

Executive Director's Report

Vacancy Announcement for Council Staff Positions

We recently advertised for two positions on Council staff – a Fishery Analyst Position and a Fishery Economist Position. Applications are being accepted until February 11, or until filled (Item B-1(a)). Related to the Fishery Analyst Position, congratulations to Nicole Kimball for her new position as Extended Jurisdiction Coordinator for ADF&G. And since you are (thankfully!) still smack in the middle of the Council process Nicole, you do not get a going away party.

Interim CCC meeting

The Interim meeting of the Council Coordination Committee (CCC) was held last week in Silver Spring, Maryland, hosted by NOAA Fisheries. An agenda for that meeting is included under Item B-1(b). I will provide a verbal update to the Council this week regarding any significant outcomes of that meeting.

Council SOPPs, etc

A revised Council SOPPs was distributed to Council members prior to this meeting, including DRAFT proposed policies for written/Email/late comments, and for minimum requirements (transportation, lodging, logistics, etc.) for Council meetings. The Council is scheduled to hold an Executive Session this week where these documents can be discussed, and modified as necessary, prior to distribution to the public and possible adoption by the Council later in this meeting. Revisions to the SOPPs are primarily in response to NOAA Fisheries Policy Directive 01-115-01 Item B-1(c), which is intended to provide consistency across all eight Council SOPPs, update those SOPPs to include provisions of the 2006 MSA reauthorization, and to implement a more formalized review and approval process for Council SOPPs. Once the Council approves the revised SOPPs, the rather extensive review and approval process would commence, beginning with submittal to the Regional Office for the first layer of that review process.

Halibut Workshop Update

Item B-1(d) is the finalized workshop description developed by Council and IPHC staff following the Council's December 2011 meeting. The workshop is confirmed for April 24-25 at the Crowne Plaza Hotel in downtown Seattle, WA. Council and IPHC staff are working to confirm the specific presenters and panelists for the workshop, as well as a workshop facilitator who will moderate the workshop discussions and prepare a workshop report. Due to the unique nature of this workshop, and the keen interest in it, the Council will offer travel support for Council members interested in attending the workshop – please let me/Gail know ASAP if you plan on attending so that we can get a head count for planning purposes.

Pacific cod workshop upcoming

On Monday, February 6, the Alaska Fisheries Science Center, in conjunction with the annual Western Groundfish Conference, will host a workshop to discuss the biology, stock assessment, and management of Pacific cod. Item B-1(e) is a description of the workshop details and logistics. The workshop is structured to facilitate dialogue among Pacific cod researchers, but will be open to the public.

U.S. Coast Guard changes

Some changes are on the horizon for the 17th USCG District. Congratulations are in order for Capt. Greg Sanial who will be moving up the chain to the position of Chief of Response, which oversees and encompasses the Law Enforcement, Search and Rescue, and Intelligence operations in Alaska. Beginning in April, the new Chief of Law Enforcement, Capt. Phil Thorne, will represent the USCG (along with the Admiral) on the Council. Many of you know Capt. Thorne from his previous experience in Alaska, including as Commanding Officer of a patrol boat homeported in Ketchikan, and as Executive Officer of the ALEX HALEY out of Kodiak.

National Ocean Council DRAFT Implementation Plan

On January 12 the National Ocean Council unveiled its DRAFT National Ocean Policy Implementation Plan, which outlines actions which will be taken to implement Executive Order 13547, and the nine priority objectives highlighted under the National Ocean Policy. I forwarded to you the link for the document (www.whitehouse.gov/oceans), and can also provide hard copies if necessary. Comments on the draft Plan are due by February 27. My intent is to further review the document and assess potential comments on behalf of the Council. In consultation with the Council Chair I would then draft any appropriate comments and distribute to Council members prior to submittal.

Economic SAFE Feedback Session

On Tuesday evening, January 31, beginning at 5:30 pm, economists from the Alaska Fisheries Science Center will host an informal workshop to solicit feedback on how to expand and improve the annual Economic chapter of the SAFE documents. The workshop will be held in the AP meeting room and is open to all interested participants. Item B-1(f) is a flyer with additional details on the workshop.

Joint Protocol Committee March 19

Just a reminder that a meeting of our Joint Protocol Committee (three Council members and three Board of Fish members) is scheduled for March 19 in Anchorage. The primary discussion topic will be Gulf of Alaska Pacific cod jig fishery management, including further discussion of the 'reverse parallel' fishery concept. Outcomes of that meeting will be informative to the Council's further consideration of this issue at our April Council meeting. Other agenda items will likely include: BOF proposal #43 (to prohibit commercial bottom gear in PWS during summer months); Tanner crab rebuilding plan; BSAI chum bycatch; GOA halibut PSC; and, the 'A' season opening date issue.

Kodiak Island Borough Resolution

Item B-1(g) is a letter to the Council, and attendant resolution from the Kodiak Island Borough, urging the use of video conferencing for participation in meetings of the North Pacific Fishery Management Council. I bring this to your attention because I intend to respond to the letter, noting the progress we have made in terms of public access through our WEB-casting of Council meetings and other means, but also noting that it is practically infeasible to use videoconferencing as a 'two-way' remote communication vehicle; i.e., we cannot use it as a vehicle for public comment during Council meetings, as we would have to make such an allowance available to all citizens of the United States, thereby making it impractical as a vehicle for public testimony.

BSFRF letter on Crab Plan Team operations

In December I shared with you the letter I received from the Bering Sea Fisheries Research Foundation (BSFRF) and their suggestions for improvements/changes to the Crab Plan Team process. I have had some preliminary discussions with staff and Dr. Foy regarding these suggestions, and plan to have a draft response before the end of this Council meeting.

Crab Plan Team membership

The attached letter and resume (Item B-1(h)) from NMFS nominates Dr. Jason Gasper to replace Gretchen Harrington on the Council's Crab Plan Team. Gretchen is transitioning to the position of NEPA Coordinator for the Alaska Region. Dr. Gasper has experience in stock assessment as well as the management and regulatory aspects of our fisheries. The SSC will review the nomination at this meeting and provide its recommendation to the Council.

Marine Fisheries Review Journal Article

The most recent edition of 'Marine Fisheries Review' will feature an article titled "Ecosystem-based Management for Protected Species in the North Pacific Fisheries", authored by current and former Council staff (Jeannie Heltzel, David Witherell, and Bill Wilson). Item B-1(i) is a copy of the article. Kudos for a great journal article!!!

Update on Halibut Catch Sharing Plan (CSP)

Item B-1(j) is an annotated summary of the Council's December motion on the halibut CSP. Council staff have met with NMFS and ADF&G staff since the December meeting to coordinate the various activities necessary to respond to the Council's motion, and to the analytical issues identified by NMFS (including the necessary response to public comments on the proposed rule). We are assigning significant resources to this project in order to have the desired information to the Council for the April meeting (and to support the Charter Management Implementation Committee meeting later this month), and to subsequently allow NMFS to develop a final rule for the CSP. These resources include Ms. DiCosimo and Dr. Fina from our staff, as well as contract assistance from Darrell Brannan and from Jonathon King, both of whom have a long history with this issue.

Inspector General to review aspects of NMFS/Council operations

Item B-1(k) is an October 2011 letter from the IG Office to Representatives Frank and Tierney, describing the IG's intent to review certain aspects of the fisheries rulemaking process, including:

- how the Councils are complying with National Standard 8 – socioeconomic impact of regulations on fishermen and fishing communities.
- assessing best practices across the Councils for addressing operational requirements, including NOAA's role in providing oversight of Councils.
- comparative analysis of fisheries rulemaking in relation to other federal rulemaking processes, including how NOAA ensures compliance with rulemaking process requirements.

I believe this review is subsequent to recent review of the New England Council process, as well as the recent review of the NOAA Office of Law Enforcement, but obviously could have implications nationally.

North Pacific Fishery Management Council

Eric A. Olson, Chairman
Chris Oliver, Executive Director



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Visit our website: <http://www.alaskafisheries.noaa.gov/npfmc>

POSITION ANNOUNCEMENT FISHERY ANALYST

North Pacific Fishery Management Council

Announcement date: January 3, 2012

Deadline for application: February 11, 2012 or until filled

The North Pacific Fishery Management Council (Council) is seeking a Fishery Analyst to work in the identification and analysis of environmental and regulatory issues pertaining to fisheries management off Alaska. This person will participate as part of a team of social, economic, and biological analysts from Council staff and from the staffs of other agencies.

The Council is one of eight regional Councils established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976. The Council has authority over the management of fisheries in the Bering Sea/Aleutian Islands and Gulf of Alaska in the Exclusive Economic Zone off Alaska. The states of Washington, Oregon, and Alaska are represented on the Council.

Primary responsibilities will be to participate as part of an analytical team in support of Council initiatives to develop and modify ecosystem-based management programs for the Federal groundfish and crab fisheries off Alaska. Environmental and regulatory impact analyses are prepared to help the Council develop the best management approaches for these fisheries.

Specific duties will include:

- Preparation of, and contributing to, environmental impact assessments and regulatory impact analysis and reports for use in the amendment of fishery management plans. Conducting critical reviews of other analyses developed in support of plans. Presenting results to the Council and advisory committees.
- Preparation of, and contributing to, the development of discussion papers to assist the Council in the development of management alternatives for analysis and consideration. Presenting results to the Council and advisory committees.
- Acting, upon assignment, as a liaison between the North Pacific Fishery Management Council and other agencies with which it cooperates, including the National Marine Fisheries Service, the Alaska Fisheries Science Center, the Alaska Department of Fish and Game, other Council staffs, and the International Pacific Halibut Commission.
- Acting, upon request, in an advisory capacity in discussions with the Council or the Council's committees on matters relating to the impacts of proposed fishery management regulations.
- Attending Council meetings, public hearings, and other meetings as required.
- Other duties as assigned.

QUALIFICATIONS:

Desired Minimums:

- Master's degree or higher in fisheries science, resource economics, fishery policy, or a related discipline.
- Progressively responsible experience in research and analysis related to fisheries or other renewable natural resources.
- Ability to clearly communicate complex issues to non-technical audiences.
- Ability to write clearly and succinctly.
- Ability to work closely with people from diverse scientific and technical backgrounds.
- Knowledge of the various laws pertaining to management of the fishing industry, including the Magnuson-Stevens Fishery Conservation and Management Act, the Executive Order 12866, the Regulatory Flexibility Act, the National Environmental Policy Act, and the Endangered Species Act.
- Ability to conceptualize the scope of a problem, analyze potential impacts, and complete writing assignments on time.

Preferred:

- Familiarity with North Pacific fisheries and current management issues.
- Demonstrated experience with inter-agency and multi-disciplinary projects.
- Demonstrated experience in the compilation and/or review of environmental impact statements (EIS) or related analyses supporting regulatory actions.

Persons with qualifications less than the specified minimums may be considered, but placement of such persons may be accordingly lower.

SALARY: GS-11/12/13 equivalent, DOE, plus Cost of Living Allowance/Locality Pay, plus fringe benefits package that includes health insurance and participation in the State of Alaska Public Employees Retirement System (PERS). Starting salary range \$68,000 - \$98,000 DOE.

LOCATION: The Council office is located in Anchorage, Alaska. Limited moving expenses are authorized. Travel will be required to attend meetings in other Alaska and Pacific Northwest locations.

TERM OF EMPLOYMENT: A commitment of at least two years is required. This is a non-Federal position, though provisions of the Intergovernmental Personnel Act apply. Candidates who wish to apply for IPA assignment from a federal agency should indicate on their application.

TO APPLY: A current curriculum vitae or employment resume, highlighting relevant experience, training, education, research skills, and publications, is required. A brief statement of interest describing the skills you would bring to this position is also required. Send these materials to:

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

The deadline for applications is February 11, 2012 or until filled.

Telephone inquires: Mr. David Witherell, Deputy Director
907-271-2809

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POSITION ANNOUNCEMENT FISHERY ECONOMIST

North Pacific Fishery Management Council

Announcement date: January 3, 2012

Deadline for application: February 11, 2012 or until filled

The North Pacific Fishery Management Council (Council) is seeking a Fishery Economist to work with other economists/analysts in the identification and analysis of economic issues pertaining to fisheries management off Alaska. This person will participate as part of a team of social, economic, and biological analysts from Council staff and from the staffs of other agencies.

The Council is one of eight regional Councils established by the Magnuson-Stevens Fishery Conservation and Management Act of 1976. The Council has authority over the management of fisheries in the Bering Sea/Aleutian Islands and Gulf of Alaska in the Exclusive Economic Zone off Alaska. The states of Washington, Oregon, and Alaska are represented on the Council.

Primary responsibilities will be to participate as part of an analytical team in support of Council initiatives to develop and modify management programs for the multi-billion dollar Federal groundfish and crab fisheries off Alaska. Several different management approaches could be considered. Economic and social impact analyses, including benefit-cost and distributional economic impact analyses will be required to help the Council develop management approaches for these fisheries.

Specific duties will include:

- Preparation of regulatory, economic, statistical, and policy analyses and reports for use in the amendment of fishery management plans. Conducting critical reviews of other analyses developed in support of plans.
- Contributing to the development of discussion papers to assist the Council in the development of management alternatives for analysis and consideration.
- Acting, upon assignment, as a liaison between the North Pacific Fishery Management Council and other agencies with which it cooperates, including the National Marine Fisheries Service, the Alaska Fisheries Science Center, the Alaska Department of Fish and Game, other Council staffs, and the International Pacific Halibut Commission.
- Acting, upon request, in an advisory capacity in discussions with the Council or the Council's committees on matters relating to the impacts of proposed fishery management regulations.
- Attending Council meetings, public hearings, and other meetings as required.
- Other duties as assigned.

QUALIFICATIONS:

Desired Minimums:

- Master's degree or higher in economics, resource economics, agricultural economics, or a related discipline.
- Progressively responsible experience in economic research and analysis related to fisheries or other renewable natural resources.
- Experience in conducting applied economic analysis, including benefit-cost and distributional economic impact analyses.
- Ability to clearly communicate complex issues to non-technical audiences.
- Ability to write clearly and succinctly.
- Ability to work closely with people from diverse scientific and technical backgrounds.
- Knowledge of the various laws pertaining to management of the fishing industry, including the Magnuson-Stevens Fishery Conservation and Management Act, the Executive Order 12866, the Regulatory Flexibility Act, the National Environmental Policy Act, and the Endangered Species Act.
- Ability to manipulate and analyze large, comprehensive sets of state and federal fisheries data.
- Ability to conceptualize the scope of a problem, analyze potential impacts, and complete writing assignments on time.

Preferred:

- Familiarity with North Pacific fisheries and their current management issues.
- Demonstrated experience with inter-agency and multi-disciplinary projects.
- Demonstrated experience in the compilation and/or review of environmental impact statements (EIS) or related economic analyses supporting regulatory actions.

Persons with qualifications less than the specified minimums may be considered, but placement of such persons may be accordingly lower.

SALARY: GS-11/12/13 equivalent, DOE, plus Alaska Cost of Living Allowance/Locality Pay, plus fringe benefits package that includes health insurance and participation in the State of Alaska Public Employees Retirement System (PERS). Starting salary range \$68,000 - \$98,000 DOE.

LOCATION: The Council office is located in Anchorage, Alaska. Limited moving expenses are authorized. Travel will be required to attend meetings in other Alaska and Pacific Northwest locations.

TERM OF EMPLOYMENT: A commitment of at least two years is required. This is a non-Federal position, though provisions of the Intergovernmental Personnel Act apply. Candidates who wish to apply for IPA assignment from a federal agency should indicate on their application.

TO APPLY: A current curriculum vitae or employment resume, highlighting relevant experience, training, education, research skills, and publications, is required. A brief statement of interest describing the skills you would bring to this position is also required. Send these materials to:

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 W. 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

The deadline for applications is February 11, 2012 or until filled.

Telephone inquires: Dr. Mark Fina, Senior Economist
907-271-2809

COUNCIL COORDINATION COMMITTEE

January 25-26, 2012

Crowne Plaza Hotel

8777 Georgia Avenue Silver Spring, MD 20910

Phone: 301-563-3722

Fax: 301-589-4791

Agenda

Wednesday, January 25, 2012

<u>Time</u>	<u>Discussion Item</u>	<u>Presenter(s)</u>
9:00 – 9:30	Welcome/Introductions	Manuel Duenas Sam Rauch
9:30 – 10:30	Council Reports on Status of Implementing Magnuson-Stevens Act Provisions and Other Current Activities of Interest <ul style="list-style-type: none">• Status of rebuilding plans• New management programs under development• Problems/concerns/other issues	Chairmen/EDs
10:30 – 10:45	Break	
10:45 – 12:00	Council Reports Continued	Chairmen/EDs
12:00 – 1:30	Lunch on your own	
1:30 – 3:00	Budget <ul style="list-style-type: none">• FY2012: status, Council funding• FY2013: update• Longer term discussion	Lindsay Fullenkamp
3:00 – 3:15	Break	
3:15 – 4:15	Marine Recreational Information Program Update (MRIP)	Gordon Colvin
4:15 – 5:15	Report on Allocation of Fishery Resources	George Lapointe
5:15 – 5:30	Wrap up and adjourn for the day	
5:30	Reception	

Thursday, January 26, 2012

<u>Time</u>	<u>Discussion Item</u>	<u>Presenter(s)</u>
9:00 - 9:30	Statement of Operational Practices and Procedures (SOPPs)	William Chappell
9:30 – 10:00	Update on National Ocean Council/Coastal and Marine Spatial Planning	Sam Rauch
10:00 – 10:15	Break	
10:15 – 11:30	Report on 2011 National SSC Workshop <ul style="list-style-type: none">• Stock Assessment Priority Project	MAFMC Rick Methot
11:30 – 12:00	Bycatch Reduction Engineering Program (BREP) Question and Answer Session	Lee Benaka
12:00 – 1:30	Lunch On Your Own	
1:30 – 2:30	Habitat Blueprint	Brian Pawlak
2:30 – 3:30	Managing Our Nations Fisheries (MONF) III Conference <ul style="list-style-type: none">• Logistics (Date, Location)• Steering Committee• Agenda/Theme• Lead In Workshops	Don McIsaac/NMFS
3:30 – 3:45	Break	
3:45 – 4:45	Outreach/ Communications <ul style="list-style-type: none">• NOAA Fisheries 2012 Communication Strategy• RFMC activities<ul style="list-style-type: none">➢ Communication Committee collective efforts➢ Individual Council efforts	Laurel Bryant/ Connie Barclay Don McIsaac/Kitty Simonds
4:45 – 5:30	Other Business, updates, and next annual CCC Meeting	Manuel Duenas
5:30	Adjourn Meeting	

Department of Commerce § National Oceanic & Atmospheric Administration § National Marine Fisheries Service

***NATIONAL MARINE FISHERIES SERVICE INSTRUCTION 01-115-01
NOVEMBER 3, 2010***

***Fisheries Management
Fishery Management Council Statements of Organization, Practices, and Procedures,
NMFSPD 01-115***

APPROVAL OF COUNCIL SOPPS

NOTICE: This publication is available at: <http://www.nmfs.noaa.gov/directives/>.

OPR: F/SF5 (Chappell)
Type of Issuance: Initial

Certified by: F/SF (Risenhoover)

SUMMARY OF REVISIONS:

Signed _____ //s// _____ October 20, 2010 _____
Emily H. Menashes Date
Acting Director, Office of Sustainable Fisheries

Approval of Council SOPPs

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1. **Introduction.** In accordance with Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) §302(f)(6), each regional fishery management council (Council) must publish and make available to the public a statement of its organization, practices, and procedures (SOPP). The SOPP is a means by which a Council documents its procedures to carry out its functions under the Magnuson-Stevens Act, as well as its compliance with a variety of other federal laws and policies. Though NMFS provides guidance on the contents of the SOPP, there is no required format or order in which the subjects must be addressed.

A Council may occasionally need to update its SOPP to respond to emerging needs or to comply with changes in relevant statutes, regulations, and policies. Each Council has its own procedures for amending its SOPP. Pursuant to 50 CFR 600.115(b), amendments to Council SOPPs must be approved by the Assistant Administrator for Fisheries (AA), on behalf of the Secretary of Commerce, and a notice must be published in the Federal Register (FR) announcing the availability of the SOPP to the public. This instruction describes the procedures that will be followed by the National Marine Fisheries Service (NMFS) to ensure that SOPPs, when submitted for approval, are handled consistently by the agency, reviewed relative to established standards, and approved in a timely manner. To assist staff at every stage of the SOPP review and approval process, a checklist is included in this instruction and will be posted on the Regulatory Services Division's website.

Although SOPPs are required by the Magnuson-Stevens Act, the documents address many matters that are not directly related to it. A SOPP describes a Council's business rules, its staffing, contracting, procurement, and data management practices, along with other activities. Some regional offices do not host the expertise to advise the Councils on such matters. Technical legal advice and support is provided in these areas of law by the Department of Commerce Office of General Council (OGC). Within OGC, the Federal Assistance Law Division (FALD) works most closely with the Councils and will serve as a single point of contact, representing OGC's broader interests, including employment and labor law, ethics, contract law, and general law.

To the extent practicable, this procedure for approving SOPPs is modeled on those used for preparing and reviewing simple regulatory actions for approval and publication in the Federal Register. To that end, and to ensure only approvable SOPP amendments are submitted to NMFS, Councils should make certain their process for developing SOPP amendments includes close consultation/collaboration with appropriate Regional Office (RO) staff, Regional Counsel, and FALD.

2. **SOPP Approval Process.** The schematic in Figure 1 describes the SOPP approval process.

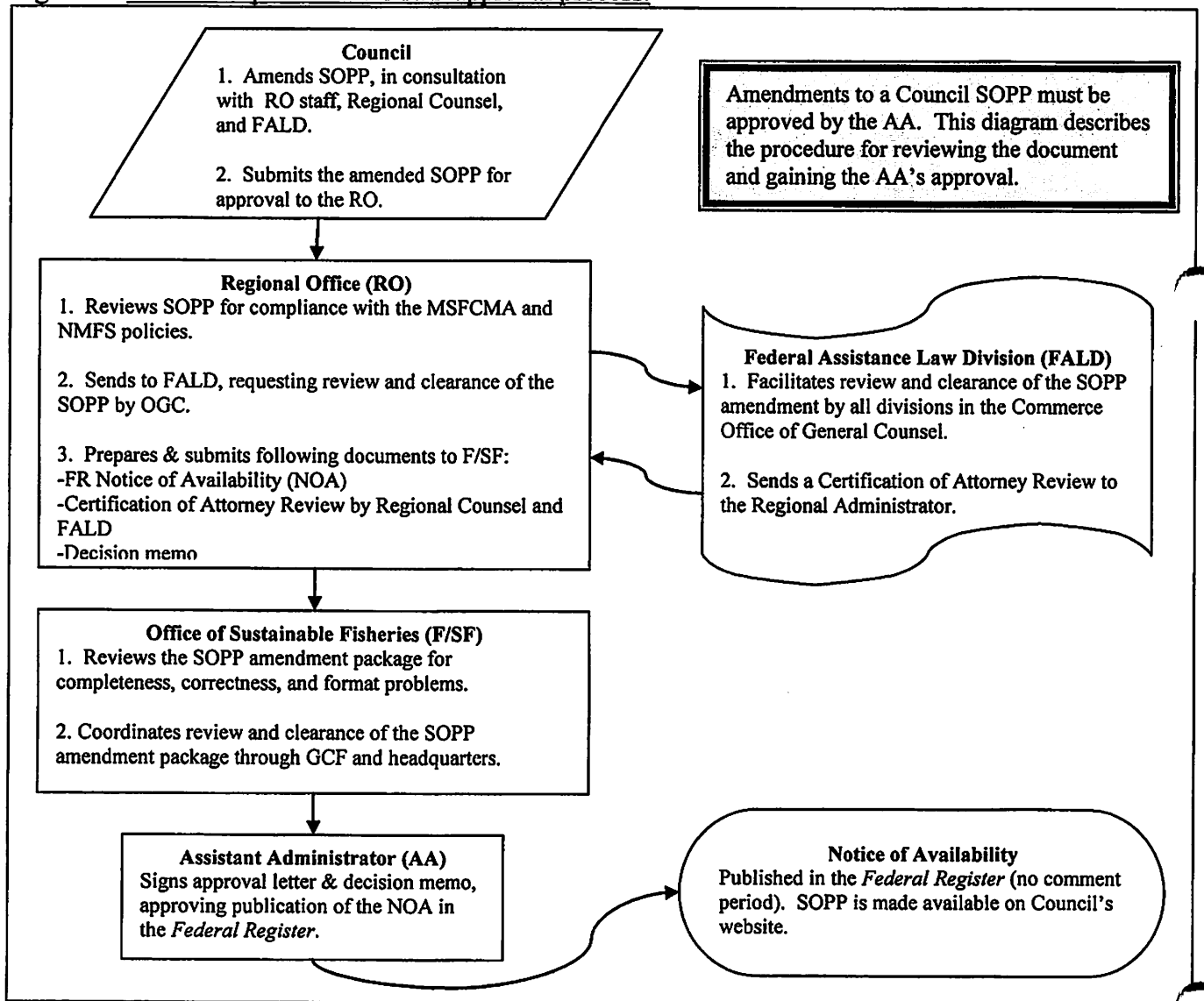
2.1. **Overview.** The formal SOPP approval process begins after a Council amends its SOPP and submits the document to the RO with a memo describing the changes. The RO and Regional Counsel will review the SOPP for its compliance with the Magnuson-Stevens Act, other laws within their purview, and NMFS policies. The RO will also send the SOPP to FALD for review with regard to legal issues under the purview of OGC. The Office of Sustainable Fisheries (F/SF) and General Counsel for Fisheries (GCF) are available to assist with questions or issues that may arise. When Regional Counsel and FALD have reviewed and cleared the SOPP, the

RO will forward the document to F/SF, along with a decision memo, draft approval letter, review certification memoranda, and the draft Federal Register notice announcing the availability of the SOPP to the public. Templates for all supporting documents are provided in the appendices of this instruction, as is a checklist for the RO to follow when preparing the documents.

F/SF will check the SOPP approval materials for completeness and correctness and submit the package through clearance (including GCF) for approval by the AA.

The AA's approval of the SOPP will be documented with a concurrence signature on the decision memorandum and an approval letter to the Council. The decision memorandum will authorize publication of the notice of availability in the Federal Register. The Council will post the approved SOPP on its official webpage.

Figure 1. Schematic plan of the SOPP approval process.



2.2. Councils. A Council, from time to time, will need to amend its SOPP to provide for updates in Council practices and procedures pursuant to governing policy and regulatory and statutory changes. Each Council has its own procedures for amending its SOPP.

This policy directive has no direct effect on internal Council procedures as regards SOPPs. However, it will be in the interest of the Council to ensure that the amendments to the SOPP are approvable by the AA. To that end, the Council should consult closely with RO staff, Regional Counsel, and FALD as any change to the SOPP is contemplated and drafted.

When a Council adopts an amendment to its SOPP, the Council will submit the amended SOPP to the Regional Administrator (RA) to begin the approval process. The Council's letter to the RA should describe the effect of the SOPP amendments. Submitting an amended SOPP highlighted in some manner to indicate where changes have been made will facilitate the review of the document.

After a SOPP is approved by the AA, the Council will post the SOPP for viewing and download from the Council's website and will make the SOPP available upon request by the public

2.3. Regional Offices. When a Council submits a SOPP for approval, the RO will initiate a review of the SOPP amendment. Typically, Regional Counsel, Sustainable Fisheries Division staff and/or the Federal Program Officer (FPO) (personnel who administer the Council's grant for the RO) will review the SOPP. The RA will send a letter to FALD, requesting review and clearance of the SOPP by OGC.

Ideally, these same parties will have been involved in crafting the SOPP amendment, so the SOPP amendment will be readily approvable. However, if any problems with the SOPP are discerned, RO staff will coordinate the resolution of the problem with the Council and will engage technical support from Regional Counsel, FALD, F/SF, and GCF, as needed.

As with routine regulatory actions, RO staff will develop the memoranda and other documents necessary to facilitate the approval of the SOPP. A decision memorandum will be signed by the RA and submitted to the AA (via F/SF) along with the Certification of Attorney Review from Regional Counsel and FALD and the draft approval letter (from the AA to the Council). Templates for the various memoranda will be provided on the Office of Sustainable Fisheries' Regulatory Services Division (F/SF5) website (http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm).

2.4. Regulatory Services Division. The Regulatory Services Division (F/SF5) within the Office of Sustainable Fisheries, is responsible for reviewing the SOPP amendment and associated documents submitted by an RO to ensure the materials are complete and formatted correctly. This function is accomplished through the Clearance Unit, which can be contacted by e-mail at <NMFS.Clearance@noaa.gov>. Similarly, F/SF5's Regulations Unit is responsible for editing Federal Register notices prior to formal submission with the SOPP amendment package. The Regulations Unit can be contacted by e-mail at , <NMFS.Edits@noaa.gov>. F/SF5 will work closely with RO staff to resolve any problems that are identified and to finalize preparation of the Federal Register notice. F/SF5 will submit the SOPP amendment package for final clearance and approval by the AA.

2.5. Federal Assistance Law Division. FALD is one of several divisions in OGC that have interests in matters addressed in a SOPP. For purposes of approving SOPPs and working with the Council and NMFS, FALD is the lead division and our liaison to the whole office. The Council should engage FALD in the development of any changes to its SOPP.

At the request of the RA, FALD will coordinate OGC's review of the amended SOPP for its compliance with grants, general, and administrative law, as well ethics law and guidelines. If any problems with the SOPP are discerned by OGC, FALD will help to resolve the problems through discussions and correspondence with RO and Council staff. FALD's clearance of an amended SOPP will be documented in a Certification of Attorney Review.

2.6. NOAA General Counsel. NOAA GC Regional Counsel will provide legal advice and review during the development of SOPPs, consulting with General Counsel for Fisheries (GCF) as needed. Regional Counsel clearance of a SOPP or amended SOPP will be provided in a Certification of Attorney Review, before the RO forwards the SOPP to F/SF. GCF will review the SOPP before it is submitted to the AA for approval.

2.7. Assistant Administrator for Fisheries. The functions of the Secretary related to implementation of the Magnuson-Stevens Act, including the approval of amended SOPPs, are delegated to the AA in the NOAA Organizational Handbook, Transmittal No. 61, Section II.C.26. The AA's concurrence signature on the decision memo will constitute approval of the SOPP and will authorize publication of the NOA in the Federal Register. The AA will also sign a letter to the Council, acknowledging approval of the SOPP, and requesting that the Council post the SOPP on its official website.

3. Approval. Approval of a SOPP will be indicated in a letter from the AA to the Council. Approval will remain valid until the SOPP is subsequently amended or until relevant policies, regulations, or statutes are revised. Should the governing authorities change, NMFS will notify the Councils of the changes and will provide advice for bringing their SOPPs into compliance with any new requirements.

If properly executed, this procedure should preclude the possibility of formal disapproval of a SOPP amendment. Technical experts from the RO, Regional Counsel, and FALD should be consulted by the Council and involved in the development of SOPP amendments. Their involvement will help to ensure the SOPP is approvable before it is subjected to formal review at the RO and certainly before it is submitted to the AA for approval. Should any reviewer discern a problem with the SOPP that would preclude its approval, then RO staff will work with Council staff to remedy the problem and will pursue correction of the SOPP amendment per Council procedures.

F/SF5 will send all original signed documents related to the SOPP approval to the RO for retention in accordance with NOAA records management practices.

APPENDIX A – Abbreviations

AA	Assistant Administrator for Fisheries
CFR	Code of Federal Regulations
Council	A Regional Fishery Management Council
FALD	Federal Assistance Law Division, Office of General Counsel
FPO	Federal Program Officer
FR	<u>Federal Register</u>
F/SF	Office of Sustainable Fisheries
F/SF5	Regulatory Services Division, Office of Sustainable Fisheries
GCF	General Counsel for Fisheries
Magnuson-Stevens Act	Magnuson-Stevens Fishery Conservation and Management Act
NMFS	National Marine Fisheries Service
NOA	Notice of Availability
NOAA	National Oceanic and Atmospheric Administration
OGC	Office of General Counsel
RA	Regional Administrator
RO	Regional Office
SOPP	Statement of Organization, Practices, and Procedures

APPENDIX B – Regional Office Checklist

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**REGIONAL OFFICE CHECKLIST
COUNCIL SOPP AMENDMENT APPROVAL PACKAGE
PARTS 1 & 2**

Use this Regional Office Checklist to develop and assemble documentation for Secretarial review and approval of an amendment to a Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP). SOPP amendments occur infrequently. If you have any questions about what is required of the RO, do not hesitate to contact the Clearance Unit or the SF5 division chief for guidance.

Include a completed Part 1, Summary Checklist, in the formal decision/transmittal package that is submitted. Part 1 identifies the documentation that must be prepared and submitted to the Clearance Unit for the SOPP amendment approval. Part 2 provides more detailed guidance on drafting memoranda/letters and developing portions of the notification document that have been problematic in the past.

The Clearance Unit encourages the RO to use Part 2, File Checklist, when preparing the required documents for the SOPP approval package. Part 2 highlights only those areas where issues, concerns, or problems have been identified during the clearance process by F-NMFS/NOAA/DOC. During this transitional period for the review and clearance of SOPPs, formal completion and submission of Part 2 of the checklist is *optional*. However, the Clearance Unit strongly encourages its use by RO staff for direction and guidance when preparing formal documentation and locating applicable websites.

For each item contained in the checklist, respond with a checkmark in the appropriate column to indicate, "Yes," the action has been completed and the document is included in the approval package (paper copy or electronic) or retained in the RO files. Some of the line items in the checklist will not apply to every SOPP amendment approval. For those items, enter "N/A", as appropriate. Contact the Clearance Unit with questions or concerns regarding the checklist.

The following website provides guidance for submitting the formal decision/transmittal package to the Clearance Unit and defines acronyms used in this document:

http://home.nmfs.noaa.gov/sf/regstream/Examples/Examples_Checklists.htm

SOPP AMENDMENT APPROVAL PACKAGE
(This action does not contain implementing regulations.)
PART 1 – SUMMARY CHECKLIST

Name of Council: _____
Name & telephone number of individual
completing Part 1, Summary Checklist: _____

1. RO completes the following actions *prior* to submission of the SOPP amendment approval package to the Clearance Unit:

- a. Heads-up e-mail submitted to Clearance Unit (NMFS.Clearance@noaa.gov) and the F/SF Office Director (Alan.Risenhoover@noaa.gov) _____
- b. Obtain an XRIN from PRIME _____
- c. Editing form & advance notification of availability submitted to NMFS.Edits@noaa.gov for review and editing _____
- d. NMFS.Edits' comments/edits incorporated _____

2. RO submits the SOPP amendment approval package to the Clearance Unit (NMFS.Clearance@noaa.gov). *Formal package includes the following documentation:*

- a. Decision memorandum from the RA to the AA, signed. _____
- b. Certification of Attorney Review signed by the Regional Attorney. _____
- c. Certification of Attorney Review signed by FALD _____
- d. Draft approval letter from AA to Council (E-copy). _____
- e. Federal Register Notification of Availability (E-copy). _____
- f. Completed/signed Part 1, RO Summary Checklist _____

I certify that all actions/documentation identified in Part 1, Summary Checklist, are: (1) contained in the formal submission package; (2) contained in the RO file for action; or (3) not applicable to this action.

Signature

Date

**SOPP AMENDMENT APPROVAL PACKAGE
PART 2 – RO FILE CHECKLIST**

Name of Council: _____ Name & telephone number of individual Completing Part 2, RO File Checklist: _____
--

Action/Document

A. Preparation of Documentation.

Yes/NA

1. Have all Memoranda/Letters/NOA, etc. been prepared according to guidance contained in the Examples Package, Federal Register Document Drafting Handbook, and other policies and procedures issued by the AA or NMFS/NOAA related to the review and clearance of SOPPs? (See: [List website URLs])	
---	--

B. Advance Review of Notification of Availability of the SOPP by NMFS.Edits

Prior to submission to NMFS.Edits an XRIN must be obtained from PRIME	
1. Once no further substantive changes are anticipated, RO E-mails advance copy of the document to NMFS.Edits@noaa.gov prior to submission of the form package to the Clearance Unit as follows: <ul style="list-style-type: none"> a. Completed "RSP Editing Form;" and (See http://home.nmfs.noaa.gov/sf/regstream/RulemakingForms.htm) b. Advance copy of notification. c. Subject line of the transmitting e-mail should include: <ul style="list-style-type: none"> (1) Council Name; (2) "SOPP amendment" (3) ID assigned to the NOA; and (4) The word "ADVANCE" d. Use the same subject line a all e-mails (delete "ADVANCE" once formally submitted) dealing with the action to facilitate tracking of the action and compiling the administrative record. e. Identify the POC and POC's e-mail address and fax and telephone numbers in the transmitting e-mail. 	
2. NMFS.Edits returns the document w/comments/ edits within 3 days of receipt.	
3. RO incorporate comments, if applicable, prior to submission of formal NOA package.	
4. If the review process results in substantive changes to the regulatory text after NMFS.Edits has completed its review, the revised document should be resubmitted to NMFS.Edits for review prior to submitting the package to the Clearance Unit.	

C. SOPP Amendment and NOA Transmittal Package. (Templates for the memos and letters noted below can be found at [http://\[insert URL\]](http://[insert URL])).

1. Decision memorandum from the RA to AA: <ul style="list-style-type: none"> a. Describes the extent and likely effect of the proposed changes to the Council SOPP. b. Indicates that RO staff, Regional Counsel, and FALD have reviewed the document and determined it satisfactory. c. Provides additional background materials, if needed, as attachments. 	
2. Regional Counsel has signed a Certification of Attorney Review and attached any legal memos referenced therein.	
3. FALD has signed a Certification of Attorney Review and attached any legal memos referenced therein.	
4. Draft approval letter from AA to the Council.	

D. Notice of Availability.

<p>1. SUMMARY section:</p> <p>a. Responds to the following questions:</p> <p>(1) What action is being taken?</p> <p>(2) Why is action necessary?</p> <p>(3) What is the intended effect?</p> <p>b. Contains no legal citations or numerical and alphabetical listings</p>	
<p>2. DATES section:</p> <p>a. Provides a place holder for the date the AA approves the amended SOPP.</p> <p>b. The Clearance Unit will insert the date in the <u>Federal Register</u> document after the decision memorandum has been signed by the AA.</p>	
<p>3. ADDRESSES section:</p> <p>a. Provides the Council address from which print copies of the SOPP may be obtained.</p>	
<p>4. SUPPLEMENTARY INFORMATION section:</p> <p>a. Discusses the extent and effects of the SOPP amendment.</p> <p>b. Indicates that the AA has approved the SOPP, as amended, on behalf of the Secretary.</p> <p>c. Provides the URL from which the public can view or download electronic versions of the SOPP.</p>	

E. OFR Filing and Publication of the NOA

<p>1. The NOA will be sent to the OFR using standard filing and publication practices.</p> <p>2. F/SF5 informs the RO when notification of the filing and publication dates for the Notice of Availability is received from the OFR.</p> <p>3. RO informs the applicable Council of the filing and publication date.</p>	
--	--

F. Administrative Record for the SOPP Approval

<p>1. RO assembles the consolidated Administrative Record for the SOPP approval, including all documentation related to the publication of the NOA and the final decision.</p>	
<p>2. After publication of the NOA in the <u>Federal Register</u>, the Clearance Unit will provide to the RO all documents containing original signatures. The Clearance Unit documents may include:</p> <p>(a) Decision memoranda;</p> <p>(b) Original routing slips;</p> <p>(c) Copies of all substantive e-mails related to the SOPP approval which did not include the RO's POC as an addressee;</p> <p>(d) FALD's Certification of Attorney Review;</p> <p>(e) Records of any meetings with individuals outside NMFS regarding the SOPP; and</p> <p>(f) Any correspondence submitted only to NMFS HQ.</p>	
<p>3. The Clearance Unit will maintain a duplicate copy of the signed documents for a period of three years.</p>	
<p>4. The RO will maintain the complete Administrative Record and will archive the records according to NOAA policy and guidelines.</p>	

APPENDIX C – Templates for Correspondence

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1. Certification of Attorney Review.....	C-2
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ATTORNEY REVIEW MEMO TEMPLATE FOR SOPP CLEARANCE

ATTORNEY-CLIENT PRIVILEGED - DO NOT RELEASE - FOIA EXEMPT

CERTIFICATION OF ATTORNEY REVIEW

MEMORANDUM FOR:

FROM:

SUBJECT: Review and Clearance of the Statement of Organization, Practices and Procedures (SOPP) [or: the amendments to the Statement of Organization, Practices and Procedures (SOPP)] for the [INSERT Council name] Fishery Management Council

This Statement of Organization, Practices and Procedures (SOPP) [or: [T]he amendments to this Statement of Organization, Practices and Procedures (SOPP)] for the [INSERT COUNCIL] Fishery Management Council is/are legally sufficient and raise(s) no significant legal issue(s) other than those addressed in any attached legal memorandum. I request that this SOPP be forwarded to Department of Commerce General Counsel for their review.

Additional Comments: N/A

Legal Memorandum Attached: yes no

Attorney-Advisor Date

[Supervisor=s Title] Date

cc: NOAA GCF

Michelle O. McClelland, Chief
Federal Assistance Law Division
U.S. Department of Commerce
1401 Constitution Ave NW
Room 5099C
Washington, DC 20230

Dear Ms. McClelland,

The [Name] Fishery Management Council has amended its Statement of Organization, Practices, and Procedures (SOPP) and has submitted it for approval by NOAA Fisheries Service. The amendments to the SOPP would [describe]. The amended sections are highlighted in the attached SOPP.

I seek your division's review and clearance of the SOPP and, as needed, your facilitation of its review by other divisions in the Office of General Counsel. NOAA Fisheries Service [Region] Regional Office staff and the Regional Counsel have previously reviewed the document, but are withholding final clearance until you have completed your review.

Any questions regarding the SOPP should be directed to [name, email address, fax number, phone number] in the [Name] Regional Office. NOAA Fisheries Service appreciates the support of the Office of General Counsel on this important matter.

Sincerely,

[RA's Name]
Regional Administrator

Enclosures

cc: F/SF5
GCF

[Note this memo will be signed by the RA after the review of the SOPP by the RO, Regional Counsel, and FALD is complete and satisfactory.]

MEMORANDUM FOR: [Name]
Assistant Administrator for Fisheries

FROM: [Name]
Regional Administrator

SUBJECT: Approval of a Council's Statement of Organization, Practices, and Procedures (SOPP)—DECISION MEMORANDUM

The [Name] Fishery Management Council has amended its SOPP and is seeking the Secretary's approval of the document.

The amendments to the SOPP would [describe the SOPP amendment, its purpose, and effect, and provide relevant background/legal context].

The SOPP has been reviewed and cleared by the [Region] Regional Administrator, a regional attorney, and the DOC Office of General Council. I recommend that you approve the SOPP by signing the attached letter to the Council and by approving the attached Notice of Availability for publication in the Federal Register.

1. I concur. _____ Date
2. I do not concur. _____ Date

Attachments

[*Chair's name*], Chair
[*Name*] Fishery Management Council
[*Address 1*]
[*Address 2*]

Dear [*Chair's name*],

On behalf of the Secretary of Commerce and pursuant to 50 CFR 600.115(b), I approve the [*Name*] Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP), as amended. I have authorized a notice to be published in the Federal Register announcing the availability of the SOPP and instructing the public to contact the Council office for a copy. Electronic downloads of the SOPP should be made available on the Council's website.

Any questions regarding the SOPP should be directed to the [*Region*] Regional Administrator or [*Name*], chief of the Regulatory Service Division in the Office of Sustainable Fisheries, ph: 301.713.2337.

Sincerely,

[*Name*]
Assistant Administrator

Enclosures

cc: F/SF5
RO
GCF

APPENDIX D – Template for the Federal Register Notice of Availability

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN

[Name] Fishery Management Council; Statement of Organization, Practices, and Procedures

AGENCY: National Marine Fisheries Service, (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; Statement of Organization, Practices, and Procedures; Amendment

SUMMARY: The Assistant Administrator for Fisheries has approved amendments to the [Name] Fishery Management Council's Statement of Organization, Practices, and Procedures (SOPP). Copies of the document are available to the public.

ADDRESSES: [Council name and full mailing address](any special identification requirements)

FOR FURTHER INFORMATION CONTACT: [Council staff point of contact, title, phone number, fax number.]

SUPPLEMENTARY INFORMATION: In accordance with the Magnuson-Stevens Fishery Conservation and Magnuson Act §302(f)(6), each regional fishery management council is required to describe its organization and operations in a SOPP. The [Name] Fishery Management Council has amended its SOPP. [Briefly describe the effect of the amendment.]

Pursuant to 50 CFR 600.115(b), the [Name] Fishery Management Council's SOPP, as amended, has been approved by the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce. The SOPP is available to the public. Copies may be obtained by contacting the Council. See ADDRESSES. An electronic version of the SOPP may be downloaded from [http://www.\[Website URL\]](http://www.[Website URL]).

Authority: 16 U.S.C. 1801 et seq.

Dated:

_____ [Page numbers]

NPFMC/IPHC Workshop on Halibut Bycatch Estimation, Halibut Growth and Migration, & Effects on Harvest Strategy

January 2012 DRAFT

Background

The North Pacific Fishery Management Council (Council) is evaluating proposed reductions to the halibut prohibited species catch (PSC) limits for trawl/longline fisheries in the Gulf of Alaska (GOA). Part of the evaluation should include an estimate of the impacts of halibut bycatch mortality levels on yield (CEY), exploitable and spawning biomass, and the dynamics of the halibut stock. In response to this need, the IPHC staff provided an analysis on these metrics, which was included both in the Council analysis and as an appendix to the GOA Halibut PSC Limit EA/RIR.

Halibut bycatch mortality impacts are a combination of both the level of bycatch mortality and its cumulative impact on yield and spawning biomass, both in total and area-specific based on estimated halibut movements. That is, bycatch impact is not just an issue of halibut biology (movement, growth, mortality), it is also an issue of the *amount* of bycatch mortality, and both components require analysis and evaluation.

On migration, the IPHC staff is preparing a white paper detailing the current understanding of halibut movements, including sources of information and analyses. This white paper may inform the Council's discussion of what the area-specific impacts of bycatch might be, given the available data and assuming the existing bycatch data are accurate. This white paper is anticipated to be made available sometime this winter, and would also be a subject of the workshop discussion. Implications of slow growth currently being observed in halibut, including the relationship to current minimum size limits, would also be reviewed at the workshop.

On bycatch estimation, there is broad agreement that the current levels of bycatch in the GOA are poorly understood, partly because of necessary extrapolations to vessels not subject to observer coverage, and are not subject to high confidence intervals. Recognizing that the groundfish observer program in the GOA is being restructured to address these deficiencies and to provide better use of available observer coverage, a review and assessment of bycatch estimation at this workshop could be very informative to that restructuring process. It could also be informative to the Council's desire to explore more comprehensive bycatch management measures (e.g., IBQs or similar 'rationalized' approaches).

The importance of the absolute level of bycatch mortality is that the Commission staff uses that estimate as one of the elements to calculate the appropriate harvest rate for the halibut stock. Essentially, the harvest rate for the stock is reduced to account for the amount of bycatch mortality that is estimated to occur. If that estimate is too low by a substantial amount, it means that the Commission's harvest rate, and the consequent yield taken from the halibut stock, is incorrect and the stock is being overexploited. However, regardless of uncertainties in total bycatch estimation in any given year, a primary goal of this workshop is to understand the impacts of *a given amount* of bycatch (for example, the current halibut PSC caps) on the IPHC's yield management strategy.

Discussions within the Council, between the Council and the Commission staffs, and between the contracting parties to the Commission would all benefit from a joint understanding of halibut bycatch mortality and its impacts. In addition, the Council desires to better understand the Commission's current view of halibut migration and halibut growth in order to understand both the total and the area-specific impacts of halibut bycatch mortality on halibut stock biomass, yield, and productivity, and the relevance

of halibut PSC limits. At its June 2011 meeting, the Council requested a jointly sponsored workshop with IPHC to examine the current understanding of halibut movements and growth.

Workshop Outline

Commission and Council staffs are therefore organizing a public workshop to review the methodology and accuracy of the estimation of halibut bycatch in trawl/longline groundfish fisheries off Alaska, and the impacts of any given amount of halibut bycatch on the halibut stock, both coastwide and by area given the current understanding of halibut migration. The workshop will also discuss general halibut ecology, including recent trends in exploitable biomass, spawning biomass, and length at age, as well as information concerning the causes and implications of halibut slow growth. The staffs believe that the workshop focus should be broader than the GOA because halibut movement is a coastwide phenomenon and the Council has stated its intent to review halibut PSC limits in the Bering Sea/Aleutian Islands (BSAI) in the future. The workshop would be jointly funded by the IPHC and the Council, and would replace the proposed SSC review of halibut migration (originally scheduled for February 2012).

The workshop is scheduled for April 24-25, 2012 and will be at the Crown Plaza Hotel in downtown Seattle, WA. These dates were chosen due to current IPHC, NPFMC, and NMFS meeting schedules and staff tasking, the need to develop background documentation and analyses of bycatch estimation, and ongoing discussions between IPHC staff and scientists contracted by the groundfish industry regarding halibut growth, migration, and harvest strategy, which are all subjects of the proposed workshop. These latter discussions, which will extend from mid-February through March 2012, are intended to develop a joint understanding of halibut bycatch and its impacts on halibut stock dynamics and yields. Neither the workshop nor the meeting report would be available to inform the Council on its selection of a preferred alternative for revising GOA halibut PSC limits, unless the Council delays that action until June of 2012, although the significant details of bycatch impact on the halibut stock were included in the September EA/RIR as noted.

The workshop would be comprised of short summary presentations from agency science staffs and invited industry science representatives, with a scientific panel that would be charged with providing a review of the discussion and its findings. The presentations, which would summarize documents that would be available prior to the workshop, would occur on Day 1. Day 2 would be reserved for comments, questions, and summary. The panel would include staff from IPHC, Council, the NMFS Alaska Fisheries Science Center, the Council's SSC, Canada's DFO, independent scientists sponsored by the fishing industry, and two independent, external scientific experts on bycatch issues. Dr. S. Martell and Mr. T. Jagielo are the currently identified independent scientists contracted by the industry. The workshop would be facilitated by an independent moderator, who would also be responsible for producing a workshop summary report to be distributed shortly after the workshop.

Workshop presentations include the following:

1. Halibut ecology;
 - a. Historical review of exploitable biomass, spawning biomass, and length at age of Pacific halibut stocks (IPHC staff)
 - b. Diet overlap of halibut and abundant Alaska flatfish — (presentations by IPHC staff and NMFS/AFSC staff)
 - c. Synopsis of theoretical and empirical evidence concerning the causes of halibut slow growth and potential differences in natural mortality by sex — (presentations by industry consultant and IPHC staff)

2. Impacts of halibut bycatch;

- a. Halibut bycatch and wastage estimation procedures and resulting estimates for the BSAI and GOA groundfish fisheries and the Alaska halibut fisheries (presentations by NMFS/AFSC staff and IPHC staff).
- b. Halibut bycatch and wastage estimation procedures and resulting estimates for the Canada groundfish and halibut fisheries (presentations by DFO designate and IPHC staff).
- c. Incorporating halibut bycatch and wastage impacts within the IPHC harvest policy (IPHC staff).
- d. Impacts of halibut bycatch and wastage in the GOA and BSAI on halibut coast wide CEY and spawning biomass (presentations by industry consultant and IPHC staff)
- e. Current understanding of halibut migration (presentation by industry consultant and IPHC staff).

3. Management of halibut bycatch;

- a. Reducing halibut bycatch mortality rates in Alaska groundfish fisheries. Description of past and current research and programs to return bycaught halibut to the sea with minimal injury (presentation by selected industry representatives).
- b. Effects of a smaller size limit on halibut coast-wide CEY, spawning biomass, and wastage in the commercial setline fishery (presentation by industry consultant and IPHC staff).
- c. Implementing improvements in estimating halibut bycatch (presentations by DFO designate and AFSC/NPGOP staff)
- d. Experience with tradable individual halibut bycatch quotas – British Columbia and U.S. West Coast (presentations by DFO designate and NMFS/NWR designate).

4. Results and policy implications;

- a. Participant discussion: A facilitator led discussion of the implications of the results for halibut (and halibut bycatch) management where workshop attendees are asked to provide their views on the implications of the results for halibut (and halibut bycatch) management, and during a moderated discussion the panel members provide feedback and-or questions about participant views and suggestions, as well as what additional research may be useful or informative.
- b. Panel discussion: A facilitator led discussion and synthesis of the implications of the results and stakeholder views for halibut (and halibut bycatch) management in the North Pacific by a workshop panel constituted in advance of the workshop.

A detailed agenda, including identification of specific presenters and panelists, will be developed in advance of the workshop.

Dear Colleague,

We would love to have you participate in the Pacific Cod workshop to be held in conjunction with the Western Groundfish Conference on **February 6th 2012, from 9am to 5pm at the Alaska Fisheries Science Center in Seattle, WA.**

The workshop goal will be to improve stock assessment and management of Pacific cod by identifying data gaps and research needs. We will bring interested scientists together to discuss the biology, stock assessment and management of Pacific cod. Our focus will be to develop a list of research needs that will not only improve current stock assessment but also help us understand Pacific Cod biology, ecology and life history, which will be required for more broad based ecosystem management. Results of this workshop will include a document summarizing the proceedings and a summary of research needs.

The discussion topics for the workshop will focus on the following questions:

1. What are the data gaps for stock assessment purposes?
2. What are the management implications of Pacific Cod stock structure and adult movement?
3. What can we learn from early life history, reproductive biology, growth, and ecology to improve Pacific cod stock assessment and management?
4. What effects will climate change have on cod stocks (e.g., thermal tolerance, ocean acidification, genetic plasticity)?

We will give a short overview of each topic and identify data gaps. We will then focus on developing research needs to address those data gaps, and stimulate plans for collaborative projects and proposals.

If you are interested in attending, please let us know and follow the instructions below:

What we would like from you before the workshop:

Please send us a brief description of your current work and potential future work that focuses on Pacific cod, together with your name, institution and collaborators. In an effort to reduce duplication among collaborators, we ask that these descriptions be organized around research themes. We will compile these in a small document for everyone to have while at the workshop. This will greatly facilitate collaborations and give us also an idea on the research interests of the participants.

For example:

Distribution and habitat use of juvenile Pacific cod in the Bering Sea

Tom Hurst (AFSC-FBEP), Jamal Moss (AFSC-ABL), Jessica Miller (OSU), Dan Cooper (AFSC-FOCI)

While little is known about the distribution and habitat use of juvenile Pacific cod, it appears that an open-water pelagic life history is more common in the Bering Sea than in the Gulf of Alaska. We recently examined catch data from pelagic sampling (BASIS survey) to describe the broad distribution of age-0 Pacific cod in the Bering Sea. A pending HEPR-sponsored project would examine inshore/offshore distribution and habitat use of demersal age-0 cod along the Alaska Peninsula.

Logistics

This workshop will be free of charge (you do not need to be registered for the Western Groundfish conference). The workshop will be held at the **Alaska Fisheries Science Center** and not at the Best Western hotel where the Western Groundfish conference will take place.

Let us know if you will need a **ride from the Western Groundfish Conference hotel (Best Western Hotel) to the Alaska Fisheries Science Center**. We are organizing a carpool. We also will be able to give you a ride back to the hotel in the evening to go to the reception event for the Western Groundfish Conference.

Thank you so much for your interest in this workshop, we are looking forward to seeing you in Seattle!

Susanne McDermott, Tom Hurst, and Ben Laurel.

Contact: Susanne.McDermott@noaa.gov

(206) 526 4417

Alaska Fisheries Science Center

7600 Sandpoint Way N.E.

Seattle, WA 98115

Economic SAFE Feedback Session

**Listening to the needs and concerns of the fishing community
and management to improve and advance economics and social
science in the SAFE**

North Pacific Fisheries Management Council Meeting

Renaissance Hotel: East Room

Tuesday January 31st

5:30-6:15pm

Each year the Economics and Social Sciences Research Program (ESSRP) at Alaska Fisheries Science Center (AFSC) documents and reports the economic status of the North Pacific Groundfish and Crab fisheries. The results of this analysis are compiled into an economic chapter of the Stock Assessment and Fisheries Evaluation (SAFE) Report (<http://www.afsc.noaa.gov/REFM/Socioeconomics/documents.php>). These data are compiled and distributed not only to inform management decisions but to provide stakeholders and the public access to data on North Pacific fisheries.

To meet the changing needs of fisheries managers and stakeholders, economists and social scientists from the ESSRP would like to hear how you use (or would like to use) the Economic SAFE. The evening of Jan. 31st 2012 at the North Pacific Fisheries Management Council meeting in the East Room of the Seattle Renaissance Hotel scientists from the ESSRP will be soliciting constructive feedback to inform and improve the Economic SAFE.

We encourage users of the Economic SAFE to come and share how they use the document and offer their personal insight into how it can be improved. The experience of these users will be compiled and used by the ESSRP to help achieve improvements in content and accessibility the Economic SAFE.

Those who are unable to attend this feedback session but would still like to give feedback on the Economic SAFE are encouraged to fill out the following Economic SAFE survey: http://www.afsc.noaa.gov/REFM/Socioeconomics/Contact/SAFE_survey.php or contact Ben.Fissel@noaa.gov.



Kodiak Island Borough Office of the Borough Clerk

710 Mill Bay Road
Kodiak, Alaska 99615

Phone (907) 486-9310 Fax (907) 486-9391
Email: njavier@kodiakak.us Website: www.kodiakak.us

December 20, 2011

North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501-2252

RECEIVED
DEC 22 2011

RE: Adoption of Resolution No. FY2012-13

Dear NPFMC:

At its regular meeting of December 15, 2011, the Borough Assembly took the following action:

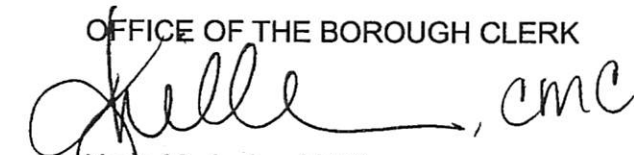
ADOPTED Resolution No. FY2012-13 Urging the North Pacific Fishery Management Council to Provide for Videoconferencing and Other Means of Remote Communication for Its Meetings.

For your convenience, a signed copy of Resolution No. FY2012-13 is enclosed.

If you have any questions regarding this action or the Assembly's process, please contact me at (907) 486-9310.

Sincerely,

OFFICE OF THE BOROUGH CLERK


Nova M. Javier, MMC
Borough Clerk

Cc: Kodiak Fisheries Advisory Council

Introduced by: Borough Assembly
Requested by: Kodiak Fisheries Advisory Council
Drafted by: Borough Clerk
Introduced on: 12/15/2011
Adopted on: 12/15/2011

**KODIAK ISLAND BOROUGH
RESOLUTION NO. FY 2012-13**

**A RESOLUTION OF THE KODIAK ISLAND BOROUGH ASSEMBLY URGING
THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
TO PROVIDE FOR VIDEOCONFERENCING AND OTHER MEANS OF
REMOTE COMMUNICATION FOR ITS MEETINGS**

WHEREAS, Kodiak is a fishing community, and Kodiak's economic health and social welfare depend on the sustained ability of its residents to harvest and process the marine resources of the Gulf of Alaska and the Bering Sea; and

WHEREAS, it is in Kodiak's best interest for its Borough and City governments to be well informed regarding the potential impacts of State and Federal fishery management actions on the Kodiak community and to have an opportunity to effectively comment on such actions before they are taken; and

WHEREAS, the Kodiak Island Borough Assembly and Kodiak City Council have established a Joint Kodiak Fisheries Advisory Committee for the purpose of providing recommendations regarding Kodiak's position on fisheries issues, and to provide a forum for interested parties to discuss, and, to the degree possible, reach consensus on fisheries issues affecting Kodiak's fishermen, processors, businesses, and residents;

WHEREAS, it is important for the Joint Kodiak Fisheries Advisory Committee to attend the North Pacific Fishery Management Council meetings and stay abreast of information provided at these meetings; and

WHEREAS, North Pacific Fishery Management Council meetings are often held in the Pacific Northwest and remote areas of the State of Alaska; and

WHEREAS, travel expenses to these areas can be cost prohibitive and may ultimately reduce access to vital information and decisions being made by the North Pacific Fishery Management Council; and

WHEREAS, the Kodiak Fisheries Advisory Committee met on September 16, 2011, and agreed that the Kodiak Island Borough Assembly and Kodiak City Council should consider urging the North Pacific Fishery Management Council to provide video conferencing of its meetings; and

WHEREAS, there are many other Alaskan coastal communities who would also benefit from video conferencing, and

WHEREAS, video conferencing gives access to participants who are limited by their physical location; and

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WHEREAS, attending the meetings in person is expensive and cost prohibitive due to travel costs, and attendance by video conference could substantially save money for interested parties; and

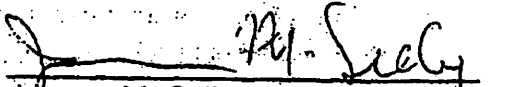
WHEREAS, attendance by video and remote conferencing will provide rural communities the choice and flexibility to be involved in the process without the huge demands of substantial travel time and costs;

WHEREAS, with advances in technology, video and remote conferencing has become increasingly popular and as the reliability and affordability of videoconferencing technologies continues to improve, agencies have become more and more creative in incorporating this technology.


NOW, THEREFORE BE IT RESOLVED, THAT THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH endorses and urges the use of video conferencing and other means of remote communication where feasible and desirable for participation in the North Pacific Fishery Management Council meetings.

**ADOPTED BY THE ASSEMBLY OF THE KODIAK ISLAND BOROUGH
THIS FIFTEENTH DAY OF DECEMBER, 2011**

KODIAK ISLAND BOROUGH


Jerome M. Selby, Borough Mayor

ATTEST:


Nova M. Javier, MMC, Borough Clerk

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UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

January 17, 2012

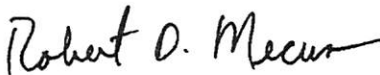
RECEIVED
JAN 17 2012

Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Chris:

We recommend that the North Pacific Fishery Management Council replace Gretchen Harrington with Dr. Jason Gasper on the Bering Sea/Aleutian Islands Crab Plan Team. Ms. Harrington will be transitioning to her new role as the Alaska Region NEPA Coordinator and will not be available to continue in her current role on the Crab Plan Team. Dr. Gasper has relevant expertise in data management, stock assessment, and Federal rule making from the Alaska Region perspective. I have attached Dr. Gasper's resume for your consideration.

Sincerely,

for 
James W. Balsiger, Ph.D.
Administrator, Alaska Region

Enclosure



Jason Gasper

NMFS Alaska Region, 709 W. 9th St.
Juneau, Alaska 99801

(907) 586-7237
jason.gasper@noaa.gov

QUALIFICATIONS

I have applied knowledge of the federal regulatory process, federal fishery regulations, groundfish and prohibited species catch accounting, and analysis associated with rule making. I also have a background in economics, statistics, and biology associated with both State of Alaska and federally managed fisheries.

EXPERIENCE

Resource Management Specialist 2005–Current
National Marine Fisheries Service, Alaska Region

Policy analyst for the Sustainable Fisheries Division. Develop and implement regulations governing Federal fisheries in waters off Alaska.

- Work closely with the State of Alaska, industry, NGOs, the International Pacific Halibut Commission, NMFS, and the North Pacific Fishery Management Council to meet Federal and state legal mandates. This includes analytical support in the form of NEPA analysis, economic analysis, discussion papers, and presentations.
- Provide statistical advice for estimation of catch in commercial fisheries in the Gulf of Alaska, Bering Sea, and Aleutian Islands. Examples include Chinook salmon bycatch accounting in the Bering Sea, groundfish estimates in waters off Alaska, and crab bycatch in the groundfish fisheries.
- Write regulations in compliance with Federal laws including: the Magnuson Stevens Act, National Environmental Protection Act, Administrative Procedures Act, and Endangered Species Act.
- Work with industry and government agencies to improve electronic reporting and accounting systems, including Alaska's eLandings system, at-sea observer data collection, and backend databases (Oracle SQL). For example, I recently worked with the Pacific cod longline fleet to investigate product recovery and the impacts on catch estimates.
- Recreational fishery coordinator. Coordination with recreational fishery constituents and agencies to improve outreach.
- Served on national and regional committees for data collection (FIS) and bycatch assessment.

Research Fellow 2002-2004
University of Washington

- Working in cooperation with the Pacific Northwest Cooperative Ecosystem Studies unit to implement mail and telephone surveys of anglers in Glacier Bay National Park.
- Developed and implemented creel surveys in the Alaska ports of Elfin Cove, Gustavus, and Bartlett Cove.
- Investigated reporting bias for anglers fishing from charter vessels in Glacier Bay National Park.
- Conducted ethnographic-observation and mail surveys about the sociology between anglers and their guides, including the dissemination of regulatory information.

Sport Fishery Management Biologist 2004-2005
Fisheries Technician (seasonal) 1998-2001
Alaska Department of Fish Game

Worked closely with constituents to improve public access to sport fishing areas, coordinated strategic planning, and conducted biological sampling.

- Coordinated parking and trail improvements at three sportfishing access sites in the Juneau area.
- Disseminated regulatory information to the public and supervised outreach desk.
- Worked onboard salmon fishery tenders and processing plants collecting biological samples from the southeastern Alaska salmon fisheries.
- Coordinated construction of a salmon weir on Baranof Island.
- Performed snorkel surveys and sample collection on lakes and streams throughout Southeast Alaska.

EDUCATION

Ph.D. Fisheries 2011
University of Alaska Fairbanks
Policy and Market Analysis of World Dogfish Fisheries and an Evaluation of the Feasibility of a Dogfish Fishery in Waters of Alaska, USA.

M.M.A. Masters in Marine Affairs (Marine Policy) 2004
University of Washington
The sportfishery in the Icy Strait/Glacier Bay/Cross Sound region of southeastern Alaska: an analysis of charter guide-client power interactions and sportfishing catch, harvest, and effort

B.S. Biology (Marine Emphasis) 2002
University of Alaska Southeast

Specialized Training
Benscheidt Communications Group
Value flow and quality management training
SQL, ARC GIS, and R programming languages

SELECTED PUBLICATIONS

- Gasper J.R., J. Watson, and J. Mondragon. 2011. Investigating weight loss in Pacific cod (*Gadus macrocephalus*) due to exsanguination. NOAA Tech. Memo. NMFS-AKRO-10.
- Cahalan, J., J. Mondragon, J. R. Gasper. 2010. Catch sampling and estimation in the Federal groundfish fisheries off Alaska. NOAA Tech. Memo. NMFS-AFSC-205. 51 pp.
- Gasper, J.R., Miller, M.L., Gallucci, V.F., Soiseth, C., 2007, The diffusion of fishery information in a charter boat fishery—Guide-client interactions in Gustavus, Alaska, in Piatt, J.F., and S.M. Gende, eds., Proceedings of the Fourth Glacier Bay Science Symposium, October 26–28, 2004: U.S. Geological Survey Scientific Investigations Report 2007-5047, p. 183-187.
- Gasper, J.R., V.F. Gallucci, M. Miller, J. Swanson, C. Soiseth, and D. Johnson. 2004. Sportfishing catch and harvest of Pacific halibut (*Hippoglossus stenolepis*) in Glacier Bay National Park, in Kruse, G.H., V.F. Gallucci, D.E. Hay, R.I. Perry, R.M. Peterman, T.C. Shirley, S.P. Spencer, B. Wilson, and D. Woodby. Fisheries assessment and management in data-limited situations. Alaska Sea Grant College Program, University of Alaska Fairbanks. AK-SG-05-02.
- Gasper, J.R., G.H. Kruse, and J. Greenberg. In prep. Spatial modeling of the distribution of spiny dogfish (*Squalus acanthias*) in the Gulf of Alaska using generalized additive and generalized linear modeling techniques. Prepared for submission to Canadian Journal of Fisheries and Aquatic Sciences
- Gasper, J. R., J. Greenberg, G. H. Kruse, and Q. Fong. In prep. Evaluation of the world market for spiny dogfish products and geography of supply. Prepared for submission to Marine Resource Economics.
- Gasper, J. R., G. H. Kruse, J. Greenberg, and Q. Fong. In prep. Policy analysis for a prospective fishery for spiny dogfish in the Gulf of Alaska. Prepared for submission to Fisheries Bulletin.

RECENT PRESENTATIONS

- Cahalan, J., J.R. Gasper, J. Mondragon. 2012. When is a ratio estimator not a ratio estimator? Evaluation of catch estimates for Alaska groundfish fisheries. American Statistical Society Conference on Statistical Practice. Orlando, Florida.
- Gasper, J.R., G.H. Kruse, J. Greenberg. 2010. The spatial distribution of spiny dogfish (*Squalus acanthias*) in the Gulf of Alaska: the use of fishery dependent data, fishery independent data, and generalized modeling for the spatial management of catch and bycatch. International Council for the Exploration of the Seas Annual Meeting. Nantes, France.
- Tribuzio, C.A., G.H. Kruse. 2010. The complexities of managing a complex: the case of assessing data limited sharks in the Gulf of Alaska. International Council for the Exploration of the Seas Annual Meeting. Nantes, France. (Presentation given for Dr. Tribuzio)
- Gasper, J.R., J. Cahalan, J. Mondragon. 2010. One size doesn't fit all: Spatial analysis of catch estimation in the North Pacific. International Council for the Exploration of the Sea symposium on fishery dependent information. Galway, Ireland.

AFFILIATIONS

Board Member of Trout Unlimited, Juneau Chapter

Ecosystem-based Management for Protected Species in the North Pacific Fisheries

JEANNIE M. HELTZEL, DAVID WITHERELL, and WILLIAM J. WILSON

Introduction

In 2010, President Barack Obama signed Executive Order 13547 that established a National Policy for the Stewardship of the Ocean, Coasts, and Great Lakes. The highest priority of the National Policy is to adopt ecosystem-based management as a foundational principle for comprehensive management of the oceans, coasts, and Great Lakes (CEQ, 2010). Federal agencies are directed to take appropriate steps and to work together to implement the National Policy ob-

Jeannie Heltzel was with the North Pacific Fishery Management Council in Anchorage, Alaska, and is currently at Oregon State University in Corvallis, Oregon (email: jeannie.heltzel@gmail.com). David Witherell is Deputy Director of the North Pacific Fishery Management Council. William Wilson is retired from the North Pacific Fishery Management Council. Views or opinions expressed or implied are those of the authors and do not necessarily reflect the position of the National Marine Fisheries Service, NOAA.

jectives to the fullest extent consistent with applicable law.

An ecosystem-based strategy to manage fisheries involves using the best available scientific information to promote long-term sustainability and to prevent adverse and irreversible harm to ecosystem structure and functioning by addressing how fishing activities affect biodiversity, food web interactions, and habitat (NMFS, 1999; Pikitch et al., 2004; Fluharty, 2005). Practical strategies to achieve ecosystem-based management of marine fisheries include: 1) maintaining abundant fish stocks, 2) maintaining healthy habitats, 3) maintaining biodiversity and food webs, 4) minimizing the effects of fisheries on protected species, 5) incorporating variable environmental conditions, uncertainty, and ecosystem science into decision making, and, 6) coordinating with other nongovernmental agencies and communities to address nonfishery impacts

on marine ecosystems (Francis et al., 2007; Marasco et al., 2007; Witherell, 2009).

In the North Pacific, measures to protect seabirds and marine mammals arise from an overall ecosystem-based approach for managing Alaska groundfish fisheries (Witherell et al., 2000; NPFMC, 2010a; NPFMC, 2011). The stated management policy is "to apply judicious and responsible fisheries management practices, based on sound scientific research and analysis, proactively rather than reactively, to ensure the sustainability of fishery resources and associated ecosystems for the benefit of future, as well as current, generations." This policy has been implemented through a variety of measures to achieve specified goals (NPFMC, 2010a; NPFMC, 2011). Precautionary and conservative annual catch limits have been established for every target fish species (DiCosimo et al., 2010). Total removals of fish (of all species) from the ecosystem have been constrained by system level optimum yield limits, particularly in the Bering Sea (NMFS, 2004). Bycatch of nontarget species has been controlled with explicit catch limits and area closures (Witherell and Pautzke, 1997; Reuter et al., 2010) and avoided by the fleets using gear modifications and proactive real-time fishery closures (Haflinger and Gruver, 2009). Fishing for forage fish species has been prohibited. Sensitive habitats and vulnerable species have been protected from fishery impacts with marine protected areas (Witherell and Woodby, 2005). At-sea observers, combined with strict reporting requirements and tight enforcement of regulations, ensure effective implementation of these mea-

ABSTRACT—*In the North Pacific Ocean, an ecosystem-based fishery management approach has been adopted. A significant objective of this approach is to reduce interactions between fishery-related activities and protected species. We review management measures developed by the North Pacific Fishery Management Council and the National Marine Fisheries Service to reduce effects of the groundfish fisheries off Alaska on marine mammals and seabirds, while continuing to provide economic opportunities for fishery participants. Direct measures have been taken to mitigate known fishery impacts, and precautionary measures have been taken for species with potential (but no documented) interactions with the groundfish fisheries. Area closures limit disturbance to marine mammals at rookeries and haulouts, protect sensitive*

benthic habitat, and reduce potential competition for prey resources. Temporal and spatial dispersion of catches reduce the localized impact of fishery removals. Seabird avoidance measures have been implemented through collaboration with fishery participants and have been highly successful in reducing seabird bycatch. Finally, a comprehensive observer monitoring program provides data on the location and extent of bycatch of marine mammals and seabirds. These measures provide managers with the flexibility to adapt to changes in the status of protected species and evolving conditions in the fisheries. This review should be useful to fishery managers as an example of an ecosystem-based approach to protected species management that is adaptive and accounts for multiple objectives.

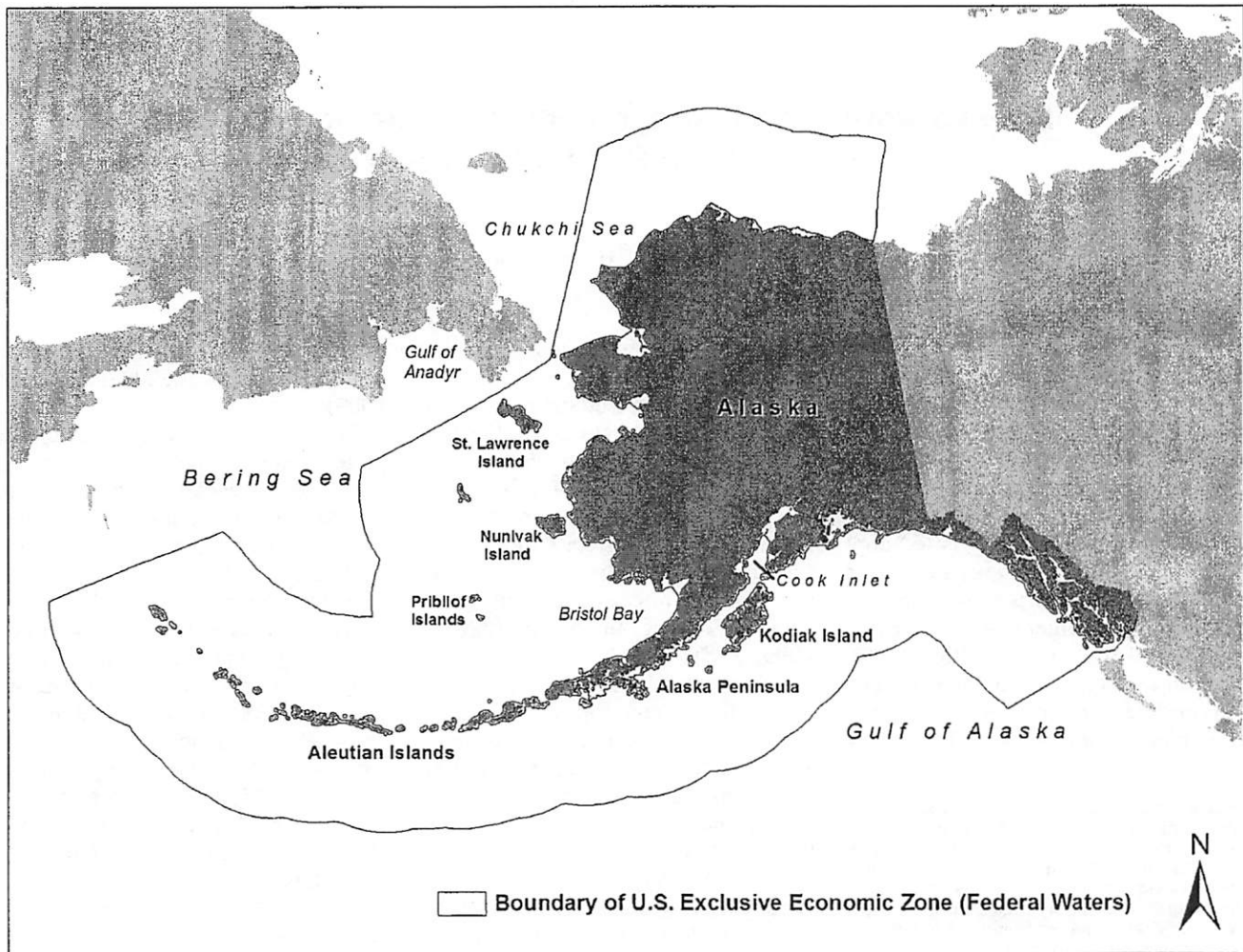


Figure 1.—Major geographic areas referenced in the text.

asures. An Ecosystem Considerations Report containing an ecosystem assessment and ecosystem indicators is prepared annually, and provides fishery managers information to qualitatively incorporate ecosystem information into the establishment of annual catch limits for target species (NPFMC, 2010b). The ecosystem-based approach for fisheries, as applied in the North Pacific, provides both direct and indirect beneficial impacts to marine mammals, seabirds, and other components of the ecosystem. This paper reviews these measures as they apply to reducing impacts of fisheries on protected species.

The North Pacific Fishery Management Council (Council) was established by the Fishery Conservation and Man-

agement Act of 1976 and is responsible for developing Fishery Management Plans (FMP's) for fisheries that take place in Federal waters (5.6–370 km or 3–200 nmi from shore) off Alaska (Fig. 1). The process of developing FMP's involves extensive input by state and Federal agencies, industry, and public interest groups, and proposed measures also undergo formal scientific review. Management measures developed by the councils must be approved by the Secretary of Commerce, and they are implemented by NMFS if they meet the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA) of 2006. In developing FMP's, the MSFCMA requires councils to consider the impacts of

fishing activities on all living marine resources, including marine mammals and seabirds.

In addition, fishery management measures are reviewed to ensure that they are consistent with several other Federal laws. The National Environmental Policy Act (NEPA) of 1973 requires that all Federal actions, including fishery management measures implemented by NMFS, be reviewed to ensure that potential environmental impacts are duly weighed and considered in decision making. And the Endangered Species Act (ESA) of 1973 requires the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service (USFWS) to ensure that fishing activities do not jeopardize

the continued existence of any listed species or adversely modify its designated critical habitat.

Under the Marine Mammal Protection Act (MMPA) of 1972, NMFS has responsibility for the management and conservation of all marine mammal species in the North Pacific, with the exception of Pacific walrus, *Odobenus rosmarus divergens*; sea otter, *Enhydra lutris*; and polar bear, *Ursus maritimus*, which are managed by USFWS. The MMPA requires these agencies to conserve species, protect their habitat, limit mortality, and not allow them to diminish below their optimum sustainable population.

The Migratory Bird Treaty Act of 1918 requires NMFS to work cooperatively with USFWS to reduce the impacts of fishing activities on seabirds. The Protected Resources Division of NMFS coordinates management and conservation of protected species, which include marine mammals, seabirds, and sea turtles, and all marine and anadromous species (including fish and invertebrates) listed under the Endangered Species Act. Fishing activities in state waters of Alaska (0–5.6 km or 0–3 nmi from shore or the baseline) are regulated by the Alaska Board of Fisheries, and the Alaska Department of Fish and Game (ADFG) implements the Board's actions.

Fishing activities may have both direct and indirect impacts on protected species. Direct impacts of fishing activities include inflicting incidental injuries or mortalities of animals through entanglement with fishing gear or vessel strikes or disturbances to animals at rookeries and haulouts. Fishing activities may also affect protected species indirectly through competition for or disruption of access to prey resources (Lowry and Frost, 1985). The indirect effects of fishing are difficult to assess because they often cannot be isolated from other ecosystem processes, such as oceanographic regime shifts and predator-prey dynamics (Springer et al., 2003; DeMaster et al., 2006). Because these impacts are uncertain and difficult to quantify, fisheries managers in the North Pacific have adopted a precaution-

ary approach to mitigate the effects of fishing activities on marine mammals and seabirds.

In the North Pacific, several types of management measures work in concert to reduce interactions between the groundfish fisheries and protected species. Area closures are designed to reduce the direct and indirect impacts of fishing in areas and during time periods determined to be especially important to protected species (Witherell and Woodby, 2005). Catch limits are seasonally apportioned to reduce the likelihood of localized depletion of key prey resources. Seabird avoidance measures allow the longline groundfish and Pacific halibut, *Hippoglossus stenolepis*, fisheries to be prosecuted with minimal disruption to the fisheries or economic burden on participants while minimizing seabird bycatch. Finally, observer monitoring requirements ensure that managers have access to timely and accurate data on the interactions between fisheries and protected species. The North Pacific Observer Program is unique in that the costs of deploying observers are paid for by the fishing industry, but the program is administered by NMFS to ensure that observers provide independent, scientifically valid data (NPFMC, 2010c). In addition, the Council has worked cooperatively with the fishing industry and state and Federal agencies to promote new research on the impacts of fishing on protected species.

This paper examines how the NPFMC and NMFS have developed an ecosystem-based management approach to mitigate interactions between the fisheries off Alaska and protected species. For the purposes of this review, we focus on marine mammal and seabird species which have known or likely interactions with the fisheries off Alaska, and hence have been addressed by the Council management process. We review direct measures developed by the Council and NMFS to mitigate known interactions between protected species and fisheries, and precautionary measures taken in cases where no direct fisheries actions have been identified to date, but where the potential exists for interactions to occur. Although other factors may have

contributed to or may have been the primary reason for the decline of some species, such as shooting, predation, or shifts in the ecosystem, fisheries managers have focused on addressing fisheries interactions when and where practicable to assist in the recovery of protected species.

The Council process involves extensive participation by the public, fishery participants, marine scientists, and fishery managers. Protected species management measures continue to be developed and refined as new information becomes available and provide the Council with the tools to address new problems as they are identified (Witherell, 2004, 2005; NPFMC, 2010d).

Direct Measures for Species with Known Fisheries Interactions

Pacific Walrus

Pacific walrus occur in the Bering and Chukchi Seas and make seasonal movements among several areas. In winter, Pacific walrus are found in shelf waters of the Bering Sea and use pack ice as a haulout. The breeding season occurs in late winter, and during this time walrus are concentrated in the Gulf of Anadyr, southwest of St. Lawrence Island, and south of Nunivak Island (Fay, 1982; Speckman et al., 2010; Fig. 2). In summer, most Pacific walrus move north with the receding pack ice to the Chukchi Sea, but thousands of male walrus may remain in Bristol Bay in the southeastern Bering Sea throughout the summer and use terrestrial haulout sites (Fay, 1982; USFWS, 1994; Jay and Hills, 2005; Okonek et al., 2009).

The Council first addressed interactions between Pacific walrus and fishing activities in the late 1980's by establishing several area closures around terrestrial haulouts in Bristol Bay. Walrus use of coastal haulouts in Bristol Bay began increasing in the 1970's as walrus numbers recovered following restrictions on commercial hunting (Fay et al., 1997). By the 1980's, four primary haulout sites were being used by walrus in Bristol Bay, including Round Island, Cape Peirce, Cape Newenham, and

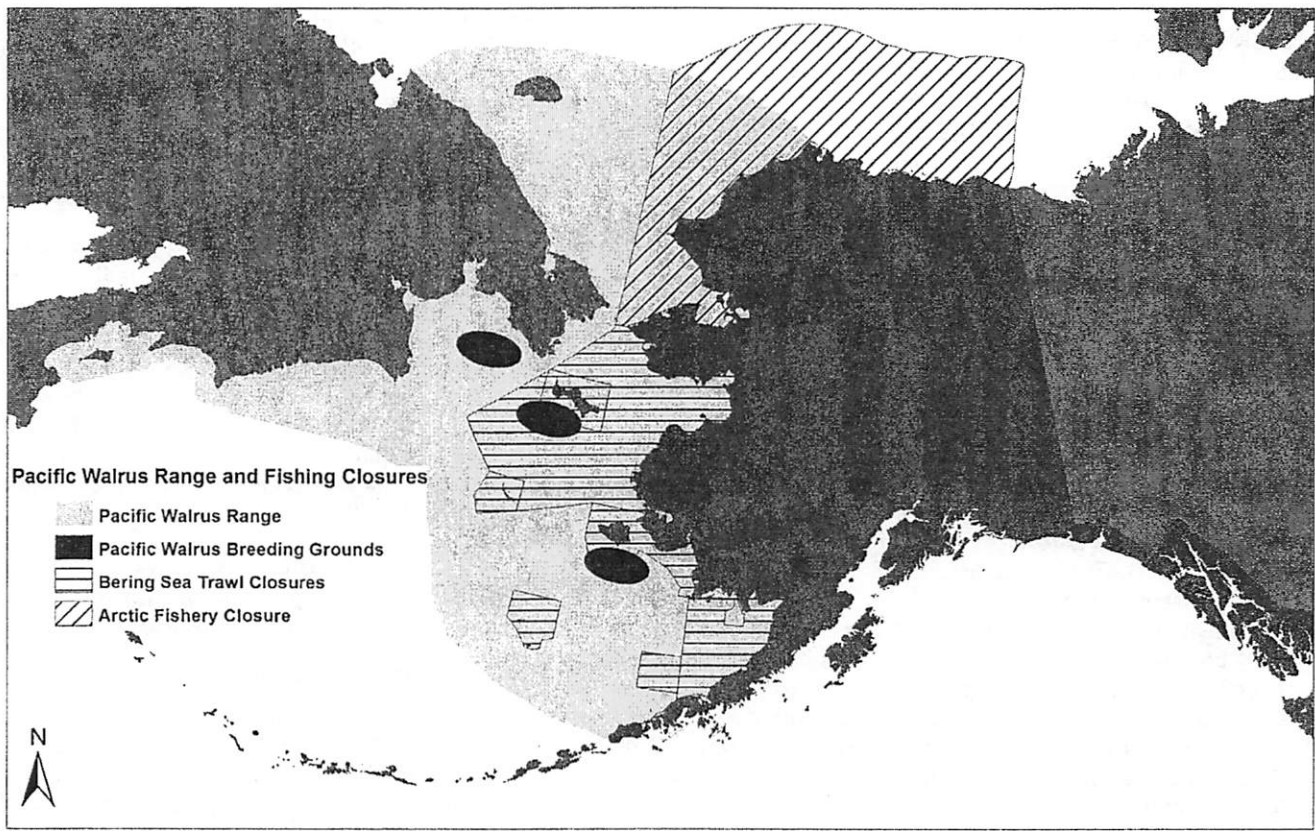


Figure 2.—Pacific walrus range and fishing closures off Alaska.

Cape Seniavin. However, peak counts at the largest haulout on Round Island declined in the 1980's by more than 50% from counts in the late 1970's (Okonek et al., 2009). Walrus in Bristol Bay may use more than one haulout during a given season, and the decrease in use of the Round Island haulout may be related to increased use of other Bristol Bay haulouts (Jay and Hills, 2005).

Shifts in haulout use within Bristol Bay are not well understood (Jay and Hills, 2005), but walrus use of haulouts may be influenced by human disturbances at haulout sites, which can cause animals to flee haulouts temporarily or abandon them permanently (Salter, 1979; Fay et al., 1989). The decline in use of the Round Island haulout in the early 1980's was coincident with the development of the Togiak Pacific herring, *Clupea pallasii*, fishery and increased aircraft traffic bringing visitors to Round Island (NPFMC, 1989). Visitor use was restricted and use of

the haulout increased. However, Round Island haulout counts declined again in the late 1980's when the yellowfin sole, *Limanda aspera*, fishery was developed in northern Bristol Bay. This fishery was prosecuted by a fleet of more than 100 vessels during summer months (NPFMC, 1989). Peak annual counts at the Round Island haulout declined from more than 14,000 animals in 1978 to 4,500 in 1988 (Okonek et al., 2009).

In response to concerns expressed by residents of Bristol Bay and wildlife managers from USFWS and ADFG about fishery-related disturbances to walrus using the Bristol Bay haulouts, the Council designated several walrus protection areas in 1989 (NPFMC, 1989; Fig. 3). The closures extend from 5.6 km to 22.2 km (3–12 nmi) from haulouts on Round Island, the Twins, and Cape Peirce, and are intended to reduce fishery-related disturbances to walrus using these sites. The closures are seasonal (1 Apr. through 30 Sept.)

and coincide with peak walrus use of haulouts. All vessels with Federal fisheries permits are prohibited from engaging in fishery-related activities in the closure areas. In addition, the State of Alaska created a complementary vessel closure that extends from 0 to 5.6 km (0–3 nmi) from Round Island and is in effect year round. The walrus area closures encompass approximately 3,087 km² (900 nmi²).

The Council did not designate a closure around the walrus haulout at Cape Newenham, but this site is also used as a haulout by Steller sea lions, *Eumetopias jubatus*, and is encircled by a 37 km (20 nmi) radius Steller sea lion closure that prohibits directed fishing for walleye pollock, *Theragra chalcogramma*, or Pacific cod, *Gadus macrocephalus*, using trawl, hook-and-line, and pot gear (Fig. 3; NMFS, 2010a). More recently, the Council has considered establishing a new closure area around a recently established walrus haulout on Hagemeister

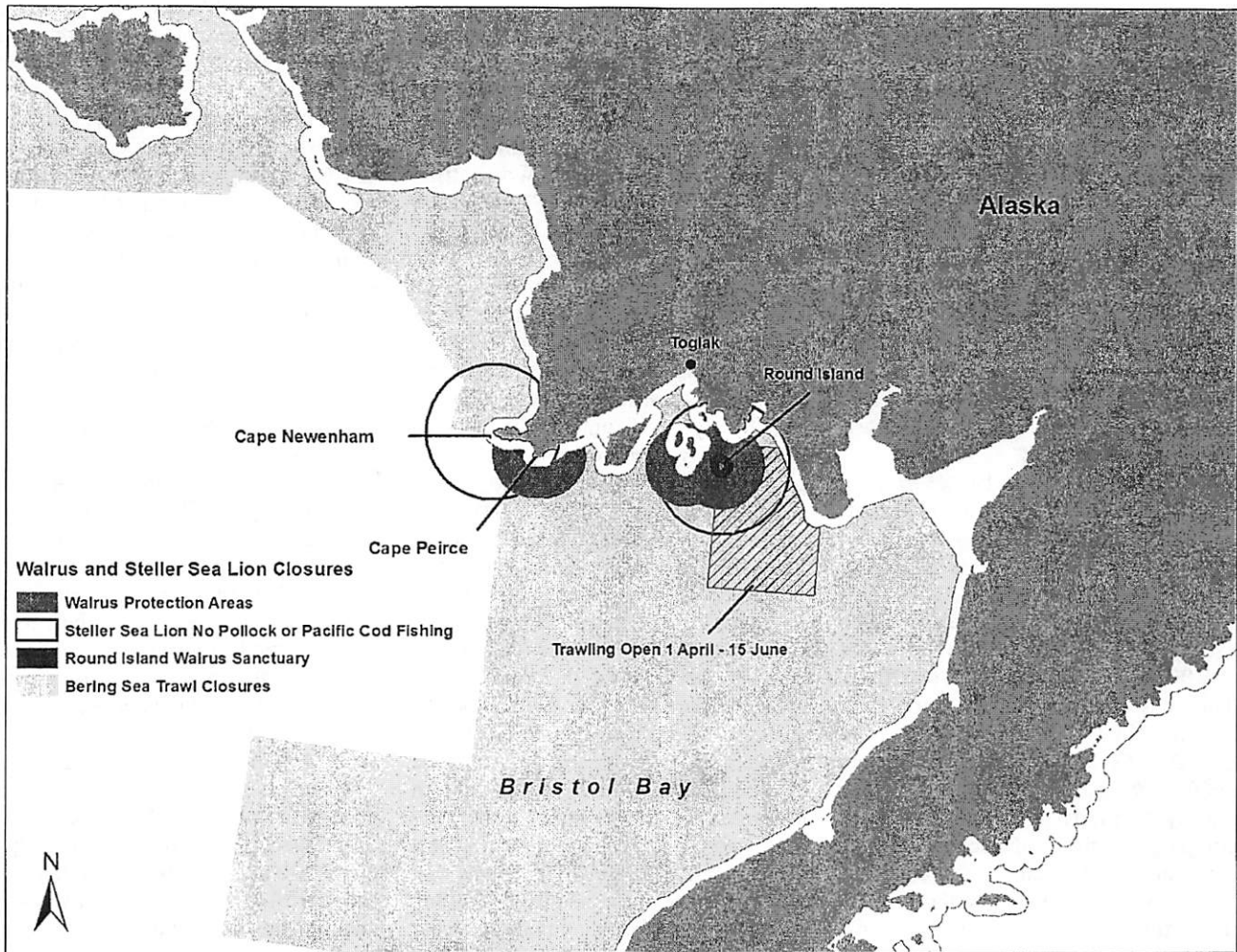


Figure 3.—Pacific walrus and Steller sea lion protection areas in Bristol Bay, Alaska.

Island, also located in northern Bristol Bay, where nearly 3,000 walrus have been counted (NPFMC, 2010e).

During 2001–10, up to 14% of the Bering Sea yellowfin sole catch was harvested in northern Bristol Bay, with harvests occurring in May and early June (NPFMC, 2010e). The yellowfin sole grounds in Bristol Bay are important to the fleet because halibut bycatch is relatively low compared with other yellowfin sole fishing grounds in the Bering Sea (NPFMC, 2010e).

Herring and Pacific salmon, *Oncorhynchus* spp., fisheries are also prosecuted in northern Bristol Bay during the time walrus are present. The intent of establishing a new closure at

the Hagemeister haulout site would be to mitigate these potential fishery-related disturbances. The proposed closure would be precautionary, as the status quo fisheries have not been determined to have non-negligible adverse impacts on walrus (NPFMC, 2010e). The primary economic cost of the proposed closure to fishery participants is increased travel time and fuel costs to transit around the closure area, because little fishing activity occurs inside the proposed closure area (NPFMC, 2010e). No action was taken since other sources of walrus disturbance in this area would not be affected by a Council action.

The Council and NMFS monitor other potential impacts of fisheries on walrus

in cooperation with USFWS. Bycatch of Pacific walrus in the commercial fisheries is not considered to be a significant source of mortality. Observer data indicate that fewer than three fishery-related mortalities of walrus occur per year (Allen and Angliss, 2011).

Bottom trawling may disturb benthic habitat in areas that are used by foraging walrus. Walrus generally feed in waters less than 80 m in depth (Fay, 1982; Jay et al., 2001; Jay and Hills, 2005) and forage on the seafloor for bivalve mollusks and other invertebrates (Fay, 1982). In 2007, the Council closed 458,921 km² (133,800 nmi²) of the northern Bering Sea to bottom trawling year-round. A portion of the closed area

is designated as the Northern Bering Sea Research Area (188,645 km² or 55,000 nmi²) and a research plan is being developed for the area that may open limited areas to experimental trawling in the future.

The intent of the closures is to protect sensitive benthic habitat in areas where little fishing currently occurs. Fishing activities in the North Pacific have the potential to shift northward as climate patterns and fish distributions change (Mueter and Litzow, 2008). Areas used by Pacific walrus during the late winter breeding season overlap extensively with the newly designated bottom trawl closure areas (Fig. 2).

The USFWS recently determined that listing Pacific walrus as threatened under the ESA is warranted but precluded at this time due to higher priority listings (USFWS, 2011a). A range-wide survey conducted in 2006 estimated a minimum population of 129,000 walrus (Speckman et al., 2010). This may indicate that the population has declined from estimates of more than 200,000 animals in the 1970's and 1980's (Fay et al., 1997), but different survey methods make it difficult to compare historical and recent population estimates (Speckman et al., 2010). If Pacific walrus are listed under the ESA in the future, USFWS would prepare a Biological Opinion evaluating the status of walrus and any adverse impacts of human activities, including fishing. If non-negligible, adverse fishery-related impacts on walrus are identified, the Council and NMFS would likely need to consider additional walrus protection measures.

Steller Sea Lions

Steller sea lions overlap in distribution with commercial fisheries throughout their range off Alaska. Steller sea lions use coastal rookeries on a seasonal basis and use haulouts on a seasonal or year-round basis, and forage offshore from these sites. The diet of Steller sea lions consists of several commercially harvested species, including walleye pollock, Atka mackerel, *Pleurogrammus monopterygius*, Pacific cod, Pacific salmon, and herring, as well as noncom-

mercially harvested species (e.g. forage fishes), and it varies seasonally and by area (Sinclair and Zeppelin, 2002).

Steller sea lion numbers declined dramatically beginning in the 1970's, and the species was initially listed as threatened in 1990. Two distinct population segments (DPS) were later identified based on genetic and demographic differences, and the western DPS was listed as endangered in 1997. The western DPS of Steller sea lions declined by about 80% from the 1970's to 2000, and then increased slightly from 2000 to 2008, although the trend is not statistically significant (NMFS, 2010a). Declines have continued in some areas, particularly in the western and central Aleutian Islands (NMFS, 2010a).

Many management measures have been implemented since 1990 when Steller sea lions were initially listed as threatened. These measures are summarized in detail in NMFS (2010a, 2010b), and an overview of the measures is provided here. Prior to 1990, shooting and incidental take in commercial fisheries were likely important causes of the decline (Loughlin and York, 2001). An estimated 6,543 Steller sea lions were incidentally taken in groundfish fisheries off Alaska from 1978 through 1988, although there was generally a declining trend in the number of animals taken per year over this time period (Perez and Loughlin, 1991). Shooting at or near a sea lion was prohibited in 1990, and the incidental take limit was reduced by 50%. In recent years, fewer than 20 sea lions per year have been taken in the groundfish fisheries off Alaska (Allen and Angliss, 2011).

Extensive area and fishing closures have been implemented around rookeries and haulouts and several larger at-sea foraging areas to reduce disturbance to animals and to reduce the potential for fisheries to cause localized depletion of prey species (NMFS, 2010a; NMFS, 2010b). In 1990, when Steller sea lions were initially listed, 5.6 km (3 nmi) radius no-entry zones were established around all rookeries.

Several consultations conducted by NMFS under Section 7 of the ESA have concluded that the groundfish fisheries

may be contributing to the decline of sea lions and have resulted in additional closures. Groundfish trawling was prohibited within an 18.5 km (10 nmi) radius of all rookeries in 1992. In 1999, the western DPS of Steller sea lions was listed as endangered and this prohibition was extended to all major haulouts for the pollock trawl fishery. Some closures around rookeries and haulouts were extended to a 37 km (20 nmi) radius either on a seasonal or year-round basis. In addition, the Aleutian Islands were closed to directed pollock fishing.

In 2002, the Council, together with NMFS, developed a comprehensive suite of gear, fishery, and area closures, including no transit and fishing zones extending up to 37 km (20 nmi) from rookeries and haulouts and directed fishing closures for pollock, Pacific cod, and Atka mackerel in three important foraging areas. Altogether, these closures total approximately 198,940 km² (58,000 nmi²) in waters off Alaska and encompass extensive portions of the area designated as critical habitat by NMFS in 1993 (Fig. 4). Detailed descriptions and maps of the Steller sea lion area, time, and fishery closures are available on the NMFS website (<http://www.fakr.noaa.gov/sustainablefisheries/sslpm/>), and are not displayed here owing to the complexity of the closures. Area closures have generally resulted in a decrease in the proportion of catch made inside Steller sea lion critical habitat in the walleye pollock, Pacific cod, and Atka mackerel fisheries (Table 1; NMFS, 2010a). The catch data in Table 1 are calculated from annual catch data provided in NMFS (2010a).

In addition to area closures, the total allowable catch (TAC) of three species that are important prey items for Steller sea lions (walleye pollock, Pacific cod, and Atka mackerel) is seasonally apportioned to distribute fishing effort over time (NMFS, 2010b). Temporal distribution of fishing effort may reduce the likelihood that fishing activities will cause localized depletion of key prey species. These measures have been implemented for the largest fisheries off Alaska, including the Bering Sea pollock, Aleutian Islands Atka mackerel,

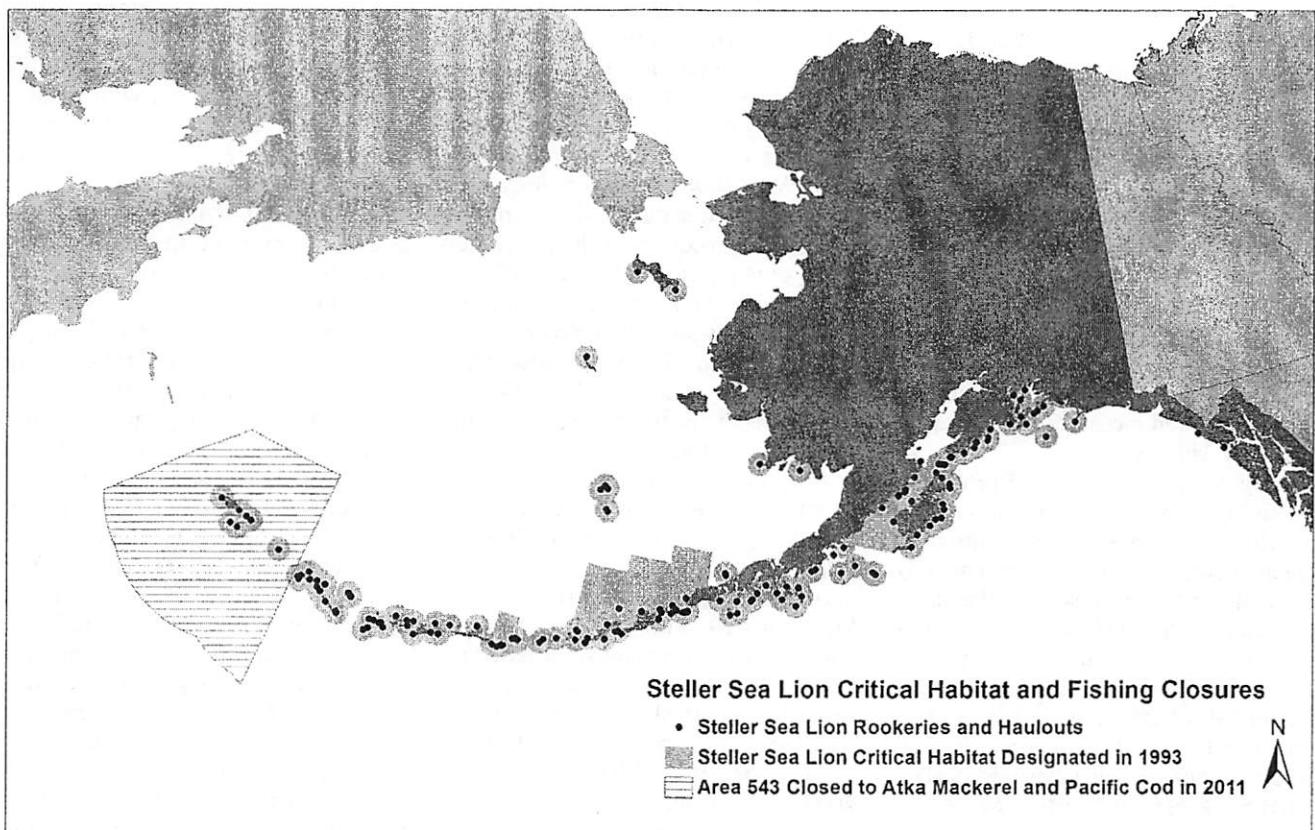


Figure 4.—Steller sea lion critical habitat, rookery and haulout locations, and recent fishery closures.

Table 1.—Total catch in metric tons (t) and percent of catch landed inside Steller sea lion critical habitat, averaged from 1991 to 1999 and 2000 to 2008.

Fishery	Average (1991–99)			Average (2000–2008)		
	Total catch (t)	Percent catch inside critical habitat	Annual range of percent catch inside critical habitat	Total catch (t)	Percent catch inside critical habitat	Annual range of percent catch inside critical habitat
Bering Sea pollock	1,248,553	52.9%	36.5%–66.1%	1,364,726	36.3%	17.3%–54.1%
Bering Sea Pacific cod	183,458	41.0%	27.0%–49.0%	159,774	33.9%	23.4%–42.7%
Aleutian Islands Atka mackerel	62,088	66.8%	27.0%–93.8%	54,113	38.6%	29.3%–47.0%
Aleutian Islands Pacific cod	26,944	82.7%	69.9%–95.2%	31,438	80.5%	69.3%–89.5%
GOA Pollock	93,493	75.5%	56.9%–85.6%	63,117	68.1%	53.8%–78.7%
GOA Pacific cod	65,778	67.9%	56.7%–74.3%	50,212	53.3%	39.5%–61.6%

Gulf of Alaska pollock, and Pacific cod fisheries. In addition, directed trawling for pollock, Pacific cod, and Atka mackerel is closed from 1 November through 19 January, and area-specific harvest limits have been established in key Steller sea lion foraging areas. Finally, directed harvests of forage fish species (with the exception of herring), some of which are regionally and temporally important prey items for many marine mammals and seabirds, have been prohibited since 1998.

In a recent biological opinion, NMFS determined that the status quo groundfish fisheries in the Aleutian Islands may be jeopardizing the continued existence of the western DPS of Steller sea lions and adversely modifying its designated critical habitat (NMFS, 2010a). In addition to fisheries, environmental changes were also identified as likely contributors to the decline, and predation by killer whales, contaminants, and interspecific competition were identified as possible contributors to the decline

(NMFS, 2010a). The Steller Sea Lion Recovery Plan divides the western DPS into 7 subareas, and the Plan's recovery criteria state that if the western DPS is declining in two or more adjacent subareas, the recovery plan goals are not being met (NMFS, 2008a). Because fisheries effects, along with environmental changes, were identified as likely contributors to the decline of Steller sea lions, the Biological Opinion recommended additional restrictions on the Atka mackerel and Pacific cod fisheries

in the Aleutian Islands as precautionary measures. In the Aleutian Islands, counts of nonpups (defined as adult and juvenile sea lions, excluding pups of the year) declined substantially from 2000 to 2008 (7% annual decline in the western Aleutians; 1–4% annual decline in the central and eastern Aleutians: NMFS, 2010a). Counts of both pups and nonpups were stable or increasing in the rest of the western DPS range (0–5% annual increase from 2000 to 2008; NMFS, 2010a). Consequently, no changes were made to Steller sea lion protection measures outside of the Aleutian Islands.

Beginning in 2011, NMFS prohibited retention of Atka mackerel and Pacific cod in the western Aleutian Islands management area (Fig. 4), and most areas of critical habitat are closed to Atka mackerel and Pacific cod fishing in the central and eastern Aleutian Islands management areas (NMFS, 2010a). Overall, about half of the Aleutian Islands Atka mackerel catch limit cannot be harvested under the new measures (NMFS, 2010b). These are the first Steller sea lion measures that have directly reduced groundfish catch limits. In addition, Pacific cod harvests in the Aleutian Islands are likely to decline because of the additional spatial restrictions on harvests, but some effort may shift to the Bering Sea (NMFS, 2010b). The economic impact of the measures on gross revenues is estimated to be \$50 million to \$66 million per year (NMFS, 2010b).

Much remains unknown about the causes of the Steller sea lion population decline (NRC, 2003; Atkinson et al., 2008; NMFS, 2010b). Recent studies have examined the effects of the pollock and Pacific cod fisheries on the prey field (Wilson et al., 2003; Conners and Munro, 2008). Future research efforts will likely focus on the Aleutian Islands to investigate the cause of continued sea lion population declines and to monitor the effects of the recently implemented fishery closures (NMFS, 2010a).

Short-tailed Albatross and Seabird Avoidance Requirements

The Council began addressing seabird bycatch issues in the late 1990's

when incidental take limits were established for the endangered short-tailed albatross, *Phoebastria albatrus*. Short-tailed albatross numbers were severely reduced by commercial feather hunting in the late 1800's and early 1900's (USFWS, 2008). Nesting sites now have protected status, and the primary threat to the recovery of the population is the potential for volcanic activity at Toroshima Island, Japan, where more than 80% of short-tailed albatross nest (USFWS, 2008). The Short-tailed Albatross Recovery Plan (USFWS, 2008) has focused recovery efforts on establishing additional nesting sites.

A secondary threat to recovery is bycatch in the commercial fisheries (USFWS, 2008). Short-tailed albatross primarily range in waters off Alaska during the post-breeding season from May until November (Suryan et al., 2007). Locations where short-tailed albatross are frequently observed include several canyons along the Bering Sea shelf edge and passes in the Aleutian Islands (Piatt et al., 2006; Suryan et al., 2007), areas where commercial fishing also occurs seasonally.

Regulations that have been developed to limit incidental takes of short-tailed albatross are described in detail in USFWS (2003) and a summary of the measures is provided here. In 1998, the USFWS issued short-tailed albatross incidental take limits of four birds during a 2-year period in the longline groundfish fisheries and two birds during a 2-year period in the longline Pacific halibut fisheries. In anticipation of the take limits being established, the fishing industry recognized a looming threat, and adopted voluntary measures to test seabird avoidance devices aboard longline fishing vessels (Wilson, 2004). This experience led the Council and NMFS to develop seabird avoidance requirements for longline vessels (Wilson, 2004), and measures were implemented in 1997 and 1998 (NMFS, 1997, 1998). All longline vessels targeting groundfish were required to adhere to specific seabird avoidance measures beginning in 1997, and the measures were extended to the longline halibut fleet in 1998.

The regulations developed by the Council required all longline vessels more than 7.9 m (26 ft) long to utilize one or more of the following seabird avoidance measures: set gear at night; tow one or more streamer lines while deploying gear; tow a buoy bag or stick while deploying gear; or deploy hooks underwater through a lining tube (NMFS, 1997, 1998). In addition, longline vessels were required to use weighted hooks that sink quickly and to follow specific offal discharge protocols. Research conducted by the University of Washington's Sea Grant Program in 1999–2000 found that the use of paired streamer lines substantially reduced seabird bycatch (Melvin et al., 2001). Consequently, seabird avoidance measures were revised by NMFS and the Council in 2001 to require all longline vessels greater than 16.7 m (55 ft) in length to use paired streamer lines (NMFS, 2002). Longline vessels from 7.9 m to 16.7 m (26–55 ft) in length are required to use either a single streamer or a buoy bag, depending on the fishing location. Streamer lines have been provided to longline vessel operators free of charge through a program administered by the Pacific States Marine Fisheries Commission in Portland, Oreg.

Overall seabird bycatch in the demersal longline fisheries declined dramatically as many vessels in the longline fleet began to use paired streamer lines (Fitzgerald et al., 2008). The regulation requiring the use of streamer lines was implemented in 2004, but many longline catcher processors began using streamer lines voluntarily in 2002 (Fitzgerald et al., 2008). Annual seabird bycatch data from 1993–2006 are provided in Fitzgerald et al. (2008).

Bycatch data for the demersal longline groundfish fisheries is summarized here for the time periods before and after streamer use was extensive in the longline fleet (1993–2000 and 2002–06, respectively: Fitzgerald et al., 2008). The average annual bycatch rate in the Alaska demersal longline groundfish fisheries declined from 0.083 birds per 1,000 hooks in 1993–2000 to 0.017 birds per 1,000 hooks in 2002–06 (Fig. 5). The average number of incidental takes in

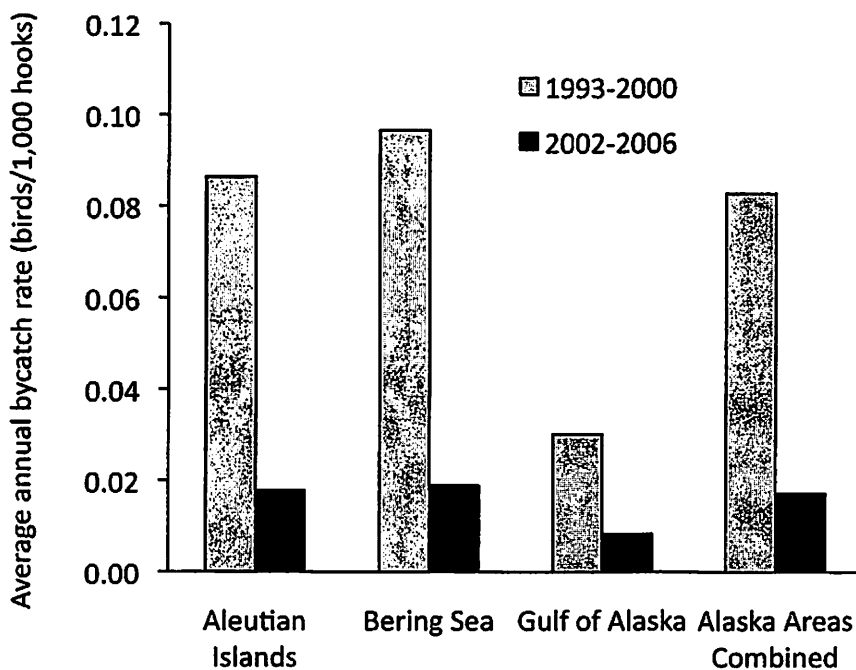


Figure 5.—Annual bycatch rate (birds per 1,000 hooks) in Alaska demersal longline groundfish fisheries, averaged for 1993–2000 and 2002–06.

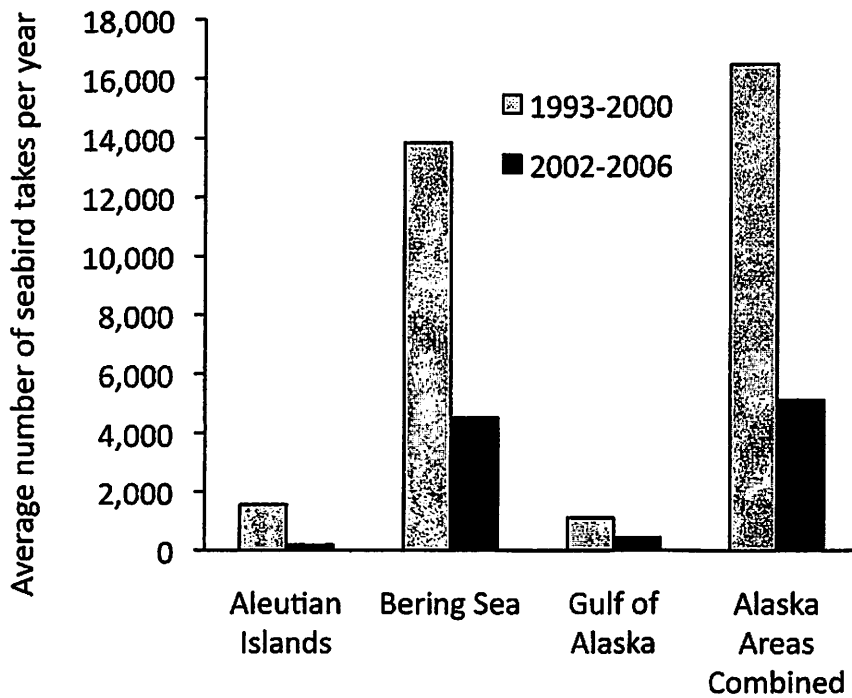


Figure 6.—Annual seabird bycatch in Alaska demersal longline groundfish fisheries, averaged for 1993–2000 and 2002–06.

the Alaska demersal longline groundfish fisheries declined from 16,507 birds per year during 1993–2000 to 5,138 birds per year during 2002–06 (Fig. 6).

Albatross takes (Laysan albatross, *Phoebastria immutabilis*; black-footed albatross, *Phoebastria nigripes*; and short-tailed albatross combined) declined from 1,051 birds per year during 1993–2000 to 185 birds per year during 2002–06 (Fig. 7). The majority of bycatch in the longline fisheries during 2002–06 consisted of northern fulmar, *Fulmarus glacialis* (39%); gulls, *Larus* spp. (39%); and shearwaters, *Puffinus* spp. (8%) (Fitzgerald et al., 2008). Total annual seabird bycatch is a relatively small proportion of the total seabird population in Alaska, which includes an estimated 48 million breeding seabirds in the Bering Sea and Gulf of Alaska and additional seabirds that visit Alaska waters (Fitzgerald et al., 2006).

Short-tailed albatross incidental take limits have not been reached since they were established in 1998. Five incidental takes of short-tailed albatross were documented in the 1990's and occurred in the Bering Sea longline Pacific cod fishery (2 takes), Bering Sea longline sablefish fishery (2 takes), and western Gulf of Alaska longline sablefish, *Anoplopoma fimbria*, fishery (1 take) (USFWS, 2008). No short-tailed albatross takes were reported from 1999 to 2009. In 2010, two short-tailed albatross were taken on observed vessels in the Bering Sea Pacific cod longline fishery. The short-tailed albatross population has increased in recent years at an annual rate of about 6–7% and currently numbers about 2,400 (USFWS, 2008). As the short-tailed albatross population increases, the likelihood of incidental takes may also increase. The take limits could be revised in the future if USFWS determines that this action is warranted.

The majority of seabird bycatch in the North Pacific during 1993–2006 occurred in the longline groundfish fisheries (92%), but bycatch also occurred in the trawl (7%) and pot (1%) fisheries (Fitzgerald et al., 2008). In the trawl fisheries, seabirds are often caught during retrieval of the trawl net.

In addition, seabirds collide with trawl cables and with transducer or "third" wires, which extend from the stern to the head of the trawl net and monitor the net's performance (Wilson et al., 2004; Melvin et al., 2011). Species with large wingspans, such as albatrosses, are particularly vulnerable to collisions with trawl cables and transducer wires (Wilson et al., 2004; Melvin et al., 2011). These mortalities are not systematically monitored by observers in the groundfish fisheries off Alaska and are likely underestimated (Fitzgerald et al., 2008).

To date, no short-tailed albatross mortalities have been observed in the trawl fisheries. However, due to the spatial and temporal overlap between short-tailed albatross and the trawl fisheries, in 2003, the USFWS issued an incidental take limit of 2 short-tailed albatross during the period of time in which the Biological Opinion is in effect (USFWS, 2003). If this limit is reached, NMFS and USFWS could consider raising the take limit or implementing new mitigation measures for trawl gear. Zador et al. (2008) examined the potential impact trawl fisheries could have on the recovery of short-tailed albatross. They determined that as many as 20 birds could be taken with trawl gear during a 5-year period and have little impact on the recovery plan timeline. Researchers are currently focusing on finding ways to reduce the potential for albatross interactions with the trawl fisheries (Melvin et al., 2011).

Precautionary Measures for Species Without Known Fisheries Interactions

North Pacific Right Whale

The endangered North Pacific right whale, *Eubalaena japonica*, is one of the rarest great whale species in Alaska waters, with an estimated 30 individuals recorded in recent surveys (Wade et al., 2011). Most recent sightings have occurred in the southeastern Bering Sea (Wade et al., 2006). This species was once relatively abundant in the North Pacific, but commercial whaling that continued until the late 1960's, including

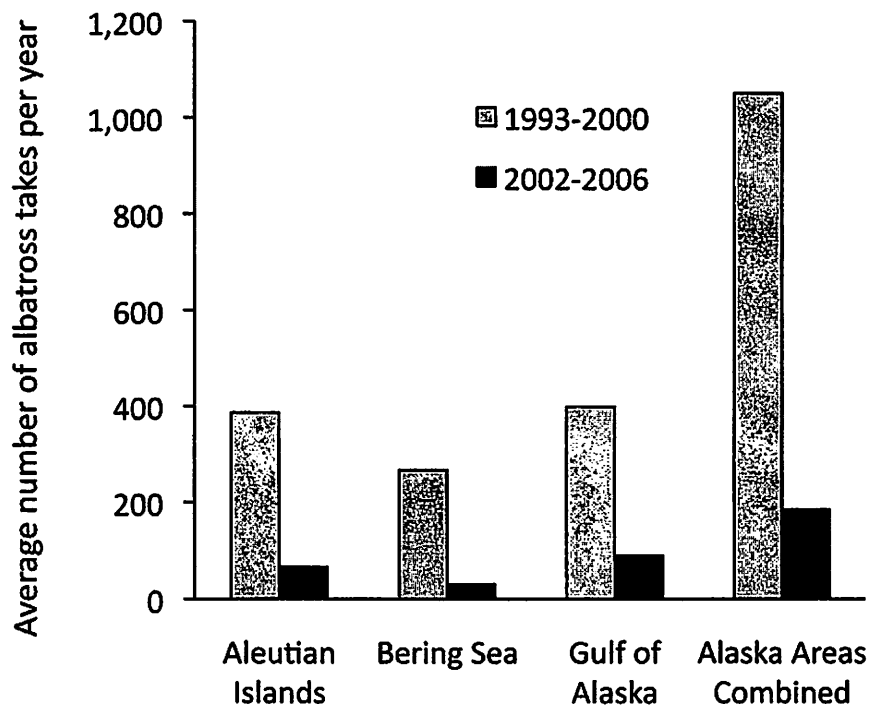


Figure 7.—Annual albatross bycatch in Alaska demersal longline groundfish fisheries, averaged for 1993–2000 and 2002–06.

hundreds killed illegally by the Soviet Union in the 1960's, severely depleted the population (Brownell et al., 2001). Visual surveys, historical catch records, and acoustic monitoring indicate that right whales primarily occur in the waters off Alaska during May through December (Brownell et al., 2001; Munger et al., 2008). An analysis of call detection rates found that right whale abundance in the southeastern Bering Sea may peak in July through October (Munger et al., 2008). Wintering areas where calving occurs are unknown, but may be located in more temperate waters (Clapham et al., 2004). Migration routes between feeding and wintering areas are also unknown.

In 2006, NMFS designated critical habitat for the North Pacific right whale in the southeastern Bering Sea and in the Gulf of Alaska southeast of Kodiak Island (NMFS, 2006; Fig. 8). The areas were identified based on an analysis of historical and recent right whale sightings which determined that these were likely important foraging

areas (Clapham et al.¹). Right whales are known to feed in areas with dense aggregations of large copepods, and the areas where most right whales have been sighted recently may support high concentrations of these prey species (Shelden et al., 2005; Clapham et al.¹).

Fishery-related activities have not been restricted within North Pacific right whale critical habitat because no fisheries target the prey species identified as important to right whales (Shelden et al., 2005; Clapham et al.¹). Moreover, there are no documented interactions between North Pacific right whales and the fisheries off Alaska (Allen and Angliss, 2011). In contrast, North Atlantic right whales, *Eubalaena glacialis*, are frequently entangled with

¹Clapham, P. J., K. E. W. Shelden, and P. R. Wade. 2006. Review of information relating to possible critical habitat for eastern North Pacific right whales. In K. E. W. Shelden and P. J. Clapham (Editors), *Habitat requirements and extinction risks of eastern North Pacific right whales*, p. 1–27. U.S. Dep. Commer., NOAA, Alaska Fish. Sci. Cent., AFSC Proc. Rep. 2006-06.

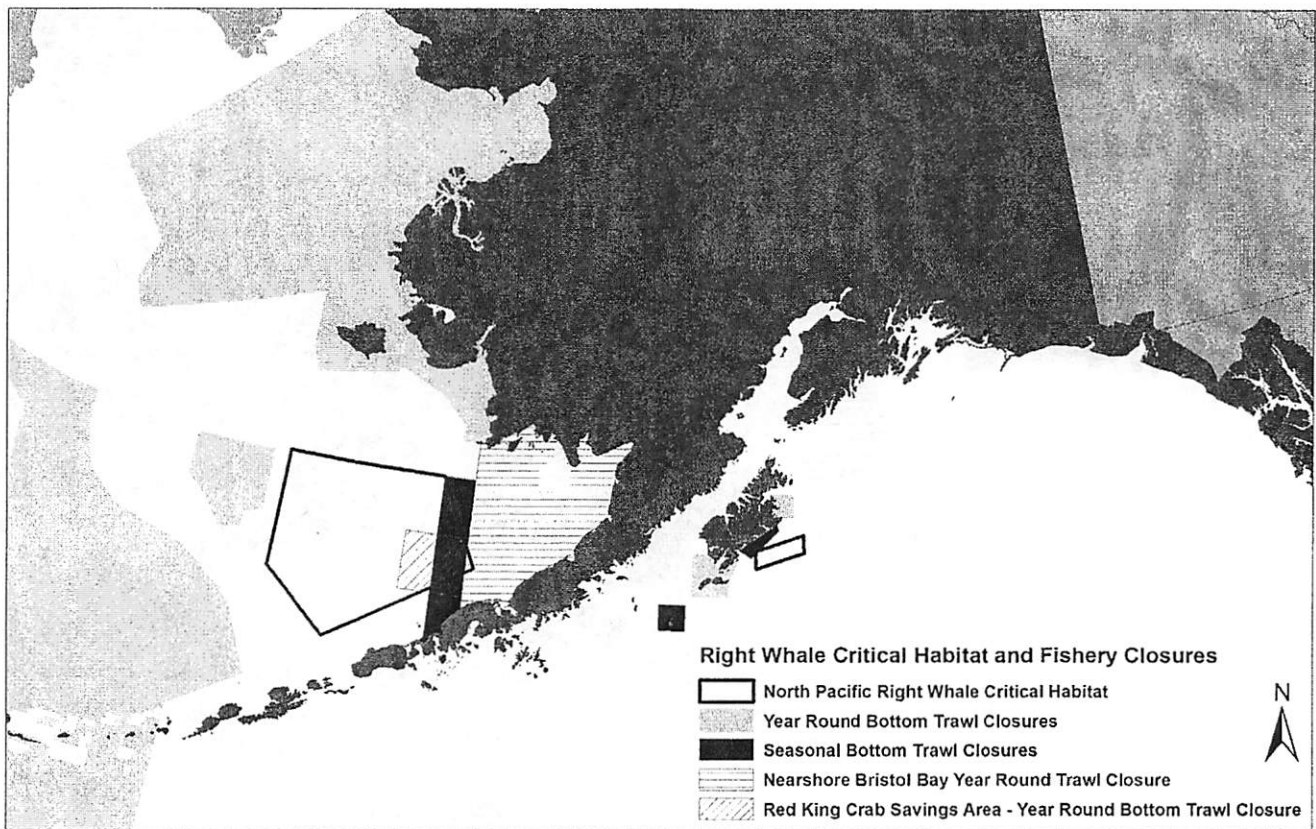


Figure 8.—Right whale critical habitat and fishing closures in the Bering Sea and Gulf of Alaska.

fishing gear, most often with pot gear and to a lesser extent with gill nets (Johnson et al., 2005).

Ship strikes are believed to be the most common anthropogenic cause of mortality of North Atlantic right whales (Knowlton and Kraus, 2001), but have not been documented in the North Pacific. Because of slower speeds, fishing vessels may pose less risk; higher speed cargo or other vessels transiting the Great Circle Route travel well to the south of the North Pacific right whale critical habitat. Large groundfish, crab, and halibut fisheries occur inside the Bering Sea and Gulf of Alaska critical habitat areas (NPFMC, 2005), and the majority of groundfish catches occur inside critical habitat during January through March, when right whales may be less likely to occur in the area (NPFMC, 2005).

However, substantial groundfish catches are also made during summer

and fall. Most catches in the Bristol Bay red king crab, *Paralithodes camtschaticus*, fishery, which occurs from 15 October through 15 January, are made within or near the Bering Sea critical habitat area (NPFMC, 2005). The Bering Sea Tanner crab, *Chionoecetes bairdi*, and snow crab, *C. opilio*, fisheries are also prosecuted inside the Bering Sea critical habitat area and open on 15 October, and these fisheries typically remain open until early spring. The timing of the crab fisheries may reduce the likelihood of interactions with right whales, which may be most abundant in Alaska waters during late summer or early fall.

Several marine protected areas overlap with North Pacific right whale critical habitat and may indirectly provide protection to right whales in key foraging areas. In the Bering Sea, right whale critical habitat encompasses 92,282 km² (26,905 nmi²), and partially overlaps or is adjacent to areas closed year-round or

seasonally to certain fishing activities to protect red king crab habitat (Fig. 8). The Red King Crab Savings Area (13,713 km² or 3,998 nmi²), established in 1995, is closed year-round to bottom trawling and dredging. The Nearshore Bristol Bay Trawl Closure Area (65,398 km² or 19,067 nmi²), established in 1997, is closed year-round to all trawling except for a small area open from 1 April to 15 June. In addition, other areas in the Bering Sea are closed seasonally to all trawling (15 March through 15 June) to protect red king crab while they are molting.

In the Gulf of Alaska, right whale critical habitat 3,042 km² (887 nmi²) is adjacent to several bottom trawl closures designated to protect red king crab habitat. In addition, the Gulf of Alaska critical habitat area overlaps areas where observer coverage requirements were recently augmented to improve monitoring of Tanner crab bycatch (NPFMC, 2010f).

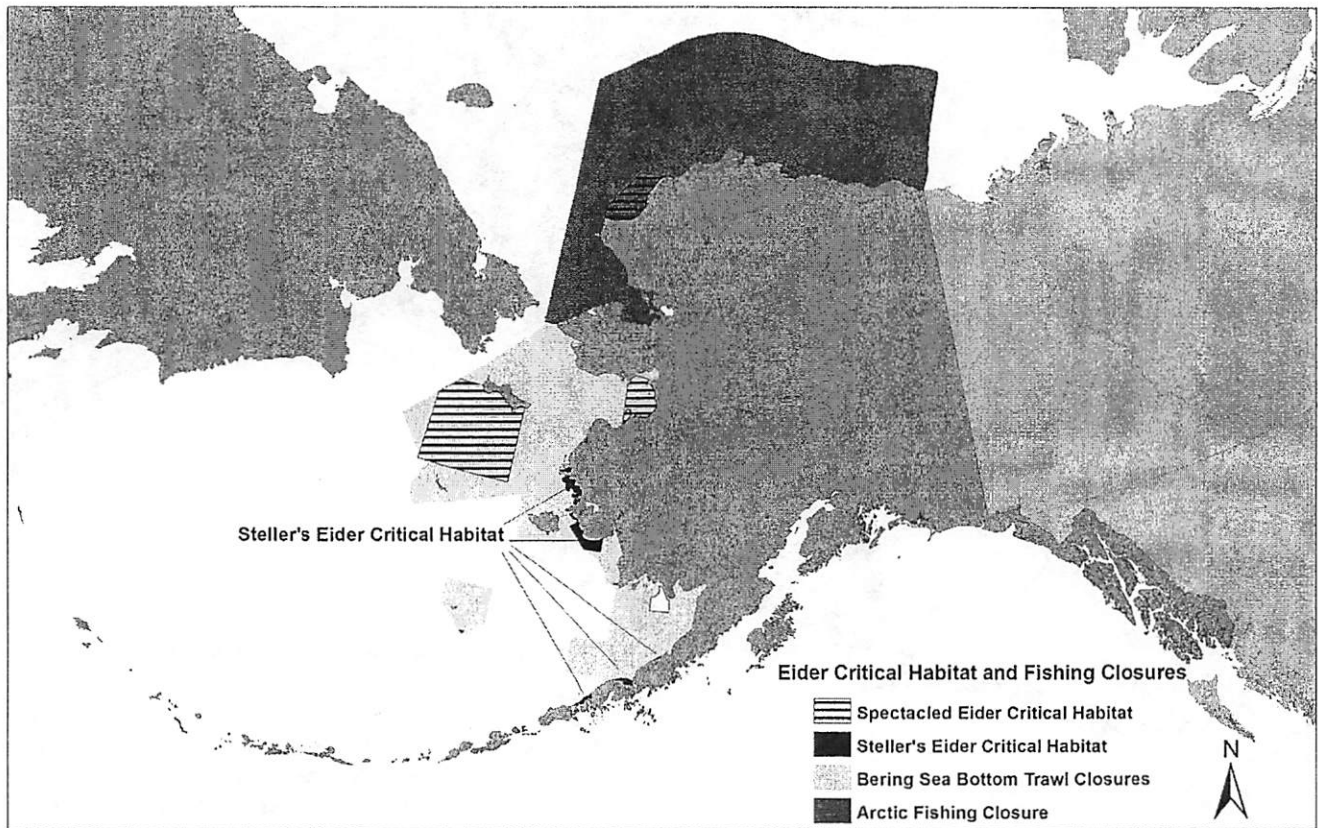


Figure 9.—Steller's eider and spectacled eider critical habitat and fishing closures off Alaska.

Vessels bottom trawling in the designated areas will be required to have 100% of fishing days observed and vessels using pot gear will be required to have 30% of fishing days observed, which increases the likelihood that any adverse interactions with fishery activities will be documented (NPFMC, 2010f).

Spectacled and Steller's Eiders

Spectacled eiders, *Somateria fishcheri*, occur in marine waters during most of the year and were listed as threatened by the USFWS in 1993 following a large decline in the western Alaska breeding population. In 2001, the USFWS designated several areas in the Bering Sea as critical habitat for spectacled eiders (USFWS, 2001a; Fig. 9). In winter, spectacled eiders are found in large, concentrated flocks in areas where openings in the sea ice have formed (Peterson et al., 1999; Lovvorn et al., 2003). The only wintering site

known was discovered in the 1990's and is located in a persistently-formed polynya in the Bering Sea south of St. Lawrence Island (Peterson et al., 1999). This site is designated as critical habitat (USFWS, 2001a). In the wintering area, spectacled eiders dive up to 70 m and feed on clams, primarily *Nuculana radiata* (Lovvorn et al., 2003).

Steller's eiders, *Polysticta stelleri*, also occur primarily in marine waters and were listed as threatened by USFWS in 1997 due to a long-term decline of the breeding population in Alaska. Several nearshore areas in the Bering Sea and Aleutian Islands are designated as critical habitat for Steller's eiders (Fig. 9; USFWS, 2001b). The seasonal distribution and diet of Steller's eiders is described in detail in the Steller's Eider Recovery Plan (USFWS, 2002). Steller's eiders use shallow bays and lagoons along the Alaska Peninsula in the fall when they are molting. In winter,

Steller's eiders occur in nearshore areas along the Alaska Peninsula, the Aleutian Islands, Kodiak Island, and Cook Inlet. In spring, large concentrations of Steller's eiders use shallow bays along the Alaska Peninsula as staging areas before migrating to nesting grounds. While in marine waters, Steller's eiders feed on benthic invertebrates, and diet varies depending on the site.

No incidental takes of spectacled or Steller's eiders have been recorded in the groundfish fisheries (Fitzgerald et al., 2008). Bottom trawling has the potential to disturb benthic habitat used by foraging spectacled and Steller's eiders (NPFMC, 2007). In 2007, the Council took final action to close large areas in the Bering Sea to bottom trawling, and the closures overlap with Steller's and spectacled eider critical habitat (NPFMC, 2007; Fig. 9). In addition, the Council closed the Arctic Management Area to fishing in 2009, and this closure

overlaps with spectacled eider critical habitat (NPFMC, 2009a; Fig. 9). Some bottom trawling has occurred in the past in spectacled eider critical habitat in the Bering Sea. The extent of this activity is documented in NPMFC (2007).

Bottom trawling has also occurred to a limited extent in Steller's eider critical habitat in the Yukon-Kuskokwim shoals, primarily by vessels targeting yellowfin sole (NPFMC, 2007). Because fishing effort in these areas was limited, the economic impact of the bottom trawling closures is considered minimal (NPFMC, 2007) but these closures consider possible shifts in fishing effort northward if climate change continues to favor movement of target fish species northward. This was a precautionary measure taken by the Council that may not provide an immediate, tangible benefit, because fishing effort was low in these areas.

Polar Bears

Polar bears are listed as threatened under the ESA, and in 2009 the USFWS designated critical habitat for polar bears (USFWS, 2010). The designated area does not overlap with any existing commercial fisheries, and there have been no documented interactions between polar bears and the commercial fisheries (Allen and Angliss, 2011). Nearly all of the area designated as critical habitat for polar bears was recently closed by the Council to any commercial fishing as part of the Arctic Fishery Management Plan (Wilson and Ormseth, 2009).

Potential Future Issues

In addition to the actions described above, the Council monitors developments in the management status of other marine mammal and seabird species that are listed under the ESA or have the potential to be listed in the future. For example, in 2008 the southwest DPS of northern sea otters, which ranges from Kodiak west to the Aleutian Islands, was listed as threatened under the ESA. In 2009, the USFWS designated critical habitat for the southwest DPS of sea otters (USFWS, 2009). The designated area does not overlap with any existing commercial fisheries managed by the

Council, and no significant restrictions on fishery-related activities are anticipated, but the consultation process continues to be monitored by the Council.

The Cook Inlet DPS of beluga whales, *Delphinapterus leucas*, is listed as endangered under the ESA, and more than one-third of Cook Inlet has been identified as critical habitat (NMFS, 2011). The population declined from an estimated 1,300 whales in the 1960's (NMFS, 2008b) to approximately 340 whales in 2010. Interactions with commercial fisheries have not been identified as a primary reason for the population decline (NMFS, 2008b). This population of beluga whales is not believed to range outside of Cook Inlet, and the whales are not likely to occur in areas where groundfish fisheries are prosecuted (NMFS, 2008b). There are no documented fishery-related mortalities of Cook Inlet belugas (Allen and Angliss, 2011). However, the groundfish fisheries may have indirect effects on the availability of prey species important to beluga whales, such as Chinook salmon, *Oncorhynchus tshawytscha* (NPFMC, 2009b). In recent years, high levels of Chinook salmon bycatch in the Bering Sea and Gulf of Alaska groundfish fisheries have been closely monitored and managed by the Council and NMFS (NPFMC, 2009b).

Northern fur seals, *Callorhinus ursinus*, range throughout the North Pacific and overlap in distribution with the commercial fisheries off Alaska. Northern fur seals spend the majority of the year foraging in the open ocean and breed during summer months at only a small number of locations. The majority of fur seals breed on the Pribilof Islands in the Bering Sea, and a small breeding population occurs on Bogoslof Island (NMFS, 2007).

Northern fur seal numbers have declined to less than half of population levels in the 1950's (NMFS, 2007). Pup production on the Pribilof Islands declined by more than 50% from 1975 to 2004 (Towell et al., 2006). The species is designated as depleted under the MMPA, but is not listed as threatened or endangered under the ESA. To date, the Council has not taken any direct

actions to mitigate any potential effects of fishery-related activities on northern fur seals. A conservation plan was prepared by NMFS that identifies possible causes of the population decline and outlines potential measures to reduce any adverse anthropogenic impacts on northern fur seals (NMFS, 2007). NMFS continues to examine trends in pup production and investigate possible interactions between fur seals and commercial fisheries.

The USFWS has completed a status review to determine whether to recommend listing black-footed albatross as threatened or endangered under the ESA because of conservation concerns, many of which are summarized in Naughton et al. (2007). On October 6, 2011, the USFWS determined that listing this albatross was not warranted based on the best available scientific and commercial information available on the condition of this species' habitat, the importance of disease and predation, the utilization of this species for scientific and commercial purposes, and other factors (USFWS, 2011). The population of black-footed albatross consists of approximately 61,700 breeding pairs (Arata et al., 2009). Incidental takes in the pelagic and demersal longline fisheries in the North Pacific are the largest source of human-caused mortality (Arata et al., 2009). Fisheries bycatch may be impacting the long-term population viability of black-footed albatross (Lewison and Crowder, 2003; Veran et al., 2007). The majority of bycatch occurs in the pelagic longline fisheries in the central North Pacific Ocean (Lewison and Crowder, 2003; Arata et al., 2009). Bycatch in the demersal longline fisheries off Alaska (<100 birds per year; Fitzgerald et al., 2008) is much less than the estimated take in the pelagic longline fisheries (5,000–6,000 birds per year; Arata et al., 2009).

In Alaska waters, satellite-tagged black-footed albatross overlap spatially and temporally with the longline sablefish, pot sablefish, and longline halibut fisheries (Fischer et al., 2009). Based on observer data, incidental takes of black-footed albatross in Alaska waters occurred primarily in the longline

sablefish fishery (83% of takes), the longline Pacific cod fishery (15% of takes), and the longline halibut fishery (2%) (Fitzgerald et al., 2008), but only a small proportion of the halibut fishery is observed. The majority of these takes were recorded in the Gulf of Alaska, where 75 black-footed albatross were taken per year from 2002 to 2006. If the black-footed albatross is listed under the ESA in the future, incidental take statements could potentially be issued by USFWS to limit bycatch in the commercial fisheries off Alaska.

Discussion

For over 30 years, the Council, working closely with the NMFS Alaska Region and NMFS Alaska Fisheries Science Center, has developed and implemented proactive and precautionary management policies consistent with an ecosystem-based approach, resulting in sustainable fisheries with minimal environmental impacts (Witherell et al., 2000; NMFS, 2004, 2005). These conservation policies, developed through a scientifically based, transparent, and deliberative process, have resulted in healthy and profitable fisheries (Witherell and Peterson, 2011). Fish stocks and protected species have directly benefited from the ecosystem-based approach, and the good socioeconomic conditions for the fishery make it easier to develop and implement precautionary measures for protected species.

The Council's approach to managing fisheries interactions with protected species has been adaptive and accounts for multiple management objectives. Management measures have been tailored depending on the nature of interactions with the fisheries, incorporating economic trade-offs to allow measures to be practical while still providing conservation for protected species. In balancing objectives, managers take into account the relative costs to the fishery, potential benefits to protected species, effects on communities, legal requirements, and the scientific uncertainty about the magnitude and direction of adverse effects due to fisheries.

In instances where the interaction is known or scientific information sug-

gests such an interaction may exist, gear requirements or marine protected areas have been established to mitigate these interactions. Seabirds are primarily impacted by bycatch in the longline fisheries, and management measures have focused on reducing adverse encounters with longline fishing gear. Incidental takes do not pose a significant threat to any of the North Pacific marine mammal stocks, in contrast with fisheries elsewhere. Pacific walrus are impacted by vessel activity near coastal haulouts, and area closures around designated sites are intended to reduce such disturbances. Fishery-related impacts to Steller sea lions have been addressed through fishery closures around rookeries and haulouts, seasonal distribution of catch limits, and limits on catches in key foraging areas.

In the absence of scientific information, the Council has taken precautionary actions to address protected species concerns if the scientific consensus is that such action may be prudent. For example, the Council required fishing vessels to stay away from sensitive benthic habitat areas where Pacific walrus, spectacled eider, and Steller's eider are known to forage. Similarly, the Council's decision to close U.S. waters in the Arctic to commercial fisheries is a risk-averse management approach (Stram and Evans, 2009; Wilson and Ormseth, 2009).

In several cases, the Council has examined potential interactions between the groundfish fisheries and other marine mammal and seabird species, but has not taken any direct action to restrict fishing activities when there has been no evidence that adverse interactions with the fisheries exist. The biological opinions for all species that are listed under the ESA are periodically updated. As new information becomes available regarding the status of the species or their interactions with the fisheries, the Council may develop new management measures or modify existing regulations.

Currently, there is little scientific information available to evaluate the effectiveness of the management measures adopted by the Council and NMFS,

with the exception of the seabird avoidance measures. While the Council's high level of at-sea observer coverage on most commercial fishing vessels contributes important data on fishery interactions with protected species, this remains an important research gap that has been discussed extensively by the Council and will likely be addressed as new measures are developed (Witherell, 2004, 2005)

Throughout the United States and in many other countries of the world, the effects of fisheries on marine mammals, seabirds, and other species are a serious concern. Based on the experience in Alaska, a precautionary ecosystem-based approach to fisheries management can address these concerns as information becomes available.

Although mitigating impacts due to fishing may not be a panacea for a species in decline if environmental conditions or other factors are involved, it can at least reduce effects due to fisheries. In the future, ecosystem modeling tools that are being developed for the North Pacific Ocean should improve our understanding of the factors that affect populations of protected species and the relative impacts due to fisheries (Hollowed et al., 2011). Because the management program in the North Pacific is science-based and adaptive, we would anticipate that fishery managers will respond accordingly.

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Attachment ES-1

**Halibut Catch Sharing Plan
Action Plan for December 12, 2011 motion
January 17, 2012**

In December 2011 the Council unanimously stated that it continues to support implementation of the Halibut Catch Sharing Plan (CSP) as the best approach to resolving longstanding allocation and management issues between the commercial and charter halibut sectors, as currently identified in the CSP Problem Statement¹. The Council also recognized that there are deficiencies in the current analysis that must be addressed before implementation can take place. Additionally, since 2008, changes in halibut management and the condition of the halibut stock have occurred, which will impact the effective implementation of the CSP as envisioned by the Council.

The Council intends to receive an update on the status of its request in February 2012 and to review the supplemental analysis in April 2012 in order to determine what, if any, additional changes are necessary in order for the CSP to meet Council objectives. The Council also requested a report from NMFS by that meeting as to whether the additions and revisions to the CSP result in the need for a new proposed rule, so that the Council may establish a timeline for implementing the CSP².

Given the myriad components involved in commercial and charter halibut management, the Council recognized that there are management options available that were not included as part of the Halibut CSP preferred alternative. The Council noted that it is not the wish of the Council to delay implementation of the Halibut CSP any further than necessary. As such, the Council requested a discussion paper analyzing the following for potential use in future halibut management (projected timeline is noted, including a Charter Management Implementation Committee Meeting on February 22, 2012):

- The use of ADF&G logbooks for official harvest reporting [ADF&G; April 2012]
- Annual limits allowing for the retention of at least one fish of any size [ADF&G; late Feb 2012 for committee guidance and NEI contractor; April 2012]
- Restricting captain and crew retention of fish [already part of CSP/no action needed]
- Trip limits, reverse slot limits, and two fish of a maximum size [ADF&G; late Feb 2012 and NEI contractor; April 2012]
- The use of a common pool purchase of QS by the charter sector [defer to additional committee work]
- Long-term management measures under Tier 1 of the CSP as identified in the Charter Halibut Implementation Committee Report [defer to additional committee work]

The Council requested additional analysis and revisions to the Halibut CSP that more specifically address a variety of public comments as outlined in the NMFS CSP report:

¹ http://www.alaskafisheries.noaa.gov/npfmc/PDFdocuments/halibut/NMFS_CSP1111.pdf

² The Council separately requested NOAA General Counsel guidance on whether the charter sector may create a single entity (e.g., regional fishing association) that could hold the sector's allocation in trust for the benefit of all guided anglers.

- Add a description of the status quo GHL allocations, such as a table of the stair step GHLs under different Total Area CEYs, and a comparison of the way in which annual allocations are made to the charter sector under both the GHL and the CSP. **[Council staff/contractor; April 2012]**
- Revise the analysis so that it incorporates allocations at lower levels of abundance, and assesses the economic impacts, to the extent practicable, of the full range of allocations. Data from recent years should be used to determine what the charter and commercial allocations would have been under the CSP, and what management measures would have been in place. **[Council staff/contractor; April 2012]**
- Add other indices to the analysis to describe the economic condition of the charter and commercial sectors over the last ten years. Examples for a typical charter and longline business in 2C and 3A could be provided. For the commercial sector, examples could include changes in QS prices and annual QS value, ex-vessel prices, and annual revenue. Consider differences between vessel classes, when QS was bought, etc. For the charter sector it could include permit prices (minimal data), number of trips and clients, and annual revenue. **[Council staff/contractor; April 2012]**
- Review the IPHC process described in the CSP for deducting removals prior to applying the allocation percentages to the combined commercial/charter catch limit. The halibut charter stakeholder committee discussed “separate accountability”, in which each sector would be held accountable for its wastage of halibut. The CSP analysis currently deducts wastage in the commercial sector BEFORE the allocation percentages are applied. In 2011 the IPHC began deducting O26/U32 BAWM before setting catch limits, and this has allocative implications for 2C and 3A. Wastage estimates for the charter sector are not currently available, and so no deductions are made. **[Council staff/contractor; April 2012]**
- Review the management matrix to determine whether management measures and the data employed are still appropriate in each tier given current charter harvests relative to combined fishery CEY, particularly in Area 3A. **[Council staff/contractor; April 2012]**

The Council also seeks additional revisions to the Halibut CSP analysis to address the technical comments as outlined in the NMFS CSP report. This is a comprehensive list and it is understood that staff will work to address each of these points, to the extent practicable, in the next version of the Halibut CSP analysis. **[Council staff/contractors; April 2012]**

With the direction provided above, the Council seeks to address the primary comments and concerns as outlined in the NMFS CSP Report and identified in public comment. It is the Council’s intent to review the additions and revisions to the modified Halibut CSP analysis in a subsequent meeting in order to determine what, if any, additional changes are necessary in order for the CSP to meet Council objectives. The Council also requests feedback from NMFS as to whether the additions and revisions to the CSP result in the need for a new proposed rule, so that the Council may establish a timeline for implementing the CSP. **[NOAA Fisheries/General Counsel April 2012]**



UNITED STATES DEPARTMENT OF COMMERCE
The Inspector General
Washington, D.C. 20230

October 27, 2011

The Honorable Barney Frank
2252 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

The Honorable John F. Tierney
2238 Rayburn House Office Building
U.S. House of Representatives
Washington, DC 20515

Dear Congressmen Frank and Tierney:

This letter responds to your joint letter of August 17, 2011 expressing concerns over the fisheries regulatory process and requesting that I investigate rulemaking at the National Oceanic and Atmospheric Administration (NOAA), the National Marine Fisheries Service, and the New England Fishery Management Council (NEFMC).

Our previous work on NOAA fisheries enforcement programs and operations identified the complexities of rulemaking as a significant factor contributing to industry concerns about enforcement, particularly in the Northeast. Subsequently, NOAA undertook an independent review of fisheries management processes in the Northeast. As you note in your correspondence, the review identified serious issues.

The April 2011 independent report included a series of recommendations to strengthen New England's fishery management processes, including increased "collection and use of socioeconomic data in fishery management plans in order to make socioeconomic analysis a more visible and meaningful part of the process." NOAA announced short and long-term actions in response to recommendations from the review, and NOAA and the NEFMC plan to provide an update at the NEFMC meeting on November 18, 2011.

As a result of the foregoing, we have been paying increased attention to the significance of NOAA's fisheries rulemaking, to include speaking with industry and community representatives in the Northeast to hear their perspectives. We also note that the Senate Commerce Subcommittee on Oceans, Atmosphere, Fisheries, and Coast Guard recently conducted a hearing on this matter. Based on your request, the results of NOAA's outside review, and concerns expressed to us, we will be undertaking an evaluation to address several key areas concerning fisheries rulemaking. Our efforts will center on three primary objectives:

1. Evaluate how the Fishery Management Councils (FMCs) established pursuant to the Magnuson-Stevens Fishery Conservation and Management Act are complying with the statutory and regulatory requirements under the Act, specifically focusing on National Standard 8 of the Act regarding the socioeconomic impact of regulations on fishermen and fishing communities.



2. Assess best practices across the FMCs for addressing operational requirements, including NOAA's role in providing oversight of the Councils under the regulations.
3. Conduct comparative analyses of fisheries rulemaking in relation to other federal rulemaking processes, and assess how NOAA ensures compliance with process requirements.

We are presently completing follow-up audit work on both NOAA's Asset Forfeiture Fund and the agency's implementation of the recommendations presented in our 2010 reports on fisheries enforcement. We intend to initiate our rulemaking evaluation following issuance of our reports in those reviews.

If you have any questions or if we can be of further assistance, please do not hesitate to contact me at (202) 482-4661.

Sincerely,



Todd J. Zinser

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

NOTICE OF VIOLATION AND ASSESSMENT
OF ADMINISTRATIVE PENALTY

RESPONDENTS:

American Seafoods Company LLC 2025 First Ave. Seattle, WA 98121 Cert. Mail No.: 7004 0550 0001 2334 7902	Ole Knotten 5521 Sharon Dr. Youngstown, OH 44512 Cert. Mail No.: 7004 0550 0001 2334 7889	American Dynasty, LLC 2025 First Ave. Seattle, WA 98121 Cert. Mail No.: 7004 0550 0001 2334 7896
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VESSEL: F/V AMERICAN DYNASTY

FILE NO.: AK0700698

ASSESSED PENALTY: \$637,000

Respondents, Respondents' attorney or other representative may seek to have this penalty amount modified on the basis that Respondents do not have the ability to pay the assessed penalty. Any request to have the penalty amount modified on this basis must be made in accordance with 15 C.F.R. § 904.102 and should be accompanied by supporting financial information.

This is your official Notice of the civil violation and administrative penalty described herein.

FACTS CONSTITUTING VIOLATION:

Intentional failure to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and failure to adjust the scale so as to bring the performance errors as close as practicable to a zero value

1. On or about February 10, 2007, during Haul 75, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error as close as practicable to a zero value, to wit: Observer Valley observed the crewmembers adjusting the flowscale and she determined that the flowscale then weighed light by 10.61%, in violation of 50 CFR 679.28(b)(4);
2. On or about February 14, 2007, during Haul 89, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error

as close as practicable to a zero value, to wit: Observer Valley observed the crewmembers adjusting the flowscale and she determined that the flowscale then weighed light by 9.33%, in violation of 50 CFR 679.28(b)(4);

3. On or about February 15, 2007, during Haul 94, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error as close as practicable to a zero value, to wit: Observer Valley observed the crewmembers adjusting the flowscale and she determined that the flowscale then weighed light by 11.38%, in violation of 50 CFR 679.28(b)(4);
4. On or about February 16, 2007, during Haul 98, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error as close as practicable to a zero value, to wit: Observer Valley observed the crewmembers adjusting the flowscale and she determined that the flowscale then weighed light by 11.41%, in violation of 50 CFR 679.28(b)(4);
5. On or about February 17, 2007, during Haul 102, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error as close as practicable to a zero value, to wit: Observer Valley observed the crewmembers adjusting the flowscale and one of the crewmembers (Joel Villegas) determined that the flowscale then weighed light by 7.4%, in violation of 50 CFR 679.28(b)(4);
6. On or about March 12, 2007, during Haul 169, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, failed to maintain the flow scale in proper operating condition throughout its use by adjusting or calibrating the scale to weigh inaccurately, and by failing to adjust the scale so as to bring the performance error as close as practicable to a zero value, to wit: Observer Kocab conducted an independent test of 108.08 kg (using MCP) of fish. Kocab determined that the flow scale indicated that amount of fish weighed 33 kg, indicating that the flow scale was weighing light by 69.47%. Upon seeing Observer Kocab collect her sample, Crewmember Jan Pedersen engaged in washing, button pushing, fiddling underneath conveyor belt, then told Observer Kocab that the flow scale was not weighing accurately. Pedersen then pushed more buttons and recommenced running fish across the flow scale, all in violation of 50 CFR 679.28(b)(4);

Submission of inaccurate information in the Catcher Processor Daily Cumulative Production Logbook (DCPL)

7. During the first fishing trip of 2007 (Between the dates of January 20 and January 29, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 7 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #1 on January 20, Haul #2 on January 20, Haul #5 on January 21, Haul #6 on January 21, Haul #9 on January 22, Haul #10 on January 22, and for Haul #14 on January 23, in violation of 50 CFR 679.7(a)(10)(iii);
8. During the second fishing trip of 2007 (between the dates of January 30 and February 9, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 10 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #37 on January 31, Haul #62 on February 5, Haul #63 on February 5, Haul #67 on February 6, Haul #68 on February 7, Haul #69 on February 7, Haul #71 on February 7, Haul #72 on February 8, and for Haul # 73 on February 8, in violation of 50 CFR 679.7(a)(10)(iii);
9. During the third fishing trip of 2007 (between the dates of February 9 and February 20, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 33 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #75 on February 10, Haul #76 on February 10, Haul #77 on February 10, Haul #78 on February 11, Haul #79 on February 11, Haul #81 on February 11, Haul #82 on February 11, Haul #83 on February 12, Haul #85 on February 12, Haul #86 on February 12, Haul #87 on February 13, Haul #90 on February 14, Haul #91 on February 14, Haul #92 on February 14, Haul #93 on February 15, Haul #94 on February 15, Haul #95 on February 15, Haul #96 on February 15, Haul #97 on February 15, Haul #98 on February 16, Haul #99 on February 16, Haul #100 on February 16, Haul #101 on February 16, Haul #101 on February 17, Haul #102 on February 17, Haul #103 on February 17, Haul #104 on February 17, Haul #105 on February 17, Haul #106 on February 18, Haul #107 on February 18, Haul #108 on February 18, Haul #109 on February 19, and for Haul #110 on February 19, in violation of 50 CFR 679.7(a)(10)(iii);
10. During the fourth fishing trip of 2007 (between the dates of February 21 and March 4, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 8 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #116 on February 22, Haul #129 on February 27, Haul #138 on March 1, Haul #139 on March 1, Haul #140 on March 2, Haul #145 on March 3, Haul #146 on March 3, and for Haul #147 on March 3, in violation of 50 CFR 679.7(a)(10)(iii);

11. During the fifth fishing trip of 2007 (between the dates of March 5 through March 16, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 10 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #160 on March 9, Haul #163 on March 10, Haul #169 on March 11, Haul #172 on March 12, Haul #176 on March 13, Haul #177 on March 13, Haul #183 on March 14, Haul #184 on March 15, Haul #185 on March 15, and for Haul #186 on March 15, in violation of 50 CFR 679.7(a)(10)(iii);
12. During the sixth fishing trip of 2007 (between the dates of March 17 through March 24, 2007), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 4 hauls in the Catcher Processor Daily Cumulative Production Logbook, to wit submitted inaccurate information regarding the total haul weight for Haul #196 on March 20, Haul #197 on March 20, Haul #198 on March 21, and for Haul #201 on March 21, in violation of 50 CFR 679.7(a)(10)(iii);

Submission of incorrect information on daily at-sea scale test report

13. On or about Feb. 3, 2007, during Haul 54, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves, and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to accurately record the required information in the at-sea test report form, to wit: incorrectly added the basket sample weights, in violation of 50 CFR 679.28(b)(3)(iii)(B);

Submission of false information on daily at-sea scale test report

14. On or about January 21, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: inaccurately reflected Flow scale weight of Fish, and altered numbers to show that the Percent Error was below 3%;
15. On or about January 23, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv) to wit: inaccurately calculated flow scale weight of fish, and used that incorrect number to calculate the Flowscale Error;

16. On or about January 25, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered Flow scale display numbers, incorrectly calculated Flowscale error, and incorrectly calculated Percent Error;
17. On or about January 26, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered Flow scale display numbers, and incorrectly calculated the Percent Error;
18. On or about January 28, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: incorrectly calculated the Flow scale weight of fish, incorrectly added fish in baskets weights, inaccurately calculated Flowscale Error, and inaccurately entered Percent error;
19. On or about January 29, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered Flow Scale Display at end of test;
20. On or about February 3, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: incorrectly recorded Flow scale display numbers, incorrectly calculated Flowscale Error, and incorrectly calculated Percent Error;

21. On or about Feb. 11, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: incorrectly recorded Flow scale display numbers for start and end of test;
22. On or about February 12, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered Flow scale Display at End of Test;
23. On or about March 7, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered Flowscale Display at end of test number;
24. On or about March 8, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: failed to calculate the Flow scale weight of Fish, failed to accurately enter the Flowscale Weight of Fish, failed to accurately calculate the Percent Error, and altered report after Observer Buckley had signed the form;
25. On or about March 9-10, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: incorrectly recorded the Flow scale display at end of test and start of test, incorrectly recorded the date of the test;

26. On or about March 10-11, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: incorrectly recorded the Flow scale display at end of test and start of test, incorrectly recorded the date of the test, failed to correctly calculate the Flow Scale Weight of Fish, failed to accurately calculate the Flowscale Error and Percent Error;
27. On or about March 11, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: inaccurately recorded the Flow scale display at start and end of test numbers, inaccurately calculated the Flowscale Error and Percent Error;
28. On or about March 12, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: altered the Flow scale display start and end of test numbers, Inaccurately calculated the Flowscale Weight of Fish, Flowscale Error and Percent Error;
29. On or about March 14, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to perform at-sea scale tests in an accurate manner, in violation of 50 CFR 679.28(b)(3); failed to accurately record the required information in the at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B); submitted inaccurate information on the at-sea scale test report and/or intentionally submitted false information on the at-sea scale test report, required under Part 679, in violation of 50 CFR 679.7(a)(10)(iii) and (iv), to wit: inaccurately recorded test date, inaccurate recorded Flow scale Display start and end of test numbers, inaccurately calculated the Flowscale weight of fish, Flowscale error and Percent Error;

Fail to Conduct at-sea flow scale test while observer is present

30. On or about February 3, 2007, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to

conduct the daily at-sea flow scale test while the observer is present, in violation of 50 CFR 679.28(b)(3)(iii)(A);

31. On or about February 4, 2007, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to conduct the daily at-sea flow scale test while the observer is present, in violation of 50 CFR 679.28(b)(3)(iii)(A);
32. On or about February 5, 2007, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to conduct the daily at-sea flow scale test while the observer is present, in violation of 50 CFR 679.28(b)(3)(iii)(A);
33. On or about March 13, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to conduct the daily at-sea flow scale test while the observer is present, in violation of 50 CFR 679.28(b)(3)(iii)(A);

Fail to Use Prescribed Form

34. Between the dates of January 20 and April 3, 2007, and January 20 and March 28, 2008, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, failed to use prescribed daily at-sea scale test report form, in violation of 50 CFR 679.28(b)(3)(iii)(B);

Operator failed to sign the daily at-sea scale test report forms

35. Between the dates of January 20 and April 3, 2007, and January 20 and March 28, 2008, Ole Knotten, operator of the F/V AMERICAN DYNASTY, failed to sign the daily at-sea scale test report forms, as required by 50 CFR 679.28(b)(3)(iii)(C);

Interference with observer / processing groundfish that was not weighed

36. On or about February 23, 2007, at the beginning of processing for Haul 118, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, processed approximately 2 metric tons of groundfish that were not weighed on a NMFS-approved scale that complies with the requirements of 50 CFR 679.28(b), in violation of 50 CFR 679.28(b)(4) and 679.7(k)(vi)(A), to wit: Observer Kocab and other factory crewmembers were told to be down in the factory for processing Haul 118 at a certain time. Upon her arrival in the factory, Observer Kocab found that a portion of Haul 118 had already passed over the flow scale and filled the approximately 7 metric ton fish holding bins. A crewmember stated to Observer Kocab that the flow scale display indicated 5 metric tons from Haul 118 had been weighed;

37. On or about February 24, 2007, at the beginning of processing for Haul 118, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, processed approximately 5 metric tons of groundfish that were not weighed on a NMFS-approved scale that complies with the requirements of 50 CFR 679.28(b), in violation of 50 CFR 679.28(b)(4) and 679.7(k)(vi)(A), to wit: Observer Kocab was told that they were ready for a flow scale test. Observer Kocab went down into the factory and found that approximately 7 metric tons of groundfish from Haul 121 appeared to have been passed across the flow scale into fish holding bins, but that the flow scale display read that only 2101 kg. had been weighed for Haul 121;
38. On or about February 25, 2007, at the beginning of processing for Haul 123, Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of the F/V AMERICAN DYNASTY, and American Dynasty, LLC, owner of said Vessel, interfered with or biased the sampling procedure employed by an observer and failed to provide reasonable assistance, in violation of 50 CFR 679.7(g)(2) and (4), 600.725(u) and 679.50(g)(1)(viii), and processed approximately 5 metric tons of groundfish that were not weighed on a NMFS-approved scale that complies with the requirements of 50 CFR 679.28(b), in violation of 50 CFR 679.28(b)(4) and 679.7(k)(vi)(A), to wit: Observer Kocab was told by a crewmember that no groundfish from Haul 123 would be processed until 2 hours later. Observer Kocab went down to the factory ½ hour later to find that 7 metric tons of fish from Haul 123 appeared to have been passed across the flow scale into fish holding bins, but that the flow scale display read that only 1,459 kg. of groundfish had been weighed for Haul 123;

Inaccurate information in the Catcher Processor Daily Cumulative Production Logbook

39. During the fourth fishing trip of 2008 (between the dates of March 5 and March 15, 2008), Ole Knotten and members of the crew of the F/V AMERICAN DYNASTY, acting for themselves and on behalf of American Seafoods Company LLC, manager of said Vessel, and on behalf of American Dynasty, LLC, owner of said Vessel, submitted inaccurate information regarding total haul weights for 10 hauls in the Catcher Processor Daily Cumulative Production Logbook, in violation of 50 CFR 679.7(a)(10)(iii), to wit: submitted inaccurate information regarding the total haul weight for Haul #137 on March 8, 2008; Haul #139 on March 9, 2008; Haul #141 on March 9, 2008; Haul #148 on March 12, 2008; Haul #150 on March 13, 2008; and for Haul #152 on March 13, 2008, in violation of 50 CFR 679.7(a)(10)(iii).

STATUTE/REGULATION VIOLATED:

Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.; 16 U.S.C. 1857(1)(A) and (G); 50 CFR 679.28(b)(4), 679.28(b)(3)(iii)(A), (B) and (C), 679.7(a)(10)(iii) and (iv), 679.7(g)(2) and (4), 600.725(u)(1), 679.50(g)(1)(viii), and 679.7(k)(vi)(A).

SEIZED ITEM(S):

None

NOTICE:

This is not a criminal action. Respondents, Respondents' attorney, or other representatives have 30 days following service of this Notice in which to respond. During this time any Respondent may:

1. Accept a compromise penalty by signing the AGREED DISPOSITION below and returning this document with a check or money order payable to the "United States Department of Commerce/NOAA" or by credit card (See Attachment 1 to provide your credit card information), at the address specified below;
2. Seek to have this Notice modified to conform to the facts or the law as Respondent sees them, by contacting in writing the attorney specified below. (If you seek to have the penalty amount modified by Agency counsel on the basis that you do not have the ability to pay the assessed penalty, your request must be made in accordance with the Agency's civil procedure regulations at 15 C.F.R. Part 904, and should be accompanied by supporting financial information.)
3. Request a hearing (like a trial) before an Administrative Law Judge (ALJ) to deny or contest all, or any part, of the violation charged and the civil penalty assessed. If a hearing is requested, the ALJ will independently determine whether a violation occurred and what penalty, if any, is warranted. THE ALJ IS NOT BOUND BY THE AMOUNT ASSESSED IN THIS NOTICE BUT MAY FIX A PENALTY BASED UPON HIS JUDGMENT OF WHAT IS APPROPRIATE, UP TO THE MAXIMUM PROVIDED BY LAW. Under the Magnuson Stevens Fishery Conservation and Management Act, A MAXIMUM CIVIL PENALTY OF \$100,000 MAY BE ASSESSED FOR EACH VIOLATION. (Effective December 14, 2004, a maximum civil penalty of \$130,000 may be assessed for each violation. 69 Fed.Reg. 74416 (Dec. 14, 2004). For violations that occur after Dec. 11, 2008, the maximum civil penalty for each violation is \$140,000. (73 Fed.Reg. 75321 (Dec. 11, 2008).) A hearing request must be in writing and be dated, and must be served either in person or by certified or registered mail, return receipt requested, at the address specified below. The request must either be accompanied by a copy of this Notice or refer to the case number appearing in the heading of the Notice;
4. Take no action. If no Respondent responds within 30 days of service of this Notice, this Notice (including the assessed penalty) becomes final in accordance with 15 C.F.R. 904.104.

For good cause shown, Respondents may, within the 30-day period specified above, obtain an extension of time to respond.

JOINT AND SEVERAL LIABILITY:

This civil penalty is assessed jointly and severally against Ole Knotten, American Dynasty, LLC and American Seafoods Company LLC. Respondents jointly, and each individually, are liable for the assessed penalty. Whether one pays the entire amount or each pays equal or unequal portions is for Respondents to determine. This case will not be closed, however, against any Respondent until the entire penalty amount is paid.

WARNING! IF NO RESPONDENT EXERCISES THE RIGHTS SPECIFIED ABOVE WITHIN 30 CALENDAR DAYS FOLLOWING SERVICE OF THIS NOTICE, ALL OF THE ALLEGATIONS AND THE PENALTY HEREIN WILL BE TAKEN AS ADMITTED AND THIS ASSESSMENT WILL BECOME A FINAL ADMINISTRATIVE ORDER ENFORCEABLE IN ANY UNITED STATES DISTRICT COURT as provided in the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq. and 16 U.S.C. 1858(a), and the implementing regulations located at 15 C.F.R. Part 904.


FINDINGS, CONCLUSIONS AND ORDER:

Based on a review and application of the facts that comprise the violation charged, penalty schedules, penalty matrixes, adjustment factors, and economic considerations set forth in NOAA's Policy for Assessment of Penalties and Permit Sanctions (see attached penalty worksheets and www.gc.noaa.gov/documents/031611_penalty_policy.pdf), I hereby find and conclude that the Respondents herein violated the Magnuson Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq., as alleged, and that a just and reasonable disposition for such violation(s) is a civil penalty in the aggregate amount of \$637,000, assessed as follows:

Count 1 -	\$30,000	Count 21 -	\$17,500
Count 2 -	\$30,000	Count 22 -	\$17,500
Count 3 -	\$30,000	Count 23 -	\$17,500
Count 4 -	\$30,000	Count 24 -	\$17,500
Count 5 -	\$30,000	Count 25 -	\$17,500
Count 6 -	\$30,000	Count 26 -	\$17,500
Count 7 -	\$12,500	Count 27 -	\$17,500
Count 8 -	\$12,500	Count 28 -	\$17,500
Count 9 -	\$12,500	Count 29 -	\$17,500
Count 10 -	\$12,500	Count 30 -	\$ 8,000
Count 11 -	\$12,500	Count 31 -	\$ 8,000
Count 12 -	\$12,500	Count 32 -	\$ 8,000
Count 13 -	\$12,500	Count 33 -	\$ 8,000
Count 14 -	\$17,500	Count 34 -	\$ 7,000
Count 15 -	\$17,500	Count 35 -	\$ 8,000
Count 16 -	\$17,500	Count 36 -	\$ 8,000
Count 18 -	\$17,500	Count 37 -	\$ 8,000
Count 19 -	\$17,500	Count 38 -	\$ 8,000
Count 20 -	\$17,500	Count 39 -	\$18,500.

IT IS SO ORDERED.

For the Secretary of Commerce



Susan K. Auer

Dated: Tuesday, January 10, 2012.

Send reply or make inquiry to: Susan K. Auer, Senior Enforcement Attorney, NOAA, Office of General Counsel, U.S. Department of Commerce, P.O. Box 21109, Juneau, Alaska 99802. Telephone: (907) 586-7078, Email: susan.auer@noaa.gov.

In accordance with the provisions of the Small Business Regulatory Enforcement Fairness Act, the Small Business Administration has established a National Small Business and Agriculture Regulatory Ombudsman to receive comments from small businesses about excessive or unfair federal regulatory enforcement actions. If a small business wishes to comment on the enforcement actions of NOAA, it may do so via the internet at www.sba.gov/ombudsman, email at ombudsman@sba.gov, mail (Small Business Administration, Office of the National Ombudsman, 409 Third St. SW, Washington, D.C. 20416), or by calling 1-888-REG-FAIR. Please note: The right to file comments with the Ombudsman is

independent of the rights afforded every respondent, including the right to contest the assessment of a civil monetary penalty or permit sanction. If you wish to exercise any of your rights as a respondent, you must do so in accordance with the procedures described in this document and 15 C.F.R. Part 904, and separately from any comments you may provide to the Ombudsman.

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

TRIDENT SEAFOODS CORPORATION, a
Washington Corporation,
5303 Shilshole Avenue, NW
Seattle WA 98107-4000,

COMPLAINT

WESTWARD SEAFOODS, INC., an Alaska
Corporation,
2101 4th Avenue, Suite 1700
Seattle, WA 98121

NORTH PACIFIC SEAFOODS, INC., a
Washington Corporation,
4 Nickerson Street, Suite 400
Seattle, WA 98109

OCEAN BEAUTY SEAFOODS LLC, an Alaska
Limited Liability Company,
1100 West Ewing Street
Seattle, WA 98119,

INTERNATIONAL SEAFOODS OF ALASKA,
INC., an Alaska Corporation,
517 Shelikof Street
Kodiak, AK 99615,

Plaintiffs,

vs.

COMPLAINT- 1

Smith & Hennessey
PLLC
Attorneys at Law
316 Occidental Avenue South, Suite 500
Seattle, Washington 98104
(206) 292-1770

1
2 **JOHN E. BRYSON, IN HIS OFFICIAL**
3 **CAPACITY AS SECRETARY OF COMMERCE**

4 1401 Constitution Avenue, N.W.
5 Washington, D.C. 20230,

6 **NATIONAL OCEANIC AND ATMOSPHERIC**
7 **ADMINISTRATION**

8 1401 Constitution Avenue, N.W., Room 5128
9 Washington, D.C. 20230

10 and

11 **NATIONAL MARINE FISHERIES SERVICE**

12 1315 East West Highway
13 Silver Spring, MD 20910

14 Defendants.

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I. INTRODUCTION

1. Plaintiffs Trident Seafoods Corporation; Westward Seafoods, Inc.; North Pacific Seafoods; Ocean Beauty Seafoods LLC; and International Seafoods of Alaska, Inc. (collectively "Plaintiffs") challenge a final rule promulgated on December 27, 2011 by Defendants, Secretary of Commerce John E. Bryson; National Oceanic and Atmospheric Administration; and National Marine Fisheries Service ("Defendants") entitled Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Gulf of Alaska; Amendment 88 ("Final Rule"), 76 Fed. Reg. 81248 (Dec. 27, 2011). The Final Rule violates the Magnuson-Stevens Fishery Conservation and Management Act ("Magnuson-Stevens Act"), the National Environmental Policy Act ("NEPA"), and the Administrative Procedure Act ("APA").

2. The Final Rule implements management measures for the Gulf of Alaska rockfish fishery via Amendment 88 to the Fishery Management Plan for Groundfish of the Gulf of Alaska.

COMPLAINT- 2

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1 3. The Final Rule for Amendment 88 is unlawful. The Magnuson-Stevens Act
2 requires that Defendants shall not approve a fishery management plan ("FMP"), or an
3 amendment thereto, and shall not approve any implementing regulations, unless the FMP or
4 amendment and the implementing regulations are consistent with "applicable law." Applicable
5 law includes the National Environmental Policy Act ("NEPA"). Here, Defendants failed to
6 analyze a reasonable range of alternatives to Amendment 88 as required by NEPA; failed to
7 prepare an environmental impact statement ("EIS"); and failed in the environmental assessment
8 ("EA") that was prepared to properly examine the effects of the proposed action and its
9 alternatives on the physical, natural, and socio-economic environment. These failures violate
10 NEPA and the Magnuson-Stevens Act. Further, Defendants' rationale for not examining a
11 reasonable range of alternatives violates the Magnuson-Stevens Act because it was based on the
12 incorrect interpretation of the Magnuson-Stevens Act that a) on-shore processing is not included
13 in the definition of the terms "fishery" and "fishing," and b) the Magnuson-Stevens Act does not
14 authorize continuation of the rockfish management program existing before the adoption of
15 Amendment 88. Defendants' actions and omissions fail to comply with the statutory
16 requirements of the Magnuson-Stevens Act and NEPA, and are arbitrary, capricious, an abuse of
17 discretion, and otherwise not in accordance with law, in violation of the APA.
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19

20
21 4. These actions and failures by Defendants have harmed Plaintiffs by harming the
22 conservation of the resource and by allocating 100% of the rents (*i.e.*, the difference between
23 total revenues from the fishery and the total costs of the fishery) to vessel owners instead of
24 allowing Plaintiffs to share in those rents. Defendants refused to analyze, or even consider, the
25 option of continuing the previously existing fishery management program even though it was
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1 preferable for the conservation and management of the resource and was supported by both
2 harvesters and processors, including Plaintiffs.

3
4 **II. JURISDICTION AND VENUE**

5 5. This action arises under the Magnuson-Stevens Fishery Conservation and
6 Management Act, 16 U.S.C. §§1801-1884; the National Environmental Policy Act, 42 U.S.C.
7 §§4321-4370f; and the Administrative Procedure Act, 5 U.S.C. §§701-706.

8 6. This Court has jurisdiction over the action pursuant to the Magnuson-Stevens Act
9 which provides that “[t]he district courts of the United States shall have exclusive jurisdiction
10 over any case or controversy arising under” the Magnuson-Stevens Act, 16 U.S.C. §1861(d).
11 The Magnuson-Stevens Act also provides that actions taken by the Secretary of Commerce in
12 issuing regulations to implement a fishery management plan shall be subject to judicial review
13 “if a petition for such review is filed within 30 days after the date on which the regulations are
14 promulgated or the action is published in the Federal Register, as applicable.” 16 U.S.C.
15 §1855(f)(1). Defendants published the Final Rule implementing Amendment 88 on December
16 27, 2011 in the Federal Register. Plaintiffs are filing this Complaint within 30 days of the
17 publication of that Final Rule.
18

19 7. This Court also has jurisdiction over this action pursuant to the APA which
20 provides that final agency action is subject to judicial review. 5 U.S.C. §§701-706. Defendants’
21 issuance of the Final Rule and its associated environmental assessment (“EA”) is an “agency
22 action” subject to judicial review under the APA.
23

24 8. This Court also has jurisdiction over this action pursuant to 28 U.S.C. §1331
25 (jurisdiction over federal questions) which grants the district courts of the United States “original
26 jurisdiction of all civil actions arising under the ... laws ... of the United States,” and 28 U.S.C.

1 §1361 which grants the district courts of the United States “original jurisdiction of any action in
2 the nature of mandamus to compel an officer or employee of the United States or any agency
3 thereof to perform a duty owed to the plaintiff.”

4
5 9. This Court has the authority to grant declaratory relief pursuant to the Declaratory
6 Judgment Act (28 U.S.C. §§2201-02) and may also grant relief pursuant to the Magnuson-
7 Stevens Act (16 U.S.C. §1855(d) and (f)) as well as pursuant to the APA (5 U.S.C. §706).

8 10. Venue is properly vested in this judicial district pursuant to 28 U.S.C. §1391(e)
9 because a substantial part of the events and omissions giving rise to the claim occurred in this
10 district and because four of the five Plaintiffs reside in this district.

11 III. PARTIES

12 11. **Trident Seafoods Corporation.** Plaintiff Trident Seafoods Corporation
13 (“Trident”), with its corporate headquarters in Seattle, Washington, operates fishing vessels and
14 seafood processing facilities throughout Alaska and the Pacific Northwest. Trident has a deep
15 and continuing concern for the proper conservation and management of the fishery resources
16 affected by Amendment 88. Trident’s survival as a company depends on the continuing health
17 and sustainability of fishery resources, including those governed by Amendment 88. Trident
18 owns a processing plant in Kodiak, Alaska called the “Star of Kodiak.” Under the Central Gulf
19 of Alaska Rockfish Pilot Program (“Rockfish Pilot Program”), the rockfish fishery management
20 plan existing before Amendment 88 and the Final Rule, Trident entered into a cooperative
21 agreement with the fishing vessels that historically delivered rockfish to the Star of Kodiak. That
22 cooperative, the Star of Kodiak Rockfish Cooperative, consisted of Trident and twelve fishing
23 vessels. During the Rockfish Pilot Program, vessels in the Star of Kodiak Rockfish Cooperative
24 harvested, and Trident’s Kodiak plant processed, approximately 22.5% of the Pacific Ocean
25
26

1 Perch, 23.2% of the Northern Rockfish, and 26.7% of the Pelagic Shelf Rockfish allocated to the
2 catcher vessel sector. Under the Rockfish Pilot Program, Trident shared rents earned from the
3 rockfish fishery with the vessels that were members of the Star of Kodiak Rockfish Cooperative.
4 Pursuant to the Final Rule, however, all of the rents from the fishery will be taken exclusively by
5 the vessel owners who have received a monopoly on the sale of a fixed percentage of the
6 rockfish harvest. Although representatives of Trident participated in the development of
7 Amendment 88 and the Final Rule by testifying and submitting comments, Trident's testimony
8 and comments on all points relevant to this Complaint were ignored by Defendants.
9

10 12. **Westward Seafoods, Inc.** Plaintiff Westward Seafoods, Inc. ("Westward"), with
11 its corporate headquarters in Seattle, Washington, operates seafood processing plants in Dutch
12 Harbor and Kodiak, Alaska. Westward has a deep and continuing concern for the proper
13 conservation and management of the fishery resources affected by Amendment 88. Westward's
14 survival as a company depends on the continuing health and sustainability of fishery resources,
15 including those governed by Amendment 88. During the Rockfish Pilot Program, Westward
16 entered into a rockfish cooperative harvesting and processing agreement with the fishing vessels
17 that historically delivered rockfish to its plant in Kodiak. That cooperative, named the Western
18 Alaska Fisheries Rockfish Cooperative, included Westward and ten fishing vessels. During the
19 Rockfish Pilot Program, these vessels harvested, and Westward's Kodiak plant processed,
20 approximately 29.7% of the Pacific Ocean Perch, 27.2% of the Northern Rockfish, and 23.9% of
21 the Pelagic Shelf Rockfish allocated to the catcher vessel sector. Under the Rockfish Pilot
22 Program, Westward shared rents earned from the rockfish fishery with the vessels that were
23 members of the Western Alaska Fisheries Rockfish Cooperative. Pursuant to the Final Rule,
24 however, all of the rents from the fishery will be taken exclusively by the vessel owners who
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1 have received a monopoly on the sale of a fixed percentage of the rockfish harvest. Although
2 representatives of Westward participated in the development of Amendment 88 which lead to the
3 Final Rule, Westward's comments on all points relevant to this Complaint were ignored by
4 Defendants.

5
6 13. **North Pacific Seafoods.** Plaintiff North Pacific Seafoods ("North Pacific"), with
7 its corporate headquarters in Seattle, Washington, operates seafood processing facilities
8 throughout Alaska. One of North Pacific's processing facilities is in Kodiak, Alaska. North
9 Pacific has a deep and continuing concern for the proper conservation and management of the
10 fishery resources affected by Amendment 88. North Pacific's survival as a company depends on
11 the continuing health and sustainability of fishery resources, including those governed by
12 Amendment 88. During the Rockfish Pilot Program, North Pacific formed the North Pacific
13 Rockfish Cooperative, which consisted of North Pacific and six fishing vessels. The vessels
14 harvested, and North Pacific's Kodiak plant processed, approximately 10.7% of the Pacific
15 Ocean Perch, 12.6% of the Northern Rockfish, and 13.5% of the Pelagic Shelf Rockfish
16 allocated to the catcher vessel sector. Under the Rockfish Pilot Program, North Pacific shared
17 rents earned from the rockfish fishery with the vessels that were members of the North Pacific
18 Rockfish Cooperative. Pursuant to the Final Rule, however, all of the rents from the fishery will
19 be taken exclusively by the vessel owners who have received a monopoly on the sale of a fixed
20 percentage of the rockfish harvest. Although representatives of North Pacific participated in the
21 development of Amendment 88 which lead to the Final Rule, North Pacific's comments on all
22 points relevant to this Complaint were ignored by Defendants.

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25 14. **Ocean Beauty Seafoods LLC.** Plaintiff Ocean Beauty Seafoods LLC ("Ocean
26 Beauty"), with its corporate headquarters in Seattle, Washington, operates seafood processing

COMPLAINT- 7

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1 plants throughout Alaska and the Pacific Northwest. Ocean Beauty has a deep and continuing
2 concern for the proper conservation and management of the fishery resources affected by
3 Amendment 88. Ocean Beauty's survival as a company depends on the continuing health and
4 sustainability of fishery resources, including those governed by Amendment 88. One of Ocean
5 Beauty's processing facilities is in Kodiak, Alaska. During the Rockfish Pilot Program, Ocean
6 Beauty formed the Ocean Beauty Seafoods Rockfish Cooperative, which consisted of Ocean
7 Beauty and seven fishing vessels. The vessels harvested, and Ocean Beauty's Kodiak plant
8 processed, approximately 18.9% of the Pacific Ocean Perch, 25% of the Northern Rockfish, and
9 23.1% of the Pelagic Shelf Rockfish allocated to the catcher vessel sector. Under the Rockfish
10 Pilot Program, Ocean Beauty shared rents earned from the rockfish fishery with the vessels that
11 were members of the Ocean Beauty Seafoods Rockfish Cooperative. Pursuant to the Final Rule,
12 however, all of the rents from the fishery will be taken exclusively by the vessel owners who
13 have received a monopoly on the sale of a fixed percentage of the rockfish harvest. Although
14 representatives of Ocean Beauty participated in the development of Amendment 88 which lead
15 to the Final Rule, Ocean Beauty's comments on all points relevant to this Complaint were
16 ignored by Defendants.

19 15. **International Seafoods of Alaska, Inc.** Plaintiff International Seafoods of
20 Alaska, Inc. ("International Seafoods") has its corporate headquarters and a seafood processing
21 plant in Kodiak, Alaska. International Seafoods has a deep and continuing concern for the
22 proper conservation and management of the fishery resources affected by Amendment 88.
23 International Seafoods' survival as a company depends on the continuing health and
24 sustainability of fishery resources, including those governed by Amendment 88. During the
25 Rockfish Pilot Program, International Seafoods formed the International Seafoods Rockfish
26

1 Cooperative, which consisted of International Seafoods and ten fishing vessels that historically
2 delivered rockfish to its plant in Kodiak. The vessels harvested, and International Seafoods'
3 Kodiak plant processed, approximately 18.2% of the Pacific Ocean Perch, 11.9% of the Northern
4 Rockfish, and 12.8% of the Pelagic Shelf Rockfish allocated to the catcher vessel sector. Under
5 the Rockfish Pilot Program, International Seafoods shared rents earned from the rockfish fishery
6 with the vessels that were members of the International Seafoods Rockfish Cooperative.
7 Pursuant to the Final Rule, however, all of the rents from the fishery will be taken exclusively by
8 the vessel owners who have received a monopoly on the sale of a fixed percentage of the
9 rockfish harvest. Although representatives of International Seafoods participated in the
10 development of Amendment 88 which lead to the Final Rule, International Seafoods' comments
11 on all points relevant to this Complaint were ignored by Defendants.
12

13
14 16. **John E. Bryson.** Defendant John E. Bryson is sued in his official capacity as the
15 Secretary of the United States Department Commerce. Mr. Bryson is ultimately responsible for
16 overseeing the proper administration and implementation of the Magnuson-Stevens Act. He is
17 also responsible for his Department's compliance with NEPA.

18
19 17. **National Oceanic and Atmospheric Administration.** Defendant National
20 Oceanic and Atmospheric Administration ("NOAA") is an agency of the United States
21 Department of Commerce with supervisory responsibility for the National Marine Fisheries
22 Service. The Secretary of Commerce has delegated responsibility to ensure compliance with the
23 Magnuson-Stevens Act to NOAA which, in turn, has sub-delegated that responsibility to the
24 National Marine Fisheries Service.

25
26 18. **National Marine Fisheries Service.** Defendant National Marine Fisheries
Service ("NMFS") is an agency of the United States Department of Commerce that has been

1 delegated the primary responsibility to ensure that the requirements of the Magnuson-Stevens
2 Act and other applicable law, including NEPA, are followed and enforced.

3
4 **IV. LEGAL BACKGROUND**

5 **A. Magnuson-Stevens Fishery Conservation and Management Act**

6 19. The Magnuson-Stevens Act was enacted to conserve and manage fish populations
7 in the United States territorial waters and in its exclusive economic zone, which extends from the
8 boundaries of state waters (three miles from shore) to 200 miles offshore or to an international
9 boundary with neighboring nations. 16 U.S.C. §1801(b)(1). The Magnuson-Stevens Act creates
10 eight regional fishery management councils and requires them to prepare fishery management
11 plans for all fisheries under their authority that require conservation and management. 16 U.S.C.
12 §1852(a) and (h)(1).

13 20. All fishery management plans and implementing regulations prepared by the
14 regional fishery management councils are subject to final review and approval by NMFS. The
15 Magnuson-Stevens Act requires that an FMP, including FMP amendments, and any regulations
16 promulgated to implement such plans or amendments, cannot be approved unless they are
17 consistent with the Magnuson-Stevens Act and "other applicable law." 16 U.S.C. §1854(a) and
18 (b).

19 21. The Magnuson-Stevens Act provides that in developing a limited access privilege
20 program, the Regional Fishery Management Council or the Secretary of Commerce "shall
21 establish procedures to ensure fair and equitable initial allocations, including consideration of
22 (i) current and historical harvests; (ii) employment in the harvesting and processing sectors;
23 (iii) investments in, and dependence upon, the fishery; and (iv) the current and historical
24 participation of fishing communities...." 16 U.S.C. §1853A(c)(5).
25
26

1 22. The Magnuson-Stevens Act further provides that if an FMP establishes a limited
2 access program, the Regional Fishery Management Council and the Secretary of Commerce shall
3 take into account, among other things, “present participation in the fishery” and “historical
4 fishing practices in, and dependence on, the fishery....” 16 U.S.C. §18534(b)(6).

5
6 23. NEPA is an applicable law with which an FMP and an FMP amendment,
7 including their implementing regulations, must be consistent.

8 **B. National Environmental Policy Act**

9 24. Congress enacted NEPA to “promote efforts which will prevent or eliminate
10 damage to the environment....” 42 U.S.C. §4321. To achieve this goal, NEPA requires federal
11 agencies, including NMFS, to fully consider and disclose the environmental consequences of an
12 agency action before proceeding with that action. 42 U.S.C. §4332(2)(C), 40 C.F.R. §§1501.2,
13 1502.5. An agency’s evaluation of environmental consequences must be based on scientific
14 information that is both “[a]ccurate” and of “high quality.” 40 C.F.R. §1500.1(b). In addition,
15 federal agencies must notify the public of proposed projects and allow the public a chance to
16 comment on the environmental impacts of the proposed federal action. 40 C.F.R. §1506.6. The
17 cornerstone of NEPA is the EIS. An EIS is required for all “major federal actions significantly
18 affecting the quality of the human environment.” 42 U.S.C. §4322(2)(C); 40 C.F.R. §1501.4. It
19 must provide a “full and fair discussion of significant environmental impacts and ... inform
20 decision-makers and the public of the reasonable alternatives which would avoid or minimize
21 adverse impacts or enhance the quality of the human environment.” 40 C.F.R. §1502.1. In
22 addition, “[a]gencies shall focus on significant environmental issues and alternatives....” *Id.*

23
24
25 25. NEPA requires the preparation of an EIS when there is a major federal action
26 significantly affecting the quality of the human environment. 42 U.S.C. §4332. The word

1 “significantly” requires consideration of the context and intensity of the proposed action,
2 including the effects on society as a whole, the affected region, the affected interests, and the
3 locality. 40 C.F.R. §1508.27.

4 26. NEPA directs:

5 “that, to the fullest extent possible: ...

6 (2) all agencies of the Federal Government shall – ...

7 (C) include in every recommendation or report on proposals for
8 legislation and other major Federal actions significantly affecting
9 the quality of the human environment, a detailed statement by the
10 responsible official on –

11 (i) the environmental impact on the proposed action, ...

12 (iii) alternatives to the proposed action....”

13 42 U.S.C. §4332(2)(C). Emphasizing the significance of this analysis, NEPA also requires that
14 each federal agency preparing an environmental document shall “study, develop, and describe
appropriate alternatives to the recommended courses of action....” 42 U.S.C. §4332(2)(E).

15 27. The analysis of alternatives “is the heart of the environmental impact statement.”
16 40 C.F.R. §1502.14. The analysis of alternatives “should present the environmental impacts of
17 the proposal and the alternatives in comparative form, thus sharply defining the issues and
18 providing a clear basis for choice among options by the decionmaker and the public.” *Id.*

19 28. The alternatives section of the EIS shall “[r]igorously explore and objectively
20 evaluate all reasonable alternatives, and for alternatives which were eliminated from detailed
21 study, briefly discuss the reasons for their having been eliminated.” 40 C.F.R. §1502.14(a).

22 29. The alternatives identified for analysis shall “[i]nclude reasonable alternatives not
23 within the jurisdiction of a lead agency.” 40 C.F.R. §1502.14(c).

1 30. If the agency prepares an EA in lieu of an EIS, then that document shall “provide
2 sufficient evidence and analysis for determining whether to prepare an environmental impact
3 statement” and shall include “discussions of the need for the proposal, of alternatives as required
4 by [42 U.S.C.] section 102(2)(E)....” 40 C.F.R. §1508.9(a)(1) and (b).
5

6 31. An agency may determine after preparing an EA and a finding of no significant
7 impact (“FONSI”) that the preparation of an EIS is unnecessary. However, an agency may rely
8 on an EA/FONSI only if its proposed action will not have significant environmental effects. 40
9 C.F.R. §1508.13. Moreover, the agency may not rely upon the analysis performed in a prior EIS
10 regarding an agency action if “the agency makes substantial changes in the proposed action that
11 are relevant to environmental concerns” or “[t]here are significant new circumstances or
12 information relevant to environmental concerns and bearing on the proposed action and its
13 impacts.” 40 C.F.R. §1502.9(c).
14

15 V. FACTUAL ALLEGATIONS

16 32. Section 802 of Public Law 108-199 directed the Secretary of Commerce
17 (“Secretary”), in consultation with the North Pacific Fishery Management Council (“Council”)
18 established under the Magnuson-Stevens Act, to establish a Gulf of Alaska rockfish
19 demonstration program that recognized the historic participation of fishing vessels and of fish
20 processors in the harvest of Pacific ocean perch, northern rockfish, and pelagic shelf rockfish
21 harvested in the Central Gulf of Alaska. The rockfish demonstration program was to sunset no
22 later than two years after its implementation.
23

24 33. Pursuant to P.L. 108-199, the Council adopted a proposed rockfish management
25 program on June 6, 2005, which was implemented in a Final Rule on November 20, 2006. 71
26 Fed. Reg. 67210 (Nov. 20, 2006). This program was the Rockfish Pilot Program. The Rockfish

1 Pilot Program met Congress's directives by creating harvester-processor cooperatives that were
2 based on a "fixed-linkage" contractual relationship between the vessel owners and a shore-based
3 processor. A harvester would be eligible to join a cooperative and thereby receive individual
4 fishing quota only by entering into a contract with the shore-based processor to which the
5 harvester had delivered the most pounds of rockfish during the years 1996 through 2000. By
6 requiring the preservation of both harvesting and processing histories, the Rockfish Pilot
7 Program was designed so that the rents generated from the rockfish fishery continued to be
8 shared between vessel owners and processors. The Rockfish Pilot Program also provided for
9 improved conservation of the rockfish resource.
10

11 34. The catcher vessel component of the Rockfish Pilot Program consisted of thirty-
12 seven vessels and five shore-based processors, all located in Kodiak, Alaska.
13

14 35. In 2007, Congress extended the Rockfish Pilot Program for five years such that it
15 expired at the end of 2011. Public Law 109-479, section 218.

16 36. At its February 2009 meeting, the Council chose to initiate an analysis of
17 continuing the existing Rockfish Pilot Program beyond the statutory sunset date.

18 37. At its October 2009 meeting, the Council eliminated from any consideration and
19 analysis the alternative of extending the Rockfish Pilot Program. The Council took this action
20 based on an opinion by the office of the NOAA General Counsel. That opinion stated the
21 Rockfish Pilot Program, with its requirement that harvesters deliver their catch to the same
22 processors to whom they historically delivered, was developed under statutory authority that
23 expired December 31, 2011. Therefore, the General Counsel's opinion advised that any new
24 rockfish management program would need to be developed under the general authority of the
25 Magnuson-Stevens Act. The General Counsel's opinion advised that under the Magnuson-
26

1 Stevens Act an FMP could not limit the number of processing sites unless justified by a
2 conservation and management objective. The General Counsel's opinion was premised on the
3 view that the terms "fishery" and "fishing" in the Magnuson-Stevens Act do not include on-shore
4 processing. The General Counsel's opinion told the Council that the Council could not consider
5 adopting the Rockfish Pilot Program, or a similar program, as the future rockfish management
6 program.
7

8 38. Based on this NOAA General Counsel Opinion, the Council excluded a
9 continuation of the Rockfish Pilot Program, or a similar program, from its list of reasonable
10 alternatives to be analyzed and considered under NEPA and the Magnuson-Stevens Act.
11

12 39. On June 14, 2010, the Council adopted a new rockfish management program
13 embodied in Amendment 88 to replace the Rockfish Pilot Program which was expiring on
14 December 31, 2011. The Council's new rockfish management plan allocated individual
15 harvesting quota to vessel owners, but allowed these vessels to then deliver their harvest to any
16 processor in Kodiak, thereby granting harvesters an unencumbered monopoly on the sale of a
17 fixed percentage of the available rockfish. Because any one of the processors in Kodiak has the
18 physical capacity to process more than all of the available rockfish harvest in a fishery managed
19 under an individual harvesting quota system, the new rockfish plan creates a large surplus of
20 processing capacity relative to harvesting capacity. Processors will, therefore, unavoidably bid
21 up the price for deliveries of rockfish and its associated bycatch such that they will cover only
22 their variable costs of production for processing rockfish. All of the rents generated from the
23 fishery will no longer be shared, but instead will be transferred exclusively to the vessel owners
24 who receive rockfish harvesting quota.
25
26

1 40. The Rockfish Pilot Program and Amendment 88 were and are a type of limited
2 access privilege program designed to meet the requirements of section 303A, 16 U.S.C. §1853A,
3 of the Magnuson-Stevens Act.

4 **FIRST CLAIM FOR RELIEF**

5 **VI. VIOLATIONS OF THE MAGNUSON-STEVENSONS ACT**

6 41. Plaintiffs incorporate paragraphs 1 through 40 of this Complaint as if expressly
7 set forth herein.

8 42. The Magnuson-Stevens Act requires that any FMP, or FMP amendment,
9 including any implementing regulations, be consistent with the Magnuson-Stevens Act. 16
10 U.S.C. §1854(a) and (b).

11 43. The Magnuson-Stevens Act defines the term "fishery" to include "fishing" and
12 the term "fishing" is defined to include harvesting and "any other activity which can reasonably
13 be expected to result in the catching, taking, or harvesting of fish...." 16 U.S.C. §1801(13) and
14 (16). The processing of fish, including on-shore processing, to provide fish to the
15 wholesale/retail market is an activity which results in the harvesting of fish. Without processing,
16 there would be no commercial harvest.

17 44. Congress has confirmed that processing, including on-shore processing, is
18 included in the term "fishing" and that the term "does include 'processing'...." Statement of the
19 Honorable John Murphy, Chairman, Committee on Merchant Marine and Fisheries, U.S. House
20 of Representatives. 124 Cong. Rec. H.8266, Aug. 10, 1978.

21 45. Defendants' practice in approving FMPs that allocate a portion of the harvest to
22 on-shore processors has confirmed that on-shore processing is included within the terms
23 "fishery" and "fishing" in the Magnuson-Stevens Act. *See, e.g.*, Amendment 23 to the FMP for
24
25
26

1 the Groundfish Fishery of the Gulf of Alaska that allocated the available pollock and cod harvest
2 between the “inshore component” and the “offshore component” of the fishery and defined
3 “fishery” to include on-shore processing. 50 C.F.R. §675.2 (1997).

4
5 46. Recently enacted amendments to the Magnuson-Stevens Act further confirm that
6 the terms “fishing” and “fishery” include on-shore processing and provide independent authority
7 to develop fishery management measures that include fixed-linkage such as found in the
8 Rockfish Pilot Program. Those provisions, among other things, provide authorization to extend
9 the Rockfish Pilot Program. 16 U.S.C. §1853A(c).

10
11 47. The Congressional directive to the Council and Secretary of Commerce to
12 develop the Rockfish Pilot Program provided no independent authorization for fixed-linkage
13 between harvesters and processors. The subsequent development and approval of the Rockfish
14 Pilot Program itself was necessarily accomplished under authority provided in the Magnuson-
15 Stevens Act.

16
17 48. The APA requires that courts “hold unlawful and set aside agency action,
18 findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not
19 in accordance with law,” or that are “without observance of procedure required by law.” 5
20 U.S.C. §706(2)(A) and (D).

21
22 49. The opinion of Defendants with respect to Amendment 88 that on-shore
23 processing is not included in the terms “fishing” and “fishery” is not in accordance with law and
24 caused the Council and Defendants to approve Amendment 88 and to promulgate the Final Rule
25 which arbitrarily and capriciously excluded a reasonable alternative from analysis and
26 consideration under NEPA, thereby violating the requirement in section 304 of the Magnuson-

1 Stevens Act, 16 U.S.C. §1854, that Amendment 88 and the Final Rule comply with applicable
2 law.

3 50. The opinion of Defendants that on-shore processing is not included in the terms
4 “fishing” and “fishery” and that fixed-linkage between harvesters and processors is not in
5 accordance with law and caused the Council and Defendants to not comply with requirements of
6 section 303A of the Magnuson-Stevens Act, 16 U.S.C. §1853A, and of section 303(b)(6), 16
7 U.S.C. §1853(b)(6), regarding the allocation of limited access privileges.

9 51. These actions by Defendants resulted in the approval of Amendment 88 and
10 promulgation of the Final Rule which are arbitrary and capricious and which violate the
11 Magnuson-Stevens Act, including sections 304, 303(b)(6), and 303A, 16 U.S.C. §§1854,
12 1853(b)(6), and 1853A, and the APA.

13 **SECOND CLAIM FOR RELIEF**

14 **VII. VIOLATIONS OF THE NATIONAL ENVIRONMENTAL POLICY ACT**

15 52. Plaintiffs incorporate paragraphs 1 through 51 of this Complaint as if expressly
16 set forth herein.

18 53. NEPA requires all federal agencies to prepare an environmental analysis of all
19 federal actions that are or may be major federal actions significantly affecting the quality of the
20 human environment. 42 U.S.C. §4332(2)(C).

21 54. NEPA requires that an agency rigorously explore and objectively evaluate the
22 proposed action and reasonable alternatives to the proposed action focusing on the associated
23 impacts on the environment. 42 U.S.C. §4332(2)(C); 40 C.F.R. §1502.14.

24 55. Defendants cannot approve an FMP or FMP amendment, or any implementing
25 regulations, that does not comply with NEPA. 16 U.S.C. §1854.
26

1 56. The APA requires that courts “hold unlawful and set aside agency action,
2 findings, and conclusions” that are “arbitrary, capricious, an abuse of discretion, or otherwise not
3 in accordance with law,” or that are “without observance of procedure required by law.” 5
4 U.S.C. §706(2)(A) and (D).
5

6 57. Defendants violated NEPA and its implementing regulations and the APA by
7 failing to consider reasonable alternatives to Amendment 88.

8 58. Defendants violated NEPA and its implementing regulations and the APA by
9 failing to prepare an EIS, relying instead on an EA.

10 59. Defendants violated NEPA and its implementing regulations and the APA by
11 failing to properly consider and analyze the effects of all reasonable alternatives, including
12 Amendment 88, on the natural and physical environment and also failed to properly examine the
13 attendant socio-economic effects.
14

15 60. These actions and failures by Defendants are arbitrary, capricious, an abuse of
16 discretion, and are otherwise not in accordance with law.

17 **VIII. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs respectfully request that the Court:

19 (a) declare that Defendants have violated the Magnuson-Stevens Act and the
20 APA as described above by employing an incorrect interpretation of the Magnuson-Stevens Act
21 that foreclosed the required analysis and consideration of issues and alternatives, and otherwise
22 failed to comply with applicable law, with respect to Amendment 88 and the Final Rule;

23 (b) declare that Defendants have violated NEPA and the APA as described
24 above by failing to consider reasonable alternatives to its actions with respect to Amendment 88
25 and the Final Rule, by failing to prepare an EIS, and by failing to fully and properly analyze the
26

1 effects of Amendment 88 and its alternatives on the physical, natural, and socio-economic
2 environment;

3 (c) vacate the Final Rule implementing Amendment 88 to the Fishery
4 Management Plan for the Groundfish of the Gulf of Alaska;

5 (d) remand the Final Rule, Amendment 88, and the EA to NMFS for
6 completion of an EIS, and for reconsideration of Amendment 88 and the Final Rule, that comply
7 with NEPA and the Magnuson-Stevens Act;

8 (e) reinstate the Pilot Rockfish Program pending reconsideration by the
9 Council and approval by Defendants of a Final Rule that complies with the Magnuson-Stevens
10 Act, NEPA and the APA;

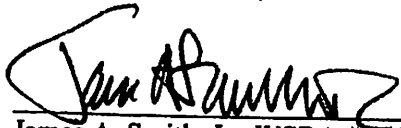
11 (f) maintain jurisdiction over this action until Defendants are in compliance
12 with the Magnuson-Stevens Act, NEPA, the APA, and every order of this Court;

13 (g) award Plaintiffs their costs of litigation, including reasonable attorney and
14 expert witness fees; and

15 (h) grant Plaintiffs such other relief as this Court deems proper and just.
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RESPECTFULLY SUBMITTED this 24th day of January, 2012.



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207th Plenary Session
February 1-7, 2012
Seattle Renaissance Hotel

B-1 Executive Director's Report – re SOPPs
Need for set times for public comments during sessions.

Public Comment – Ludger Dochtermann:

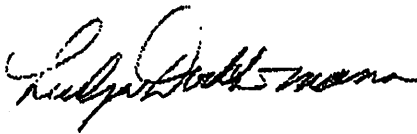
Mr. Chairman Eric Olson, Secretary John Bryson & North Pacific Council members:

I would like the NPFMC to establish several set times for Public Comments to be made at each session, near the beginning, in the middle, and before the end of C and D items. There needs to be a time and date certain, predictable, in advance of major agenda items, when fishermen and others can rely upon giving a public comment.

The expenses, travel arrangements, and other considerations regarding attendance at meetings warrants this addition of set times. Other regional fishery management councils currently have such procedures in place, and you may wish to consult them regarding how best to design such a practice.

At the December meeting, despite repeated requests to the chairman to speak on an upcoming topic, I was rebuffed. Yet, I had already made international travel plans which were unchangeable. So, I sat in the Hilton Hotel for days, hoping to testify, and never got to do so. As an owner of several vessels, this was an improper treatment of the public's and vessel owner-operator rights to participate.

Please — I'd like to see a Council motion to make this proposal a SOPP priority beginning as soon as possible, as you well understand the cost saving this would mean for industry. Thank you,



F/V North Point, F/V Stormbird — January 24, 2012

**EPA NATIONAL POLLUTANT DISCHARGE
ELIMINATION SYSTEM (NPDES) PERMITS
PROPOSED FOR COMMERCIAL FISHING
VESSELS
INFORMATION DOCUMENT
PRODUCED BY RICK MARKS, HSGB
JANUARY 17, 2012**

The EPA issued drafts of the next vessel general permits (sVGP & VGP) for public comment on December 9, 2011 (See 76 FR 76716). The EPA will accept written comments on or before February 21, 2012. EPA is seeking comments on all aspects of these draft permits.

Comments may be submitted via email toow-docket@epa.gov; and by mail (original plus 3 copies) to: Water Docket, Environmental Protection Agency, Mail code: 4101T, 1200 Pennsylvania Ave, N.W., Washington, D.C. 20460.

The **SMALL VESSEL GENERAL PERMIT (“sVGP”)** covers discharges incidental to the normal operation of fishing vessels less than 79 feet (24.08 meters). For the “sVGP” comments should be clearly marked “Docket ID No. EPA-HQ-OW-2011-0150”.

The **VESSEL GENERAL PERMIT (“VGP”)** covers discharges incidental to the normal operation of vessels 79 feet and larger. For the VGP comments should be clearly marked “Docket ID No. EPA-HQ-OW-2011-0141”.

Geographic scope: The area or “waters” covered by both permits is identical and considered to be “waters of the United States” which includes all navigable waters subject to the jurisdiction of the U.S., essentially extending from the dock to the outer reach of the 3 nm territorial sea. Basically, it is any place you can navigate a boat in the U.S.

////////////////////////////////////

PROPOSED ELEMENTS OF THE sVGP

Effective Date: Permit coverage will begin when published in the Federal Register (expected before December 19, 2013) and will continue for 5 years from date of implementation.

Obtaining A Permit: Vessel owner/operators must complete the PERMIT AUTHORIZATION AND RECORD OF INSPECTION FORM (“PARI”) and retain it onboard the vessel. Completion of the PARI provides written certification that the vessel owner/operator has read and understood the terms of the permit.

Vessel discharges THAT ARE NOT ELIGIBLE for coverage include but are not limited to discharges from industrial operations (seafood processing), sewage, spent/used oil, garbage or trash, Tetra- or Perchchloroethylene degreasers, and discharges covered by another NPDES permit.

Vessel discharges eligible for coverage under this permit must be minimized or eliminated to the extent achievable using control measures (including Best Management Practices – “BMPs”) that are technologically available and economically practicable and achievable in light of best marine practice. You may not add any constituents to any discharge that are not incidental to the normal operations of a vessel.

GENERAL sVGP PERMIT REQUIREMENTS

All discharges must meet the following standards –

Minimize potential for substances or pollutants to accidentally enter the effluent;

May not contain visible garbage in the effluent;

May not use any dispersants, cleaners or chemicals or other materials that would remove the appearance of a visible sheen;

Minimize introduction of foam or floating solids;

Oil or oily mixtures may not be discharged in an amount that will form a visible sheen;

Discharge of antifreeze must be minimized;

When feasible, cleaning and maintenance should be done in drydock;

Any soaps, detergents and cleaners must be non-toxic, phosphate-free and biodegradable;

Any spills of oil or other harmful chemicals that are discharged in a quantity that may be harmful or cause a visible sheen must be reported immediately to the National Response Center at 1-800-424-8802.

ELIGIBLE sVGP PERMIT DISCHARGES AND OTHER MANAGEMENT REQUIREMENTS

Fuel Management

All motorized craft constructed on/after December 19, 2012 must have fuel-separator or a fuel tank vent to prevent a spill. You should not overfill and do not top off fuel tanks; If the vessel does not have a fuel-air separator or a fuel tank vent you must use an oil absorbent material or other appropriate device while fueling to prevent any oil from

entering the water. Regularly inspect the fuel and hydraulic systems for any damage or leaks. Unless impracticable, fill portable tanks onshore, instead of on the dock or on the vessel.

Engine and Oil Control

Periodically inspect the engine for loose or leaking hoses, gaskets and seals, repair as soon as possible. Place oil absorbent material or other spill response equipment under the engine or use other preventative practices to minimize oil entering the bilge. Any spill or overflow must be cleaned up immediately and a supply of materials to assist in cleanup must be kept onboard and stocked. Dispose of oil-absorbent material onshore. If equipped with a bilge oily water separator, periodically check for the presence of a visible sheen on the while in use; if this occurs, suspend activity until the problem is fixed.

If you do not use a USCG-type bilge oily water separator, use an oil-absorbent material. Any discharge of packing gland or stuffing box effluent must not contain oil in quantities that may be harmful and if a visible sheen is evident, suspend activity until the problem is fixed. Unless technically infeasible, you must use environmentally acceptable lubricants in all machinery (these include Blue Angel, European Eco Label, Nordic Swan, the Swedish Standard SS 155470).

Unless infeasible, prior to pumping the bilge, inspect the bilgewater for an oily sheen, during pumping inspect surrounding water for a visible sheen; if this occurs, suspend activity until the problem is fixed. Do not add substances to the bilge that remove the appearance of a visible sheen.

Solid and Liquid Waste Management

Prevent trash or garbage, including food waste, cigarette butts, etc. from entering any waste stream covered by this permit, maintain a tidy deck. All vessels must have an appropriate receptacle for retaining garbage onboard, store toxic substances appropriately until they can be discarded onshore. Prevent loose items on deck from entering waste stream. Prevent fishing gear (lines, nets, hooks, etc.) from entering the waste stream.

Deck Wash Down and Runoff and Above Waterline Hull Cleaning

Use all soaps and cleaners as directed by the label. Soaps and cleaners must be non-toxic, phosphate-free and biodegradable. Prevent on-deck debris and residue and spills from entering wash down and runoff discharges. Minimize the discharge of paint chips and residue, dispose of properly onshore.

Vessel Hull Maintenance

If the vessel is equipped with an anti-foulant system you must minimize the impact and discharges of paints from the system, consider use of non-copper based paints and use less toxic alternatives to the extent practicable and available. Where drying or cleaning at haul-out is adequate for managing fouling do not use anti-fouling coatings, if not needed. Discharges of tributyltin (TBT) are prohibited, use no such coating or use an effective overcoating to prevent TBT leaching. Do not clean anti-fouling paint which releases biocides for the first 90 days after application.

If anti-fouling paint requires cleaning, do so gently using a soft sponge. Examine surrounding water during this process, and stop immediately if any visible plume appears. Consider hiring a qualified hull cleaner. When cleaning hulls coated with anti-fouling paint in dry dock, work away from the water. Place a tarp under the vessel to catch particles. If working in an area that has an NPDES permit you must follow those requirements.

Vessel hulls must be periodically inspected and if necessary, cleaned to prevent the spread of invasive species. Minimize transport of any visible living aquatic organisms from one water body to the next by regular hull cleaning. Prior to transporting the vessel from one water body to the next overland, you must inspect the visible hull areas for stowaway organisms and remove them appropriately.

Graywater

Minimize graywater discharges in areas with heavy vessel traffic and in sanctuaries wildlife refuges, wild and scenic rivers, wilderness areas. If the vessel has capacity to store graywater in these waters, it should be stored and later discharged in other waters or onshore. Minimize production of graywater while the vessel is stationary in confined waters (harbors and marinas). If the vessel has capacity to store graywater, it should be stored and later discharged at an appropriately equipped onshore facility or while the vessel is underway.

You must use soaps and cleaners that are non-toxic, phosphate-free and biodegradable or any activities that may result in their introduction to graywater. Excess oils, including animal fats and vegetable oils, used during cooking must not be added to the graywater system or into any other discharge covered by this permit;

Fish Hold Effluent

If you are unloading your catch at a shore-based seafood processor or other pier and a shore-based discharge facility is available and economically achievable, you must discharge your effluent (including dirty ice) to that facility instead of discharging to surrounding waters.

Minimize the discharge of fish hold water or ice while *in port* {NOTE – “in port” means while the vessel is anchored, moored or otherwise secured in waters subject to this permit which are inside the baseline of the U.S. territorial sea, (i.e. inside the COLREG lines). All reasonable steps must be taken to prevent the discharge of excess of fish hold water and ice while stationary at the pier. If solid fish waste is contained in the fish hold effluent, the effluent may not be discharged while in port, unless a physical separation method is used (e.g. filters or removal of fish residuals).

When cleaning your fish hold, you must use soaps and cleaners that are non-toxic, phosphate-free and biodegradable. Further, while pier side and stationary, you may not wash any residual solids into surrounding waters.

Do not discard any unused bait overboard, unless you caught that bait in that waterbody or watershed. Unused bait purchased from a bait shop or dealer may not be discharged overboard.

Ballast Water [NOTE – Vessels with 8 cubic meters or greater of ballast water capacity that discharge ballast water are not authorized to discharge under this permit and must seek coverage under the VGP]

If your vessel has less than 8 cubic meters of ballast water capacity you must --

Avoid discharge or uptake of ballast water in areas that are in or may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds or coral reefs.

Minimize or avoid uptake of ballast water in areas known to have toxic algal blooms, near sewage outfalls, near dredge operations, areas with poor tidal flushing, in darkness to avoid uptake of bottom-dwelling organisms, where props may disturb the sediment and in areas with pods of whales, convergence zones and boundaries of major currents.

If you discharge ballast water into waters covered by this permit discharge only the minimal amount necessary for vessel operations. When feasible, use one of the following measures to reduce potential for transfer of unwanted organisms: use potable water for ballasting; utilize onshore treatment or disposal methods; for vessels on fixed routes, capture and reuse ballast water in each port.

Seawater Cooling Overboard Discharge

When possible, seawater cooling overboard should be discharged when the vessel is underway. To reduce the production and discharge of seawater cooling overboard, the EPA recommends the use of shore based power when in port if – power is readily available, the system is capable of providing all needed electricity required for vessel operations, and if the vessel is compatible and equipped to connect to such systems.

MONITORING AND RECORDKEEPING

Recordkeeping Requirements

All vessel owner/operators must read and sign the PARI from found in Appendix A of this permit. It must be kept on board at all times to maintain valid sVGP coverage. All vessel owner/operators must conduct quarterly visual inspections and certify the inspections were completed on the PARI form.

Quarterly Visual Inspection Requirements

Vessel owner/operators must conduct a quarterly visual inspection of each vessel covered by this permit. It can be conducted by you or your authorized representative. The inspection must cover all discharges and all applicable areas and at a minimum, the visible portions of the hull.

While the vessel engine is operating, frequently check the area around and behind the vessel to ensure that no visible sheen, dust, or chemicals or discoloration is originating from the vessel. Check to ensure that all equipment on board is in proper working condition. This equipment includes, as appropriate, oily water separators, monitors bilges, pumps and generators. Check all protective seals for lubrication and hydraulic leaks. During quarterly inspections, you must document any problem requiring corrective action and corrective actions that were taken to resolve the problem. The dates of inspections must be documented on the sVGP PARI Form along with any corrective actions taken;

Permit Compliance

Any noncompliance with the requirements of this permit constitutes a violation of the Clean Water Act (CWA). Each day a violation continues is a separate violation of this permit. Any knowing violation of these requirements is punishable by a fine of not more than 10,000, or by imprisonment for not more than 2 years for a first offense and for a second offense the fine is \$20,000 and 4 years in prison. Any person who knowingly makes false statements or false certifications on reports upon conviction, may be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or both. There may also be severe criminal penalties; The EPA may request any information related to this permit and this must be provided within a reasonable time period;

Regarding inspection and entry – the vessel owner or operator shall allow EPA or an authorized representative (i.e. USCG, EPA contractor, State agency) to inspect any vessel, equipment, practices or operations regulated under this permit and to sample or monitor to assure permit compliance.

Noncompliance reports for the previous calendar year must be reported by February 28th of the following calendar year.

Water-Quality-Based Effluent Limitations

These requirements supplement the other technology based limitations of the permit described above. If at any time you become aware, or EPA determines, that your discharge causes or contributes to an exceedance of acceptable water quality standards, you must take action to bring your discharge into compliance and you must report exceedances and the steps taken to comply on your annual noncompliance report.

EPA may impose additional water-quality based limitations on a site-specific basis or require you to obtain coverage under an individual permit if information indicates your discharges are not controlled properly;

Discharges to Water Quality Impaired Waters

Impaired waters are those which have been identified by a State or EPA as not meeting applicable State water quality standards. Impaired waters may include both waters with

EPA-approved or EPA-established Total Maximum Daily Loads (TMDLs) and those for which EPA has not yet established a TMDL.

If you discharge to impaired waters without an EPA-approved TMDL, you are required to comply with the requirements of this section. If you discharge into impaired waters with an EPA-approved TMDL and EPA or State TMDL authorities have informed you that a Waste Load Allocation (WLA) has been established that applies specifically to your vessel's discharges or your vessel class type, your discharge must be consistent with the requirements of that WLA. If a TMDL does exist vessel operators will be informed via dock side postings and information made available from the Captain of the Port.

State and Indian Country Specific Requirements

Permit conditions applicable to specific States, Indian Country, or territories will be included in the final permit through the CWA Section 401 certification process.

EPA Regional Contacts

For more information visit <http://www.epa.gov/npdes/vessels>

For questions about the sVGP, email sVGP@epa.gov

For questions about the VGP, email VGP@epa.gov

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//////////End sVGP//////////////////////////////////////Start VGP...//////////////////////////////////////

PROPOSED ELEMENTS OF THE VGP

Effective Date: Permit coverage will begin December 19, 2013 and expire December 18, 2017. The new VGP will replace the existing 2008 VGP.

The most significant change from the 2008 VGP is the application of new stringent numeric technology-based ballast water effluent limitations.

EPA expects that most vessels seeking coverage under this permit will be greater than 79 feet. However commercial fishing vessels and other non-recreational vessels less than 79 feet are also eligible for coverage under this permit or those vessels may seek coverage under the sVGP.

If auxiliary craft such as lifeboats, rescue boats or barges onboard larger vessels require NPDES permit coverage they are eligible for coverage under this permit and are covered by submission of the NOI for the larger vessel. For reporting, these vessels are part of the same entity as the larger vessel.

Obtaining a Permit: Authorization to discharge under this permit is determined by the following criteria --

If your vessel was authorized to discharge under the 2008 VGP you must submit a NOTICE OF INTENT ("NOI") no later than December 12, 2013 or 7 days prior to discharging.

If your vessel is greater than 300 gross tons or the vessel has the capacity to hold or discharge more than 8 cu meters (2113 gallons) of ballast water you must submit a NOI no later than December 12, 2013 or 7 days prior to discharging.

If your vessel is less than 300 gross tons and does not have the capacity to hold or discharge more than 8 cu meters (2113 gallons) of ballast water you do not need to submit a NOI. However, you must complete the PERMIT AUTHORIZATION AND RECORD OF INSPECTION FORM ("PARI") and retain it onboard the vessel.

Vessel discharges THAT ARE NOT ELIGIBLE for coverage include but are not limited to discharges from industrial operations (seafood processing), sewage, spent/used oil, garbage or trash, Tetra- or Perchchloroethylene degreasers, and discharges covered by another NPDES permit.

Vessel discharges eligible for coverage under this permit must be minimized or eliminated to the extent achievable using control measures (including Best Management Practices – "BMPs") that are technologically available and economically practicable and achievable in light of best marine practice. You may not add any constituents to any discharge that are not incidental to the normal operations of a vessel.

TECHNOLOGY-BASED EFFLUENT LIMITS AND RELATED REQUIREMENTS APPLICABLE TO ALL VESSELS

Material Storage

You must minimize the amount of time cargoes and onboard materials are exposed to precipitation and spray. If water draining from storage areas comes in contact with oily materials you must use dry cleanup methods or absorbents; store the water for onshore disposal; or run the water through an oily water separator.

Toxic and Hazardous Materials

You must locate toxic and hazardous materials in protected areas respecting crew safety. Containers must be suitable and not overfilled and empty containers may not be jettisoned. Any discharge must be properly documented according to permit requirements.

Fuel Spills/Overflows

Spills/Overflows may not result in a discharge of oil in quantities that may be harmful. You must conduct all control measures and practices to minimize spills and ensure containment. Vessels with air vents from fuel tanks must use spill containment or other methods to prevent spills. Large scale spills are not incidental to normal operations are not permitted.

For fueling auxiliary vessels from a "host" vessel: examine surrounding water for a visible sheen, if this occurs, stop fueling and cleanup immediately; do not top off tanks, when possible, fuel on shore or when vessel is on the host vessel; when possible, fill portable tanks on shore; use oil absorbent material while fueling; regularly inspect fuel and hydraulic systems for leaks; crew must be trained in methods to minimize spills.

Discharges of Oil including Oily Mixtures

All discharges of oil and oily mixtures must have concentrations of oil less than 15 parts per million (ppm) before discharge. All other discharges of such mixtures must not contain oil in quantities that may be harmful.

Training

All owners/operators must ensure that the master, operator, person in charge, crew members who are involved in discharge management are adequately trained in implementing this permit. Training need not be formal or via an accredited course but it is the owner/operators responsibility to ensure staff are given the necessary information to conduct proper procedures.

EFFLUENT LIMITS AND RELATED REQUIREMENTS FOR SPECIFIC DISCHARGE CATEGORIES

Deck Wash Down and Runoff and Above Waterline Hull Cleaning

Before washdown, broom clean decks and remove existing debris.

When required by class societies, vessels must be fitted with perimeter rails and scuppers to collect runoff for treatment. Where feasible, machinery on deck must have drip pans and be disposed of properly. Soaps and cleaners must be non-toxic, phosphate-free and biodegradable. Prevent on-deck debris and residue and spills from entering wash down and runoff discharges. Minimize the discharge of paint chips and residue, dispose of properly onshore.

Bilgewater/Oily Water Separator Effluent

Vessel operators may not use dispersants, detergents, emulsifiers, or chemicals that remove the appearance of a visible sheen in bilgewater discharges. Except for flocculants or other additives used to enhance oil/water separation, you may not add substances that drain to the bilgewater. Routine cleaning and cleaning materials are considered part of normal operations and permissible.

All vessels must minimize the discharge of bilgewater into waters subject to this permit. This can be done by reducing production of bilgewater, disposing of onshore, or discharging outside 3 nm.

There are several provisions specific to vessels greater than 400 tons. See FR notice for those proposed requirements.

Q: EPA is specifically seeking comments on whether to alter the bilgewater management regime for new build vessels and whether to provide existing vessels with additional bilgewater management options?

Ballast Water

All discharges of ballast water must comply with the requirements of this permit as well as with USCG requirements. All vessels equipped with ballast tanks must also comply with identified BMPs in this section. All discharges may not contain oil, noxious substances or hazardous materials.

All owner/operators of vessels equipped with ballast tanks must train all crew involved in ballast water discharge/treatment. As part of Ballast Water Management Plan (BWMP), owner/operators must maintain a written training plan. The BWMP must be developed specifically for your vessel and be available to the EPA upon request.

Mandatory ballast water BMPs include but are not limited to: avoid discharge or uptake of ballast water in areas that are in or may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds or coral reefs; Minimize or avoid uptake or ballast water in areas known to have toxic algal blooms, near sewage outfalls, near dredge operations, areas with poor tidal flushing, in darkness to avoid uptake of bottom-dwelling organisms, where props may disturb the sediment and in areas with pods of whales, convergence zones and boundaries of major currents; If you discharge ballast water into waters covered by this permit discharge only the minimal amount necessary for vessel

operations; clean tanks regularly in mid-ocean; when discharging ballast in port, utilize high suction (if available) for tank discharge to minimize sediment.

Suggested ballast measures include use of potable water for ballasting and transferring ballast water between tanks in lieu of discharge.

Ballast Water Numeric Discharge Limitations

Owners/operators must meet the following discharge limits. {NOTE -Vessels excluded from these requirements are those engaged in short distance voyages in one COTP zone or those crossing no physical barriers and do not travel more than 10nm; or are unmanned, unpowered barges or lakers built before January 1, 2009; or participate in the USCG Shipboard Technology Evaluation Program. }

1. For organisms greater than or equal to 50 micrometers in minimum dimension: discharge must include fewer than 10 living organisms per cubic meter of ballast water;
2. For organisms less than 50 micrometers and greater than or equal to 10 micrometers: discharge must include fewer than 10 living organisms per milliliter (mL) of ballast water;
3. Indicator microorganisms must not exceed:
 - a. For Toxicogenic Vibrio cholera (serotypes O1 and O139): a concentration of less than 1 colony forming unit (cfu) per 100 mL.
 - b. For Escherichia coli: a concentration of fewer than 250 cfu per 100 mL.
 - c. For intestinal enterococci: a concentration of fewer than 100 cfu per 100 mL.

These limits may be met by using one of the ballast water management measures.

Ballast Water Management Measures

Vessels with the capacity to carry greater than or equal to 8 cubic meters of ballast water may use one of the following 4 management methods to meet the numeric discharge limits specified above. EPA notes that emergency discharges of ballast water bypassing any of the 4 methods listed below to prevent loss of life, personal injury or severe property damage may be applicable.

(1) Ballast Water Treatment System (BWTS)

Must be a system shown to be effective by testing in accordance with the EPA-ETV protocol for verification by an independent third party. Use of a BWTS carries substantial monitoring, testing, calibration, effluent monitoring parameters, biocide limitations, record keeping & reporting.

Ballast Water Treatment System (BWTS) Compliance Schedule

Vessels	Ballast Water Capacity	Date Constructed	Compliance Date
New Vessels		After January 1,	On delivery

		2012	
Existing Vessels	Less than 1500 cu meters	Before January 1, 2012	First scheduled drydock after 1/1/2016
	1500-5000 cu m	Before January 1, 2012	First scheduled drydock after 1/1/2014
	Greater than 5000 cu m	Before January 1, 2012	First scheduled drydock after 1/1/2016

(2) Onshore Treatment of Ballast Water

If a compatible onshore treatment system is available, an owner/operator may safely transfer ballast water provided all piping and connections are leak free. EPA notes that transferring ballast water to a treatment barge could constitute as “on-shore treatment” except that the discharge from the treatment barge would be subject to individual NPDES permit requirements as an industrial operation, most likely from the State in which the barge is operating.

(3) Use of Public Water Supply (PWS)

Vessels using water from a PWS (US & Canada) must maintain records, including receipts indicating the originating system. Vessels using PWS water as ballast must have previously cleaned the ballast tanks and never introduced ambient water to those tanks and supply lines. If untreated water is introduced to the tanks at any time, they must be cleaned before the vessel can return to using PWS.

(4) No Discharge of Ballast Water

Vessels may meet the requirements by not discharging any ballast water into waters subject to this permit.

Anti-Fouling Hull Coatings/Hull Coating Leachate

All coatings must be registered, sold, applied and maintained and removed in a manner consistent with applicable requirements. Vessels painted outside the U.S. must not contain material banned in the U.S. Discharges of tributyltin (TBT) are prohibited and no such coating can be used or use an effective overcoating to prevent TBT leaching.

Aqueous Film Forming Foam (AFFF)

Discharge of AFFF are authorized only for emergency purposes. For vessels that leave the territorial sea more than once per month, discharges of fluorinated AFFF are not authorized in waters subject to this permit and must be collected and disposed of onshore.

Boiler/Economizer Blowdown

You must minimize the discharge of boiler/economizer blowdown in port if chemicals are used to reduce impurities. There are additional limitations for vessels greater than 400 tons.

Cathodic Protection

Cathodic protection must be maintained such that the flaking of anodes is minimized. Sacrificial anodes must not be used more than necessary and must be cleaned and/or replaced during maintenance periods and should be flush-fitted to the hull.

Magnesium is less toxic than aluminum which is less toxic than zinc. Vessel operators using sacrificial anodes must select the least toxic metals and document their choices (including why they did not choose the least toxic metal) in their recordkeeping. EPA recommends use of Impressed Current Cathodic Protection (ICCP) in place of sacrificial anodes when technologically feasible. If ICCP is used, operators must maintain dielectric shields to prevent flaking.

Chain Locker Effluent

The anchor chain must be carefully and thoroughly washed as it is being hauled out of the water to remove sediment and marine organisms. Lockers must be cleaned during drydock. If feasible, clean and rinse the space beneath the locker prior to entering waters subject to this permit. Chain lockers shall not be rinsed in waters subject to this permit unless there is a safety issue which must be documented.

Controller Pitch Propeller and Thruster Hydraulic Fluid and Other Oil-to-Sea-Interfaces and Equipment Subject to Immersion

The protective seals on any oil-to-sea interface must be maintained in good operating order to minimize leaks. No oils may be discharged in harmful quantities. Excess lubricants must be removed and vessels constructed on or after December 19, 2003 must use environmentally acceptable lubricants in all oil-to-sea interfaces. For all vessels built before December 19, 2013, unless technically infeasible, you must use environmentally acceptable lubricants and if unable to do so, you must document the deviation. Acceptable lubricants include Blue Angel, European Eco Label, Nordic Swan, and the Swedish Standard SS 155470.

Distillation and Reverse Osmosis Brine

Brine from the distillation system and osmosis water shall not contain or come in contact with machinery or equipment (other than necessary), toxic materials or waste.

Elevator Pit Effluent

Discharges of untreated EPE are not authorized in waters of this permit except in emergency. They must be managed with bilgewater or an oily-water separator.

Firemain Systems

Discharges from firemain systems are authorized for emergency purposes and testing. They may be discharged in port to assure operations function and training provided the water is ambient or from a PWS system.

Freshwater Layup

Minimize the amount of disinfection or biocidal agents used in layup to the minimum necessary.

Gas Turbine Washwater

Gas turbine washwater may not be directly discharged in waters subject to this permit. If feasible, it must not be comingled with bilgewater that will be discharged. It must be collected and disposed of onshore.

Graywater

All vessels must minimize graywater discharges in port. If a vessel cannot store it, you must minimize production of it in port. If a vessel has the capacity to store graywater it cannot be discharged into sanctuaries, wildlife refuges, wild and scenic rivers, wilderness areas. If the vessel has capacity to store graywater in these waters, it should be stored and later discharged in other waters or onshore. Vessels should minimize production of graywater while in these waters. You must use soaps and cleaners that are non-toxic, phosphate-free and biodegradable or any activities that may result in their introduction to graywater. Excess oils, including animal fats and vegetable oils, used during cooking must not be added to the graywater system or into any other discharge covered by this permit.

Motor Gasoline and Compensating Discharge

The discharge of motor gasoline and compensating effluent must not have oil in quantities that may be harmful or creates a visible sheen. Discharges must be minimized in port.

Non-Oily Machinery Waste

If discharged overboard, non-oily waste must be free from oils and may also be drained to the bilge.

Refrigeration Condensate

You must not allow condensate to come in contact with oily or toxic materials if it is to be discharged overboard. If comingled with oil it must be collected and treated consistent with requirements of this permit.

Seawater Cooling Overboard Discharge

When possible, seawater cooling overboard should be discharged when the vessel is underway. To reduce the production and discharge of seawater cooling overboard, the EPA recommends the use of shore based power when in port if – power is readily available, the system is capable of providing all needed electricity required for vessel operations, and if the vessel is compatible and equipped to connect to such systems;

Seawater Piping Biofouling Prevention

Vessels owner/operators must minimize the use of approved biofouling chemicals. Organisms must be removed on a regular basis and disposed of in accordance with appropriate regulations. Removed organisms must not be disposed of in waters subject to this permit and EPA recommends disposal more than 50 nm from shore.

Boat Engine Wet Exhaust

Engines must be kept in good working order. Use low sulfur fuels and EPA encourages use of 4 stroke engines and if using 2 stroke engines, owners must use acceptable lubricants or record the deviation.

Sonar Dome Discharge

The water inside the sonar dome shall not be discharged into waters subject to this permit.

Underwater Ship Husbandry Discharges

Vessel owners must minimize the transport of attached living organisms when travelling into US waters or between COTP zones. When possible, rigorous hull cleaning should take place. If water-pressure systems are used, the wash water must be treated. Old paint and materials removed from the hull must be collected and disposed of properly. Removal of organisms while the vessel is waterborne must minimize the discharge of fouling organisms and antifouling coatings by using soft brushes or vacuum technology.

Welldeck Discharges

Welldeck discharges containing graywater from smaller vessels should not be discharged within waters subject to this permit.

Graywater Mixed with Sewage from Vessels

Any discharge of this effluent must comply with graywater effluent requirements of this permit.

Exhaust Gas Scrubber Washwater Discharge

Exhaust gas scrubber washwater discharge must not contain oil or oily mixtures in quantities that may be harmful. Sludge or residues must be collected and delivered ashore to a proper facility. Any washwater discharges must meet the numeric effluent standards, monitoring and reporting found in part 2.2.26 of the permit (Pages 50-53) titled "Exhaust Gas Scrubber Treatment Standards".

Fish Hold Effluent

You must minimize the discharge of fish hold water or ice while *in port* {NOTE – "in port" means while the vessel is anchored, moored or otherwise secured in waters subject to this permit which are inside the baseline of the U.S. territorial sea, (i.e. inside the COLREG lines)}. If solid fish waste is contained in the fish hold effluent, the effluent may not be discharged while in port, unless a physical separation method is used (e.g. filters or removal of fish residuals).

The discharge of fish hold effluent (incl. dirty ice) is prohibited if you are unloading your catch at a shore-based seafood processor or pier. If a shore-based discharge facility is available to receive your effluent, then discharge is overboard is prohibited provided the facility use is economically achievable, the facility has an NPDES permit or the facility discharges to an NPDES-permitted sewage treatment facility. The discard of any unused

bait overboard is prohibited unless you caught that bait in that waterbody or watershed. Unused bait purchased from a bait shop or dealer may not be discharged overboard.

Water-Quality-Based Effluent Limitations

These requirements supplement the other technology based limitations of the permit described above. If at any time you become aware, or EPA determines, that your discharge causes or contributes to an exceedance of acceptable water quality standards, you must take action to bring your discharge into compliance and you must report exceedances and the steps taken to comply on your annual noncompliance report; EPA may impose additional water-quality based limitations on a site-specific basis or require you to obtain coverage under an individual permit if information indicates your discharges are not controlled properly;

Discharges to Water Quality Impaired Waters

Impaired waters are those which have been identified by a State or EPA as not meeting applicable State water quality standards. Impaired waters may include both waters with EPA-approved or EPA-established Total Maximum Daily Loads (TMDLs) and those for which EPA has not yet established a TMDL;

If you discharge to impaired waters without an EPA-approved TMDL, you are required to comply with the requirements of this section;

If you discharge into impaired waters with an EPA-approved TMDL and EPA or State TMDL authorities have informed you that a Waste Load Allocation (WLA) has been established that applies specifically to your vessel's discharges or your vessel class type, your discharge must be consistent with the requirements of that WLA; if a TMDL does exist vessel operators will be informed via dock side postings and information made available from the Captain of the Port;

Permit Compliance

Any noncompliance with the requirements of this permit constitutes a violation of the Clean Water Act (CWA). Each day a violation continues is a separate violation of this permit. Any knowing violation of these requirements is punishable by a fine of not more than 10,000, or by imprisonment for not more than 2 years for a first offense and for a second offense the fine is \$20,000 and 4 years in prison. Any person who knowingly makes false statements or false certifications on reports upon conviction, may be punished by a fine of not more than \$10,000 per violation, or by imprisonment for not more than 6 months per violation, or both. There may also be severe criminal penalties;

The EPA may request any information related to this permit and this must be provided within a reasonable time period.

Regarding inspection and entry – the vessel owner or operator shall allow EPA or an authorized representative (i.e. USCG, EPA contractor, State agency) to inspect any vessel, equipment, practices or operations regulated under this permit and to sample or monitor to assure permit compliance.

Noncompliance reports for the previous calendar year must be reported by February 28th of the following calendar year.

Electronic reporting is required for all documentation including but not limited to NOIs, annual reports and Discharge Monitoring Reports (DMRs) unless a temporary waiver is granted by EPA.

Corrective Actions

Taking corrective actions in no way impairs EPA's ability to require remedies to bring a non-compliant vessel into compliance as soon as possible. On a case by case basis, EPA may take enforcement action quickly to assure compliance.

Problems Triggering The Need For Corrective Actions

If any of the following problems are identified you must take action to ensure the problem is eliminated and will not be repeated: You violate one or more effluent limits or any other requirement of this permit or the EPA makes that determination; You become aware or EPA determines that your measures do not control discharges as required; or You find or EPA determines that your pollution control measures or BMPs are not being properly operated and maintained or are not having the intended effect.

Corrective Action Assessment

Following identification of any problem you must conduct a corrective action assessment that includes the following: a description of the problem; an explanation of the cause; a description of the corrective action taken to eliminate the problem; an indication if drydock is necessary and when it will be scheduled; a record of the entire process.

Deadlines for Eliminating Problems

Simple corrective actions are allowed 2 weeks to be fixed. Actions that require new parts or equipment to be ordered are allowed 3 months. Large and more complex actions that require drydock repairs must be fixed at the next drydock appointment.

Effect of Corrective Actions

If the initial occurrence of the problem constitutes a violation of the permit, conducting the assessment and correcting the problem do not absolve you from liability for the original violation. However, failure to comply with assessment and correction constitute additional permit violations. EPA will consider promptness of corrective action in determining enforcement response.

INSPECTIONS, MONITORING AND RECORDKEEPING

You must conduct the following inspections, monitoring and recordkeeping activities for your vessel.

Routine Vessel Inspections must be conducted at least once per week or per voyage, whichever is more frequent. You must document the findings in the official ship's log or as a component of the permit recordkeeping.

Extended Unmanned Period Inspections (EUP) must be conducted if a vessel is unmanned for a period of 13 days or greater. This will also require pre- and post-layup inspections. If in extended layup, a surrounding waters visual inspection once every 2 weeks is also required.

Comprehensive Annual Vessel Inspections must be conducted at least once every 12 months. These can be done by the master, owner, or trained marine engineer or class society representative.

Dry Dock Inspection Reports must be prepared and provided to the EPA, upon request.

Regarding Recordkeeping... Vessels covered by this permit must keep records on the vessel that include a detailed 11-point inspection program (see Permit pages 63-65). The vessel owner/operator must retain copies of all reports, certifications, records, monitoring data, and other information required by this permit and records of all data used to complete the NOI to be covered by this permit, for a period of at least 3 years from the date that your coverage under this permit expires or is terminated. All information shall be made available to EPA or action official upon request.

Vessels equipped with ballast water tanks must keep on board additional written records detailing ballast water activities (see Permit pages 65-66).

Regarding Reporting... For each vessel, owner/operators must submit an Annual Report for each year they have active permit coverage. Annual Reports must be completed each year and submitted by February 28 of the following year. A separate 2013 annual report will not be required instead any relevant information from December 19, 2013 to December 31, 2013 must be included in the annual report for the 2014 calendar year.

EPA Regional Contacts

For more information visit <http://www.epa.gov/npdes/vessels>

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Prepared by:

Rick E. Marks

For Clients of Hoffman, Silver, Gilman & Blasco

Agenda 10-1
February 2012

Subject: Invitation to an Audio Roundtable Discussion on the National Ocean Policy
From: National Ocean Council <NationalOceanCouncil@ostp.eop.gov>
Date: 1/26/2012 3:43 PM
To: Undisclosed recipients;

The National Ocean Council cordially invites you to an audio roundtable discussion on
the National Ocean Policy and the Seafood Industry
with the National Ocean Council Acting Director and
Representatives from the U.S. Department of Agriculture and the National Oceanic and Atmospheric
Administration

on

February 21, 2012
4:00 pm - 5:00 pm (EST)

This roundtable is an opportunity to engage in a dialogue on the draft National Ocean Policy
Implementation Plan and the work of the National Ocean Council.

To receive the call-in number and passcode, please RSVP to NationalOceanCouncil@ostp.eop.gov by
February 17th. Space is limited.
We hope you will be able to join us.

Thank you,

The National Ocean Council Office