>C</sup> under two sets of conditions: with and without the adoption of Alternative 2.5.

Without Alternative 2.5, Alternative 1.3<sup>C</sup> would create a TAC that was equal to the ABC, but with a cap at 40,000 mt. This alternative has similarities to 1.2 which allowed the Council to choose the directed fishing allowance so as to reflect similar pollock allocations to CDQ groups but with a cap at 40,000 mt. However, Alternative 1.3<sup>C</sup> without 2.5 differs from 1.2 in that the allocation in 1.3<sup>C</sup> is determined by a formula in the FMP. The following analyses address implementation of Alternative 1.3<sup>C</sup> alone:

- *Effects on pollock stocks:* This alternative would constrain the AI TAC to 40,000 mt a year if the ABC were 40,000 mt or greater. If the ABC were less than 40,000 mt, the TAC would equal the ABC. Since TACs never exceed ABCs under any circumstances, and would be less than ABCs for ABCs of 40,000 mt and more, this alternative is not expected to have significant impacts on pollock stocks with respect to the relevant criteria: “insignificant.”
- *Effects on other target species and fisheries:* As noted in the discussion of 1.1 in Section 4.2.2, pelagic pollock trawling tends to be a “clean” fishery with relatively little bycatch of other species. The pelagic gear should have little impact on the habitat for these other species. Moreover, there appears to be limited overlap between pollock and fixed gear fishing areas. This alternative has therefore been ranked “insignificant” with respect to these impact.
- *Effects on incidental catch of other and non-specified species:* As noted in Section 4.2.2, the pelagic trawling for pollock is a relatively “clean” fishery that appears to harvest relatively limited volumes of other or non-specified species. Several of the other species are benthic oriented, and as should normally appear in relatively small volumes in pelagic gear. Fishermen have an incentive to avoid harvesting non-specified species, as these have little economic value. Methods, amounts, and locations of harvest are not changed with this alternative in a manner that would be expected to impact incidental catch of other and non-specified species beyond impacts that have already been identified for the groundfish fisheries (Programmatic SEIS). Therefore, this impact has been rated “insignificant.”
- *Effects on incidental catch of forage fish species:* Presumably the incidental catch of forage species would be similar to the patterns of catch in the historic pollock fishery, where levels were very low but in many cases unknown. The incidental catch of forage fish under this alternative likely would be in some proportion to the level of catch of the target species. But the levels of incidental catch are unknown. Overall BSAI removals are expected to change modestly because of the OY cap. The overall effects of this alternative likely would be negligible. This impact has therefore been rated

“insignificant.”

- *Effects on incidental catch of prohibited species:* As noted in the discussion of Alternative 1.2 in Section 4.2.2, if the Council were to place a cap on the Aleut Corporation allocation of 40,000 mt, it is likely that any effects would be insignificant to stocks of prohibited species, to directed fisheries for these species, and to levels of incidental catch of these species in the groundfish fisheries. Alternative 1.3<sup>C</sup> falls within the scope of Alternative 1.2, and this impact has been rated “insignificant.”
- *Effects on Steller sea lions:* As noted earlier, because of the combination of the deterministic linkage between TAC and ABC, the relatively high cap, and the concerns over STELLER SEA LIONS in the Western Aleutians, this alternative will require formal consultation. The significance of the potential effect of this alternative on Steller sea lions cannot be determined without the analysis that would be provided through a formal consultation. For this reason, the significance level has been determined to be “unknown.”
- *Effects on other marine mammals:* A wide range of potential impacts are discussed under Alternative 1.1 in Section 4.2.2. The fact that this fishery has occurred in the region before without adversely impacting other marine mammals suggests that it will not have adverse impacts in the future. Also, this fishery will be a small incremental addition to fishing and other maritime activity already taking place in the region. This impact has been rated “insignificant.”
- *Effects on seabirds:* A wide range of potential impacts are discussed under Alternative 1.1 in Section 4.2.2. Alternatives 1.1, 1.2, and 1.3 draw an insignificance conclusion in large part from their status as process setting alternatives, which defer consideration of specific TACs to the annual specifications process. Alternative 1.3<sup>C</sup> is not a current TAC-setting process alternative, but, as noted in the discussion above, imposes limits on the ability of the Council to take account of some issues by modifying TAC in the specifications process. However, the end result of implementing this alternative is establishing a quota for a fishery in the AI region. Such a fishery has occurred in the past without major impacts on seabird populations. This fishery would be by offshore trawl vessels, with some potential for seabird mortality from vessel structure or third wire strikes, partly from attraction offered by processing offal discharge from some processing vessels. However, industry also is working on seabird avoidance measures, particularly to minimize third wire concerns, and thus this alternative would not result in an appreciable potential for additional seabird mortality, and thus is rated “insignificant”.
- *Effects on habitat:* The pollock fishery created under Alternative 1.3<sup>C</sup> would use mid-water pelagic fishing gear, which does not normally come in contact with the bottom. Fishermen have an incentive to avoid damaging the gear and incurring costs by bringing the gear in contact with the bottom. The SSL protection measures protect about 65% of the Aleutian Islands shelf from the pollock fishery. For these reasons, the potential impact of fishing under Alternative 1.3 on habitat is expected to be “insignificant.”
- *Effects on ecosystem:* A wide range of potential impacts, including impacts on predator-prey relationships, energy flow and balance, and ecosystem diversity, are discussed under Alternative 1.1 in Section 4.2.2. On the basis of an evaluation of forage availability, spatial and temporal concentration on forage, removal of top predators, introduction on non-native species, energy redirection and removal, or species, functional or genetic



diversity, Alternative 1.1 was found to have “insignificant” impacts. Because 1.3<sup>C</sup> represents a subset of possible 1.1 outcomes, 1.3<sup>C</sup> has been given an “insignificant” significance ranking for this impact.

- *Effects on state managed and parallel fisheries:* As noted under Alternative 1.1 in Section 4.2.2, about 95% of the state waters in the Aleutian Islands are in areas that are closed to pollock fishery by SSL protection measures. Those waters that are open do not show significant historical pollock fishing, and only minimal effort for any species. As noted under Alternative 1.2, with a 40,000 cap on the AI pollock allocation, it is likely that any effects to state-managed and parallel groundfish fisheries would be insignificant. Alternative 1.3<sup>C</sup>, which places a similar 40,000 mt cap on the AI pollock allocation, is therefore considered to be “insignificant.”
- *Social and economic effects:* Alternative 1.3<sup>C</sup>, falls within the range of impacts analyzed under Alternative 1.2, which allows the Council to set an ABC with a 40,000 mt cap. Alternative 1.2 was determined to be “not significant.” Key factors in the determination were the fact that changes in the Aleutians would generally be offset in the EBS. For example, changes in revenues and profits to Aleut Corp would be offset by reductions in revenues and profits in the funding sectors. Moreover, EBS changes were expected to be small compared to changes in harvesting levels these fisheries could expect normally. Thus impacts on related fisheries, consumers, and excess capacity are likely to be small. Because Alternative 1.3<sup>C</sup> is a subset of Alternative 1.2 was determined to be “not significant” alternative is therefore determined to be “insignificant.”

When Alternative 1.3<sup>C</sup> is adopted in combination with Alternative 2.5, the impacts are “not significant.” The impact analysis for 1.4<sup>C</sup> below applies to 1.3<sup>C</sup> with 2.5 and has not been duplicated.

The two alternatives have AI pollock allocations that are very similar. Alternative 1.3<sup>C</sup> does have a somewhat larger directed fishing allowance than Alternative 1.4<sup>C</sup>. The directed fishing allowances under 1.3<sup>C</sup> are 1,200 mt greater than under 1.4<sup>C</sup> for ABCs up to 40,000 mt, and 2,200 mt at that level and above. These calculations are illustrated in Table 4.2.3-2 below. While Alternative 1.4<sup>C</sup> appears to provide an effective TAC cap 37% below the lowest TAC between 1991 and 1998, Alternative 1.3<sup>C</sup> with Alternative 2.5 appears to provide an effective cap 28% below that level. This difference is judged to have minimal impact, and not to affect the significance of Alternative 1.3<sup>C</sup> compared to Alternative 1.4<sup>C</sup>.

In addition, Alternative 1.3<sup>C</sup> would prevent a “B” season allocation, while Alternative 1.4<sup>C</sup> would make it possible for the Aleut Corporation to use unused “A” season TAC in the “B” season. Given the price differential, it seems likely that the Corporation would normally seek to use its entire allocation, or as much as possible, in the “A” season. This difference, therefore, is judge to have a minimal impact as well, and not to affect the significance of Alternative 1.3<sup>C</sup> compared to Alternative 1.4<sup>C</sup>.

**Table 4.2.3-2: Comparison of allocation sizes under Alternatives 1.3<sup>C</sup> and 1.4<sup>C</sup> and under different assumptions about ABC levels (measured in metric tons)**

Alternative 1.3 <sup>C</sup> (Council's language)					Alternative 1.4 <sup>C</sup> (Council's language)			
ABC	TAC	ICA	DFA w/o 2.5	DFA with 2.5	ABC	TAC	ICA	DFA
10,000	10,000	2,000	8,000	3,200	10,000	4,000	2,000	2,000
20,000	20,000	2,000	18,000	7,200	20,000	8,000	2,000	6,000
30,000	30,000	2,000	28,000	11,200	30,000	12,000	2,000	10,000
40,000	40,000	2,000	38,000	15,200	40,000	15,000	2,000	13,000
50,000	50,000	2,000	38,000	15,200	50,000	15,000	2,000	13,000
60,000	60,000	2,000	38,000	15,200	60,000	15,000	2,000	13,000

Notes: TAC under 1.3<sup>C</sup> is assumed to equal the ABC. The ICA is subtracted from this to give an annual DFA. The "A" season allocation is 40% of the annual DFA; the remainder is rolled back. Under 1.4<sup>C</sup> the TAC is 40% of the ABC. Subtracting the ICA leaves the DFA. Fish unused in the "A" season could be used in the "B" season.

### NEPA Significance Analysis of the Council's Alternative 1.4<sup>C</sup>

Alternative 1.4<sup>C</sup> has been determined to be not significant with respect to the impact criteria:

- *Effects on pollock stocks:* This alternative would constrain the annual directed fishing allowance below 15,000 mt a year (the actual amount below 15,000 mt will depend on the choice of pollock ICA for the Aleutians; in-season managers currently advise that a 2,000 mt ICA would be appropriate. If adopted, that would lead to a 13,000 mt DFA). TACs will be equal to 15,000 mt for ABCs equal to or greater than 37,500 mt and 40% of ABC for smaller ABCs. Since TACs would be considerably less than ABCs under any circumstances, this alternative is not expected to have significant impacts on pollock stocks with respect to the relevant criteria: "insignificant."
- *Effects on other target species and fisheries:* This alternative limits pollock harvests below levels that would be allowed by the ABC and at least 35% below the lowest level taken in the historical fishery. In the past the pollock fisheries have only caught small incidental amounts of other target species. There appears to be limited overlap between pollock and fixed gear fishing areas. This alternative has therefore been ranked "insignificant" with respect to these criteria.
- *Effects on incidental catch of other and non-specified species:* This alternative limits pollock harvests below levels that would be allowed by the ABC and at least 35% below the lowest level taken in the historical fishery. Less constrained alternatives were judged to be insignificant with respect to this criterion. This impact has been rated "insignificant."
- *Effects on incidental catch of forage fish species:* This alternative limits pollock harvests below levels that would be allowed by the ABC and 37% below the lowest ABC from 1991 to 2004. Less constrained alternatives were judged to be insignificant with respect to this criterion. This impact has been rated "insignificant."

- *Effects on incidental catch of prohibited species:* This alternative limits pollock harvests below levels that would be allowed by the ABC and at 37% below the lowest ABC between 1991 and 2004. Less constrained alternatives were judged to be insignificant with respect to this criterion. This impact has been rated “insignificant.”
- *Effects on Steller sea lions:* This alternative constrains potential TACs to 15,000 mt and thus is expected to have smaller impacts on Steller sea lions than the other alternatives. This alternative does create a formula that determines the TAC once the ABC is known. This alternative limits the ability of the Council to reduce the TAC below ABC to address ecosystem concerns. The BiOps acknowledged the fact that TAC could be set equal to ABC for any prey species and that the SSL protection measures, the harvest control rule, and the 2 million metric ton BSAI OY provided additional precautionary margin for Steller sea lions. Although the TAC specification process, together with the 2 million mt cap, means that most species TACs will be less than ABC, the AI pollock TAC being set at ABC or a percentage of ABC will be analyzed for impacts on the human environment annually during the harvest specifications process. For this reason, the significance level has been determined to be “insignificant.”
- *Effects on other marine mammals:* A wide range of potential impacts are discussed under Alternative 1.1 in Section 4.2.2. The fact that this fishery has occurred in the region before without adversely impacting other marine mammals suggests that it will not have adverse impacts in the future. Moreover, this alternative limits pollock harvests at 37% below the lowest ABC taken between 1991 and 2004. The impacts of a reopened AI pollock fishery would thus likely be less than those impacts realized in this fishery in prior years. Also, this fishery will be a small incremental addition to fishing and other maritime activity already taking place in the region. This impact has been rated “insignificant.”
- *Effects on seabirds:* This alternative is significantly more restrictive than the other alternatives. Even given the uncertainties in impacts on some seabirds from an AI pollock fishery described under Alternative 1.1 in Section 4.2.2, the element of a reduction in fishing effort embodied in this alternative that suggests a reduced level of impact on seabirds compared with the other alternatives. The constrained TAC should minimally impact potential seabird prey. The constrained level of directed fishing for pollock under this alternative would result in lower levels of fishing vessel activities in the AI region, with the resultant likely lower levels of seabird take through trawl cable or superstructure strikes. Since these levels are currently not of major concern, this alternative would not appreciably change this situation. While the issue of potential rat entry to an uninfested Aleutian island is of concern, as discussed above the likelihood of an event that would lead to this is very small; this alternative would be associated with lower levels of fishing activity than the others, and therefore would have a lower probability of potential effect. This alternative is considered “insignificant.”
- *Effects on habitat:* Alternative 1.4 was determined to be “not significant” with respect to these criteria. Alternative 1.4<sup>C</sup> constrains potential pollock harvests even more than 1.4. Alternative 1.4<sup>C</sup> would therefore be expected to be associated with lower habitat impacts than Alternative 1.4. This alternative limits pollock harvests below levels that would be allowed by the ABC and at 37% below the lowest ABC between 1991 and 2004. Alternative 1.4<sup>C</sup> is therefore determined to be “insignificant” with respect to habitat

- impacts.
- *Effects on ecosystem:* As noted above, Alternative 1.1 was determined to be “insignificant” after a consideration of an evaluation of forage availability, spatial and temporal concentration on forage, removal of top predators, introduction on non-native species, energy redirection and removal, or species, functional or genetic diversity. Alternative 1.4<sup>C</sup> limits pollock harvests below levels that would be allowed by Alternative 1.1, and 37% below the lowest ABC between 1991 and 2004. Alternative 1.4<sup>C</sup> is therefore considered to be “insignificant” with respect to this criterion.
  - *Effects on State managed and parallel fisheries:* As noted under Alternative 1.1 in Section 4.2.2, about 95% of the State waters in the Aleutian Islands are in areas that are closed to pollock fishery by SSL protection measures. Those waters that are open do not show significant historical pollock fishing, and only minimal effort for any species. As noted under Alternative 1.2, with a 40,000 cap on the AI pollock allocation, it is likely that any effects to State-managed and parallel groundfish fisheries would be insignificant. Alternative 1.4<sup>C</sup>, which places a 15,000 mt cap on the AI pollock allocation, is therefore considered to be “insignificant.”
  - *Social and economic effects:* Alternative 1.3<sup>C</sup>, falls within the range of impacts analyzed under Alternative 1.2, which allows the Council to set an ABC with a 40,000 mt cap. Alternative 1.2 was determined to be “not significant.” Key factors in the determination were the fact that changes in the Aleutians would generally be offset in the EBS. For example, changes in revenues and profits to Aleut Corp would be offset by reductions in revenues and profits in the funding sectors. Moreover, EBS changes were expected to be small compared to changes in harvesting levels these fisheries could expect normally. Thus impacts on related fisheries, consumers, and excess capacity are likely to be small. Because Alternative 1.3<sup>C</sup> is a subset of Alternative 1.2 was determined to be “not significant” alternative is therefore determined to be “insignificant.”

**The following text would be added to page 286 in Chapter 7 (the RIR) of the EA/RIR document:**

As noted above, Alternative 1.4 makes it possible for the Council to allocate somewhat more fish to the corporation (depending on the size of the TAC it chooses) compared to Alternative 1.4<sup>C</sup>. The potentially larger allocations under 1.4 range between 1,200 mt and 2,200 mt for ABCs between 10,000 mt and 40,000 mt. At a 40,000 mt ABC, the Aleut Corporation could receive 2,200 more metric tons under Alternative 1.4 than under Alternative 1.4<sup>C</sup>. Using a royalty value of \$304 per metric ton in the “A” season, this could be as much as \$670,000.

Thus Alternative 1.4 may be associated with larger allocations to and revenues to the Aleut Corporation. However, the alternative may be associated with somewhat larger adverse impacts to the BSAI fisheries (Up to 2,200 mt). This potential impact is contingent on the funding decisions the Council would have made under Alternative 1.4. Under Alternative 1.4, the Council could have set a TAC that would create the same allocation for the Aleut Corporation as it would have received from Alternative 1.4<sup>C</sup>, given the same ABC level. Insert the following

table at the end of Chapter 6

**Table 6.0-9 Summary of Significance Determinations for Council April Motion Decision 1 Alternatives: Allocation Size**

<b>Coding: S- = Significantly adverse, I = Insignificant impact, S+ = Significantly beneficial, U = Unknown</b>			
<b>Issue</b>	<b>Alternative 1.3<sup>C</sup> (without 2.5)</b>	<b>Alternative 1.3<sup>C</sup>(with 2.5)</b>	<b>Alternative 1.4<sup>C</sup></b>
Pollock stock	I	I	I
Other target species and fisheries	I	I	I
Incidental catch of other and nonspecified species	I	I	I
Incidental catch of forage species	I	I	I
Incidental catch of PSC	I	I	I
Steller sea lions	U	I	I
Other marine mammals	I	I	I
Seabirds	I	I	I
Habitat	I	I	I
Ecosystem	I	I	I
State-managed and parallel fisheries	I	I	I
Socio-economic	I	I	I

## Potential AI pollock fishery rockfish bycatch

In April 2004 the AP requested a discussion of "Relative to pollock harvest levels under the new 1.3 of the EA, quantify rockfish bycatch amounts and implications to MRAs and rockfish target fisheries in the Aleutian Islands." The new 1.3 of the EA was a reference to an earlier AP motion requesting an alternative similar to the existing 1.4, to range from 0 to 40,000 mt. The following text is to be added to the EA at page 104 in response to this request.

### Supplementary rockfish text:

During the domestic AI pollock fishery from 1991 to 1998, pollock fishermen took rockfish as a bycatch. Rockfish bycatch during the period totaled 324 mt. Almost all of this, 300 mt, was Pacific ocean perch (POP). Over half of the remainder, about 16 mt during the eight years, was shorttraker. Rockfish bycatch rates averaged 0.00085 mt per mt of pollock over the period; the rate in the lowest year was 0.000125, while the rate in the highest year was 0.003421. Table 4.2.2-1 below, shows the estimated rockfish bycatch associated with these rates for potential pollock directed fishing allowances from 10,000 to 40,000 mt.

**Table 4.2.2-1 Estimated rockfish bycatch under different assumptions about DFA levels (metric tons)**

DFA	Rockfish bycatch with bycatch rate of 0.000125	Rockfish bycatch with bycatch rate of 0.00085	Rockfish bycatch with bycatch rate of 0.000342
10,000	1	9	34
20,000	3	17	68
30,000	4	26	101
40,000	5	34	137

Almost all of this estimated rockfish bycatch is expected to be POP. The dominance of POP is consistent with experience in the recent EBS pollock fishery, and in the GOA pollock fishery. In the Aleutians the POP fishery is typically conducted by five to seven trawlers that begin fishing in the Eastern Aleutian district in July, and gradually work their way to the Central and Western districts. In 2004, the AI POP TAC was set equal to the ABC of 11,172 mt. Separate TACs were provided in each management district. In 2003, fishing operations harvested the entire AI TAC, exceeding it in the Eastern and Western districts, and falling short in the Central district. POP bycatch in the pollock fishery would count against the AI POP quotas and reduce the volume of POP available to this trawl fishery. In a low bycatch rate year, the rockfish bycatch may be under 10 mt. In a high year, with a 40,000 mt DFA, the rockfish bycatch may reach 137 mt.

In the BSAI, pollock fishermen have a 2% MRA for shorttraker/rougheye, and a 5% MRA for the remaining rockfish species (including POP). AI bycatch rates from the 1990s do not approach

these levels. EBS harvest data for 2003 does not indicate that pollock fishermen are trying to top off their MRA with POP. There is no evidence of pollock fishermen topping off on POP in the past. Should that occur, NMFS would have the option of lowering the MRA rate.

This discussion is based on bycatch rates in the 1990s. A new fishery may be significantly different, and associated with different patterns of rates. A new fishery will be taking place away from historical fishing areas. Moreover, a significant part of the harvest in a new fishery may be taken with small (under 60 ft LOA) trawlers, which may operate in ways that are different from the historical fishery.

### **Use of Video Technology in Place of Observers**

In April 2004 the SSC requested a discussion of the use of video technology as a substitute for more expensive observer coverage on AI Pollock trawlers. The following text is to be added to the end of Section 4.4.1 at page 200:

The high costs associated with observer coverage may be mitigated through the use of remote monitoring technologies. These may include video or digital imaging of activity on the deck, combined with one or more other technologies, such as GPS to record vessel position, course and speed, or a hydraulic pressure transducer to record variations in the activity of vessel hydraulics as it sets, fishes and retrieves its trawl. Linked together, the various technologies could provide a relatively comprehensive record of vessel activity. Similar technologies have been used successfully in fisheries off of British Columbia where issues associated with preventing tampering with the equipment, and cost-effective review of monitoring data have been dealt with. The cost of these technologies is much lower than the cost of observer coverage (Gilroy, et al., pages 24 to 28). It is not clear to what extent these technologies could be substituted for observers in an Aleutian Islands pollock fishery. They are likely to provide an imperfect substitute for the range of information that might be supplied by an observer.

Add to references:

Gilroy, Heather L., Tracee O. Geernaert, Stephen M. Kaimmer, Gregg H. Williams, and Robert J. Trumble. "A Feasibility Study that Investigates Options for Monitoring Bycatch of the Short-tailed Albatross in the Pacific Halibut Fishery off Alaska." International Pacific Halibut Commission (IPHC). Seattle: December 1, 2000.

**Aleutians Islands Pollock Allocation**

North Pacific Fishery Management Council  
Portland – June 2004

1

**Outline**

- The AI pollock issue
- Decision elements and alternatives
- NEPA conclusions
- Should CDQ groups contribute to funding
- Specifications

2

**The AI Pollock issue**

3

**Consolidated Appropriations Act of 2004**

- Required that future Aleutian Islands pollock allocations be made to the Aleut Corporation
- Conditions imposed on harvest by the Aleut Corporation
- No actual DFA required
- Created need for FMP Amendment, regulatory amendments, and pollock allocation in specs

4

**Council's Action in February 2004**

- Council requested an evaluation of an FMP amendment to be presented at the April 2004 meeting
- Identified five decisions
- And appropriate alternatives with respect to each of these
- Identified objective of a final decision for an FMP Amendment in June 2004

5

**Council's Action in April 2004**

- Council received a preliminary analysis, and approved it for release for public comment after certain changes were made
- Requested several new alternatives and a new decision element (exemption from Chinook PSC cap for AI pollock)

6



## Council's Action in June 2004

- Council proposes to take final action on amendment to the BSAI FMP to allow a fishery for AI pollock
- Council must choose among alternatives available for its six decisions

7

## Decision Elements and Alternatives

8

## Current decision elements

- Allocation size
- Allocation funding
- Monitoring
- Small vessels
- Economic development reporting
- Chinook PSC cap

9

## Allocation size

- 1.1 No action places no limits on funding
- 1.2 Relate to CDQ levels, 40,000 mt cap
- 1.3<sup>C</sup> TAC equals 40,000 mt or ABC, whichever less; seasonal apportionment
- 1.4<sup>C</sup> TAC equals 15,000 mt or 40% of ABC, whichever less; no seasonal apportionment
- 1.3 and 1.4 versions of above, without direct deterministic relationship between TAC and ABC; seasonal apportionment

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## Allocation funding

- 2.1 No action: not viable
- 2.2 Fund from EBS pollock only
- 2.3 Fund from all BSAI species
- 2.4 Fund from all BSAI species except IFQ sablefish
- 2.5 Fund from EBS pollock, and BSAI rock sole and yellowfin sole

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## Monitoring

- 3.1 No action, no new measures
- 3.2 Additional measures (Notify NMFS of eligible vessels, CMCP, Aleut Corp responsibility for harvest monitoring and staying within TAC, and more)
- 3.3 Measures in 3.2 plus observers (2 sub-options)

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### Small vessels

- 4.1 No action: no restrictions on small vessels in early years of program
- 4.2 Restrict entry by small vessels in early years of program (two sub-options)

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### Development reporting

- 5.1 No action – no reporting requirement
- 5.2 Aleut Corp provides annual report to Council
- 5.3 Aleut Corp provides annual CDQ level report to NMFS or State of Alaska
- 5.4 Aleut Corp reports at June 2006 Council meeting

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### Chinook PSC cap

- 6.1 No action – count Chinook PSC against BSAI cap
- 6.2 Do not count Chinook PSC against BSAI cap
- 6.3 Local AI cap leading to AI closure

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### Changes to EA/RIR since April, 2004

- New decision element and additional alternatives – NEPA analysis
- Additional NEPA analysis of more verbatim Council motion – re: Alts 1.3 and 1.4
- Addressed AP and SSC concerns (AI rockfish bycatch, NEPA significance criteria, effects on marine mammals, rats)

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### NEPA Conclusions

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### NEPA Conclusions

- Most decision-alternatives do not raise NEPA significance issues
- Alt 3.1 which does not increase the level of monitoring has “unknown” effects for several impact items
- Alt 3.3 which requires observers has an unknown “safety” impact – a social unknown would not require an EIS

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### NEPA Conclusions

- Alt 1.3<sup>C</sup>, which requires TAC to be equal to 40,000 mt or the ABC, whichever is less, has been given an "unknown" designation because of the requirement for Section 7 ESA consultation
- When 1.3<sup>C</sup> is combined with 2.5, it is given an "insignificant" rating

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### Alternative 1.3<sup>C</sup>

- "The Council shall allocate a combined Aleutian Islands ICA and DFA equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% season, 60% B season allocation required by the SSL protection measures"

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### Alternative 2.5

- "The pollock allocation to the AI fishery will be funded 10% by a reduction in the BSAI rock sole fishery ITAC, 10% by a reduction in the BSAI yellowfin sole fishery ITAC, and 80% by a reduction in the EBS pollock fishery ITAC. No later than June 10, unused A season AI pollock DFA, and the entire B season AI pollock DFA shall be rolled back to the EBS pollock fishery..."

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### Alternative 2.5 (continued)

- "Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACs and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so."

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### Alternative 1.4<sup>C</sup>

- "Beginning in 2005, and until changed, the annual Aleutian Islands pollock TAC shall be the lesser of 15,000 mt or 40% of the AI pollock ABC. One hundred percent of the Directed Fishing Allowance (DFA) shall be available for harvest in the pollock "A" season."

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### Should CDQ Groups Contribute?

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### Issue: Should CDQ groups contribute?

- Depending on the way Alternatives 2.2, 2.3 and 2.4 are structured,
- CDQ groups may or may not contribute to the Aleut pollock allocation
- This question may remain a policy option open to Council decision

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### CDQ Group Contributions

- 1 Determine the AI pollock DFA and ICA (but don't define an AI pollock TAC)
- 2 Deduct these from the OY
- 3 TACs for other species must be  $\leq$  to the remainder after the AI DFA and ICA have been deducted from the OY.
- 4 Determine the TACs for these species
- 5 Calculate species specific reserves, CDQ reserves, and ITACS for other BSAI species

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### CDQ Group contributions

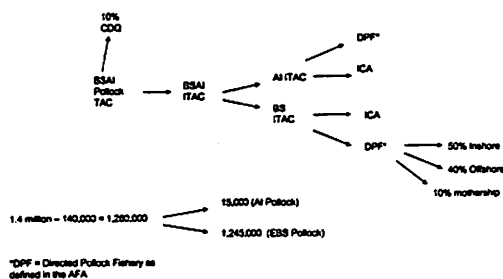
- No AI pollock TAC is defined
- Other species TACs are reduced as appropriate to fund AI pollock
- CDQs can be calculated as 10% of pollock as required by AFA, and 7.5% of other species as required by FMPs.

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### New Legal Issues

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### BSAI Pollock TAC and CDQ Allocation



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### CDQ Groups do not contribute

- 1 Determine the AI pollock DFA
- 2 Determine the BSAI TACs for each of the other species
- 3 Deduct CDQ and unspecified reserves
- 4 Subtract species contributions to the AI pollock DFA

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### CDQ Groups do not contribute

- CDQ allotment is calculated as a percentage of the TAC
- Can be calculated as 10% of pollock TAC as per AFA, and 7.5% of other species as per FMP
- All pollock funding is taken after the CDQ is calculated

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### Alternative 2.5 and CDQ contributions

- No CDQ contributions associated with this alternative
- It bases calculations on percentages of ITACs, which are TACs following deductions for CDQ reserves (and non-specified reserves)

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### Specifications

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### Issue: Specifications

- The analysis in the EA/RIR covers the FMP and regulatory amendment
- Specific levels of ABC and TAC will have to be evaluated in the fall in the Specifications EA

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### Council Decision Recap

- Council final decision in June
- FMP and regulatory amendments
- 2005 Specifications
- Can be effective in January 2005

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6/10/04 11:00am  
C-4 H/O by  
Staff

## The AI Pollock Alternatives, June 2004

### 1.0 Allocation size

- 1.1 No action: Determine the appropriate Aleutian Islands pollock TAC each year during the annual specifications process.
- 1.2 For guidance in determining the allocation amount to the AI pollock fishery, the Council shall consider pollock allocations given to the various groups that participate in the CDQ program, in order to recommend a "reasonable amount" of AI pollock to award to the Aleut Corporation, and in no case should this amount exceed 40,000 mt.
- 1.3<sup>C</sup> The Council shall allocate a combined Aleutian Islands ICA and DFA equal to the lesser of the ABC or 40,000 mt. This allocation shall be subject to the 40% "A" season, 60% "B" season allocation required by the SSL protection measures. (Language of Council's April motion)
- 1.4<sup>C</sup> Beginning in 2005, and until changed, the annual Aleutian Islands Pollock TAC shall be the lesser of 15,000 mt or 40% of the AI Pollock ABC. One hundred percent of the Directed Fishing Allowance (DFA) shall be available for harvest in the Pollock "A" season. (Language of Council's April motion)
- 1.3 The Council shall allocate a combined AI ICA and DFA equal to the lesser of the TAC generated from the ABC for that year or 40,000 mt. The DFA shall be subject to the 40% "A" season and 60% "B" season apportionment required by the Steller sea lion protection measures.
- 1.4 Beginning in 2005, and until changed, the AI pollock "A" season DFA shall be the lesser of 15,000 mt or 40% of the AI pollock annual TAC after subtraction of the ICA. No part of the annual DFA shall be allocated to the "B" season.

### 2.0 Allocation mechanism

- 2.1 No action: no regulatory changes
- 2.2 The pollock allocation to the AI fishery will be funded by a reduction in the EBS pollock TAC. Any unused pollock TAC from the AI fishery will be rolled back to the EBS pollock TAC. This will occur at the earliest time possible in the calendar year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.3 The pollock allocation to the AI fishery will be funded by taking equal proportional reductions in the TAC amounts from each of the existing groundfish fisheries in the BSAI, without regard to species. Any unused TAC amount, surplus to the needs of the AI pollock fishery, will be rolled back to the fisheries from which it originated in the same proportions (and species). This should occur at the earliest time in the calendar

year. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

- 2.4 The pollock allocation to the AI fishery will be funded as described in Alternative 2.3 but the procedure for calculation of TAC exempts the BSAI sablefish IFQ fishery from the proportional reduction and rollback. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.
- 2.5 The pollock allocation to the AI fishery will be funded 10% by a reduction in the BSAI rock sole fishery ITAC, 10% by a reduction in the BSAI yellowfin sole fishery ITAC, and 80% by a reduction in the EBS pollock fishery ITAC. No later than June 10, unused A season AI pollock DFA, and the entire B season AI pollock DFA, shall be rolled back to the EBS pollock fishery. Before making the apportionment as described here, the AI pollock DFA is to be funded from the difference between the sum of all BSAI groundfish fishery TACS and the BSAI 2 million mt OY cap, unless the difference is not large enough to do so.

### **3.0 *Monitoring vessel activity***

- 3.1 Status quo (this option imposes only those monitoring and enforcement requirements that would be required if there were no change in regulation).
- 3.2 “Increased monitoring” alternative. This alternative would have several required measures (not options). These include:
  1. The Aleut Corporation must notify the NMFS Alaska Region with a list of which vessels are authorized by it to fish in the Aleutians; notification must be at least 14 days prior to the anticipated start of fishing. The NMFS RAM Division will verify each vessel’s eligibility (FFP, ADF&G number, USCG fishery endorsement, length, or AFA status) and provide to the Aleut Corporation a list of qualified vessels and the date fishing may commence. These vessels must carry documentation showing they have RAM approval and Aleut Corporation permission;
  2. Catcher vessels are prohibited from fishing for pollock in the Aleutian Islands if pollock harvested in the Bering Sea or GOA are on board. Also, catcher vessels are prohibited from fishing for pollock in the Bering Sea or GOA if Aleutian Islands pollock are on board;
  3. AFA requirements extend to catcher-processors and motherships (this extends AFA level observer and scale requirements to CPs under 60 feet and to unlisted AFA vessels);
  4. AI pollock may only be delivered to a shoreside processor or stationary processor which has an approved Catch Monitoring Control Plan;
  5. The Aleut Corporation will be responsible for keeping its harvests and its agents’ harvests within the AI pollock directed fishing allowance. The Aleut Corporation shall be responsible for designating a person as a quota manager for

pollock catch accounting; this person shall report to NMFS Sustainable Fisheries Division with weekly pollock catch summaries.

- 3.3 "Observer" alternative. Option 3.3a: All the requirements of Alternative 2 would apply; in addition, all catcher vessels would be required to have 100% observer coverage. Option 3.3b: All of the requirements of Alternative 2 would apply; in addition, all catcher vessels would be required to have 30% observer coverage while operating in the Aleutian Islands and at least one trip by each participating vessel would have to be observed.

#### **4.0 *Small vessels***

- 4.1 No action. Take no steps to delay ability of Aleut Corporation to introduce vessels under 60 feet LOA.
- 4.2 Defer small vessel participation until a later date 2 (2006) or 5 (2007) years from 2004 to allow for development of a management program.

#### **5.0 *Economic development report mandate***

- 5.1 No action: do not require the Aleut Corporation to submit an annual report to the Council or NMFS
- 5.2 Require the Aleut Corporation to submit an annual report to the Council
- 5.3 Require the Aleut Corporation to submit an annual report to NMFS or the State of Alaska comparable to the annual reports submitted by the CDQ groups.
- 5.4 Require the Aleut Corporation to submit a report to the Council prior to its June 2006 meeting. At the June 2006 meeting, the Council shall review the AI pollock fishery's performance, including information on harvest success, development of a small vessel fleet, and progress toward completion of pollock processing capacity to determine if further adjustments to the AI pollock TAC may be appropriate, in light of Section 803 of the Consolidated Appropriations Act, 2004 and Senator Stevens' floor language.

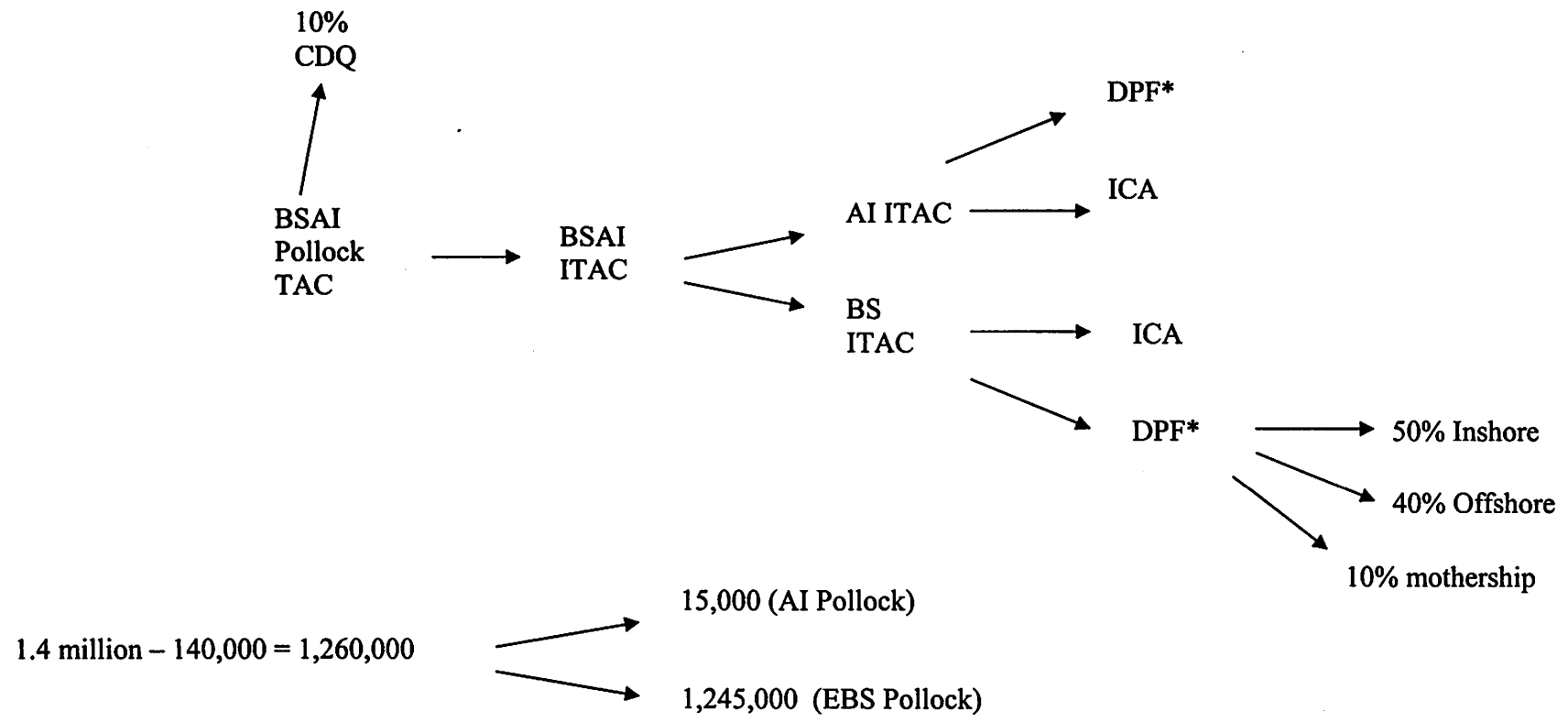
#### **6.0 *Chinook salmon bycatch management***

- 6.1 No action. Chinook salmon bycatch in the AI pollock fishery would count against the BSAI Chinook salmon bycatch cap.
- 6.2 Chinook salmon bycatch in the AI pollock fishery would not count toward the Chinook salmon bycatch cap in the BSAI.
- 6.3 A new 360 Chinook salmon bycatch cap is set for the AI Pollock fishery which, when attained, results in closure of the AI Chinook Salmon Savings Area only.



6/10/04 11 am  
C-4 H/O by  
Staff

# BSAI Pollock TAC and CDQ Allocation



\*DPF = Directed Pollock Fishery as defined in the AFA

Comparison of Elements of CDQ Program, Adak crab allocation, and Adak AI pollock allocation

6/10/04 11am  
C-4 H/O by  
Nicole K.

	<b>CDQ</b>	<b>Adak crab</b>	<b>AI pollock</b>
Status	On-going since 1992	Approved by Council in 2002-2003 Mandated by Congress in Jan 2004 Expected implementation in 2005	Mandated by Congress in Jan 2004 Final action by Council June 2004 Expected implementation in 2005
Purpose of Allocation	To provide the means for starting or supporting commercial fisheries business activities that will result in an ongoing, regionally based, fisheries-related economy.	The Council's motion states that funds must be "used for fisheries related purposes" and the "benefits derived from the allocation accrue to the community and achieve the goals of the fisheries development plan."	Congress stated that the purpose is for "economic development in Adak."
Entity Receiving Allocations	CDQ groups: non-profit corporations representing eligible western Alaska communities. BOD must be 75% resident fishermen and each community must have at least one representative board member.	Adak community non-profit entity with board of directors elected by residents of Adak. Entity has not yet been established. Aleut Enterprise Corporation could receive allocations and hold funds in trust until the entity is established (for up to two years).	Aleut Corporation, an existing, for-profit Native regional corporation established under the Alaska Native Claims Settlement Act.
Species	All groundfish except squid; prohibited species; crab; and halibut	Western Aleutian Islands brown king crab	AI pollock
Allocation Amount	10% of BSAI pollock, 7.5% of most groundfish and PSC, 7.5% of crab (until 2005), and various allocations of halibut	10% of the annual TAC for WAI brown king crab	Entire directed fishing allowance of pollock specified for the AI.
Estimated Value of Allocations	*Annual CDQ royalties \$46 million (2002) *Net assets \$193 million (2002)	Ex-vessel value of about \$950,000. Future royalty value unknown.	Estimate of \$10.3 million, based on a 40,000 mt directed fishing allowance. (AI pollock EA/RIR, Table 7.7-1, p. 287. Estimates based on EBS CDQ pollock royalty rates. 40,000 mt is the upper bound of two of the three action alternatives for the allocation size.)
Limitations on Use of Allocation	Restricted to fisheries-related investments. NMFS is preparing proposed rule to relax this requirement based on Council recommendations under Am. 71.	Council's motion restricts use of funds generated from the allocation to "fisheries related purposes."	Required to be used for economic development in Adak.
Continued on next page			

Comparison of Elements of CDQ Program, Adak crab allocation, and Adak AI pollock allocation

	<b>CDQ</b>	<b>Adak crab</b>	<b>AI pollock</b>
<b>Agency Responsible for Oversight</b>	<ul style="list-style-type: none"> <li>*NMFS: general oversight and final approval of allocations and community development plans.</li> <li>* State: primary day-to-day oversight</li> </ul>	<p>Council motion specifies "city or state oversight." NMFS will propose to defer oversight to the State under the crab FMP. Allocations would be set in NMFS regulation, but NMFS would have no direct role in oversight of the economic development aspects of the program.</p>	<p>Council will determine level of oversight and agency responsible for oversight (NMFS, State, or Council).</p>
<b>Primary Elements of Oversight</b>	<ul style="list-style-type: none"> <li>*Periodic, competitive allocations among CDQ groups.</li> <li>*Prior approval of community development plan and all significant new investments.</li> <li>*Quarterly reports to the State.</li> <li>*Annual audited financial statements and management report.</li> <li>*Periodic, competitive allocations play large role in compliance.</li> </ul>	<ul style="list-style-type: none"> <li>*Council motion requires a fisheries development plan, use procedures, investment policies, and auditing procedure. If oversight deferred to the State under the crab FMP, the State would develop oversight regulations and administrative process.</li> <li>* No competitive allocations as part of compliance mechanism.</li> <li>* Council could reassess allocation if compliance issues are identified by State.</li> </ul>	<p>Council will select appropriate level of reporting for the Aleut Corporation.</p> <ul style="list-style-type: none"> <li>*Op. 1: no report (e.g. no oversight)</li> <li>*Op. 2: annual report to Council</li> <li>*Op. 3: annual financial report to NMFS or State with summary to Council</li> <li>*Op. 4: one time report to Council prior to June 2006 meeting</li> <li>* no competitive allocations as part of compliance mechanism.</li> <li>*Council could reassess allocation if compliance issues are identified.</li> </ul>
<b>NMFS's Oversight Responsibilities</b>	<ul style="list-style-type: none"> <li>*Final approval of allocations.</li> <li>*Final approval of CDPs</li> <li>*Prior approval of all significant investments through amendments to CDPs.</li> <li>*Resolve appeals on allocations and amendment disapprovals.</li> <li>*Review of CDQ groups' annual audited financial statements.</li> <li>*Review of State's annual report to NMFS.</li> </ul>	<p>If oversight is deferred to the State, NMFS's role would be limited to verification that the Adak community entity is a non-profit corporation with an elected Board of Directors.</p>	<p>The Council will recommend NMFS's role in oversight in June 04.</p> <ul style="list-style-type: none"> <li>*Op. 1: no role for NMFS</li> <li>*Op. 2 and Op. 4: Limited to review of reports by the Regional Administrator in his capacity as a Council member.</li> <li>*Op. 3: Council will select State or NMFS for primary oversight role. If NMFS is selected, it would have a significant role in oversight through review of independently audited annual report, but this would not be as significant a role as in the CDQ Program because it doesn't involve approval of periodic, competitive allocations or review and prior approval of Community Development Plans or any significant new investments. Also does not require NMFS to determine whether investments are fisheries related or not.</li> </ul>
<b>Reporting to the Council</b>	<ul style="list-style-type: none"> <li>* No formal annual report to the Council, although NMFS and the State would provide this type of report to the Council at any time upon request.</li> <li>* State consults with Council on allocation recommendations during each allocation cycle (every three years).</li> </ul>	<p>Council motion does not specifically require any reports to the Council. However, motion references that the Council would reassess the allocation for further action if funds from the allocation have to be held in trust by the Aleut Enterprise Corporation for more than two years. Also mentions oversight to ensure that "Council's goals are met."</p>	<p>Council will select in June 04:</p> <ul style="list-style-type: none"> <li>*Op. 1: no report;</li> <li>*Op. 2: annual report by Aleut Corp. to Council;</li> <li>*Op. 3: detailed report to NMFS or State, annual summary to Council;</li> <li>*Op. 4: report to Council prior to June 06 mtg.</li> </ul>

C-4 Pub. Test.  
6/10/04  
Jerry Davis  
CDQ group  
Yukon Delta

TO: Ms. Lauren Smoker  
FROM: Yukon Delta Fisheries Development Association, Bristol Bay Economic Development Corporation  
DATE: June 8, 2004  
RE: Funding the AI Pollock Allocation

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**Issue**

Under relevant federal law and federal regulations implementing current Bering Sea and Aleutian Islands ("BSAI") management practices, including those found in the most recent Fisheries Management Plan ("FMP") adopted by the North Pacific Fisheries Management Council ("NPFMC" or the "Council"), is it a reasonable alternative under the EA/RIR analysis for Amendment 82 to the FMP to consider the establishment a directed fishing allowance ("DFA") in the BSAI pollock fishery and deduct the same from the BSAI Optimum Yield ("OY") before the establishment of a total allowable catch ("TAC") for the same fishery?

**Short Answer**

It is not a reasonable alternative under the EA/RIR analysis for Amendment 82 to the FMP for the Council to consider a funding alternative for Adak pollock that would establish a DFA in the AI Pollock fishery, deduct the same from the OY, prior to setting a TAC for that same fishery if the result would be an avoidance of the clear statutory mandate under Section 206(a) of the American Fisheries Act, PL 105-277 (the "AFA"), that allocates ten percent of any directed pollock fishery in the Aleutian Islands to the western Alaska Community Development Program ("CDQ") as a threshold matter prior to the allocation for any other purpose.

In addition, the clear language of Section 803 of the Consolidated Appropriations Act ("CCA"), and Senator Stevens floor statement regarding the same (the "Floor Statement"), are not in conflict with the allocation criteria set forth in the AFA and neither statute creates an ambiguity that would allow an allocation method other than what is currently used to fund a directed fishery for the Aleut Corporation ("Adak"), which include first setting a TAC for any fishery prior to setting a DFA.

**Analysis**

**CCA, Section 803**

The CCA directs that the "directed pollock fishery" in the AI Subarea of the BSAI shall be allocated to the Aleut Corporation. CCA, Section 803(a). The term "directed pollock fishery" is not defined in the CCA, however the AI Subarea of the BSAI is defined by reference to current federal regulations at 50 CFR 679.2. Senator Stevens specifically stated in the Floor Statement in reference to Section 803(a) that:

"Section 803 does not waive the requirements of the Magnuson-Stevens Act, Endangered Species Act, National Environmental Policy Act or any other federal

laws. The North Pacific Council and NMFS should be cautious in implementing section 803(a) to ensure that any reopening of a directed Aleutian Islands pollock fishery is accomplished in full compliance with all applicable law, and without disrupting 2004 groundfish fisheries which have already commenced." (Emphasis added).

The Floor Statement in regards to Section 803(b) limits the AFA's Section 206(b) to only the Bering Sea for the specific purposes of allowing Adak to develop a small vessel pollock fishery. There is no other limitation or modification of the AFA in the CCA.

The Floor Statement in regards to Section 803(c) explains that the BSAI OY will have to make room for the Adak DFA by taking "proportional reductions in the total allowable catches for each of the existing groundfish fisheries as necessary to accommodate the establishment of the Aleutian Island pollock fishery."

In addition, Section 803(d) of the CCA specifically references the CDQ program and indicates that the Adak fishery should be modeled after the CDQ program, not be created at its expense.

### The American Fisheries Act

The definitions contained in Section 205 of the AFA include the same reference to a definition of the BSAI as contained in the CCA and include a definition of "directed pollock fishery" which controls subsequent uses of the same term in related legislation unless otherwise defined. Section 205(4) of the AFA.

Section 205(4) of the AFA defines "directed pollock fishery" as the directed fishing allowances as set forth in AFA's Section 206(b), which DFAs are made after a TAC setting process that includes the preliminary 10% deduction for the CDQ program.

Most importantly, the AFA's Section 206(a) sets forth a clear allocation to the CDQ program of 10% of any directed fishery for BSAI pollock as a directed fishery allowance prior to any other DFA. The language, which again is not modified or altered in any way by the CCA, reads as:

"Effective January 1, 1999, 10 percent of the total allowable catch of pollock in the Bering Sea and Aleutian islands Management Area shall be allocated as a directed fishing allowance to the western Alaska community development quota program established under section 305(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i))."

Additionally, Section 206(a) intends that that a pollock TAC first be set prior to any allocation for directed fishing allowances. The October 21, 1998 Senate Conference Report on the AFA states that "Section 206 clarifies that the 10 percent of pollock allocated to the Western Alaska CDQ program is allocated as a target species consistent with the present method of allocation and with Congressional intent with the respect to the target species allocations required under Section 305(i) of the Magnuson-Stevens Act for the western Alaska CDQ program."

### Current Regulations and Council Process

Current regulations also mandate a TAC setting process prior to the establishment of any DFA's. 50 CFR 679.20(a)(5)(i), states that the Pollock TAC for the Bering Sea subarea is only apportioned for directed fishing after subtraction of the 10% CDQ reserve. After the CDQ reserve is taken, this code section then allocates the "directed fishing allowance" to the

harvesting vessels (the 50/40/10 split pursuant to the AFA's Section 206(b)). 50 CFR 679.20(a)(5)(ii) states that if the Aleutian Islands subarea is opened to directed fishing then the pollock TAC will be allocated by the same procedure as (a)(5)(i).

In addition, the EA/RIR itself (on page 145) speaks to an appearance in the CCA that the Council determine the AI pollock allocation in the context of the annual specifications process, implicitly not upsetting the current process where DFAs come after the TAC is set.

### Amendment 82 EA/RIR

This document, responsive to the council motions in February and April, does an exhaustive and complete analysis of the methods of funding the Adak fishery. However, it makes a series of assumptions that are without supporting legal basis and that allow a conclusion that a DFA can be deducted from the ABC prior to setting a TAC.

The EA/RIR states correctly on page 148, last full paragraph, that the "AI directed fishing allocation is to be allocated to the Aleut Corporation." Current regulations and management would then establish this DFA after the normal TAC setting process. However, the EA/RIR goes on to state in this same paragraph "[t]he CCA does not speak about the AI TAC. Since the entire directed fishery in the AI is to be allocated to the Aleut Corporation, Congress appears to have superceded [sic] the direction it gave in the AFA to make an allocation to the three vessel classes identified in the AI." (Emphasis added.)

It is hard to understand how this document can come a conclusion that because language did not include one defined term (and instead included another), it can be understood to expand the meaning of the defined term it did include ("directed pollock fishery"). To follow this logic to its extreme, any statute now will have to include, in addition to the inclusion of a defined and well understood term, a definition of what it does not include, otherwise the included term will then be understood to be ambiguous and, therefore, open to any "possible" interpretation.<sup>1</sup>

In addition, the original Council motions in both February and April clearly did not contemplate an allocation procedure which would allow a DFA prior to the establishment of a TAC for all affected fisheries. Indeed, the Council's April motions contemplate that the Adak DFA be taken from the TAC's of various other fisheries. The council did not direct an analysis that would allow an Adak DFA taken directly from the OY, except in the instance where there is a difference between the OY and the various TACs.

Clearly, "Specifications Method #1" is flawed and should be stricken from any consideration by the Council. In this instance, the EA/RIR's comparison of this method to the GOA Pacific Cod fishery is inapposite and irrelevant to any discussions for the BSAI pollock fishery. The GOA Pacific cod fishery is constrained by a state Guideline Harvest Limit, a factor which is not present in the BSAI pollock fishery. Indeed, this same EA/RIR concludes that there is no "significant effect" under any of the Adak funding alternatives on state-managed or parallel fisheries. While otherwise favorable to the CDQ groups' position, "Specification Method #2" is also flawed in that it again allows a determination of a DFA prior to the determination of a TAC.

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<sup>1</sup> Indeed, courts will not strive to find ambiguities if there is a clear expression of legislative intent. "...When the Legislature has stated the purpose of its enactment in unmistakable terms, we must apply the enactment in accordance with the legislative direction, and all other rules of construction must fall by the wayside. Speculation and reasoning as to legislative purpose must give way to expressed legislative purpose." Milligan v. City of Laguna Beach (1983) 34 Cal.3d 829, 831.

## **Conclusion**

Section 803, the AFA, and relevant regulations indicate that the CDQ allocation is paramount over any subsequent directed fishing allocation. Also, the CCA states its intent that the Adak fishery be implemented in full compliance with applicable law. If Senator Stevens intended that the entire AI TAC be allocated to the Aleutian Island fishery without deduction for CDQ, he would have specifically modified 206(a) in the CCA to be limited to only the Bering Sea and he would have also used the term "TAC" in Section 803(a), instead of "directed pollock fishery," to be consistent with the present regulatory scheme's allocation measures. Any funding mechanism proposed that would allow a DFA to be set for an Adak fishery from the OY prior to setting a TAC should be stricken from any analysis under the EA/RIR.

**Public Comment of Stephen Taufen**  
167<sup>th</sup> Plenary Session of the **North Pacific Fishery Management Council**  
Benson Hotel, Portland, Oregon – June 9-15, 2004

C-1: BSAI Crab Rationalization Environmental Impact Statement &  
**C-4: Aleutian Island Pollock 'Robbery'**

For disclosure compliance, I am Stephen Taufen, founder of the *Groundswell* Fisheries Movement, and also the managing partner and CFO of "Adak Power and Electric," whose transparent interests are also at stake before this Council. This week, you are considering many Final Action items to which my testimony applies. But, I am specifically here today to challenge the BSAI EA/RIR whose 400+ pages bear the footing "Aleut Corporation Pollock EA". How telling! For where else in America can you find one corporation being handed *in perpetuity* our Nation's resources?

If the Council members have called off the racket, then the following does not apply; but I doubt that you've all found the courage to put the U.S. Constitution and Magnuson Act before the cronyism of Ted Stevens' Appropriations rider that you helped railroad into [quote-unquote] "*law.*" Those of you who still ride for the Stevens brand will recognize yourselves in my comments, and those among you who have found again your senses on right and wrong will understand me, and what you must immediately do to help stop this robbery. The People needed an independent Adak to police "comparable, uncontrolled pricing" in the marketplace for the Treasury.

**In unanimously considering yourselves in June 2002 on Crab Rationalization as a powerful Council of 'untouchables,' you have given transnational wolves a virtual passkey to our national resource henhouse, and orchestrated a cover-up of an elaborate economic scam on the US Treasury and taxpayers.** Is it not enough that after you already gave Dutch Harbor's economy back to foreign-owned economic enemies in the American Fisheries Act, you now want Adak to be discriminatorily monopolistic? If so, then you are '*Worse than traitors in arms!*' You're willfully stealing from taxpayers and attacking the Civil Rights of US Citizens.

**Likewise, your actions will have many 'unintended consequences' that could well include the demise of this Council,** of and nearly by itself, over the burning cinders that follow a conflagration of already begun federal lawsuits, investigations and prosecutions. You'll have failed to heed my repeated, kind warnings for seven years not to embark on this treacherous passage with fellow buccaneers who treasonously practice economic war against our Nation.

You eschew litigation as you attempt to paint environmentalists into a corner of economic unreasonableness. But what of real businesses such as Adak Power and Electric and how you continually step on their federal rights, even after you were forewarned? No, now you allow further crafting of the EA/RIR to enroll small seafood businesses under TAC's large-sized umbrella, while completely dismissing other small business rights that your legislative enactments will deteriorate.



**And in your institutional inertia you are giving away national resources to corporations who define economic development as the 'fraudulent reassignment of government funds and public resources awarded for other purposes and the subsequent takings of more funds under misrepresentations of need to replace already pilfered off funds,' as "economic development."**  
Are you prepared for the embarrassment hammer to drop when the Department of Defense's investigative service comes calling at Adak, in the near future?

You have continually embraced hours of testimony by racketeer influencers the likes of WSU professor Scott Matulich, whose half-baked economic theories, paid for by the godfathers of the AFA in university contributions, underlain your scheming, while failing to ask me a single question, for years now, about why in 1996 I tried to graciously stop him from running down the path of bought-and-paid-for non-science. And yet you fail year after year to ask me questions and gain insight into the economic harms of transfer pricing, product laundering, and why you must also consider IRS regulations on "advanced pricing formula agreements" and the federal requirements of a "fair and equitable share to resource cost providers" - while you embrace childish approaches to antitrust enforcement to avoid spanking your own corporate daddies for stealing the Public's cookies from Neptune's jar.

Yet you've heard me, a noted whistle-blower and nationally respected regional Impact economist (input-output modeler for agriculture commissions), telling you for years that the corrupt professor left taxes and cross-border shifting of profits out of his economic equations, despite advanced knowledge of IRS transfer pricing investigations and facts. I reminded you in Portland years ago that Matulich specifically scorned my well-meaning attempt in 1996 to advise him otherwise, as he'd already been paid for three or four more years of work - by the PSPA and godfathers of Alaska's fisheries, I might add.

And you've also known all along about now Region 10 EPA administrator John Iani's personal involvement, when he was at the Pacific Seafood Processors Association, leading the contracting for Matulich's cow-pie theories. Maybe you should take a look at the June issue of FISHERMEN'S NEWS at the From the Fleets column, "The Ruinous Years," and see how Matulich, Kevin Duffy and Dr. Kryger, along with a leading Icicle Seafoods shareholder, all figure in underhandedly promoting Crab Rationalization and other acts against the harvesters' and People's interests. Obviously, you've deliberately made quite a bed for yourselves and fellow cronies haven't you?

Well, remember always that as you judge TAC/AEC's economic development prattle, that unlike myself, you have not read the Adak Land Transfer Agreements, phase-in reports, and the tens of pounds of documents that would just begin to give you insight on real Adak economic development and who hold the rights to it there. Only a mere handful of people understand the true rights and situation at Adak, and some of those who do are lying outright to you.

You have no idea of the decades-long rights, leases, business and property conveyances, and municipal and private rights at Adak. You keep treating a mere landholder/lessor - TAC - as if it were somehow the legitimate CBO at Adak. You completely ignored our "false information" charges and

the 'clear and convincing evidence' presented, and that the Alaska Federation of Natives unanimously opposed Stevens' Rider granting rights not to natives, but to one of the regional, for-profit ANCSA corporations – where Stevens' son sits on the board of directors of its major subsidiary that self-appoints itself as solely capable of Adak's development. Remember, TAC is just a landholder, like others – for example, the University of Washington owns a lot of downtown property, but is not running ram shod over the City of Seattle and City Light, plundering Treasury coffers, and has not been granted the "economic development" rights, nor the fisheries of Puget Sound!

You are unaware of the history of AEC's often illegal attempts to inject themselves into Adak's economic development, and been deliberately blind to the facts. Norquest Seafoods pulled out years ago, and Icicle Seafoods has just pulled out, and many independent businesses have been pushed out or prevented from entering Adak because of the high costs and risks of doing business in Adak. These include risks of being dragged into federal false claims lawsuits, civil and criminal investigations, etc. And they include the key issues of fuel price-gouging and the resulting excessive electrical rates that violate state and federal laws, and the same high fuel prices also cost the school district and fishing boats to lose monies. Meanwhile, the additional million dollars or so ripped off each year has been taken for lavish wastes in AEC salaries and furniture, etc. in Anchorage. How much of these siphoned funds were also used to lobby this Council itself?

AEC's partners in the seafood industry at Adak have also failed to pay equitable fish ticket prices, ripping off both the State of Alaska and City, as well as fishermen and federal taxes on their incomes. As a manager of a public utility, you're darned right I am concerned when Adak's so-called developer chases away businesses and citizens who would become our customers, and charges monopolistic prices on diesel fuel – after having absconded with public-serving fuel tank properties. Yet, TAC/AEC's idea of development has always been to structure for acquisition of federal grants and contracting funds that can become subject to fraudulent uses and waste. Yet, Alaska economists and bankers constantly point out that these practices of living off the federal dole are what may destroy Alaska's future altogether.

But do you care? No, you've been hell bent on also giving them America's pollock and crab and more. You've broken your social contract with the People who pay this Council's expenses! And in trying to find an Antitrust loophole, believe that you can drive Crab Rationalization and the Aleut Corporation Pollock robbery through to implementation. You have ignored what actual behavior has occurred among fishing cartelized oligopsonists and try setting up useless guidelines for "don't behaviors" when it is historically clear that "they do."

All one need to remember is the San Francisco DOJ Antitrust Division's recommendation for criminal prosecutions that foreign owners and customers of the cartel stopped in Washington DC. And that the Bristol Bay Antitrust lawsuit just paid off fishermen solely because Marubeni laid \$25 million on the table to get out in the first weeks of the case, immediately after "abusive transfer pricing" (ATP) was entered into the arguments and the case. That lazy and irresponsible jury hardly represents the ones that will follow. And the court files are full of useful evidence for the government and others.

Don't tell me that you are incapable of understanding my years of efforts on ATP, and how what appears to be a complex accounting fraud is actually garden-variety ripoffs, and that cartel members act to keep each other in the game, as they rig the system so no "comparable, uncontrolled prices" exist. Don't tell me it's too difficult to understand the tax evasion, and the differences between better fish ticket prices and incomes distributed to fleets who pay their taxes from cross-border tax evasion by multinational corporations. This is easy to grasp when compared to your attempts to bury the greater extortions in thousands of pages of half-baked reports and deliberately incomplete analyses, in your common mistake of believing that "the more difficult schemes are to understand, the smaller the likelihood that you will ever be detected" – or when detected, be blamed.

But your enormous, recalcitrant bureaucracy is not fooling us. From *Groundswell's* perspective, and speaking for harvesters, utility workers, and all other manner of working people who create wealth through sweat-equity and honest labors, "*We build things – You destroy them!*"

On behalf of harvesters: *Groundswell* believes that **Senator Stevens' Rider in the 2004 Consolidated Appropriations Act violated the Equality Clause and Due Process, as well as the Magnuson Act requirement of equitable distributions, and it also negates the attainment of maximum net national economic benefits from United States fisheries:** all for the sake of corrupt organizations who would cartelize public fisheries for their own greed. That Rider represents a final act of completion - attained by the hands of a despicable public servant - which was necessary to allow Justice officials to investigate racketeers for harms committed against this Nation.

'*Staying silent*' is not patriotic duty! For as racketeer facilitators – despite long having 'clear and convincing evidence' to halt all Adak allocations, you Council members who are in on the game, apparently with both silent blinders and deliberate underhandedness, played a large role in accomplishing that illicit goal. But we thank you for your willful ignorance, 'reckless disregard' and unanimous consent in affixing your imprimatur on the monopolists' and Stevens' scheme, ensuring that these crimes reached prosecutable performance. For, as racketeering prosecutors have been fond of noting, "*Oh the web they weave, when they first set out to deceive.*"

This Council, under the conniving of Chairman Lauber, known at the time to be a conflicted lobbyist for the shoreside PSPA (primarily a Japan corporate dominated buyers-as-owners-cartel), also failed in 1998 to follow its Advisory Panel's April motion to fully identify the negative effects on markets and prices from the illicit bookkeeping practices of Abusive Transfer Pricing, a tax evasion and negative economic impacts issue I have repeatedly brought to this Council's attention. In 1997 I warned of this Trojan Horse and its cadre of foreign economic warriors having entered our 200-mile walls. I said then that if we let this happen, "*It's America's fault.*" Now, that fault and the failure to address this international, criminal product laundering and its economic devastation on our fisheries, lies clearly, primarily upon you.

**For, as Tom Ridge recently said, the negative balance of trade in seafood has reached levels of concern for national, Homeland Security. Stevens' rider giveaways will only worsen these ruinous deficits, which Transfer Pricing enforcement would largely correct, by over a billion**

**dollars each year, plus regional economic multiplier effects.** Alaska economist, Gunnar Knapp's own presentations have shown the dramatic drop in ex-vessel prices that this Council must seriously consider as *de facto* antitrust violations. After all, you are all aware of the low relative prices of U.S. shoreside delivered pollock that is a fraction of the prices the same parent firms pay in their own Japanese ports – and that this theft occurred before the American Fisheries Act bound all catchers to Debt Peonage “cooperatives” that put former Soviet Union collectives to shame, in blatant violation of the Thirteenth Amendment to the US Constitution restrictions on indentured servitude.

And, because your institutional memories are short, let me remind that I also warned you in 1999 of how Pre-emptive Doctrine trickery would be used to skirt Antitrust laws to enfranchise a cronyist oligopsony under Processor Quota shares while disenfranchising the fleets and People. But again, in your institutional inertia, fueled by God knows what mistaken values, you've compartmentalized your responsibilities, hid behind mountains of technical prattle and half-baked insider reports (such as the CR-EIS and this corporate EA/RIR), and signed-off on your part of the racket.

On behalf of Adak Power and Electric and all of the citizens of Adak, native and non-native: I feel that your failure to stop the Adak Allocations after we advised you in October 2002 of “false information” having been provided to you by the Aleut Corporation, its officers and agents, is clear evidence of your complicity with that racketeering theft of United States resources from their rightful holders. I personally believe that Senator Ted Stevens' regulation-negotiation techniques, violation of multiple Senate rules, and other means and methods of attaining these illicit takings of property rights represent an extortion and treason, not mere ethical lapses.

Dr. William Hogarth, director of NMFS also failed last November when I asked him to tell the Senate not to proceed with Stevens' Rider, and a GAO official said he was probably required by law to do that, after publicly acknowledging the “false information” investigation. In the same way, Senator Frank Murkowski also failed on the Adak Land Transfer Act to include local concerns about misappropriation of public-servicing properties. There has been far too much recalcitrance, and more.

There are over 200 references to so-called economic development at Adak in the EA/RIR, yet not one recognition of the rights of the citizens who comprise the City of Adak, a second class city under Alaska law; and not one notable respect for the economic rights of other, especially non-Aleut Corporation small businesses at Adak. And there is really no description of how economic growth would occur save for establishing a monopoly in fisheries.

Government should improve the quality of life for its citizen-taxpayers, and cultivate their economic opportunities. But your muddled thinking is helping to advance economic lopsidedness and development disequilibrium, instead. You are destructing marketplace incentive – a good indication that you don't know good business development policy from running a zoo (or prison), full of fish harvesters and citizens caged by this Council.

Do you really believe that the United States defense industry, soon to place dozens of U.S. families in Adak to operate a \$900 million X-band radar system, is going to tolerate (at nearly one-third the cost of power production) electrical utility rates subsidies to seafood operations that violate

regulatory orders already in place, and Alaskan laws? Do you really believe that those same citizens will pay exorbitant power rates that were not established in accordance with Alaska utility laws governing the public's convenience and necessity, as in all other Alaskan cities, just so that the Aleut Corporation can discriminatingly price-gouge on fuel used to produce commercial power, and heat homes (and run personal and government vehicles), for their greed, against public utility laws?

Have you not noticed in my industry writings (*Bonsai Buccaneers in the Fish Republic of Alaska* series) last year the warnings of the Boeing refueling jet *quid pro quo* by Senators Stevens and Murray, tied to the latter's promoting an end-run of antitrust law by having the Congressional Research Service craft an insufficient review to "authorize" what would otherwise be "smoke-filled room" criminal associations/acts by corporate contributors? And have you not noticed Defense Secretary Rumsfeld's recent curtailment of that illicit spending? Do you not also believe the Defense Department and Boeing/Raytheon will soon care greatly about price-gouging and misappropriations on the Adak national missile defense system, too? Or were you blinded to your national responsibilities by a pollock swung across your face by corporate thugs?

**Mr. Secretary, we call upon you to convene an inter-Cabinet session to illuminate your fellow Secretaries and the Armed Forces Committees about the possibilities of upcoming risks of False Claims Act filings at Adak.** And we encourage you to review all of the many Aleut Corporation subsidiaries (in Colorado etc.) who annually handle millions in government defense contracts. Please take note that in 1999, The Aleut Corporation also illegally shared our US Navy electrical renovation bid submittal with its own subsidiaries and apparently others, which precluded an earlier solution at Adak for lower-cost utilities that would truly have promoted real economic development (Evidence in *Davison v. City*).

Likewise, even TDX Corporation, a Pribilof Island corporation who bought Sand Point Electric in Alaska, observed the wrongful development at Adak by TAC/AEC executives and refused to take ownership of the electric utility, recommending our group (i.e., Adak Power and Electric).

Clearly, Adak's development is in trouble today because repeated warnings and efforts at law enforcement have been scuttled by government bureaucrats and US Senators who have deliberately failed to look out for the best interests of the United States, and were living with a mind-set of confused values on the likes of a "Fishron."

The Secretaries may also wish to review my public comment [[oceancommission.gov/publiccomment/northwestcomments/taufen\\_comment.pdf](http://oceancommission.gov/publiccomment/northwestcomments/taufen_comment.pdf)] before the US President's Ocean Policy Commission re issues of Federalism (commerce and sovereignty) and on transparency and accountability, the conduct of undervalued international trade, and transfer pricing abuse (cross-border tax evasion & product laundering) to also understand why it is a necessary condition for economic development to prevent seafood monopolies in Adak and elsewhere.

And please also revisit the records at the Office of the President's US Trade Representative from 1995 where the USTR Mickey Kantor had forwarded my concerns to DOC/NMFS and the Department of Justice. And please review the Writ of Mandamus, January 13, 2003, US District Court in Seattle,

Judge Barbara Rothstein, filed against NMFS and this Council, that was served on US AG John Ashcroft. And please also call the Commissioner of the IRS regarding my repeated whistle-blowing on Transfer Pricing in Alaska Seafoods and why the IRS set aside funds for a Seafood Specialty Group.

When one concerned citizen, like myself – with over 20 years in the seafood industry – could make such a public-interest effort and get the SSG funded, why do you as Council members fail to lift even one finger and point at this greed and vote NO!?

And returning to the BSAI EA/RIR, do you actually believe that any economic development in Adak can occur without lowest-cost possible, regulated utilities that serve that public's 'convenience and necessity', and proffer more affordable economic activity? And do you expect that any Adak pollock and crab plant and proper cold storage will be built (especially using federal funds and loan guarantees) without considering the Civil Rights of city residents, and meeting federally required 'local contract performance preferences' and EPA airshed law, for which Adak Power and Electric has prevailing rights?

**And should a Civil Rights case be brought, do you expect any federal contracts will be awarded (or loan guarantees allowed) at Adak,** from which TAC/AEC and other defendants will be precluded by law, to foster development through them: your chosen corporate monopolists? You've deliberately forgotten the constitutional rights of Adak citizens.

Can you name one other city in America that has completely had its sovereignty usurped by one Senator's dictatorial decree and handed to a pickpocket corporation? Would you, in your home, lit and heated by electricity, in your city, allow one corporation to forever take away all of your rights to proper power rates, equal protections and economic freedoms? If so, you've certainly consumed too much of the electric Kool-Aid made by Crab Rat cronies – and forgotten about rat poison.

**On May 27, in the US District Court of Alaska, Adak Power and Electric's executive officer filed a lawsuit, Larry Davison v. City of Adak, A04-114 Civil RRB, for breach of contract and the implied covenant of good faith and fair dealing.** Was that breach in the best interests of Base Realignment and Closure Act required elements of transition to public use? Did it not also negatively affect Adak's power needs under national security interests of NMD (national missile defense) X-band systems? Will it not also mean further ripoffs of the taxpayers and US Government for excessive cost fuel itself, and subsequent utility rates?

Davison v. City of Adak includes issues of "**misappropriations of federal, state and local resources**" that led to our being wrongfully deprived of ownership rights to facilities and the electrical tariff at Adak. Might not the City of Adak, after returning our utility at great cost, then respond by suits against other parties, such as TAC/AEC and Adak Seafoods, who actually caused their liability? This is just the first of potential federal lawsuits on these matters. Where goes economic development by your cronies if a judge forever calls a halt to their participation?

**May we also remind you that US District Judge Barbara Rothstein allows us to re-file the 1/13/03 Writ of Mandamus against NMFS and NPFMC, for 'particularized harms.'** Thank you, for especially particularizing them in this EA/RIR and the Stevens' rider. I may soon refile that Writ – even though my slate has gotten busy readying to file a 31 USC 3729-3733 FEDERAL FALSE CLAIMS ACT action on Adak.

You guys never overestimated the power of Senator Stevens, and you got what you wanted. But, you grossly underestimated the power of a *Groundswell* of evidence, eager law enforcement, and the powers of the rest of the US Senate and government judiciary officials to challenge both Benedict and Benito Stevens, and to send them packing, and to close shop on their cronies.

**Remember well the words, *qui tam pro domino rege quam pro se ipso in hac parte sequitur*: 'Who as well for the king as himself sues in this matter.'** Misappropriation of US Commerce EDA grant funds and price-gouging for fuel, misfeasance of City utility funds, and over-billing electrical usage to government entities and employees at fraudulent rates, are among the many actionable causes under a *qui tam* federal lawsuit on False Claims.

[And, addressing the USCG Council member:] **I wonder if the Coast Guard has also pondered the excessive fuel costs charged by AEC for its fleet of enforcement ships that visit Adak?** Admiral, wouldn't your concept of economic development at Adak include returning once-public functions of the Navy base, like fuel docks and tanks, back over to entities who are public or publicly-regulated in order to lower your fleet budget?

**Please be advised that the NMFS Office of Law Enforcement's special agents have also just concluded their criminal investigation into the "false information" charges regarding the Adak Allocation, and possible related racketeering.** Their investigational findings, conclusions and recommendations are now working their way up OLE's channels.

Last December, on the morning before I went to domestic violence court against Trident Seafoods' owner/president, the special agent (and others) called me from the federal building in Anchorage and had me give the judge specific knowledge that they believed I was being threatened by Charles Bundrant in connection with their criminal investigations at Adak, which I did in court that day. Why would they suspect/do that? I'd suggest this Council also note that, and tread lightly.

And Mr. Bundrant argued before the judge that a permanent protective order against him might prevent him from being present before meetings such as this Council's where I might attend. He also lied repeatedly on the record to the judge. Well, I'm here today, is he? Or are you just going to also let Stevens give away a large part of the People's crab resources to Trident without ever publicly grilling him – or other executives – on the record, here at this Council? Please excuse me if he's here, and you actually ask him a probing question, but the facts of his intimidations, lies and cowardice still stand in this public vortex as fact. Judge Carla Shapira scolded Bundrant's behavior as "unbecoming an adult," and though she could not award the PPO, the judge openly stated my writings are protected by the First Amendment. She also strongly noted their importance to this industry and the public, and encouraged me "to keep on writing."

And regarding NMFS-OLE's investigation, I personally expect nothing less than for criminal charges to land at the US Attorney General's office in Alaska, causing 'a charging document' to empanel a grand jury. I also expect that grand jury to 'return a full bill,' an indictment including RICO, because the ownership of the utility matter is but one example of the web's reach, and the lies that underlay all of the actionable causes - and the Stevens Rider itself. I also suspect that the investigation's search warrants in July 2003 included finding the evidence on TAC/AEC actions defrauding the government and others.

In the words of great presidents, I call upon you to '*Tear down this wall of tyranny.*' President Reagan - signer of the Federal False Claims Act - warned us to '*Trust, but Verify,*' and we have greatly assisted you to go well beyond in the Triangulation of the Truth, but you have miserably failed this Nation. At a time in America when countless examples of illicit accounting, crooked lobbying, and foul cronyism have led to innumerable prosecutions for harms to the Public, you should long ago have recognized the dark path you continued to set foot upon. **Structure implies Strategy** - and we know what you have been up to, the corporations and politicians it is for, and it must stop here and now!

So, if you few on this Council have any last chance to recommend that the Secretary call upon the Senate for full hearings, and ask the Justice department for full criminal investigation, and at this meeting to reject the EA/RIR, stop rider Implementation and reject all of its illicit takings, we at *Groundswell*, and as a business owner at Adak, call upon you to act now, or forever lie in a bed of historical shame made by your hands.

For, as long as the consequences fall upon the wallets and lives of others, you demonstrated that you don't seem to care much. You've dragged the People and coastal Alaska through a long scam, so I feel no remorse in delivering this long scolding - as it was full of public-serving facts, disclosures and well-meaning calls for full law enforcement. But, if I may help illuminate these concerns in any further detail and give you public-serving advice on how to extricate yourselves from this unanimous dilemma, I'd be glad to stay here all day and try to answer your questions.

Thank you, Council members and Mr. Secretary.

Sincerely yours,

NB: this is the written version submitted to the Secretary and Council, not the version contained on Council tape recordings at the proceedings. Copy of draft version of Larry Davison v. City of Adak attached, please note again item 14, "misappropriations of federal, state, and local resources."

###



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Filed Thursday  
May 27, 2004

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

LARRY DAVISON,

Plaintiff,

v.

CITY OF ADAK,

Defendant.

Case No. A04-114 Civil (RRB)

COMPLAINT

COMES NOW the plaintiff Larry Davison and for his Complaint pleads as follows:

COUNT I.

BREACH OF CONTRACT.

1. At all times relevant to this lawsuit, plaintiff Larry Davison was a resident of Seattle, King County, State of Washington.

2. At all times relevant to this lawsuit, defendant City of Adak was a municipal corporation organized under the laws of the State of Alaska, a citizen of the State of Alaska, and subject to suit under AS 09.65.070(a).

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3. This court has jurisdiction over this case under 28 U.S.C. §1332(a) since the amount in controversy exceeds \$75,000.00 and is between citizens of different states.

4. Defendant City of Adak contacted Plaintiff and offered Plaintiff the opportunity to develop the Adak power facility in Adak, Alaska, which had been formerly operated by the U.S. Navy.

5. Defendant City of Adak and Plaintiff entered into an implied in fact contract to develop the power facility, giving Plaintiff the exclusive rights to conform the power facility to public use and to operate the power facility thereafter for the next ten years.

6. Defendant City of Adak accepted the contract and took steps to enable Plaintiff to complete his obligations under the contract.

7. Plaintiff partly performed under the contract, making the contract irrevocable.

8. Plaintiff spent considerable expense in completing his part performance under the contract.

9. Defendant City of Adak accepted Plaintiff's part performance under the contract.

10. On May 30, 2002, defendant City of Adak breached the contract by instructing Plaintiff to cease work on the contract and leave Adak Island.

11. The Plaintiff has suffered damages as a result of this breach including labor and money expended in performing under the contract, loss of profits during the life of the contract, and loss of the right of first refusal to buy the facility.

### COUNT II.

#### BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING.

12. Plaintiff incorporates by reference and realleges as if fully set forth herein paragraphs 1 through 10 above.

13. The contract between Plaintiff and defendant City of Adak contains an implied covenant of good faith and fair dealing.

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14. Defendant City of Adak breached the covenant of good fair and fair dealing by misappropriating federal, state and local resources, by violating certain regulations governing operation of power facilities and by refusing to account for these misappropriations and violations thereby preventing Plaintiff from obtaining a tariff to produce power, and by instructing the Plaintiff to cease work and leave Adak Island, and other acts.

15. Plaintiff incorporates by reference and realleges as if fully set forth herein paragraph 11 above.

WHEREFORE Plaintiff prays that:

1. Plaintiff Larry Davison be awarded money damages in the amount five million dollars (\$5,000,000.00);
2. Plaintiff Larry Davison be awarded his costs and a reasonable attorney's fee; and
3. For such other and further relief as this court deems just and equitable.

DATED this \_\_\_\_\_ day of May , 2004.

DELANEY, WILES, HAYES,  
GERETY, ELLIS & YOUNG, INC.  
Attorneys for Plaintiff Larry Davison

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Donna Parker  
Pub Test. C4  
6/10/04 350pm

## AI Pollock Allocation

Criteria for Making Allocation  
Approximate Value of Allocation to Adak  
Approximate Cost to EBS Pollock Fleet

### I. Criteria for Making Allocation using CDQ program as model to increase economic development:

1. Need (population, # of communities, unemployment rate; median income)
2. Organization and management of group (structure and personnel)
3. Specific goals and objectives (investments, jobs, training, education, conservation)
4. Performance (did they do what they said they were going to do?)

#### Milestones:

1. Investments (i.e., build a plant, build a dock, buys vessels)
2. Jobs (i.e., provide at least 100 jobs to the region)
3. Training (i.e., provide at least 20 internships)
4. Education (i.e., create scholarship fund that generates at least \$50,000 in scholarships per year)
5. Conservation (bycatch reduction)

### II. Value of Allocation Based on CDQ Royalties

Total 2002 CDQ pollock royalty paid to 65 communities was \$39 million.

Average CDQ royalty A/B season - \$300/ton

Average CDQ royalty A season only - \$400/ton

Using CDQ model above, CBSFA most similar to Adak - 7,000 mt with 40/60 A/B split  
Both single community, low population, deep-water ports, and existing facilities  
Highest per capita allocation

Using CBSFA Allocation amount to determine value:

A/B Split - 7,000 mt x \$300 = \$2.1 million

A season only - 7,000 mt x \$400 = \$2.8 million

Using Option 1.4 (15,000 mt) amount to determine value:

A/B Split - 15,000 mt x \$300 = \$4.5 million

A season only - 15,000 mt x \$400 = \$6 million

### III. Cost to EBS Pollock Fleet

A/B split average gross value - \$800/mt (\$800,000 for every 1,000 mt lost)

A season average gross value - \$1,100/mt (\$1.1 million for every 1,000 mt lost)

A/B @ 7,000 mt = \$5.6 million gross value lost

A season @ 7,000 mt = \$7.7 million gross value lost

A/B @ 15,000 mt = \$12 million gross value lost

A season @ 15,000 mt = \$16.5 million gross value lost

The higher the allocation, the more significant the impact.

The higher the allocation, the more significant the departure from the CDQ allocation model.

The higher the allocation, the more uncertain the impact on Steller sea lions, coral and bycatch impacts.