AGENDA C-2
DECEMBER 1998

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: December 2, 1998

SUBJECT: American Fisheries Act

ESTIMATED TIME
8 HOURS

ACTION REQUIRED

Review progress and provide staff guidance for developing follow up amendments.

BACKGROUND

Provisions of the American Fisheries Act (AFA) were presented during the special November Council meeting. Following that overview, the Council took action on issues which required immediate resolution for the 1999 fishing seasons. These are reiterated below, as they were described in our recent newsletter:

ACTIONS TAKEN AT NOVEMBER 1998 MEETING

- Comment to the Secretary of Commerce to revise the following IO3 regulations to be compatible with the various elements of the Act:

  1. the allocation percentages and duration of allocations as written in the Act.
  2. the 2.5% set aside for catcher vessels delivering shoreside is no longer necessary.
  3. the exclusion of offshore catcher vessels from fishing in the CVOA during "B" season is no longer necessary.

- Adopted NMFS' recommendation to exempt squid from the CDQ program under emergency rule-making, and requested that the CDQ groups develop bycatch avoidance programs for other potential limiting species.

- Approved an emergency rule to require two observers (at least one of which must be multispecies CDQ certified) on all eligible catcher/processors listed in the Act.

- Regarding the review process for co-op contracts in the pollock fisheries, the Council initiated development of a discussion paper examining the following conditions for cooperative agreements:

  1. limiting co-op agreements to a range of 1-6 years.
  2. prohibiting linkage of membership in co-ops to delivery of non-pollock species.
  3. requiring disclosure of information on catch and bycatch by co-op participants, per SB 1221.
  4. contracts must be submitted to Council by December 1 (for following year's co-op).

These requirements would be applicable to co-ops forming for year 2000 fisheries; for the 1999 catcher/processor co-ops, the review process will follow the basic guidelines contained in the Act.

- The Council further requested that NOAA General Counsel clarify the Council's ability to supersede provisions in §210(b) and §208(f) of the Act. These refer to (respectively) co-op conditions for catcher vessels delivering shoreside, and eligibility requirements for shoreside processors.

- Regarding catcher/processor sideboards to protect non-pollock fisheries, the Council concurred with NMFS' plan to prohibit AFA-listed vessels from exceeding the "inside critical habitat" harvest percentage of the Atka mackerel caps as spelled out in §211 paragraph (b)(2)(c). These and other catch limitations described below will be implemented via the specifications process for 1999 fisheries.

- The Council approved the following guidelines for managing non-pollock target fisheries by the listed catcher/processors under AFA:

Groundfish:

1. Non-pollock groundfish caps for listed vessels will be established on the basis of the percent of groundfish harvests in non-pollock fisheries in 1995, 96, 97 (for Pacific cod, 1997 only).

2. NMFS will determine the bycatch needs for pollock and non-pollock fisheries and allow for directed fishing for non-pollock target species such that the total catch of those species should not exceed the caps as established in #1.

PSC Caps:

1. Total PSC cap for listed vessels will be established on the basis of percentage of PSC removals in the non-pollock groundfish fisheries in 1995, 96, 97.

2. NMFS will allow for directed fishing of non-pollock species such that the total PSC removals do not exceed the PSC cap as established in #1.

3. The listed vessels' PSC caps will not be apportioned and will be managed under open access season apportionment closures.

- The Council also initiated an amendment to analyze pollock season opening dates (A & B season), and the removal of the stand-down provisions for inshore/offshore catcher vessels in the pollock fishery. This will be prepared in 1999 for possible application to the 1999 "B" season, and for year 2000 and beyond. For early 1999 (at least), all opening dates and stand-down provisions remain in effect.

In addition to the items listed above, we will need to develop a 'technical' amendment in 1999 to conform our FMPs with other, mandated provisions of the AFA. For example, there is a provision regarding crab fishery LLP endorsements for catcher vessels delivering to catcher processors (vessel must have fished a species in 1997 to receive that species endorsement), as well as a provision prohibiting listed catcher processors from fishing in the GOA. There are also specific upgrade allowances for listed vessels which are different than under the current LLP. This would be an additional, and presumably simple, amendment for Council review in April and could be in place in time for year 2000 LLP implementation. If any adjustments are made by the Council to the GOA amendment, such as making it of similar duration as the BSAI allocations, this could also be included in that amendment package.

The remaining items relevant to the AFA are summarized under Item C-2(a) - this is a slightly revised version of the 'roadmap' we presented at the last meeting which includes the AP's recommendations. These actions include development of year 2000 sideboards to limit the participation in non-pollock fisheries by catcher processors and by catcher vessels participating in pollock coops. It also includes development of measures to protect pollock-ineligible processors from the impacts of the AFA. Analyses that must be completed by April 1999, in order to meet the AFA's July 1 deadline, are on pages 1-3 of the roadmap. Direction to the staff regarding alternatives and options for these analyses must be given at this meeting to allow adequate time for the analyses to be completed for initial review in April 1999.

This section of the document is where the Council needs to focus at this meeting. The AP commented on most of these issues in November. However, they declined to select alternatives which would restrict the harvest of co-op member catcher vessels in other groundfish fisheries (they did address crab sideboards). Instead they opted to take that issue up at this meeting. Given the AP's intent, the Council should have a complete set of recommendations for the required "near term" suite of analyses. Issues in this section that are projected to consume the most staff effort (and/or outside contracting) include catcher vessel, catcher processor, and shoreplant spillover restrictions for the year 2000 and beyond.

Pages 4-6 of Item C-2(a) are the "longer-term" issues in the AFA that may be developed on longer time lines or at the Council's discretion. No Council action on these items is required at this meeting, and it is unlikely that much staff effort could be devoted to these until after April; however, there may be some overlap between some of the near and long term issues. For example, the AP recommendation regarding protective measures for pollock-ineligible processors includes examination of excessive share caps for processors.

Item C-2(b) is the annotated summary of the provisions of the Act and the required Council actions. This was the primary working document at the November meeting and is keyed to the page numbers in the full Act, which is under Item C-2(c). Item C-1(d) contains correspondence received by the Council on the AFA since the October Council meeting.

Roadmap for Council Discussions of AFA Tasking (December 6, 1998)

Includes Council/AP recommendations, timelines, and *staff notations*.
*** denotes major analysis/staff time.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
3	Monitor NMFS development of fee system	Periodic reviews at Council meetings	1999	NMFS HQ ***
The AP reiterates its October 1998 recommendation on development of fee systems: "The AP recommends the Council direct NMFS to work cooperatively with ADF&G, processors and fishermen to develop a standardized fee collecting mechanism which will provide consistency between current fee collection programs, the IFQ fee, CDQ program, and potential future fee programs. "With respect to the proposed IFQ fee program, the AP recommends it not go forward until a mechanism be included which allows fishermen to submit evidence demonstrating discrepancies between standard prices charged by NMFS and actual prices received by the individual fishermen. Motion carries unanimously (19/0)."				
6	Adjust LLP for new upgrade criteria and endorsement restrictions	Technical amendment	1999	Council
Staff note: *No AP action on this item. Upgrade criteria for eligible vessels are stipulated in the AFA, and are different than under current LLP. Regarding endorsement restrictions, AFA refers to vessels, while LLP will issue licenses to persons. An amendment is necessary to preclude the initial issuance of these endorsments; i.e., so that they cannot be transferred to another vessel.*				
7b	Catcher Processor Restrictions for 2000 and beyond	Plan/reg amendment package	by July of 1999	Council ***
Staff note: *This action necessary for year 2000 and beyond. Need Council direction on whether to implement differently than for 1999. AP recommendations pending on this issue.*				

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

AFA catcher vessel restrictions require the Council to develop conservation and management measures to prevent pollock-eligible catcher vessels (CVs) from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. The clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a co-op because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income.

Therefore, the AP recommends the Council's interpretation of CV protective measures, i.e., that the CV protective measures be limited to protecting against adverse results of fishery co-ops on other fisheries, and therefore, would not be applied to those pollock CV's not participating in co-ops. Also, that this be sector specific. Motion carries unanimously (19/0).

The AP recommends the Council initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

1. No crossover allowed into any crab fisheries for vessels with membership in a pollock co-op.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
   Sub-option: vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery.

   Duration sub-options:
   a. Permanent based on participation in co-op
   b. Only for year vessel is involved in co-op.

3. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest including:
   a. Restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

Motion carries 17/0/2.

Staff note: *These recommendations apply only to restrictions in crab fisheries. The AP was advised by staff that alternatives and options regarding non-pollock groundfish restrictions could be defined in December. Need to define 'traditional' harvest level for the limitations. Could be average of 1995, 1996, and 1997, or other basis defined by Council. AP recommendations pending on this issue, as it relates to groundfish sideboards.*

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
9	Protective measures for pollock ineligible processors	Plan/Reg amendment	By July 1, 1999	Council ***

The AP recommends that any conservation or management measures that are recommended to the Secretary in protecting processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the Act or as a result of fishery cooperatives in the directed pollock fishery:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and
3. document that the adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence,

before any protective measures are implemented. Motion carries 6/2/6.

The AP recommends a discussion paper be initiated examining options to mitigate potential adverse impacts from AFA on non-pollock processors including:

1. The ability to allow processors not listed in Section 208 to process limited amounts of inshore pollock allocation, including requirement to participate in buyout provisions.
2. Excessive share caps on processors of 10%, 12%, 15% and 17.5%. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors.
3. Restricting vessels used for processing in the inshore sector to a single geographic location.
4. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 96 and 97.

The AP further requests the Council initiate a data gathering program to identify the benefits and impacts of AFA. Information tracked should examine state and federal fisheries and include:

ownership patterns
processor activity
product forms
ex-vessel price
employment changes
market share

Motion carries 18/1.

14	Disclose catch and bycatch info by vessel	Regulatory amendments	No time certain	Council/ NMFS

Staff note: *No AP action. Will also require complementary action by State.*

LONG TERM (May be developed any time)

#	Action	Mechanism	Timeline	Tasking
10	Prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock)	FMP/Reg amendment	No time certain	Council ***

The AP recommends that the Council move forward with an FMP amendment to prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock). The analysis should examine shares of fisheries as defined in the following options:

1. individual crab and groundfish species
2. Pollock, non-pollock groundfish, crab.

Motion carries unanimously 19/0.

Staff note: *This analysis likely cannot be initiated until after April, though processor caps are included in the suite of potential measures recommended by the AP regarding protection of pollock-ineligible processors.*

The AP recommends the Council ask staff to examine the following and report back to the Council:

1. Definitions used in AFA and Magnuson-Stevens for consistency.
2. The ability of pollock processors to expand their operations to other geographic locations, and
3. The ability of pollock processors to transfer their processing privileges.

Motion carries unanimously 19/0.

17	Report to Congress on Program Performance	Develop report	By Oct 2000	Council / NMFS ***
18	GAO Report to Council on fillet production	GAO Report	By June 1, 2000	GAO
19	Council response to GAO report	Develop amendments as needed	By late 2000	Council

Staff note: *No AP motion. May be addressed at a later meeting.*

OPTIONAL (may be developed as necessary - timelines vary)

#	Action	Mechanism	Timeline	Tasking
12	Recommend measures to mitigate AFA impacts	FMP and regulatory amendments	As needed	Council ***
*** The AP recommends the Council add to staff tasking the framework proposal submitted by Alaska Groundfish Databank for pollock co-ops in the Gulf of Alaska. Motion carries 20/0/1. (A motion to request the Council add to staff tasking proposal #21 restrictions on processing of trawl caught groundfish in the GOA including exempting vessels less than 60 ft, looking at trip limits, and addressing tax concerns for deliveries outside catch area, failed 7/11/1.) **Staff note:** *The Council also may wish to consider amending the GOA I/O3 to change the duration to mirror that of the BSAI allocations. If so, we could include that in the 'technical' amendment package being prepared for April review.*				
15	If necessary, change criteria for establishing Shoreside catcher vessel cooperatives in Section 210(b)(1)	Regulatory amendment to supersede legislation	Anytime	Council ***
The AP recommends the Council further address in a discussion paper, options for compensation to inshore catcher vessels with catch history delivering to catcher processors that is no longer available to them under AFA. Motion carries unanimously (19/0). Additionally, examine inserting a clause replacing language in §210(b)(1) to add an option for determining catch history for catcher vessels on the basis of the best two of three years in 1995, 96, 97. Motion carries unanimously (21/0). **Staff note:** *These issues refer to co-op requirements and may not require actual regulatory action by the Council. Need to resolve in time for year 2000 implementation.*				
13	Consider changing pollock CDQ %	FMP amendment for 2002-2004	Process amd in 2001	Council ***
16	If necessary, allow more shoreside processors	Via NMFS permit process	If TAC up 10% If loss of plant	Council
20	Renewal of program which expires 12/31/04	Full FMP and regulatory amendments	Analysis/ Action in 2004	Council ***

THE AP APPROVED THE FOLLOWING ADDITIONAL MOTIONS

*** The AP recommends the Council initiate analysis for the following management actions for the pollock fishery in the Gulf of Alaska

1. Trip limits of 75,000 - 400,000 maximum within a 24 hour period
2. Vessel length restriction of 125 ft.
3. Superexclusive areas
4. Limit the second trimester to 15% TAC allocation.

Motion carries 16/4

*** The AP recommends the Council initiate a regulatory amendment for examining start dates for the pollock fisheries (both A and B seasons). Motion carries unanimously 21/0.

Staff note: *The first motion above was approved by the AP in addition to measures related directly to AFA. The second motion above has already been tasked by the Council at the November meeting.*

Roadmap for Council Discussions of AFA Tasking (December 9, 1998)

(Revised to reflect AP actions taken at this meeting)

Includes Council/AP recommendations, timelines, and *staff notations*.
*** denotes major analysis/staff time.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
*	Duration of GOA I/O3	Plan Amendment	1999	Council
The AP recommends the Council initiate an analysis to establish duration for GOA I/O3 to coincide with the BSAI. Motion carries unanimously (21/0). This action was taken at the December meeting				
3	Monitor NMFS development of fee system	Periodic reviews at Council meetings	1999	NMFS HQ ***
The AP reiterates its October 1998 recommendation on development of fee systems: "The AP recommends the Council direct NMFS to work cooperatively with ADF&G, processors and fishermen to develop a standardized fee collecting mechanism which will provide consistency between current fee collection programs, the IFQ fee, CDQ program, and potential future fee programs. "With respect to the proposed IFQ fee program, the AP recommends it not go forward until a mechanism be included which allows fishermen to submit evidence demonstrating discrepancies between standard prices charged by NMFS and actual prices received by the individual fishermen. Motion carries unanimously (19/0)."				
6	Adjust LLP for new upgrade criteria and endorsement restrictions	Technical amendment	1999	Council
Staff note: *No AP action on this item. Upgrade criteria for eligible vessels are stipulated in the AFA, and are different than under current LLP. Regarding endorsement restrictions, AFA refers to vessels, while LLP will issue licenses to persons. An amendment is necessary to preclude the initial issuance of these endorsements; i.e., so that they cannot be transferred to another vessel. The AP understood that these licenses would be issued if they took no action.*				

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
7b	Catcher Processor Restrictions for 2000 and beyond	Plan/reg amendment package	by July of 1999	Council ***

The AP recommends, for the year 2000 and beyond, the Council initiate an analysis for the 20 + 9 vessels listed in the AFA of their bycatch in both the directed pollock and non-pollock fisheries (95, 96, 97) and associated PSC levels.

Add sub-option: Pelagic pollock fisheries.

Motion carries 13/5.

The AP recommends the Council revisit the policy where NMFS would allow for directed fishing of pollock and non-pollock species such that the total PSC removals do not exceed the PSC caps as established in #1 of PSC Caps (on page 2 of action memo) which states, "Total PSC cap for listed vessels will be established on the basis of percentage of PSC removals in the non-pollock groundfish fisheries in 1995, 96, 97." Motion carries 12/7.

Staff note: *This action necessary for year 2000 and beyond. Need Council direction on whether to implement differently than for 1999. AP recommendations are from the December 1998 meeting on this issue.*

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Crab Sideboards

AFA catcher vessel restrictions require the Council to develop conservation and management measures to prevent pollock-eligible catcher vessels (CVs) from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. The clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a co-op because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income.

Therefore, the AP recommends the Council's interpretation of CV protective measures, i.e., that the CV protective measures be limited to protecting against adverse results of fishery co-ops on other fisheries, and therefore, would not be applied to those pollock CV's not participating in co-ops. Also, that this be sector specific. Motion carries unanimously (19/0).

The AP recommends the Council initiate analysis of the following options to mitigate impact of possible spillover effects of AFA on other fisheries:

1. No crossover allowed into any crab fisheries for vessels with membership in a pollock co-op.
2. No crossover allowed in the Tanner crab fishery only (opilio and bairdi).
3. No crossovers at the endorsement level. (Option 3 was added during the Dec. meeting - Motion carries 13/8)

   Sub-option: vessels which qualified based on bycatch of bairdi in red king crab would be restricted to bycatch of bairdi in the red king crab fishery.

   Duration sub-options:
   a. Permanent based on participation in co-op
   b. Only for year vessel is involved in co-op.
   c. Duration of AFA (clarified by staff that this was implied in the November AP motion)

3. Measures which would restrict pollock co-op vessels to their aggregate traditional harvest including:
   a. Restriction to the percentage of crab harvest in all species between 1995, 96, and 97.

Motion carries 17/0/2.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Groundfish Sideboards (Note: these actions were taken during the December meeting)

In further developing CV sideboards, the AP reiterates its November motion which stated that,

> "SB 1221 catcher vessel restrictions require the Council to develop conservation and management measures to prevent pollock-eligible catcher vessels (CVs) from exceeding their aggregate traditional harvest levels in other fisheries as a result of fishery cooperatives in the directed pollock fishery. The clear intent of Congress is to limit the impact of these restrictions or protective measures to catcher vessels actually participating in a co-op because there would be no reason, or need, to add restrictions on CVs that elect to fish pollock open access in the traditional manner. The CV open access pollock fishery would not have any unfair advantage to adversely impact other fisheries and may in fact depend on those other fisheries for a majority of their income.
>
> Therefore, the AP recommends the Council's interpretation of CV protective measures, i.e., that the CV protective measures be limited to protecting against adverse results of fishery co-ops on other fisheries, and therefore, would not be applied to those pollock CV's not participating in co-ops. Also, that this can be sector specific." Motion carries unanimously (19/0).

This is consistent with the language in the bill (§ 211(c)(1)(A) of the American Fisheries Act). The sideboards should restrict a vessel's new opportunities resulting from the enactment of the American Fisheries Act. Sideboards should not be punitive in nature based solely upon a vessel's AFA eligibility to fish for pollock in the Bering Sea/Aleutian Islands.

Participation in a co-op is defined as **ANY** use of a vessel's catch history by a co-op, whether by direct harvest, lease or stacking of quota.

To What BSAI Non-Pollock Fisheries the Restrictions Should Apply

1. CV restrictions should apply to those fisheries that run concurrent in time with the BSAI pollock fisheries. Priority should be given to:

   GOA pollock
   BSAI/GOA Pacific cod
   Rock sole
   Atka mackerel

2. Restrictions should apply to all non-pollock FMP fisheries. Motion carries 15/6.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
8	Catcher Vessel restrictions in other fisheries	Plan/Reg amendment	By July 1, 1999	Council ***

Groundfish Sideboards Continued (Note: these actions were taken during the December meeting)

When the CV Restrictions Should Apply

3. Co-op vessels harvest levels should be restricted only during the same time periods as the normal open access pollock fishery

   Sub-option: Use 1998 open access season dates by sector as a base reference
   Sub-option: Use 1999 sea lion modified season dates.

Nature of CV Restrictions

Option A: Absolute harvest amounts expressed in percentage of TAC in metric tons.
Option B: Restrict degree of effort measured in fishing days.

Determination of "Traditional Harvest Level"

1. The definition of "traditional" in non-pollock fisheries will be determined by catch history
   a. On basis of percentage of groundfish harvest in non-pollock fisheries.
   b. On basis of percentage of total groundfish harvest.

Option A: Apply one time frame equally to all groundfish targets
Option B: Apply differentially to fully utilized fisheries and fisheries in which the TAC is not taken on a regular basis.

   Sub-option 1: Use average catch history in the years 1995, 96, and 97.
   Sub-option 2: Use catch history based on years 1992-97.

      Sub-option under 1 and 2: Utilize "best 2 years"

Determination of "Aggregate"

Option A: Apply and monitor by the sector
Option B: Apply and monitor by individual co-op

Management of Non-Pollock fisheries

Co-op vessels limited to target fishing for non-pollock species during those times when the open access target fishery for the non-pollock species is open.

The AP recommends the Council ask the VBA Committee to develop options for PSC caps for co-op vessels in non-pollock fisheries.

Motion carries unanimously (21/0). Catcher vessel groundfish sideboard actions were taken during the December meeting.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
9	Protective measures for pollock ineligible processors	Plan/Reg amendment	By July 1, 1999	Council ***

The AP recommends that any conservation or management measures that are recommended to the Secretary in protecting processors not eligible to participate in the directed pollock fishery from adverse effects as a result of the Act or as a result of fishery cooperatives in the directed pollock fishery:

1. list the adverse effects that the measures are aimed at protecting,
2. quantify how the measures will protect the non-eligible processor from the adverse effects, and
3. document that the adverse effects have a high probability of occurring as opposed to being just perceived as a possibility of occurrence,

before any protective measures are implemented. Motion carries 6/2/6.

The AP recommends a discussion paper be initiated examining options to mitigate potential adverse impacts from AFA on non-pollock processors including:

1. The ability to allow processors not listed in Section 208 to process limited amounts of inshore pollock allocation, including requirement to participate in buyout provisions.
2. Excessive share caps on processors of 10%, 12%, 15% and 17.5%. A sub-option should also be examined which allows differential caps between pollock and non-pollock processors.
3. Restricting vessels used for processing in the inshore sector to a single geographic location.
4. Measures to restrict pollock processor activity in non-pollock fisheries to no more than historic levels including options using years 1995, 96 and 97.

The AP further requests the Council initiate a data gathering program to identify the benefits and impacts of AFA. Information tracked should examine state and federal fisheries and include:

ownership patterns
processor activity
product forms
ex-vessel price
employment changes
market share

Motion carries 18/1.

NEAR TERM (By July 1999 - Analyses by April 1999)

#	Action	Mechanism	Timeline	Tasking
14	Disclose catch and bycatch info by vessel	Regulatory amendments	No time certain	Council/ NMFS

The AP recommends the Council request NMFS and ADF&G initiate development of a discussion paper examining what disclosure of catch and bycatch information § 211(d) of the AFA would allow that is currently restricted, any other legal impediments to such disclosure, and how that disclosure may be beneficial in implementing §301(a)(9) and §303(a)(11) of the Magnuson-Stevens Act. Motion carries unanimously (21/0). This action was taken during the December meeting.

Staff note: *Will require complementary action by NMFS and State.*

LONG TERM (May be developed any time)

#	Action	Mechanism	Timeline	Tasking
10	Prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock)	FMP/Reg amendment	No time certain	Council ***

The AP recommends that the Council move forward with an FMP amendment to prevent excessive harvest/processing shares for all crab and groundfish (and excessive processing shares for pollock). The analysis should examine shares of fisheries as defined in the following options:

1. individual crab and groundfish species
2. Pollock, non-pollock groundfish, crab.

Motion carries unanimously 19/0.

Staff note: *This analysis likely cannot be initiated until after April, though processor caps are included in the suite of potential measures recommended by the AP regarding protection of pollock-ineligible processors.*

The AP recommends the Council ask staff to examine the following and report back to the Council:

1. Definitions used in AFA and Magnuson-Stevens for consistency.
2. The ability of pollock processors to expand their operations to other geographic locations, and
3. The ability of pollock processors to transfer their processing privileges.

Motion carries unanimously 19/0.

17	Report to Congress on Program Performance	Develop report	By Oct 2000	Council / NMFS ***
18	GAO Report to Council on fillet production	GAO Report	By June 1, 2000	GAO
19	Council response to GAO report	Develop amendments as needed	By late 2000	Council

Staff note: *No AP motion. May be addressed at a later meeting.*

OPTIONAL (may be developed as necessary - timelines vary)

#	Action	Mechanism	Timeline	Tasking
12	Recommend measures to mitigate AFA impacts	FMP and regulatory amendments	As needed	Council ***
*** The AP recommends the Council add to staff tasking the framework proposal submitted by Alaska Groundfish Databank for pollock co-ops in the Gulf of Alaska. Motion carries 20/0/1. (A motion to request the Council add to staff tasking proposal #21 restrictions on processing of trawl caught groundfish in the GOA including exempting vessels less than 60 ft, looking at trip limits, and addressing tax concerns for deliveries outside catch area, failed 7/11/1.) **Staff note:** *The Council also may wish to consider amending the GOA I/O3 to change the duration to mirror that of the BSAI allocations. If so, we could include that in the 'technical' amendment package being prepared for April review.*				
15	If necessary, change criteria for establishing Shoreside catcher vessel cooperatives in Section 210(b)(1)	Regulatory amendment to supersede legislation	Anytime	Council ***
The AP recommends the Council further address in a discussion paper, options for compensation to inshore catcher vessels with catch history delivering to catcher processors that is no longer available to them under AFA. Motion carries unanimously (19/0). Additionally, examine inserting a clause replacing language in §210(b)(1) to add an option for determining catch history for catcher vessels on the basis of the best two of three years in 1995, 96, 97. Motion carries unanimously (21/0). **Staff note:** *Clarified by staff that this likely will require regulatory action, and we will attempt to incorporate this within the "sideboard" amendment package for review in April..*				
13	Consider changing pollock CDQ %	FMP amendment for 2002-2004	Process amd in 2001	Council ***
16	If necessary, allow more shoreside processors	Via NMFS permit process	If TAC up 10% If loss of plant	Council
20	Renewal of program which expires 12/31/04	Full FMP and regulatory amendments	Analysis/ Action in 2004	Council ***

THE AP APPROVED THE FOLLOWING ADDITIONAL MOTIONS

*** The AP recommends the Council initiate analysis for the following management actions for the pollock fishery in the Gulf of Alaska

1. Trip limits of 75,000 - 400,000 maximum within a 24 hour period
2. Vessel length restriction of 125 ft.
3. Superexclusive areas
4. Limit the second trimester to 15% TAC allocation.

Motion carries 16/4

*** The AP recommends the Council initiate a regulatory amendment for examining start dates for the pollock fisheries (both A and B seasons). Motion carries unanimously 21/0.

Staff note: *The first motion above was approved by the AP in addition to measures related directly to AFA. The second motion above has already been tasked by the Council at the November meeting.*

AGENDA ITEM C-2(b)
DECEMBER 1998

Annotated Summary of American Fisheries Act Provisions

with tasking summary for each section

New Ownership Standards

Require 75% U.S. ownership of vessels by the October 1, 2001. The Secretary will apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) to determine whether the vessel is 75% U.S. owned (pp. 1-3). Final regulations to implement the 75% vessel ownership standard shall be published in the Federal Register by April 1, 2000 (p.3).

Vessels measuring 100' and greater shall file a statement of U.S. citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of Maritime Administration on an annual basis. The form shall be written in such a way as to allow the vessel owners to satisfy any annual renewal requirements for a certificate of documentation. After October 1, 2001 transfers of ownership and control of vessels will be rigorously scrutinized for violations (pp. 3-4). The three true motherships in the pollock fishery are exempted from section 12102(c) unless 50% ownership of the vessel changes (p.5).

The Secretary of Transportation shall establish requirements necessary to demonstrate compliance with Section 12102(c) of title 46, US Code, as amended by this Act for vessels less than 100'. Minimizing the administrative burden on industry must be taken into account (p. 4).

ACTION REQUIRED: Final regs based on specifics in the Act must be published by April 2000 to implement these standards (does not specify which agency, but presumably NMFS). Enforcement for vessels >100' is by Admistrator of Maritime Administration. For vessels <100', the Secretary of Transportation shall establish requirements and enforce these provisions. No Council action required.

Bering Sea/Aleutian Islands Pollock Fishery

Allocations

Effective January 1, 1999 (pp. 6-7).

10% of the BSAI TAC would be allocated to the Western Alaska **CDQ** fishery.

After subtraction of the CDQ allocation and bycatch reserves for other groundfish fisheries, the Secretary shall make a directed fishing allowance to each sector of the remaining pollock as a directed pollock fishery allocation. The directed pollock fishery allocation shall be divided as follows:

50% to catcher vessels harvesting pollock for delivery to the **inshore** component.

50% to catcher vessels harvesting pollock for delivery to the **inshore** component.
40% to catcher/processors harvesting pollock for processing by the **offshore** component
10% to catcher vessels harvesting pollock for processing by **motherships** in the offshore component

ACTION REQUIRED: **By NMFS** - These allocation percentages will be implemented for 1999 through the specifications process. As such, the percentage allocations by the Council in I/O3 will be disapproved by the Secretary. Two additional measures for the CDQ fisheries will be implemented by emergency rule via amendment 45: (1) exemption of accounting for pollock bycatch in non-pollock CDQ fisheries, and (2) removal of squid from the CDQ program to allow for full prosecution of the 10% pollock allocation.

By Council - Because new percentage allocations are mandated by the Act, the most expeditious solution would be for the Council to comment to the Secretary that the percentages in the Act be substituted for those submitted by the Council. Our FMP would then be amended to reflect the correct allocations. The duration of the allocations, as specified in the Act, should also be substituted by the Secretary. This amendment would expire in five years, though the CDQ allocation may be adjusted after two years. The Act is silent with regard to two important provisions from I/O3, and also require Council comment: (1) definition of the CVOA, and which sectors are excluded for certain seasons, and (2) the 2.5% set aside of the onshore quota for small catcher vessels, to be harvested just prior to the B season. The Council needs to provide comment to the Secretary regarding these two provisions. It appears likely that the CVOA designations need to remain as part of the overall pollock management program (though adjustments are possible given the upcoming marine mammal discussions). The 2.5% set aside for small catcher vessels is an issue for which Council comment will be expected. NOTE that the 2.5% set aside may be difficult to implement under a coop situation and would only be relevant for 1999. Staff assumes that all other provisions of I/O3 are subsumed by the Act.

Buyout

The Secretary shall provide $75,000,000 through a direct loan obligation (p.7). Those monies plus $15,000,000, of the $20,000,000 Federal funds appropriated (p. 7), will be paid to the owners of the catcher/processor vessels American Empress, Pacific Scout, Pacific Explorer, Pacific Navigator, Victoria Ann, Elizabeth Ann, Christina Ann, Rebecca Ann, and Browns Point ($90,000,000 total) no later than December 31, 1998 (p. 7). In return, these vessels shall be permanently ineligible for any U.S. fishery endorsements effective December 31, 1998 and their catch histories shall be extinguished. Excluding the American Empress, all of these vessels shall be scrapped by December 31, 2000 (pp. 7-8). The American Empress cannot be used to harvest any fish stock outside the U.S. EEZ that occurs within the exclusive economic zone of the U.S. (e.g. this boat cannot be used to fish pollock in Russia) (p. 7).

The remaining $5,000,000, of the $20,000,000 in appropriated Federal funds, shall be divided among the owners of the catcher/processor vessels American Enterprise, Island Enterprise, Kodiak Enterprise, Seattle Enterprise, and US Enterprise, if a cooperative agreement is filed by the catcher/processor sector, not less than 30 days prior to the start of the 1999 pollock fishing season. If a cooperative agreement is not signed, then the $5,000,000 will be divided among the catcher processors listed in paragraphs 1-20 of section 8(e) based on the individual vessels percentage of the total harvest these vessels took during the 1997 directed pollock fishery (p.8). Conference reports (but not the Act itself) indicate an additional $10 million in federal appropriation to fund, among other things, NMFS costs of implementation ($6 million), the Secretary of Transportation costs ($2 million), the crab vessel buyback program ($1 million to underwrite $100 million in costs).

Repayment of the $75,000,000 loan shall begin with pollock harvested after January 1, 2000 and continue until

the loan obligation is fully repaid. The repayment shall be based on a fee of 0.6 cents for each pound round-weight of all pollock harvested in the directed inshore pollock fishery, to be equally shared by the processors and catcher vessels. (p. 7 and conference report).

ACTION REQUIRED: None by Council. **Secretary** must establish fee program for inshore sector to repay loan obligation starting in January 2000. **NMFS** must determine list of eligible catcher vessels delivering to catcher processors to implement $5 million payout in event of no coop contract. This will be done in late 1998 by requesting vessels to provide proof of 1997 landings for qualification. NMFS must also verify that the 8 vessels have been scrapped by December 31, 2000, and that the American Empress does not fish stocks that occur in the U.S. EEZ.

Eligible Vessels

Catcher Vessels Onshore. Effective January 1, 2000, only catcher vessels that have been determined by the Secretary to have delivered more than 250 metric tons of pollock in the directed pollock fishery to the inshore sector in any year 1996, 1997, or between January 1 and September 1, 1998 or vessels that are less than 60' LOA and have delivered at least 40 metric tons of pollock to processors in the inshore sector in any one of these three time periods, will be eligible to fish in the BSAI inshore directed pollock fishery. Vessels must also be qualified under the groundfish LLP program for the BS/AI in addition to meeting the Act's landings requirements in order to be eligible for the BSAI pollock fishery. Catcher vessels eligible to deliver pollock from the directed pollock fishery to catcher/processors are excluded from the list of vessels eligible to deliver inshore (p. 9).

Catcher Vessels to Catcher/Processors. Effective January 1, 1999 only catcher vessels that delivered at least 250 mt and 75% of the pollock it harvested to catcher/processors in the offshore sector during the 1997 directed pollock fishery are eligible. Catcher vessels must also be qualified for a BS or AI groundfish endorsement under LLP to be eligible (p. 9). Seven vessels are listed in this group.

Catcher Vessels to Motherships. Effective January 1, 2000, any catcher vessel that has delivered at least 250 metric tons of pollock to motherships in the offshore sector in any year 1996, 1997, or between January 1, 1998 and September 1, 1998 and is qualified under the Council's groundfish LLP in the BS or AI, is eligible to be included in this sector, so long as they are not also included in the list of catcher vessels delivering to the catcher processor sector (vessels are listed on pp. 9-10). Nineteen vessels are listed in this group.

Motherships. Effective January 1, 2000, only the Excellence, Golden Alaska, and Ocean Phoenix shall be allowed to process pollock from the directed BSAI mothership pollock allocation (p. 10).

Catcher Processors. Effective January 1, 1999, only the twenty listed vessels will be eligible to harvest pollock in a directed fishery. Any other catcher processor that harvested more than 2,000 metric tons of pollock in the 1997 directed pollock fishery, and is determined to be eligible to harvest BS/AI pollock under the Council's groundfish LLP, will also be eligible, but will be limited in aggregate to 0.5 percent of the catcher/processor sector's total allocation (pp. 10-11).

Shoreside Processors. Effective January 1, 2000, only processors that processed more than 2,000 metric tons of round-weight pollock from the inshore sector's directed pollock fishery during both 1996 and 1997 will qualify to process over 2,000 metric tons of round-weight pollock from the inshore pollock fishery. Processors in the inshore sector that did not meet the 2,000 metric ton round-weight requirement may still process pollock from the directed fishery, but are limited by a 2,000 metric ton round-weight annual cap (pp. 11-12).

The North Pacific Council may recommend measures that allow additional processors to process more than 2,000 metric tons of round-weight pollock if the BS/AI pollock TAC increases by at least 10 percent above the 1997 level, or in the advent of actual total loss or constructive total loss of an inshore processor that is eligible to process more than 2,000 metric tons of round-weight pollock from the inshore allocation (p. 12).

ACTION REQUIRED: **NMFS** -For catcher vessels delivering to catcher processors, NMFS will request vessels to submit proof of 1997 landings for qualification for this sector. For catcher processors the records are more accessible and NMFS will make such determination prior to 1999 fishing season. All other sector eligibilities begin in year 2000, allowing NMFS time to make such determinations prior to beginning of that fishing season. For catcher processors not listed (initial data queries indicate only one vessel, the Ocean Peace, that qualifies), NMFS will use the specifications process to implement this 0.5% set-aside. Vessel(s) will be required to submit documentation for NMFS review. A mechanism for interim permits will be included, in the event NMFS is unable to make a final eligibility determination by the start of the fishery.

Council - may recommend measures to allow additional inshore processors in the event of a 10% TAC increase, or in the event of a lost plant.

Replacement Vessels.

In the event of the actual total loss or constructive loss, an eligible vessel may be replaced so long as the vessel was not lost due to willful misconduct of the owner or his agent. The replacement vessel must have been built in the US and if the vessel is (was) rebuilt that must also have taken place in the US. The replacement vessel must make a landing by the end of the third calendar year after the year the vessel is lost or destroyed. If the lost vessel was greater than 165' in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel must be of equal or lesser length, tons, and horsepower. If the lost vessel was less than 165' registered length, then the replacement vessel may exceed the original vessel's length, gross tons, and horsepower by 10 percent, but only up to the thresholds. The replacement vessel must also meet the US ownership provisions of this act (p. 12).

ACTION REQUIRED: This is different from the moratorium and LLP provisions that do not allow any increase in vessel length of a replacement for a vessel that was lost or destroyed. In addition, the 20% upgrade rule only applies to vessels less than 125' under the moratorium and LLP. No immmediate action is required by NMFS, but the **Council** will need to initiate an amendment to the moratorium/LLP provisions regarding lost vessels, to reflect the allowances under the Act for those specific vessels.

List of Ineligible Vessels

Effective December 31, 1998, the following vessels will be permanently ineligible to participate in any US fishery and their catch history is voided for the purpose of qualifying for any current or future US fishing privileges or rights: American Empress, Pacific Scout, Pacific Explorer, Pacific Navigator, Victoria Ann, Elizabeth Ann, Christina Ann, Rebecca Ann, and the Browns Point (p. 13).

ACTION REQUIRED: **NMFS** and the **Coast Guard** will be responsible for extinguishing the fisheries license/endorsements of these vessels, and ensuring that the catch histories of these vessels are not used to qualify for any present or future limited access program in the U.S. EEZ.

Fishery Cooperative Limitations

Release of Information About Cooperatives and The Harvests of Individual Vessels Within the Cooperative.

Any contract implementing or substantially modifying a fishery cooperative shall be filed with the North Pacific Council and the Secretary, not less than 30 days prior to the start of fishing. In addition, a letter from a representative of the cooperative to the Department of Justice requesting a business review and any response received from the Department of Justice shall also be made available to the North Pacific Council and the Secretary. Information from these documents, that is deemed necessary by the Council or the Secretary, shall be made available to the public, and at a minimum will include the list of parties to the contract, the list of vessels involved, and the amount of pollock and other fish to be harvested by each party to the contract (pp.13-14). The North Pacific Council and the Secretary shall also make available to the public, harvest information from vessels in the directed pollock fishery that is deemed necessary, on a vessel-by-vessel basis. Harvest information that is released to the public may include both target and bycatch species data (p. 14).

Cooperative of Catcher Vessels in the Inshore Sector

Effective January 1, 2000, after filing the required paper work with the North Pacific Council and the Secretary, which includes the information in the previous (release of information) section and the signatures of the owners of at least 80 percent of the "qualified catcher vessels", a cooperative may be formed. A "qualified catcher vessel" is defined as a catcher vessel that meets the minimum inshore delivery requirements and has delivered more pollock to its inshore cooperative processor than any other inshore processor during the year prior to the cooperative being formed. Under the cooperative, that processor must have agreed to take deliveries from the catcher vessel and the catcher vessel must deliver at least 90 percent of its pollock from the directed pollock fishery to that processor. The remaining 10 percent may be delivered to other inshore processors if allowed under the signed cooperative agreement (p. 14).

Qualified catcher vessels that do not enter into the cooperative will be allowed to pool their portion of the TAC in an open access style fishery (p. 14). Any contract implementing a cooperative must allow qualified inshore catcher vessels not included in the contract to enter the contract before the fishing begins, under the same terms and conditions as the vessels originally included in the contract (p. 14).

Qualified inshore catcher vessels that harvested pollock for delivery to catcher processors or motherships during 1995, 1996 or 1997 shall be provided, to the extent practicable, fair compensation under the terms of the cooperative (p. 15).

Cooperative of Catcher Vessels in the Catcher/Processor Sector

Effective January 1, 1999, not less than 8.5% of the catcher/processor's directed pollock allocation shall be made available for harvest only by eligible catcher vessels in the catcher/processor sector. These qualified catcher vessels may enter into a cooperative with the catcher processor sector during the 1999 pollock fishery, so long as the contract implementing the cooperative establishes penalties to prevent these catcher vessels from harvesting more than their traditional levels of harvest in other U.S. EEZ fisheries during 1999 (p. 11).

Cooperative of Catcher Vessels in the Mothership Sector

Effective January 1, 2000, qualified catcher vessels in the mothership sector may enter into a cooperative if a

minimum of 80 percent of the qualified catcher vessel owners join. Any contract implementing a cooperative must allow qualified catcher vessels not included in the contract to enter the contract before fishing begins, under the same terms and conditions as the vessels originally included in the contract (pp. 15-16).

ACTION REQUIRED: **NMFS**, for 1999 will need to accomodate the 8.5% set-aside for catcher vessels delivering to catcher processors - this will be done through the specifications process. Coop contracts must be reviewed to determine that there are provisions for this group of catcher vessels to not exceed their traditional harvest levels in other fisheries. Act does not specify formal Council review and approval role, but **Council** (and Secretary) will receive copies of coop agreements (contracts) at least 30 days prior to fishing season, ensure that the basic provisions are contained, and make information from these contracts available to the public.

Excessive Shares

Harvesting. No person, corporation, or other entity may harvest more than 17.5 percent of the BS/AI pollock TAC available to the directed pollock fisheries (p. 16).

Processing. The Council must recommend measures to the Secretary that would prohibit any individual or entity from processing an excessive share of the BS/AI directed pollock fishery TAC, though no deadline was included for making the recommendation. If the Council recommends a level less than 17.5 percent then processors may continue to process up to 17.5 percent under a grandfather provision. The Council must consider the need for catcher vessels to have competitive buyers when determining excessive share limits (p.16).

If the Council or the Secretary believes that an individual or entity has exceeded the excessive share cap they may submit information to the Administrator of the Maritime Administration to allow the Administrator to determine if a violation occurred. The Administrator shall submit his finding to the North Pacific Council and the Secretary as soon as practicable (p. 16). When determining excessive share limits, an entity that owns or controls 10 percent of another entity shall be considered one entity (p. 16).

ACTION REQUIRED: **NMFS** - Coop agreements should reflect the 17.5% limit, which will also be published as a limit in the specifications process. NMFS in-season (and end of season) monitoring will be used to determine that no entity exceeds the tonnage associated with the 17.5% limit. **Council** must initiate amendments to establish limits on pollock processing by any one entity (though there is no time certain on this mandate).

Landings Tax

Any contract implementing a cooperative shall include a clause that requires all members to pay to the State of Alaska an amount equal to the State Landings Tax on any pollock harvested in the directed pollock fishery. If this clause is not included in the contract, the cooperative will not be allowed to form (p. 17).

ACTON REQUIRED: **NMFS/Council** review of contracts.

Penalties

In addition to civil penalties and permit sanctions, violations shall be subject to forfeiting any fish harvested or processed illegally to the Secretary of Commerce (p. 17).

Protection of Other Fisheries

Generally, the Council shall recommend to the Secretary any management measures it deems necessary to protect other fisheries under its jurisdiction from impacts of this Act or the cooperatives formed as a result of this Act (p.17). Specific mandates of the Act are as follows:

Catcher Processor Restrictions

Effective January 1, 1999, eligible catcher processors under this Act shall not, in aggregate, harvest a greater percentage (Eligible Cps catch / Offshore TAC) of a Council managed BS/AI groundfish species (including PSC) than was harvested during 1995, 1996, and 1997 (other than the pollock fishery). In addition, they shall not harvest more than 11.5 percent of the Central and 20 percent of the western Aleutian Islands directed Atka mackerel fishery TAC; process any pollock from the inshore or mothership allocation; process any BS/AI crab; harvest any fish from the Gulf of Alaska; process any pollock in the Gulf of Alaska; process any fish harvested from area 630 in the Gulf of Alaska; or, process in aggregate more than 10 percent of the Pacific cod harvested in areas 610, 620, and 640 of the Gulf of Alaska (pp. 17-18).

In addition, eligible catcher processors are not allowed to harvest fish from any other U.S. fishery except the Pacific coast whiting fishery or where specifically authorized to harvest or process fish under a Council's fishery management plan (p. 18).

Effective January 1, 1999 eligible catcher processors listed by name in this Act, and participating in CDQ fisheries, are also required to weigh all the fish on a NMFS certified scale when harvesting groundfish, and carry two observers on board while harvesting or processing groundfish. These regulations will go into effect January 1, 2000 for all other eligible catcher processors (p. 19).

Catcher Vessels

By July 1, 1999, the Council shall make recommendations to the Secretary to prevent catcher vessels that are eligible to participate in the inshore, catcher/processor, or mothership directed pollock fishery from exceeding their aggregate traditional harvest in other fisheries under the authority of the North Pacific Council (p.19).

Catcher vessels that are eligible to deliver directed pollock harvests to the catcher/processor sector are required to have made crab landings in 1997 and meet the requirements of the crab LLP. The Council is also directed to eliminate latent licenses from the crab LLP (p. 20).

NOTE: The action taken at the October Council meeting may fulfill the requirement to eliminate latent licenses . The Council's action reduced the number of licenses from 365 to 286, or a 23% reduction (including the 12 under 60' vessels which were exempted from the recent participation requirements). In October however, the Council noticed that it would discuss the crab LLP eligibility issue in the context of SB1221, particularly whether SB1221 held implications regarding the number of licenses, or whether State of Alaska management considerations may be affected by SB1221. The attached Table shows that the provisions of the Act do not change the number of eligible crab vessels, when combined with the Council's October action (though the Act does eliminate three endorsements). An indirect impact of the Act may be that the crab qualified catcher vessels (which are also pollock vessels fishing under a possible coop) may now be able to more fully participate in crab fisheries for which they qualify; however, as noted above the Act also

specifically requires the Council to submit, by July 1999, measures to prevent these (and all) catcher vessels from exceeding their aggregate, historic harvest in crab as well as other groundfish fisheries.

Inshore Processors

By July 1, 1999, the Council shall make recommendations to the Secretary to protect processors not eligible to participate in the directed pollock fishery. If the Council does not make a recommendation by this date or the Secretary determines the proposed measure are not adequate, the Secretary may alter the regulations, to the extent deemed necessary (p. 19).

Effective January 1, 2000, the owners of motherships and inshore processors that are under a cooperative are prohibited from annually processing a greater percentage of each crab species than their facilities processed on average during 1995, 1996, and 1997. Facilities shall be deemed to have the same owner if an entity owns or controls 10 percent or more of each facility (pp.19-20).

The Council is directed to recommend management measures that prevent an individual or entity from harvesting or processing an excessive share of crab or groundfish fisheries in the BS/AI. Note that no time line was set in the Act for this provision (p.20).

ACTION REQUIRED: **NMFS** - NMFS proposes to implement the catcher processor restrictions as follows: use the specifications process to place limits on the amounts of non-pollock groundfish that can be taken by the 20 listed pollock vessels. These limits will be in aggregate and will be based on the amounts harvested in non-pollock fisheries in 1995, 1996, and 1997 (weighted average), by the original 29 total vessels. The PSC cap will be similarly based on PSC taken in those years, in non-pollock fisheries, by the same 29 vessels. The PSC cap for the 20 vessels is intended to be further apportioned to the various non-pollock target fisheries. NOTE that it will be a cap, within the overall PSC cap, as opposed to a guaranteed allocation to those 20 vessels. When a groundfish or PSC apportionment is reached, NMFS will close all trawling for those vessels, other than pelagic (for pollock). PSC taken by these 20 vessels in pollock targets will be assigned to the overall, fleet-wide PSC cap. This approach could be adjusted by the Council for year 2000 and beyond. Observer and scale requirements will be enforced as are all such requirements.

The specific limits on Atka mackerel will also be implemented via the specifications process. In year 2000 issuance of LLP licenses by the RAM division will have to take into account the restrictions on GOA endorsements for some of the affected catcher processors (see related Table attached - there are 4 vessels affected, with a total of 6 endorsements). For 1999, it is assumed the statute itself will be sufficient for NMFS/Coast Guard enforcement of this provision.

The restrictions on BSAI crab processing and harvesting fish in the GOA require no additional regulation and will be implemented by NMFS via force of the statutes. Restrictions on processing of pollock/cod in/from the GOA will be implemented as part of Amendment 51 for the GOA (I/O3). Requirements for weighing fish on certified scale, and for carrying two observers, are clear in the statute and will be enforced as with any other observer requirements.

Crab processing limits for motherships and inshore processors begin in year 2000 and will be implemented by NMFS in the same manner as described for harvest limits (in-season and post-season monitoring to ensure that no entity processes more than its historical average, expressed in tonnages).

Council - Along with the general mandate to protect non-pollock harvesting/processing, the following specific amendments are mandated: (1) By July 1, 1999 measures to prevent all catcher vessels from exceeding, in their aggregate, their traditional harvest (weighted average of 1995, 1996, and 1997) in other Council managed fisheries (includes groundfish and crab fisheries); (2) By July 1, 1999 measures to protect processors not eligible to participate in the directed pollock fishery; (3) By no time certain, measures to prevent an individual or entity from harvesting or processing an excessive share of any groundfish or crab fisheries in the BSAI (this is in addition to the mandate to establish processing limits for pollock). The Council may wish to provide direction to staff at this meeting, or in December, regarding alternatives and options to be evaluated in the first two of these amendment packages. The restrictions as detailed above for catcher processors would serve as a template for these amendments relative to catcher vessels and inshore plants. Final Council action would be necessary in June 1999, with initial review of the analyses in April. Item (3) may be best pursued as a separate amendment package, given there are no time certain mandates attached.

Fisheries Outside the North Pacific

By no later than July 1, 1999, the **Pacific Council** shall recommend measures to protect fisheries under its jurisdiction from adverse impacts caused by this Act. If the Pacific Council does not take sufficient action by this date the Secretary, by regulation, may implement adequate measures (p. 20).

Bycatch Information

The Council and Secretary may publicly disclose any information from the groundfish fisheries under the authority of the NPFMC that would be beneficial in implementing section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act on vessel-by-vessel basis (pp.20-21).

MSFCMA Language:

301(a)(9) Conservation and management measures shall, to the extent practicable, (A) minimize bycatch and (B) to the extent bycatch cannot be avoided, minimize the mortality of such bycatch.

303(a)(11) establish a standardized reporting methodology to assess the amount and type of bycatch occurring in the fishery, and include conservation and management measures that, to the extent practicable and in the following priority--

(A) minimize bycatch; and

(B) minimize the mortality of bycatch which cannot be avoided.

ACTION REQUIRED: None required, but the Council may recommend and the Secretary may approve measures to allow public disclosure of any necessary information. This might include information that was heretofore considered to be confidential under State and/or Federal laws.

CDQ Loan Program

The Secretary is authorized to provide loans to CDQ communities, subject to available appropriations, for the purpose of purchasing vessels and shoreside processors eligible to participate in the BSAI directed pollock fishery. The vessel LISA MARIE (1038717) shall also be included along with the eligible pollock vessels (p. 21).

Restrictions on Federal Loans

Loans may not be provided by the Federal Government for the purpose of constructing or rebuilding fishing vessels greater than 165' in registered length, more than 750 gross tons, or capable of producing 3,000 shaft horsepower. This prohibition excludes vessels in the menhaden fishery and the tuna purse seine fishery outside the US EEZ or in the area of the "South Pacific Region Fisheries Treaty" (p. 21).

Duration of Program

The pollock allocation percentages, vessels and processors eligible to participate in the directed pollock fishery, and the cooperative structures shall remain in effect until December 31, 2004, and will be repealed on that date. After December 31, 2004 the Council may recommend to the Secretary that the program be continued, altered, or discontinued (p.21). Except for the measures required in this Act, nothing shall be construed to limit the authority of the NPFMC or the Secretary under the MSFCMA (p.21).

The Council may recommend to the Secretary that conservation and management amendments be made to the fishery cooperative limitations and CDQ program under this Act for conservation purposes or to mitigate adverse effects on the fisheries or to fewer than three vessels in the directed pollock fishery. However, the allocation percentages and the vessels and processors listed under this Act may not be altered prior to December 31, 2004. Any changes must take into account all factors affecting the fishery and must be imposed fairly and equitably, to the extent practicable, among and within sectors in the directed pollock fishery (p 22).

The 10 percent CDQ allocation may be changed after December 31, 2001 if the Council finds that CDQ program for pollock has been adversely affected by this Act (p. 22).

The criteria which sets the harvest percentages for catcher vessels delivering to inshore cooperatives required in paragraph 1 of section 210(b) may be altered for conservation and management measures (p.22).

ACTION REQUIRED: None required, though the Council may initiate amendments described above if deemed necessary.

Required Reports

Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act. The report shall include information on the Acts effects on fish conservation and management, bycatch levels, fishing communities, business and employment practices of participants in any fishery cooperatives, the western Alaska CDQ program, and any fisheries outside of the authority of the North Pacific Council, and other matters as the North Pacific Council deems appropriate (p. 22).

Not later than October 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on whether this Act has negatively affected the market for fillets and fillet blocks, including the reduction in the supply of such fillets and fillet blocks. If the report determines that such markets have been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects (p. 22).

Other Issues

If any provision of this Act is determined to be unconstitutional, the remaining sections of this Act shall not be affected (p.22). If any provision of this Act is determined to be inconsistent with an existing international agreement relating to foreign investment to which the U.S. is a party, such provisions of this Act shall not apply to the owner or mortgagee of that vessel on October 1, 2001 to the extent of the inconsistency. If any ownership interest in that vessel is transferred to or otherwise acquired by a foreign individual or entity after October 1, 2001, then the provisions in this Act shall apply (pp. 22-23).

ATTACHMENT

1. Crab

Of the 7 vessels eligible under SB 1221's offshore designation for Catcher Vessels delivering to Catcher Processors, 3 qualify under the *general license* criteria for Crab LLP. These 3 are also qualified under the LLP's Proposed Action 5, Alternative 9, to cross over into the crab fisheries, and are highlighted below.

				Eligibility		
Vessel Name	**ADF&G**	**USCG**	**Length (ft)**	**General LLP**	**LLP Alt. 9**	**SB 1221 (1997 Crab Landings)**
AMERICAN CHALLENGER	39113	615085	87	NO	NO	NO
FORUM STAR	59687	925863	96	NO	NO	NO
MUIR MILACH	41021	611524	86	YES	YES	YES (B.Bay Red)
NEAHKAHNIE	32858	599534	98	NO	NO	NO
OCEAN HARVESTER	00101	549892	108	YES	YES	YES (B.Bay Red)
SEA STORM	40969	628959	123	YES	YES	YES (B.Bay Red)
TRACY ANNE	54654	904859	100	NO	NO	NO

All 3 of these eligible vessels have also made crab landings in 1997 (thus complying with SB 1221's exemption from the prohibitions on crab participation), though these landings were *only for Bristol Bay Red King Crab*. Assuming that SB 1221's species criteria speaks only to a distinction between King and Tanner crab, then the 3 vessels must *each* forfeit a BSAI Tanner endorsement, but can keep all previous endorsements for King crab. Therefore, SB 1221 effectively cuts out a total of 3 endorsements that would have otherwise been allowed under LLP.

		Endorsements Prior to SB 1221				
Vessel Name	**ADF&G**	**BSAI Tanner**	**Prib Blue/Red King**	**Adak Red King**	**B.Bay Red King**	**Total**
MUIR MILACH	41021	1*		1	1	**3**
OCEAN HARVESTER	00101	1*	1		1	**3**
SEA STORM	40969	1*	1		1	**3**

* Denotes endorsements that will be lost assuming SB 1221's "species specific" language for 1997 crab landings

2. Groundfish

Of the twenty vessels eligible to operate as Catcher Processors under SB 1221, the following four must forfeit a combined total of six GOA groundfish endorsements according to the legislation's prohibitions on all GOA fishing.

				GOA Endorsements			
Vessel Name	**ADF&G**	**USCG**	**Length (ft)**	**EG**	**CG**	**WG**	**Total**
AMERICAN ENTERPRISE	54836	594803	210	1	1	1	**3**
HIGLAND LIGHT	56974	577044	270	0	0	1	**1**
NORTHERN GLACIER	48075	663457	201	0	0	1	**1**
STARBOUND	57621	944658	240	0	0	1	**1**
				Total			**6**

TITLE II—FISHERIES
Subtitle I—Fishery Endorsements

SEC. 201. SHORT TITLE.

This title may be cited as the "'American Fisheries Act."

SEC. 202. STANDARD FOR FISHERY ENDORSEMENTS.

(a) STANDARD.—Section 12102(c) of title 46, United States Code, is amended to read as follows—

''(c)(1) A vessel owned by a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is not eligible for a fishery endorsement under section 12108 of this title unless at least 75 per centum of the interest in such entity, at each tier of ownership of such entity and in the aggregate, is owned and controlled by citizens of the United States.

''(2) The Secretary shall apply section 2(c) of the Shipping Act, 1916 (46 App. U.S.C. 802(c)) in determining under this subsection whether at least 75 per centum of the interest in a corporation, partnership, association, trust, joint venture, limited liability company, limited liability partnership, or any other entity is owned and controlled by citizens of the United States. For the purposes of this subsection and of applying the restrictions on controlling interest in section 2(c) of such Act, the terms 'control' or 'controlled'—

''(A) shall include—

''(i) the right to direct the business of the entity which owns the vessel;

''(ii) the right to limit the actions of or re-place the chief executive officer, a majority of the board of directors, any general partner, or any person serving in a management capacity of the entity which owns the vessel; or

''(iii) the right to direct the transfer, operation or manning of a vessel with a fishery endorsement; and

''(B) shall not include the right to simply participate in the activities under subparagraph (A), or the use by a mortgagee under paragraph (4) of loan covenants approved by the Secretary.

''(3) A fishery endorsement for a vessel that is chartered or leased to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement and used as a fishing vessel shall be invalid immediately upon such use.

''(4)(A) An individual or entity that is otherwise eligible to own a vessel with a fishery endorsement shall be ineligible by reason of an instrument or evidence of indebtedness, secured by a mortgage of the

vessel to a trustee eligible to own a vessel with a fishery endorsement that is issued, assigned, transferred or held in trust for a person not eligible to own a vessel with a fishery endorsement, unless the Secretary determines that the issuance, assignment, transfer, or trust arrangement does not result in an impermissible transfer of control of the vessel and that the trustee—

"(i) is organized as a corporation, and is doing business, under the laws of the United States or of a State;

"(ii) is authorized under those laws to exercise corporate trust powers;

"(iii) is subject to supervision or examination by an official of the United States Government or a State;

"(iv) has a combined capital and surplus (as stated in its most recent published report of condition) of at least $3,000,000; and

"(v) meets any other requirements prescribed by the Secretary.

"(B) A vessel with a fishery endorsement may be operated by a trusuee only with the approval of the Secretary.

"(C) A right under a mortgage of a vessel with a fishery endorsement may be issued, assigned, or transferred to a person not eligible to be a mortgagee of that vessel under section 31322(a)(4) of this title only with the approval of the Secretary.

"(D) The issuance, assignment, or transfer of an instrument or evidence of indebtedness contrary to this paragraph is voidable by the Secretary.

"(5) The requirements of this subsection shall not apply to a vessel when it is engaged in fisheries in the exclusive economic zone under the authority of the Western Pacific Fishery Management Council established under section 302(a)(1)(H) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(H)) or to a purse seine vessel when it is engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone of the United States or pursuant to the South Pacific Regional Fisheries Treaty, provided that the owner of the vessel continues to comply with the eligibility requirements for a fishery endorsement under the federal law that was in effect on October 1, 1998. A fishery endorsement issued by the Secretary pursuant to this paragraph shall be valid for engaging only in fisheries in the exclusive economic zone under the authority of such Council, in such tuna fishing in the Pacific Ocean, or pursuant to such Treaty.

"(6) A vessel greater than 165 feet in registered length, of more than 750 gross registered tons, or that has an engine or engines capable of producing a total of more than 3,000 shaft horsepower is not eligible for a fishery en-dorsement under section 12108 of this title unless—

"(A)(i) a certificate of documentation was issued for the vessel and endorsed with a fishery endorsement that was effective on September 25, 1997;

"(ii) the vessel is not placed under foreign registry after the date of the enactment of the American Fisheries Act; and

"(iii) in the event of the invalidation of the fishery endorsement after the date of the enactment of the American Fisheries Act, application is made for a new fishery endorsement within fifteen (15) business days of such invalidation; or

"(B) the owner of such vessel demonstrates to the Secretary that the regional fishery management council of jurisdiction established under section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)) has recommended after the date of the enactment of the American Fisheries Act, and the Secretary of Commerce has approved, conservation and management measures in accordance with such Act to allow such vessel to be used in fisheries under such council's authority."

(b) PREFERRED MORTGAGE.—Section 31322(a) of title 46, United States Code is amended—

(1) by striking "and" at the end of paragraph (2);

(2) by striking the period at the end of para-graph (3)(B) and inserting in lieu thereof a semicolon and "and"; and

(3) by inserting at the end the following new paragraph:

"(4) with respect to a vessel with a fishery endorsement that is 100 feet or greater in registered length, has as the mortgagee—

"(A) a person eligible to own a vessel with a fishery endorsement under section 12102(c) of this title;

"(B) a state or federally chartered financial institution that satisfies the controlling interest criteria of section 2(b) of the Shipping Act, 1916 (46 U.S.C. 802(b)); or

"(C) a person that complies with the provisions of section 12102(c)(4) of this title."

SEC. 203. ENFORCEMENT OF STANDARD.

(a) EFFECTIVE DATE.—The amendments made by section 202 shall take effect on October 1, 2001.

(b) REGULATIONS.—Final regulations to implement this subtitle shall be published in the Federal Register by April 1, 2000. Letter rulings and other interim interpretations about the effect of this subtitle and amendments made by this subtitle on specific vessels may not be issued prior to the publication of such final regulations. The regulations to implement this subtitle shall prohibit impermissible transfers of ownership or control, specify any transactions which require prior approval of an implementing agency,

identify transactions which do not require prior agency approval, and to the extent practicable, minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the opportunity to form fishery cooperatives.

(c) VESSELS MEASURING 100 FEET AND GREATER.—

(1) The Administrator of the Maritime Administration shall administer section 12102(c) of title 46, United States Code, as amended by this subtitle, with respect to vessels 100 feet or greater in registered length. The owner of each such vessel shall file a statement of citizenship setting forth all relevant facts regarding vessel ownership and control with the Administrator of the Maritime Administration on an annual basis to demonstrate compliance with such section. Regulations to implement this subsection shall conform to the extent practicable with the regulations establishing the form of citizenship affidavit set forth in part 355 of title 46, Code of Federal Regulations, as in effect on September 25, 1997, except that the form of the statement under this paragraph shall be written in a manner to allow the owner of each such vessel to satisfy any annual renewal requirements for a certificate of documentation for such vessel and to comply with this subsection and section 12102(c) of title 46, United States Code, as amended by this Act, and shall not be required to be notarized.

(2) After October 1, 2001, transfers of ownership and control of vessels subject to section 12102(c) of title 46, United States Code, as amended by this Act, which are 100 feet or greater in registered length, shall be rigorously scrutinized for violations of such section, with particular attention given to leases, charters, mortgages, financing, and similar arrangements, to the control of persons not eligible to own a vessel with a fishery endorsement under section 12102(c) of title 46, United States Code, as amended by this Act, over the management, sales, financing, or other operations of an entity, and to contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

(d) VESSELS MEASURING LESS THAN 100 FEET.—The Secretary of Transportation shall establish such requirements as are reasonable and necessary to demonstrate compliance with section 12102(c) of title 46, United States Code, as amended by this Act, with respect to vessels measuring less than 100 feet in registered length, and shall seek to minimize the administrative burden on individuals who own and operate such vessels.

(e) ENDORSEMENTS REVOKED.—The Secretary of Transportation shall revoke the fishery endorsement of any vessel subject to section 12102(c) of title 46, United States Code, as amended by this Act, whose owner does not comply with such section.

(f) PENALTY.—Section 12122 of title 46, United States Code, is amended by inserting at the end the following new subsection:

"(c) In addition to penalties under subsections (a) and (b), the owner of a documented vessel for which a fishery endorsement has been issued is liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly falsified or concealed a material fact, or knowingly made a false statement or representation with respect to the eligibility of the vessel under section 12102(c) of this title in applying for or applying to renew such fishery endorsement."

(g) CERTAIN VESSELS.—The vessels EXCELLENCE (United States official number 967502), GOLDEN ALASKA (United States official number 651041), OCEAN PHOENIX (United States official number 296779), NORTHERN TRAVELER (United States official number 635986), and NORTHERN VOYAGER (United States official number 637398) (or a replacement vessel for the NORTHERN VOYAGER that complies with paragraphs (2), (5), and (6) of section 208(g) of this Act) shall be exempt from section 12102(c), as amended by this Act, until such time after October 1, 2001 as more than 50 percent
of the interest owned and controlled in the vessel changes, provided that the vessel maintains eligibility for a fishery endorsement under the federal law that was in effect the day before the date of the enactment of this Act, and unless, in the case of the NORTHERN TRAVELER or the NORTHERN VOYAGER (or such replacement), the vessel is used in any fishery under the authority of a regional fishery management council other than the New England Fishery Management Council or Mid-Atlantic Fishery Management Council established, respectively, under sub-paragraphs (A) and (B) of section 302(a)(1) of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1852(a)(1)(A) and (B)), or in the case of the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX, the vessel is used to harvest any fish.

SEC. 204. REPEAL OF OWNERSHIP SAVINGS CLAUSE.

(a) REPEAL.—Section 7(b) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239; 46 U.S.C. 12102 note) is hereby repealed.

(b) EFFECTIVE DATE.—Subsection (a) shall take effect on October 1, 2001.

Subtitle II—Bering Sea Pollock Fishery

SEC. 205. DEFINITIONS.

As used in this subtitle—

(1) the term "Bering Sea and Aleutian Islands Management Area" has the same meaning as the meaning given for such term in part 679.2 of title 50, Code of Federal Regulations, as in effect on October 1, 1998;

(2) the term "catcher/processor" means a vessel that is used for harvesting fish and processing that fish;

(3) the term "catcher vessel" means a vessel that is used for harvesting fish and that does not process pollock onboard;

(4) the term "directed pollock fishery" means the fishery for the directed fishing allowances allocated under paragraphs (1), (2), and (3) of section 206(b);

(5) the term "harvest" means to commercially engage in the catching, taking, or harvesting of fish or any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish;

(6) the term "inshore component" means the following categories that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area:

(A) shoreside processors, including those eligible under section 208(f); and

(B) vessels less than 125 feet in length overall that process less than 126 metric tons per week in round-weight equivalents of an aggregate amount of pollock and Pacific cod;

(7) the term "Magnuson-Stevens Act" means the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.);

(8) the term "mothership" means a vessel that receives and processes fish from other vessels in the exclusive economic zone of the United States and is not used for, or equipped to be used for, harvesting fish;

(9) the term "North Pacific Council" means the North Pacific Fishery Management Council established under section 302(a)(1)(G) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(G));

(10) the term "offshore component" means all vessels not included in the definition of "inshore component" that process groundfish harvested in the Bering Sea and Aleutian Islands Management Area;

(11) the term "Secretary" means the Secretary of Commerce; and

(12) the term "shoreside processor" means any person or vessel that receives unprocessed fish, except catcher/processors, motherships, buying stations, restaurants, or persons receiving fish for personal consumption or bait.

SEC. 206. ALLOCATIONS.

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

(b) INSHORE/OFFSHORE.—Effective January 1, 1999, the remainder of the pollock total allowable catch in the Bering Sea and Aleutian Islands Management Area, after the subtraction of the allocation under subsection (a) and the subtraction of allowances for the incidental catch of pollock by vessels harvesting other groundfish species (including under the western Alaska community development quota program) shall be allocated as directed fishing allowances as follows—

(1) 50 percent to catcher vessels harvesting pollock for processing by the inshore component;

(2) 40 percent to catcher/processors and catcher vessels harvesting pollock for processing by catcher/processors in the offshore component; and

(3) 10 percent to catcher vessels harvesting pollock for processing by motherships in the offshore component.

SEC. 207. BUYOUT.

(a) FEDERAL LOAN.—Under the authority of sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g) and notwithstanding the requirements of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a), the Secretary shall, subject to the availability of appropriations for the cost of the direct loan, provide up to $75,000,000 through a direct loan obligation for the payments required under subsection (d).

(b) INSHORE FEE SYSTEM.—Notwithstanding the requirements of section 304(d) or 312 of the Magnuson-Stevens Act (16 U.S.C. 1854(d) and 1861a), the Secretary shall establish a fee for the repayment of such loan obligation which—

(1) shall be six-tenths (0.6) of one cent for each pound round-weight of all pollock harvested from the directed fishing allowance under section 206(b)(1); and

(2) shall begin with such pollock harvested on or after January 1, 2000, and continue without interruption until such loan obligation is fully repaid; and

(3) shall be collected in accordance with section 312(d)(2)(C) of the Magnuson-Stevens Act (16 U.S.C. 1861a(d)(2)(C)) and in accordance with such other conditions as the Secretary establishes.

(c) FEDERAL APPROPRIATION.—Under the authority of section 312(c)(1)(B) of the Magnuson-Stevens Act (16 U.S.C. 1861a(c)(1)(B)), there are authorized to be appropriated $20,000,000 for the payments required under sub-section (d).

(d) PAYMENTS.—Subject to the availability of appropriations for the cost of the direct loan under subsection (a) and funds under subsection (c), the Secretary shall pay by not later than December 31, 1998—

(1) up to $90,000,000 to the owner or owners of the catcher/processors listed in paragraphs (1) through (9) of section 209, in such manner as the owner or owners, with the concurrence of the Secretary, agree, except that—

(A) the portion of such payment with respect to the catcher/processor listed in paragraph (1) of section 209 shall be made only after the owner submits a written certification acceptable to the Secretary that neither the owner nor a purchaser from the owner intends to use such catcher/processor outside of the exclusive economic zone of the United States to harvest any stock of fish (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802)) that occurs within the exclusive economic zone of the United States; and

(B) the portion of such payment with respect to the catcher/processors listed in paragraphs (2) through (9) of section 209 shall be made only after the owner or owners of such catcher/processors submit a written certification acceptable to the Secretary that such catcher/processors will be scrapped by December 31, 2000 and will not, before that date, be used to harvest or process any fish; and

(2)(A) if a contract has been filed under section 210(a) by the catcher/processors listed in section 208(e), $5,000,000 to the owner or owners of the catcher/processors listed in paragraphs (10) through (14) of such section in such manner as the owner or owners, with the concurrence of the Secretary, agree; or

(B) if such a contract has not been filed by such date, $5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under paragraphs (1) through (20) of section 208(e), divided based on the amount of the harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such manner as the Secretary deems appropriate, except that any such payments shall be reducee by any obligation to the federal government that has not been satisfied by such owner or owners of any such vessels.

(e) PENALTY.—If the catcher/processor under paragraph (1) of section 209 is used outside of the exclusive economic zone of the United States to harvest any stock of fish that occurs within the exclusive economic zone of the United States while the owner who received the payment under subsection (d)(1)(A) has an ownership interest in such vessel, or if the catcher/processors listed in paragraphs (2) through (9) of section 209 are determined by the Secretary not to have been scrapped by December 31,2000 or to have

been used in a manner inconsistent with subsection (d)(1)(B), the Secretary may suspend any or all of the federal permits which allow any vessels owned in whole or in part by the owner or owners who received payments
under subsection (d)(1) to harvest or process fish within the exclusive economic zone of the United States until such time as the obligations of such owner or owners under subsection (d)(1) have been fulfilled to the satisfaction of the Secretary.

(f) PROGRAM DEFINED; MATURITY.—For the purposes of section 1111 of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f), the fishing capacity reduction program in this subtitle shall be within the meaning of the term "program" as defined and used in such section. Notwithstanding section 1111(b)(4) of such Act (46 U.S.C. App. 1279f(b)(4)), the debt obligation under subsection (a) of this section may have a maturity not to exceed 30 years.

(g) FISHERY CAPACITY REDUCTION REGULATIONS.— The Secretary of Commerce shall by not later than October 15, 1998 publish proposed regulations to implement sub-sections (b), (c), (d), and (e) of section 312 of the Magnuson-Stevens Act (16 U.S.C. 1861a) and sections 1111 and 1112 of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1279f and 1279g).

SEC. 208. ELIGIBLE VESSELS AND PROCESSORS.

(a) CATCHER VESSELS ONSHORE.—Effective January 1, 2000, only catcher vessels which are—

(1) determined by the Secretary—

(A) to have delivered at least 250 metric tons of pollock; or

(B) to be less than 60 feet in length overall and to have delivered at least 40 metric tons of pollock, for processing by the inshore component in the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(2) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(3) not listed in subsection (b), shall be eligible to harvest the directed fishing allowance under section 206(b)(1) pursuant to a federal fishing permit.

(b) CATCHER VESSELS TO CATCHER/PROCESSORS.—Effective January 1, 1999, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN CHALLENGER (United States official number 615085);

(2) FORUM STAR (United States official number 925863);

(3) MUIR MILACH (United States official number 611524);

(4) NEAHKAHNIE (United States official number 599534);

(5) OCEAN HARVESTER (United States official number 549892);

(6) SEA STORM (United States official number 628959);

(7) TRACY ANNE (United States official number 904859); and

(8) any catcher vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons and at least 75 percent of the pollock it harvested in the directed pollock fishery in 1997 to catcher/processors for processing by the offshore component; and

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary.

(c) CATCHER VESSELS TO MOTHERSHIPS.—Effective January 1, 2000, only the following catcher vessels shall be eligible to harvest the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) ALEUTIAN CHALLENGER (United States official number 603820);

(2) ALYESKA (United States official number 560237);

(3) AMBER DAWN (United States official number 529425);

(4) AMERICAN BEAUTY (United States official number 613847);

(5) CALIFORNIA HORIZON (United States official number 590758);

(6) MAR-GUN (United States official number 525608);

(7) MARGARET LYN (United States official number 615563);

(8) MARK I (United States official number 509552);

(9) MISTY DAWN (United States official number 926647);

(10) NORDIC FURY (United States official number 542651);

(11) OCEAN LEADER (United States official number 561518);

(12) OCEANIC (United States official number 602279);

(13) PACIFIC ALLIANCE (United States official number 612084);

(14) PACIFIC CHALLENGER (United States official number 518937);

(15) PACIFIC FURY (United States official number 561934);

(16) PAPADO II (United States official number 536161);

(17) TRAVELER (United States official number 929356);

(18) VESTERAALEN (United States official number 611642);

(19) WESTERN DAWN (United States official number 524423); and

(20) any vessel—

(A) determined by the Secretary to have delivered at least 250 metric tons of pollock for processing by motherships in the offshore component of the directed pollock fishery in any one of the years 1996 or 1997, or between January 1, 1998 and September 1, 1998;

(B) eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary; and

(C) not listed in subsection (b).

(d) MOTHERSHIPS.—Effective January 1, 2000, only the following motherships shall be eligible to process the directed fishing allowance under section 206(b)(3) pursuant to a federal fishing permit:

(1) EXCELLENCE (United States official number 967502);

(2) GOLDEN ALASKA (United States official number 651041); and

(3) OCEAN PHOENIX (United States official number 296779).

(e) CATCHER/PROCESSORS.—Effective January 1, 1999, only the following catcher/processors shall be eligible to harvest the directed fishing allowance under section 206(b)(2) pursuant to a federal fishing permit:

(1) AMERICAN DYNASTY (United States official number 951307);

(2) KATIE ANN (United States official number 518441);

(3) AMERICAN TRIUMPH (United States official number 646737);

(4) NORTHERN EAGLE (United States official number 506694);

(5) NORTHERN HAWK (United States official number 643771);

(6) NORTHERN JAEGER (United States official number 521069);

(7) OCEAN ROVER (United States official number 552100);

(8) ALASKA OCEAN (United States official number 637856);

(9) ENDURANCE (United States official number 592206);

(10) AMERICAN ENTERPRISE (United States official number 594803);

(11) ISLAND ENTERPRISE (United States official number 610290);

(12) KODIAK ENTERPRISE (United States official number 579450);

(13) SEATTLE ENTERPRISE (United States official number 904767);

(14) US ENTERPRISE (United States official number 921112);

(15) ARCTIC STORM (United States official number 903511);

(16) ARCTIC FJORD (United States official number 940866);

(17) NORTHERN GLACIER (United States official number 663457);

(18) PACIFIC GLACIER (United States official number 933627);

(19) HIGHLAND LIGHT (United States official number 577044);

(20) STARBOUND (United States official number 944658); and

(21) any catcher/processor not listed in this sub-section and determined by the Secretary to have harvested more than 2,000 metric tons of the pollock in the 1997 directed pollock fishery and determined to be eligible to harvest pollock in the directed pollock fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary, except that catcher/processors eligible under this paragraph shall be prohibited from harvesting in the aggregate a total of more than one-half (0.5) of a percent of the pollock apportioned for the directed pollock fishery under section 206(b)(2).

Notwithstanding section 213(a), failure to satisfy the requirements of section 4(a) of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 (Public Law 100–239; 46 U.S.C. 12108 note) shall not make a catcher/processor listed under this subsection ineligible for a fishery endorsement.

(f) SHORESIDE PROCESSORS.—

(1) Effective January 1, 2000 and except as provided in paragraph (2), the catcher vessels eligible under subsection (a) may deliver pollock harvested from the directed fishing allowance under section 206(b)(1) only to—

(A) shoreside processors (including vessels in a single geographic location in Alaska State waters) determined by the Secretary to have processed more than 2,000 metric tons round-weight of pollock in the inshore component of the directed pollock fishery during each of 1996 and 1997; and

(B) shoreside processors determined by the Secretary to have processed pollock in the inshore component of the directed pollock fishery in 1996 or 1997, but to have processed less than 2,000 metric tons round-weight of such pollock in each year, except that effective January 1, 2000, each such shoreside processor may not process more than 2,000 metric tons round-weight from such directed fishing allowance in any year.

(2) Upon recommendation by the North Pacific Council, the Secretary may approve measures to allow catcher vessels eligible under subsection (a) to deliver pollock harvested from the directed fishing allowance under section 206(b)(1) to shoreside processors not eligible under paragraph (1) if the total allowable catch for pollock in the Bering Sea and Aleutian Islands Management Area increases by more than 10 percent above the total allowable catch in such fishery in 1997, or in the event of the actual total loss or constructive total loss of a shoreside processor eligible under paragraph (1)(A).

(g) REPLACEMENT VESSELS.—In the event of the actual total loss or constructive total loss of a vessel eligible under subsections (a), (b), (c), (d), or (e), the owner of such vessel may replace such vessel

with a vessel which shall be eligible in the same manner under that subsection as the eligible vessel, provided that—

(1) such loss was caused by an act of God, an act of war, a collision, an act or omission of a party other than the owner or agent of the vessel, or any other event not caused by the willful misconduct of the owner or agent;

(2) the replacement vessel was built in the United States and if ever rebuilt, was rebuilt in the United States;

(3) the fishery endorsement for the replacement vessel is issued within 36 months of the end of the last year in which the eligible vessel harvested or processed pollock in the directed pollock fishery;

(4) if the eligible vessel is greater than 165 feet in registered length, of more than 750 gross registered tons, or has engines capable of producing more than 3,000 shaft horsepower, the replacement vessel is of the same or lesser registered length, gross registered tons, and shaft horsepower;

(5) if the eligible vessel is less than 165 feet in registered length, of fewer than 750 gross registered tons, and has engines incapable of producing less than 3,000 shaft horsepower, the replacement vessel is less than each of such thresholds and does not exceed by more than 10 percent the registered length, gross registered tons or shaft horsepower of the eligible vessel; and

(6) the replacement vessel otherwise qualifies under federal law for a fishery endorsement, including under section 12102(c) of title 46, United States Code, as amended by this Act.

(h) ELIGIBILITY DURING IMPLEMENTATION.—In the event the Secretary is unable to make a final determination about the eligibility of a vessel under subsection (b)(8) or subsection (e)(21) before January 1, 1999, or a vessel or shoreside processor under subsection (a), subsection (c)(21), or subsection (f) before January 1, 2000, such vessel or shoreside processor, upon the filing of an application for eligibility, shall be eligible to participate in the directed pollock fishery pending final determination by the Secretary with respect to such vessel or shoreside processor.

(i) ELIGIBILITY NOT A RIGHT.—Eligibility under this section shall not be construed—

(1) to confer any right of compensation, monetary or otherwise, to the owner of any catcher vessel, catcher/processor, mothership, or shoreside processor if such eligibility is revoked or limited in anyway, including through the revocation or limitation of a fishery endorsement or any federal permit or license;

(2) to create any right, title, or interest in or to any fish in any fishery; or

(3) to waive any provision of law otherwise applicable to such catcher vessel, catcher/processor, mothership, or shoreside processor.

SEC. 209. LIST OF INELIGIBLE VESSELS.

Effective December 31, 1998, the following vessels shall be permanently ineligible for fishery endorsements, and any claims (including relating to catch history) associated with such vessels that could qualify any owners of such vessels for any present or future limited access system permit in any fishery within the exclusive economic zone of the United States (including a vessel moratorium permit or license limitation program permit in fisheries under the authority of the North Pacific Council) are hereby extinguished:

(1) AMERICAN EMPRESS (United States official number 942347);

(2) PACIFIC SCOUT (United States official number 934772);

(3) PACIFIC EXPLORER (United States official number 942592);

(4) PACIFIC NAVIGATOR (Uoited States official number 592204);

(5) VICTORIA ANN (United States official number 592207);

(6) ELIZABETH ANN (United States official number 534721);

(7) CHRISTINA ANN (United States official number 653045);

(8) REBECCA ANN (United States official number 592205); and

(9) BROWNS POINT (United States official number 587440).

SEC. 210. FISHERY COOPERATIVE LIMITATIONS.

(a) PUBLIC NOTICE.—

(1) Any contract implementing a fishery cooperative under section 1 of the Act of June 25, 1934 (15 U.S.C. 521) in the directed pollock fishery and any material modifications to any such contract shall be filed not less than 30 days prior to the start of fishing under the contract with the North Pacific Council and with the Secretary, together with a copy of a letter from a party to the contract requesting a business review letter on the fishery cooperative from the Department of Justice and any response to such request. Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a) or any other provision of law, but taking into account the interest of parties to any such contract in protecting the confidentiality of proprietary information, the North Pacific Council and Secretary shall—

(A) make available to the public such information about the contract, contract modifications, or fishery cooperative the North Pacific Council and Secretary deem appropriate, which at a minimum shall include a list of the parties to the contract, a list of the vessels involved, and the amount of pollock and other fish to be harvested by each party to such con-tract; and

(B) make available to the public in such manner as the North Pacific Council and Secretary deem appropriate information about the harvest by vessels under a fishery cooperative of all species (including bycatch) in the directed pollock fishery on a vessel-by-vessel basis.

(b) CATCHER VESSELS ONSHORE.—

(1) CATCHER VESSEL COOPERATIVES.—Effective January 1, 2000, upon the filing of a contract implementing a fishery cooperative under subsection (a) which—

(A) is signed by the owners of 80 percent or more of the qualified catcher vessels that delivered pollock for processing by a shoreside processor in the directed pollock fishery in the year prior to the year in which the fishery cooperative will be in effect; and

(B) specifies, except as provided in paragraph (6), that such catcher vessels will deliver pollock in the directed pollock fishery only to such shoreside processor during the year in which the fishery cooperative will be in effect and that such shoreside processor has agreed to process such pollock, the Secretary shall allow only such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) to harvest the aggregate percentage of the directed fishing allowance under section 206(b)(1) in the year in which the fishery cooperative will be in effect that is equivalent to the aggregate total amount of pollock harvested by such catcher vessels (and by such catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) in the directed pollock fishery for processing by the inshore component during 1995, 1996, and 1997 relative to the aggregate total amount of pollock harvested in the directed pollock fishery for processing by the inshore component during such years and shall prevent such catcher vessels (and catcher vessels whose owners voluntarily participate pursuant to paragraph (2)) from harvesting in aggregate in excess of such percentage of such directed fishing allowance.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative under paragraph (1) must allow the owners of other qualified catcher vessels to enter into such contract after it is filed and before the calender year in which fishing will begin under the same terms and conditions as the owners of the qualified catcher vessels who entered into such contract upon filing.

(3) QUALIFIED CATCHER VESSEL.—For the purposes of this subsection, a catcher vessel shall be considered a "qualified catcher vessel" if, during the year prior to the year in which the fishery cooperative will be in effect, it delivered more pollock to the shoreside processor to which it will deliver pollock under the fishery cooperative in paragraph (1) than to any other shoreside processor.

(4) CONSIDERATION OF CERTAIN VESSELS.—Any contract implementing a fishery cooperative under paragraph (1) which has been entered into by the owner of a qualified catcher vessel eligible under section 208(a) that harvested pollock for processing by catcher/processors or

motherships in the directed pollock fishery during 1995, 1996, and 1997 shall, to the extent practicable, provide fair and equitable terms and conditions for the owner of such qualified catcher vessel.

(5) OPEN ACCESS.—A catcher vessel eligible under section 208(a) the catch history of which has not been attributed to a fishery cooperative under paragraph (1) may be used to deliver pollock harvested by such vessel from the directed fishing allowance under section 206(b)(1) (other than pollock reserved under paragraph (1) for a fishery cooperative) to any of the shoreside processors eligible under section 208(f). A catcher vessel eligible under section 208(a) the catch history of which has been attributed to a fishery cooperative under paragraph (1) during any calendar year may not harvest any pollock apportioned under section 206(b)(1) in such calendar year other than the pollock reserved under paragraph (1) for such fishery cooperative.

(6) TRANSFER OF COOPERATIVE HARVEST.—A contract implementing a fishery cooperative under paragraph (1) may, notwithstanding the other provisions of this subsection, provide for up to 10 percent of the pollock harvested under such cooperative to be processed by a shoreside processor eligible under section 208(f) other than the shoreside processor to which pollock will be delivered under paragraph (1).

(c) CATCHER VESSELS TO CATCHER/PROCESSORS.—Effective January 1, 1999, not less than 8.5 percent of the directed fishing allowance under section 206(b)(2) shall be available for harvest only by the catcher vessels eligible under section 208(b). The owners of such catcher vessels may participate in a fishery cooperative with the owners of the catcher/processors eligible under paragraphs (1) through (20) of the section 208(e). The owners of such catcher vessels may participate in a fishery cooperative that will be in effect during 1999 only if the contract implementing such cooperative establishes penalties to prevent such vessels from exceeding in 1999 the traditional levels harvested by such vessels in all other fisheries in the exclusive economic zone of the United States.

(d) CATCHER VESSELS TO MOTHERSHIPS.—

(1) PROCESSING.—Effective January 1, 2000, the authority in section 1 of the Act of June 25, 1934 (48 Stat. 1213 and 1214; 15 U.S.C. 521 et seq.) shall extend to processing by motherships eligible under section 208(d) solely for the purposes of forming or participating in a fishery cooperative in the directed pollock fishery upon the filing of a contract to implement a fishery cooperative under subsection (a) which has been entered into by the owners of 80 percent or more of the catcher vessels eligible under section 208(c) for the duration of such contract, provided that such owners agree to the terms of the fishery cooperative involving processing by the motherships.

(2) VOLUNTARY PARTICIPATION.—Any contract implementing a fishery cooperative described in paragraph (1) must allow the owners of any other catcher vessels eligible under section 208(c) to enter such contract after it is filed and before the calendar year in which fishing will begin under the same terms and conditions as the owners of the catcher vessels who entered into such contract upon filing.

(e) EXCESSIVE SHARES.—

(1) HARVESTING.—No particular individual, corporation, or other entity may harvest, through a fishery cooperative or otherwise, a total of more than 17.5 percent of the pollock available to be harvested in the directed pollock fishery.

(2) PROCESSING.—Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from processing an excessive share of the pollock available to be harvested in the directed pollock fishery. In the event the North Pacific Council recommends and the Secretary approves an excessive processing share that is lower than 17.5 percent, any individual or entity that previously processed a percentage greater than such share shall be allowed to continue to process such percentage, except that their percentage may not exceed 17.5 percent (excluding pollock processed by catcher/processors that was harvested in the directed pollock fishery by catcher vessels eligible under 208(b)) and shall be reduced if their percentage decreases, until their percentage is below such share. In recommending the excessive processing share, the North Pacific Council shall consider the need of catcher vessels in the directed pollock fishery to have competitive buyers for the pollock harvested by such vessels.

(3) REVIEW BY MARITIME ADMINISTRATION.—At the request of the North Pacific Council or the Secretary, any individual or entity believed by such Council or the Secretary to have exceeded the percentage in either paragraph (1) or (2) shall submit such information to the Administrator of the Maritime Administration as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary. For the purposes of this subsection, any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity.

(f) LANDING TAX JURISDICTION.—Any contract filed under subsection (a) shall include a contract clause under which the parties to the contract agree to make payments to the State of Alaska for any pollock harvested in the directed pollock fishery which is not landed in the State of Alaska, in amounts

which would otherwise accrue had the pollock been landed in the State of Alaska subject to any landing taxes established under Alaska law. Failure to include such a contract clause or for such amounts to be paid shall result in a revocation of the authority to form fishery cooperatives under section 1 of the Act of June 25, 1934 (15 U.S.C. 521 et seq.).

(g) PENALTIES.—The violation of any of the requirements of this section or section 211 shall be considered the commission of an act prohibited by section 307 of the Magnuson- Stevens Act (16 U.S.C. 1857). In addition to the civil penalties and permit sanctions applicable to prohibited acts under section 308 of such Act (16 U.S.C. 1858), any person who is found by the Secretary, after notice and an opportunity for a hearing in accordance with section 554 of title 5, United States Code, to have violated a requirement of this section shall be subject to the forfeiture to the Secretary of Commerce of any fish harvested or processed during the commission of such act.

SEC. 211. PROTECTIONS FOR OTHER FISHERIES; CONSERVATION MEASURES.

(a) GENERAL.—The North Pacific Council shall recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by this Act or fishery cooperatives in the directed pollock fishery.

(b) CATCHER/PROCESSOR RESTRICTIONS.—

(1) GENERAL.—The restrictions in this sub-section shall take effect on January 1, 1999 and shall remain in effect thereafter except that they may be superceded (with the exception of paragraph (4)) by conservation and management measures recommended after the date of the enactment of this Act by the North Pacific Council and approved by the Secretary in accordance with the Magnuson-Stevens Act.

(2) BERING SEA FISHING.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from, in the aggregate—

(A) exceeding the percentage of the harvest available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total harvest by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total amount available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997;

(B) exceeding the percentage of the prohibited species available in the offshore component of any Bering Sea and Aleutian Islands groundfish fishery (other than the pollock fishery) that is equivalent to the total of the prohibited species harvested by such catcher/processors and the catcher/processors listed in section 209 in the fishery in 1995, 1996, and 1997 relative to the total

amount of prohibited species available to be harvested by the offshore component in the fishery in 1995, 1996, and 1997; and

(C) fishing for Atka mackerel in the eastern area of the Bering Sea and Aleutian Islands and from exceeding the following percentages of the directed harvest available in the Bering Sea and Aleutian Islands Atka mackerel fishery—

(i) 11.5 percent in the central area; and

(ii) 20 percent in the western area.

(3) BERING SEA PROCESSING.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) processing any of the directed fishing allowances under paragraphs (1) or (3) of section 206(b); and

(B) processing any species of crab harvested in the Bering Sea and Aleutian Islands Management Area.

(4) GULF OF ALASKA.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) are hereby prohibited from—

(A) harvesting any fish in the Gulf of Alaska;

(B) processing any groundfish harvested from the portion of the exclusive economic zone off Alaska known as area 630 under the fishery management plan for Gulf of Alaska groundfish; or

(C) processing any pollock in the Gulf of Alaska (other than as bycatch in non-pollock groundfish fisheries) or processing, in the aggre-gate, a total of more than 10 percent of the cod harvested from areas 610, 620, and 640 of the Gulf of Alaska under the fishery management plan for Gulf of Alaska groundfish.

(5) FISHERIES OTHER THAN NORTH PACIFIC.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) and motherships eligible under section 208(d) are hereby prohibited from harvesting fish in any fishery under the authority of any regional fishery management council established under section 302(a) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)) other than the North Pacific Council, except for the Pacific whiting fishery, and from processing fish in any fishery under the authority of any such regional fishery management council other than the North Pacific Council, except in the Pacific whiting fishery, unless the catcher/processor or mothership is authorized to harvest or process fish under a fishery management plan recommended by the regional fishery management council of jurisdiction and approved by the Secretary.

(6) OBSERVERS AND SCALES.—The catcher/processors eligible under paragraphs (1) through (20) of section 208(e) shall—

(A) have two observers onboard at all times while groundfish is being harvested, processed, or received from another vessel in any fishery under the authority of the North Pacific Council; and

(B) weigh its catch on a scale onboard approved by the National Marine Fisheries Service while harvesting groundfish in fisheries under the authority of the North Pacific Council. This paragraph shall take effect on January 1, 1999 for catcher/processors eligible under paragraphs (1) through (20) of section 208(e) that will harvest pollock allocated under section 206(a) in 1999, and shall take effect on January 1, 2000 for all other catcher/processors eligible under such paragraphs of section 208(e).

(c) CATCHER VESSEL AND SHORESIDE PROCESSOR RESTRICTIONS.—

(1) REQUIRED COUNCIL RECOMMENDATIONS.—By not later than July 1, 1999, the North Pacific Council shall recommend for approval by the Secretary conservation and management measures to—

(A) prevent the catcher vessels eligible under subsections (a), (b), and (c) of section 208 from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery; and

(B) protect processors not eligible to participate in the directed pollock fishery from adverse effects as a result of this Act or fishery cooperatives in the directed pollock fishery.

If the North Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the North Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation restrict or change the authority in section 210(b) to the extent the Secretary deems appropriate, including by preventing fishery cooperatives from being formed pursuant to such section and by providing greater flexibility with respect to the shoreside processor or shoreside processors to which catcher vessels in a fishery cooperative under section 210(b) may deliver pollock.

(2) BERING SEA CRAB AND GROUNDFISH.—

(A) Effective January 1, 2000, the owners of the motherships eligible under section 208(d) and the shoreside processors eligible under section 208(f) that receive pollock from the directed pollock fishery under a fishery cooperative are hereby prohibited from processing, in the aggregate for each calendar year, more than the percentage of the total catch of each species of crab in directed fisheries under the jurisdiction of the North Pacific Council than facilities operated by such owners processed of each such species in the aggregate, on average, in 1995, 1996, 1997. For the purposes of this subparagraph, the term "facilities" means any processing plant, catcher/processor,

mothership, floating processor, or any other operation that processes fish. Any entity in which 10 percent or more of the interest is owned or controlled by another individual or entity shall be considered to be the same entity as the other individual or entity for the purposes of this subparagraph.

(B) Under the authority of section 301(a)(4) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(4)), the North Pacific Council is directed to recommend for approval by the Secretary conservation and management measures to prevent any particular individual or entity from harvesting or processing an excessive share of crab or of groundfish in fisheries in the Bering Sea and Aleutian Islands Management Area.

(C) The catcher vessels eligible under section 208(b) are hereby prohibited from participating in a directed fishery for any species of crab in the Bering Sea and Aleutian Islands Management Area unless the catcher vessel harvested crab in the directed fishery for that species of crab in such Area during 1997 and is eligible to harvest such crab in such directed fishery under the license limitation program recommended by the North Pacific Council and approved by the Secretary. The North Pacific Council is directed to recommend measures for approval by the Secretary to eliminate latent licenses under such program, and nothing in this subparagraph shall preclude the Council from recommending measures more restrictive than under this paragraph.

(3) FISHERIES OTHER THAN NORTH PACIFIC.—

(A) By not later than July 1, 2000, the Pacific Fishery Management Council established under section 302(a)(1)(F) of the Magnuson-Stevens Act (16 U.S.C. 1852(a)(1)(F)) shall recommend for approval by the Secretary conservation and management measures to protect fisheries under its jurisdiction and the participants in those fisheries from adverse impacts caused by this Act or by any fishery cooperatives in the directed pollock fishery.

(B) If the Pacific Council does not recommend such conservation and management measures by such date, or if the Secretary determines that such conservation and management measures recommended by the Pacific Council are not adequate to fulfill the purposes of this paragraph, the Secretary may by regulation implement adequate measures including, but not limited to, restrictions on vessels which harvest pollock under a fishery cooperative which will prevent such vessels from harvesting Pacific groundfish, and restrictions on the number of processors eligible to process Pacific groundfish.

(d) BYCATCH INFORMATION.—Notwithstanding section 402 of the Magnuson-Stevens Act (16 U.S.C. 1881a), the North Pacific Council may recommend and the Secretary may approve, under such terms and conditions as the North Pacific Council and Secretary deem appropriate, the public disclosure of

any information from the groundfish fisheries under the authority of such Council that would be beneficial in the implementation of section 301(a)(9) or section 303(a)(11) of the Magnuson-Stevens Act (16 U.S.C. 1851(a)(9) and 1853(a)(11)).

(e) COMMUNITY DEVELOPMENT LOAN PROGRAM.—Under the authority of title XI of the Merchant Marine Act, 1936 (46 U.S.C. App. 1271 et seq.), and subject to the availability of appropriations, the Secretary is authorized to provide direct loan obligations to communities eligible to participate in the western Alaska community development quota program established under 304(i) of the Magnuson-Stevens Act (16 U.S.C. 1855(i)) for the purposes of purchasing all or part of an ownership interest in vessels and shoreside processors eligible under subsections (a), (b), (c), (d), (e), or (f) of section 208. Notwithstanding the eligibility criteria in section 208(a) and section 208(c), the LISA MARIE (United States official number 1038717) shall be eligible under such sections in the same manner as other vessels eligible under such sections.

SEC. 212. RESTRICTION ON FEDERAL LOANS.

Section 302(b) of the Fisheries Financing Act (46 U.S.C. 1274 note) is amended—

(1) by inserting "(1)" before "Until October 1, 2001"; and

(2) by inserting at the end the following new paragraph:

"(2) No loans may be provided or guaranteed by the Federal Government for the construction or rebuilding of a vessel intended for use as a fishing vessel (as defined in section 2101 of title 46, United States Code), if such vessel will be greater than 165 feet in registered length, of more than 750 gross registered tons, or have an engine or engines capable of producing a total of more than 3,000 shaft horsepower, after such construction or rebuilding is completed. This prohibition shall not apply to vessels to be used in the menhaden fishery or in tuna purse seine fisheries outside the exclusive economic zone of the United States or the area of the South Pacific Regional Fisheries Treaty."

SEC. 213. DURATION.

(a) GENERAL.—Except as otherwise provided in this title, the provisions of this title shall take effect upon the date of the enactment of this Act. Sections 206, 208, and 210 shall remain in effect until December 31, 2004, and shall be repealed on such date, except that the North Pacific Council may recommend and the Secretary may approve conservation and management measures as part of a fishery management plan under the Magnuson-Stevens Act to give effect to the measures in such sections thereafter.

(b) EXISTING AUTHORITY.—Except for the measures required by this subtitle, nothing in this subtitle shall be construed to limit the authority of the North Pacific Council or the Secretary under the Magnuson-Stevens Act.

(c) CHANGES TO FISHERY COOPERATIVE LIMITATIONS AND POLLOCK CDQ ALLOCATION.—The North Pacific Council may recommend and the Secretary may approve conservation and management measures in accordance with the Magnuson-Stevens Act—

(1) that supersede the provisions of this title, except for sections 206 and 208, for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery caused by this title or fishery cooperatives in the directed pollock fishery, provided such measures take into account all factors affecting the fisheries and are imposed fairly and equitably to the extent practicable among and within the sectors in the directed pollock fishery;

(2) that supersede the allocation in section 206(a) for any of the years 2002, 2003, and 2004, upon the finding by such Council that the western Alaska community development quota program for pollock has been adversely affected by the amendments in this title; or

(3) that supersede the criteria required in paragraph (1) of section 210(b) to be used by the Secretary to set the percentage allowed to be harvested by catcher vessels pursuant to a fishery cooperative under such paragraph.

(d) REPORT TO CONGRESS.—Not later than October 1, 2000, the North Pacific Council shall submit a report to the Secretary and to Congress on the implementation and effects of this Act, including the effects on fishery conservation and management, on bycatch levels, on fishing communities, on business and employment practices of participants in any fishery cooperatives, on the western Alaska community development quota program, on any fisheries outside of the authority of the North Pacific Council, and such other matters as the North Pacific Council deems appropriate.

(e) REPORT ON FILLET PRODUCTION.—Not later than June 1, 2000, the General Accounting Office shall submit a report to the North Pacific Council, the Secretary, and the Congress on the whether this Act has negatively affected the market for fillets and fillet blocks, including through the reduction in the supply of such fillets and fillet blocks. If the report determines that such market has been negatively affected, the North Pacific Council shall recommend measures for the Secretary's approval to mitigate any negative effects.

(f) SEVERABILITY.—If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

(g) INTERNATIONAL AGREEMENTS.—In the event that any provision of section 12102(c) or section 31322(a) of title 46, United States Code, as amended by this Act, is determined to be inconsistent with an existing international agreement relating to foreign investment to which the United States is a party with respect to the owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, such provision shall not apply to that owner or mortgagee with respect to such vessel to the extent of any such inconsistency. The provisions of section 12102(c) and section 31322(a) of title 46, United States Code, as amended by this Act, shall apply to all subsequent owners and mortgagees of such vessel, and shall apply, notwithstanding the preceding sentence, to the owner on October 1, 2001 of such vessel if any ownership interest in that owner is transferred to or otherwise acquired by a foreign individual or entity after such date.

Alaska Groundfish Data Bank P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RECEIVED
DEC - 2 1998
N.P.F.M.C

RE: SENATE BILL 1221

DATE: DECEMBER 2, 1998

SENT BY FAX: 2 PP

AGDB COMMENTS ON SENATE BILL 1221 FOLLOW UP AMENDMENTS
AGENDA ITEM C-2(b)

SIDE BOARDS FOR BERING SEA CATCHER VESSELS

In review of the side boards for Bering Sea catcher vessels eligible for co-ops, we note the language intended to "prevent catcher vessels eligible under subsections (a), (b) and (c) of section 208 from exceeding in the aggregate the traditional harvest levels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery;" appears to need clarification and perhaps some amendment.

Concern 1: The Gulf fisheries are seasonal. The pollock fishery is spread over three trimesters and the rest of the trawl groundfish fisheries are restricted by quarterly halibut caps.

Unless it is clear that the definition of "fisheries" includes both season and species (i.e. the first trimester pollock fishery is defined as one fishery and the 2nd trimester fishery is defined as a different "fishery) it would be possible for Bering sea catcher vessels to take their total aggregate share of the Gulf pollock fishery in the roe season to the detriment of the local fleet.

We suggest language defining "fishery" as an area/season/species combination be developed to assure that the intent of SB 1221 is understood clearly.

Concern 2: Some, if not a majority of the pollock taken by catcher vessels eligible for Bering Sea co-ops was delivered to Gulf of Alaska processors. The Gulf communities are concerned that without further direction the pollock delivered to Gulf processors in the past by vessels now eligible for Bering sea co-ops may be delivered back to Bering Sea processors.

We suggest that the catcher vessel side boards for Gulf pollock and include language specifying that pollock and Pacific cod caught in the Central Gulf/West Yakutat must be processed anywhere within those three reporting areas - 640, 630 and 620 to assure that SB 1221 does not result in reducing the share of Pollock to the affected communities.

Chris Blackburn • Director • (907) 486-3033 • FAX (907) 486-3461 • e-mail 7353974@mcimail.com

Thank your for your consideration of our comments

Chris Blackburn

Chris Blackburn, Director
Alaska Groundfish Data Bank

Alaska Groundfish Data Bank — P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: POLLOCK CO-OP PROVISIONS
GULF OF ALASKA

DATE: NOV. 4, 1998

SENT BY FAX: 5 PP

ATTACHMENT TO SB 1221 COMMENTS

PROPOSAL FOR DEVELOPING PROVISIONS TO ALLOW POLLOCK CO-OPERATIVES IN THE GULF OF ALASKA

SUBMITTED BY ALASKA GROUNDFISH DATA BANK
NOVEMBER 4, 1998

REQUEST FOR THE NPFMC TO BEGIN DEVELOPING PROVISIONS FOR GULF OF ALASKA POLLOCK COOPERATIVES.

The Gulf of Alaska fishing industry is pleased that Senate Bill 1221 will increase the amount of pollock which will be processed onshore in the Bering Sea and promises a more efficient fishery.

However, the Congressional decision to provide provisions for pollock co-ops in the Bering Sea pollock fishery not only took the Gulf of Alaska by surprise, it also tilted the playing field by leaving the Gulf of Alaska disadvantaged with no options other than open access. Obviously, if co-ops are advantageous for the Bering Sea fleets, they will also be advantageous for the Gulf of Alaska.

To assure the Gulf of Alaska pollock industry the same opportunities as the Bering Sea pollock industry and the same potential market advantages we request that the North Pacific Fishery Management Council begin development of provisions and sideboards for Co-ops in the Gulf of Alaska. We feel it imperative that the provisions for pollock co-ops in the Gulf of Alaska be in place at the same time the shorebased provisions for the Bering Sea are implemented in the year 2000.

WE ASK THAT DEVELOPING GULF OF ALASKA CO-OP PROVISIONS BE ONE OF THE ACTIONS INCLUDED AS PART OF STAFF TASKING UNDER AGENDA ITEM C-1 SENATE BILL 1221.

AREAS WHERE THE GULF CO-OP PROVISIONS SHOULD DIFFER FROM THE BERING SEA PROVISIONS

The Kodiak pollock industry believes co-op provisions for the Gulf of Alaska should, as closely as possible, mirror the provisions for the Bering Sea as contained in Senate Bill 1221. The members of AGDB have spent time since the passage of Senate Bill 1221 reviewing the Bering Sea provisions and identifying those provisions which should be modified to reflect the difference between the Bering Sea pollock industry and the Gulf of Alaska pollock industry.

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PROPOSAL FOR GULF OF ALASKA CO-OPERATIVES -- PAGE 2 OF 6

During four two hours meetings the Kodiak processors and pollock fishermen reviewed the provisions of Senate Bill 1221. Provisions which were unanimously felt to be inappropriate for the Gulf are

SB 1221 SECTION 208 - CATCHER VESSEL ELIGIBILITY

1. Qualifying years for eligible onshore catcher vessels: For the Gulf the preferred years are 1996, 1997 or between January 1, 1998 and the date of the November Council meeting. [Hopefully the earliest date which is justifiable].
2. Qualifying tonnage: 100,000 LBS. [Allows all vessels now fishing pollock to qualify in the Gulf].

SB 1221 SECTION 208(F) - PROCESSOR ELIGIBILITY

3. Qualifying years and tonnage for eligible shoreside processors: processed more than 2,000 MT of pollock round weight in any two of the three years 1996, 1997 or 1998. [Assures that all Gulf processors now processing pollock will qualify].
4. Structural Loss: In the Case of the total structural loss of an eligible processor, the processor's vessels may co-op with another eligible processor. [There is enough processing capacity to take care of vessels orphaned by loss of a processing facility as demonstrated when Tyson's plant burned.]

SB 1221 SECTION 208 (g) - REPLACEMENT VESSELS

5. Replacement Vessel: A replacement vessel used for directed fishing of pollock cannot exceed 125 feet LOA. [It was felt that limiting the LOA of replacement vessels would be an appropriate step toward decreasing over capitalization].

SB 1221 SECTION 210(b) - CATCHER VESSEL CO-OPERATIVES

6. Calculation of a vessel's quota share: deferred to a later date (Consensus building requires more time.)
7. Vessel Qualification for a co-op: more time for discussion needed. Concerns expressed about being "tied" for life to the same processor.

SB 1221 SECTION 211(c) - CATCHER VESSELS AND SHORESIDE PROCESSOR RESTRICTIONS

8. Consensus that Gulf catcher vessels eligible for pollock co-ops should be prevented from exceeding their aggregate harvest levels in Bering Sea fisheries. Since many vessels fish all fisheries in the Gulf of Alaska, this provision may not be appropriate for Gulf pollock co-op eligible vessels fishing other Gulf fisheries. More discussion is required.

OTHERS ISSUE FOR DISCUSSION:

1. Catcher vessels eligible to participate in both a Bering Sea and Gulf pollock coop shall be allowed to participate in both co-ops.
2. For the purpose of determining excess share use the aggregated Gulf wide quotas AREAS 610, 620, 630 AND 640 AND 649 combined . [Processors buy fish from all areas]
3. Separate Gulf pollock co-ops may be established for Area 610 and the combined Areas 620, 630,640 and 649 reporting areas.
4. Following implementation of pollock co-op provisions, develop co-op provisions for other trawl target species. The eligibility and catch time frames used for other species should be the same time frames adopted for the formation of pollock co-ops.

SENATE BILL 1221 -- ISSUES FOR DEVELOPMENT OF A POLLOCK CO-OP IN THE GULF OF ALASKA

Following are the SB 1221 summarized provisions contained in 1221 for the Bering Sea and the suggested changes (underlined) which appear more appropriate for the Gulf of Alaska as described above.

BERING SEA	WY AND CENT GULF OF ALASKA
SEC. 208 ELIGIBLE ONSHORE CATCHER VESSELS 1. MUST BE ELIGIBLE UNDER LICENSE LIMITATION 2. QUALIFYING YEARS - 1996, 1997 OR BETWEEN JAN. 1, 1998 AND SEPT. 1, 1998 3. LANDING CRITERIA - ONE LANDING IN ANY ONE OF THE QUALIFYING YEARS 4. TONNAGE CRITERIA >60 FT LOA - 250 MT IN ANY ONE OF THE QUALIFYING YEARS 5. < 60 FT LOA - 40 MT IN ANY ONE OF THE QUALIFYING YEARS IF THE BS QUOTA INCREASES BY MORE THAN 10% OVER THE 1970 QUOTA OR IN THE CASE OF THE TOTAL STRUCTURAL LOSS OF AN ELIGIBLE PROCESSOR THE NPFMC MAY RECOMMEND AND THE SECRETARY APPROVE MEASURES TO ALLOW CATCHER VESSELS TO DELIVER POLLOCK TO SHOREBASED PROCESSORS NOT ELIGIBLE UNDER THIS SECTION.	ELIGIBLE ONSHORE CATCHER VESSELS 1. MUST BE ELIGIBLE UNDER LICENSE LIMITATION 2. QUALIFYING YEARS - 1996, 1997 OR BETWEEN JAN. 1, 1998 <u>AND DATE OF THE NOVEMBER 1998 NPFMC COUNCIL MEETING</u> 3. LANDING CRITERIA - ONE LANDING IN ANY ONE OF THE QUALIFYING YEARS 4. TONNAGE CRITERIA - 100,000 LBS. <u>IN THE CASE OF THE TOTAL STRUCTURAL LOSS OF AN ELIGIBLE PROCESSOR THE VESSELS MAY COOP WITH ANOTHER ELIGIBLE PROCESSOR.</u>

PROPOSAL FOR GULF OF ALASKA CO-OPERATIVES -- PAGE 4 OF 6

BERING SEA		WY AND CENT GULF OF ALASKA
SEC. 208(f) ELIGIBLE SHORESIDE PROCESSORS ELIGIBLE SHOREBASED CATCHER VESSELS MAY DELIVER ONLY TO SHOREBASED PROCESSORS WHICH MET THE FOLLOWING CRITERIA 1. HAVE A SINGLE GEOGRAPHIC LOCATION IN THE STATE OF ALASKA 2. PROCESSED MORE THAN 2,000 MT OF POLLOCK ROUND WEIGHT 1996 AND 1997 3. PROCESSORS WHICH HAVE PROCESSED LESS THAN 2,000 MT ROUND WEIGHT AS OF JANUARY 1, 2000 MAY NOT PROCESS MORE THAN 2,000 MT.		ELIGIBLE SHORESIDE PROCESSORS ELIGIBLE SHOREBASED CATCHER VESSELS MAY DELIVER ONLY TO SHOREBASED PROCESSORS WHICH MET THE FOLLOWING CRITERIA 1. HAVE A SINGLE GEOGRAPHIC LOCATION IN THE STATE OF ALASKA 2. PROCESSED MORE THAN 2,000 MT OF POLLOCK ROUND WEIGHT 1996, 1997 OR 1998 IN ANY TWO OF THE THREE QUALIFYING YEARS.

PROPOSAL FOR GULF OF ALASKA CO-OPERATIVES -- PAGE 5 OF 6

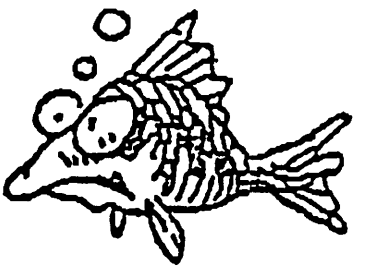
BERING SEA		WY AND CENT GULF OF ALASKA
SEC, 208 (g) REPLACEMENT VESSELS IN THE EVENT OF TOTAL LOSS OR CONSTRUCTIVE TOTAL LOSS OF AN ELIGIBLE VESSEL MAY BE REPLACED 1. IF THE LOSS IS NOT BY WILLFUL MISCONDUCT OF THE OWNER OR AGENT 2. WAS BUILT IN THE US AND IF EVER REBUILT WAS REBUILT IN THE US. 3. THE FISHERY ENDORSEMENT OF THE REPLACEMENT VESSEL IS ISSUED WITHIN 36 MONTHS OF THE LAST YEAR THE ELIGIBLE VESSEL HARVESTED POLLOCK IN THE DIRECTED POLLOCK FISHERY 4. IF THE ELIGIBLE VESSEL IS GREATER THAN 165 FT LOA GREATER THAN 750 GROSS TONS AND GREATER THAN 3,000 SHAFT HORSEPOWER, THE REPLACEMENT VESSEL CANNOT EXCEED ANY OF THE ABOVE SPECIFICATIONS 5. IF THE ELIGIBLE VESSEL WAS LESS THAN THE ABOVE SPECIFICATIONS THE SPECIFICATIONS MAY BE EXCEEDED BY 10% IN THE REPLACEMENT VESSEL.		REPLACEMENT VESSELS IN THE EVENT OF TOTAL LOSS OR CONSTRUCTIVE TOTAL LOSS OF AN ELIGIBLE VESSEL MAY BE REPLACED 1. IF THE LOSS IS NOT BY WILLFUL MISCONDUCT OF THE OWNER OR AGENT 2. WAS BUILT IN THE U.S. AND IF EVER REBUILT WAS REBUILT IN THE US. 3. THE FISHERY ENDORSEMENT OF THE REPLACEMENT VESSEL IS ISSUED WITHIN 36 MONTHS OF THE LAST YEAR THE ELIGIBLE VESSEL HARVESTED POLLOCK IN THE DIRECTED POLLOCK FISHERY 4. A REPLACEMENT VESSEL USED FOR DIRECTING FISHING OF POLLOCK CANNOT EXCEED 125 FEET LOA. 5. IF THE ELIGIBLE VESSEL WAS LESS THAN THE ABOVE SPECIFICATIONS THE SPECIFICATIONS MAY BE EXCEEDED BY 10% IN THE REPLACEMENT VESSEL

PROPOSAL FOR GULF OF ALASKA CO-OPERATIVES -- PAGE 6 OF 6

BERING SEA	WY AND CENT GULF OF ALASKA
CO-OP QUOTA THE AGGREGATE OF THE CO-OP VESSELS DIRECTED POLLOCK CATCH FOR THE YEARS 1995, 1996 AND 1997 AS A PERCENT OF THE POLLOCK HARVESTED FOR THE COMBINED YEARS	**CO-OP QUOTA** TO BE DEVELOPED LATER
VESSEL QUALIFICATION FOR CO-OP VESSEL QUALIFIES FOR A CO-OP IF IN THE PRIOR YEAR THE VESSEL DELIVERED MORE POLLOCK TO THE SHORESIDE PROCESSOR WITH WHICH THE VESSEL INTENDS TO CO-OP THAN TO ANY OTHER SHOREBASED PROCESSOR	**VESSEL QUALIFICATION FOR CO-OP** TO BE CONSIDERED LATER

BERING SEA	WY AND CENT GULF OF ALASKA
CATCHER VESSEL AND SHORESIDE RESTRICTIONS 1. PREVENT CATCHER VESSELS ELIGIBLE FOR A CO-OP FROM EXCEEDING AGGREGATE HARVEST LEVELS IN OTHER FISHERIES. 2. PROTECT PROCESSORS INELIGIBLE TO PARTICIPATE IN THE DIRECTED POLLOCK FISHERY FROM THE ADVERSE EFFECTS OF CO-OPS.	**CATCHER VESSEL AND SHORESIDE RESTRICTIONS** 1. PREVENT CATCHER VESSELS ELIGIBLE FROM EXCEEDING AGGREGATE HARVEST LEVELS IN BERING SEA FISHERIES. 2. PROTECTIONS FOR OTHER GULF FISHERIES: TO BE CONSIDERED LATER 2. PROTECT PROCESSORS INELIGIBLE TO PARTICIPATE IN THE DIRECTED POLLOCK FISHERY FROM THE ADVERSE EFFECTS OF CO-OPS.

North
Pacific
Longline
Association



Agenda C-2

December 1, 1998

Mr. Richard B. Lauber, Chariman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK

RE: Protection Of Non-Pollock Fisheries From S.1221

Dear Rick:

Congress has advised the Council to adopt conservaton and management measures to protect non-pollock fisheries from adverse affects of S.1221. Since we have no analysis of the impacts of the dramatic changes created by the Act, this may be an impossible task. We believe that the Council should take more time to analyse this complex circumstance - otherwise, we are shooting in the dark.

The freezer-longliner fleet engaged in the fixed gear fisheries for groundfish off Alaska finds itself in the same position as fixed gear crab fishermen with respect to the potential negative impacts of S.1221. Our fisheries are fully utilized by traditional participants who are wholly dependent upon them. Additional harvesting or processing by the many vessels that are technically qualified to participate in our fishery under LLP (please see attachment) but have made only token landings in recent years threatens to put the traditional participants out of business - particularly with an anticipated reduction in BSAI cod ABC/TAC. This additional activity will be stimulated by the expectation - created directly by S.1221 - that somewhere in the near future our fisheries will be subject to a de facto ITQ program like a co-op, or another form of quota management. Fishermen will be racing to increase their catch/processing histories, whether they are making money or not. Congress has indicated that the Council should address the question of harmful impacts of this sort, and we are writing to encourage it to do so. In our view this situation constitutes an emergency. Some specific recommendations follow:

Freeze the Fisheries in Place Now by Emergency Rule

The most obvious way to prevent speculative increases in non-pollock fishing activity is to freeze those fisheries in place, by vessel and by gear type for one year - now. **We suggest that each gear type under Council jurisdiction - trawl, trawl c/p, longline, longline c/p, pot, pot c/p, jig - be immediately**

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TEL: 206-282-4639; FAX: 206-282-4684

limited to the harvest and processing levels achieved (as a proportion of TAC) in each non-pollock fishery in 1998 (alternative: applies to cod only). Vessels would fish from a pool, and would not have individual quotas. In order to be effective this program would have to be implemented by emergency rule. Speculative fishing activity in 1999 could prove disastrous for traditional participants in the non-pollock fisheries. If the emergency rule were extended to a second 180-day period, the Council would have a year to deal with the significant and complex impacts of S.1221 on the non-pollock fisheries.

We also recommend that the following measures be analysed in this context:

Protection for Traditional Dependents - BSAI Fixed Gear Cod

We have watched the Council struggle with various sets of qualifying years in an effort to limit participation to those truly dependent on the crab fishery. It has been and remains a difficult task. With that experience in mind and advice from experienced pot and longine fishermen we have developed a performance standard that would keep any reasonably dependent fixed gear vessel in the BSAI fixed gear cod fishery, but would eliminate speculators who have made only token landings:

LLP notwithstanding, in order to continue in the directed BSAI fixed gear fishery for cod a vessel greater than sixty feet in length must have landed at least 250,000 pounds of processed BSAI cod or 500,000 pounds of BSAI round cod in either 1997 or 1998. Landings in 1999 would not qualify, for obvious reasons. Vessels under sixty feet in length would be exempt from this requirement. Cod bycatch in other fisheries could continue to be retained and sold.

The purpose of this proposal is to allow any vessel that is reasonably dependent on cod - that has made five or six trips in either year - to qualify, but to eliminate speculators with only token deliveries.

Declaration - Fixed or Mobile Gear in BSAI Cod Fishery

The cod quota in the BSAI is split between fixed and mobile gear. This split may be revisited, and it is necessary to know how many vessels will participate in each category. **We propose that all dual-qualified vessels under LLP - vessels that can fish for cod with trawl or fixed gear - be required to make a one-time permanent election as to whether they will fish cod with fixed or trawl gear.** This election should be made by mid-1999. The election is also necessary to prevent double-dipping. As things stand, trawlers that are dual-qualified but not constrained by the traditional take limits in S.1221 could fish in both the trawl and fixed gear fisheries for cod.

Limitation on Additional At-Sea Processing of Fixed Gear-Caught Cod

The Council is on record as wishing to limit growth in offshore processing - it recently set "limited processing" at 1 mt per day in an LLP amendment. Likewise, S.1221 recognized the danger inherent in additional offshore processing by prohibiting eligible catcher-processors from processing any BSAI crab. Our concern - explained at length during public testimony at the last Council meeting - is that if additional processing of fixed-gear caught cod by factory trawlers or motherships is allowed, our fishery may suffer greatly. Cod longliners and pot fishermen now coexist happily because they are separated on the grounds. Pot fishermen fish close to shore plants, where they deliver. Freezer-longliners concentrate their fishery in the western Aleutians and to the north in the Bering Sea, along the edge. Serious gear conflicts would occur if pot fleets served by motherships or factory trawlers were to move north or west.

We propose that trawl catcher-processors and motherships shall not, in aggregate, process a greater share of groundfish harvested by fixed gear than they processed in 1997 or 1998.

Please note that these proposals are not designed to increase anyone's share in any non-pollock fishery. To the contrary, they are designed to maintain the status quo in the face of S.1221. We are of the firm belief that dramatic action on the part of the Council will be necessary to carry out the Congressional mandate to protect non-pollock fisheries from the impacts of S.1221.

Sincerely,

Thorn

Thorn Smith

Attachment

Draft

Projected Non-Trawl Groundfish LLP Qualifiers in the Bering Sea and CV/CP Designations by Vessel Length

Gear Designation and Vessel Length	BSA & GOA			BSA			Total
	CVs	CPs	All	CVs	CPs	All	
Non-Trawl							
Less than 60'	108	2	*110*	29	0	*29*	*139*
60' to 124'	77	22	*99*	43	0	*43*	*142*
125' and greater	*7*	24	*31*	19	6	*25*	*56*
Total	192	48	*240*	91	6	*97*	*337*
Trawl and Non-Trawl							
Less than 60'	18	0	*18*	1	0	*1*	*19*
60' to 124'	71	9	*80*	9	2	*11*	*91*
125' and greater	6	36	*42*	3	0	*3*	*45*
Total	95	45	*140*	13	2	*15*	*155*
Grand Total	287	93	*380*	104	8	*112*	*492*

THE BULK OF THE BSAI FIXED GEAR COD FISHERY IS CONDUCTED BY 26-30 FREEZER-LONGLINERS AND BY SOME 20 ACTIVE POT BOATS (PERSONAL COMMUNICATION), FOR A TOTAL OF 46-50 VESSELS. AS ABOVE, 492 VESSELS ARE QUALIFIED TO FISH FOR GROUNDFISH WITH FIXED GEAR UNDER LLP - A POTENTIAL TENFOLD INCREASE. DATA DERIVED FROM ANALYSIS OF PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE, AUGUST 21, 1998.

SUN DRAGON
LIMITED PARTNERSHIP
P.O. Box 70668 / Seattle, Washington 98107
Telephone: (1) 206 605 9375 Fax: (1) 206 285 4671

December 1, 1998

Richard B. Lauber, Chairman
NPFMC Members and Staff

Re: Repercussions of SB 1221

I am writing this letter (and intend to offer Public Testimony) regarding the possibly unintended, but nevertheless malodorous effects of SB 1221 -Section 208F on our Alaskan fisheries in general, my company in particular, and my express intention to seek redress either through the Public Forum, or if need be, through the Courts.

As many of you know, I (and / or various entities under my control) have participated in the Groundfish fisheries throughout Alaska for as long as most of you. Whether through the ownership of fishing vessels or as a shore based processor I have been involved (both directly and indirectly) in nearly every phase of this industry since Americanization, and far longer in the traditional Alaskan fisheries.

Since 1990, my participation has been confined to the Saltfish business, and at various times I have been one of Alaska's largest buyers of Cod. The need to seek out better pricing and steadier demand for our finished products led me to Europe, where I have established a sizable business in value adding and direct distribution of Alaskan Saltfish. This market utilizes many species including Pollock.

On June 12, 1996, Sun Dragon Limited Partnership received NPDES Permit # AK-G52-0472 which grants the authorization (of both the Federal and Alaska State governments) to process SEAFOOD aboard a vessel anchored in Lost Harbor, Akun Island, Alaska. The validity of this Permit has been reaffirmed repeatedly, and is generally irrevocable, except for violation of it's discharge limits.

For several years, we have been searching for a suitable US built vessel to use in Lost Harbor, and having found such a vessel, I'm happy to say that we are now prepared to launch a sizable "near shore" processing operation during 1999 utilizing this permit. We will be offering to purchase fish on a competitive basis from any and all independent fishing vessels, including semi finished fish from vessels who process on board. That includes Pollock, Cod (and soon) Crab.

However, it quite suddenly appears that we are being told that we may shortly be unable to offer to purchase certain fish from certain vessels. We believe that our inalienable and existent rights to utilize our Permit have been "taken", and moreover, that we were denied the due process guaranteed by the U.S. Constitution.

sundragon@compuserve.com

When SB 1221 was first introduced, it seemed to me a possibly admirable undertaking. Even during my extensive travels, I looked for updates either through phone conversations or over the Internet Although it appeared that some procedural changes were being wrought to the Bill's intent, I NEVER ONCE HEARD OR SAW ANYTHING WHATSOEVER WHICH WOULD HAVE INDICATED THAT RESTRICTIONS ON ENTRY INTO THE PROCESSING SECTOR WERE EVEN BEING DISCUSSED, MUCH LESS CLOSE TO INCLUSION and IMPLEMENTATION !

I defy anyone to show me where there is (or was) any "Public Notice" or even a mention of these monumental (and in my view unconstitutional) changes in fundamental intent as having been proposed or discussed, either on the Internet or in any widely dispersed publication.

Indeed, even as recently as last week (over 30 days since being signed into law) I could find absolutely no mention of them anywhere on the Internet except for a copy of the Bill as signed into law.

Some have since mentioned that "there were many people who knew" and that "they" were invited to Washington D.C. to "state their case". I would like to know "how many", who chose the criteria for determining WHO was to be "invited", and "when and how" THEY were invited. I find it curious that no one bothered to take the time to investigate who might have had a current NPDES Permit (the only true prerequisite in order to process fish in Alaska) to process at a stationary location within the "affected" area.

I am well aware of the fact that neither the NPFMC, nor the Governor, nor (for that matter) anyone who was not a direct beneficiary, were consulted very little (if at all) during the closing hours of this treacherous division of our Public Resources.

Should Section 208F of this Bill stand as written, not only might a small handful of mostly foreign owned processing companies be able to "lock out" any independent fisherman they wish from selling his rightfully caught Pollock, but they will most certainly be able to exert undue influence over the destination market of their other species as well, effectively controlling Grounds Prices across the spectrum.

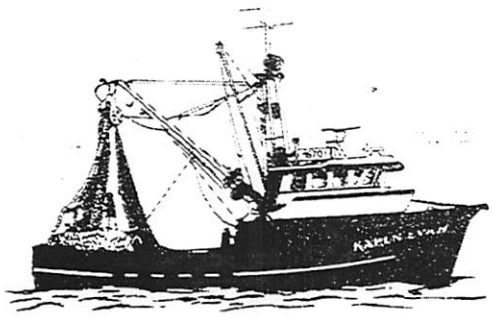
I must therefore assume that some Council members are not only upset, but indignant over their lack of consultation. The "framers" even had the temerity to insert language barring Council action on the most questionable parts of the Bill.

It is for this reason that I submit this letter, and will seek the support (in whatever fashion) of the Council during this meeting, in our fight to seek the review and corrective action necessary in order to allow us to exercise our Constitutionally Permitted rights to BUY fish from INDEPENDENT fishermen.

By the way, I was born in Chicago, Illinois on October 31, 1952.

Respectfully,

Brad A. Resnick
President and General Partner



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November 23, 1998

Attn: Mr. Clarence Pautzke, executive director
Mr. Richard B. Lawbert
North Pacific Management Council
605 W. 4th Ave. Suite 306
Anchorage,AK 99501-2252

Dear Mr. Lawbert,

I own and operate a 58 foot combination Trawler/Seiner that operates out of Sand Point for Pollock. Although I have some questions, I strongly support the concept of Senate Bill 1221 for the Gulf of Alaska.

Sand Point is in the East Aleutians Borough and I see that they have joined the Fair Fisheries Coalition in opposing 1221 for the Gulf. I would like to take this opportunity to distance myself from the stand taken by the Borough. As a small boat we have the least amount of options and would benefit the most from protection thtat 1221 would provide.

Others and myself plan on attending the December council meeting to make known that the Borough does not represent the interest of all the participants in the area. We all agree that the Gulf needs to be protected by the year 2000. I believe the entire Gulf should be consistent and not recognize any one small entity.

Sincerely,

John T. Evich
F/V Karen Evich

J. Thomas Evich F/V Karen Evich 2051 North Shore Rd., Bellingham, WA 98226 (206) 671-1354

Alaska
Mailing Address:

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ALYESKA
SEAFOODS, INC.

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Seattle, WA 98103
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Seattle Office
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Seattle, WA 98105
Fax: (206) 547-1808

December 3, 1998

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

Dear Members of the Council:

My name is Alec W. Brindle, and I am writing to you in my capacity as President of Alyeska Seafoods ("Alyeska"). I would like to take this opportunity to do two things. First, I would like to clarify exactly who Alyeska is, and second, I would like to comment on some of the recommendations which have been made to the Council by the Fair Fisheries Coalition ("Coalition").

With respect to the first issue, there has been a great deal of private and public conversation, including in the media, over the years suggesting that Alyeska is the same as Westward Fisheries ("Westward") and that the two companies' interests are identical. Let me assure you, Alyeska and Westward are not the same.

Perhaps some history of Alyeska would be helpful at this point. In the early 1980's, concern was acute in the Congress and the Council that the Bering Sea pollock resource was being harvested solely by foreign vessels, with no benefit whatsoever to either the United States or Alaska. Through a series of measures, the United States government encouraged the establishment of onshore joint ventures in the pollock fishery between United States and Japanese companies.

As a result of these United States government actions, Wards Cove Packing Company ("Wards Cove"), an Alaska fish processing company since 1912, entered into such a joint venture with, among others, Maruha to form Alyeska Seafoods. Incidentally, at the time Wards Cove made its decision to invest onshore, any member of the Coalition could have done the same. For whatever reason, they did not do so.

Let me reiterate, Alyeska was not, and is not, the same company as Westward. Winn F. Brindle, A Vice-President of Wards Cove, and the then and current General Manager of Alyeska, managed the construction of Alyeska's plant in Dutch Harbor, built long before Westwards's plant. To this day, Winn F. Brindle, as General Manager, is directly responsible for the overall operations of Alyeska. Alyeska's production is sold

for it by its owners on separate accounts on a brokerage basis. Alyeska and Westward have different ownerships, different managements, different fleets, and different priorities. We are not the same company.

Which is not to say that there is not some common ownership between the two companies, there clearly is. Alyeska's owners include Maruha, which owns Westward, but also Wards Cove, which holds a significant stake in Alyeska, but no interest in Westward. To say Westward and Alyeska are identical entities would be like saying Ford, which owns a part of Mazda, is the same company as Mazda. Alyeska's ownership is reflected by its Board of Directors, which consists of three individuals from Wards Cove, two from Maruha and one from Marubeni with the President of Wards Cove also serving as the President of Alyeska.

Let me assure you that my job as President of Alyeska is to do my best to ensure the success of Alyeska Seafoods, and that is where it ends. Neither Wards Cove nor its principals have ever had any interest in Westward and, in fact, Westward is a competitor of both Alyeska and Wards Cove, both on the fishing grounds and in the marketplace.

Presumably, people who want to lump Alyeska and Westward together have an agenda, and I imagine that it is that if the Council adopts additional processing caps, Alyeska will have to live together with Westward, thus diminishing the amount of capacity for both companies. I have to this day never heard a legitimate justification for doing this to two separate companies.

In sum, while some may claim there is justification in capping a single processor's share, this must be limited to real single processors, not to companies with established histories of separate ownership and management and which are, in fact, competitors in the fisheries of the North Pacific.

Let me now address certain proposals put before the Council by the Fair Fisheries Coalition.

The first Coalition proposal I would like to address would expand the crab processing cap to all groundfish and reduce the cap by 25% or 50%. This proposal is presented under the guise of being a sideboard, designed to prevent claimed unfair crossover from the inshore pollock processors into other fisheries.

In fact, this is no sideboard; it is a punitive measure designed to punish the inshore processors. The inshore processors already agreed not to expand their traditional crab processing if a fishery cooperative is formed for pollock. That may be a legitimate measure to prevent perceived unfair crossover. How is it legitimate to cut the inshore

pollock processors' crab processing by 25% or 50%? That isn't designed to prevent crossover, it is designed to punish pollock processors by taking away what they traditionally processed.

Similarly, the Coalition has asked the Council to institute a 12% processing cap on Bering Sea and Gulf of Alaska pollock, and to study processing caps of 10%, 12%, 15%, and 17.5%. This proposal essentially attempts to rewrite the legislation. Simply put, caps as low as 10% or 12% for processors would make Alyeska economically unviable. I do not believe that is what the Council or Congress would intend, but that would be the effect. Once again, instead of a sideboard, the Coalition is seeking a punitive measure. Alyeska is willing to discuss legitimate sideboards with anyone, but we cannot accept our economic extinction under the pretense of protecting the non-pollock processors.

Which allows me to crystallize my concerns with the Coalition. The bill in Washington was designed to rationalize an overcapitalized pollock fishery. Unfortunately, the Coalition, any one of whose members could have joined the pollock fishery at any time prior to the bill, but did not, now seek to punish the inshore sector. I have been around this business far too long to be surprised by its ability to cannibalize itself, but the Coalition is truly extraordinary in its attack on the inshore pollock sector.

Finally, let me comment on the generous use of the term "windfall" which some are using to describe the inshore allocation. It is important to recall that the inshore sector is committed to paying $75,000,000 over an indefinite amount of time for an allocation which can be changed by the Council in the year 2005. That doesn't sound like much of a "windfall" to me.

Thank you for the opportunity to submit these comments. I regret that I am unable to personally attend this meeting of the Council, but representatives of Alyeska will be in attendance to address any questions you might have.

Very truly yours,

Alec W. Brindle

Alec W. Brindle
President

AWB/cp

NORQUEST

November 2, 1998

Mr. Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Ave., Suite 306
Anchorage, Alaska 99501-2252

Re: Senate Bill 1221

Dear Mr. Lauber,

The Council has placed a discussion of Senate Bill 1221 on its agenda for the November, 1998 meeting. However, there is no specific action noticed to the public, and as a consequence of that our comments cannot be directed towards any proposed Council action.

Having said that, we have some general concerns that we would like to express that I hope will give you some flavor of the concerns our company has.

There are two principles within S. 1221 which create hazards for the industry, in our opinion:

- For the first time ever a processor "limited entry" program has been developed for a public fishery resource with the limitations on what companies may process pollock in the future
- Independent pollock fishermen may be restricted from seeking alternative processors of their raw product

The Council needs to provide clear guidance to the industry on the circumstances under which new processors may compete with existing processors in the purchase of pollock from the Bering Sea. This should include the criteria that will be employed, the time frame that will be required and the duration that a new processor will be allowed to compete with existing processors.

Since the "privilege" to become a new processor in the Bering Sea pollock fishery is of no value without access to raw product, the Council must likewise set forth the conditions under which fishermen will be allowed to sell their product to alternative processors. Additionally, the Council needs to squarely determine whether a pollock fisherman is prohibited from establishing its own processing entity and vertically integrating its business.

NorQuest Seafoods, Inc.
4225-23rd Avenue West • Seattle, Washington 98199
Telephone: (206) 281-7022 • Fax: (206) 285-8159
Crusader Fisheries • Lafayette Fisheries • Silver Lining Seafoods

For the record, NorQuest Seafoods is opposed to restrictions on the privilege to process any seafood in the North Pacific. We are opposed to regulations which restrict the ability of fishermen to change who their buyer will be.

We recognize that S. 1221 is now law, and the Council cannot change that. However, the Council will be required to implement its provisions, including so called "safeguards" against negative impacts to other fishermen and processors by the provisions in S. 1221.

NorQuest believes that "safeguards" will inevitably lead towards more restrictions in other fisheries on who can buy raw product, and under what conditions. We are concerned that safeguards will lead in the long term to a highly structured, complex web of restrictions on processing and fishing. These effects need to be very carefully analyzed and understood. There is a great danger that the net sum of Council action can be detrimental to the dynamic nature of our industry which is necessary to confront the continual changes in raw product, harvesting technology and market demands.

At the same time, we are fearful of the new found power and wealth S. 1221 creates for a select few processors. Those few processors will now have the ability to behave differently in other activities than they otherwise would, with unpredictable short and long term consequences for every other fishery in the North Pacific. Those consequences should be understood to include not only fisheries under the jurisdiction of the Magnuson – Steven Act, but also fisheries under the jurisdiction of the States. The Congress recognized the immediate impacts that would result for the Bering Sea crab fisheries by providing special provisions to restrict growth in the Bering Sea Crab fisheries by shore based pollock participants. Given the special privileges granted to pollock processors, we must support these provisions, and believe that the same provisions should apply to those involved in the offshore sector of the pollock fishery.

You must give the public adequate time to understand the consequences of your implementation of S. 1221, and to comment with a vision not only of what you might do this year but what you foresee the consequences to be two years, five years and further out from today. Since S. 1221 did not undergo a hearing process, with respect to the two general principles stated at the beginning of this letter, there is much that is not understood by us and others in the industry. It is up to the Council process to ensure that there is now adequate notice to the public, and information to understand the consequences, of proposed Council action.

As envisioned in the Legislation, we assume the Council will create a process that will measure the activities of the pollock processors in all other fisheries, compared to their current status, and allow for an open review of the extent to which S. 1221 privileges have contributed to those activities. A logical first starting point would be an accumulation of all data reflecting the historical and current activities of all pollock processors in all non-pollock fisheries. This should include both raw product acquisition and market share data. It should reflect both directly owned and controlled operations and those indirectly owned or controlled.

The Council should also institute, now, a system to gather data reflecting the future activities of the pollock processors in non-pollock fisheries, so the it can be accumulated in a comprehensive, timely, and systematic manner. That will be necessary to have a true measure of the impacts of S. 1221.

We wish you well in the daunting task in front of you.

Sincerely,

Terry Gardiner

Terry Gardiner
President

Alaska Groundfish Data Bank — P.O. Box 2298 • Kodiak, Alaska 99615

TO: RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

RE: PROPOSAL 21

DATE: NOVEMBER 4, 1998

SENT BY FAX: 3 PP

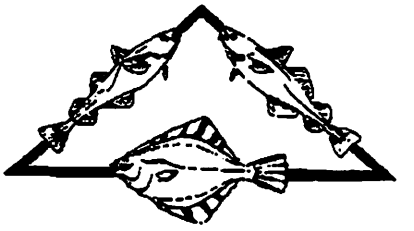
REQUEST TO CONSIDER PROPOSAL 21 AS PART OF THE DELIBERATIONS ON SENATE BILL 1221

The following proposal was submitted to the Council as part of the 1998 proposal cycle. The proposal would require that product caught in the 640, 630 and 620 Gulf reporting areas be processed within the aggregate boundaries. We appreciate your consideration of our request.

Chris Blackburn, Director
Alaska Groundfish Data Bank

Chris Blackburn • Director • (907) 486-3033 • FAX (907) 486-3461 • e-mail 7353974@mcimail.com

Alaska Groundfish Data Bank
P.O. Box 2298 • Kodiak, Alaska 99615



GROUNDFISH FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Please check applicable box(es)

☐ Bycatch Reduction ☐ BSAI Groundfish FMP ☐ GOA Groundfish FMP
☐ BSAI Crab FMP ☐ Scallop FMP ☐ Observer Program
☐ Habitat of Particular Concern

Name of Proposer: ALASKA GROUNDFISH DATA BANK **Date:** AUG. 11, 1998

Address: P.O. BOX 948, KODIAK, AK. 99615

Telephone: 907-486-3033 **FAX:** 907-486-3461

Fishery Management Plan: GOA

Brief Statement of Proposal:

The intent of this proposal is to require trawl caught groundfish in Central Gulf/West Yakutat, Reporting Areas 620, 630 and 640, to be delivered only to processors in the combined reporting areas and to restrict processors in the Central Gulf/West Yakutat area from processing trawl caught groundfish taken outside the Central Gulf/West Yakutat reporting area.

This proposal does not restrict factory trawlers since factory trawlers process in the area in which they are fishing.

The Western Gulf is not included because the needs of the Western Gulf may be different than those of the Central Gulf/West Yakutat reporting areas. The Eastern Gulf is closed to all trawling, so would not be affected by this proposal.

Objectives of Proposal: (What is the problem?)

Currently trawl vessels are able to fish the Central Gulf/West Yakutat reporting areas and deliver the catch to processors outside the Central Gulf/West Yakutat reporting areas, depriving the local communities of the benefits of the fish on their "door steps."

This proposal does not limit vessel effort, but does assure that the communities within the Central Gulf/West Yakutat reporting areas benefit from the fish caught within the combined reporting area.

Currently pollock and Pacific cod are the species most likely to caught in the Central Gulf/West Yakutat Area and processed outside the area.

Chris Blackburn • Director • (907) 486-3033 • FAX (907) 486-3461 • e-mail 7353974@mcimail.com

REQUIRE PROCESSING OF FISH WITHIN REGIONAL AREA -- PAGE 2 OF 2

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

Only the Council can recommend allocative measures to the Secretary of Commerce.

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

The Central Gulf/West Yakutat communities win. Processors outside the Central Gulf/West Yakutat reporting area who expect to process trawl caught groundfish from the Central Gulf/West Yakutat will lose.

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

Exclusive registration is an alternative solution, but restricts vessels and does not guarantee that fish caught in the Central Gulf/West Yakutat area are processed within the area.

Supportive Data & Other Information: What data are available and where can they be found? NMFS has data on fishing patterns. ADF&G has fish ticket data for catcher vessel catch and delivery sites.

NOTE: West Yakutat is included in this proposal because the License Limitation provisions allow vessels which qualify for the Central Gulf to also fish West Yakutat.

Signature:

Chris Blackburn, Director
Alaska Groundfish Data Bank

NORTH PACIFIC PROCESSORS, INC.

HOME OFFICE: 2800 EASTLAKE AVE. EAST • SEATTLE, WASHINGTON 98102 • (206) 726 9900
P.O. BOX 84179 • SEATTLE, WASHINGTON 98103-11
PROCESSING PLANT: BOX 1040 • CORDOVA, ALASKA 9957

Nov. 4, 1998

To: Chairman Lauber and Honorable Council Members, North Pacific Fishery Management Council

Fm: Ken Roemhildt, Supt., North Pacific Processors, Cordova AK

Subj: Written comments pertaining to the November meeting.

North Pacific Processors of Cordova, Alaska would like to make the following written comments concerning adjenda item C-1
C-1 Senate Bill 1221. This bill provides a reasonable plan for the Bering Sea fisheries. It will allow participants to use their limited resourses to do a better job. Unfortunately, the rest of the Gulf of Alaska is not covered, and that will put us at a great disadvantage. While we all want to increase recoveries and reduce waste and discards, the nature if the extremely short duration fisheries makes it necessary for us to use our resouces to expand volumes. Giving some reasonable plan for Gulf Pollock fisheries would also allow us to maximize more desireable things than just volume.

The Pollock fishery is extremely important to North Pacific in Cordova and also to the City of Cordova. Pollock acounts for about one third of our total purchases, and provides about 200 shoreside jobs and between $1,000,000 and $1,500,000 in total labor cost and taxes. In a small Coastal Alaskan City, in the middle of the winter when NOTHING else is going on, thats important. And these wintertime jobs are the ones that allow people to live in Cordova year around. Jobs and some money circulating in the winter is a real benefit to the whole community: the Utilities and many of the merchants up town are really pleased that their bills are being paid on time because of this fishery. Beside that, six to ten boats are also involved, with fishermen earning in the million dollar range.

A reasoned approach to the Pollock fishery in the Gulf of Alaska is necessary for the well being of our industry and our Coastal Cummunities. Please help us in this matter by considering the Gulf Industry Plan, which would put us on par with the Bering Sea Plan.

Thank You,

Ken Roemhildt, Supt.

Ken Roemhildt, Supt

ios

November 4, 1998

To: Rick Lauber, Chairman
North Pacific Fishery Management Council

Re: Pollock/Gulf of Alaska

From: Margy Johnson
Innkeeper

The gulf of Alaska must have a better plan for the pollock season. The Cordova area fisheries have been hit hard in the past few years. SBA has declared this a disaster area. The pollock season comes a time when the community is at its lowest financial ebb.

North Pacific Processors alone provides:

200 shore side jobs (Most of the employees that time of year are locals.)

$1 to 1.5 million in gross labor

$1 million to fisherman

Cordova needs those jobs and that cash in order survive. These are difficult times for resource based economies. Please support the Gulf Industry plan similar to the Bering Sea plan in SB 1221.

The Reluctant Fisherman Inn
HOTEL • RESTAURANT • LOUNGE
Box 150, Cordova, Alaska 99574 (907) 424-3272

ALASKA PACIFIC SEAFOODS
DIVISION OF NORTH PACIFIC PROCESSORS, INC.
HOME OFFICE: 2300 EASTLAKE AVE. EAST • SEATTLE, WASHINGTON 98102 • (206) 726-9900
P.O. BOX 31179 • SEATTLE, WASHINGTON 98103-1179
PROCESSING PLANT: 927 SHELIKOF AVE. • KODIAK, ALASKA 99615 • (907) 486-5924

November 4, 1998

Rick Lauber, Chairman:
North Pacific Fishery Management Council

We are seriously concerned over our interests in the Gulf of Alaska Pollock and Groundfish Fisheries. Alaska Pacific Seafoods, Division of North Pacific Processors, Inc. has a long history in Groundfish and helped pioneer the Pollock Fishery. Beginning in 1984, prior to SB1221, the Inshore/Offshore debate, and the 1989 Factory Trawler Raid of the Gulf of Alaska, the Alaska Fisheries Development Foundation secured a grant to Americanize Shorebased processing of surimi in Alaska. The project was hosted in Kodiak at Alaska Pacific Seafood and the original Baader 182 that helped mechanize the Alaskan Fishery was part of that project and is still productive for our corporation.

North Pacific Processors have a long and significant history in the Pollock Fishery and want to make sure that our interest and investment are not jeopardized in haste or in the wake of SB1221.

The Gulf of Alaska has been vulnerable to Bering Sea interests in the past. The 1989 Factory Trawler Raid that laid the foundation for Inshore/Offshore serves as a reminder. We have fears that the Gulf of Alaska may be seriously exposed again, as the Bering Sea industry; plants, vessels, and quota are nearly ten times the size of those in the Gulf. Provisions are needed to keep the fish harvested in the Gulf of Alaska processed in the Gulf of Alaska. Left with little or no protection from the Bering Sea the Gulf of Alaska is ripe for another raid.

We hope that in response to recent efforts like SB1221 to provide rationalization for the Bering Sea that you may provide some rational protection for the Gulf of Alaska. The coastal communities within the Gulf of Alaska are most dependent upon the health and stability of fisheries resources and Pollock is a key component in the Gulf Seafood Industry. Economic stability is tenuous in Gulf communities like Kodiak and Cordova with the current instability in the world marketplace. Pollock has provided employment for hundreds of employees during the off seasons and winter months and allowed North Pacific Processors to keep our plants open and viable.

We are concerned that in providing Bering Sea rationalization guaranteeing a large portion of the Alaskan Pollock quota to a very small number of corporations jeopardizes current market balance. SB 1221 may force consolidation into the Gulf of Alaska of companies not already participating in the Bering Sea with those currently in the Gulf. A few huge corporations from the Bering Sea will essentially control the market. We think that when one side of an equation is balanced the other side must be balanced also. We hope that you have intentions of protecting the vested interests of communities and processing plants in the Gulf of Alaska and providing some balance to the equation.

Processors of Quality Alaska Seafoods

We respectfully submit these concerns, realizing that this does not address all the issues. We would gladly be available for any comments or input.

Sincerely,

John Sevier
General Manager
Sitka Sound Seafood Division
North Pacific Processors, Inc.

Matthew Moir
General Manager
Alaska Pacific Seafood Division
North Pacific Processors, Inc.

November 4, 1998

Richard B. Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

This letter is to request that the Council discuss and make recommendations regarding safeguards to address a number of pressing issues with respect to implementation of the American Fisheries Act (AFA) that was recently enacted into law (Division C, title II, Public Law 105-277). Section 211 of the AFA specifically requires that the Council "recommend for approval by the Secretary such conservation and management measures as it determines necessary to protect [the non-pollock] fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by [the American Fisheries] Act or fishery cooperatives in the directed pollock fishery." We applaud you and the Council for expeditiously scheduling the November 10 -12 meeting, and hope that you will be proactive in considering and implementing the safeguards discussed herein.

The two provisions of the AFA that most greatly impact non-pollock processors and both pollock and non-pollock fishermen are the establishment of a closed class of pollock processors in the inshore and mothership sectors and the requirement that catcher vessels in an inshore fishery cooperative may deliver their catch to only one processor. While section 210(b)(6) would appear to permit catcher vessels in a cooperative to deliver up to ten percent of their collective catch to a second processor, the veto given the primary processor in section 210(b)(1)(B) ("...and that such shoreside processor has agreed to process such pollock") will likely make this alternative market option ephemeral unless the Council recommends a number of safeguards to the Secretary that clarify the requirements for cooperative contracts in order to enhance their value to fishermen.

Opening the Closed Processing Class. Perhaps the most unprecedented aspect of the AFA is the creation of a closed class of inshore pollock processors and motherships. While this Council, the State of Alaska, and indeed the Congress have in the past taken steps to limit the number of fishing vessels in order to prevent or mitigate overfishing, there is no conservation benefit or rationale to a limitation on the number of entities who may process the fish once caught. Such a limitation serves only the economic interests of the protected class, while reducing market pressure on the price paid to fishermen for their fish. The inshore and mothership sectors will point to the limitation on the number of catcher processors as a justification – however, that limitation is the defacto result of a limitation on the massive harvesting capacity of those vessels, and not the processing capacity per se. Congress likewise limited the harvesting capacity in the inshore and mothership sectors. In fact, there is no restriction on increases in processing

capacity in any sector of the pollock fishery, but rather only a restriction on the number of entities that may engage in pollock processing.

Section 211(c)(1)(B) clearly directs the Council to recommend actions "to protect processors not eligible to participate in the directed pollock fishery from adverse effects" from the AFA or fishery cooperatives. The most appropriate action to protect against adverse effects would be to permit the non-pollock processors to be able to have direct access to at least a portion of the new windfall that has been transferred inshore by the AFA. Only then will those processors not listed in section 208(f) be able to effectively compete for fish with the closed class. One approach the Council should consider is a parallel to the cap contained in section 211(c)(2)(A), which effectively limits the owners of mothership and shoreside processor operations identified in section 208 from processing more than their collective historical percentage of each species of crab. The appropriate parallel which would be a safeguard that permits shoreside processors not identified in section 208 to have direct access to no more than 30 percent of the inshore allocation, thus ensuring that the identified processors in section 208(f) are able to catch no less than their historical percentage of the TAC (and more to the extent that other processors do not outbid them for the fish).

Senator Stevens, in his summary of the AFA in the *Congressional Record*, suggested that the Secretary could open the closed class in the context of its clear safeguard authority under sections 211 and 213. This would indicate that the Council would be within its purview to recommend such a measure. It would greatly mitigate the adverse effects of the AFA if the Council were to suggest such a measure. To the extent that the Council or the Secretary believes they cannot legally open the closed class, it would be helpful to the non-pollock processors and to the debate to clearly establish why that is so.

Excessive Shares. Another related safeguard on processing that sections 210(e)(2) and 211(c)(2) specifically ask the Council to address is the issue of "excessive" processing shares of Bering Sea pollock, groundfish, and crab. In the absence of any Council action to address this issue, no processing cap at all is established under these sections. In order to prevent further concentration in the processing sector, promote competition in the price paid to fishermen, and to maintain the economy of coastal communities in Alaska, Washington, and Oregon through a diversified processing base, the Council should establish reasonable caps on the amount of any species that a single entity can process.

It should be noted that in the context of the halibut and sablefish fisheries the Council prohibited processor ownership of IFQs and limited owners of catcher vessels to no more than 1 percent of the total quota share for any area. While higher limits are in order here, clearly something considerably less than the 17.5 percent harvesting cap is necessary if the Council is to protect fishermen and non-pollock processors from the adverse effects that flow from a windfall transfer of fish inshore, a closed class (even if partially opened

per the above safeguard), and the use of fishery cooperatives. We would suggest a discussion of a cap on the order of 10 to 12 percent in pollock would be appropriate, especially in light of the statutory grandfather of any entity that may be processing over that amount.

Fishery Cooperative Safeguards. With respect to fishery cooperatives, a number of safeguards should be recommended by the Council in order to maximize the opportunity those cooperatives provide to fishermen and to mitigate the considerable control that the AFA gives to the closed class of inshore processors with whom those cooperatives must be formed. Sections 211 and 213 specifically provide the Council with authority to recommend safeguards for fishery cooperatives, and we urge the Council to adopt a number of specific recommendations to mitigate the adverse impacts of the cooperative provisions on fishermen and other fisheries. In addition, as with many of the provisions of the AFA, the Council should make concrete recommendations to clarify ambiguities that may otherwise be exploited to the detriment of others.

Two important safeguards would be to remove the limitations in section 210(b) on who inshore fishermen may form a cooperative with, as well on who they may deliver pollock to. Under section 210(b) as written, inshore fishermen may only form a cooperative with the approval of a specific processor, and that processor is pre-determined to be only the processor to whom they delivered the most fish in the preceding year. Only by removing these two limitations will any action to open the closed processing class be able to have any effect. In the event that opening the class itself is not possible, removal of these limitations, combined with the clarifications listed below, is still critical to make fishery cooperatives operate to the benefit of fishermen, rather than solely to the advantage of the processor to whom they will otherwise be bound.

One clarification that the Council should recommend to the Secretary is that the entire contract itself be public, in order to minimize the collusive effect such contracts will have on the conduct of the fisheries. At a minimum, in addition to the items listed in the statute, the price that is paid for the fish should be made public, as it is today when processors compete for the delivery of fish.

Two critical additional clarifying safeguards that should be recommended by the Council with respect to fishery cooperative contracts are 1) that any restrictions or other provisions or agreements in the contracts that affect the harvesting or processing of non-pollock species should be prohibited; and 2) all contracts must be filed no later than December 1 of the year prior to the year in which fishing will occur, and may be no longer than one year in duration. The prohibition on linkages to other fisheries is essential to prevent the closed class from using their veto over fishery cooperatives to leverage concessions or commitments out of pollock fishermen or boat owners who participate in multiple fisheries.

The filing time frame and one year duration are essential to preserving the opt-in and open access provisions as viable alternatives for fishermen. Without the filing deadline, fishermen who are not part of a contract can be frozen out of being able to exercise their rights notwithstanding the 30 day prefiling requirement simply by the coop filing the contract a few days before, or even after, the start of the calendar year in which the fishing will occur. The limitation to one year is suggested in section 210(b)(1)(B), and is necessary to give the Council maximum oversight and the fishermen maximum opportunity to use the fishery cooperative to negotiate a fair price for their fish.

In the specific case of inshore processors, the Council should recommend that the Secretary prohibit processors from refusing to agree to a fishery cooperative because the fishermen choose to exercise the right to deliver up to 10 percent of the cooperative's fish to a processor other than the primary processor. The fishermen should be free to exercise that right at any time during the fishing season, in order to ensure that there continues to be some competition, however minimal, among the closed class of processors for the fish that is being harvested.

With respect to mothership processors, the Council should recommend that the Secretary clarify that section 210(d) does not permit the mothership operators to form a separate cooperative that allocates processing shares. Rather, the section is intended to allow the motherships, with the concurrence of at least 80 percent of the catcher vessel owners, to enter into the same cooperative with the catcher vessels. This interpretation would help ensure, to the extent possible with a closed class of processors, that the catcher vessels would preserve their option to deliver their catch to the mothership offering the best price, rather than the motherships being able to collude amongst themselves to allocate processing shares so that they can avoid competing on price.

Definition of Inshore Sector. Another clarification that the Council should recommend to the Secretary to minimize the adverse impacts of the AFA on non-pollock processors is to clarify that vessels being used for processing in the inshore sector must remain at a single geographic location, as is presently the requirement under the Council's fishery management plan. The definition of "inshore processor" included in the AFA omits this requirement, though it is alluded to in the identification of the closed class of inshore processors under section 208(f). Nothing in the AFA conflicts with the existing requirement, and the absence of such a clarification invites the opportunity for owners of eligible pollock processing operations under section 208(f) to further overcapitalize the processing sector to the detriment of other processors. The closed class could easily do this by bringing mobile floaters into State waters to process the increased allocation of pollock, and use that new mobile processing capacity for other fisheries as well using the flexibility granted them by fishery cooperatives.

Conservation Measures. In addition to establishing safeguards, the Council should recommend that additional conservation and management

measures should apply with respect to fish harvested under a fishery cooperative. Bycatch and adverse impacts on marine mammals, crab, and other fisheries should be able to be reduced due to the elimination of the "race for fish," which has often been cited as a key justification for the type of fishery cooperatives made possible by the AFA.

Thank you for your attention to the issues raised in this letter.

Sincerely,

ICICLE SEAFOODS, INC.

Don Giles, President & CEO

NORQUEST SEAFOODS

Terry Gardiner, President

SNOWPAC PRODUCTS, INC.

Greg Blakey, President

ALL ALASKAN SEAFOODS, INC.

Lloyd Cannon, Chairman of the Board

ROYAL ALEUTIAN SEAFOODS, INC.

Garry Honcon, CEO

701 Dexter Avenue N., Suite 403
Seattle, WA 98109
206) 283-6605 / (206) 282-4572

Royal Aleutian Seafoods, Inc.

PO Box 920128
Dutch Harbor, AK 99692
(907) 581-1671 / (907) 581-1743

November 4, 1998

Richard B. Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501

Re: Senate Bill 1221

Dear Mr. Lauber,

Please accept this letter as Royal Aleutian Seafoods, Inc. ("RAS") comments regarding Senate Bill 1221. This letter follows a previous letter dated September 29, 1998, that was submitted to NPFMC ("Council") prior to S. 1221's passage.

As background, RAS is a 100% American owned seafood company that operates from a single processing location in Dutch Harbor, Alaska. RAS is primarily a crab processor and can be characterized as a non-pollock processor.

To restate, RAS remains opposed to two principles of S. 1221; 1) the creation of a protected class of pollock processors and the prohibition of open access to the pollock fishery, and 2) the establishment of restrictive cooperatives that limit fisherman from marketing their catch to a processor of choice.

However, now S. 1221 has become law and RAS is concerned with the Council's management measures to protect other fisheries, or the implementation and enforcement of the so-called "safeguard" provisions. Congress clearly intended to protect non-pollock processors from adverse effects as a result of S. 1221. Congress recognized the special need to establish protective measures for the non-pollock participants in the Bering Sea crab fisheries including harvesters and processors. Congress specifically restricted the growth in crab of the motherships and shoreside pollock processors through capping market share to historical levels.

One of the primary criticisms of the evolution of S. 1221 was the lack of public notice and process. It is incumbent upon the Council to provide adequate public notice and

Royal Aleutian Seafoods, Inc.

participation in order for effected parties to evaluate the short and long term consequences of implementing the safeguards that Congress intended.

Inclusive in S. 1221 is to measure the activities of the pollock processors in order to determine their adverse effect on all other fisheries. To fulfill this requirement of the Act, the Council needs to establish a baseline of information, that reflects the historical market share of the pollock processors in all non-pollock fisheries. With respect to crab, the baseline information becomes the foundation for establishing the market share cap for the mothership and shoreside pollock processors.

The non-pollock participants in Alaska are relying on the Council to implement the safeguards that Congress envisioned and to carry out the spirit of S. 1221, **namely to protect non-pollock processors as a result of S. 1221.**

Sincerely,

Gary M. Loncon
CEO

from Oct 98 MEETING

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Seattle, WA 98109
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Royal Aleutian Seafoods, Inc.

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September 29, 1998

Richard B. Lauber, Chairman
North Pacific Fisheries Management Council
605 West 4th Avenue, Suite 306
Anchorage, AK 99501
Hand Delivered

RE: S. 1221

Dear Mr. Lauber,

Please accept this letter as Royal Aleutian Seafoods, Inc. ("RAS") brief comments regarding Senate Bill 1221. We are most disturbed with the Draft Legislation dated September 23, 1998, how it differs significantly from the original legislation. This letter is not intended to be a detailed analysis of S. 1221, given the "closed door" policy which with this legislation has been drafted. RAS has had limited opportunity to review this latest draft and reserves the right to further comment once proper analysis has been conducted.

As background, RAS is a 100% American owned seafood company that operates from a single processing location in Dutch Harbor, Alaska. RAS primarily engages in crab processing in the Bering Sea arena. It was with a passing interest to review S. 1221, only to discover that the crab business as well as all seafood sectors that do business in the Bering Sea will be dramatically impacted by its passage.

Originally, the S. 1221 was a legislative solution to reduce foreign ownership and rationalize the Bering Sea pollock fishery. The latest draft of S. 1221, while reduces Bering Sea participants, fails to Americanize the pollock fishery and includes provisions that will have sweeping changes to the North Pacific seafood industry. Further, the bill serves to benefit a few select shore-based companies to the detriment of others that are not currently engaged in pollock processing.

RAS is concerned with the following provisions:

- Establishes an exemption to anti-trust laws for certain processors.

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- Allows the establishment of cooperatives that among other issues will result in a significant number of pollock vessels free to fish in the crab business that have little or no historical basis. The crab business is currently overcapitalized, which with the passage of S. 1221 will further worsen the economics of the crab business.
-
- Serves to strengthen control of U.S. fisheries by foreign interests.
- Eliminates the opportunities of American owned independent processors and harvesters.
- Transfers power, control and ultimately financial wealth to a few select beneficiaries of the bill.

In summary, S. 1221 circumvents the council process, public comment, and serves to benefit a few companies, while independent seafood companies and harvesters are disadvantaged. RAS is strongly against the passage of S. 1221 in its present form and welcomes the opportunity to thoroughly review to detail the far-reaching ramifications.

Sincerely,

Garry M. Loncon
CEO

AGENDA C-9
OCTOBER 1998
SUPPLEMENTAL

KRIS POULSEN & ASSOCIATES COMMERCIAL FISHING VESSELS • M/V BERING SEA • M/V ARCTIC SEA • M/V NORTH SEA

1143 N.W. 45TH STREET • SEATTLE, WASHINGTON 98107 • OFFICE: 206-783-6708 • FAX: 206-784-2502

September 22, 1998

The Honorable Slade Gorton
730 Hart Senate Office Building
Washington, D.C. 20510

RE: Agenda Item C-9, Implications of S.1221

Dear Senator Gorton,

I am a member of the Bering Sea crab industry and am very concerned about the implications of S.1221 for this industry. In reviewing the current language of S.1221, it no longer resembles the initial language and now has grave implications for the Bering Sea crab industry, which is comprised mainly of large vessels with homeport in Seattle.

In particular, there are three items which are extremely offensive and unacceptable for the Bering Sea Crab industry:

1. A landing in 1997 as the only requirement for a license for crabbing. Anything other than a landing in both 1996 and 1997 is unacceptable, as it forecloses future consideration of a permit buyback program.
2. The allowance of cooperatives within the trawl industry.
3. The total lack of input crabbers and other affected sectors were allowed in this process, and the fact that these issues should be decided by the North Pacific Fishery Management Council.

I would like to give you some historical background as to the reason why I, and the vast majority of crabbers find fault with the preceding three points.

<u>1980-1983</u>
These years formed the "King Crab Crash" which resulted in a 66% decrease in average crab vessel revenue. Many vessels converted and crossed over to trawling at this time due to grim future prospects in the crab industry. These trawlers have rarely fished crab since this time, and have never relied upon it financially. The trawl "A" season

and opilio crab season (Over 70% of income is derived for the respective industry during these seasons) have historically occurred in conjunction. For this reason, trawlers have not economically depended upon crab since the early 1980's. The 39 trawlers under consideration are pioneers of the trawl industry and a huge expense to the crab industry, both from revenues lost due to bycatch mortality and periodic directed fishing.

No Trawl Zone 1981-1985

Trawlers and major processors fought to have the historic crab sanctuary (no-trawl zone) opened to trawling. This zone has been an extremely important area for the protection of king crab from the effects of trawling. This area was opened to trawling in 1981 resulting in a huge amount of bycatch and waste of king crab by trawlers, creating significant losses for crabbers. The Alaska Crab Coalition (ACC) was formed in order to combat this blatant disregard of the entire crab industry. A no-trawl zone was re-established in 1986 by the ACC. However, it was much smaller and did not cover some critical area for the red king crab. If it had not been for the ACC, these trawlers who call themselves "pioneers" would have destroyed the crab resource.

Future of Groundfish Committee (FOG Committee) 1987-1988

The FOG Committee was composed of representatives from all fishing industry sectors. The task of this Committee was to find ways in which to deal with imminent overcapitalization in all Bering Sea fishing industries. The FOG Committee recommended to the North Pacific Fishery Management Council (NPFMC) a moratorium on new entrants. This recommendation would have created a much more healthy Bering Sea fishing industry, and S.1221 or any license limitation would not be necessary. However, the trawlers and major processors fought this action delaying the moratorium 6 years with no curtailment of new entrants into any fisheries.

Individual Transferable Quotas (ITQ's) 1990-1995

ITQ's were discussed for certain Bering Sea fisheries (Halibut, Crab, and Groundfish) very seriously during the first half of this decade. In particular, crab was a likely candidate of such a program due to safety reasons (Bering Sea Crab fishing is the most dangerous industry in the U.S.). The current Halibut/Blackcod fishery shows the increased safety benefits of an ITQ. ITQ's would allow fishermen to fish around the weather, instead of fishing through

unsafe weather under the current olympic style fishery. However, the trawlers and major processors sunk this crab ITQ program. Now, the trawlers and processors are legislating their own two pie ITQ program through a cooperative. This cooperative will allow them to transfer quota from vessels just as an ITQ would and free up crossover boats to fish the major crab fisheries.

Industry Funded License Buyback Plan (LBP) 1996-1998

The LBP was designed by members of the crab industry to deal with the overcapitalization of the crab industry, which could have been dealt with many times in the past. However, the trawlers and major processors always wanted a little more and would not allow the gates to crab or trawling be closed. The LBP is designed to buy enough licenses to maintain the fleet below 200 vessels. The addition of 39 trawlers to the crab industry, combined with a cooperative fishing agreement for these trawlers, greatly increases capacity in the crab industry. Basically, the trawlers are scuttling attempts by the crab industry to limit capacity. In addition, they will ironically use proceeds from the crab to pay back their $70 million buyback loan.

Current Situation

The current average crab vessel revenue has fallen to the same level as in 1983, when many crabbers permanently crossed over to participate in the groundfish industry. However, crabbers now have no other fishery to cross over to and the entire crab industry is teetering on the economic brink. Instead of being granted some form of relief, we are in jeopardy of having 39 pollock vessels grandfathered into our fishery and able to fish full-time. Average crab vessel revenue is now only $600,000 (this is almost certainly below average break even) while trawlers average three times this amount. S.1221, or an LLP amendment that allows speculative pollock boats into crab fisheries, will lead to mass bankruptcies for the crab industry and a loss of life by many crab fishermen.

Conclusion

Allowing 39 additional trawlers to enter the crab industry is entirely unfair. These vessels made an economic decision in the early 1980's to become trawlers, and have not relied upon crab since. The crab industry is already massively overcapitalized, without the addition of these 39 trawlers. The addition of these 39 trawlers with the cooperative will make the average crab fisherman

go bankrupt. There are also 128 crab vessel with trawl licenses. This license to trawl is worth well over $1 million per license. However, these 128 crabbers are willing to give up this right if, and only if, trawlers are willing to give up the right to crab.

It is an outrage to crabbers that trawlers are allowed a cooperative, which will allow them to fish all crab seasons. This is also an outrage to crabbers since the crab industry has fought long and hard for both limitation of vessels and some for of cooperative or ITQ. We have never been granted this privilege because the trawlers want a piece of our industry as well.

Lastly, it is an outrage that this process has circumvented the North Pacific Fishery Management Council (NPFMC) system and gone through congress with no input from other industries. Do crabbers matter that little to our own representatives? The NPFMC was put in place so that these situations would not occur. Instead, you have over ruled the recent Inshore-Offshore allocation decision, and created a huge mess which stretches well beyond the Bering Sea trawl industry. All S.1221 does is transfer the problem from the Bering Sea trawl industry to other sectors of the fishing industry such as crabbers.

It is ridiculous that the trawlers and major processors are able to have their way, grandfathering 39 trawlers in the crab industry, given the fact of their blatant disregard for the conservation of crab stocks in the Bering Sea.

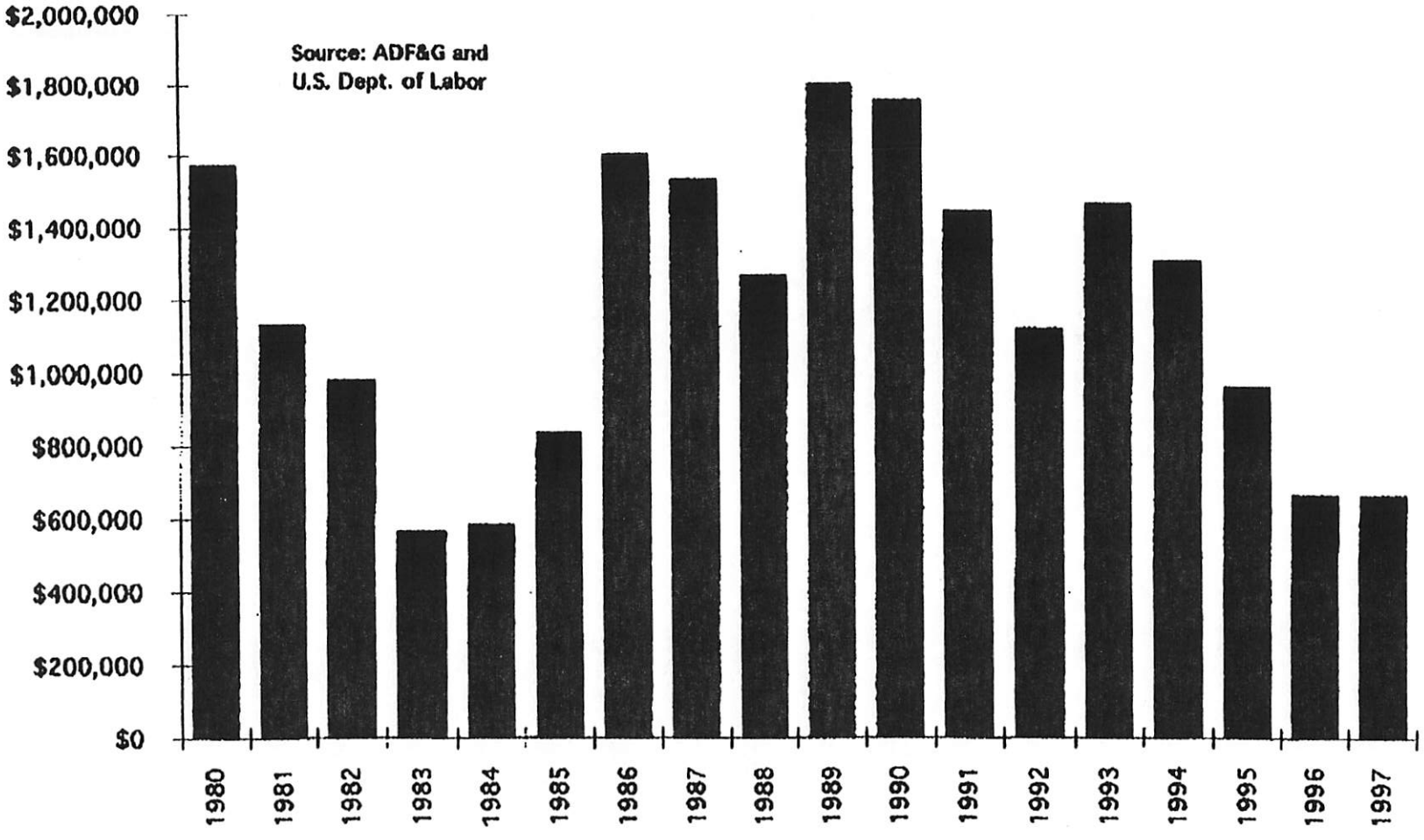
Sincerely,

Edward Poulsen

Edward Poulsen
Kris Poulsen & Associates

cc: Rick Lauber, Chairman NPFMC
Frank Rue, Commissioner ADF&G

Average Crab Vessel Revenue Adjusted for Inflation



from Oct 98 mtg notebook

KRIS POULSEN & ASSOCIATES COMMERCIAL FISHING VESSELS • M/V BERING SEA • M/V ARCTIC SEA • M/V NORTH SEA

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September 29, 1998

Mr. Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Ste. 306
Anchorage, Alaska 99501-2252

RE: Agenda Item C-1, License Limitation Plan Amendments

Dear Rick,

The purpose of this letter is to explain the necessity of Alternative 4 of Proposed Action 5 (Require recent crab fishery participation), scheduled for the October Council meeting in Seattle. Alternative 4 is a necessity for three reasons: The proposed industry funded Bering Sea/Aleutian Islands crab license buyback, current conditions of the crab industry, and agreements made between the crab and groundfish industries in the early 1990's.

BS/AI Crab Industry Funded Buyback

History has shown that the most debilitating issue facing any buyback program (industry or government funded) is latent capacity. The greater the latent capacity, the greater the chance of failure. Historical examples of buyback programs fraught with latent capacity are: Washington State Salmon Buyback, East Coast Groundfish Buyback, British Columbia Salmon Buyback, and the United Kingdom Decommissioning Scheme. None of these programs were able to retire any substantial amount of effective capacity. All of these fisheries were license limited with loose entry requirements resulting in latent capacity (for example, it has been estimated that 75% of current East Coast Groundfish licenses are latent). Most of the time this occurs because license limitation is chosen as a solution to declining harvests and increasing effort. However, by the time the license limitation plan is in place it is too late. More vessels are licensed than the amount which traditionally fished the resource, an economic collapse typically occurs, and a huge amount of latent capacity exists as few vessels can depend upon the resource. Those that never where dependent on the fishery continue fishing for their dependent fishery with license in hand from the previously licensed fishery.

The Bering Sea crab industry is showing all the telltale signs of continuing this trend. The Northern Economics analysis projects 365 vessels to qualify for BS/AI crab fisheries. However, the number of vessels which depend upon crab (i.e. are not financially viable without it) is in the low 200's. This can be shown by determining which fisheries the traditional crab fleet depends upon for financial viability. For the last five years, vessels have averaged $573,619 during Opilio, while averaging only $94,200 and $71,400 for King and Bairdi crab respectively. Put another way, 77.6% of average vessel revenue is generated in the Opilio season.

The implications of this are that a vessel can not depend upon either King crab or Bairdi. This is further evidenced by the closure of King crab in both 1994 and 1995 and closure of Bairdi in 1997. Basically, the traditional crab fleet which depends upon crab fisheries for financial viability can be determined by looking at those vessels which consistently fish Opilio crab.

The number of vessels making Opilio landings between 1995-1998 has averaged 235. Analysis of the State of Alaska's Commercial Fisheries Entry Commission lists show that there is some speculation going on even within this group of crabbers. Due to this speculation, the true number of core crab vessels which are economically dependent on crab is most likely somewhat less than 200 vessels. This is also shown in the analysis under alternative 8 which requires landings in each of the years between 1995-1998. One would expect that if a vessel is truly financially dependent on crab, the vessel would have made numerous landings in each one of these years. 1998 should be included even though the data only includes Opilio, since Opilio represents 77.6% of all revenue generated by a crabber. The analysis shows only 193 vessels made landings during this period.

I support Alternative 4 which requires crab landings in 1996 and 1997 because it is fair while still eliminating most of the latent capacity present within the industry. Alternative 4 would qualify 245 vessels (after reductions and exemptions). This amount is somewhat greater than the number of vessels financially dependent upon crab. However, it also allows flexibility for those vessels which have extenuating circumstances.

Qualification of any amount of crab vessels greater than 245 will result in undue latent capacity. This latent capacity will hinder, if not destroy, any chance of the industry funded crab buyback. It makes no sense for the crab industry to buy out vessels which are opportunistic and speculative. Little effective capacity could be retired with the amount of money available for the buyback. Basically, vessel owners would be asked to pay more for the program than the benefits they would receive from a smaller fleet size.

However, with qualification of 245 vessels, the industry funded Crab Buyback Plan would have a very good chance of buying out effective capacity. In this way, the Crab Buyback would actually receive greater benefit in decreased fleet size, than they pay out to support the buyback loan.

In summary, Alternative 4 should be implemented because it is a fair way to achieve a fleet of mostly true crabbers (financially dependent on crab). By doing so, the industry funded Buyback will then have a very good chance of approval and becoming a success.

Current Conditions of the Bering Sea Crab Industry

The Bering Sea crab industry is in a very poor economic state at the present time. The attached chart reveals that average vessel revenues are at the same level experienced during 1983-1984 adjusted for inflation. It was during this time that many crab vessels crossed over to become trawlers. The current situation is just as desperate. Although difficult to determine, it is most likely that the average vessel revenue is below the average economic break even point. This implies that vessels are having a very difficult time paying the bills.

Where vessel owners used to maintain vessels to the best of their ability, vessels owners are now forced to scrimp on maintenance. I believe that the prolonged decreased average revenues crabbers are experiencing will become apparent soon for the traditional crab fleet (especially if some severe weather is experienced), as may be evidenced by an increase in vessel sinkings and injuries.

There is a very important difference between traditional crabbers which are dependent on crab and those latent vessels which are not dependent. Latent vessels do not need to earn enough money during crab season to cover their fixed costs, while traditional crabbers do. Thus, it makes sense for vessels from other industries to participate in the short King and Bairdi seasons, even when average revenue levels are very low.

For example, as long as a vessel is able to cover fuel, bait, and food expenses (as well as applicable insurance) it makes sense for a vessel to fish a short season such as King or Bairdi. These variable costs are quite low for these fisheries since they are so short. It should be expected that many vessels will then enter these fisheries to cover a portion of their fixed costs (i.e. interest, taxes, licenses, legal, accounting, phone, a portion of insurance, and vessel maintenance). These vessels which are not dependent on crab are mainly trawlers and longliners as well as 24 large crab vessels fishing in other countries, which have healthy industries. For example, trawlers averaged $1,731,770 in

1996 and over $2 million in 1995. Basically, they are able to cover all fixed costs in their dependent fisheries while making pure profit in King and Bairdi.

Unfortunately, the traditional crab fleet must be able to cover nearly all fixed costs during the Opilio season. This has been exceedingly difficult as average revenues during the Opilio fishery have dropped dramatically. In 1995 average Opilio revenue was $711,462 then dropping almost in half to $365,811 in 1996 and remaining depressed in 1997 at $409,292. The situation looks just as bleak for the future in regards to Opilio. A lack of recruitment means that we have already seen the peak in abundance, and quota levels will begin to drop off dramatically. Unfortunately, the nagging influence of the Japanese economic crisis will continue to depress all crab prices. Canadian and Russian harvests of Opilio and King continue to depress prices as well.

What this means is in a few years traditional crab fishermen will be forced to rely on another resource as Opilio quotas are slashed and prices do not compensate for the decline. However, there are no new crab resources to develop. Bairdi is currently closed and shows no sign of recovery. This leaves King as the future mainstay of the traditional crab industry. However, with increased King crab abundance and revenues, latent capacity will come flooding in resulting in an inability of crabbers to pay for their fixed costs.

The result of the above will be an economic disaster for the traditional crab fleet if Alternative 4 is not implemented.

Industry Agreements on Crossovers

During June 22-28 of 1992, the North Pacific Fishery Management Council met and took final action on the vessel Moratorium. The July 7, 1992 Council Newsletter states, "There are no further restrictions on a qualified vessel crossing over from one fishery to another (groundfish, crab, or halibut) during the moratorium, regardless of past participation." This agreement was struck between the various fishing industries at this time.

We are now at a point where halibut has gone Individual Transferable Quota, and both the groundfish and crab industries are attempting to eliminate the crossover provision. This is fine as long as both sides are willing to eliminate the ability to crossover. An important fact to consider is that it is relatively easy for both trawlers and longliners, as well as any other vessel which so desires, to lease crab pots and make a landing in the crab fishery. At the same time, it is not an easy task for a crabber to attach trawl gear to the vessel and make a landing.

For the above reason, crossovers should be eliminated, and Alternative 4 of Proposed Action 5 should be implemented. Alternative 4 will eliminate many of the speculative vessels which do not depend on crab, but made a landing due to the ease of doing so with the desire to obtain a license for a fishery in which they rarely fish.

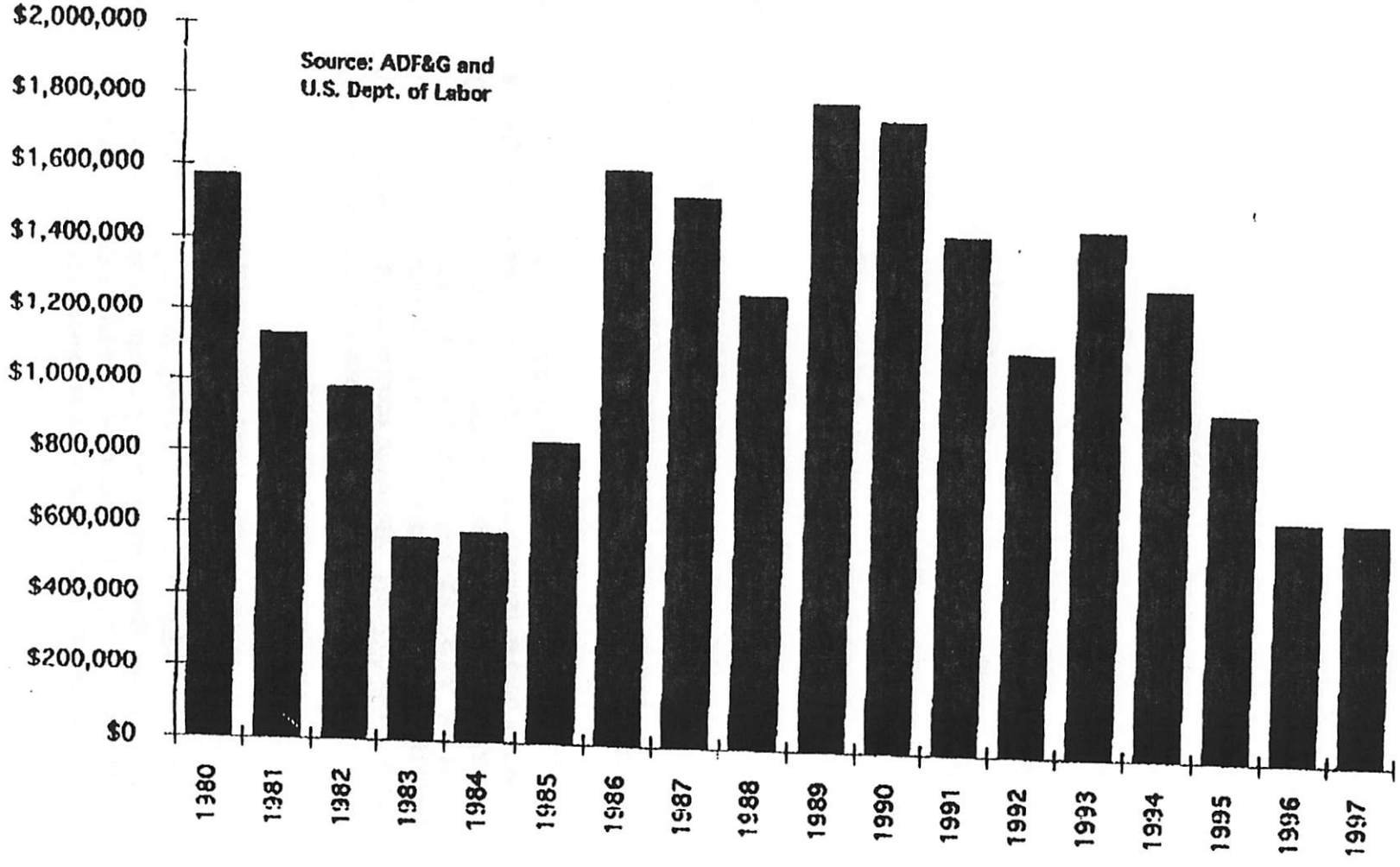
Conclusion

The Bering Sea/Aleutian Islands crab industry is currently in an economic recession due to low prices and an abundance of vessels. Many of these vessels fish speculatively and opportunistically, which results in economic hardship upon the traditional crab fleet which is economically dependent upon crab. For the industry funded Crab Buyback Plan to have any chance at success and to avert the very real possibility of an economic collapse of the traditional crab industry, Alternative 4 of Proposed Action 5 should be implemented.

Sincerely,

Edward Poulsen
Kris Poulsen & Associates

Average Crab Vessel Revenue Adjusted for Inflation



RE: American Fisheries Act
Presentation to NPFMC, November 11, 1998

Thank you Mr. Chairman members of the Council. I am Garry Loncon, and I represent Royal Aleutian Seafoods, Inc. As background, Royal Aleutian Seafoods is a 100% American owned seafood company that operates from a single processing location in Dutch Harbor and is engaged almost exclusively in crab processing.

Before I begin my comments regarding American Fisheries Act I would like to express my appreciation to the Council and this process, specifically that these proceedings are conducted in a public forum, where all industry participants have an opportunity to comment.

We are fundamentally opposed to two principals of the Act:

1) **The creation of a protected class of pollock processors and the prohibition of open access to the pollock fishery. Limiting processors is a watershed event in Alaskan fisheries legislative history. There is simply no rationale to a limitation on the number of processors and such a limitation serves only the economic interests of the protected class. Imagine if this form of legislation existed in 1988, when Royal Aleutian Seafoods, was formed. Well there would be no Royal Aleutian Seafoods.**
2) **The requirement that catcher vessels in an inshore fishery cooperative may deliver their catch to only one processor. This establishment of restrictive cooperatives that limit a fisherman from marketing their catch to a processor of choice is a second unprecedented aspect of AFA.**

In combination, the closed class and restrictive cooperatives are tantamount to a processor IFQ.

Having stated this I am remindful that AFA is law. A protected class of processors, and namely the shoreside processors, with a new found economic windfall in the form of a 42% increase in pollock processing share, remain Royal Aleutian Seafoods' primary competitors in crab processing. The ways in which the protected class is able to exploit its economic and operating advantages leaves an independent crab company quite vulnerable.

Public testimony will well document that various fishing groups, municipalities, and generally the balance of the non-pollock processing participants across the state of Alaska are rightfully calling for safeguards. So how does the Council address protection of the other fisheries, or the implementation and enforcement of the so-called safeguard provisions? I submit, that duplicating 1221 in other areas, or simply put attempting to build protective fences around each industry segment, such as Kodiak is not a workable solution. Replicating 1221 represents challenges to the Council in terms of legality, management of the Council's limited resources, and is an impossible task to accomplish by July 1, 1999. A workable solution for safeguards is to clearly restrict the harvesters and processors that have benefited from the Act. In other words, build only one fence around the protected class.

So what safeguards must the Council address:

1) The Council should limit the participation in other fisheries by vessels that can participate in fishery cooperatives for Bering Sea pollock. This can be done through a number of measures, which could include limiting or eliminating eligibility for certain non-pollock fisheries, or by requiring vessels that contribute catch history to a pollock cooperative to either fish that history or not participate in other fisheries until after the close of the pollock fishery.

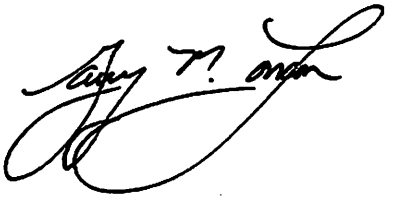
2) The Council should expand the existing safeguard in section 211(c)(2)(A) that limits the ability of inshore and mothership operators to process crab to (A) apply to all species of groundfish as well as crab, and (B) to include catcher processors eligible under section 208(e).

3) The Council should establish by July 1, 1999 a two-tiered standard for excessive harvesting and processing shares. The AFA itself sets out a two tier standard by setting limits on Bering Sea pollock harvesting and processing in section 210(e) and on harvesting and processing for all other species in section 211(c)(2)(B). The Council should follow this model by establishing two standards for excessive share caps – one that applies to the closed class of harvesters and processors for Bering Sea pollock, and a second standard that applies to all other harvesters and processors.

IN THE EVENT OF DIRECT QUESTION: [For example, under this approach any entity that is eligible to harvest Bering Sea pollock would be capped at 17.5 percent for pollock, and 5 percent of the overall TAC for all other species, with no more than 10 percent of the TAC for any one species. For harvesters not eligible to catch Bering Sea pollock, the excessive harvesting cap would be 10 percent of the overall TAC, with no more than 20 percent of the TAC for any one species. A similar cap can be set for processing.]

Clearly, Congress intended to protect processors not eligible to participate in the pollock fishery from adverse effects from the AFA or fishery cooperatives. Congress recognized the special need to establish protective measures for the non-pollock participants in the Bering Sea crab fisheries including harvesters and processors. Congress specifically restricted the growth in crab of the motherships and shoreside processors, but failed to include catcher processors, which requires a Council remedy.

The non-pollock participants in Alaska are relying on the Council to implement and enforce safeguards that Congress envisioned and to carry out the spirit of AFA, namely to protect non-pollock processors as a result of the Act.



Don Giles / Earl Comstock

The Fair Fisheries Coalition Safeguards Proposal

The Fair Fisheries Coalition represents fishermen, processors, and communities that are adversely impacted by the American Fisheries Act (AFA). We recommend that the Council analyze and adopt the following safeguards pursuant to section 211(c) of the AFA in order to minimize the adverse impacts of the AFA on non-pollock processors and harvesters.

1) Limit Eligible Catcher Vessels to Pollock Only The Council should recommend that fishing vessels eligible to harvest pollock under section 208 be restricted to the Bering Sea pollock fishery only for the duration of the AFA (i.e., until 2004), notwithstanding any prior participation in other fisheries.

The Council should task staff to develop options that examine the impacts of prohibiting participation of Bering Sea pollock catcher vessels in: all other fisheries; all crab fisheries; and all crab and Gulf of Alaska groundfish fisheries only. The Council should consider as a sub-option allowing Bering Sea pollock eligible catcher vessels less than 125 feet to permanently elect to fish either Bering Sea pollock or all other species for which they are eligible.

2) Expansion of Processing Cap for Pollock Processors to All Species The Council should recommend expanding the existing safeguard in section 211(c)(2)(A) that caps the ability of inshore and mothership operators to process crab to:

(A) apply to all species of groundfish as well as crab, and

(B) to include owners of catcher processors eligible under section 208(e).

The Council should task staff to evaluate the impacts of using the three-year aggregate contained in section 211(c)(2)(A) on the availability of markets for fishermen in non-pollock fisheries, as well as the sub-options of reducing the traditional processing cap by 25% and 50%.

3) Establishment of Excessive Share Caps The Council should recommend by July 1, 1998 that the harvesting and processing caps in section 210(e) be expanded to apply to Gulf of Alaska pollock as well, and recommend a combined excessive share cap of –

A) 17.5% for harvesting Bering Sea and Gulf of Alaska pollock; and

B) 12% for processing Bering Sea and Gulf of Alaska pollock. As provided in section 210(e)(2), any entity over that amount should be capped at their existing level or 17.5%, whichever is lower.

The Council should defer action on establishing excessive harvesting and processing shares for non-pollock fisheries until a later date when more information is available.

The Council should task staff to analyze the impact on markets for fishermen of combined pollock processing caps of 10%, 12%, 15% and 17.5%. The Council should task staff to develop for next year an analysis of harvesting and processing shares that currently exist in all non-pollock fisheries.

4) Removal of Fishery Cooperative Delivery Restrictions The Council should recommend removal of two restrictions placed on fishery cooperatives under section 210(b). The restrictions on which processors fishermen may form cooperatives with and who they may deliver to should be eliminated. In addition, the Council should recommend that up to 30 percent of the inshore allocation be available for delivery under fishing cooperatives to processors not listed in section 208(f).

The Council should task staff to examine the impact of eliminating the "qualified catcher vessel" restriction for establishing cooperatives and the limitation on which processors fishing cooperatives may deliver pollock to. NOAA GC should be asked to evaluate the legal authority of the Council to supercede the restrictions in section 208(f). To the extent the Council has such authority, staff should develop options for allowing delivery of 10%, 20%, and 30% of the inshore pollock to processors not eligible under section 208(f). Each of the options should require non-eligible processors to participate in the loan buyout provisions to the extent that they process Bering Sea pollock.

5) Establishment of a Public Data Base to Analyze Impacts The Council should initiate the data gathering program recommended by the Advisory Panel.

6) The Definitions of Shoreside Processor and Eligible Facilities Should Be Clarified The Council should recommend that the definition of shoreside processor include only vessels operating at a single geographic location, and that specific facilities be identified as eligible under section 208(f) instead of corporate entities.

7) Safeguards Should be Required in Fishery Cooperative Contracts The Council should recommend that fishery cooperatives be limited to one year in duration, that linkages to delivery of non-pollock catches be prohibited, and that all contracts must be filed no later than December 1 of the year prior to when fishing begins. In addition, catch and bycatch information should be made available on a vessel-by-vessel basis.

8) Cooperatives Should Be Required to Reduce Bycatch and Address Sea Lion Concerns to A Greater Extent than Non-Cooperative Fisheries The Council should recommend that conservation and management measures required to address bycatch and Stellar Sea lion issues be applied separately to cooperative and non-cooperative fisheries. The flexibility granted cooperatives to control

fishing effort and timing provides greater ability to those fishermen to undertake conservation measures.

The Council should task staff with developing options for applying separate conservation regimes to cooperative and non-cooperative fisheries that maximize the conservation and management objectives while still allowing fishermen the opportunity to prosecute the fishery successfully.

Ken Stump
Paul Clark

GREENPEACE

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

December, 1998

Subject: 1999 TAC specifications for the BS/AI and GOA groundfish fisheries in the context of Steller sea lion conservation

Dear Mr. Chairman,

The following comments of Greenpeace, American Oceans Campaign, and Sierra Club Alaska concern the Plan Teams' recommended 1999 ABCs for pollock, Pacific cod and Atka mackerel, three of the most heavily exploited groundfish species during the 1990s, as well as broader ecosystem concerns which are not addressed anywhere in the status quo TAC-setting process, particularly as they affect the endangered Steller sea lion. We have already submitted extensive written comments on these matters in repeated testimony to the Council, in this year's Council FMP amendment proposal cycle, and most recently in our comments to NMFS on the Draft EIS for the BS/AI and GOA FMPs and the Draft Reasonable and Prudent Alternatives (RPAs), all of which we incorporate by reference.

In light of the current NMFS Section 7 consultation on the endangered Steller sea lion and the requirement to provide Reasonable and Prudent Alternatives (RPAs) to avoid jeopardizing the species, it is clear that the status quo regulation of the groundfish trawl fisheries can not go forward in 1999. Furthermore, the evidence from recent Plan Team stock assessments indicates that the health and long-term productivity of major commercial stocks of pollock, Pacific cod, and Atka mackerel are placed at high risk by status quo management in the 1990s.

Major deficiencies in the status quo operation of the fisheries that must now be addressed include:

- Inadequate trawl exclusion zones which fail to protect large portions of critical habitat proximal to sea lion rookeries and which do not extend to critical habitat foraging zones around haulout sites in the Gulf of Alaska and Bering Sea/Aleutian Islands;

- Inadequate seasonal and area-specific apportionments of the pollock and Atka mackerel TACs to spread out the fisheries impacts more evenly across the year and avoid concentrating catches of these primary Steller sea lion prey in critical habitats at difficult times of the year for foraging sea lions;

- Lack of protections for sea lion winter foraging habitat in the large aquatic foraging zone off the eastern Aleutian Islands, overlapping the CVOA, where record levels of 50-70% of the giant eastern Bering Sea pollock catch have been extracted in the 1990s;

- Lack of protections for pollock spawning grounds and other important fish and shellfish habitat, particularly (but by no means only) in the ecologically productive zone off the eastern Aleutian Islands, overlapping the CVOA and critical sea lion habitat, where an enormous quantity of pollock trawl fishing effort and catch has become concentrated on the spawning aggregations since the late 1980s;

- Lack of an AI pollock stock rebuilding program and a moratorium on the directed fishery in light of very low stock abundance, unknown recruitment trends, and concerns for sea lion prey availability in the AI, as well as the complete absence of time-area management in the current AI pollock fishery;

- Lack of adequate downward adjustments in groundfish TACs for heavily exploited stocks of pollock, Atka mackerel and Pacific cod in order to reflect the risks associated with current low levels of spawner biomasses, large uncertainties about recruitment in future years, heavy reliance on forage species such as pollock and Atka mackerel by Steller sea lions, northern fur seals, Pacific harbor seals, large colonies of seabirds and other groundfish, and present concentration of the major trawl fisheries for pollock, Atka mackerel and Pacific cod in critical sea lion habitat.

1. THE IMPACT OF FISHING IN AN ECOSYSTEM CONTEXT IS NOT ADDRESSED IN THE SINGLE-SPECIES TAC-SETTING PROCESS

In the Draft EIS on the BS/AI and GOA FMPs (September, 1998), NMFS defined the scope of the federal action to be assessed under NEPA as the "TAC-setting process." However, the current TAC-setting process is only, and narrowly, concerned with setting model-generated numerical thresholds and quotas for single stocks of commercially exploited fish. Therefore, how does the management system address the broader direct, indirect and cumulative impacts of these fisheries quotas on the environment? How do managers determine the basis for precautionary downward adjustments of ABCs and other measures at the Council TAC-setting level?

You will recall that there was considerable discussion concerning these issues at last year's TAC-setting meeting, particularly as they concern the high levels of groundfish removals from critical habitat of the endangered Steller sea lion in western Alaska. The Council heard presentations from the Plan Teams stating plainly that no ecosystem adjustments are made to their ABC recommendations. Precautionary downward adjustments of ABCs for ecosystem considerations are left to the Council's discretion at the TAC-setting level. Difficult to quantify or politically charged issues concerning time-area regulations or fishery impacts on habitats and protected species are deferred to the Council process for resolution.

Status quo ABC- and TAC-setting in the management of fisheries in the North Pacific clearly does not incorporate multispecies or ecosystem-level considerations and impacts into conventional single-species catch levels:

> "*The ABCs have generally been developed using single-species stock assessment philosophies... which maximize yield while preventing overfishing of each [managed] species, but do not explicitly account for trophic interactions with other taxa*" (Fritz et al. 1995).

Although the North Pacific Council has a reputation for excellence under the conventional single-species management regime, in the current TAC-setting process there is no clear policy framework or procedure for considering these non-economic values and adjusting single-species fishing strategies to address multi-species contexts, impacts on food webs and habitats, and protected species. Furthermore, the TAC-setting process in marine fisheries management today is dominated by a focus on maximizing annual economic production for the fishery in a single-species context without considering the effects on the stability of exploited ecosystems. NMFS acknowledged this limitation in the 1996 Section 7 Biological Opinions on the Bering Sea and Gulf of Alaska:

> "*The overall process continues to be driven by fishing industry and economic considerations, and thus, opportunities to explore biological management approaches to stabilize or enhance the ecosystem and declining species are not adequately pursued.*"

The National Research Council's 1996 report on The Bering Sea Ecosystem expressed a similar view:

> *"Management in the oceans is still typified by a focus on maximizing yields or economic profits from individual resources without an understanding of the ecosystem processes required to sustain those resources..."* (NRC 1996)

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The debate over how to characterize this broader ecosystem context and account for it in the TAC-setting process has been drawn sharply into focus by the concerns about heavy trawl fishing in Steller sea lion critical habitats. This issue provides NMFS and the Council a clear example of the way in which these single-species ABC/TACs may appear "conservative" relative to a model estimate of stock biomass for "the managed stock as a whole," yet jeopardize other groundfish consumers in the food web in the local areas where these large trawl fisheries have been concentrated. The stock assessment models on which the ABC recommendations are based tell us nothing about the impacts of fisheries in the times and areas where fishing actually occurs, and without that information it is impossible, practically speaking, to understand the impacts of TACs on the ecosystem.

The Council is given broad discretionary authority to address the impacts of fishing on the environment, e.g., of large trawl fisheries in Steller sea lion critical habitat, under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA). Council authority to separate areas or geographic regions into management districts and subareas, for instance, is expressly mandated in the Discretionary Provisions section 303(b) of the MSFCMA. Specifically, any FMP may "*designate zones where, and periods when, fishing shall be limited, or shall not be permitted, or shall be permitted only by specified types of fishing vessels or with specified types and quantities of fishing gear.*"

Recognizing the inadequacies of the status quo and the need for significant changes in the fisheries to address broader ecosystem concerns, last year then-NMFS Regional Administrator Steven Pennoyer and other members of the Council stressed the need to have comprehensive recommendations in time for the 1999 TAC specifications at this December meeting.

That time is now upon us.

SUMMARY RECOMMENDATIONS

Substantially reducing total catches in Steller sea lion critical habitat will require a comprehensive set of conservation measures which includes more effective spatial and temporal regulation of the pollock and Atka mackerel trawl fisheries, in particular, coupled with extension of no-trawl buffer zones to protect critical sea lion foraging habitat areas as described in our FMP amendment proposals to the Council in August.

For the eastern Bering Sea and Gulf of Alaska pollock fisheries and the Aleutian Atka mackerel fishery, these measures include a comprehensive restructuring of the fishery designed to:

- **protect nearshore foraging habitat out to 20 nautical miles** year-round around rookeries and haulouts listed as critical habitat in order to provide full protective coverage across all seasons in core foraging areas where the most vulnerable segments of the population are most likely to be found;

- **extend trawl exclusion zones around other major haulouts** (>100 animals) which have not been granted protected status and where significant numbers of sea lions are known to forage at a time when numbers at most sites have fallen well below the 200-animal standard for inclusion as critical habitat;

- **protect winter foraging habitat out to 60 nautical miles** in the at-sea foraging area from Unimak Island to Island of the Four Mountains, which has become the focal point of the largest groundfish fishery in North America during the 1990s;

- **limit overall fishery removals from individual management areas** in order to reduce localized extraction rates by developing area-specific harvest guidelines to ensure that the TAC does not become geographically concentrated in one area or region such as the CVOA, resulting in intense pulse fisheries, disproportionately high extraction rates, localized depletions of the stock and other adverse modifications of the available prey base;

- **spread the allowable catch out on at least a quarterly basis** in order to reduce the impact of large-scale pulse fisheries in any season, and to reduce first quarter fishing on spawning aggregations of declining pollock stocks in particular;

- **create a year-round CVOA** prohibiting the offshore pollock fleet from fishing there on a year-round basis to reduce fishery removals and effort on spawning pollock in the first quarter of the year, when all sectors of the fleet concentrate there and fish are most vulnerable to trawl gear, as well as to reduce the impacts of high-volume trawling in critical sea lion habitat during the winter months;

- **protect EBS pollock spawning and nursery grounds** and other important fish and shellfish habitat in CVOA/Steller sea lion critical habitat areas between Unimak Island and Islands of the Four Mountains.

In addition to the comprehensive time-area management measures just outlined, TAC reductions are required for declining commercial stocks and for fisheries most affected by measures to reduce groundfish trawl fishing in critical sea lion habitats. The most recent stock assessments for 1999 indicate that the most heavily exploited stocks and species in the BS/AI -- pollock, Pacific cod and Atka mackerel -- have experienced sharp declines in abundance and spawning stock size in the 1990s, continuing into the present, under the status quo. In the Gulf of Alaska, the pollock spawning stock collapsed in the wake of overfishing during the early and mid-1980s Shelikof Strait roe fishery, and stock size has remained very low throughout the 1990s into the present.

For the eastern Bering Sea pollock and Gulf of Alaska pollock stocks, the Aleutian Atka mackerel and pollock stocks, and eastern Bering Sea cod stock, the following TAC reductions designed to:

- **close the Aleutian Islands to directed pollock fishing** to promote rebuilding of a depleted stock and to safeguard the availability of this important component of prey diversity for endangered Steller sea lions throughout the Aleutians;

- **reduce the 1999 eastern Bering Sea pollock TAC below the ABC** at least in proportion to the reductions in catch from Steller sea lion critical habitat and to the extent that area-specific exploitation rates outside critical habitat exceed the stated target harvest rates for the fishery as a whole. The goal is to ensure that the TAC does not become disproportionately concentrated in other areas and that reductions in one area or season are not simply displaced into another area or another fishing season, as well as to reduce pressure on a greatly reduced and declining spawning stock;

- **reduce the 1999 Gulf of Alaska pollock TAC below the ABC** at least in proportion to the reductions in catches from Steller sea lion critical habitat in order to avoid displacement, as well as to account for the current low level of spawner biomass, projections of below average recruitment in future years, large uncertainties about the stock-recruitment relationship, tendency for Gulf pollock abundance to fluctuate rapidly, heavy predation on pollock by Steller sea lions and other marine wildlife, present concentration of the catch in critical sea lion habitat, and persistent overages of the TAC exceeding the acceptable biological catch for the stock;

- **reduce the 1999 Aleutian Atka mackerel TAC below the ABC** at least in proportion to the reductions in catches from Steller sea lion critical habitat in order to avoid displacing large amounts of the catch into intense pulse fisheries elsewhere, to decrease the risk of a continued sharp decline in spawning stock, and to ensure the continued availability of this primary sea lion prey throughout the region;

- **reduce the 1999 eastern Bering Sea Pacific cod TAC below the ABC** based on the more risk-averse exploitation rates estimated for the 1980s fishery in light of very low and declining spawner stock biomass, poor recruitment trends, large uncertainties about natural mortality and recruitment, and likely adverse effects of a large first quarter trawl fishery

concentrated on spawning aggregations in critical sea lion foraging habitat off Unimak Island with very high bycatch and discard rates of about 40%.

Steller Sea Lion Conservation Measures Provide Multiple Benefits To Fisheries And the Ecosystem

Measures designed to protect sea lion foraging areas from trawling will provide protection to vital fish habitats, including spawning and nursery grounds for commercial species of fish. Other benefits include: reduced bycatch of prohibited species such as halibut, crab, herring and salmon, reduced bycatch of non-commercial species important to marine mammals and seabirds (e.g., juvenile pollock, sand lance, capelin, squid, octopus), and greater protection of benthic habitats in an area where once-abundant red king crab and tanner crab stocks have plummeted.

For instance, the importance of the CVOA as a critical area for the reproductive success of both King and Tanner crab, where high concentrations of females and juveniles are typically found, has been highlighted for the Council's attention by others. Rebuilding plans for the depleted Bairdi Tanner crab stock can only be enhanced by sea lion conservation measures designed to reduce trawling in the large critical sea lion habitat foraging area off the eastern Aleutian Islands, which extensively overlaps the CVOA:

> *"For such a relatively small area, the CVOA has great importance for the success of all life stages of Bairdi crabs, especially when one considers that up to 57% of small female Bairdi reside within the CVOA, as was the case in 1997... Given that the Bairdi stock is currently listed as overfished according to National Standard 1, it seems prudent to reduce effort within the CVOA, not to increase effort in this critical habitat...."* (Poulsen, 1998).

This same area of the southeastern Bering Sea shelf is an important pollock spawning ground as well as critical Steller sea lion habitat. The protection afforded to spawning pollock by the 60 nm winter/spring trawl exclusion zone in the sea lion winter foraging area between 164-170W will reduce fishing pressure on the stock at the time of year when the fish are most vulnerable to trawl gear. NMFS has noted that the spawning stock could benefit from reduced catches in the CVOA area:

> *"Due to the predominant currents and drift of pollock eggs and larvae, this area probably contributes more to successful recruitment to the pollock population of the Eastern Bering Sea than spawning ground northwest of the Pribilofs. Consequently, from a pollock management perspective alone, it might be prudent to direct effort away from the Area"* (Aron memo, 1991)

Hutchings (1995; 1996) considered seasonal closures coinciding with the period of highest catch rates on prespawning and spawning aggregations of the (Atlantic) northern cod stock as a way of re-establishing the temporal/spatial refuges consistent with historical fishing patterns prior to the 1950s. Seasonal closures are cheaper and easier to enforce than quota restrictions or bycatch limits, since compliance can be measured by the absence of vessels

fishing (Hutchings 1996). Similar seasonal closures in the large areas of the CVOA/critical habitat would not only protect critical Steller winter foraging habitat, they would restore that portion of the southeastern Bering Sea pollock spawning grounds as a refuge from pollock fishing during the spawning period, as was the case under the former December-May trawl closure in the large Winter Halibut Savings Area.

III. EXISTING REGULATIONS HAVE FAILED TO PROTECT SEA LIONS OR SUSTAIN FISHERIES STOCKS

Temporal And Geographic Concentration Of The Groundfish Fisheries In Critical Habitat Jeopardizes The Steller Sea Lion

Despite the general agreement that food limitation is driving the sea lion decline, and despite the agreement that pulse fishing resulting in locally high extraction rates poses the greatest threat to sea lions' ability to find adequate amounts of food (SSLRT 1991; NMFS 1991, 1996, 1998), the Fisheries Service and the North Pacific Council have allowed critical habitat to become the focal point of major groundfish fisheries in the 1990s, particularly for pollock, Atka mackerel and Pacific cod.

NMFS has failed to require adequate measures to protect critical habitat even as trawl groundfish removals from foraging areas proximal to sea lion rookeries and haulouts in the BS/AI – dominated by pollock and Atka mackerel -- have remained very high as a percentage of the allowable catch:

- The April 1991 Biological Opinion concluded that sea lions and fisheries target large schools of fish to maximize foraging efficiency and minimize effort, therefore large fishery removals from schools of fish in close proximity to rookeries and haulouts are likely to decrease the amount of food available to sea lions.

- The June 1991 Biological Opinion concluded that the Gulf pollock fishery had become spatially and temporally compressed in nearshore waters over time, and that large pollock harvests over small areas and time periods may deplete local pollock stocks and limit prey availability for sea lions.

- The January 1996 Biological Opinion for the BS/AI noted that fishery catches near Steller sea lion rookeries, haulouts and at-sea foraging habitats continue to be much higher than they were prior to the population decline and that the majority of the groundfish removals continue to be taken in rapid, intensive fisheries concentrated in time and area (NMFS 1996).

Concentration of fisheries on sea lion foraging grounds may cause localized depletion of the prey base and jeopardize sea lions even if overall fish stock abundance is high, as was the case with Bering Sea pollock in the early 1970s and again in the 1980s. In the 1990s, with pollock stocks far below the levels of the 1980s, this large pulse fishery has maintained high catch levels and targeted the catches increasingly in critical habitat, thereby greatly increasing the likelihood that adverse effects on prey availability for sea lions and other species will occur.

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Although the spatial/temporal dynamics of the fishery are not modeled in the ABC-setting process, the impacts of the ABC/TACs on the environment are inseparable from the time-

area dynamics of fishery removals. Time-area regulations under the status quo have not worked to protect Steller sea lion foraging areas identified as critical to the species' survival and recovery:

- Existing trimester pollock regulations and 10 nm no-trawl zones around sea lion rookeries in the Gulf of Alaska have failed to reduce the amount of pollock and other groundfish trawl TACs taken within Steller sea lion critical habitat around rookeries and especially haulouts, or to spread the TAC sufficiently in time and area to prevent concentration of the catch in the most difficult months for foraging sea lions or prevent localized pulse fishing.

- Similar broad spatial allocation of the Aleutian Atka mackerel TAC has proven equally ineffective at preventing spatially concentrated pulse fisheries and localized depletions, and the proposed 1999 A-B seasonal allocation would only divide the fishing season into two large short-lived pulse fisheries which will remain concentrated in or near sea lion critical habitat at a time when the Plan Team is recommending the third largest ABC in the history of the fishery (Lowe and Fritz, 1998).

- Worse still, the grossly inadequate status quo regulations of the giant BS/AI pollock fishery not only have not reduced the impacts on Steller sea lion critical habitat and pollock spawning grounds, they have hugely *increased* those impacts to record levels throughout the 1990s (Fritz et al. 1995; NRC 1996; NPFMC/NMFS 1998).

- The existing rookery buffer zones (10 or 20 nm seasonal) do not cover critical habitat feeding areas of (a) adults and juveniles from winter haulout sites (as much as two-thirds of the observed animals in non-breeding months); (b) females without pups throughout the year (as much as 40% of the adult female population every year); (c) and some feeding trips of nursing females from the rookeries.

Furthermore, status quo management strategies in the 1990s have jeopardized the fishery stocks in a single-species context:

- The evidence indicates that the health and long-term productivity of major commercial stocks of pollock, Pacific cod, and Atka mackerel are being placed at high risk by status quo management strategies that have resulted in geographic concentration of catches, temporal concentration of catches in large, short-lived pulse fisheries, and greatly increased fishing on declining spawning stocks.

Gulf Of Alaska Pollock

In the Gulf of Alaska, FMP Amendments 19 (1990), establishing quarterly allocation of the W-C GOA pollock TAC, 25 (1992), establishing 3 new management districts in W-C GOA for pollock and 10 nm trawl closures around 14 W-C GOA Steller sea lion rookeries, and 45 (1996) establishing a pollock trimester TAC apportionment in W-C GOA are often cited by

management as examples of the precautionary and ecosystem-based approach to management of fisheries as practiced in the North Pacific.

However, these amendment measures were responses to the Steller sea lion's plummeting population in the Gulf of Alaska since the late 1970s, when large-scale pollock trawling in accustomed sea lion foraging habitats was introduced, peaking in a massive but short-lived roe pollock fishery in the Shelikof Strait (1981-85) and the rapid collapse of the spawning stock, from which it has not recovered. Even though the Steller sea lion population was listed as threatened in 1990, it took legal action under the Endangered Species Act to compel the North Pacific management system to adopt GOA Amendment 25, and subsequent events have demonstrated that the measures failed to reduce the amount of pollock and other groundfish trawl TACs taken within Steller sea lion critical habitat around rookeries and especially haulouts, or to spread the TAC sufficiently in time and area to prevent localized pulse fishing.

Eastern Bering Sea Pollock

In the BS/AI, Amendment 14 (1991), prohibiting pollock roe-stripping and establishing the current A-B seasonal division of the TAC, Amendment 17 (1992), establishing the Bogoslof District for pollock specification purposes and closing the area to directed pollock fishing following the collapse of the spawning stock there, and Amendment 18 (1992), establishing the 35-65% inshore/offshore pollock fleet allocation and creating the Catcher Vessel Operation Area (CVOA), all laid the groundwork for the status quo management of the BS/AI pollock TAC today.

Amendment 38 (1996), extending the inshore/offshore-1 pollock allocation and Amendment 51 (1998), revising the inshore/offshore-2 pollock allocation formula, are an outgrowth of Amendment 18 (1992). The desperate struggle over the allocation of the BS/AI pollock quota during the passage of Amendment 51(June 1998) and the Congressional intervention to restructure the pollock allocation only four months later testify eloquently to the failure of the status quo FMP amendment measures to solve the problem identified initially in Amendment 18: of fishing capacity far in excess of the TAC levels, a subsequent race for fish and preemption of participants in the fishery.

Worse still, the BS/AI pollock status quo regulations not only have not reduced the impacts on Steller sea lion critical habitat, they have actually *increased* those impacts very substantially through the 1990s. In the absence of any controls on the geographic distribution of the TAC, pollock fishery removals in the southeastern Bering Sea/CVOA region, encompassing a large area of Steller sea lion critical habitat, have been allowed to increase steadily since the 1980s to record levels in the 1990s. The current A-B seasonal division of the catch has actually served to concentrate catches in the first quarter of the year on spawning pollock aggregations at levels ten times higher than any time prior to 1987.

The current spatial/temporal concentration of trawl effort in the CVOA/sea lion critical habitat and on the pollock spawning grounds east of Bogoslof District is the result of the failure of Amendments 14, 17, 18, 38 and 51 to the BS/AI FMP to address the underlying dynamics of

overcapitalization, steadily declining pollock biomass, continuing high TAC levels, and lack of effective time-area management of the fishery in the 1990s.

Aleutian Islands Pollock

The Council has failed to spread the fishery out geographically across Aleutian Islands management areas or prevent the taking of the TAC in a brief, intense first quarter fishery on pollock spawning grounds. Between 1990 and 1995, 386,000 mt were taken out of the stock, which has been declining steadily since 1983. In the Amukta Pass region where large pollock aggregations were exploited in the early 1990s few pollock are now found. In most recent years, the fishery has been reported to move farther west in search of fishable aggregations as the stock abundance has declined. As an important secondary prey item for Steller sea lions in the west-central Aleutians, the loss of this resource due to fishery overexploitation in the 1990s constitutes a major adverse impact on prey availability during a period of steady decline in the Aleutian sea lion population.

Aleutian Islands Atka Mackerel

Amendment 28 (1994) established three management districts in the Aleutian Islands for purposes of TAC specifications. However, a broad spatial division of the quota into three subareas has not reduced the concentration of removals from within critical Steller sea lion habitat boundaries. In fact, as the TAC has reached record-high levels in the 1990s the volume of fishery removals from critical habitat has soared. In the absence of any seasonal regulations, there has been a complete shift in effort by an overcapitalized factory trawl fleet to the first quarter of the year as vessels race for shares of the quota.

Since the Atka mackerel fishery has always been concentrated in highly localized areas primarily within 20 nm of sea lion rookeries and haulouts in the Aleutians, the risk of adversely affecting sea lion prey availability and/or quality of prey is greatly increased by the record-high TACs for Atka mackerel in the 1990s. Given that Atka mackerel is the most common prey resource of sea lions in the region and that fishery-induced localized depletions appear to occur regularly in fished areas, this intense, short-lived pulse fishery poses a serious threat to Steller sea lion prey availability "during the time the fishery is operating and for a period of unknown duration after the fishery is closed" (Lowe and Fritz, 1997).

Although NMFS recommended, and the Council approved, new measures for the 1999 fishing season, a large Aleutian trawl fishery targeting primary sea lion prey will continue to operate in areas proximal to rookeries and haulouts listed as critical habitat and will likely continue to create localized depletions, by NMFS' own reckoning, despite the proposed measures (NMFS/AFSC 1998). NMFS and the Council cannot reasonably ensure that the Atka mackerel proposal, as now conceived, will not jeopardize the species or adversely modify critical habitat under the current proposal.

Nor can NMFS credibly maintain that the current fishery is sustainable, given the indications of steep stock decline during the period of record-high quotas in the 1990s,

continuing into the present. In addition to jeopardizing sea lions, the impacts of high catch rates and localized depletions of standing stock at a number of fished sites simultaneously could have serious implications for productivity of the stock (Lowe and Fritz, 1998), particularly if the declining stock biomass trend continues and localized populations become vulnerable to serial overfishing at heavily exploited sites.

COMPREHENSIVE TIME-AREA MANAGEMENT OF FISHERIES ARE A CRITICAL COMPONENT OF STELLER SEA LION CONSERVATION AND SUSTAINABLE FISHERIES

Present-day groundfish trawl fisheries in the Bering Sea/Aleutian Islands and Gulf of Alaska management areas have developed in areas that have historically supported the majority of the Steller sea lion population (NPFMC/NMFS 1991), and which have since been designated critical habitat (NMFS 1993). In the last three decades, Steller sea lion numbers have declined 80-90% in these areas of western Alaska, where food limitation is generally agreed to be driving the ongoing decline, but have increased in areas of Southeast Alaska where there are no large trawl fisheries targeting sea lion prey.

Critical habitat involves "determination of the essential physical or biological features that are essential to the conservation of the species, and second, the determination of whether these features require special management considerations or protections." (ESA) In designating Steller sea lion critical habitat, NMFS acknowledged the need for spatial and temporal regulation of fishery removals to ensure that pulse fishing and local depletions of prey stocks do not occur, noting that adverse modification of critical habitat and jeopardy to the species' survival are inseparable (NMFS 1993). More recently, NMFS has stated that the single most important feature of marine areas critical to Steller sea lions is their prey base (NMFS 1998).

The growth of pollock fishing in Steller sea lion critical habitat under U.S. management has been particularly alarming, given its importance as a major sea lion prey. Following the dismantling of extensive trawl closure areas for the foreign trawl fleets in the early 1980s, catches in critical habitat areas rose steadily through the 1980s, reaching record levels in the mid-1990s. Based on observer and fishery data from the foreign and domestic fishery (NMFS/AFSC unpublished fishery data), pollock removals from heavily exploited critical habitat in the southeastern Bering area are probably considerably higher during the 1990s than at the peak of the foreign pollock fishery in the heydays of the early 1970s:

- Eastern Bering sea pollock catches in the southeastern Bering Sea/CVOA averaged 279,000 mt during 1980-85, 611,178 mt during 1986-91, and 724,676 mt during 1992-1997 (NPFMC/NMFS 1998).

- 50-93% of the eastern Bering Sea pollock TAC was taken from the southeastern Bering Sea during 1990-97 (See Table below).

- 88% of the EBS pollock TAC was taken from the southeast area during 1993-1996 (See Table below).

- 50-70% of the EBS pollock TAC has come from the CVOA in the 1992-1997 period (NPFMC/NMFS 1998).

The Steller sea lion population in the Gulf of Alaska has plummeted since the late 1970s, coincident with the development of a large trawl fishery for pollock which culminated in the overfishing of the Shelikof Strait spawning pollock stock during 1981-1985 in an area now designated as critical habitat. The percentage of groundfish catch in GOA critical habitat increased dramatically from 5% in 1977 to more than 80% in 1985, peaking at 225,000 mt (mostly pollock) during the large but short-lived Shelikof Strait roe pollock roe fishery. The reasons for this collapse are attributable to overfishing accompanied by poor recruitment of subsequent year classes (Lowry et al., 1988). The stock size declined to very low levels in the late-1980s and remains at only a fraction of its former size today (**See GOA pollock recommendations, Table 1**).

Although the pollock TAC, and hence the catch in critical habitat, fell off after 1985 as the Shelikof spawning stock collapsed, the percentage of the annual catch taken from GOA critical habitat has remained high (55-93%) into the present (Fritz et al., 1995; Fritz and Ferrero 1997):

- The existing fishery catch data indicate that substantial portions of the groundfish trawl catch (dominated by pollock) are taken within critical habitat areas adjacent to rookeries and haulouts in the Gulf of Alaska, with higher concentrations of catch occurring between 10-20 nm.

- From 1990-97, an average of 63% of the *observed* GOA pollock catch has come from within 20 nm of sea lion rookeries and major haulouts listed as critical habitat (NMFS/AFSC unpubl. fishery data).

In the Aleutian Islands, where Atka mackerel is the most common Steller sea lion prey, the Atka mackerel fishery has always been concentrated in nearshore areas of critical habitat proximal to sea lion rookeries and haulouts, occurring in the same few locations every year (Lowe and Fritz 1997):

- Catches in this fishery were low throughout the late 1970s and never exceeded 40,000 metric tons in the 1980s, averaging about 25,000 metric tons prior to the 1990s.

- During 1992-1997, catches soared. The fishery removed 436, 669 mt and averaged 72,778 mt, reaching a record high of 104,000 mt in 1996,

- Although the target harvest rate for the managed stock as a whole is believed to be 10-15%, based on overall stock biomass estimates, fishery data indicates that local rates in fished areas have ranged as high as 55-91% (Lowe and Fritz 1997; Fritz 1997, 1998).

- Locally high catch rates have been shown to cause localized depletions in the size and density of Atka mackerel populations "*which could affect foraging success during the time the fishery is operating and for a period of unknown duration after the fishery is closed. This raises concerns about how the fishery may affect food availability and the potential recovery of the population*" (Lowe and Fritz 1997).

Since the Atka mackerel fishery has always been concentrated in highly localized areas primarily within 20 nm of sea lion rookeries and haulouts in the Aleutians, the risk of adversely affecting sea lion prey availability and/or quality of prey is greatly increased by the record-high TACs for Atka mackerel in the 1990s. In addition, there has been a complete shift in effort by an overcapitalized factory trawl fleet to the first quarter of the year as vessels race for shares of the quota. A broad spatial division of the quota into three subareas has not reduced the concentration of removals from within critical habitat boundaries. In fact, as the TAC has reached record-high levels in the 1990s the volume of fishery removals from critical habitat has soared.

Need For Year-Round Trawl Exclusion Zones To Protect Critical Habitat Foraging Areas

During the Council's FMP amendment proposal cycle last August, Greenpeace and American Oceans Campaign submitted detailed proposals to (1) extend year-round trawl exclusion zones out to 20 nm around Steller sea lion rookeries and haulouts listed as critical habitat in the Bering Sea/Aleutian Islands and Gulf of Alaska management areas, (2) apply the same trawl exclusion zones around major haulout sites at which >100 animals have been counted but which are not currently listed as critical habitat -- e.g., Cape Sarichef and Oksenof Point (Unimak Island), Bishop Point and Cape Izigan (Unalaska Island) – and (3) expand no-trawl zones to 60 nm seasonally (e.g., Oct 1-Apr 30; Dec 1-May 15) or year-round to protect the full extent of the eastern Aleutian Islands aquatic foraging area from Unimak Pass to Islands of the Four Mountains, which serves as an accustomed winter foraging area for sea lions and also as a vital pollock spawning grounds.

The EA/RIR for Amendments 25 and 20 to the FMPs of the GOA and BS/AI (Prohibition to groundfish trawling in the vicinity of sea lion rookeries) recommended special management measures to prohibit trawling in certain areas because: (1) trawl fisheries account for the majority of the catch of species of concern in critical habitat; (2) trawlers have higher bycatch of non-target prey species including juvenile pollock, squid, octopus, salmon, herring, capelin, eulachon, and sand lance, as well as flatfish and shellfish, any number of which may serve as important seasonal or secondary items in the sea lion diet, depending on availability; (3) trawlers are the primary source of lethal incidental entanglements in nets; (4) trawlers are responsible for benthic habitat disturbances and changes in species composition (NPFMC/NMFS 1991).

The major objectives of this sea lion conservation measures are three-fold:

- **Protect nearshore foraging habitat out to 20 nautical miles** year-round around rookeries and haulouts listed as critical habitat. These same trawl closure areas should apply to other major haulouts (>100 animals) not currently listed as critical habitat. The intent is to reduce fishery interactions in core foraging areas where the most vulnerable segments of the population are most likely to be found. Year-round extension of the no-trawl zones from 10 to 20 nm around rookeries and from 0 to 20 nm around major haulouts is intended to provide protection across all seasons to vital nearshore foraging areas frequented by nursing females, young-of-the-year pups and weaned juveniles who may still depend on mother's milk for some portion of their nutrition even into their second year. The data supporting the existing 20 nm boundaries around rookeries and

haulouts is consistent across all areas studied from Southeast Alaska, Gulf of Alaska, Eastern Aleutians, and the Russian Kuril Islands (e.g., Merrick 1992, 1993; Merrick and Loughlin 1993; Calkins 1996; Swain 1996; Loughlin and Merrick 1997). Sea lions forage much farther afield than 20 nm, especially in the fall, winter and early spring months; but 20 nm from land sites seems to be a good approximate average distance that encompasses much sea lion activity throughout the species' range, including home ranges of summer adult females and winter young-of-the-year pups (Merrick and Loughlin, 1997). Nursing mothers also appear to stay closer to shore even in winter in order to return to their pups regularly, while young weaned juveniles generally forage closer to shore and make shallower dives than adults (Merrick and Loughlin, 1997).

- **Protect winter foraging habitat out to 60 nautical miles** in the at-sea foraging area from Unimak Island to Island of the Four Mountains, which has become the focal point of the largest groundfish fishery in North America during the 1990s. Although 20 nm trawl buffer zones will provide expanded protection for nearshore foraging areas around critical land sites, they will not address the larger problem of pulse fishing and depletion of primary sea lion prey resources in the larger aquatic foraging zones, particularly in the heavily exploited eastern Aleutians aquatic foraging area, the eastern two-thirds of which is extensively overlapped by the CVOA. NMFS has previously determined that a seasonal trawl closure strategy comprised of 20 nm closures in summer and 60 nm closures in winter (Oct 1-Apr 30) would best approximate Steller sea lion seasonal foraging patterns (NMFS 1991), and that a large area of the eastern Aleutian Islands out to the continental shelf contains critical winter foraging habitat on pollock spawning grounds (NMFS 1993). A Section 7 Consultation on Amendment 18 to the BS/AI FMP, February 1992, found that "*increased fishing effort in the CVOA may diminish the availability of food resources to Steller sea lions that forage in this geographic region and may adversely affect their survival and recovery.*" Spatial and temporal concentration of the giant eastern Bering Sea pollock fishery in the CVOA/critical habitat and during the winter months jeopardizes the ability of the sea lions to find adequate prey at a time when the animals are expected to be more nutritionally stressed due to adverse weather, fewer available prey, and higher nutritional demands on pregnant and/or nursing females and weaned pups (NMFS 1993).

- **Protect EBS pollock spawning and nursery grounds** in CVOA/critical habitat in the areas north and west of Unimak Island. Since the closure of the Bogoslof management district (518) in 1992, a technologically advanced trawl fleet with at least 2-3 times more fish-catching capacity than NMFS scientists say the stock will bear, has become steadily more concentrated in this area and in the first quarter of the year on a declining spawning stock. The pattern of fishing in the 1990s reflects the steady decline and shrinking geographic distribution of the stock, yet the TAC during 1990-97 has remained relatively constant and slightly above the 1.2 million metric ton recent historical average (Wespestad et al. 1997; Ianelli et a., 1998). The rapid growth of the roe pollock fishery and trends in pollock recruitment do not bode well for the long-term viability of the fishery itself. The protection afforded to spawning pollock by the 60 nm winter/spring trawl exclusion zone in the sea lion winter foraging area will reduce fishing pressure on the stock at the time of year when the fish are most vulnerable to trawl gear. This measure will also reduce bycatch of prohibited species such as halibut and crab, and reduce bycatch of non-target forage species such as juvenile pollock, squid, capelin, herring, sand lance and other important components of the food web.

Need For Area-Specific Catch Guidelines To Prevent Geographic Concentration of Fisheries And Serial Depletion Of Heavily Exploited Areas

Area-specific catch guidelines and specified limits or caps on the amount of pollock and other groundfish that can be removed from any one management area, based on the proportion of the stock distribution in a given area or based on a percentage of the TAC, are intended to spread the TAC out geographically and minimize its effects in any one area. The goal is to ensure that area-specific exploitation rates do not exceed the stated target harvest rates for the fisheries as a whole. The stated target harvest rate for the "managed stock as a whole" is a meaningless index of sustainable fisheries if disproportionately high catch rates and serial depletions of local standing stocks are allowed to occur in the actual locations of the fishery.

Major episodes of overfishing on localized or regional groundfish stocks have occurred numerous times under the North Pacific Council's management. Although fishery *yields* have generally remained at historically high levels for the most heavily exploited groundfish species during the 1980s and 1990s, regional spawning stocks of pollock have been overfished and rapidly depleted in the Shelikof Strait (1981-1985), Aleutian Basin/Bogoslof Island (1987-1992), and Aleutian Islands (1990s). In addition, overfishing led to the virtual demise of the Atka mackerel population of the GOA in the late 1980s and early 1990s, a decline masked by the large increases in the Aleutian Atka mackerel TAC beginning in 1992. Similar trends are now evident in the southeastern Bering Sea pollock fishery, where an average of 88% of the annual TAC has become concentrated since 1993, and where record levels of 50-70% of the TAC have come from the CVOA. Between 1994 and 1997, as the EBS pollock abundance estimate declined 38%, survey biomass declined 81% in the heavily exploited CVOA.

Seasonally concentrated schools of spawning fish should not, however, become targets of concentrated high-volume fishing at the time when fish are most vulnerable to trawl gear. For instance, large schools of pollock are found in the CVOA/critical habitat area prior to and during spawning time. However, no one actually surveys pollock abundance in the CVOA in winter or knows how many fish are there prior to the start of the fishery. The only index of pollock abundance is fishery CPUE, which is much higher in the "A" season, as would be expected on spawning aggregations. CPUE can remain deceptively high for aggregated schools of spawning fish even when the population is decreasing sharply, as happened in the short-lived roe pollock fisheries at Shelikof Strait and Bogoslof Island.

Need For Quarterly TAC Allocations In The Pollock And Atka Mackerel Fisheries

It is a key weakness of existing NMFS sea lion conservation measures that the agency never recommended the same quarterly time-area apportionment scheme of the BS/AI pollock TAC as was adopted in the GOA pollock fishery, in order to minimize the risk of pulse fishing and localized depletions of this single most important prey item in the sea lion diet throughout much of western Alaska.

The time has come to establish at least quarterly as well as area-specific apportionments of the pollock TACs to slow down and spread these giant fisheries out temporally and geographically, thereby reducing the concentrated pulse fishing that diminishes the available

prey base in critical sea lion habitats. We think these measures also make good sense to reduce fishing on pollock spawning grounds in the first quarter of the year, when the fish are most vulnerable to trawl gear, in order to sustain the long-term productivity of the steadily declining spawning stocks.

The history of the Section 7 consultation record and the established facts concerning sea lion biology and fishery interactions in critical sea lion foraging habitat demonstrate that quarterly allocations of the pollock TACs for the BS/AI and Gulf of Alaska are a fundamental component of comprehensive sea lion conservation measures that will reduce the likelihood of jeopardizing sea lions, adversely modifying their critical habitat, and limiting their recovery.

Despite the repeated support for quarterly allocations in the Section 7 record, however, the Gulf pollock fishery has been allocated on a trimester basis since 1996 as approved in Amendment 45 to the Gulf of Alaska FMP, in which the former third and fourth quarter allocations were combined into one TAC release on September 1, comprising 50% of the annual TAC. When combined with the 25% TAC release in the first trimester, beginning January 20, 75% of the TAC has been concentrated in the fall and winter months which NMFS says are most difficult for foraging sea lions.

Amendment 45 to the Gulf of Alaska FMP constituted a major step backward for NMFS sea lion conservation policy. In the Bering Sea, there has been no spatial management of the TAC and only a minimal A-B seasonal split since 1990 (Amendment 14) that has actually concentrated the TAC in the winter months on spawning pollock aggregations. The percentage of the catch taken in the first quarter of the year on roe-bearing fish has risen 10-fold over the percentage of first quarter catch prior to 1986.

Given the enormous size of these fisheries and their continued concentration in and near Steller sea lion habitats, as well as the temporal concentration of Gulf pollock TAC in the fall-winter period under the current trimester management scheme, at a minimum these TACs should be allocated on a quarterly basis and the fall-winter allocation must be reduced substantially. A quarterly allocation of the TAC is the bare minimum of seasonal divisions which will ensure that at least half of the catch is directed away from the fall-winter months, and a strong case exists for dividing these large fishery quotas into even smaller seasonal apportionments to truly ensure that the impacts of big pulse fisheries are spread evenly across the year.

Quarterly apportionments are not a panacea. Data from the Gulf of Alaska pollock and Aleutian Atka mackerel fisheries indicate that these kinds of broad spatial/temporal allocations do not address the localized nature of the fisheries in question and their likely impacts on sea lion prey availability and foraging success. They altogether failed to reduce fishery removals in critical habitat or prevent them from increasing substantially. But, when combined with a comprehensive strategy of year-round trawl exclusion zones and area-specific catch limits to ensure that the TAC does not become geographically compressed in one area or region, quarterly TAC allocations serve to further reduce the likely adverse impacts of high-volume pulse fishing by spreading out the effort and catches across the year.

THE 1999 TACS FOR BS/AI POLLOCK, ATKA MACKEREL, PACIFIC COD AND GULF OF ALASKA POLLOCK SHOULD BE REDUCED

The failure to reduce the TAC in proportion to the amount of the catch displaced by the closure of the Bogoslof area (518) to directed pollock fishing in 1992 resulted in intensified exploitation of the CVOA/critical habitat region directly to the east, especially in the first quarter of the year on spawning pollock, and contributed to the concentrated pulse fishery that must now be addressed. Concurrent with the implementation of other reasonable and prudent measures to reduce trawl fishery catches in critical habitat, the allowable catch should be reduced to prevent displaced effort from creating new problems elsewhere.

Major commercially exploited stocks of pollock, Atka mackerel and Pacific cod are a focus of concern at this time. The recent stock assessments indicate that the most heavily exploited species in the BS/AI -- pollock, Pacific cod and Atka mackerel -- have experienced sharp declines in abundance and spawning stock size in the 1990s, continuing into the present, under the status quo. It is in the interests of sustainable fisheries as well as sea lion conservation to avoid further depleting these stocks, given their low stock sizes and declining trends, their importance to the fishing industry, and their vital role as forage fishes in the ecosystems of the Gulf of Alaska, Aleutian Islands and eastern Bering Sea.

Eastern Bering Sea Pollock

The conditions which prompted Greenpeace to recommend significantly reduced TACs for eastern Bering Sea pollock in 1997 and 1998 have not improved, despite the expectation and the stock model prediction that a new year class of juvenile pollock from 1996 will start showing up in the exploitable stock in 1999. Indeed, the addition of two years of information on the low and declining status of the stock confirms the original concern that the long-term productivity of eastern Bering Sea pollock is being seriously undermined. Based on estimates of MSY, the spawner stock is only at about 30% of its average size in the absence of fishing in 1998.

<u>The High TACs Of The 1990s Are Undermining The Long-Term Productivity Of The Stock</u>

Although NMFS maintains that the Bering Sea pollock stock is not managed for a constant catch and that the TAC is within the limits of what the stock will bear, the pattern of fishing in the 1990s reflects the steady decline and shrinking geographic distribution of the stock during the 1990s even as the TAC has slightly exceeded the 1.2 million metric ton recent historical average (Wespestad et al. 1997; Ianelli et al., 1998). Thus the pollock fishery of the 1990s is removing a much larger proportion of the total pollock biomass as the stock declines.

In the 1990s, with the stock at less than half its estimated size in the 1980s, the total EBS pollock catch has reached its highest levels under U.S. management – ranging from 1.45 million metric tons in 1990 to 1.1 million metric tons in 1998. During 1990-1997, the fishery removed

nearly 10 million metric tons of pollock biomass, in addition to nearly 1 million mt of recorded pollock discards from all groundfish fisheries combined. The retained catch has averaged 1.23 million mt per year during this period, in addition to an average of 111,607 mt of pollock discards in the groundfish fishery every year (Ianelli et al., 1998, Table 1.2).

If the stock assessment models are to be believed, the remaining stock of older fish (the preferred target of the fishery, to which the full-selection F rate applies) is nearly fished out. Ianelli (1996) projected a 40% reduction in the pollock fishery yield during 1998 and 1999 based on declining stock trends. It is only by making the optimistic assumption that the stock-recruitment relationship is reliably known and that the 1996 year class will make a strong showing in 1999 and beyond that the recommended 1999 ABC of nearly 1 million metric tons is supported by the stock assessment author for this depleted and declining stock.

Based on the Plan Team's recommended choice of Model 2, the projection of EBS stock abundance in 1999 predicts a 37% increase in begin-year 1999 exploitable (age 3+) pollock biomass due to anticipated age-3 recruitment from what is expected to be a large incoming 1996 year class. However, the actual strength of the 1996 year class is unknown and other abundance indices show disturbing trends:

- The 1998 bottom trawl survey biomass estimate of 2.21 million metric tons declined 27% from 1997 and is the second lowest bottom trawl estimate on record.

- The projected 1999 (female) spawning biomass of 1,630,000 mt falls below the Bmsy estimate of 1,740,000. In addition, the spawner stock size is also a "begin-year" 1999 estimate and therefore it does not reflect the impact of a fishery in 1999, which will reduce spawner size considerably.

- Biomass estimates for eastern Bering Sea pollock have declined by more than half since the mid-1980s while the average 1990s TAC of 1.23 million mt (Ianelli et al., 1998, Table 1.2) has remained well above the 35-year average catch of about 1.1 million metric tons, meaning that the pollock fishery of the 1990s is removing a much larger proportion of the total pollock biomass, approaching 20% of the estimated exploitable biomass for the "managed stock as a whole."

- EBS pollock survey abundance estimates declined by 38% from 1994-1997 but plummeted 81% in the heavily exploited southeastern Bering Sea/CVOA region where 50-70% of the giant TAC has been extracted annually since 1992 and where extraction rates ranging from 30-50% have been estimated for the B-season portion of the fishery in the two most recent years.

Predictions of strong recruitment are cited to justify maintaining the TAC at historically high levels, but expectations for new recruitment to the stock have proven overly optimistic throughout the 1990s. It is not possible to make reliable predictions about recruitment based on estimates of year class strength at pre-recruit stages of development. Density-dependent predation by pollock consumers in the ecosystem may substantially reduce the number of fish available to the fishery at age 3+, just as increased fishing on juvenile-aged fish by Russian-

flagged factory trawlers in the Navarin region may have a substantial impact on subsequent recruitment of this and other year classes. At the same time, environmental conditions may have equally significant and unexpected effects on the survival of a cohort to age-3+. Therefore there is a high degree of uncertainty associated with the eventual recruitment of year classes to the fishery.

The bottom line is that the fishery has become completely recruitment-driven. The future of the fishery hinges on the strength of the 1996 year class to replenish a rapidly diminishing population of spawning-age fish and support the fishery in the very near future at ages 3-4, when the fish are less than 50% mature.

The Recommended 1999 ABC Does Not Reflect The High Level Of Risk And Uncertainty Associated With This Overexploited Stock

Concerns about the low level of spawning stock and future productivity of the stock loom large, as expressed by the Plan Team in November. The BS/AI Plan Team's recommended pollock Acceptable Biological Catch (ABC) of .992 million metric tons, while slightly lower than the 1.1 million mt ABC/TAC for 1998 and slightly lower still than the 1.13 million quota in 1997, does not provide adequate security against the risk of overfishing in a single-species context and does not address impacts to pollock predators in an ecosystem context. Key issues which have not been adequately addressed in the single-species stock assessment, as discussed at the Plan Team's November meeting, include:

- The most recent trawl survey is the 2nd lowest recorded in the time series and the lowest since 1980.

- Based on MSY assumptions, the spawning stock is estimated to be at only 30% of its size under unfished conditions due to the repeated targeting of one strong 1989 year class and lesser numbers from 1992, which have supported the fishery during most of the 1990s.

- In various model runs with the data, the spawning stock is consistently projected below the Bmsy and B40% target stock size which is supposed to produce the long-term maximum sustainable yield (Ianelli et al., 1998, Table 1.10). Under the Plan Team's preferred model 2, 1998 age 3+ biomass is only 5.13 million mt compared to 13-15 million mt in the mid-1980s.

- In the model projections for 1999 and 2000, all the year classes beyond the age of 3 and 4 are nearly completely fished out (Ianelli et al., 1998, Figure 1.15). The fishery will be almost exclusively dependent on the appearance of large numbers of age 3-4 pollock recruits which are less than 50% sexually mature, assuming that the maturity schedule is an accurate reflection of the average age to maturity in the stock.

- The truncated age structure of the stock means that the 1999-2000 fishery is pinning all its hopes on what is believed to be a fairly large 1996 year class, which is the only prospect for replenishing the stock in the near-term. If the strength of that 1996 age group turns out to be only

average at age 3+, as happened with the 1992 year class, then the declining spawner biomass will not support the existing fishery and the risk of crashing the stock increases dramatically.

- There are large uncertainties about the effects of poorly regulated pollock fishing by Russian-flagged factory trawlers in the northwest Bering Sea (Navarin region), whose catches are believed to consist predominantly of eastern Bering Sea-spawned juvenile pollock cohorts which would otherwise return to spawn as adults in U.S. waters (Ianelli et al., 1998). In the recent past the Plan Team has ventured to guess that the combined U.S./Russian exploitation rate on the stock may be as high as 30% of the exploitable biomass – much higher than the official rate in the NMFS stock assessment.

- The impact of large-scale pollock fishing in an ecosystem context is not addressed, particularly the fact that the EBS pollock quota has become even more concentrated in Steller sea lion critical habitat in the southeastern Bering Sea and Aleutian Islands during the 1990s. The Plan Team ABC comes with no recommendations to reduce the impacts of the fishery in Steller sea lion critical habitats by means of TAC reductions, effective time-area regulations, or trawl closure areas.

- The stock assessment author and the Plan Team gave no consideration to alternative time-area regulations in order to reduce the current heavy fishing on the low and declining spawning stock in the southeastern Bering Sea/CVOA region at the time of year when they are most vulnerable to trawl gear, during spawning.

The Needs Of Pollock Predators In The Ecosystem Are Not Factored Into The ABC

As noted above, the eastern Bering Sea spawning stock is estimated to be at only about 30% of what it would be (based on MSY management assumptions for the stock) under unfished or "pristine" conditions. Under the assumptions of the single-species fishing strategy, the fact that the spawning stock is estimated to be at only about 30% of its pristine size is not cause for concern because it is responding as expected under the F40% fishing mortality rate. However, no consideration is given to the effect on the pollock food web of fishing down the adult spawning stock to such low levels relative to the unfished condition. If this lower spawner biomass is the expected outcome of fishing at the Fmsy or F40% rate, such that only 30-40% of the pristine spawning stock size is presently available, that is simply another way of saying that on average there would be about 60-70% more pollock biomass available to Steller sea lions and other pollock predators in the absence of fishing.

Although predator-prey relations are not incorporated into conventional single-species stock dynamics models, a recent study of Gulf of Alaska pollock used available predator consumption data to model the effects of Pacific halibut, arrowtooth flounder, and Steller sea lions as a type of "fishery" in order to quantify changes in the statistical catch-age model assumptions about constant natural mortality (Hollowed et al., 1997). When other pollock predators were explicitly accounted for in the model, the estimate of natural mortality doubled for age-2 fish and increased by as much as 60% for age-3+ fish – suggestive of how much the single-species stock assessment models, on which the ABCs and TACs are based, may underestimate the needs and impacts of predators in the marine food web.

Even in the absence of reliable data on consumption rates for predators, the predator-prey relationships are commonly known for most commercial species. Thus while it may be difficult or impossible to quantify the food web effects of fishing on important forage species such as pollock or Atka mackerel, it is nevertheless possible – and necessary – to make qualitative judgements that account explicitly for the needs of other species and to adjust TACs downward in order not to disrupt and destabilize food web relations in an ecosystem context. Although such judgements always run the risk of being arbitrary, there is also much that is arbitrary and based on guesswork in these quantitative stock assessment methods; yet limited information does not stop fisheries managers from setting large TAC quotas in the face of uncertainty.

In The Interest Of Protecting The Pollock Stock, Ensuring Adequate Prey Availability For Pollock Predators, And Preventing The Displacement Of Disproportionate Effort Into New Areas, The 1999 TAC Must Be Reduced Significantly

By relying so heavily on incoming 1996 "recruits" in 1999 and beyond to sustain this high TAC level, the NMFS and the Council are betting the future of the fishery on the appearance of a single year class of fish whose actual strength and future recruitment is highly uncertain. Given the shrinking size and geographic distribution of the pollock stock and the concentration of the fishery on the spawning stock in sensitive wildlife foraging habitats, there appears to be no other viable way to slow down and redistribute the catch geographically without also making a significant reduction in the EBS pollock quota in order to avoid displacing the problem of disproportionate effort and catches into new areas:

- We recommend reducing the 1999 BS/AI pollock quota at least in proportion to the reduction in catch from Steller sea lion critical habitats and to the extent that area-specific exploitation rates outside critical habitat exceed the stated target harvest rates for the fishery as a whole. The goal is to ensure that the TAC does not become disproportionately concentrated in other areas as it has in the CVOA, resulting in intense pulse fisheries, disproportionately high extraction rates, localized depletions of the stock and other adverse effects.

- By reducing the first quarter pollock roe fishery to no more than 25% of the total TAC, establishing a year-round CVOA, and "banking" the savings for the ecosystem, the Council can achieve a major reduction from the current level of pollock fishing in the Steller sea lion winter foraging habitat within the CVOA while simultaneously reducing the risk of further depleting the spawning stock when it is most vulnerable to trawl gear.

- **Aleutian Islands Pollock**

Aleutian pollock exploitable (age 3+) biomass estimates have declined steadily since the early 1980s. The 1997 triennial trawl survey biomass estimate of 106,000 metric tons was only about 20-25% of its value in the early 1980s, when systematic surveys began (Wespestad et al., 1997). Large uncertainties about the discreteness of the "stock" and its relation to the EBS stock

abound. The stock assessment acknowledges that the status and dynamics of this stock are not well understood, that catch-age data is limited, and that reliable estimates of Fmsy and Bmsy do not exist for the Aleutian portion of the pollock stock.

If the AI pollock population is indeed a separate stock, a rebuilding program seems in order. If it is reliant on density dependent spillover from large year classes of EBS-spawned adult pollock or portions of the depleted Aleutian Basin stock, then there is little near-term hope that the AI or the Bogoslof region will experience a resurgence in pollock abundance (Wespestad et al., 1997). That "spillover" mechanism appears to have been shut off since the mid-1980s, when the EBS pollock stock began its long, steady decline to present levels.

We do not think the slight upturn in 1997 survey biomass from the lowest value on record in 1994 justifies continued directed fishing for pollock in 1999. Since issues of stock definition and other uncertainties were not resolved last year, the Plan Team recommended the crude Tier 5 overfishing formula of multiplying the 1997 survey biomass estimate times .75 of the natural mortality rate (M = 0.3) to arrive at a 1998 ABC of 23,760 mt. Given the absence of new survey information, the Plan recommends the same technique for deriving a 1999 ABC, using the same 1997 survey biomass estimate as the best available estimate of biomass in 1999. In other words, the fishery is removing about 20% of this depleted stock relative to a 1997 survey estimate -- a higher exploitation rate than is applied to the EBS or GOA pollock stocks.

The use of a stock survey estimate that is already one and half years out of date to set the catch level for 1999 is a testimony to the inadequate information and degree of uncertainty associated with this level of fishing on Aleutian pollock. If rebuilding of this stock and the Bogoslof/Aleutian Basin stock is linked to density dependent "spillover" recruitment from large year classes of EBS origin, there may be little near-term hope of a resurgence in Aleutian pollock stocks no matter what. Furthermore, fishing on the stock occurs in the late winter on spawning aggregations, when the stock is most vulnerable to trawl gear. No regulations are applied to the fishery to spread out its impacts in time or area. Increasingly the fleet has had to move farther west to find the fish.

In light of the available information on the depleted status of the Aleutian pollock "stock" and the importance of Aleutian pollock as a secondary prey item for endangered Steller sea lions, we continue to believe that the only prudent course of action under the terms of both the MSFCMA and ESA is a moratorium on the directed pollock fishery at this time:

- The Council should close the Aleutian pollock fishery to directed fishing in order to rebuild the stock to safer levels of spawner biomass and to enhance the availability of this important component of prey diversity for Steller sea lions in the west-central Aleutians, in keeping with past Plan Team recommendations for a moratorium on directed fishing for AI pollock: "*...the Plan Team believes that the Aleutian pollock fishery should be managed on a bycatch-only basis for the following reasons: 1) the trawl survey time series indicates that the Aleutian pollock biomass has declined sharply and consistently since 1983, and gives no reason to expect an upturn in the foreseeable future; 2) some fish captured in the Aleutian Islands region may be part of the Aleutian Basin stock, a stock on which fishery impacts should be minimized; and 3) pollock has been shown to be an important prey item for Steller sea lions breeding on rookeries just*

to the east of the Aleutian Islands management area, rookeries which recently have fared better than those for which the availability of prey consists largely of Atka mackerel" (NPFMC, 1996).

- **Gulf of Alaska Pollock**

The recommended 1999 Gulf of Alaska pollock ABC is 94,400 mt for the west-central Gulf, plus 8,620 mt for the eastern Gulf. This 103, 000 mt total represents a reduction of about 26,000 mt for the W-C GOA compared to 1998 (120,000 mt), but the recommended ABC still exceeds the 88,000 mt W-C GOA average catch during 1990-1997 (Hollowed et al., 1998, Table 1.1). In light of the low spawner biomass and projected declining trend in future years of the model, we do not believe the recommended 1999 ABC represents a risk-averse catch level for the stock or for pollock predators such as the endangered Steller sea lion, in whose critical habitat foraging areas the fishery has been concentrated since the early to mid-1980s.

<u>The Recommended 1999 Gulf Pollock ABC Is Too High Given Declining Stock Trends And Uncertain Recruitment</u>

The Plan Team justification for maintaining a 100,000 mt fishery in 1999 is based solely on the anticipation of a very large 1994 year class, which was supposed to start entering the fishery this year as four-year-olds. However, four-year-old fish were not encountered as expected and only in the in the Chirikof and Shumagin areas, based on length frequency data, leading to the speculation that the stock has moved west (Hollowed et al., 1998). Are reports of reduced size-at-age a density dependent effect of large numbers from the 1994 year class, or are food supplies limited due to prevailing oceanographic conditions? Will this affect 1994 year class survival to maturity, or reduce their reproductive capacity? No one really knows.

What we do know, based on the stock assessment author's preferred Model A, is that the Gulf pollock stock is at the lowest levels seen since the beginning of the model time series of stock size estimates in the early 1970s. With the exception of the anticipated large 1994 year class, the stock trends are consistently low and declining steadily:

- There has been no significant recruitment, except for the 1994 year class, since the late 1980s.

- The time series of pollock biomass used for the stock synthesis model was 653,905 t in 1996, a drop of 14% from the 1993 estimate and the lowest bottom trawl point estimate in the time series since 1975 (Hollowed et al., 1997, Table 1.7).

- The 1998 EIT survey estimate of pollock abundance in Shelikof Strait was 489,000 mt, down from the 1997 survey estimate of 570,100 mt and the 1996 estimate of 745,400 mt.

- The estimated 1998 female spawner biomass value of 278,000 mt is the lowest in the model time series since 1973 (Hollowed et al., 1998, Table 1.13).

- The projected begin-year 1999 female spawner biomass of 222,700 mt is below the B40% estimate of 240,000 mt, based on the model's maturity schedule and average recruitment from 1964-1998 (Hollowed et al., 1996).

- The projected 1999 begin-year exploitable (age 2+) biomass of 764,000-774,000 mt continues the steady downward trend from 1,202,000 mt in 1994 to 933,000 mt in 1998 (Hollowed et al., 1998. Table 1.13).

- In the near-term, pollock biomass is expected to decrease in 2000 due to a below average 1996 year class (Hollowed et al., 1998).

The Gulf of Alaska Plan Team Minutes of November, 1997 expressed a high degree of discomfort with the large increase in the 1998 TAC, given the biomass and recruitment trends and other ecosystem considerations concerning pollock predators. Their concerns are as relevant today as last year:

> *"The Team recommended that in setting TAC, the Council may wish to consider the relatively low level of pollock biomass, the dramatic increase in the Central Gulf ABC while the Steller sea lion population continues to decline in the area, and the effect of below average recruitment of pollock in future years which could result in a rapid decline in the pollock stock. The Team also noted that current information indicates that fishing rates may now be higher than at the peak of the fishery, the spawning potential ratio is the lowest since 1973, and while the high 1998 ABC is driven by the strong 1994 year class, there is no evidence to suggest that the 1995 and 1996 year classes are above average."*

The Plan Team currently acknowledges that the fishery is recruitment-driven, meaning dependent on the incoming 1994 year class to support the current 100,000+ mt catch levels. The fact that the data and the model find no indications of significant recruitment prior to the 1994 year class and none afterward is cause for great concern. If predictions of strong recruitment for the 1994 year class are wrong, the biomass of pollock in the west-central Gulf of Alaska could rapidly plummet to new lows, based on the stock assessment author's own predictions for recruitment from subsequent year classes. The model projects that the stock female spawner biomass will fall to 222,015 mt in 1999 and 195,639 mt in 2000, and would continue to fall to only 102,000 mt by the year 2003 without replenishment from a big new year class.

<u>The Needs Of Pollock Predators In The Ecosystem Are Not Factored Into The ABC</u>

The 1998 EIT survey estimate of pollock abundance in the Shelikof Strait was 489, 000 mt compared to 570,100 mt in 1997 and 745,400 mt in 1996. Table 1.4 in the stock assessment lists the time series of trawl/acoustic survey biomass estimates for Shelikof Strait spawning stock

during 1981-1998, by way of comparing these spawning stock sizes with past estimates. When adjusted to fit the pre-1992 EIT estimates, the 1998 Shelikof survey estimate of 387,000 mt hovers near the lowest end of the range of stock sizes surveyed in the Shelikof Strait time series beginning in 1981 and is the lowest since the 1988-1994 "post-Shelikof" period, when the Shelikof Strait stock size estimates fell to the 300,000-500,000 mt range (Hollowed et al., 1998, Table 1.4). That compares with the first survey estimate in 1981 of 2.8 million metric tons, at the time when the Shelikof Strait roe fishery took off.

Although the Model A 1998 female spawner biomass estimate of 278,000 mt was slightly above the average level expected under the Model A F40% fishing strategy (B40% = 240,000 mt), it is the lowest estimate in the model time series since 1973 (Hollowed et al., 1998, Table 1.13). While today's reduced spawning stock abundances are consistent with the expectations of conventional F40% single-species exploitation strategies, what does that mean for other pollock predators in food web of the Gulf of Alaska? If this lower spawner biomass is the expected outcome of fishing at the F40% rate, such that only a fraction of the "pristine" spawning stock size is presently available, that is simply another way of saying that on average there would be about 60-70% more pollock biomass available in the absence of fishing to support the Gulf of Alaska's endangered Steller sea lion and depleted harbor seal populations as well as other pollock predators in the ecosystem.

The exclusive single-species focus of the model does not account for the long-term effects of such exploitation strategies on the ecosystem and epitomizes what is wrong with the single-species approach to fishery management in the North Pacific. However, a recent study of GOA pollock used available predator consumption data to model the effects of Pacific halibut, arrowtooth flounder, and Steller sea lions as a type of "fishery," in order to quantify their effects on the single-species model assumptions about constant natural mortality (Hollowed et al., 1997). When other pollock predators were explicitly accounted for in the model, the estimate of natural mortality doubled for age-2 fish and increased by as much as 60% for age-3+ fish – suggestive of how much the single-species stock assessment models, on which the ABCs and TACs are based, may underestimate the needs and impacts of predators in the marine food web.

Pollock has been identified as an important prey for Steller sea lions and seals in the Gulf of Alaska ecosystem since at least the 1940s (Imler and Sarber, 1947), and it has been the single most important prey in the Steller sea lion food habits data in all years and all seasons sampled since systematic studies were begun in the mid-1970s (NMFS, 1995). Since the early to mid-1980s, the fishery has been concentrated in critical foraging areas of the endangered Steller sea lion. Central Gulf of Alaska Steller sea lion populations began declining in the late 1970s and early 1980s as the pollock fishery expanded into the Kodiak-Chirikof regions, and the decline accelerated at the time of the Shelikof Strait spawning stock collapse between 1985-1989. From 1986-89, during the period of steepest Steller sea lion declines in the central Gulf of Alaska, the Shelikof Strait EIT survey estimate fell to record lows of 300,000 mt (Table 1).

Table 1. – Shelikof Strait Pollock Biomass Estimates and Gulf of Alaska SSL Trend Counts, 1976-1998.

Year	Shelikof EIT Survey (tons) (1)	SSL Nonpups CGOA(2)	SSL Nonpups WGOA(2)
1976		24,678	8,311
1981	2,785,755		
1982			
1983	2,278,172		
1984	1,757,168		
1985	1,175,823	19,002	6,275
1986	585,755		
1987			
1988	301,709		
1989	290,461	8,552	3,908
1990	374,731	7,050	3,915
1991	380,331	6,273	3,734
1992	580,000	5,721	3,720
1993	295,785		
1994	366,800	4,520	3,982
1995	572,900		
1996	588,800	3,915	3,741
1997	450,260		
1998	386,904	3,346	3,361

(1) Hollowed et al., 1998. Revised pollock biomass estimates from echo integration trawl Surveys of Shelikof Strait, Table 1.4.

(2) NMML/NMFS. Counts of adult and juvenile Steller sea lions observed at rookery and haul-out trend sites during June and July aerial surveys. Trend counts understate total population numbers but reflect long-term population trends.

The Plan Team's only response when confronted with the Shelikof survey biomass trends in Table 1 is to assume that the large pollock biomasses of the late 1970s-early 1980s are an anomaly – without any long-term reliable baseline data to support their assumption. Thus the Team discounts the risks associated with the comparatively low spawner biomass levels of the 1990s or the need to reduce fishing pressure significantly in order to let the spawning stock rebuild to more precautionary levels. We do not know if pollock would normally tend be at the high-end abundances observed in the early 1980s, or closer to the low levels of the last decade,

in the absence of fishing. The fact that we don't know should be cause for greater precaution, not less.

Given the large uncertainties and declining trends in the Gulf pollock stock assessment and given what we know about sea lion reliance on pollock and about the high levels of pollock fishing in critical habitat, we conclude that the only reasonable and prudent way to protect Steller sea lions in the Gulf of Alaska is to apply 20 nm year-round trawl exclusion zones around all critical habitat foraging areas adjacent to rookeries and haulouts in order to buffer sea lions from the effects of a large pulse fishery as well as a single-species exploitation strategy premised on reducing stock size to low levels without knowing whether or not the stock will remain productive at such levels:

- Since a long-term average stock size (hence MSY) is unknown and recruitment is highly erratic, one thing is certain: the risks of rapid downturns in pollock abundance increase at the low spawner stock sizes and high ABC levels recommended by the Plan Team for 1998 and 1999.

- Fishing at the current F40% fishing mortality rate will amplify any natural downward trend in pollock abundance, and the status quo pattern of fishing in Steller sea lion critical habitat will only reduce prey availability for this endangered species even further.

In addition to expanded trawl closure areas, we are calling for a return to quarterly allocation of the pollock quota as well as a significant downward adjustment in the 1999 TAC for all the reasons cited above:

- The 1999 Gulf of Alaska pollock TAC should be significantly reduced below the ABC in a precautionary manner to account for the current low level of spawner biomass, projections of below average recruitment in future years, large uncertainties about the stock-recruitment relationship, tendency for Gulf pollock abundance to fluctuate rapidly, persistent overages of the TAC exceeding the acceptable biological catch for the stock, in addition to heavy predation on pollock by Steller sea lions and other marine wildlife, present concentration of the catch in critical sea lion habitat, and displacement of the catch from critical habitats which will occur with expanded sea lion conservation measures.

- We recommend reducing the 1999 Gulf pollock quota at least in proportion to the reduction in catch from Steller sea lion critical habitats and to the extent that area-specific exploitation rates outside critical habitat exceed the stated target harvest rates for the fishery as a whole. The goal here as elsewhere is to ensure that the TAC does not become disproportionately concentrated in other areas as it has in the current fishing areas within critical habitat, resulting in intense pulse fisheries, disproportionately high extraction rates, localized depletions of the stock and other adverse effects.

Aleutian Atka Mackerel

Until the 1990s, the Aleutian Atka mackerel catch never exceeded 38,000 metric tons. Beginning in 1992, the Council raised the TAC to 43,000 m, increasing to 80,000 mt by 1995 and 106,157 t in 1996. Since then, the estimated stock size has dropped sharply by about 50%, based on the triennial trawl survey estimate of 1997, suggesting that the record-high levels of catch in the 1990s are not sustainable within a single-species context. Given its importance as a primary prey for sea lions and other wildlife in the Aleutians, it is critical to maintain the stock at a high level of abundance by means of extra-precautionary exploitation strategies.

However, the Plan Team accepted the stock assessment authors' recommendations for a 1999 ABC of 73,300 mt, the third highest in the history of the fishery. Although there is no new survey information since 1997, the 1998 fishery data shows older fish in the population which caused the model to find more fish this year compared to 1997 and 1996. We think this ABC recommendation is ill-advised at a time when large percentages of the catch remain concentrated within critical sea lion foraging habitat, thereby greatly increasing the likelihood of localized depletions of unknown duration and adverse effects on abundance and/or quality of prey.

Measures currently proposed by the Council to displace fishery catches from critical Steller sea lion foraging habitats would not go into full effect for four years, and even then they would only limit catches in critical habitat to half their current levels in the west-central Aleutian management areas (542 and 543), but not in the eastern management area (541). We think this 1999 ABC recommendation is ill-advised at a time when high percentages of the catch remain concentrated within critical sea lion foraging habitat, thereby greatly increasing the likelihood that localized depletions and other adverse effects on abundance and/or quality of prey will continue to occur.

Given the BS/AI Plan Team's recently recommended 1999 ABC of 73,000 mt, the proposed regulations will only reduce the percentage of the 1999 TAC taken in critical habitat in Districts 542 and 543 by about 15% from the recent average percentage of the TAC taken from critical habitat:

> *"The regulatory amendment for the 1999 Atka mackerel fishery will reduce the amount of Atka mackerel caught within critical habitat in areas 542 and 543 from an average (1995-1997) of 95% and 85%, respectively, to 80% and 65%, respectively. It is estimated that approximately 55,700 mt of Atka mackerel could be caught inside critical habitat in 1999, which is 65% of the recommended 1999 ABC. This a decline of about 15% in the recent average percentage of Atka mackerel TAC taken from critical habitat"* (Lowe and Fritz, 1998).

Previously we have summarized major reasons for assuming a highly precautionary exploitation strategy for Atka mackerel:

- **Atka Mackerel Are Difficult to Assess**. Actual biomass estimates of Atka mackerel may have been overestimated in the early 1990s. The difficulty of determining stock size of Atka mackerel is compounded by the inaccessibility of trawl survey gear to rocky seabed terrain which is

its prime habitat, and by the fact that this species does not possess a swim bladder and therefore cannot be located by hydroacoustic instruments. Given the difficulty of assessing Atka mackerel population size and dynamics, the record-high TACs of the 1990s represent a very high-risk strategy which attracts more vessels into the fishery at a level of exploitation which appears increasingly unsustainable.

- **Atka Mackerel Are Vulnerable to Localized Depletion**. The historical locations of the fishery and the patchy, localized distribution of schools of mackerel in the same locations every year suggest that a relative handful of areas in the western Aleutians near Buldir Island, on Petrel Bank, east and west of Kiska Island, south of Amchitka Island, in the Seguam Pass area, and near Umnak Island represent the bulk of the population. The predictable schooling behavior of Atka mackerel in shallow waters each summer and in these same locations make them particularly susceptible to bottom trawl gear (Lowe and Fritz, 1997). Overfishing in the late 1980s and early 1990s reduced the Gulf of Alaska Atka mackerel population to low levels and resulted in the closure of that fishery.

- **Localized Depletion Is Occurring**. Analysis of CPUE data suggests that locally high local exploitation rates are occurring in the fishery, ranging between 55-91% -- many times higher than the target exploitation rates of between 10% and 15% estimated by the model for the managed population as a whole (Lowe and Fritz, 1996; Fritz, 1997). Recent work by Lowe and Fritz (1996) and Fritz (1997) indicate that localized depletions in the Atka mackerel fishery do indeed occur and persist for an unknown duration after the fishery has departed.

- **Impacts On Steller Sea Lion Foraging and Critical Habitat**. High percentages of the fishery (between 77-99%) in most years have occurred within sea lion critical habitat along the Aleutian archipelago. Given that Atka mackerel is the most common summer prey resource of sea lions in the region, the record-high TACs and catches of the 1990s pose a serious risk of depleting the prey availability for sea lions in and around rookeries and haulouts in the months leading up to and during the breeding season. Temporary reductions in the size and density of local Atka mackerel populations could affect Steller sea lion foraging success "during the time the fishery is operating and for a period of unknown duration after the fishery is closed" (Lowe and Fritz, 1997).

- **Large Uncertainties About the Life History of the Target Species**. Other characteristics of Atka mackerel (e.g., nest-guarding by males, low female fecundity) suggest that the population is not as resilient as gadids to high levels of exploitation. MSY is unknown and the authors of the stock assessment chapter express uncertainty about the long-term effects on the spawning stock from an F40% fishing strategy as applied to species such as pollock.

Atka Mackerel's Importance to Steller Sea Lions in the Aleutian Islands

In the Aleutian Islands, where Atka mackerel is consistently the most common sea lion prey, the Atka mackerel fishery has always been concentrated in nearshore areas of critical habitat proximal to sea lion rookeries and haulouts, occurring in the same few locations every year (Lowe and Fritz 1997). Although the target harvest rate for the managed stock as a whole is believed to be 10-15%, based on overall stock biomass estimates, fishery data indicates that local rates in fished

areas have ranged as high as 40-94% (Lowe and Fritz 1997; Fritz 1997, 1998; Lowe and Fritz, 1998).

Since the Atka mackerel fishery has always been concentrated in highly localized areas primarily within 20 nm of sea lion rookeries and haulouts in the Aleutians, the risk of adversely affecting sea lion prey availability and/or quality of prey is greatly increased by the record-high TACs for Atka mackerel in the 1990s. In addition, there has been a complete shift in effort by an overcapitalized factory trawl fleet to the first quarter of the year as vessels race for shares of the quota. A broad spatial division of the quota into three subareas has not reduced the concentration of removals from within critical habitat boundaries. In fact, as the TAC has reached record-high levels in the 1990s the volume of fishery removals from critical habitat has soared.

Locally high catch rates have been shown to cause localized depletions in the size and density of Atka mackerel populations "*which could affect foraging success during the time the fishery is operating and for a period of unknown duration after the fishery is closed. This raises concerns about how the fishery may affect food availability and the potential recovery of the population.*" (Lowe and Fritz 1997). In May 1998, NMFS cited evidence for fishery-induced localized depletions in critical habitat as reason for proposing management actions to reapportion the Aleutian Atka mackerel fishery in order to reduce the risk of depleting the local prey base and thereby adversely modifying critical habitat and jeopardizing survival and/or recovery of the species:

> "*If lack of available prey is an impediment to the recovery of the western population of Steller sea lions, then the evidence for fishery-induced localized depletions of Atka mackerel and the persistent distribution of the fishery within critical habitat support the hypothesis of sea lion fishery competition and fishery impacts on Steller sea lion population dynamics.*" (NMFS 1998)

The Council's Proposed 1999 Management Measures Are Inadequate

Under the proposed restructuring of the fishery recommended by NMFS and adopted by the Council in June 1998, there would be an A/B season split of the fishery as well as a critical habitat split of the TAC (40% inside CH, 60% outside CH) in order to achieve an overall 50% reduction in the percentage of the TAC caught within critical habitat from the roughly 80% average today -- but only for Aleutian management areas 542 and 543:

- The proposed A/B seasonal 50-50 split of the TAC is not sufficient to prevent locally high extraction rates and localized depletions in the fishery, as assessed in the May 1998 EA by NMFS. Even in instances where the fleet's effort is presumed to be evenly distributed across all fishery sites, NMFS demonstrates that catch would exceed 20% of the largest Leslie initial biomass estimate at most sites analyzed in Districts 542 and 543. Since the TAC has risen to record levels of 64,000-100,000+ mt from 1993-1998, ranging from 2-4 times the historical average, both the "A" and "B" season TACs will exceed the entire catch of earlier years. NMFS has not proposed to reduce the TAC to levels nearer the historical average even though agency scientists have noted that localized depletions tend to occur in areas with the largest concentrations of the catch.

- NMFS decided arbitrarily that a 50% reduction (for Areas 542 and 543 but *not* for Area 541) in total fishery removals from critical habitat, phased in over 4 years, is adequate to avoid localized depletion or adverse modification of critical habitat. It *might* achieve the first goal if the fishery participants are spread out evenly, according to NMFS' own analysis; but in reality the factory trawl fleet is *not* spread out evenly and the choice of 50% does not ensure that localized depletions, adverse modification of critical habitat, and jeopardy to the species' survival are avoided. Nor does a 50% reduction ensure that an adequate level of prey will be available to halt the decline and promote the recovery of the population in the region.

- In District 541, the only measure proposed by the new regulations to reduce catch in critical habitat is a seasonal 20 nm trawl exclusion zone around the Seguam and Agligadak rookeries that was previously in place only for the pollock A-season. Under the proposed regulations, would remain in place for the Atka mackerel B-season as well (Lowe and Fritz, 1998). We support this measure as the only truly effective way to ensure that the critical foraging areas around the rookeries are fully protected during the operations of the fishery. However, the proposed regulations do not see fit to extend comparable levels of protection to any of the other rookery areas, and the regulations would altogether ignore the critical areas around haulouts, where much of the population may be found in the non-breeding season.

In other words, a large Aleutian trawl fishery targeting primary sea lion prey will continue to operate in areas proximal to rookeries and haulouts listed as critical habitat and will likely continue to create localized depletions, by NMFS' own reckoning, despite the proposed measures (NMFS/AFSC 1998). NMFS and the Council cannot reasonably ensure that the Atka mackerel proposal is not jeopardizing the species or adversely modifying critical habitat under the current proposal.

Given the declining status of the spawning stock, the large uncertainties in basic stock parameters, the rising volume of the catch in critical sea lion foraging habitat during the 1990s, and new evidence indicating that localized depletions are occurring in fished areas within critical sea lion habitat and jeopardizing the species, the Council should revise its proposed 1999 regulations. In addition to year-round 20 nm rookery and haulout no-trawl zones around all sites listed as critical habitat in the Aleutians, the Council should adopt the following measures for the fishery:

- quarterly allocations of the TAC

- spatial allocations across a greater number of smaller management areas

- TAC reductions at least in proportion to the amount of the catch displaced from Steller sea lion critical habitat due to conservation measures, and to the extent that area-specific exploitation rates outside critical habitat exceed the stated target harvest rates for the fishery as a whole. The goal here as elsewhere is to ensure that the TAC does not become disproportionately concentrated in other areas as it has in current fishing areas, resulting in intense pulse fisheries, disproportionately high extraction rates, localized depletions of the stock and other adverse effects.

BS/AI Pacific Cod

In 1998, the eastern Bering Sea bottom trawl estimate for Pacific cod was only 534,141 mt. That compares with 1996 and 1997 bottom trawl survey estimates of 890,793 mt and 604,881 mt, respectively. The time series of Pacific cod age 3+ biomass in the stock assessment model is the lowest since 1980, while the spawning stock biomass estimate is the lowest since 1981 (Thompson and Dorn, 1998, Table 2-26).

The Record-High TAC Levels Of The 1990s Are Not Sustainable And Must Be Significantly Reduced

The record-high ABCs and catches of the mid-1990s appear unsustainable in the current stock assessment, with a high risk of driving the spawning stock biomass to dangerously low levels even at the Plan Team's recommended 1999 ABC of 177,000 mt. A time series of EBS Pacific cod catch divided by age 3+ biomass in the stock assessment model indicate that the 1995-1998 exploitation rate has been at the highest levels ever, and twice as high as the catch rate of the 1980s (Table 2.28). Furthermore, the recommended 1999 ABC of 177,000 mt is about 15% of the model-projected 1999 age 3+ biomass, it represents fully 33% of the 1998 bottom trawl survey biomass estimate.

Model projections of spawner biomass show a continued decline to the turn of the century. With the exception of the above-average 1992 year class, there has been no substantial recruitment to the stock since the 1980s. Meanwhile the time series of age 3 recruitment as estimated in the stock assessment model is the lowest since 1990 and the 4th lowest in the time series (Table 2.27). The stock assessment authors note that recent year classes observed at age 3 have all been below average:

> *"With the addition of the 1995 year class, it may be noted that the most recent year classes observed at age 3 have all been below average...The model's present estimate of 1996 cohort's abundance at age 1 (based mostly on the 1997 and 1998 bottom trawl surveys) is about average. Nevertheless, even if the 1996 year class were to recruit at the level currently anticipated, the departure from the recent trend of weak year classes may be short lived, as the present prognosis for the 1997 year class is very poor."*

Thus the outlook for the near future appears rather dismal, with a strong indication that stock biomass will continue to decline.

The increase in Pacific cod ABC/TACs to record-high levels in the mid-1990s has been accompanied by a large increase in the volume of the catch removed from sea lion critical habitat off the eastern Aleutians in the first quarter of the year. In the most recent years for which figures

are available (1994-95), the catch in critical habitat has exceeded 100,000 metric tons -- a greater than five-fold increase over the level of the late 1970s and early 1980s.

Given the steady declining status of the spawning stock, large uncertainties in basic stock parameters, very poor recruitment trends, and the rising volume of the catch in critical sea lion foraging habitat during the 1990s, the Council should adopt measures to:

- establish quarterly allocations of the TAC
- end trawl fishing on spawning cod aggregations in Steller sea lion critical habitat during the first quarter of the year
- reduce the 1999 TAC such that the exploitation rate (measured as catch divided by age 3+ biomass) approximates the lower rates of the 1980s in order to protect and rebuild the spawning stock to safer levels

VI. CONCLUSION

Given (1) the size and scope of the pollock fishery compared to any other groundfish fishery, (2) the intense spatial-temporal compression of major groundfish fisheries in habitats which are essential to the survival and recovery of the Steller sea lion, (3) the evidence for high exploitation rates and rapidly declining biomass in the critical habitat areas where pollock and Atka mackerel fisheries are concentrated, and (4) the importance of sea lion critical habitats as a spawning and nursery habitat for pollock and other fish and shellfish, we believe that NMFS and the North Pacific Council must take these proposed actions to reduce fishing pressure in these habitats under the terms of the protected species requirements of the ESA and in the interest of the long-term viability of the fisheries themselves.

Part of Greenpeace presentation

A conservation example implementing sea lion ecosystem principles

Management Action	Eastern Bering Sea Pollock	Gulf of Alaska Pollock	Aleutian Islands Pollock	Atka Mackerel
Temporal TAC Distribution	A minimum of 4 Seasons: A (Jan 20) 15% B (April 15) 30% C (July 1) 30% D (Sept 15) 25% • Nov 1 – Jan 19 Closed • Inter-seasonal closures • No rollovers	A minimum of 4 Seasons: A (Jan 20) 15% B (April 15) 30% C (July 1) 30% D (Sept 15) 25% • Nov 1 - Jan 19 – Closed • Inter-seasonal closures • No rollovers	Short-term: prohibit directed fishery for pollock Long-term: establish consistent time/area scheme	4 Seasons: A (Jan 20) 25% B (April 15) 25% C (July 1) 25% D (Sept 15) 25% • Nov 1 – Jan 19—Closed • Inter-seasonal closures • No rollovers
Spatial TAC Distribution	• No phase-in • Maximum 35% of pollock TAC from CVOA-CH • TAC allocated to: (1) CVOA-CH (2) Areas 517, 513, 514, 521, 522, 523	• No phase-in • Areas 610, 620, 630, Shelikof	N/A	• No phase-in • Areas 541, 542, 543 • Subarea allocations within existing areas to avoid localized concentration
Trawl Exclusion Zones	• 20 nm, year-round • ALL trawling • 60 nm seasonal for foraging range / year-round CVOA • All haulouts and rookeries identified as CH	• 20 nm, year-round • ALL trawling • All haulouts and rookeries identified as CH	N/A	• 20 nm, year-round • ALL trawling • All haulouts and rookeries identified as CH
TAC Reductions	At least in proportion to reductions in catch from SSL CH and consistent with target catch rates for fishery as a whole.	At least in proportion to reductions in catch from SSL CH and consistent with target catch rates for fishery as a whole.	N/A	At least in proportion to reductions in catch from SSL CH and consistent with target catch rates for fishery as a whole.

- Support jeopardy/adverse modification opinions for pollock fisheries
- Do not support no jeopardy opinion for Atka mackerel fishery.
- Our recommended pollock RPAs consistent with bi-op's conservation principles
- RPAs benefit SSLs
- RPAs benefit pollock stocks, long-term future of fisheries
- RPAs benefit crab and halibut habitat
- RPAs benefit other predators that are in decline/ecosystem as a whole

Rick Marrs

Comments of the Steller Sea Lion Caucus
On the Issue of Jeopardy
Associated with the Bering Sea and Gulf of Alaska
Pollock Fisheries (November, 1998)

The Steller Sea Lion Caucus is writing to formally express its extreme concern over the Steller Sea Lion (SSL) question in the North Pacific region.

The Sea Lion Caucus is comprised of the fishery-dependent communities of Southwest Alaska which are the closest in proximity to the Steller sea lion rookeries and haulouts. The Caucus membership currently includes the City of Akutan, the Aleutians East Borough, City of False Pass, City of King Cove, the City of Kodiak, the Kodiak Island Borough, the City of Sand Point, and the City of Unalaska. These communities are heavily dependent on the Bering Sea and Gulf of Alaska pollock and other groundfish fisheries for employment and municipal tax revenues. The purpose of the Caucus is expressed by the following goals:

- Active support of Federal, State, and Local efforts to promote the long-term recovery of the Steller Sea Lion population.
- Active support of Federal, State, Local, and Industry efforts to provide for a sustainable North Pacific groundfish fishery, and sustainable fishing communities.
- Aggressive and continuous participation in the long-term Steller Sea Lion recovery effort, including the promotion of an open, public discourse on the National Marine Fisheries Service's ESA process, best available scientific and commercial data, and the use of the North Pacific Fishery Management Council and the Steller Sea Lion Recovery Team in all efforts to recover sea lions while sustaining the Region's commercial fisheries.
- Promotion of cooperation between Governmental and independent scientists, including objective and credible peer review of **all** scientific and commercial data, theories, and research protocols.
- Promotion of eductional efforts to explain the fact of the Steller Sea Lion decline, and efforts being made to recover this important marine species.

While the Endangered Species Act (ESA) places the ultimate responsibility for rendering Biological Opinions with the National Marine Fisheries Service (NMFS), the statute does not require the agency to make decisions in a vacuum. We believe the current administrative record does not warrant a finding of jeopardy.

First, the agency has failed to consider a large body of scientific information pertinent to meso-scale ecosystem changes and fishery-SSL interactions which is a requirement of the ESA and federal interagency policy for ESA activities. Second, the agency has failed to assess the efficacy

of prior/pending mitigation measures through a formal deliberative scientific process. Third, the agency has elucidated no quantifiable differences between the projected impacts on SSL by the 1999 groundfish fishery versus the impacts of fisheries on SSL during other years when "non-jeopardy" decisions were issued by the agency.

I. Failure To Use Consistent ESA Policy and Best Available Scientific And Commercial Data

The NMFS is currently operating under an interagency policy which requires an independent peer review process to ensure the best biological and commercial information is being used in the ESA decision making process (59 FR 34270, July 1, 1994, attached).

Section (B)(1) of this policy specifically addresses circumstances when scientific disagreement is sufficient to warrant special review. The "Special Circumstances" Section (B)(1) reads as follows:

> Sometimes, specific questions are raised that may require additional review prior to a final decision, (e.g. scientific disagreement to the extent that leads the Service to make a 6 month extension of the statutory rulemaking period). The Services will determine when a special independent peer review process is necessary and will select the individuals responsible for the review. Special independent peer review should only be used when it is likely to reduce or resolve the unacceptable level of scientific uncertainty.

A SSL review was commissioned by the NMFS and completed by Boyd (1995). The central objective of the report was to provide an independent review of SSL scientific research based on specified terms of reference (Boyd, 1995 - see Appendix I). In our opinion, the paper is replete with scientific information that conflicts with NMFS' position on SSL management. Unfortunately, this report has not been considered during the agency's ESA process for SSL.

The fact that all NMFS's mitigation measures (current and proposed) are directed at the pollock fishery clearly indicate that NMFS has determined the pollock fishery to be the single cause of decline in the SSL population. In addition to Boyd (1995), we firmly believe the NMFS marine mammal biologists have failed to consider a large body of scientific information prior to issuing the Summary Draft Biological Opinion. This additional scientific information runs counter to both the NMFS' single hypothesis that the pollock fishery is causing the decline, and to the Interagency Policy on ESA activities which require the agency to "...use the best scientific and commercial data available." (ESA Section 7(a)(2); 59 FR 34270).

To the best of our knowledge NMFS has not considered the following sources of available scientific and commercial data as required by law:

1) There is conflicting information regarding the implications of diet and the decline of sea lions. Merrick (et.al, 1997) reported a highly significant correlation between prey diversity and SSL population decline. More specifically, as diet diversity decreases — sea lion numbers decrease.

Resident SSL groups feeding on fewer prey species experienced a more pronounced rate of decline compared to SSL groups feeding in areas offering a suite of prey species. Fadely (et.al., 1994) also implicate diet composition and prey abundance/acquisition in the decline of SSL.

2) SSL populations reached peak densities during the 1960's. Since that time, starting in the late 1970's, the population has declined significantly. According to NMFS oceanographer Dr. Bill Peterson (personal communication, NMFS presentation to Pacific States Marine Fisheries Commission, October 12, 1998, Sun Valley, Idaho) the Gulf of Alaska and North Pacific region experienced substantial shifts in species composition, a direct result of oceanographic changes in the form of reduced upwelling, warming, and other El Nino-related events. These physical and biological oceanographic changes were followed by substantial shifts in prey species composition which has forced cascading affects across trophic levels, impacting SSL, piscivorus marine bird populations, sea otters (*Enhydra lutris*), and killer whales (*Orcinus orca*) (Alverson, 1992; Boyd, 1995; Merrick, 1995; Trites and Larkin, 1996; Estes, et. al., 1998; Merculieff, 1998). Existing research documents a shift in SSL diet correlated with this "regime shift", from one of small pelagic fish to a diet dominated by pollock (Alverson, 1992; Merrick et. al., 1997).

3) The Scientific and Statistical Committee (SSC) of the North Pacific Fishery Management Council (NPFMC) recommended several alternative hypotheses be examined to determine the root cause(s) of SSL decline (NPFMC-SSC, 1998). The fact that the SSC has recommended investigation in these specific areas clearly indicates viable alternatives have not been satisfactorily examined by NMFS biologists.

The NPFMC-SSC list of hypotheses requiring investigation includes the following:

#1: Physical oceanographic conditions in the eastern Bering Sea and North Pacific changed in the mid-1970's. This change influenced the productivity of several species.
#2: Among the species that declined were forage fishes high in fat, including capelin, herring, eulachon and sandlance.
#3: At the start of the fatty forage fish decline, the W. SSL stock was high in abundance. The forage fish decline initiated the subsequent decline in SSL.
#4: Walleye pollock numbers increased as the W. SSL decreased and became the major prey of SSL.
#5: Pollock as a prey item are less nutritiuous than forage fish, to the point that SSL in captivity show declines in health when fed solely on pollock. By implication feeding on pollock is contributing to the decline.
#6: The present fishery for pollock adversely affects the availability of prey limiting the ability of SSL to recover.

4) The Committee on the Bering Sea Ecosystem (et.al., 1996) indicated the inabilty to adaptively manage resources (incl. marine mammals) in the region is a direct result of our meager understanding of the system. The Committee suggested a top research priority should be to more fully understand the relationships between ecosystem dynamics, pollock and other prey species, predators, and anthropogenic activities if we are to reverse declines in species such as SSL.

5) Research indicates increasing adult pollock biomass may actually have a negative impact on the abundance of small pollock (Livingston, 1993). Density-dependent cannibalism may result in a dampening in the abundance of a given year class of pollock. Predation by adult pollock has been shown to inflict a large amount of mortality which varies interannually. Trites (et.al., 1998) has suggested increasing adult pollock biomass could result in less (or at least, more variable) individual juvenile pollock available to juvenile SSL.

6) No supporting evidence is currently available which suggests the commercial pollock fishery, which targets Age-4+ fish (Hallowed, 1998; Hughes, 1998) has had any demonstrated impact on the abundance of juvenile pollock (Alverson, 1998; Fritz and Ferrero, 1998). Alverson (1998) indicates that despite periodic and significant increases (>400%) in the abundance of Age-0 to Age-2 pollock (preferred prey size for juvenile SSL), the SSL population did not respond to this positive trend in prey numbers.

II. Failure To Assess Efficacy of Current/Pending Mitigation Measures

NMFS cannot determine the positive or negative effects of current and pending measures vis a vis the SSL jeopardy condition due to the fact that a coordinated scientific program is nonexistent. The SSL Recovery Team (SSLRT) was developed to review components of a SSL Recovery Plan, rank research priorities, evaluate research hypotheses and methodologies, coordinate SSL-related studies, and provide a basis for updating the SSL Recovery Plan (NMFS, 1998). Unfortunately, the SSLRT convened only two of the originally scheduled four workshops and has for all intents and purposes, ceased to function. The SSLRP has apparently never received sufficient funding to achieve full implementation (Boyd, 1995). To our knowledge, the body that NMFS has formally recognized as playing a key role in SSL recovery has not been re-convened or even consulted on the current jeopardy situation.

During 1991-1993, NMFS implemented protective 10 and seasonal 20 nm trawl exclusion zones in numerous areas in the Gulf of Alaska and Bering Sea. To date, NMFS has not assessed the effectiveness of these initial protective measures. The agency has publically recognized the logical need to reassess the effectiveness of these SSL protective measures before the addition of any new measures by the following statement: "Given the current understanding of the sea lion/fishery prey interactions, additional research is warranted prior to establishing revised management actions." (NMFS, 1998; see also NMFS-Alaska, 1998a).

Section 7 (3)(A) of the ESA requires that in the event jeopardy is determined to exist, the action agency shall suggest reasonable and prudent alternatives which would result in avoidance of the jeopardy condition outlined in ESA Section (a)(2). In the case of SSL, the record clearly indicates NMFS is not able to estimate the impacts on the western population of SSL for current or proposed measures with respect to the jeopardy condition. This is further supported by the statement in the NMFS DRAFT Biological Opinion — "At present, our understanding of predator-prey-fishery dynamics is limited, and much of the information necessary to evaluate direct links between the fisheries and sea lions is not available." (NMFS-Alaska, 1998b). Clearly, NMFS cannot meet the ESA jeopardy avoidance requirements of Section 7(3)(A) due to a lack of relevant scientific information.

The NPFMC and NMFS has implemented additional SSL protection measures. For example, three mile no-entry buffer zones were established in 1990; seasonal apportionments in the GOA and Bering Sea (1991) pollock fisheries and GOA Atka mackerel fishery (1999); 1998 measures to reduce AI Atka mackerel fishing effort near SSL rookeries; 1997 measure prohibiting directed fishing on forage fish such as capelin, sand lance, and myctophids. To date, the efficacy of any of these measures has never been quantified. Fritz and Ferrero (1998) concur, stating "These initial measures partitioned some fishing effort away from sea lion habitats, but the conservation benefits remain uncertain." We strongly disagree with the strategy of moving forward with additional conservation measures when the impacts, positive or negative, of the current measures have not been assessed.

III. Failure To Quantify How The 1999 Groundfish Fisheries Will Impact SSL More Severely Compared to Other Years

NMFS issued non-jeopardy Biological Opinions on the groundfish fisheries off Alaska in 1991 and 1996. Each of these opinions concluded that the fisheries were not likely to jeopardize the continued existence and recovery of the SSL (NMFS-Alaska, 1998b).

In December 1997, the NPFMC proposed a 60% increase in the 1998 total allowable catch (TAC) for pollock in the Western and Central Regulatory Areas of the GOA based on increases in groundfish biomass. NMFS re-initiated the ESA consultation process and concluded the 1998 TAC increase would not likely jeopardize the continued existence of the western population of SSL, nor would it result in degradation/adverse modification of SSL critical habitat (NMFS, 1998).

Currently, NMFS has again re-initiated consultation because the previous consultation expires at the end of 1998, and is therefore required before the beginning of the fishery in 1999. NMFS has yet to quantify how the 1999 fisheries will differ in their impact on SSL. In fact, the NPFMC is considering *lowering* the 1999 harvest specifications for groundfish fisheries in both the Bering Sea and GOA. Recent scientific decisions forwarded from both the BS and GOA Plan Teams has recommended fishery management-based harvest reductions for the 1999 BS and GOA pollock fisheries to 992,000 mt and 94,000 mt, respectively. These specifications, which we understand to be near certain, will effectively reduce fishing effort and pollock harvest in both areas.

In conclusion, it remains unclear how NMFS can determine the existence of a jeopardy condition in light of the following: 1) failure to consider a substantial body of scientific and commercial data pursuant to ESA and embodied in the federal interagency policy on ESA peer review; 2) failure to assess the efficacy of existing/pending mitigation measures as part of a formal deliberative scientific process; and 3) failure to reconcile how a *reduction* in 1999 groundfish TAC will increase the potential for jeopardy compared to other years when "non-jeopardy" rulings were issued by the agency.

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[Federal Register: July 1, 1994]

Part VIII

Department of the Interior
Fish and Wildlife Service

Department of Commerce
National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Policy Statements; Notices
DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Endangered and Threatened Wildlife and Plants: Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities

AGENCIES: Fish and Wildlife Service, Interior, and National Marine Fisheries Service, National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of policy statement.

SUMMARY: The Fish and Wildlife Service and National Marine Fisheries Service (hereafter referred to as Services) announce interagency policy to clarify the role of peer review in activities undertaken by the Services under authority of the Endangered Species Act of 1973 (Act), as amended, and associated regulations in Title 50 of the Code of Federal Regulations. This policy is intended to complement and not circumvent or supersede the current public review processes in the listing and recovery programs.

EFFECTIVE DATE: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jamie Rappaport Clark, Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, ARLSQ-452, 18th and C Streets, NW., Washington, D.C. 20240 (telephone 703/358-2171), or Russell Bellmer, Chief, Endangered Species Division, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, Maryland 20910 (telephone 301/713-2322).

SUPPLEMENTARY INFORMATION:

Background

The Act requires the Services to make biological decisions based upon the best scientific and commercial data available. These decisions involve listing, reclassification, and delisting of plant and animal species, critical habitat designations, and recovery planning and

implementation.

The current public review process involves the active solicitation of comments on proposed listing rules and draft recovery plans by the scientific community, State and Federal agencies, Tribal governments, and other interested parties on the general information base and the assumptions upon which the Service is basing a biological decision.

The Services also make formal solicitations of expert opinions and analyses on one or more specific questions or assumptions. This solicitation process may take place during a public comment period on any proposed rule or draft recovery plan, during the status review of a species under active consideration for listing, or at any other time deemed necessary to clarify a scientific question.

Independent peer review will be solicited on listing recommendations and draft recovery plans to ensure the best biological and commercial information is being used in the decisionmaking process, as well as to ensure that reviews by recognized experts are incorporated into the review process of rulemakings and recovery plans developed in accordance with the requirements of the Act.

Policy

A. In the following endangered species activities, it is the policy of the Services to incorporate independent peer review in listing and recovery activities, during the public comment period, in the following manner:

(1) Listing

(a) Solicit the expert opinions of three appropriate and independent specialists regarding pertinent scientific or commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing;

(b) Summarize in the final decision document (rule or notice of withdrawal) the opinions of all independent peer reviewers received on the species under consideration and include all such reports, opinions, and other data in the administrative record of the final decision.

(2) Recovery

(a) Utilize the expertise of and actively solicit independent peer review to obtain all available scientific and commercial information from appropriate local, State and Federal agencies; Tribal governments; academic and scientific groups and individuals; and any other party that may possess pertinent information during the development of draft recovery plans for listed animal and plant species.

(b) Document and use, where appropriate, independent peer review to review pertinent scientific data relating to the selection or implementation of specialized recovery tasks or similar topics in draft or approved recovery plans for listed species.

(c) Summarize in the final recovery plan the opinions of all independent peer reviewers asked to respond on an issue and include the reports and opinions in the administrative record of that plan.

Independent peer reviewers should be selected from the academic and scientific community, Tribal and other native American groups, Federal and State agencies, and the private sector; those selected have demonstrated expertise and specialized knowledge related to the scientific area under consideration.

B. Special Circumstances

(1) Sometimes, specific questions are raised that may require additional review prior to a final decision, (e.g. scientific disagreement to the extent that leads the Service to make a 6-month extension of the statutory rulemaking period). The Services will determine when a special independent peer review process is necessary and will select the individuals responsible for the review. Special independent peer review should only be used when it is likely to reduce or resolve the unacceptable level of scientific uncertainty.

(2) The results of any special independent peer review process will be written, entered into the permanent administrative record of the decision, and made available for public review. If the peer review is in the context of an action for which there is a formal public comment period, e.g., a listing, designation of critical habitat, or development of a recovery plan, the public will be given an opportunity to review the report and provide comment.

Scope of Policy

The scope of this policy is Servicewide for all species of fish and wildlife and plants, as defined pursuant to section 3 of the Act (16 U.S.C. 1532).

Authority

The authority for this policy is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531-1544).

Dated: June 27, 1994.
Mollie H. Beattie,
Director, U.S. Fish and Wildlife Service, Department of the Interior.

Dated: June 24, 1994.
Rolland A. Schmitten,
Assistant Administrator for Fisheries, National Marine Fisheries Service.
[FR Doc. 94-16021 Filed 6-30-94; 8:45 am]
BILLING CODE 4310-55-P

12/12 9:15pm

Industry Proposal for EBS Pollock Harvest Inside-Outside Critical Habitat

Proposal #2

	A1		A2		B		C		Total		Grand
Shoreside	Critical H	Outside CH	Critical H*	Outside CH	Critical H	Outside CH	Critical H	Outside CH	Critical H	Outside	Total
50%	24.00%	6.00%	9.00%	6.00%	21.00%	9.00%	18.75%	6.25%	72.75%	27.25%	100.00%
tons	99,994	24,998	37,498	24,998	87,494	37,498	78,120	26,040	303,106	113,534	416,640
Days	23.8	11.9	12	11.90	25.00	17.04	22.32	11.84			
Rate	4200	2100	4200	2100	3500	2200	3500	2200			
Relative % In-Out	80.0%	20.0%	60.0%	40.0%	70.0%	30.0%	75.0%	25.0%			
C-Ps											
40%	18.75%	11.25%	9.38%	5.63%	0.00%	27.50%	0.00%	27.50%	28.13%	71.88%	100.00%
tons	62,496	37,498	31,248	18,749	-	91,661	-	91,661	93,744	239,568	333,312
Days	7.4	8.3	3.7	4.2		14.1		14.1			
Rate	8,500	4,500	8,500	4,500		6,500		6,500			
Relative % In-Out	62.5%	37.5%	62.5%	37.5%		100.0%		100.0%			
Motherships											
10%	28.13%	16.88%	0.00%	0.00%	18.75%	11.25%	15.63%	9.37%	62.51%	37.50%	100.00%
tons	23,436	14,062	-	-	15,624	9,374	13,024	7,808	52,084	31,244	83,328
Days	12.3	7.4			12.5	7.5	10.4	6.2			
Rate	1,900	1,900			1,250	1,250	1,250	1,250			
Relative % In-Out	62.5%	37.5%			62.5%	37.5%	62.5%	37.5%			
CDQs											
10%	18.75%	11.25%	9.38%	5.63%	6.00%	24.00%	5.00%	20.00%	39.13%	60.88%	100.00%
tons	18,600	11,160	9,300	5,580	5,952	23,808	4,960	19,840	38,812	60,388	99,200
Relative % In-Out	62.5%	37.5%	62.5%	37.5%	20.0%	80.0%	20.0%	80.0%			

Totals by Season									
	204,526	87,718	78,046	49,327	109,070	162,341	96,104	145,349	
Fraction of TAC	0.2062	0.0884	0.0787	0.0497	0.1100	0.1637	0.0969	0.1465	
Fraction In-Out	0.70	0.3002	0.61	0.3873	0.40	0.5981	0.40	0.6020	
Season Total (%)		29.5%		12.8%		27.4%		24.3%	94.0%
Season Total (mt)		292,243		127,373		271,411		241,453	932,480
Assumptions		A1+A2 Seasons	0.67						
EBS TAC	992,000								
CDQ	(99,200)								
Bycatch	(59,520)								
	833,280 EBS ITAC								

12/12/98 14:29
Industry Proposal #2 Final Version

Proposed Season Opening Dates

	A-1	A-2	B	C
Shoreside	Jan. 20	Feb. 20	Aug. 1	Sept. 15
C-Ps	Jan. 26	Feb. 20	Aug. 1	Sept. 15
	Jan. 20 if COOP		July15 if COOP	
Motherships	Feb. 1 single A Season		Sep. 1	Sept. 15
CDQs	Jan. 20	Feb. 20	Apr.11	Sept. 15

*CH as defined by NMFS (i.e. CH + portion of OCS)

The Bering Sea

Recent declines of many populations of marine mammals and birds that live in and near the Bering Sea, a semienclosed basin of the North Pacific Ocean between Alaska and Russia, have attracted attention and have been attributed by many to the effects of fishing. The National Research Council recently reviewed the information (NRC 1996a) and concluded that fishing probably has affected the ecosystem but in a more complicated fashion than simple overfishing and in combination with environmental changes. Documented changes include changes in abundances of many fish species and changes in the physical environment. There also is persuasive (although not conclusive) evidence that marine mammals and birds are declining because the juveniles are short of food.

The NRC report concluded that the changes in the Bering Sea ecosystem were probably caused by a combination of changes in the physical environment coupled with heavy exploitation of components of the system (whales and fishes). Many sperm and baleen whales were removed from the Bering Sea and adjacent waters in the 1950s, 1960s, and 1970s. Various flatfish species, Pacific Ocean perch, and herring were also heavily fished in that period, with resulting population declines. Many of those species feed heavily on zooplankton and thus compete with walleye pollock; others of those species prey on pollock. In the late 1970s the physical regime appears to have shifted as well, resulting in higher sea-surface temperatures and less ice cover than before, conditions that seem to favor pollock recruitment.

As a result, the ecosystem appears to have become more dominated by pollock than it was before. In recent years other predatory fishes—mostly flatfishes—have increased as well. These predators might be responsible for the decline of species normally favored by marine mammals and birds, such as capelin (*Mallotus villosus*), Pacific sand lance (*Ammodytes hexapterus*), and squid (*Berryteuthis* sp. and *Gonatus* sp.) As a result of these changes, juvenile marine mammals and birds have been deprived of their preferred foods. Thus, fishing (including whaling) appears to have contributed to a significant change in the structure and functioning of this large marine ecosystem, although the current pollock fishery does not seem to be a major contributor to the problem.

Analogs to the Bering Sea

The complexity of marine ecosystems and the number of potential factors involved make it difficult to have great confidence in our understanding of the precise mechanisms that relate fishing to the populations of top predators. The NRC report (NRC 1996a) pointed out that, although there has been heavy fishing pressure in the North Sea, in the upwelling areas off South Africa and Namibia, and off Peru, there have not been clear effects on the populations of pinnipeds.

Nonetheless, it seems likely that continued removal of large portions of various trophic levels from marine ecosystems will affect ecosystem structure and functioning. One issue that

Jay Stenson, etc al C-1

GOA Proposed SSL Mitigation Measures

The processing and harvesting sectors of Kodiak, Sand Point, Seward, and Cordova and associated communities have reached consensus on the following mitigation measures for SSL in the GOA. Although we do not believe the current administrative record warrants a finding of jeopardy we respectfully request the Council adopt the following measures to meet the temporal, spatial, and trawl exclusion requirements of the Biological Opinion.

Temporal Dispersion:
To more evenly distribute the trawl fisheries we propose adoption of the trimester seasonal apportionment which was originally developed by NMFS in the October 23, 1993 *Draft* Summary Biological Opinion with one additional change. The only change from the NMFS proposal is to move 5% of the allocation from the A Season to the B Season (*). We felt that the original suggestion of 35% harvest in January should be modified to 30%, reflective of NMFS' primary concern for available prey during the winter months. Shifting allocation into the B Season is also consistent with NMFS' concerns in the final Biological Opinion.

The consensus proposal is as follows:

Season	Start Date	Allocation
A	January 20	30%*
B	June 1	20%
C	September 1	50%

Trawling for pollock is prohibited from November 1 through January 19.

The trimester approach will ensure the economic viability of the fishery by providing for consistent employment of the vessel and shore-based work force. It will also prevent cost increases resulting from switching back and forth more often between different fisheries.

The trimester approach, allowing for longer seasons, is safer for the fishermen. This is consistent with the management position taken by the Secretary, the Council, and supported by the industry for the halibut and sable fish fisheries.

We oppose adopting a quarterly approach because it will intensify pulse-type fishing which is exactly the opposite result NMFS requires to protect SSL (see Biological Opinion, p.115). Quarterly allocations will also result in work force disruptions and increased community costs. The Council should recall that a quarterly approach became unmanageable as TAC levels declined.

Spatial Dispersion:
To more evenly distribute the pollock trawl fishery with respect to SSL critical habitat we propose

an incremental phase-out reduction in pollock removals from critical habitat. During 1990-1997, approximately 70% of the GOA pollock TAC was taken annually in SSL critical habitat.

The consensus proposal is a follows:

1) 70% cap of GOA TAC taken in SSL critical habitat during 1999
2) Reduction schedule as follows:

Year	Percent TAC from SSL Critical Habitat
2000	65%
2001	60%
2002	55%
2003	50%

3) Subject to annual review as stated in the Final Biological Review (p. 120)
4) NMFS be required to implement a research program designed to quantify the efficacy of this mitigation measure prior to the A Season in the year 2000

Employing a phase out approach to protect SSL from alleged competition with the pollock fishery is consistent with the Council's 1998 recommended regulatory amendment to the Secretary on the incremental shift in Atka mackerel harvest through 2002. The NMFS issued a non-jeopardy finding for the Atka mackerel fishery in the Final Biological Opinion.

The 70% cap for the 1999 season will not permit a significant increase in the TAC taken in SSL critical habitat. In the past, the GOA fishery has taken a maximum of 93% of the TAC in SSL critical habitat.

The most significant problem with a reduction in TAC from critical habitat is that it will force fishermen, many operating on small vessels, further offshore exposing them to increased peril. This result is inconsistent with National Standard #10 of the Magnuson-Stevens Act.

The proposed phase-out reduction schedule will allow sufficient time for fishermen to adjust their fishing practices, to find new areas where they can operate, and provide time for them to seek alternative fisheries and make the necessary economic adjustments to purchase new gear.

Pollock Trawl Exclusion Zones:

In the GOA, NMFS is proposing 43 new trawl exclusion zones in addition to the 9 zones already

existing. Of the 52 total no-trawl zones, 11 are absolutely essential fishing areas which the fishing industry simply cannot afford to lose.

The consensus proposal is as follows:

We request the following 11 haulouts be removed from the list of no trawl zones for pollock:

Key Fishing Areas:

1. Cape Barnabas
2. Ugak Island
3. Gull Point
4. Cape Ugat
5. Cape Ikolik (summer haul out only)
6. Chiswell Island (summer haul out only)
7. Rugged Island (summer haul out only)
8. Pt. Erlington
9. Needles
10. Sea Lion Rocks (Sand Point)
11. Mitrofania

Areas #1-#5 are used marginally by SSL but remain key fishing locations. Cape Barnabas has not had any animals recorded since 107 were counted in 1985. Cape Ikolik has only been used since 1992 and has averaged only 71 animals since that time.

Anecdotal evidence from fishermen indicate increased summer SSL activity in Area #5 (Cape Ikolik) and we suggest the area be protected as a summer haul out along with Areas #6 and #7. The industry utilizes all these areas during rough weather during the winter fishery.

Also, Areas #6 and #7 are located near Seward. Local fishermen fish these areas in the winter season. If access to these areas is lost, Seward fishermen have no alternative fishing locations available during inclement weather. The City of Seward will also lose significant income if access is denied to these key areas.

Areas #8 and #9 are critical to Cordova fishermen and the City of Cordova. Cordova is a remote fishing-based community with little or no alternative winter season revenue sources. Loss of access to these key areas will be economically devastating. Local Cordova fishermen forced to relocate will likely move 70 miles offshore beyond Middleton Island. The safety concerns created by this action will be significant. This area periodically experiences some of the most extreme weather in the North Pacific.

Closing Area #10 (Sea Lion Rocks) will shut down the Sand Point local summer/fall fishery which is prosecuted almost exclusively in this area. Area #11 (Mitrofania) is the closest fishing location for vessels traveling from Area 610. If this area is closed, fishermen will have to travel 10 hours further to reach alternative fishing areas. This will increase the risk of fishermen having to steam greater distances.

According to the Final Biological Opinion (p.120), the efficacy of these new trawl exclusion zones is required to be assessed annually. Accordingly, we include as part of our request:

1) NMFS implement an intra-season, multi-year survey designed to collect statistically valid density estimates of haulout and rookery areas to start during 1999.
2) NMFS implement a program designed to test the efficacy of the trawl exclusion zones prior to the start of the A Season in the year 2000.

GOA fishermen are extremely concerned over losing 41 trawl exclusion zones within their traditional fishing grounds with the current minimal level of scientific justification. We believe this is more than enough to meet the immediate requirements set fourth in the Final Biological Opinion. Any additional loss of the 11 key fishing areas highlighted above will preclude fully prosecuting the pollock fishery, force fishermen to relocate locate to new areas, increasing both safety- at- sea concerns and travel/maintenance costs, and will negatively impact the economy of Southwest Alaska's coastal communities.

Additional Research Requirements:

1) NMFS must assess the efficacy of prior/current SSL mitigation measures immediately.
2) Since competition is the primary justification for the finding of jeopardy, NMFS must be required to develop and implement a research program designed to quantify the level of competition between fishing and SSL decline.
3) The SSL Recovery Team must be fully funded and incorporated into the process.
4) The Final Biological Opinion should be formally peer reviewed by a number of independent scientists. The peer review results should be made available to the public for comment.

Jay Stream, et al C-1

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MODIFICATIONS TO SUGGESTED GULF RPA CLOSURES

KODIAK ISLAND

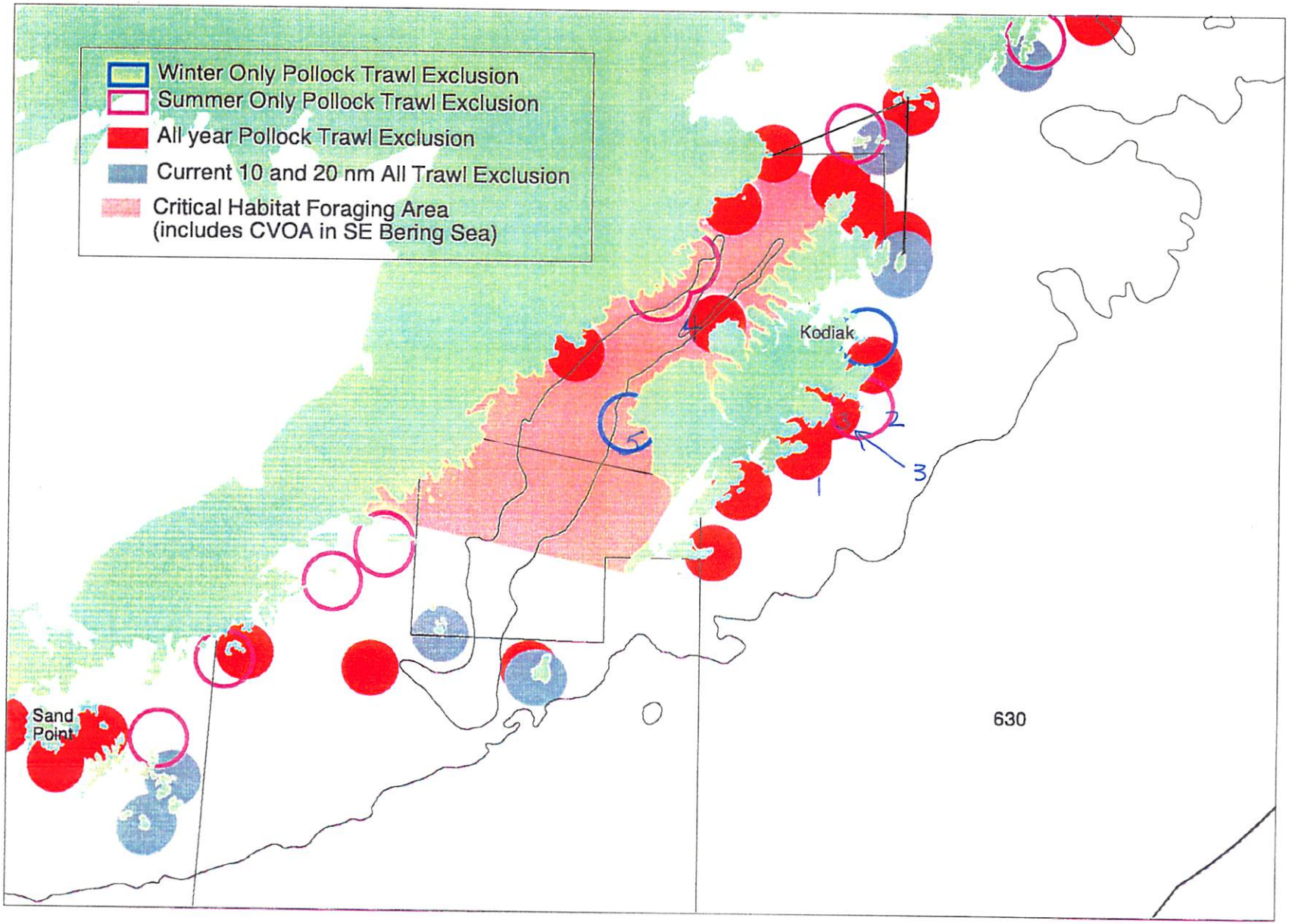
1. **Cape Barnabas**
2. **Ugak Is.**
3. **Gull Pt.**
4. **Cape Ugat**
5. **Cape Ikolik (Change to Summer Haulout)**

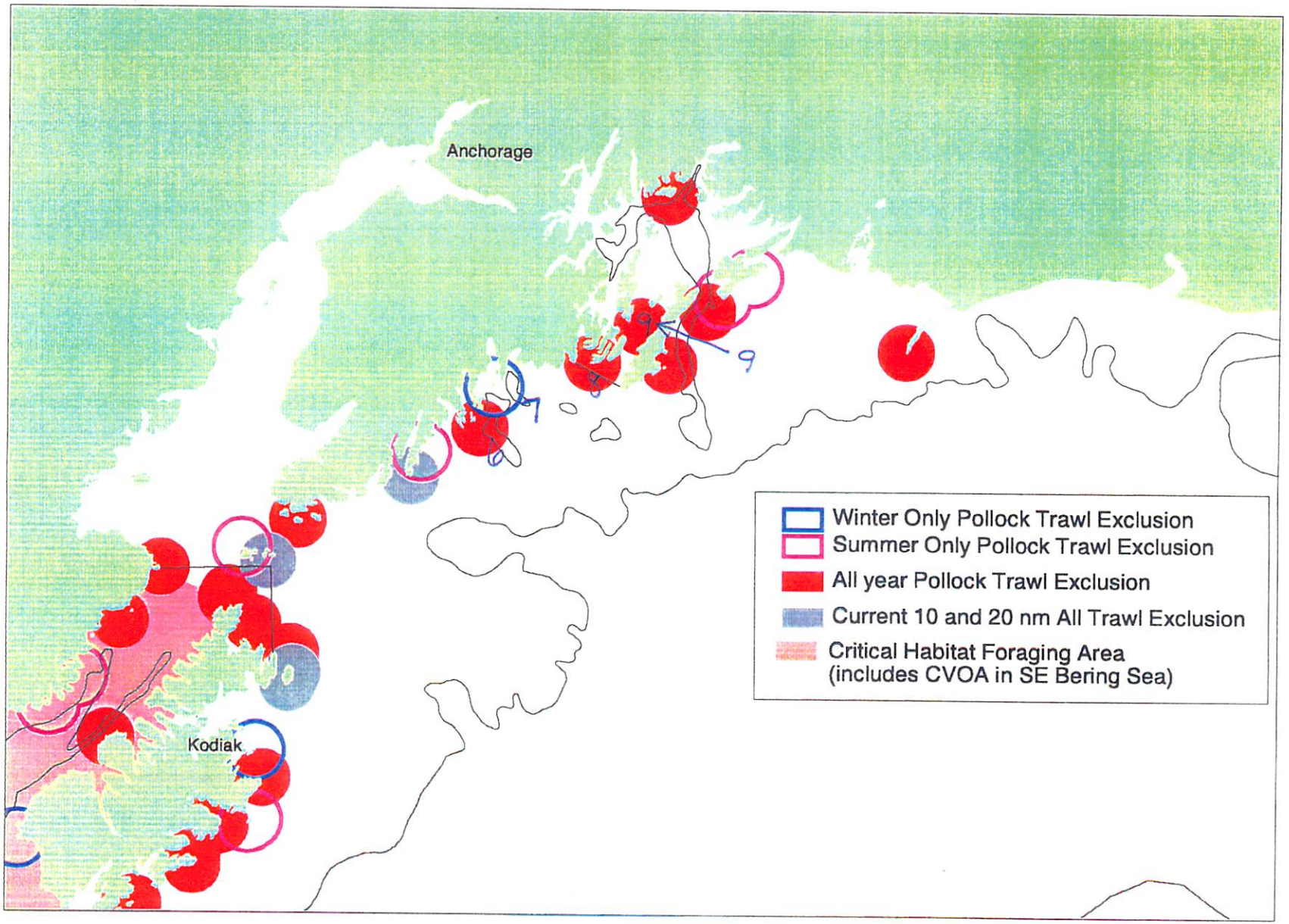
KENAI PENINSULA

6. **Chiswell Is. (Change to Summer Haulout)**
7. **Rugged Is. (Change to Summer Haulout)**

PRINCE WILLIAM SOUND (ALASKA STATE WATERS FISHERY)

8. **Pt. Elrington**
9. **Needles**


Winter Only Pollock Trawl Exclusion
Summer Only Pollock Trawl Exclusion
All year Pollock Trawl Exclusion
Current 10 and 20 nm All Trawl Exclusion
Critical Habitat Foraging Area
(includes CVOA in SE Bering Sea)
Kodiak
Sand
Point
630
1
2
3
4
5


Anchorage
Kodiak
Winter Only Pollock Trawl Exclusion
Summer Only Pollock Trawl Exclusion
All year Pollock Trawl Exclusion
Current 10 and 20 nm All Trawl Exclusion
Critical Habitat Foraging Area
(includes CVOA in SE Bering Sea)

Kodiak Electric Association Inc.

(907) 486-7700

Box 787
KODIAK, ALASKA 99615

December 2, 1998

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

Sent Via Fax: (907) 271-2817 and U.S. Mail

Re: Steller Sea Lion Measures

At their regular meeting of November 25, 1998, the Board of Directors of Kodiak Electric Association, Inc. unanimously passed a resolution requesting mitigation of proposed Sea Lion Protection Measures.

I have enclosed a copy of Resolution #501-98 *Requesting Mitigation of Proposed Sea Lion Protection Measures in the Gulf of Alaska and the Bering Sea* for your consideration. Please note the important impacts the scope of the proposed closures will have on the economics of Kodiak, Cordova, Seward, Sand Point, King Cove, Dutch Harbor, and Akutan, and address this issue at the 136th Plenary Session of the North Pacific Fishery Management Council meetings scheduled for December 6-14, 1998.

Please contact me at (907) 486-7700 if you should have any questions.

Sincerely,

Edwin K. Kozak /nbs

Edwin K. Kozak, P.E.
General Manager

EKK:nbs
Enclosure

npfmcres.ltr

KODIAK ELECTRIC ASSOCIATION, INC.

KODIAK, ALASKA

RESOLUTION
501-98

REQUESTING MITIGATION OF PROPOSED SEA LION PROTECTION MEASURES IN THE GULF OF ALASKA AND THE BERING SEA

WHEREAS, the National Marine Fisheries Service (NMFS) is currently in the process of rendering a Biological Opinion pursuant to the Endangered Species Act to determine whether the Gulf of Alaska and Bering Sea groundfish fisheries, through their fishing practices, are jeopardizing the continued existence of endangered Steller sea lions; and

WHEREAS, the NMFS has decided that access to pollock is the reason for the continued decline of the sea lion population, although it has produced no analysis to substantiate this belief; and

WHEREAS, the NMFS has recently issued a paper outlining proposed regulations, termed Reasonable and Prudent Alternatives (RPAs) which would greatly expand the number of "no fishing" buffer areas in the Gulf of Alaska and the Bering Sea, in hopes of mitigating jeopardy to the sea lion population; and

WHEREAS, NMFS scientists have acknowledged publicly and in writing that the agency does not know what is causing the decline in Steller sea lion populations, yet is determined to pursue regulation of the Alaska fishing industry in spite of this lack of knowledge; and,

WHEREAS, the best available scientific information does not support a determination that the fishing industry presents jeopardy to the sea lion population; and,

WHEREAS, NMFS has not undertaken any concerted research activities to prove or disprove whether the RPAs, currently in effect in the Gulf of Alaska since 1992, have effectively addressed the decline of resident Steller sea lion populations; and

WHEREAS, the proposed buffer areas include all rookeries and haul-out areas where 200 or more Steller sea lions have been observed since the early 1960s, even though many such areas have had no significant resident Steller sea lion population in decades; and;

WHEREAS, a number of the rookeries and haul-outs currently used by more than 200 Steller sea lions are used only seasonally; and,

WHEREAS, the proposed additional haul-out and rookery closures preclude fishing in all of the major pollock fishing areas; and

WHEREAS, the scope of the proposed closure will cripple the Alaska groundfish fisheries by virtually eliminating the pollock fisheries on which the economies of Kodiak, Cordova, Seward, Sand Point, King Cove, Dutch Harbor, and Akutan depend, drastically affecting small-boat fishermen and dramatically reducing the amount of fish available to Alaskan shore-based processors; and

WHEREAS, the Alaska Groundfish Data Bank reports that pollock accounts for 48 percent of the projected catch by species for the Port of Kodiak in 1998; and

WHEREAS, the seafood processing industry in Kodiak alone comprises almost 30 percent of Kodiak Electric Association's annual sales revenue; and

WHEREAS, the loss of pollock processed by Kodiak shore-based operations will reduce the electrical energy used by the community; and

WHEREAS, the loss of electrical energy sold due to a reduction in seafood processing could lead to a loss of customers and rate increases to the cooperative members;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors of Kodiak Electric Association of Kodiak Alaska calls upon the Alaska Congressional delegation, the Governor of the State of Alaska, the Alaska State Legislature, the Secretary of Commerce, and the North Pacific Fishery Management Council to urge the National Marine Fisheries Service to (1) refrain from any additional regulation of the fishing industry unless jeopardy is proven through scientific research programs, (2) if jeopardy is proven, reduce the scope of the proposed RPAs to only those rookeries and haul-out areas which have had resident Steller sea-lion populations of 200 or more animals within the past eight years, (3) adopt seasonal restrictions rather than year-round restrictions, to reflect the fact that Steller sea lions do not inhabit all rookeries and haul-out areas on a year-round basis, and (4) develop a research program designed specifically to determine the effectiveness of such RPAs.

CERTIFICATION

I, **Kathleen Ballenger** do hereby certify that I am **elected** Secretary of Kodiak Electric Association, Inc., an electrical non-profit cooperative membership corporation organized and existing under laws of the State of Alaska; that the foregoing is a complete and correct copy adopted at a meeting of the Board of Directors of this corporation, duly and properly called and held on the **twenty-fifth day of November, 1998**; that a quorum was present at the meeting; that the resolution is set forth in the minutes of the meeting and has not been rescinded or modified.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of this corporation this **twenty-fifth day of November, 1998**.

(Seal)

Secretary Kathleen B. Ballenger

501-98se.lin

WWF

December 8, 1998

Mr. Rick Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK 99510

Dear Mr. Lauber:

I am writing on behalf of World Wildlife Fund to express our support for the recent decision by the National Marine Fisheries Service (NMFS) to recognize the impact of the pollock fishery on the declining Steller sea lion populations. Around the world we have witnessed the loss of many marine species and the collapse of many valuable marine ecosystems. We are glad to see that NMFS and NOAA are working to prevent the loss of the sea lion, a sentinel of Alaska's seas.

We understand that the North Pacific Fisheries Management Council will be meeting this week and will be discussing the management alternatives set forth in NOAA's recently issued Biological Opinion regarding the impact of fisheries on the Steller sea lion. We are concerned about the precarious state of a number of seabird, fish, and mammal species such as the Steller sea lion, whose 50-80% decline in both the US and Russia signifies that the stability of the North Pacific marine ecosystem is at serious risk. Although these declines are alarming, there is still an opportunity to protect Alaska's marine resources for the future, and we urge the Council to take advantage of this opportunity. At this time we encourage the Council to develop a proactive strategy to protect the future of fisheries in the region, as well as the ecosystems on which they and many other species depend.

World Wildlife Fund (WWF) is an international conservation organization with programs in over 100 countries. In the United States, we have 1.2 million members who are concerned about wildlife and habitat protection. WWF is particularly interested in the North Pacific region, as we are beginning a new ecoregion-level initiative to protect marine biodiversity and address threats to both wildlife (and people) such as overfishing,

World Wildlife Fund
1250 Twenty-Fourth St., NW Washington, DC 20037-1132 USA
Tel: (202) 293-4800 Fax: (202) 293-9211
Affiliated with World Wide Fund for Nature

climate change, and toxic contamination in the Bering Sea. Thank you for considering our concerns about conserving one of the most important fisheries in the world, the North Pacific, in all its diversity.

Sincerely,

William M. Eichbaum
Vice President, US Conservation and Global Threats

EARTH ISLAND INSTITUTE

RECEIVED

DEC - 8 1998

LATE COMMENT

Monday, 7 December 1998

N.P.F.M.C
Rick Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Re: 1999 TAC specifications for the Bering Sea/ Aleutian Islands and Gulf of Alaska groundfish fisheries in the context of Steller sea lion conservation

Dear Chairman Lauber,

This memo is a formal endorsement by the International Marine Mammal Project of Earth Island Institute of the comments submitted this week by Greenpeace, American Oceans Campaign, and Sierra Club, Alaska regarding the Plan Team's recommended 1999 ABC's for pollock, Pacific cod, and Atka mackerel.

The National Marine Fisheries Service's (NMFS) Biological Opinion, released Friday, declared that groundfish trawl fisheries are indeed jeopardizing the continued existence of the endangered Steller sea lion. NMFS's decision corroborates the perspective offered by our colleagues' comments and points to the urgent need for reducing, relocating, and rescheduling the groundfish trawl catches in the ways specified in those comments.

The restrictions proposed by our colleagues' comments represent a strong step in the direction of an ecosystem approach to fisheries management in the North Pacific. The free fall of Steller sea lions in the western portion of their range is an alarm sounding for the ecosystem of which they and the fisheries are a part. As you know, the precipitous decline of the Steller sea lion population, some 80 to 90% in the western portion of its range, indicates ecological collapse on a broader scale. Populations of Northern fur seals, harbor seals, and marine birds have dropped along with that of the Steller sea lion. Recent high profile newspaper articles have highlighted the situation in the North Pacific, investigating the unprecedented predation of sea otters by orcas, whose usual prey are depleted. As we have learned in California, underpopulation of sea otters results in overpopulation of otter prey such as sea urchins, which results in habitat loss for other marine organisms that depend on the kelp the urchins consume. As the comments point out, the fisheries have increased their catches while the total biomass of the fish populations from which they are harvesting has dropped. The scene is set for a crash of these fisheries.

We urge you and the Council to follow the specific recommendations contained in the foregoing comments to:

•Increase trawl exclusion zones to better protect sea lion rookeries and critical habitat for foraging.

300 Broadway, Suite 28
San Francisco, CA 94133
Tel: 415-788-3666
Fax: 415-788-7324

•Reapportion the seasonal TAC's for pollock and Atka makerel so that fishing is no longer concentrated in Steller sea lions' critical habitats during the winter, which is already difficult for foraging.

•Increase protection for sea lion winter foraging habitat off the eastern Aleutian Islands, into the Catcher Vessel Operation Area.

•Protect pollock spawning grounds and other important fish and shellfish habitats where trawl fishing has been concentrated.

•Establish an Aleutian Islands pollock stock rebuilding program and a moratorium on the directed fishery.

•Reduce groundfish TAC's for heavily exploited stocks of pollock, Atka mackerel, and Pacific cod.

Please register our endorsement of the Greenpeace/ American Oceans Campaign/ Sierra Club, Alaska comments. Thank you very much for your consideration.

Sincerely yours,

Laura Seligsohn

Laura Seligsohn, M.A.
Pinniped-Fisheries Campaign Director

National Audubon Society

ALASKA STATE OFFICE
308 G Street, Suite 217
Anchorage, AK 99501
Tel: (907) 276-7034
Fax: (907) 276-5069

Statement to North Pacific Fishery Management Council
December 11, 1998

Mr. Chairman and Council Members, my Name is John Schoen. I am the Director of the Alaska Office of the National Audubon Society. Prior to working for Audubon, I served as a Research Wildlife Biologist and Supervisor for the Alaska Department of Fish & Game for 20 years.

National Audubon has a membership of over half a million people including 2,000 members in Alaska. The mission of the Audubon Society is to conserve natural ecosystems focusing on birds, other wildlife, and their habitats. Audubon has a great interest and concern for the conservation of Steller Sea Lions in Alaska.

First I would like to compliment Dr. Tim Ragen for his factual and forthright testimony before the Council. This is a difficult issue and he has done a very good job.

For the last 30 years, we have followed the dramatic decline of this species throughout the western portion of their range in Alaska. The reasons for the initial decline are uncertain and potentially complicated. However, even now, the western stock continues to decline. Clearly, we have a serious problem that must be immediately addressed.

Regardless of the reason for the initial decline, we now have a population at low numbers that can be affected by a number of different factors including climate change, regime shifts, commercial fishing, contaminants, etc.

We also know that pollock is a major food resource of sea lions in the area of decline, and the fishery may now be having a significant impact on sea lion recovery. Unfortunately, it has taken us a long time to address this issue in a substantive way and now we are facing a crisis.

We concur with the recent jeopardy finding of the National Marine Fisheries Service.

Audubon recommends the council take decisive conservation actions to reverse the decline of Steller sea lions. In hindsight, we may have avoided our current crisis if we had acted earlier. I am a firm believer in timely, preventative conservation management as the best course of action. This provides more flexibility and management options than waiting for a crisis to force us into reactive management.

As this issue becomes further polarized it will be that much more difficult to resolve. I strongly urge everyone to work together constructively to reverse the decline and restore the sea lion population. Clearly, we also need an additional investment in research to help reduce the level of uncertainty surrounding the causes of the decline and monitor our success along the way. Setting benchmarks, monitoring, and adaptive management will be fundamental to successful conservation.

Again, Audubon has a significant concern for conservation of the Steller sea lion. We urge the Council to work cooperatively with the National Marine Fisheries Service to immediately address the conservation needs of the Steller sea lion. If you error, error on the side of conservation. In the long run, responsible conservation will be good economics.

Thank you for considering my remarks.

Sincerely,

John W. Schoen, Ph.D.
Executive Director

We concur with the recent proposed ranking of the National Marine Fisheries Service.

Alaska is recommending the council take aggressive conservation actions to reverse the decline of Steller sea lions. In hindsight, we may have [illegible] our current [illegible]. I am a firm believer in timely precautionary conservation management in the face of [illegible]. This provides more flexibility and management options than waiting for a crisis to force us into reactive management.

As this issue becomes further polarized it will be that much more difficult to resolve. I strongly urge everyone to work together cooperatively to reverse the decline and restore this population. Clearly, we also need an additional investment in research to help reduce the level of uncertainty surrounding the causes of the decline and monitor our success along the way. Setting benchmarks, monitoring and adaptive management will be fundamental to successful conservation.

Again, Alaska has a significant concern for conservation of the Steller sea lion. We urge the council to work cooperatively with the National Marine Fisheries Service to immediately address the conservation needs of the Steller sea lion. If you must err, err on the side of conservation. In the long run conservation will be good economics.

Thank you for considering my remarks.

Sincerely,

John W. [illegible], Ph.D.
Executive Director

Alaska Marine Conservation Council
Box 101145, Anchorage Alaska 99510
(907) 277-5357 • (fax) 277-5975
amcc@akmarine.org • www.akmarine.org

December 4, 1998

Rick Lauber, Chair
North Pacific Fishery Management Council
605 W. 4th Ave.
Anchorage, AK 99510

RE: C-1 Steller sea lions and D-3 Groundfish Specifications

Dear Chairman Lauber,

The Alaska Marine Conservation Council requests that the North Pacific Fishery Management Council (the Council) adopt management measures for 1999 groundfish fisheries that mitigate the effects of these fisheries on the North Pacific marine ecosystem. We are concerned about the health of individual fish stocks and other species in the ecosystem such as the endangered Steller sea lion. Our recommendations pertain to the setting of the Total Allowable Catch (TAC) and reducing the concentration of large-scale fisheries in time and area.

A. Pollock

We recommend a restructuring of the pollock fishery in order to manage the fishery within the context of the ecosystem. We ask that you consider AMCC's groundfish proposal (attached) which begins to address the problem of this large fishery and its potential impacts on the ecosystem. We believe that what is good for the ecosystem is also good for the long-term health of the fishery and the communities that rely on it.

The Eastern Bering Sea pollock fishery has developed markedly in the last twenty years. Scientific understanding of the Bering Sea pollock stocks has improved, but assessing the status of the stock is still plagued with uncertainty. Prior to 1980, there was no directed harvest on spawning aggregations of pollock. The overall biomass of Bering Sea pollock grew in the mid-1980s, but has since decreased by half. In this same period of time, the Donut Hole fishery collapsed and closed to fishing, the Bogoslof fishery closed, and the Aleutian Islands portion of the stock has declined. There are serious concerns about the western Bering Sea stock and the Russian harvest of pollock in the Navarin area of the northern Bering Sea.

The Bering Sea Plan Team has described six areas of concern for Eastern Bering Sea pollock. These concerns contributed to their decision to select a stock assessment model that estimates the stock at a more conservative level than other models considered in the stock assessment report (Bering Sea/Aleutian Islands Stock Assessment and Fishery Evaluation Report (SAFE), p.7):

- the 1998 trawl survey biomass estimate is the lowest since 1980 and the second lowest in the entire time series;
- future catches and biomass levels will be heavily dependent on the strength of the 1996 and 1997 year classes, the estimates of which are currently accompanied by high levels of uncertainty;
- the projected 1999 spawning biomass is only 31% of the estimated pristine level;
- pollock has been the most common item in the diet of Steller sea lions, which are listed as an endangered species;
- impacts of Russian harvests of pollock in the western Bering Sea on future recruitment to the eastern Bering Sea stock are currently unknown but potentially significant; and
- the age distribution of the stock is narrower than was the case during the late 1980's and early 1990's, raising possible concern about the short-term spawning capacity of the stock.

We very much appreciate the Plan Team's exercise of caution here. The Plan Team's concern about the short-term spawning capacity of the declining pollock stock should alert managers to the precarious point of no-return. We could well be brought nearer to this point if we continue to heavily exploit spawning aggregations of pollock with so much uncertainty about the consequences to the stock itself. We note, however, that most of the concerns listed are framed in a single species context. They do not address many additional concerns about the consequences of the fishery on the rest of the ecosystem.

The status of the pollock stock should be of concern especially now that the biomass estimates for it have gone below the original setting for B_{msy} (biomass needed to produce maximum sustainable yield) or 6,000,000 metric tons (mt). Six of the models used in the stock assessment show biomass estimates of 5,100,000 mt to 5,130,000 mt, and three of the models show biomass at 4,160,000 to 4,980,000 mt. This year the Plan Team lowered B_{msy} to 5,200,000 mt. Because MSY is a flawed management concept, the original B_{msy} setting at 6,000,000 mt was not something necessarily to rely on. By the same token, this sudden lowering of B_{msy} should not make us feel more secure. On the contrary, it raises more questions about MSY as a management concept and red flags of uncertainty that warrant more conservation. When one applies additional ecosystem considerations, such as prey requirements for Steller sea lions, other marine mammals, seabirds, and other commercially valuable fish, the need for caution grows.

Many things are changing in the Bering Sea ecosystem. An important indicator of the many changes is the severe decline of Steller sea lions. Whatever initiated the decline

of sea lions may not be the most important factor today in its continued decline or its ability to recover. Since pollock are widely recognized as a major prey item for sea lions, and the fishery has undergone tremendous growth *and* concentration in areas and time in the last ten years especially, restructuring of this fishery is essential. Changes to the fishery must aim to mitigate adverse impacts of the fishery on the rest of the ecosystem including the Steller sea lion.

The Plan Team recommendation is to set the 1999 Acceptable Biological Catch (ABC) for Eastern Bering Sea pollock at 992,000 mt. We would support the Plan Team's recommendation if the goal were to manage only for this single species. But because the goal must be to manage for the whole ecosystem, we urge the Council to adopt these precautionary measures:

- Establish a buffer between the Total Allowable Catch (TAC) and ABC. This would create a margin of safety to account for the foraging needs of other species such as the Steller sea lion.

- Restructure the fishery by spreading it out in area and time (see attached AMCC groundfish proposal). This would reduce the concentration of effort in critical habitat for Steller sea lions in the winter when they are most vulnerable to food stress.

- Limit the Aleutian Islands pollock fishery to bycatch only. Fishermen report that they have to "go farther each year to find enough fish," evidence that the Aleutian Islands pollock stock cannot support a directed fishery at this time.

While these comments do not speak directly to the Gulf of Alaska, we urge the Council to apply conservation measures to more broadly distribute the pollock fishery in area and time in the Gulf (as well as other methods to reduce the impact of the fishery inside Steller sea lion critical habitat) to achieve changes needed for Steller sea lion recovery.

B. Other Groundfish Stocks

Generally, all target species in the Bering Sea are in some level of decline. While we recognize and expect there to be natural fluctuations in biomass levels, this overall decline warrants the Council's caution in the TAC setting process. Of particular concern is the status of Greenland turbot. This species has incurred a significant decline in the last thirty years, and is at very low levels. It has been suggested that if, as required by the Magnuson-Stevens Act, a minimum stock-size threshold was established, that the current stock level is below it, and would require a rebuilding plan. We are also concerned about cod and its continuing decline. We recommend the Council take extreme caution in setting these TACs.

C. Ecosystem Considerations Chapter

We appreciate that the Ecosystem Considerations chapter of the SAFE is growing in breadth and substance. The chapter now includes a wealth of information regarding different elements of the marine ecosystem. Compiling information is an important step in developing ecosystem concepts in fisheries management. Let us now focus on the challenge of applying this new approach in actual management decisions.

AMCC encourages the Council to consider our recommendations or, in the case of the pollock fishery, other rigorous measures that also reduce the concentration of fishing effort and removals inside Steller sea lion critical habitat during the sensitive winter season. Such measures will move the Council toward a true application of ecosystem-based management.

Sincerely,

Dorothy Childers
Executive Director

RECEIVED
AUG 14 1998
NPFMC

FISHERY MANAGEMENT PLAN AMENDMENT PROPOSAL
North Pacific Fishery Management Council

Please check applicable box(es):

- ☐ Bycatch Reduction
- ☑ BSAI Groundfish FMP
- ☐ GOA Groundfish FMP
- ☐ BSAI Crab FMP
- ☐ Scallop FMP
- ☐ Habitat Areas of Particular Concern (HAPC)

Date: August 13, 1998

Name of Proposer: Alaska Marine Conservation Council
Address: Box 101145, Anchorage, Alaska 99510
Telephone: 907-277-5357

Brief Statement of Proposal:

To address ecosystem and fishery-specific concerns stemming from removals in the "A" season of the Eastern Bering Sea (EBS) pollock fishery, this proposal calls for the analysis of options to restructure the Eastern Bering Sea pollock fishery to reduce fishing pressure during "A", or roe-bearing pollock season:

- **Reduce the pollock harvest in the "A" season to no more than 10, 20, 22.5, or 30% of the total quota.**

  Sub-option: Reduce the annual harvest rate during "A" season. The annual harvest rate has averaged between 17 and 23% in the last 8 years. In 1998 it is roughly 20% (quota/exploitable biomass). This sub-option would lower this rate during the "A" season to 10%. For example, the harvest quota in 1998 is 1.19 mmt of an estimated 6.1 mmt exploitable biomass. The "A" season is allocated 45% of the annual quota or 535,5000 metric tons in 1998. In this sub-option, reducing the harvest rate to 10% during the "A" season translates to a reduction in "A" season harvest from 535,500 mt to 274,000 mt ((.10 x 6.1 mmt) x .45 = 274,500 mt). The "B" season harvest would remain unchanged from the annual harvest rate.

- **Break up the "A" season in time: redistribute the fishery through temporal closures to allow for greater prey availability for marine mammals. Options include: 1) open the fishery for one week, then close for one week; 2) 10 days on/10 days off; 3) 14 days on/14 days off.**

- **Reduce the levels of pollock catches in designated sea lion winter foraging grounds. Without closing out entire 60 nm radius determined to encompass winter forage grounds, we suggest that there be a maximum tonnage of pollock allowed to be extracted from these waters. The suggested maximum for the "A" season pollock harvest in critical sea lion habitat is the percentage of total of the pollock harvest removed in 1977: 10% or roughly 100,000 mt of pollock. The remainder of the quota could still be taken from outside of sea lion winter foraging range.**

Objectives of Proposal (What is the problem?):

The Eastern Bering Sea pollock population is roughly half of what it was in the mid-1980's. During this peak recorded in recent history, the mid-1980's' high of EBS pollock coincided with abundant levels of those stocks designated as the Aleutian Basin stock, the Bogoslof area stock, and the Western Bering Sea. The precise association between these "stocks" is not well understood today. However, it is not prudent to conduct an intensive fishery concentrated on a spawning aggregation of fish whose population is in a decline and whose adjacent stocks and/or populations are in decline or have disappeared (i.e. Bogoslof, Aleutian Basin, and Western Bering Sea Sea).

A precautionary measure for the EBS pollock fishery is to restrict or minimize the level of intense fishing on spawning aggregations. An extensive analysis of spawner-recruit relationships concludes that the size of spawning populations influences the number of recruits produced. Most often, high spawner abundance contributes to high recruitment, and low spawner abundance is most often associated with low recruitment. (Myers and Barrowman, 1996). "The failure to recognize the need to conserve spawning biomass is a principal reason for the disastrous collapse of the formerly great cod fisheries in Eastern Canada" (Hutchings and Myers, 1994; Myers et al. 1996,1997). The words may ring ominous for a fellow gadid, pollock, as we continue to apply intense fishing pressure on its spawning biomass as the population numbers continue their decline in the 1990's.

Pollock has been found to be a major prey item of the endangered Steller sea lion, and it is also preyed upon by at least 10 other species of marine mammals, 13 species of seabirds, and 10 species of fish (Frost and Lowry 1986). The western population of Steller sea lion may be an important barometer of ecosystem change. At the present time, pollock *are* an integral part of a complex food web of the North Pacific. Nutritional stress from lack of available prey is considered a major factor in sea lion decline. Undoubtedly there are significant environmental influences playing some role in the decline of sea lions and harbor seals, along with several marine birds and fishes. We must look to ourselves to insure that human activities do not impede the recovery of various marine populations. This proposal is one way to include ecosystem considerations into the design of a fishery.

Groundfish fisheries of the North Pacific have undergone unprecedented growth in capacity and technological efficiency in the last thirty years. The Bering Sea pollock fishery has developed into the world's biggest single species fishery. Prior to 1980, very little of this fishery occurred during winter months. In the last ten years, this fishery has intensified its harvest in area and time to coincide with critical foraging habitat of sea lions during winter months when metabolic demands are at an all-time high and the proximity and access to a roe-bearing (high nutrition) prey is crucial. In the Gulf of Alaska, NMFS' recognition that pollock is important forage for sea lions in the fall and early winter resulted first in a seasonal distribution of the fishery quota, and then recently resulted in an adjustment in the percentage of the seasonal allocation.

The Catcher Vessel Operating Area (CVOA) of the Bering Sea overlaps and is juxtaposed to a large area designated as critical habitat for Steller sea lions. While it is unknown what the harvest rate during pollock A season in the CVOA is, recent analysis indicates that localized harvest rates here during the B season may be as high as 46%, and the rate of decline in area pollock may be as high as 81% in the last three years (Fritz, NPFMC, 1998). This measured level of decline in pollock abundance during the "B" season is reason for concern. It also suggests that we should look more closely at the rate of pollock removals in the concentrated area and time of the "A" season, especially as it overlaps in area and time of foraging of Steller sea lions in winter months.

Rather than debate the reasons for the initial decline of sea lions, let us look to what is contributing to or exacerbating the sustained decline and impeding recovery of the population. If prey availability is acknowledged as important to the recovery of the western population of Steller sea lion, then we must be certain that we do what we can to minimize human influence on this availability. The absolute number of prey is important in a predator's foraging success, but it is not the only factor to be considered. "The availability of pollock to these consumers depends on the size structure of pollock populations, *their areal and temporal distributions, and the area and temporal distribution of the consumers.*" (NMFS, 1998).

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

The Council is responsible for the management of the pollock fishery. Voluntary reductions in the quota or in fishing time and area are unlikely. The Council and NMFS have a responsibility to take into account the protection of marine ecosystems when establishing yields from a fishery (definition of OY) and to ensure that no federal actions impede the recovery of an endangered species.

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

The marine ecosystem and Alaskan coastal people who rely upon it for their cultural, economic, and spiritual sustenance will benefit. The heavily overcapitalized pollock fleet that relies on a roe product will have to adjust to a more sustainable approach in fishery exploitation.

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

This proposal seeks to minimize impacts of an intensive fishery on roe-bearing pollock during critical foraging periods of the endangered Steller sea lion. There are many alternatives that are more constraining to the pollock fishery. However, this proposal offers a range of alternatives that would allow the fishery to continue with a foundation of an ecosystem approach in harvest strategies.

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

Frost, K.J. and Lowry, L.F., (1986). Trophic importance of some marine gadids in northern Alaska and their body-otolith size relationships. Fishery Bulletin, 79:187-192.

Fritz, L. 1998. NMFS, Projections of Pollock Catches and Estimations of B-Season Harvest Rates Inside and Outside of the Catcher Vessel Operating Area (CVOA) along with Trends in Pollock Catches in Steller Sea Lion Critical Habitat in the Bering Sea/Aleutian Islands Region (Inshore/Offshore3 document)

Hutching, J.A, and Myers, R.A. 1994. What can be learned from the collapse of a renewable resource? Atlantic cod, *Gadus morhua,* of Newfoundland and Labrador. Canadian Journal of Aquatic Science. v. 51: 2126-2146.

Magnuson-Stevens Fishery Conservation and Management Act, 1996

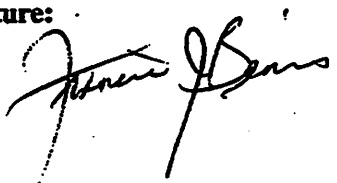
Myers, R.A., and Barrowman, N.J. 1996. Is fish recruitment related to spawner abundance? Fishery Bulletin, 94:707-724 .

Myers, R.A., Hutchings, J.A., and Barrowman, N.J. 1997. Why do fish stocks collapse? The example of cod in eastern Canada. Ecological Applications, 7:91-106.

NMFS, 1998. Effects of the CVOA on Marine Mammals (Inshore/Offshore3 document). Prepared by Alaska Region, NMFS, Juneau, Alaska.

North Pacific Fishery Management Council, November, 1996. Stock Assessment and Fishery Evaluation (SAFE) Report for the Groundfish Resources of the Bering Sea/Aleutian Islands Regions.

Signature:



December 10, 1998

Mr. Chairman, members of the Council:

My name is Dave Allison. I am here today on behalf of the Marine Fish Conservation Network, a growing coalition that now includes 88 environmental, fish conservation, public interest and commercial and recreational fishing organizations. A list of the member organizations is attached to our testimony.

We will make our presentation brief today and appreciate the time and attention that the Council is investing in making the decision on recovery of Steller Sea Lion populations in the Gulf of Alaska, Aleutian Islands and Bering Sea.

We also appreciate the expertise and professionalism of the National Marine Fisheries Service staff who have worked so hard on this issue. Our comments, to the extent they are critical of the RPAs, are only intended to support more clearly and difinitively the principles set out in the Biological Opinion and RPAs.

Mr Chairman, we strongly support the presentations made by Greenpeace, American Oceans Campaign, Sierra Club, Alaska, Audubon and World Wildlife Fund.

As we mentioned, the Principles are great and we endorse them without reservation. The actual measures in the RPAs, however, fall far short of meeting the Principles.

The proposal does not appear to significantly reduce fishing in the A season.

It does not significantly reduce fishing on spawning stocks.

It does not significantly reduce fishing in critical habitat.

It does not significantly spread out the fishery in space and time.

We encourage you to combine the CVOA and Critical Habitat areas and close them to trawling November 1 through April 15 and, at the very least make the combined area a CVOA.

We also encourage you to adopt true temporal dispersion into four descrete and separated seasons.

Again, Mr. Chairman, we only raise these several issues as major concerns of the Network but urge you to consider all of the recommendations offered by Greenpeace, American Oceans Campaign, Sierra Club, Audubon and World Wildlife Fund.

Thank you for the opportunity to comment today.

David L. Allison
Marine Fish Conservation Network.

Marine Fish Conservation Network
Member Groups

Abalone and Marine Resources Council
Alabama Rivers Alliance
Alaska Marine Conservation Council
Alaska Longline Fisherman's Association
American Oceans Campaign
American Sport Fishing Association
Atlantic Salmon Federation
Biodiversity Legal Foundation
Cape Arago Audubon Society
Cape Cod Commercial Hook Fishermen's Association
Center for Marine Conservation
Chesapeake Bay Foundation
Coastal Research and Education, Inc.
Coastal Waters Project
Concerned Citizens of Montauk
Conservation Law Foundation
Defenders of Wildlife
Earthjustice Legal Defense Fund
Environment Hawaii
Environmental Defense Fund
Federation of FlyFishers
Fisheries Defense Fund, Inc.
Fish Forever
Fish Unlimited
The Fisherman
Florida League of Anglers
Friends of the Earth
Fulton Safe Drinking Water Action Committee
G.R.E.E.N.
Greenpeace
Gulf Restoration Network
Hawaii Audubon Society
Hawaii Conservation Association
Hawaii International Billfish Association
Interfaith Council for Protection of Animals & Nature
International Game Fish Association
Island Institute
Jersey Coast Anglers Association
King and Sons Fishing Company
Kodiak Community Conservation Network
Maine Lobsterman's Association
Marine Conservation Biology Institute
The Marine Mammal Center
Maryland Saltwater Sportfishermen's Association
Massachusetts Audubon Society
Massachusetts Wildlife Federation
Montauk Boatmen's and Captain's Association
Narragansett Baykeeper
National Aquarium
National Association of Underwater Instructors
National Audubon Society
National Audubon Society, Ten Mile Creek
National Coalition for Marine Conservation
National Fishing Association
National Wildlife Federation
Natural Resource Consultants
Natural Resources Defense Council
Newport County Saltwater Fishing Club
Ocean Policy Associates
Oceanwatch
Ocean Wildlife Campaign
Oregon Wildlife Federation
Oregon Trout
Pacific Coast Federation of Fishermen's Association
Pacific Marine Conservation Council
People for Puget Sound
Planning and Conservation League
Project A.W.A.R.E. Foundation
Recreational Fishing Alliance
ReefKeeper International
Reid International
Restore America's Estuaries
Riverkeeper, Inc.
SWIM (Safer Waters in Massachusetts)
Saltwater Sportsman
Save the Bay (Providence, RI)
Save the Harbor/Save the Bay (Boston, MA)
Save the Sound (Long Island Sound)
Sea Turtle Survival League
Sierra Club
The Siwa-ban Foundation
Stripers Unlimited
Surfers Environmental Alliance
Tampa Baywatch, Inc.
Trustees for Alaska
United Anglers of California
Wildlife Conservation Society
World Wildlife Fund

DAVE FRASER

Decline/Recovery

What are the contributing factors?

(Human caused)

- Intentional kill
  34,000 (pg. 85)
- Incidental kill
  50,000 1960-1990 (pg. 84)
- Commercial harvesting
  45,178 pups 1963-1972 (pg.77)
- Subsistence harvesting
  450/year in early 90's (pg. 71)

(Non-fishery – Not human caused)

- Killer Whale Predation Estimate
  MISSING – Trites
- Changes in prey availability
  - Regime shift

(Fishery caused?)

- Changes in prey availability
  - Fishery competition ***???***

Carrying Capacity and Fisheries Competition

Missing Information

- **Missing -**
- Quantity of fish consumed per day per Steller Sea lion
- ***10 kgs per day?***

- **Missing -**
- Numbers of Steller sea lions in E-GOA
- ***8000?***

- **Missing -**
- Estimate of annual demand of E-GOA Steller sea lions
- ***365 days x 8000 x 10 kgs per day = 29,200 MT per year?***

- **Missing -**
- Biomass of pollock in E-GOA
- ***100,000 MT? (GOA -SAFE)***

- **Missing -**
- Estimate of annual demand of CVOA Steller sea lions
- ***365 days x 6000 x 10 kgs per day = 21,900 MT per year?***

- **Missing -**
- Biomass of pollock in CVOA
- ***1,400,000 MT (1993 post A-season fishery survey)?***

Carrying Capacity and Fisheries Competition

Missing Information

- **Missing** -
- BSAI Pollock Biomass – 1970
- ***4,000,000 MT – 1998 SAFE fig. 1.22, pg. 78***

- **Missing** -
- Sea lion population EBS – 1970
- ***270,000 - Trites and Larkins***

- **Missing** -
- Ratio of sea lion population to pollock biomass time series – 1960-1998

- **Missing** -
- Estimate of BSA sea lion removals of pollock
- ***56,000 MT or 1% of Pollock Biomass - Livingston 1993***

- **Missing** -
- CPUE analysis over duration of A-season in CVOA
- ***Seastate Analysis provided in public comment***

- **Missing** -
- Winter surveys for BSAI

Other Missing Information

- **Missing -**
- L. Boyd, 1995 – Review of NMFS Sea Lion Research Program

- **Missing -**
- Estes 1998, Science Vol. 282
Killer Whale Predation on Sea Otters Linking Oceanic and Near Shore Ecosystems

- **Missing -**
- Ianelli, Analysis of Pollock Stock Abundance for EBS for 1999 SAFE, re: 1993 post A-season stock abundance.

- **Missing -**
- R. Merrick, 1995 Ph.D. Dissertation on Steller Sea Lions

- **Missing -**
- NMFS, 1998 Marine Mammal Protection Act of 1972 Annual Report

- **Missing -**
- National Research Council, 1998 Sustaining Marine Fisheries

- **Missing -**
- Swartzman et al, 1994 Relating trends in walleye pollock abundance in the Bering Sea to environmental factors

Correlations? - Causation?

- **Missing -**
- A positive correlation between Stellar sea lion declines and increased A-season harvests.

- **Missing -**
- A positive correlation between increased pollock populations and higher Steller sea lion populations.

- **Missing -**
- A positive correlation between rookery protection zones and higher Steller sea lions populations.

TONY KNOWLES
GOVERNOR

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Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

November 6, 1998

Mr. Gordon Blue
2902 Sawmill Creek Road
Sitka, AK 99835

Dear Mr. Blue:

Thank you for your letter concerning the management of Alaska's Bering Sea crab fisheries. I am glad you have taken the time to follow up on our conversation in Sitka because I share your concerns about the potential spillover effects from S. 1221.

I find it very disturbing that pollock trawlers could be freed up to fish otherwise latent licenses in the crab fisheries. I understand the Board of Fish has similar concerns which they will be communicating to the North Pacific Fishery Management Council (NPFMC). Also, I have asked that the state's representative on the NPFMC work to address these concerns and seek to reduce the number of latent licenses to a more acceptable level.

As you know, the NPFMC will have a special meeting November 8-13 to begin the implementation of S. 1221. I encourage you to actively participate in assisting the council in this adjustment process.

Again, thank you for your efforts on behalf of Alaska fishermen.

Sincerely,

Tony Knowles
Governor

IMPLICATIONS OF 1221 CROSSOVERS ON CRAB FISHERIES

CAVEATS:

- ALT 9 LIST INCOMPLETE (MISSING 30+ VESSELS)
- OFFSHORE CATCH UNRECORDED/INCOMPLETE FISH TICKETS
- COMPUTER/SOFTWARE PROBLEM

FOCUS ON QUALITATIVE NOT NUMERICAL RESULTS

APPROACH

- HISTORICAL RELIANCE ON CRAB
  - REVENUE COMPARISONS OF ALT.9 VESSELS (CROSSOVER vs. NON-CROSSOVER)
    - 1995-97
    - 1991-97
  - CRAB AS SHARE OF VESSEL GROSS REVENUE
  - MEANING OF CROSSOVER
  - DIVERSIFICATION FOR RISK MANAGEMENT (Comments)
    - 1994 AND 1996
- POST-1221 EXPECTATIONS (Comments)
  - CHANGES IN POLLOCK GROSS REVENUES
  - CHANGES IN POLLOCK COSTS
  - CHANGES IN SHARE OF CRAB AND REVENUES
    - CAPPED AT *AGGREGATE "TRADITIONAL" HARVEST*
    - UNCAPPED OPEN ACCESS
    - NO CROSSOVER

FIG. 1: PER VESSEL REVENUE COMPARISONS OF NON-CROSSOVER AND CROSSOVER (1995-97).

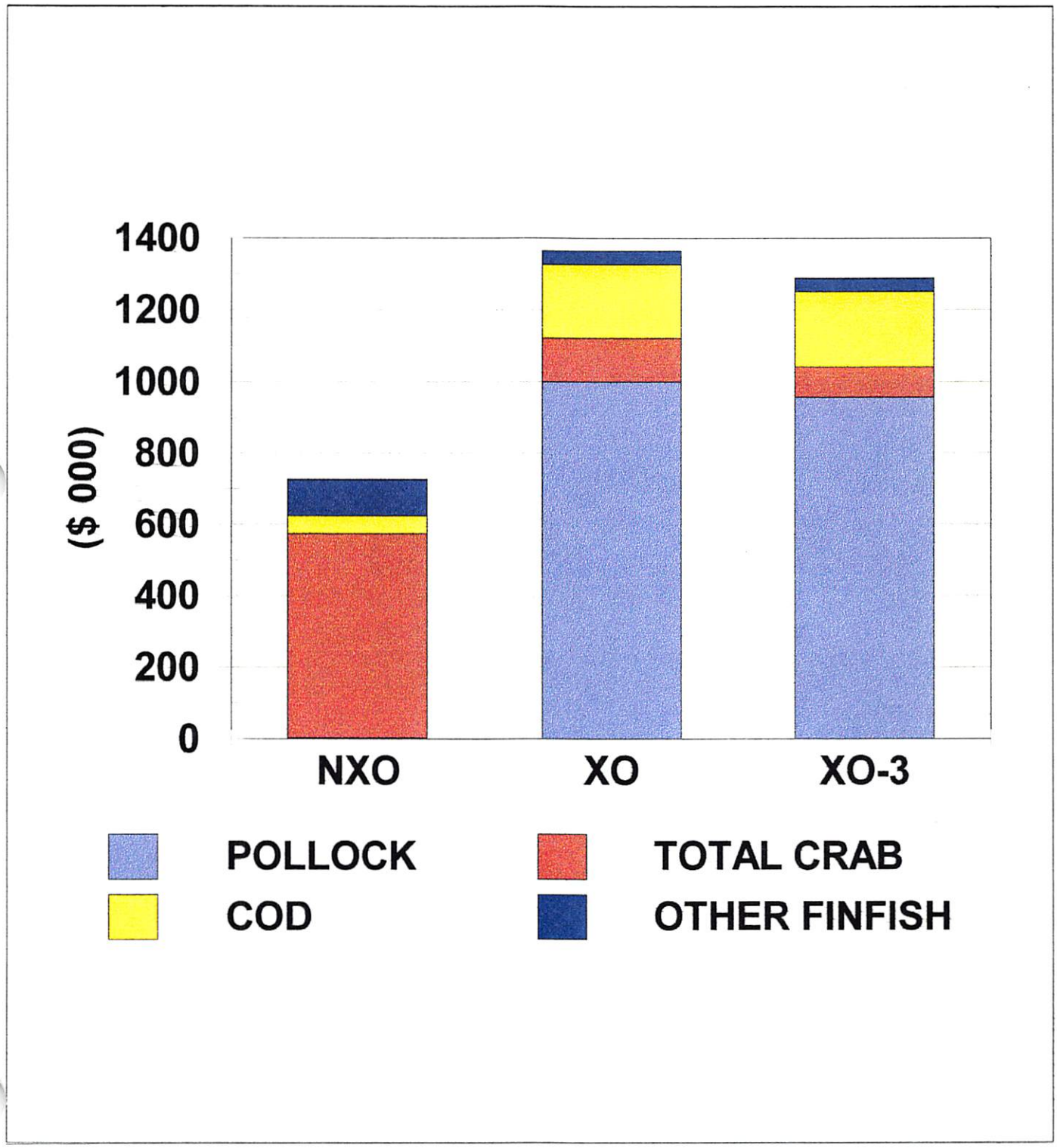


FIG 2: PER VESSEL SHARE OF REVENUE FROM VARIOUS FISHERIES (1995-97).

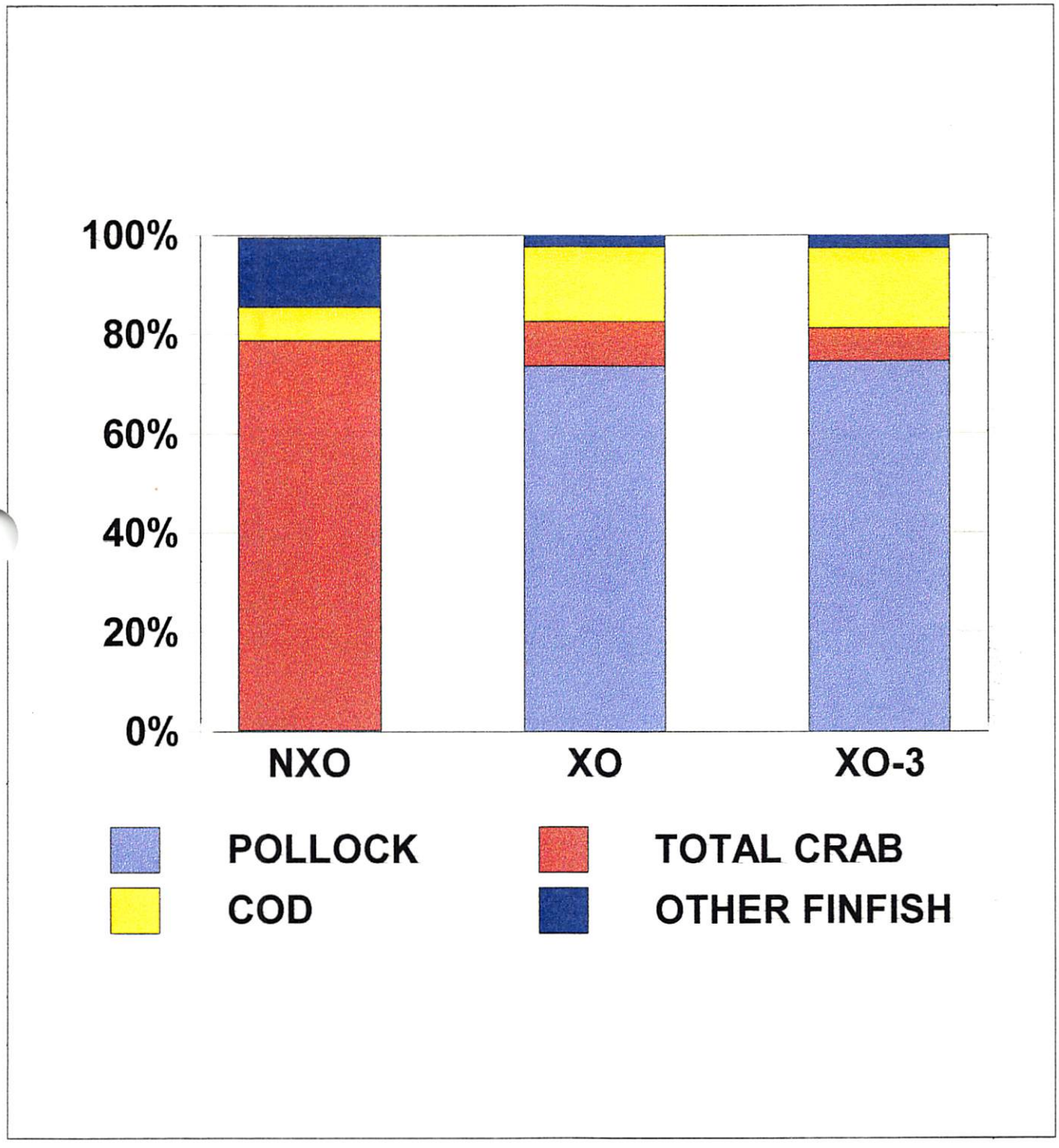
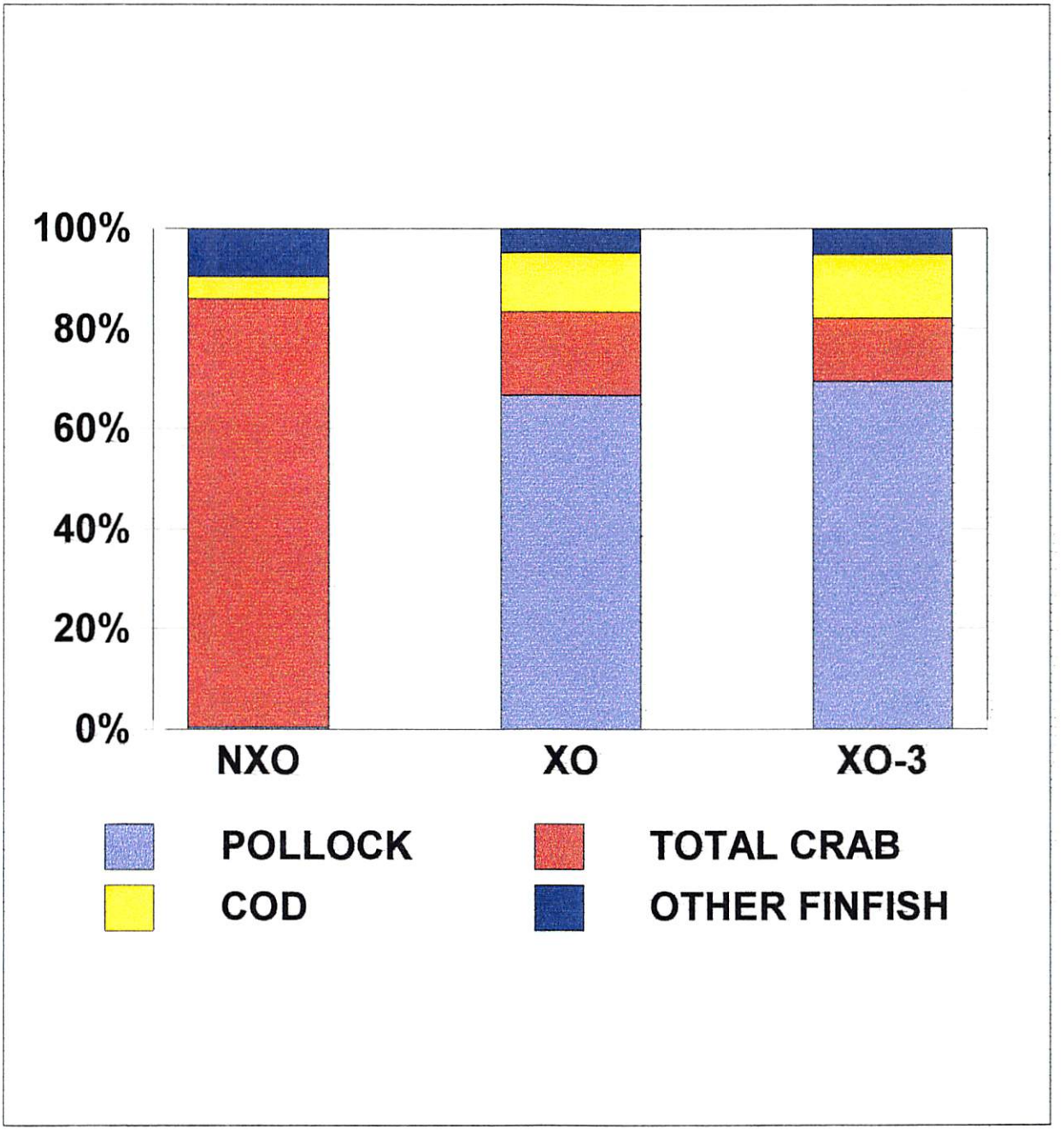
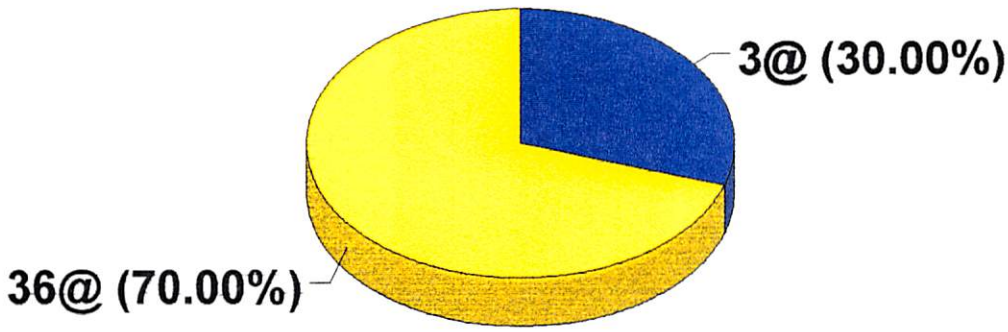


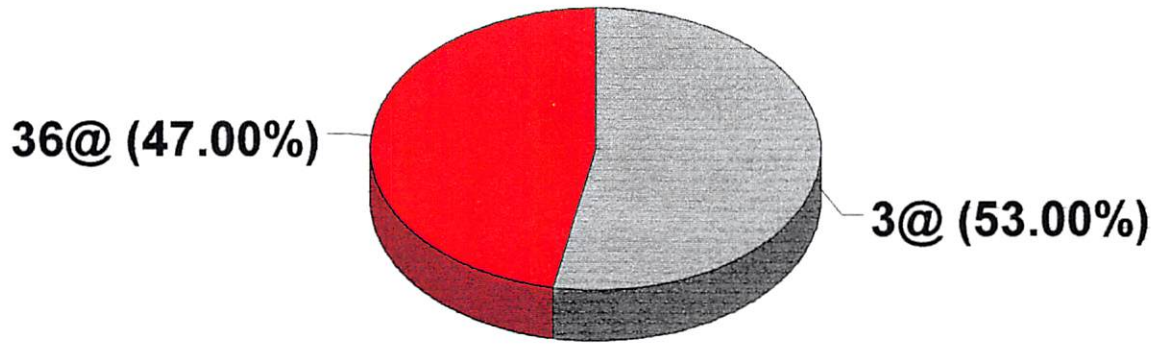
FIG 3: PER VESSEL SHARE OF REVENUE FROM VARIOUS FISHERIES (1991-97).



GROSS REVENUE SHARE
3 vs 36 CROSSOVERS



CROSSOVER OPILIO HARVEST
3 vs 36 CROSSOVER VESSELS



POST-1221 EXPECTATIONS (Comments)

- POLLOCK GROSS REVENUES WILL INCREASE
- POLLOCK COSTS WILL DECREASE
- CHANGES IN SHARE OF CRAB AND REVENUES
  - CO-OP STRUCTURE
  - ADFG MANAGEMENT ABILITY
    - IF CROSSOVERS CAPPED AT *AGGREGATE "TRADITIONAL" HARVEST*:
      - CRAB REVENUE CONSTANT
      - CROSSOVERS: RELY LESS ON CRAB
        NEED LESS DIVERSIFICATION
    - IF UNCAPPED OPEN ACCESS
      - CROSSOVER: CRAB REVENUE UP
        NEED LESS DIVERSIFICATION
      - NON-CROSSOVER: CRAB REVENUE DOWN
        GREATER RISK
    - IF NO CROSSOVER PERMITTED
      - CROSSOVERS REVENUES ???
      - NON-CROSSOVER REVENUES INCREASE

ALASKA CRAB COALITION
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Seattle, Washington 98107
206 547 7560
Fax : 206 547 0130

December 13, 1998

Richard Lauber, Chairman
North Pacific Fishery Management Council
605 West 4th avenue, Suite 306
Anchorage, Alaska 99501-2252

RE: PETITION FOR EMERGENCY RULE RELATIVE TO THE AMERICAN FISHERIES ACTAND UNITED STATES SENATE LETTER TO NORTH PACIFIC FISHERY MANAGEMENT COUNCIL DATED DECEMBER 8, 1998, AND STATE OF ALASKA BOARD OF FISHERIES LETTER TO NORTH PACIFIC FISHERY MANAGEMENT COUNCIL DATED NOVEMBER 4, 1998, REGARDING THE AMERICAN FISHERIES ACT AND THE NORTH PACIFIC FISHERY MANAGEMENT COUNCIL LICENSE LIMITATION PROGRAM FOR BERING SEA ALEUTIAN ISLANDS KING AND TANNER CRAB FISHERIES

Dear Mr. Chairman:

RATIONALE: Forty-one of the 89 catcher vessels, with "established" pollock markets and qualified to fish pollock under the American Fisheries Act are qualified to fish in Bering Sea crab fisheries, unless restrictive action is recommended by the Council as directed by that Act, and approved by the Secretary. As described in the problem statement below, absent restrictive action, these vessels will cause an increase of capacity in the BSAI crab fisheries. This possible increase in capacity in already extremely overcapitalized fisheries presents an emergency, insofar as achievement of the optimum yield will be made much more difficult if not impossible in 1999. There will be severe, adverse consequences for both conservation of the crab resources and the economic viability of the crab-dependent fleet which is foreclosed from participating in the pollock fisheries.

The recommended emergency rule will prevent up to 38 of the above-referenced pollock crossover vessels from entering the opilio and red king crab BSAI fisheries in 1999. The estimated total number of vessels operating in those fisheries in 1999 would be 250. That is the number of vessels that the State of Alaska has determined to be the maximum that should be allowed to participate in order to allow effective management and thus avoid adverse consequences.

PROBLEM TO BE ADDRESSED: Forty-one of the 89 catcher vessels with "established" pollock markets and qualified to fish pollock under the American Fisheries Act are qualified to fish in Bering Sea crab fisheries, unless restrictive action is recommended by the Council as directed by that Act, and approved by the Secretary.

The American Fisheries Act provides for catch history and a fully privatized IFQ-like program for the BSAI pollock fishery, closing out vessels otherwise qualified under the LLP, while allowing qualified pollock catcher vessels to fish in BSAI crab fisheries. The establishment of catch history in that Act relieves the benefited vessels of the need to participate in the pollock fisheries in 1999 for that purpose. This frees those vessels to participate in the BSAI crab fisheries.

Thus, unless, protective measures are established, there will be in 1999 a severe influx of capacity into the BSAI crab fisheries. A prohibition in the American Fisheries Act will prevent BSAI crab vessels from crossing over into pollock in order to offset the additional capacity in the BSAI crab fisheries caused by the influx of pollock crossover vessels. The increase in capacity in the BSAI crab fisheries will lead to further conservation and management problems.

RECOMMENDATION FOR EMERGENCY RULE:

OPILIO CRAB:
Of those vessels qualified under the American Fisheries Act to participate in the BSAI directed fisheries for opilio crab, only those vessels that landed opilio crab during the directed fishery for that species in 1997 may participate in the directed fishery for that species in 1999.

KING CRAB FISHERIES:
Of those vessels qualified under the American Fisheries Act to participate in the BSAI directed fisheries for king crab, only those vessels that landed king crab during the directed fishery for that species in 1999.

Sincerely,

Arni Thomson

Arni Thomson
Executive director

ATTACHMENTS:
Alaska Dept. of Fish and Game presentation to the NPFMC dated 11/4/98, Total Vessel Participation, 1988-1998, in Bering Sea Crab Fisheries, showing the number of AFA vessels qualified under Alternative 9 of the Crab LLP, year by year

Average Bering Sea Crab Vessel Break Even Analysis, Based on Current Gross Revenue Edward Poulsen, Presentation to the NPFMC dated 10/8/98

Contribution of Each Species Group to the Pollock Catcher Vessel's Annual Ex-Vessel Revenue, Table 2, p. 49, EA/RIR, Inshore/Offshore 3, NPFMC, dated 8/26/98

Alaska Crab Coalition letter to Rick Lauber dated 12/5/98, Investment as an Indicator of Dependence, including revised ownership list of AFA, Alternative 9 Crab LLP qualified vessels; Comparative Economic Analysis of BSAI-AFA qualified trawl catcher vessel revenues vs. crab vessel revenues; and comparison of dedicated crab fleet revenue and AFA pollock crossover vessel dependence upon crab (average 1995-1997, 4.8%)

Ted Kronmiller memorandum to Arni Thomson dated 12/9/98, regarding State of Alaska Submission to NPFMC on the Crab LLP

Joe Wabey letter to Rick Lauber, dated 12/4/98, Crab LLP and Pollock Crossovers

REFERENCES:

United States Senate letter to Rick Lauber, dated 12/8/98

Board Of Fisheries letter dated 11/4/98

Scott Mattulich presentation to NPFMC, 12/12/98

EA/RIR, Initial Regulatory Flexibility Analysis, Inshore/Offshore-3 (Amendments 51/51), NPFMC, dated 8/26/98

Ak.) G 11/4/98

Table 1. Total vessel participation in Bering Sea crab fisheries and the number of vessels that qualified under LLP alternative 9 and SB 1221 Vessels

Fishery	Bristol Bay Red King		Bering Sea Tanner (*C. bairdi*)		Bering Sea Snow (*C. opilio*)		Pribilof Blue & Red king		St. Matthew Blue King	
Year	Total	SB 1221	Total	SB 1221	Total	SB 1221	Total	SB 1221	Total	SB 1221
1988	200	3	98	2	162	2		1	46	2
1989	211	5	109	3	168	6	0	0	69	1
1990	240	12	179	12	189	4	0	0	31	1
1991	302	33	255	25	220	8	0	0	68	6
1992	281	30	285/294	32	250	10	0	0	174.	8
1993	292	37	296	35	254	13	112	3	92	1
1994	0	0	183	12	273	11	104	3	87	2
1995	0	0	196	19	253	7	126	0	90	2
1996	196	7	135	8	234	3	66	0	122	0
1997	256	35	0	0	226	2	53	0	117	0
1998	275	35	0	0	229	7	58	0	131	0

AVERAGE: -250 -193 -223

Average Bering Sea Crab Vessel Break Even Analysis Based on Current $600,000 Average Gross Revenue

Gross Revenue	$600,000
Fuel, Food & Crew (42%)	$252,000
Insurance	$100,000
Maintenance & Repair	$90,000
Mortgage	$70,000
Taxes, licensing & Dues	$20,000
Gear & Supplies	$20,000
Legal & Accounting	$15,000
Moorage & Storage	$10,000
Bait	$10,000
Communications	$4,000
Net for Emergencies and Ownership Distributions	$9,000

Table 2 reports the percentage of ex-vessel revenue generated by each species group. Three separate size classes were defined for the catcher vessel fleet. Vessels less than 125' length overall (LOA) comprised the smallest class. Vessels from 125' through 155' LOA were grouped to form a mid-sized class. Finally, the largest class consisted of catcher vessels over 155' LOA.

Catch reported in the ADF&G Fishticket, NORPAC, and PacFIN data bases were used to determine the catch of each species. That catch was then priced using PacFIN, ADF&G Commercial Operator Annual Reports (COAR), and ADF&G fishtickets. The resulting values were then used to compare the relative contribution of each species to the catcher vessel's total annual revenues. Those calculations indicate that pollock always accounted for the greatest percentage of revenue. Other groundfish species accounted for the next highest revenue in all cases. The catcher vessels less than 125' LOA earned a higher percentage of their revenue from Pacific whiting than either the larger vessel classes.

Table 2 Contribution of each species group to the catcher vessel's annual ex-vessel value

Size Class	Year	Pollock	Ground fish	Halibut	Shell fish	Shrimp	Other Shellfish	Salmon	Herring	Misc. Finfish	Pacific Whiting
<125'	1991	54%	30%	2%	10%	0%	0%	0%	0%	1%	3%
<125'	1994	71%	19%	1%	8%	0%	0%	0%	0%	0%	2%
<125'	1996	70%	21%	1%	2%	0%	0%	0%	0%	0%	6%
125-155'	1991	62%	33%	0%	5%	0%	0%	0%	0%	1%	0%
125-155'	1994	91%	7%	0%	1%	0%	0%	0%	0%	0%	0%
125-155'	1996	95%	5%	0%	0%	0%	0%	0%	0%	0%	0%
>155'	1991	70%	21%	0%	8%	0%	0%	0%	0%	0%	0%
>155'	1994	86%	7%	0%	7%	0%	0%	0%	0%	0%	0%
>155'	1996	88%	11%	0%	1%	0%	0%	0%	0%	0%	1%

Data Sources: Ex-vessel prices for finfish were taken from PacFIN and Fishtickets, and shellfish prices from Westward region shellfish reports and the COAR data set. Catch data were derived from the ADF&G Fishticket, Norpac, and PacFIN data bases

S.1221 - 45% Inshore

Table 4.18. Estimated product mix under allocation Alternative 3(D).

Alternative 3(D) (45% Inshore, 15% "True" Motherships, and 40% Catcher Processors)								
Inshore/Offshore Class	Who Caught the Fish	Surimi	Minced	Fillet/Block and IQF	Deep Skin Fillet	Meal	Oil	Roe
Non-surimi C/P	Self Caught	-	4,669	2,823	11,256	-	-	1,119
	Catcher Vessels	-	904	663	1,628	-	-	119
Non-surimi C/P Total		-	5,572	3,487	12,884	-	-	1,238
Surimi - C/P	Self Caught	36,086	10	785	4,569	7,778	245	3,667
	Catcher Vessels	5,107	-	19	474	976	-	318
Surimi - C/P Total		41,193	10	804	5,042	8,754	245	3,985
Catcher Processor Total[1]		**41,193**	**5,582**	**4,290**	**17,927**	**8,754**	**245**	**5,223**
"True" Mothership Total[1]		**29,729**	-	-	-	**6,781**	**477**	**1,453**
Inshore Total[1]		**82,610**	**3,041**	**10,685**	**8,617**	**32,262**	**9,857**	**5,114**
Grand Total		**153,531**	**8,623**	**14,976**	**26,544**	**47,796**	**10,580**	**11,790**
Non-surimi C/P	CDQ Fishery[3]	-	3,059	3,191	2,662	-	-	346
Surimi - C/P	CDQ Fishery	3,993	10	150	1,027	338	-	481
"True" Mothership	CDQ Fishery	1,301	-	-	-	264	-	274
Inshore	CDQ Fishery[2]	1,897	70	245	198	741	226	117

[1] Use caution when comparing production across industry sectors. See the discussion of utilization rates in the baseline chapter.
[2] The utilization rates from the combined open access and CDQ catches were used to estimate this production
[3] CDQ production is assumed to remain constant under any of the allocation alternatives
Note: This estimate assumes a 1.1 million metric ton TAC, with 7.5% allocated to CDQ fisheries.

Catcher Vessel's Gross Revenue from Pollock

The total amount of gross revenue earned by catcher vessels under this alternative is $117.5 million. Inshore delivery vessels and vessels delivering to "true" motherships are projected to increase their revenues by $19.1 and $8.3 million, respectively. Catcher vessels delivering to the catcher processor sector are projected to realize a $2.5 million decrease. Overall, catcher vessel revenues increase by $24.9 million.

Table 4.19 **Alternative 3(D)**: Impacts on Catcher Vessel's Gross Revenue

			Catcher Processors		
	Inshore	"True" Motherships	CV Deliveries	Own Harvest	Total
Allocation Percentages	**45%**	**15%**	**4%**	**36%**	**100%**
Sector's Allocation (mt)	457,875	152,625	40,700	366,300	1,017,500
Change from Status Quo [1] (mt)	101,750	50,875	(12,263)	(137,363)	-
Sector's Allocation Change (%)	29 %	50 %	(27 %)	(27 %)	-
Est. Exvessel Revenue per Ton of Raw Pollock	$ 187	$ 164 [2]	$ 164 [2]	n/a	n/a
Est. Total Exvessel Revenue (Million $)	$ 85.8	$ 25.0	$ 6.7	n/a	$ 117.5
Est. Change in Exvessel Revenue (Million $)	($ 19.1)	$ 8.3	($ 2.5)	n/a	$ 24.9

The sector's allocation was calculated using the following formula: (allocation % *1,100,000mt * 0.925)
[1] Status quo allocation assumes that catcher processors harvest 55%, "true" motherships 10%, and Inshore 35%. The National Marine Fisheries Service 1996 Blend data also showed that about 10% of catcher processor's pollock was delivered to them by catcher vessels.
[2] Remember, "true" mothership and catcher processor revenue per ton is assumed to be 87.5% of the Inshore revenue.

ALASKA
CRAB
COALITION

3901 Leary Way (Bldg.) N.W., Suite #6 • Seattle, WA 98107 • (206) 547-7560 • FAX (206) 547-0130

DECEMBER 5, 1998

MR. RICK LAUBER, CHAIRMAN
NORTH PACIFIC FISHERY MANAGEMENT COUNCIL
605 WEST 4TH AVENUE, SUITE 306
ANCHORAGE, ALASKA 99501-2252

RE: BERING SEA/ALEUTIAN ISLANDS CRAB LICENSE LIMITATION PROGRAM, INVESTMENT AS AN INDICATOR OF DEPENDENCE

Dear Rick:

Representatives of pollock crossover vessels are arguing that investments in crab fishing gear for such vessels justify future participation in the BSAI crab fisheries. It is readily demonstrated that contention of those representatives is without merit.

Section 303(b)(6) of the Magnuson-Stevens Fishery Conservation and Management Act ("Act") contains the provisions specific to limited access systems. Investment is not expressly mentioned. 16 U.S.C. 1853(b)(6)(B). However, the factor, "dependence" on the fisheries, can be construed, in some cases, to entail, in part, investments by participants. The reason is, of course, that investments are made with the expectation of a return, and this may imply, in some cases, a degree of dependence. Section 303(b)(6) also refers to "economics of the fishery" and to "the capability of fishing vessels used in the fishery to engage in other fisheries". 16 U.S.C. 1853(b)(6)(C), (D).

The issue, in any particular context, revolves around the facts and circumstances, and must be addressed in relative terms. That is to say, limit entry in overcapitalized fisheries necessarily, and lawfully, involves winners and losers. Accordingly, an analysis of dependence for the purposes of limited entry can only make sense, and more specifically, can only be addressed in a manner consistent with the fairness and equity requirements of the Act under National Standard 4, if approached in relative terms. 16 U.S.C. 1851(a)(4).Some fishermen are not dependent at all or in any significant, material way; some are totally dependent; some are far more dependent than are others. *See* the ACC Comment to the North Pacific Fishery Management Council, dated September 25, 1998.

In the case of the BSAI crab fisheries, which are massively overcapitalized by any rational criterion, the pollock crossover vessels have no dependency or relatively little, in comparison to the dedicated crab vessels, which are totally, or almost totally, dependent on those fisheries. The investment in gear and related equipment for the pollock crossover vessels is approximately $159,000. This includes $125,000 (250 pots x $500 per pot); pot launcher, $9,000; power block, $25,000. This is a very minor cost for a fully equipped trawl catcher vessel worth an estimated $2,000,000-$7,000,000. The investment in a dedicated crab harvester is $2,000,000-$5,000,000, and in a dedicated crab catcher-processor is $5,000,000 to $10,000,000. (See the attached List of SB 1221 Coop-Eligible Pollock Trawlers, NPFMC Approved Under Alternative #9 of the License Limitation Program for the Bering Sea King and Tanner Crab Fisheries).

The operators of the pollock crossover vessels may indirectly recover their investment in crab gear from operations in fisheries other than those for BSAI crab. Indeed, for many of the relevant pollock crossover vessels, the investments in crab gear have already been directly recovered through speculative participation in the BSAI crab fisheries. By contrast, the operators of the dedicated crab vessels are prohibited from crossing over into pollock or any other trawl fisheries, and pot fishing for cod provides a very limited financial opportunity that cannot remotely support the investment in the vessels. Furthermore, cod is a fully utilized fishery, which cannot economically support a major influx of capacity.

On the other hand, the pollock crossover vessels have other options available to them in the underutilized yellowfin sole and flatfish fisheries. Recently, markets for these species have improved, and offer another avenue for recovery of investments, an avenue not available to pot vessels.

Pollock crossover vessels also enjoy an enormous windfall from the American Fisheries Act. No such windfall exists for the dedicated crab vessels. As a result of the enactment of the American Fisheries Act, pollock fisheries will provide a much improved return on the investments in pollock vessels. Moreover, in comparison to BSAI crab fishing, pollock fishing has already demonstrated far superior financial performance. (See attached Comparative Economic Analysis, 1995, 1996 and 1997, Bering Sea Pollock and Crab).

Thus, if investment is to be taken as an indicator of dependence, the pollock crossover vessels have little or no dependence on the BSAI crab fisheries. By contrast, the dedicated crab vessels have total or near total dependence on those fisheries.

Sincerely,

Arni Thomson

Arni Thomson
Executive Director

REVISED: 12/2/98

LIST OF BERING SEA SB 1221 COOP-ELIGIBLE POLLOCK/GROUNDFISH TRAWLERS, NPFMC APPROVED, ALTERNATIVE #9 FOR THE LICENSE LIMITATION PROGRAM, FOR BERING SEA KING & TANNER CRAB FISHERIES. **TOTAL VESSELS: 41**

VESSEL NAME		ADF&G	LOA	OWNERSHIP INFORMATION	
AJ		57934	150	Saga Sfds. (49% Norway)	WA
ALASKA DAWN	(OK alt. 4)	69765	90	William Gilbert	AK
ALDEBARAN		48215	132	Trident Sfds.	WA
ALSEA		40749	124	Halls	OR
AMERICAN EAGLE	(OK alt. 4)	00039	120	R. Tynes, J. Wabey	WA
ARCTIC WIND		01112	123	Victor Sfds.	WA
ARCTURUS		45978	132	Trident Sfds.	WA
ARGOSY)	(OK alt. 4)	38547	124	Halls	OR
BLUE FOX (Attached, NMFS memo)		62892 or 66039 ?	85	Pacific Draggers Inc.	OR
COMMODORE		53843	133	Victor Sfds., J. Johannesen	WA
DOMINATOR)	(OK alt. 4)	08668	130	Trident Sfds.	WA
DONA MARTITA	(OK alt. 4)	51672	152	Trident Sfds. R. Desautel	WA
ELIZABETH F		14767	90	Brekken/S. Stutes	AK
FIERCE ALLEGIANCE	(OK alt. 4)	55111	166	R. Mezich	WA
FLYING CLOUD	(OK alt. 4)	32473	124	Trident Sfds.	WA
GOLDEN DAWN	(CDQ)	35687	149	Trident Sfds., APICDA	AK
GOLDEN PISCES	(OK alt. 4)	32817	98	Elmer McNabb	OR
GUN MAR		41312	172	G. Ildhuso, (Ocean Phoenix)	WA
LADY JOANNE	(OK alt. 4)	62922	58	David Wilson	AK
LISA MARIE	(CDQ)	70221	78	YDFDA	AK
MAJESTY		60650	106	Trident Sfds.	WA
MAR GUN		12110	110	G. Ildhuso, (Ocean Phoenix)	WA
MARCY J	(OK alt. 4)	00055	97	H. Jones	AK
MARGARET LYN		31672	103	R. Czeisler (Ocean Phoenix)	WA
MARK 1		06440	98	C. Garbrick (Ocean Phoenix)	WA
MUIR MILACH		41021	86	D. Fraser	WA
NORDIC FURY		00200	93	Hovik/Stone (Ocean Phoenix)	WA
NORDIC STAR		00961	123	C. Swasand	WA
OCEAN HARVESTOR	(OK alt. 4)	00101	108	K. Ness (Trident partner)	WA
OCEANIC		03404	122	E. Langesater	WA
PACIFIC FURY		00033	110	M. Stone (Ocean Phoenix)	WA
ROYAL AMERICAN		40840	105	O. Austneberg,	WA
SEA STORM		40969	123	W. Pereyra (50% S. Korea)	WA
SEA WOLF		35957	143	AK. Boat Co.	WA
SEADAWN		00077	124	F. Yeck	OR
STAR FISH	(OK alt. 4)	00012	123	C. Swasand	WA
STARLITE		34931	123	C. Swasand	WA
STARWARD		39197	123	C. Swasand	WA
STORM PETREL		39860	123	Victor Sfds., J. Johannesen	WA
VESTERAALEN		38342	124	E. Pedersen, (Ocean Phenix)	WA
VIKING EXPLORER	(OK alt. 4)	36045	125	Trident Sfds.	WA

MAJOR PERMIT HOLDERS: Ocean Phoenix group 7, vessel owners are partners in the mothership; Swasand/Starbound 4; Trident Sfds 9; Victor Sfds./Johannesen 3; **Sub Total, 23 of 41.**

ADDITIONAL SB 1221VESSELS CURRENT PARTICIPANTS IN BSAI CRAB NOT QUALIFIED UNDER ALT. #9: DONA LILLIANA, HALF MOON BAY, POSEIDON, ROYAL ATLANTIC, SUNSET BAY, VANGARD. Sub Total: 7. **(Total SB 1221 Alternative 4 Qualified: 13)**

Crab Revenue & S.1221 Crossover Vessel Dependence Upon Crab

Year	Total Crab Revenue	Crab Revenue Ave. (Alt.4, 245 Standardized) *	Actual # of XO's that fished Crab	Ave. Revenue of All Vessels Fishing Crab **	Ave. Revenue in Crab of 41 S.1221 XO Pollock Catcher Boats ***	Crab as % of Ave. Gfish Revenue
1995	$205.6M	$ 839,184	22	$60,000 (Bairdi)	$ 32,195	2.6%
1996	$130.9M	$ 534,286	11	$171,000 (BBKC)	$ 45,878	4.2%
1997	$134.7M	$ 549,796	36	$110,000 (BBKC)	$ 96,585	7.5%
	Averages	$ 641,088		$ 113,667	$ 58,220	4.8%

References: Economic Status Of The Groundfish Fisheries Off Alaska, NMFS (1998). Alaska Dept. of Fish & Game, Westward Region Shellfish Economic Report (1998).

* Crab revenue based on major fisheries: Bering Sea opilio and bairdi, Bristol Bay king crab and St. Matthew/Pribilof Islands blue and red king crab.

** Pollock catcher vessel cross sovers almost exclusively fish Bristol Bay king crab only, and retain a bycatch of bairdi in that fishery. Or in the case of 1994 and 1995, when Bristol Bay king crab was closed in November, bairdi was the only fishery available to crabbers and trawlers. Thus, the average crab revenue for trawlers that participate is only based on these fisheries and does not include opilio, the major crab fishery that sustains the crab fleet, but conflicts with the trawlers main fishery, the pollock roe A season.

*** This revenue figure illustrat es the average revenue of the 41 Alternative 9 crab LLP qualified S 1221 vessels and the average le\ vel of economic non-dependency.

Comparative Economic Analysis Of Bering Sea/Aleutian Islands S 1221 Trawl Catcher Vessel Revenues Vs. Crab Vessel Revenues

Year	Total Pollock Revenue	Pollock Vessels	Other Groundfish	Other Groundfish Boats	Ave. Pollock Revenue	Ave. Other Groundfish Revenue	Total Ave. Groundfish Revenue
1995	$ 126,300,000	117	$ 21,400,000	125	$ 1,079,487	$ 171,200	$ 1,250,687
1996	$ 111,800,000	119	$ 20,400,000	131	$ 939,496	$ 155,725	$ 1,095,221
1997	$ 112,900,000	106	$ 24,800,000	113	$ 1,065,094	$ 219,469	$ 1,284,563
				Averages	Pollock is 85% of Groundfish Total	182,131	$ 1,210,157

References: Environmental Assessment/Regulatory Impact Review/ Initial Regulatory Flexibility Analysis For Inshore/ Offshore 3. North Pacific Fishery Management Council. August 26, 1998.
Economic Status Of The Groundfish Fisheries Off Alaska, 1997. National Oceanic and Atmospheric Administration. November 20, 1998.

THEODORE G. KRONMILLER
ATTORNEY

9893 GEORGETOWN PIKE
SUITE 400
GREAT FALLS, VIRGINIA 22066

703/757-6602
703/757-6603 FAX

December 9, 1998

MEMORANDUM FOR ARNI THOMSON

Subject: State of Alaska Submission to the North Pacific Council on the Crab LLP

You have asked that I advise you concerning the legal significance of a State of Alaska, Board of Fisheries ("Board"), submission dated November 4, 1998, to the North Pacific Fishery Management Council ("Council"), in relation a proposed amendment to the crab license limitation program ("Crab LLP"), for the purpose of reducing excess capacity. In short, a submission by the Board to the Council with respect to Bering Sea/Aleutian Islands ("BSAI") crab fisheries, for which the federal government has delegated management authority to the State of Alaska under the applicable fishery management plan, carries great legal weight.

First, it is important to recognize, based on the state of the record of the pending Crab LLP amendment process and on the authority and the expertise of the Board, that the Board's submission to the Council on this subject is the best scientific evidence available. In accordance with National Standard 2, section 301(a)(2), of the Magnuson-Stevens Fishery Conservation and Management Act ("Act"), such evidence must form the basis of fishery conservation and management decisions. 16 U.S.C. 1851(a)(2). That section provides, "Conservation and management measures shall be based upon the best scientific information available."[1] 16 U.S.C. 1851(a)(2). Accordingly, the Council and the Commerce Department are legally obligated to base the pending Crab LLP amendment on the above-referenced submission by the Board.

Second, in the event of litigation challenging regulations implementing a Crab LLP amendment, the submission of the Board will be of particular importance. Failure to comply with National Standard 2, as it relates to that submission, could very well lead to the regulations being overturned. Of course, the obverse is also true.

When considering the legal significance of the Board's submission, the standard of judicial review of regulations promulgated pursuant to the Act is important to the

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[1] *See* section 303(a)(5), (8) of the Act. 16 U.S.C. 1853(a)(5), (8). The Guidelines for National Standard 2 provide that, "[s]cientific information includes, but is not limited to, information of a biological, ecological, economic, or social nature". 50 C.F.R. 600.315(b)(1). " FMPs should be amended on a timely basis, as new information indicates the necessity for change in objectives or management measures." 50 C.F.R. 600.315(d).

analysis. It is well established that the Secretary of Commerce ("Secretary") has broad discretion in administering the Act. Accordingly, actions by the Secretary pursuant to the Act are subject to extremely limited judicial review. *Associated Fisheries of Maine, Inc. v. Daley*, 127 F.3d 104, 109-110 (1st Cir. 1997); *Alliance Against IFQs v. Brown*, 84 *supra*, at 349-350; *C&W Fish Co. v. Fox*, 931 F.2d 1556, 1562; *Alaska Factory Trawlers Ass'n v. Baldridge*, 84 F.3d. 343, 9th Cir.1996, *cert. den.* 117 S.C. 1497, L.Ed. 2d 681 (1997), at 1460; *State of Maine v. Kreps*, 563 F.2d 1052, 1055 (1st Cir. 1977); *Southeastern Fisheries Ass'n, Inc. v. Mosbacher*, 773 F. Supp. 435, 439 (D.D.C. 1991); *National Fisheries Institute v. Mosbacher*, 732 F. Supp. 210 (D.D.C. 1990), at 223; *Associated Vessels Services, Inc. v. Verity*, 688 F. Supp. 13, 17 (D.D.C. 1988); *State of Louisiana v. Baldridge*, 538 F. Supp. 625, 628 (E.D. La. 1982); *Pacific Coast Fed'n v. Secretary of Commerce*, 494 F. Supp. 626, 628 (N.D. Cal. 1980).

However, the discretion of the Secretary of Commerce, while broad, is not entirely unbounded. In *Alliance Against IFQs v. Brown, supra,* the Court stated:

> Where we review regulations promulgated by the Secretary of Commerce under the Magnuson [-Stevens] Act, our only function is to determine whether the Secretary 'has considered the relevant factors and articulated a rational connection between the facts found and the choice made.' [*Washington Crab Producers, Inc. v. Mosbacher*, 924 F.2d 1438 (9th Cir. 1990), at 1440-41]... We determine only if the Secretary acted in an arbitrary and capricious manner in promulgating such regulations. *Id.* at 1441. *See also* 16 U.S.C. sec. 1855(b)(1)(B); 5 U.S.C. sec. 706(2)(A)-(D). We cannot substitute our judgment of what might be a better regulatory scheme, or overturn a regulation because we disagree with it, if the Secretary's reasons for adopting it were not arbitrary and capricious.
>
> 84 F.3d at 345.

In *National Fisheries Institute v. Mosbacher, supra,* the Court stated:

> It is especially appropriate for the Court to defer to the expertise and experience of those individuals and entities—the Secretary, the Councils, and their advisors—whom the Act charges with making difficult policy judgments and choosing appropriate conservation and management measures based on their evaluations of the relevant quantitative and qualitative factors. [Citations omitted.]
>
> 732 F. Supp. 223.

The statement cited immediately above unarguably applies, as well, to the State of Alaska, including its Board, in the context of the BSAI crab fisheries. This is a function of the authority delegated to the State of Alaska by the federal government for the management of the BSAI crab fisheries.

Failure to follow the expert advice of the Board would, in the absence of superior scientific evidence clearly contradicting that advice, be subject to challenge as arbitrary and capricious and an abuse of discretion. The record of the pending Crab LLP amendment process contains no such evidence. Indeed, the scrupulously documented, clearly reasoned, and legally supported comments of the Alaska Crab Coalition, among others, on the pending Crab LLP amendment proposals, strongly support the position of the Board. A vpproval by the Commerce Secretary of regulations based on the Board's submission could not be credibly challenged.

Theodore G. Kronmiller

December 4 1998

Mr. Clarence Pautzke
Executive Director NPFMC
Anchorage Ak.
Fax 907-271-2807

Re: Crab LLP consideration

Dear Mr. Pautzke

Presently before the council is a great opportunity to undo a very controversial decision that the council made at the October meeting. An opportunity to help make sense of the BS/AI crab fisheries, to do good for both the true consistent participants in the BS/AI crab fleet and the true consistent players of the pollock/crab crossover vessels,the ones who have year after year consistently participated in the crab fisheries. The council has the opportunity to recind the decision of opening the flood gates into the already overcrowded crab fisheries that Alternative 9 allows, and reconsider- adopt Alernative 4 which more truely reflects who the consistent participants have been in the Bering Sea crab fisheries for the past several years.

I myself, have been involved in the fisheries as a fisherman, owner/ operator for the past 29 years. I have participated in nearly every crab season in that time and continue to operate my vessel today. With the collapse of the king crab stocks in the early 80's, my partners and I made the decision to convert our vessel to an effecient trawler/crabber combination vessel in 1981. We have continiously fished crab in between trawl seasons at every opportunity since the vessels conversion 18 years ago. Several of the other so called trawler/crabber combination vessels elected not to participate in the crab fisheries even though they had similar opportunities such as we've had. In fact many, if not most of these converted crabber to trawler vessels sold off much or all of their crab pots during those years leading up to the present. We on the other hand, have continued our commitment and shown our dependency in the crab fishery by virtue of our consistent participation and our capital expenditures on gear and improvements.

There is obviously no solution that is going to be perfect for all those involved, but I take some offense when many of the so called "crossover" vessels suddenly seem to display a "historical dependency flag" claiming their very recent participation in the tremendously overcapitalized crab fisheries as being one they have desperately depended on but just could'nt take the time to participate in, that is until the threat of being shut out became a possibility. At the same time they have worked very effectively to keep out anymore entrants into the pollock fishery.

As an independent fisherman, I really don't like the boxed in feeling that we are having to face in the name of rationalization, but some sense must be made of things to preserve at least what we have now to try to stay in business . I sincerely hope the council will take the necessary action to reduce the number of wild cards in the BS/AI crab fishery by adopting Alternative 4 which more accurately represents the numbers and participants who have consistently fished , taken the economical as well as the physical risks that go along with the crab fisheries. Thank you for the consideration.

Sincerely

Joseph Wabey
f/v American Eagle
f/v Arctic Eagle

Gulf of Alaska Coastal Communities Coalition, Inc.
P.O. Box 201236
Anchorage, AK 99520

December 8, 1998

Mr. Richard Lauber, Chairman
North Pacific Fisheries Management Council
605 West Fourth Avenue
Anchorage, AK 99615

Re: S. 1221

Dear Chairman Lauber:

I am pleased to convey to you and the Council the concerns and recommendations of the Gulf of Alaska Coastal Communities Coalition, Inc. (Gulf Coalition) regarding S. 1221, The American Fisheries Act. The GOACCC was created for fisheries dependent communities around the Gulf of Alaska to participate in the public process with a focus on the sustainability of marine resources and rural economies.

The Gulf Coalition adamantly opposes spillover effects in the Gulf of Alaska caused by S. 1221 as well as adverse impacts that will passively occur because of S. 1221. It is difficult, if not impossible, to know the impacts and the magnitude of these impacts S.1221 will have in the Gulf of Alaska. Consequently, we suggest that the NPFMC immediately form a task force, or working committee, to analyze and anticipate S.1221 impacts in the Gulf and to make regulatory recommendations to the Council before the Council moves toward Gulf of Alaska regulatory changes. We believe that coastal communities throughout the Gulf should be represented at the table. Consequently, we suggest, because of geographical diversity, at least two Gulf Coalition representatives be considered to serve on any entity created to work with industry and management in addressing Gulf of Alaska fallout from S. 1221.

Secondly, the Gulf Coalition strongly recommends that the Council immediately commission socio-economic impact analyses regarding S.1221's impact on Gulf of Alaska communities. The Council's committee on Gulf of Alaska impacts would work closely with those undertaking such a socio-economic analysis. As you are aware, many fishery dependant coastal communities are struggling and several are facing closure of their school and extinction. In addition, several larger communities which enjoy processing capacity are facing substantial loss of revenue. We do not believe it was the intent of Congress to make an already difficult situation worse by enacting S. 1221. A timely socio-economic impact analysis would focus the discussion regarding Gulf impacts and provide the Council an additional basis for forwarding mitigating recommendations to the Secretary.

The Gulf Coalition began focusing our energy and resources on S. 1221 in late September. Although the attached letters reflect our voice on the issue, most of our recommendations were not in the final bill. We trust that we will be able to work with the Council in mitigating the more draconian impacts of S. 1221 as it relates to Gulf of Alaska communities.

As we read S. 1221, it appears that there are provisions in section 213© which allow the NPFMC to make recommendations which supersede the provisions of the entire title save sections 206 and 208. We understand this section to say that the Council may subject implementation of parts of S. 1221 to the normal public process and, provided the justifications set forth in the law are met, make recommendations to the Secretary which could change some of the provisions in the current Act.

Additionally, section 211(a) appears to provide some latitude for the NPFMC to make recommendations designed to mitigate or prevent any adverse impacts caused by the Act on, "...other fisheries ... and participants in those fisheries ...." We understand that this clause as well as 213(a) was inserted in the Act to allow an avenue for concerned individuals and groups such as the Gulf Coalition to work toward making the American Fisheries Act better legislation.

Again, it is important for a Council appointed Gulf of Alaska task force to research adverse impacts and report to the Council before the Council makes regulatory recommendations regarding S.1221.. Coastal Community representatives should be a part of whatever advisory panel the Council forms.

Thank you in advance for your consideration of our suggestions.

Sincerely,

Thomas H. Abel

Thomas H. Abel
Chairman

cc. NPFMC
Advisory Panel
Science and Statistical committee

Enclosures:
Governor Knowles Letter
Senators Stevens and Murkowski Letters

TONY KNOWLES
GOVERNOR

P.O. Box 110001
Juneau, Alaska 99811-0001
(907) 465-3500
Fax (907) 465-3532

STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

August 14, 1998

Gulf of Alaska Coastal Communities Coalition
P.O. Box 201236
Anchorage, AK 99520-1236

Dear Coalition Members:

Thank you for your letter regarding the need for positive action to create additional fisheries opportunities for rural communities in the Gulf of Alaska. As leaders of your communities, I applaud your coordinated effort to meet the challenges faced by coastal Alaska. As you know, my Administration has been working hard to expand the job opportunities in rural Alaska. The state unquestionably has a role and it will require the attention of all levels of government working as partners with the private sector to realize the opportunities that should rightfully flow to Alaska families in coastal communities.

For just the reasons you outlined in your letter, I requested $300,000 in funding for developing fisheries. Half of that funding will be used for existing fisheries that require additional assessment work to be fully realized. The other half of the money will be used to help the state address fisheries development from a broad policy perspective. I suggest you work closely with the Department of Fish and Game as that project gets underway.

In response to your specific request for state action, I will have a group of state officials, including members of the Salmon Cabinet and other agencies as necessary, work with you to review the existing fisheries situation and develop some positive solutions. I propose the first objective be identifying the key issues and concerns, and what objectives should be pursued.

I will be appointing Commissioners Frank Rue and Mike Irwin to head this group and have asked them to contact you and further develop your ideas and suggestions and begin to establish a work plan and mission statement.

Sincerely,

Tony Knowles
Governor

GULF OF ALASKA COASTAL COMMUNITIES COALITION, INC.
P.O. Box 201236
Anchorage, AK 99520

September 25, 1998

COPY

The Honorable Ted Stevens
United States Senate
SH-522 Hart Senate Office Building
Washington, D.C. 20510-0201

Re: Comments on Senate Bill 1221

Dear Senator Stevens:

The Gulf of Alaska Coastal Community Coalition includes representatives from a majority of the communities around the Gulf of Alaska from False Pass to Metlakatla. Our mission is to conserve and protect the health and sustainability of marine resources in the Gulf of Alaska and to secure an equitable allocation of those marine resources to residents in our coastal communities. (Please see our enclosed mission statement.) With this mission in mind, several of the provisions in Senate Bill 1221 raise serious concerns for our coastal communities.

It is our understanding that S. 1221 was intended to deal exclusively with problems in the Bering Sea/Aleutian Islands fisheries and was not intended to address issues in the Gulf of Alaska. It is our understanding that once the problems in the Bering Sea were resolved, interested parties would then address fishery issues related to the Gulf. Although perhaps unintended, it appears that S. 1221, as drafted, impacts several Gulf of Alaska issues and may, on many issues, make subsequent discussions of those problems moot. We strongly urge that the final version of S. 1221 confine its scope to the Bering Sea/Aleutian Islands regulatory area. We request that members of our coalition who live in our communities and rely on fishing in the Gulf of Alaska be provided the opportunity to meet and discuss our region's problems with you and your staff and thereby to become part of the process of working out acceptable solutions to problems facing Gulf coastal communities.

As currently drafted, S. 1221 does not confine its scope to the Bering Sea/Aleutian Islands. For example, section 207 (b)(3) explicitly provides for catching and processing limitations in the Gulf. We understand the concern regarding the mobility of displaced Bering Sea vessels and fully support the provisions of subsection 207(b)(3)(A) prohibiting those vessels from harvesting fish in the Gulf of Alaska. We believe that section 207 should stop with this limitation on catch opportunities, and that subsections 207(b)(3)(B) and (C) should be stricken. There is no reason to restrain processing capacity in the Gulf. However, if you believe a prohibition on processing in the gulf is essential for the success of S. 1221, we urge deletion of section 207(b)(3)(B) which unnecessarily differentiates regulatory area 630 from areas 610, 620 and 640 and limit the processing prohibition to pollock for the entire Gulf of Alaska.

The largest immediate economic harm to Gulf of Alaska coastal communities will result from section 207 (c)(2). (In the 9/23/98 draft this section is designated (b)(2) on p. 21). To address this harm, we urge that sections 207 (c)(2)(A), (B) and (C) dealing with Gulf of Alaska fisheries should be deleted from the bill and section 207(c)(2) conclude: "... the secretary shall promulgate regulations that prohibit said catcher vessels from participating in any Gulf of Alaska groundfish fishery."

As drafted, section 207(c)(2) appears to give Bering Sea catcher vessels the right to harvest Gulf of Alaska resources while participating in a Bering Sea cooperative pollock fishery. In short, with the fishing cooperatives, these vessels can, in essence, be in two places at the same time and they are guaranteed the same percentage of the pollock quota as they caught in 1997. Those living in our coastal communities know that the dynamics of the 1997 season served the interests of the Bering Sea catcher boats to the detriment of Gulf of Alaska fishermen and that they significantly increased their percentage of the Western Gulf pollock catch in 1997. This provision puts in concrete a direct allocation of the highest percentage of catch many of these vessels have had in several of the Gulf fisheries. Consequently, S. 1221 provides a defacto Individual Vessel Fishing Quota to Bering Sea catcher vessels while not providing the same protection to vessels in the Gulf, and, in addition, provides these vessels with an unfair advantage on the fishing grounds. We are confident that this is not what you intended and urge you to make the changes needed to remedy this problem.

The asterisk (*) CDQ and PROCESSOR LOANS place holders in the draft just prior to section 208 are both intriguing and alarming for Gulf of Alaska coastal communities. Will this allow CDQ groups to increase their stake in Gulf of Alaska fisheries? Will it create another ownership entity or entities for Gulf IFQ's? Our communities are worried about these undrafted provisions in S.1221 and requests an opportunity to review and comment on the proposed sections, when they are drafted.

In summary, while we believe the thrust of your bill is laudatory and we support it, as it relates to Bering Sea/Aleutian Islands fishery issues, we are unified in our opposition to the above provisions which adversely impact Gulf of Alaska fisheries, Gulf of Alaska small boat fishermen and Gulf of Alaska communities. We ask for your help in making these changes which will not place our communities in further jeopardy.

We look forward to meeting with you or your staff early next week to work through these issues, and want to thank you for the opportunity to comment on this proposed legislation.

Very truly yours,

Thomas H. Abel

Thomas H. Abel
Chairman

cc: Trevor McCabe
642501.027

GULF OF ALASKA COASTAL COMMUNITIES COALITION, INC.

P.O. Box 201236
Anchorage, AK 99520

October 6, 1998

Via Facsimile (202) 224-2354

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

Via Facsimile (202) 224-5301

The Honorable Frank H. Murkowski
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Re: S. 1221

Dear Senator Stevens and Senator Murkowski:

The purpose of this letter is to express once again the strong opposition of the Gulf of Alaska Coastal Communities Coalition (GOAC^3) to two provisions of the latest draft of S. 1221 dated October 3, 1998, which adversely affects the Gulf of Alaska and we request their deletion.

As we explained in previous correspondence, the GOAC^3 was formed out of genuine alarm that coastal communities in the Gulf of Alaska are endangered economically and are at grave risk of becoming dysfunctional or extinct unless the Alaska Delegation step forward to intervene and to help.

A key element of what historically sustained our communities was reliance first and foremost on the fisheries and other marine resources for food and, in the modern era, on commercial fishing as part of the economy of the local communities. As we explained in our letter dated September 25, 1998, two provisions of the draft of S. 1221 create serious potential impacts on the fishery resources of the Gulf of Alaska and place our fisheries dependent communities at risk. This is particularly troubling to us because (1) no representative of this coalition, or anyone representing our interest,

was invited to participate in the recent conferences that have taken place in Washington, D.C. with representatives of processors, the catcher/processors and other special interests; and (2) in spite of our letter outlining our concerns, there has been virtually no change made to the earlier draft bill to accommodate our concerns and, in fact, the bill appears to continue to favor certain special interests from the region of the Gulf of Alaska to the detriment of small boat fisheries.

As you know, the Stevens-Magnuson Act Amendments have begun to address the issues of fisheries-dependent communities in general in Alaska and, in the case of the CDQ communities of the Bering Sea, has been very generous in addressing the economic challenges facing those communities. We certainly support and applaud that commitment you have made.

However, we are seriously concerned that your otherwise laudable attempts to further resolve issues in the Bering Sea and to advance the Americanization of the fisheries there, advertently or inadvertently, have greatly compounded the difficulty of finding, developing and implementing viable solutions to the marine resource allocation and conservation issues that currently plague the Gulf of Alaska. Such issues represent a major threat to the continued viability of our communities.

We need and seek your help on this matter!

We understand that the myriad concerns of Gulf of Alaska communities could not be logically dealt in S. 1221, which is ostensibly focused on the Bering Sea. We have accepted that and have operated on the premise that the effort in S. 1221 would be limited to the Bering Sea. It was a great disappointment therefore to learn that certain interests from the Gulf of Alaska have managed to become players in the current deliberations on S. 1221 to the exclusion and detriment of our communities. We request that you amend S. 1221 to cut out those provisions shown in the enclosure we recommend be deleted.

Senator Stevens and Senator Murkowski ... these are serious survival matters dealing with our communities, our families, our children and our economies. If you do not listen and take responsive action, there will come a time when the residents of our communities will either be forced to move from rural Alaska to urban centers of the State in order to survive, or to rely solely on subsistence resources, which for an entirely different set of reasons is becoming more challenging. With that movement, rural Alaska in our region will be forever changed and the vision we share with you of rural Alaska joining the mainstream economy of Alaska will be lost. We are requesting that you work with us during this next year to focus on the economical survival problems focusing on the Gulf of Alaska communities and to seek solutions that will help diversify the economies of our region and help restore a significant capability within our communities so that we can once again rely upon the fisheries resources which have been a part of our lives historically.

We are sending you under separate cover a set of data developed by the State of Alaska which clearly show the trend of what is happening in our communities with regard to fisheries allocation, loss of permits and quota share, incomes, etc. It was prepared by the State of Alaska recently and is part of the information base that is needed to correct the fisheries problems facing our region.

Please do not pass S. 1221 without excising those sections which would adversely affect coastal fisheries dependent communities in the Gulf of Alaska.

Sincerely.

Thomas H. Abel
Chairman

Ed Carle
Director

Emil Christiansen, Sr.
Director

Richard Peterson
Director

Byron Skinna, Sr.
Director

cc: The Honorable Don Young
Trevor McCabe, Office of Senator Stevens
Bill Woolf, Office of Senator Murkowski

COPY

GULF OF ALASKA COASTAL COMMUNITIES COALITION, INC.
P.O. Box 201236
Anchorage, AK 99520

October 13, 1998

The Honorable Ted Stevens
United States Senate
522 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Frank H. Murkowski
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

Re: S. 1221

Dear Senator Stevens and Senator Murkowski:

Although we must remain opposed to the passage of S. 1221 in its present form, we thank you for the courtesies extended to us by your staffs, especially during the very busy time of appropriations and end of session.

Our organization was formed for the purpose of participating in the public process on behalf of our membership, the fisheries dependent communities on the coast of the Gulf of Alaska.

It is our sincere hope that we can begin developing a process with which to address the serious issues confronting our communities. In five communities we are facing the potential loss of the local schools. If the school goes the communities will become ghost towns.

Since our inception we have assiduously and vigorously begun the gathering of data and information necessary to the development of a plan or plans with which to address solutions to our problems and to implement strategies to prevent or mitigate economic downturns or disasters. As promised in our previous correspondence, we transmit to you the 60 CFEC reports

regarding the status of fisheries in our communities. The reports document the dramatic decline of our fishing economies and highlight the need for immediate corrective measures.

We are certain that we can count on our entire Alaska delegation to sit down with us and begin developing solutions to these challenging issues; and we are looking forward to working with you in the next Congress.

Best regards.

Sincerely.

GULF OF ALASKA COASTAL
COMMUNITIES COALITION, INC.

Thomas H. Abel
Chairman

cc: The Honorable Don Young
Trevor McCabe, Office of Senator Stevens
Bill Woolf, Office of Senator Murkowski

Fair Fisheries Coalition Recommendation for a Resolution to Congress – 12/14/98

Whereas, the American Fisheries Act has established a closed class of facilities and vessels which may process Bering Sea pollock allocated to catcher vessels delivering to the inshore component or motherships in the offshore component;

Whereas, the American Fisheries Act establishes restrictions that require fishermen in a cooperative delivering inshore to deliver at least 90 percent of their pollock only to one particular facility or vessel within the closed class;

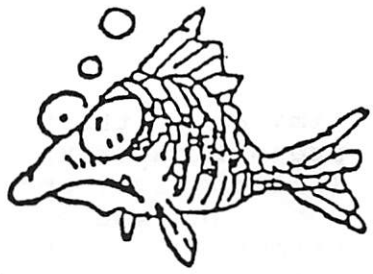
Whereas, the American Fisheries Act directs the Council to establish safeguards to protect fishermen and processors under the Council's jurisdiction;

Whereas, limiting entry for processors and restricting to whom fishermen may deliver their catch reduces competition and the price paid to fishermen without any conservation benefit;

Whereas, legal counsel for the National Marine Fisheries Service has informed the Council that the American Fisheries Act does not permit the Council to open the closed class of inshore and mothership processing facilities and vessels, thus denying the Council the ability to permit fishermen to deliver their pollock to whomever they choose;

Now, therefore be it resolved, that the Council requests that Congress amend the American Fisheries Act to remove the restrictions on which facilities and vessels may process Bering Sea pollock allocated to catcher vessels delivering pollock to the inshore component or motherships in the offshore component.

North
Pacific
Longline
Association



Agenda C-2

December 1, 1998

Mr. Richard B. Lauber, Chariman
North Pacific Fishery Management Council
605 West 4th Avenue
Anchorage, AK

RE: Protection Of Non-Pollock Fisheries From S.1221

Dear Rick:

Congress has advised the Council to adopt conservation and management measures to protect non-pollock fisheries from adverse effects of S.1221. Since we have no analysis of the impacts of the dramatic changes created by the Act, this may be an impossible task. We believe that the Council should take more time to analyse this complex circumstance - otherwise, we are shooting in the dark.

The freezer-longliner fleet engaged in the fixed gear fisheries for groundfish off Alaska finds itself in the same position as fixed gear crab fishermen with respect to the potential negative impacts of S.1221. Our fisheries are fully utilized by traditional participants who are wholly dependent upon them. Additional harvesting or processing by the many vessels that are technically qualified to participate in our fishery under LLP (please see attachment) but have made only token landings in recent years threatens to put the traditional participants out of business - particularly with an anticipated reduction in BSAI cod ABC/TAC. This additional activity will be stimulated by the expectation - created directly by S.1221 - that somewhere in the near future our fisheries will be subject to a de facto ITQ program like a co-op, or another form of quota management. Fishermen will be racing to increase their catch/processing histories, whether they are making money or not. Congress has indicated that the Council should address the question of harmful impacts of this sort, and we are writing to encourage it to do so. In our view this situation constitutes an emergency. Some specific recommendations follow:

Freeze the Fisheries in Place Now by Emergency Rule

The most obvious way to prevent speculative increases in non-pollock fishing activity is to freeze those fisheries in place, by vessel and by gear type for one year - now. **We suggest that each gear type under Council jurisdiction - trawl, trawl c/p, longline, longline c/p, pot, pot c/p, jig - be immediately**

4209 21st Avenue West, Suite 300, Seattle, Washington 98199
TEL: 206-282-4639; FAX: 206-282-4684

limited to the harvest and processing levels achieved (as a proportion of TAC) in each non-pollock fishery in 1998 (alternative: applies to cod only). Vessels would fish from a pool, and would not have individual quotas. In order to be effective this program would have to be implemented by emergency rule. Speculative fishing activity in 1999 could prove disastrous for traditional participants in the non-pollock fisheries. If the emergency rule were extended to a second 180-day period, the Council would have a year to deal with the significant and complex impacts of S.1221 on the non-pollock fisheries.

We also recommend that the following measures be analysed in this context:

Protection for Traditional Dependents - BSAI Fixed Gear Cod

We have watched the Council struggle with various sets of qualifying years in an effort to limit participation to those truly dependent on the crab fishery. It has been and remains a difficult task. With that experience in mind and advice from experienced pot and longine fishermen we have developed a performance standard that would keep any reasonably dependent fixed gear vessel in the BSAI fixed gear cod fishery, but would eliminate speculators who have made only token landings:

LLP notwithstanding, in order to continue in the directed BSAI fixed gear fishery for cod a vessel greater than sixty feet in length must have landed at least 250,000 pounds of processed BSAI cod or 500,000 pounds of BSAI round cod in either 1997 or 1998. Landings in 1999 would not qualify, for obvious reasons. Vessels under sixty feet in length would be exempt from this requirement. Cod bycatch in other fisheries could continue to be retained and sold.

The purpose of this proposal is to allow any vessel that is reasonably dependent on cod - that has made five or six trips in either year - to qualify, but to eliminate speculators with only token deliveries.

Declaration - Fixed or Mobile Gear in BSAI Cod Fishery

The cod quota in the BSAI is split between fixed and mobile gear. This split may be revisited, and it is necessary to know how many vessels will participate in each category. **We propose that all dual-qualified vessels under LLP - vessels that can fish for cod with trawl or fixed gear - be required to make a one-time permanent election as to whether they will fish cod with fixed or trawl gear.** This election should be made by mid-1999. The election is also necessary to prevent double-dipping. As things stand, trawlers that are dual-qualified but not constrained by the traditional take limits in S.1221 could fish in both the trawl and fixed gear fisheries for cod.

Limitation on Additional At-Sea Processing of Fixed Gear-Caught Cod

The Council is on record as wishing to limit growth in offshore processing - it recently set "limited processing" at 1 mt per day in an LLP amendment. Likewise, S.1221 recognized the danger inherent in additional offshore processing by prohibiting eligible catcher-processors from processing any BSAI crab. Our concern - explained at length during public testimony at the last Council meeting - is that if additional processing of fixed-gear caught cod by factory trawlers or motherships is allowed, our fishery may suffer greatly. Cod longliners and pot fishermen now coexist happily because they are separated on the grounds. Pot fishermen fish close to shore plants, where they deliver. Freezer-longliners concentrate their fishery in the western Aleutians and to the north in the Bering Sea, along the edge. Serious gear conflicts would occur if pot fleets served by motherships or factory trawlers were to move north or west.

We propose that trawl catcher-processors and motherships shall not, in aggregate, process a greater share of groundfish harvested by fixed gear than they processed in 1997 or 1998.

Please note that these proposals are not designed to increase anyone's share in any non-pollock fishery. To the contrary, they are designed to maintain the status quo in the face of S.1221. We are of the firm belief that dramatic action on the part of the Council will be necessary to carry out the Congressional mandate to protect non-pollock fisheries from the impacts of S.1221.

Sincerely,

Thorn

Thorn Smith

Attachment

Draft

Projected Non-Trawl Groundfish LLP Qualifiers in the Bering Sea and CV/CP Designations by Vessel Length

Gear Designation and Vessel Length	BSA & GOA			BSA			Total
	CVs	CPs	All	CVs	CPs	All	
Non-Trawl							
Less than 60'	108	2	*110*	29	0	*29*	*139*
60' to 124'	77	22	*99*	43	0	*43*	*142*
125' and greater	7	24	*31*	19	6	*25*	*56*
Total	192	48	*240*	91	6	*97*	*337*
Trawl and Non-Trawl							
Less than 60'	18	0	*18*	1	0	*1*	*19*
60' to 124'	71	9	*80*	9	2	*11*	*91*
125' and greater	6	36	*42*	3	0	*3*	*45*
Total	95	45	*140*	13	2	*15*	*155*
Grand Total	287	93	*380*	104	8	*112*	*492*

THE BULK OF THE BSAI FIXED GEAR COD FISHERY IS CONDUCTED BY 26-30 FREEZER-LONGLINERS AND BY SOME 20 ACTIVE POT BOATS (PERSONAL COMMUNICATION), FOR A TOTAL OF 46-50 VESSELS. AS ABOVE, 492 VESSELS ARE QUALIFIED TO FISH FOR GROUNDFISH WITH FIXED GEAR UNDER LLP - A POTENTIAL TENFOLD INCREASE. DATA DERIVED FROM ANALYSIS OF PROPOSED LICENSE LIMITATION AMENDMENT PACKAGE, AUGUST 21, 1998.

receive benefits under the following programs during the POR:

A. VAT Reductions
B. Export Credits Under Law 227/77
C. Capital Grants Under Law 675/77
D. Retraining Grants Under Law 675/77
E. Interest Contributions on Bank Loans Under Law 675/77
F. Interest Grants Financed by IRI Bonds
G. Preferential Financing for Export Promotion Under Law 394/81
H. Corporate Income Tax (IRPEG) Exemptions
I. European Agricultural Guidance and Guarantee Fund
J. Urban Redevelopment Under Law 181
K. Local Income Tax (ILOR) Exemptions
L. Industrial Development Loans Under Law 64/86
M. Export Marketing Grants Under Law 304/90
N. Lump-Sum Interest Payment Under the Sabatini Law for Companies in Southern Italy
O. Remission of Taxes on Export Credit Insurance under Article 33 of Law 227/77
P. European Social Fund
Q. European Regional Development Fund
R. Export Restitution Payments

We did not receive any comments on these programs from the interested parties and our review of the record has not led us to change our findings from the preliminary results.

Final Results of Review

For the period January 1, 1997 through December 31, 1997, we determine the net subsidy for CO.R.EX. to be 0.95 percent *ad valorem*. We will instruct the Customs Service to assess countervailing duties at this net subsidy rate on all entries of the subject merchandise from CO.R.EX. entered, or withdraw from warehouse, for consumption on or after January 1, 1997 and on or before December 31, 1997.

The Department also intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties of 0.95 percent of the f.o.b. invoice value on all shipments of the subject merchandise from CO.R.EX. entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this new shipper review. The cash deposit rates for all other producers/exporters remain unchanged from the last completed administrative review (see *Final Results of Countervailing Duty Administrative Review: Certain Pasta from Italy* 63 FR 35665 (August 14, 1998)).

This administrative review and notice are in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act and 19 CFR 351.214.

Dated: November 25, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98-31983 Filed 11-30-98; 8:45 am]

BILLING CODE 3510-DS-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 111398E]

Eligibility To Participate in the 1999 Directed Pollock Fishery in the Bering Sea and Aleutian Islands Management Area and Eligibility To Be Considered for Disbursement of Funds Pursuant to the American Fisheries Act

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

ACTION: Solicitation of applications.

SUMMARY: NMFS invites owners of vessels that meet the requirements in either section 208(b)(8) or (e)(21) of the American Fisheries Act (AFA) to apply for eligibility to participate in the offshore directed pollock fishery in the Bering Sea and Aleutian Islands Management Area (BSAI) after January 1, 1999. Section 208(b)(8) requirements apply to catcher vessels that deliver to catcher/processors in the offshore component. Section 208(e)(21) requirements apply to catcher/processors in the offshore component. Owners of vessels that are not specifically named in section 208(b) or (e) must apply to participate in the offshore directed pollock fishery in the BSAI after January 1, 1999.

NMFS also invites owners of vessels that meet the requirements in either section 207(d)(2)(A) or (B) to apply for consideration of the disbursement of funds. If a contract for a cooperative pursuant to section 210(a) is filed by vessels listed in section 208(e), then vessels listed in section 208(e)(10) through (14) will receive the disbursement of funds. However, if no such contract is under section 208(b) or 208(e)(1) through (20) that provide applications will be considered for the disbursement of funds.

Vessel owners may use a single application for both purposes; however, applications for the disbursement of funds must be received by NMFS prior to December 15, 1998. This action is necessary to meet the statutory deadline of December 31, 1998, specified in the AFA and is intended to meet the objectives of the U.S. Congress for vessels participating in the directed pollock fishery in the BSAI.

DATES: Effective November 25, 1998.

ADDRESSES: Applications should be addressed to Philip J. Smith, Administrator, Restricted Access Management, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802. Copies of the relevant portions of the AFA also are available at the above address. Comments regarding the collection of information burden can be sent to the above address and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503, Attention: NOAA Desk Officer.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION:

1. General Information

The AFA, Pub. L. 105-277, was signed into law on October 21, 1998. Section 208 of the AFA specifies which vessels and processors are eligible to harvest pollock in the directed pollock fishery in the BSAI, either by directly naming the eligible vessels or processors, or by providing criteria to determine eligibility. Section 208(h) provides that in the event that the Secretary of Commerce (Secretary) is unable to make a final determination about the eligibility of a vessel under section 208(b)(8) or (e)(21) before January 1, 1999, such vessels, upon the filing of an application asserting eligibility, shall be eligible to participate in the directed pollock fishery in the BSAI pending a final determination by the Secretary.

2. Eligibility Under Section 208(b)(8) To Participate in the Directed Pollock Fishery in the BSAI

Section 208(b)(8) sets out three requirements that must be met by catcher vessels not specifically named in section 208(b)(1) through (7) in order for those vessels to deliver to catcher/processor vessels fish harvested in the directed pollock fishery after January 1, 1999. First, a catcher vessel must have delivered at least 250 metric tons (mt) of pollock in the directed pollock fishery in 1997. Second, at least 75 percent of the pollock harvested by a catcher vessel must have been delivered to a catcher/processor for processing by the offshore component. Third, a catcher vessel must be eligible to harvest pollock in the directed pollock fishery under the License Limitation Program (LLP) (63 FR 52642, October 1,

1998). For purposes of this action, a catcher vessel means a vessel that is used for harvesting fish and that does not process pollock onboard.

3. Eligibility Under Section 208(e)(21) To Participate in the Directed Pollock Fishery in the BSAI

Section 208(e)(21) sets out two requirements that must be met by catcher/processors not specifically named in section 208(e) for those vessels to participate in the directed pollock fishery after January 1, 1999. First, a catcher/processor must have harvested more than 2,000 mt of the pollock in the 1997 directed pollock fishery. Second, a catcher/processor must be eligible to harvest pollock in the directed pollock fishery under the LLP. Catcher/processors determined to be eligible under section 208(e)(21) will be prohibited from harvesting more than one-half of one percent of the pollock apportioned to the offshore component by section 206(b)(2). For purposes of this action, a catcher/processor means a vessel that is used for harvesting fish and processing that fish.

4. Temporary Eligibility To Participate in the Directed Pollock Fishery in the BSAI

Although the potential exists for NMFS, on behalf of the Secretary, to determine eligibility for catcher vessels based on the first two requirements in section 208(b)(8) and for catcher/processor vessels based on the first requirement in section 208(e)(21) by January 1, 1999, NMFS cannot determine the requirement of eligibility under the LLP until applications for the LLP are solicited and eligibility for that program is determined. NMFS anticipates that will not occur until late 1999. Because eligibility for the LLP cannot be determined before January 1, 1999, owners of vessels that qualify under section 208(b)(8) or (e)(21) will need to submit an application asserting eligibility to participate in the directed pollock fishery, as provided in section 208(h). If NMFS determines, based on a submitted application that a vessel does not meet the first two requirements in section 208(b)(8) or the first requirement in section 208(e)(21), an initial administrative determination (IAD) will be issued denying eligibility to participate in the 1999 directed pollock fishery in the BSAI. An applicant can appeal that IAD under 50 CFR 679.43.

5. Disbursement of Funds to Eligible Vessels

Section 207(d)(2) of the AFA provides that the Secretary shall pay by December 31, 1998, $5,000,000 to the owners of the catcher vessels eligible under section 208(b) and the catcher/processors eligible under section 208(e)(1) through (20), if a contract for a cooperative has not been filed by that date. This payment will be divided among the owner(s) of catcher vessels named in section 208(b)(1) through (7), catcher vessels for which an application has been submitted for eligibility under section 208(b)(8), and catcher/processor vessels named in section 208(e)(1) through (20). This apportionment will be based on the proportional amount of pollock harvested by each of these vessels in the 1997 directed pollock fishery minus any obligation to the Federal government that has not been satisfied by the owner(s) of any such vessels. If a contract for a cooperative is filed, only the named vessels in section 208(e)(10) through (14) will receive the disbursement.

To provide NMFS with time to meet the statutory deadline for the $5,000,000 disbursement, applications from owners of vessels that are eligible under section 207(d)(2) must be received by December 15, 1998, to be considered for the disbursement. Regardless of the status of the cooperative, the applications from owners of vessels that meet the requirements of section 208(b)(8) will be used to establish eligibility to participate in the 1999 directed pollock fishery.

6. Application Table

The following table provides a quick reference for who should apply.

Owners of the category of vessels set out below must apply if they wish to . . .	. . . Fish in 1999	. . . Receive payments
Catcher Vessels named in sections 208(b)(1) through (7)	NO	YES [1]
Catcher Vessels eligible based on criteria in sections 208(b)(8)	YES	YES [1]
Catcher/processor vessels named in sections 208(e)(1) through (20)	NO	YES [2]
Catcher/processor vessels eligible based on criteria in section 208(e)(21)	YES	N/A

[1] Will receive payment only if no contract has been filed under section 210(a).
[2] If contract is filed under section 210(a), only vessels listed in section 208(e)(10) through (14) will receive payment. If contract is not filed under section 210(a), $5,000,000 will be divided among vessels that are eligible under sections 208(b) and (e)(1) through (20) based on the amount of harvest of pollock in the directed pollock fishery by each such vessel in 1997 in such a manner as the Secretary deems appropriate.

7. Application Information

Applications must be submitted to NMFS (see **ADDRESSES**). Applications for payments under section 207(d)(2) must be received by December 15, 1998, to be considered for disbursement. Applications submitted to NMFS must contain: (1) the name of the vessel; (2) the owner(s) of the vessel; (3) the business address(es) and telephone and FAX number(s) of owner(s); (4) the section of the AFA under which the vessel is eligible to participate; (5) the amount of pollock harvested in the directed pollock fishery in the BSAI in 1997; and (6) evidence supporting the amount of pollock harvested in the directed pollock fishery in the BSAI in 1997. NMFS will review applications submitted pursuant to section 208(h) and will issue temporary permits so that vessels may participate in the 1999 directed pollock fishery pending a final determination of eligibility.

8. Eligibility Determination

Eligibility to participate in the directed pollock fishery pursuant to AFA does not confer any right of compensation, monetary or otherwise, to the owners of vessels named specifically in the AFA or owners who submit applications. When NMFS is able to determine the status of vessels under the LLP, the privilege to participate in the directed pollock fishery will be revoked if a vessel is not eligible to participate based on the requirements of the LLP.

9. Paperwork Reduction Act Requirements

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act (PRA) and which has been approved by OMB under control number 0648–0366. Public reporting burden for this

collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**)

Authority: Title II, Pub. L. 105-277.

Dated: November 25, 1998.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-31956 Filed 11-25-98; 3:05 pm]

BILLING CODE 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398C]

Mid-Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Executive Committee, Law Enforcement Committee, Large Pelagics Committee, Comprehensive Management Committee and Tilefish Committee will hold public meetings.

DATES: The meetings will be held on Tuesday, December 15, 1998 to Thursday, December 17, 1998. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: This meeting will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA, telephone: 610-521-5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904, telephone: 302-674-2331.

FOR FURTHER INFORMATION CONTACT: Christopher Moore, Ph.D., Acting Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302-674-2331, ext. 16.

SUPPLEMENTARY INFORMATION: On Tuesday, December 15th, the Council will meet from 10:00 a.m. until 5:00 p.m. The Large Pelagics Committee will meet from 5:00-6:00 p.m. On Wednesday, December 16th, the Executive Committee will meet from 8:00-9:00 a.m. The Tilefish Committee and Law Enforcement Committee will meet simultaneously from 9:00-10:00 a.m. The Council, together with the Atlantic States Marine Fisheries Commission (ASMFC) will meet from 10:00 a.m. until 5:00 p.m. On Thursday, December 17th, the Comprehensive Management Committee will meet from 8:00-9:00 a.m. Council will meet from 9:00 a.m. until approximately 2:00 p.m.

Agenda items for this meeting are: Discussion and possible adoption of management measures for Atlantic mackerel, *Illex* and *Loligo* squids, and butterfish; review and adopt Amendment 1 to the Monkfish Fishery Management Plan (FMP) for Secretarial submission; review public comments and adopt the Spiny Dogfish FMP for Secretarial approval; review Highly Migratory Species (HMS) FMPs and make possible recommendations; develop plans for Tilefish FMP development for 1999; review Monitoring Committee recommendations and develop recommendations on summer flounder, scup, and black sea bass 1999 recreational management measures; discussion of commercial management measures for summer flounder, scup, and black sea bass; discuss plans for comprehensive management for 1999 and possible recommendation on scup discards; discuss law enforcement concerns regarding management measures for Mid-Atlantic FMPs; discussion and possible adoption of management measures for bluefish, species managed by the New England Council, and dolphin and wahoo, and other fishery management matters.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: November 24, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98-31994 Filed 11-30-98; 8:45 am]

BILLING CODE 3510-22-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.112598A]

Endangered Species; Permits

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

ACTION: Notice of receipt of application for a scientific research permit (1187).

SUMMARY: Notice is hereby given that Stephen M.H. Connett, St. George's School, has applied in due form for a scientific research permit (1187) to take listed sea turtles.

DATES: Written comments or requests for a public hearing on this application must be received on or before December 31, 1998.

ADDRESSES: The application and related documents are available for review by appointment in the following offices:

Office of Protected Resources, F/PR3, NMFS, 1315 East-West Hwy., Room 13307, Silver Spring, MD 20910-3226 (301-713-1401); and Director, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930-2298 (978-281-9250).

Written comments, or requests for a public hearing on this application should be submitted to the Chief, Endangered Species Division, Office of Protected Resources.

FOR FURTHER INFORMATION CONTACT: Michelle Rogers, Endangered Species Division, Office of Protected Resources, (301-713-1401).

SUPPLEMENTARY INFORMATION: Stephen M.H. Connett, St. George's School, requests a scientific research permit under the authority of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531-1543) and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217-227).

Mr. Connett has requested a five-year scientific research permit to take 200 loggerhead (Caretta caretta), 300 green (Chelonia mydas), 200 hawksbill (Eretmochelys imbricata), 5 leatherback (Dermochelys coriacea), 5 Kemp's ridley (Lepidochelys kempii), and 5 olive ridley (Lepidochelys olivacea) sea turtles annually in the Northwestern Atlantic Ocean for the purpose of obtaining life history data on all turtles captured, and determining migratory behavior and habitat utilization of juvenile turtles captured on foraging grounds. Turtles will be captured by hand and/or dip net, weighed, measured, flipper tagged, tissue

T. Smith
C-2

United States Senate

WASHINGTON, DC 20510

December 8, 1998

Richard Lauber
Chairman
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Dear Mr. Chairman:

The North Pacific Council must make recommendations this week to protect other fisheries that may be negatively affected as a result of the American Fisheries Act or the potential for fishery cooperatives in the Bering Sea/Aleutian Islands (BSAI) pollock fishery.

Section 211(a) of the American Fisheries Act requires the Council to recommend "such conservation and management measures as it determines necessary to protect other fisheries under its jurisdiction and the participants in those fisheries, including processors, from adverse impacts caused by the [American Fisheries Act] or fishery cooperatives in the directed pollock fishery." Section 211 (c)(2)(C) specifically directs the Council to "recommend measures for approval by the Secretary to eliminate latent licences under [the License Limitation Program]." In anticipation that a fishery cooperative might be formed by catcher-processors in 1999, the American Fisheries Act included specific measures to protect other fisheries and participants in this regard. The Act appropriately left to the Council, however, the responsibility to develop and recommend the measures that may be needed to fully protect other fisheries.

We urge the Council to make strong recommendations to the Secretary to protect other fisheries and fishermen and to eliminate latent licenses. If the Council cannot develop adequate long-term measures due to time constraints or its work on the Steller sea lion issue, then we encourage the Council to recommend emergency measures until the long-term measures can be developed. We appreciate your attention to this important matter and ask that you keep us informed of the Council's actions this week and anything we can do to assist in the matter.

Sincerely,

Senator Slade Gorton

Senator Ted Stevens

Senator Patty Murray

Senator Frank Murkowski

C-2

Groundfish Forum's recommendations for additional options for American Fisheries Act "Roadmap" 12/14/98

Option 8: Catcher vessel sideboards:

Page 4: Catcher vessel restrictions in other fisheries. Participation in co-op defined as **ANY** use of vessels' catch history whether by direct harvest, lease or stacking of quota. Groundfish Forum has been assured that this language offers protection from the situation where a catcher vessel SELLS its pollock rights. We have been told that this vessel would be subject to the sideboards that are eventually approved by the Council. We would feel more confident of this if the word sale was inserted in the list of activities following the word ANY. Groundfish Forum agrees that catcher vessel sideboards should apply only to vessels in a coop or where catch history is included in coop but the insertion of this language is key to our endorsement of this concept.

Page 5: When the CV Restrictions Should Apply.
Under 3, Insert an option to serve intent of Option 2 (Restrictions should apply to all non-pollock FMP fisheries). The Option 2 to apply sideboards to all FMP fisheries is meaningless unless this section includes an option to limit in some way pollock CVs catches or participation throughout the year ~~instead of necessitates a sub-option~~ under 3. Groundfish Forum recommends this sub-option be: sub-option3. CV restrictions to apply year round.

Page 5: Determination of "Traditional Harvest Level": Option B. discusses fully utilized fisheries and those that are not fully utilized because TAC not taken every year. Groundfish Forum suggests that PSC may always be limiting in some fisheries and rejects the TAC not taken as the definition of "not fully utilized". The Council may want to use different time frames to determine ~~establish~~ traditional harvest levels for pollock CVs, but this should have nothing to do with whether a fishery is "fully utilized" as defined here. Groundfish Forum recommends determination of whether a fishery is fully utilized should include notion that PSC can be fully and efficiently utilized without TAC being taken.

Page 5: . Management of Non-Pollock fisheries. Insert option that PSC is determined by means other than options developed by VBA committee. The Council may want to consider an assignment of PSC not related to VBAs because there is no guarantee that VBAs will be implemented given legal and other impediments. Addition option for assigning PSC limitations for pollock CVs should read: "PSC sideboards based on catch history in non-pollock fisheries at VIP rates for PSC or at some fraction of VIP rates for PSC. Further, Council should consider whether it would want PSC history from the cod fishery (a fishery that in some years has averaged 5% to be transferable to other non-pollock fisheries.

Action 10: Excessive Shares: Currently the roadmap views this as a long term action because there is no "time certain" on this action set out in the AFA. Groundfish Forum worries that failing to address this issue will greatly increase incentives for capitalization to "establish" shares before limitations are in place. We implore the Council to take up excessive shares for the non-pollock fisheries A.S.A.P. to avoid the "race for historical shares' and all the difficulties additional capital from these incentives will create for non-pollock fisheries, both for fixed and trawl gear.

C-2(A)

AGENT FOR:
[illegible]aska Challenger
[illegible]dog
[illegible]ky
Labrador
Retriever
Tuxedni

ALASKA BOAT COMPANY

A Division of Wards Cove Packing Company

P.O. BOX C-5030 • SEATTLE, WASHINGTON 98105
Phone: 206/547-2100 • Fax: 206/547-5056
Telex: 6734327 • E-Mail: 6041762@mcimail.com

AGENT FOR:
Alaska Rose
Bering Rose
Destination
Great Pacific
Sea Wolf

AFA ROADMAP #15

Members of the Council:

My name is Kenneth Tippett and I am fleet manager for Alaska Boat Company, which manages several trawlers and crab vessels.

I address you today on certain points of the American Fisheries Act. This involves historical catch levels of two vessels – the ALASKA ROSE and the BERING ROSE. These two vessels fished as catcher vessels for the offshore fleet during two of the three years used for determining the amount of pollock they may bring to an inshore co-operative. Section 210 (b)(1)(B) indicates that only shoreside deliveries count toward the co-op poundage. This severely reduces the poundage they may bring to a co-op. These vessels have a history of fishing pollock back to the early 80's. They fished joint venture, for offshore catcher/processor and for inshore. They are pollock trawl vessels that changed ownership in mid-1996 and were able to secure a steady market shoreside at that time. They are being unfairly punished for their previous owner's inability to find a long term steady market.

We feel a fair and equitable means of determining the co-op share for these vessels would be to allow them to use the tonnage caught offshore to determine their percentage for co-op purposes. The Council is afforded the power to change this by Sec. 213 (c)(3).

Additionally, we feel the three-year time period, 1995, 1996 and 1997, is overly burdensome. The best two years of three years to determine co-op percentage would be more equitable. This evens the playing field for those vessels that might have lost fishing time due to breakdowns, strikes, etc., to be able to pick the best two of three years. The Council has already set a precedent in the L.L.P. for crab by taking the more open view and using only one-year to receive a crab endorsement.

Thank you.

KAT/lw
Ken/council speech

Ken Tippett

Ralph Hoard / Earl Comstock
C-2

Fair Fisheries Coalition Recommendations for Agenda Item C-2, December 1998

Item #8 – Catcher Vessel Restrictions in Other Fisheries

The AP recommendations do not comply with the statutory language, which requires the Council to recommend "measures to prevent the catcher vessels *eligible under subsections (a), (b), and (c) of section 208* from exceeding in the aggregate the traditional harvest levels of such vessels in other fisheries under the authority of the North Pacific Council as a result of fishery cooperatives in the directed pollock fishery..." (emphasis added). **The plain statutory language establishes an aggregate cap for all catcher vessels *eligible* under section 208.** The phrase "harvest levels of such vessels" refers back to all catcher vessels eligible under section 208, as opposed to only those participating in coops.

The AP recommendation that the cap apply only to vessels actually participating in a coop is therefore in violation of the statute, and the Council should not adopt that limitation.

The Council should also clarify in adopting the AP recommendations for analysis that fishing for a particular species by all section 208 eligible catcher vessels will cease when the aggregate cap for that species is reached. This clarification is needed because the statute requires an aggregate cap at no greater than the traditional harvest level of all section 208 eligible catcher vessels. The AP recommendations suggest that only catcher vessel that participate in a coop would be restricted, which conflicts with the statute. Eligible inshore catcher vessels that elect to fish open access rather than coop are still the beneficiaries of a 42 percent increase in the pollock quota.

The Council should modify the AP recommendations on traditional harvest level and the definition of aggregate harvest level to base the cap on the percentage of the TAC harvested for each non-BSAI pollock species by all catcher vessels eligible under section 208.

The Council should also eliminate from analysis the AP recommendation that traditional harvest be expressed as degrees of effort measured in fishing days. All of the allocations made in the AFA are expressed in terms of percentages of the TAC. Use of fishing days would be difficult or impossible to enforce, and could result in serious reduction in harvest levels for non-section 208 eligible catcher vessels.

The Council should add to the AP recommendations an analysis of three different safeguard options to prohibit catcher vessels eligible under section 208 from harvesting: 1) any species of crab; 2) Gulf of Alaska groundfish (including GOA pollock); and 3) any fish or crab other than BSAI pollock.

With these modifications, the Coalition supports analysis of the AP recommendations for Item #8. **The Coalition also supports the AP recommendation regarding the definition of participation in a coop and the management of non-pollock fisheries.**

Item #9 – Protective Measures for Pollock Ineligible Processors

The Council should not adopt the AP recommendation regarding criteria that should be applied before adopting protective measures. The criteria would result in no action being taken prior to adverse impacts actually being demonstrated, which is contrary to the plain language of the AFA. Section 211 (c)(1)(B) of the AFA requires the Council to recommend *not later than July 1, 1999,* measures to "*protect* processors not eligible to participate in the directed pollock fishery..." The AP recommendation would make compliance with the AFA time frame impossible. Further, by definition a protective measure is prophalactic; it is simply not possible to know in advance exactly how the economic windfall from the transfer of fish onshore and the economic efficiencies resulting from coops will adversely impact non-eligible processors. However, there is no doubt that some adverse impact will occur.

The AP recommended that staff develop a discussion paper on 4 options to mitigate adverse impacts on non-pollock processors. **The Council should modify the AP recommendation to direct staff to develop proposals for the Council to consider in April on options 2 through 4.** Option 1 should be analyzed only if NMFS General Counsel can state for the record that the Secretary has the authority to open the closed class of processors established in section 208(f). **The Council should take action on an excessive processing share cap in April based on the analysis identified in Option 2.**

As part of option 3 the Council should clarify that the term "shoreside processor" in section 208(f) means either a facility onshore or a vessel located in a single geographic location in Alaska State Waters, and not a corporate entity in its entirety. This clarification is consistent with section 208(f)(2), which allows replacement in the case of "total or constructive loss of a shoreside processor..." There can be total or constructive loss of facilities or vessels, but not corporate entities (i.e., the Akutan plant versus Trident Corp.).

The Council should make two additions to the AP recommendations (as modified above). **First, the Council should extend the processing cap established under section 211(c)(2) to include GOA pollock and all other species of groundfish (other than BSAI pollock) as well as crab.** This extension is necessary to protect pollock and non-pollock processors in the Gulf of Alaska, as well as non-pollock processors in the Bering Sea.

Second, the Council should expand the processing cap to include owners of catcher processors eligible under section 208(e). While section 211(b) prohibits the use of catcher processors identified in section 208(e) for harvesting or processing in the Gulf of Alaska, or processing crab in the Bering Sea, these safeguards only apply to the vessels and not the corporate owners. This expansion is necessary to prevent the corporate owners from using the economic windfall obtained from the buyout of ineligible vessels or fishery cooperatives to unfairly compete against non BSAI pollock processors.

The Coalition supports the AP recommendation regarding a data gathering program.

Item #10 – Prevent Excessive Harvest/Processing Share

The Council should adopt the AP recommendation, and should task staff to develop the analysis for deliberation at the April meeting. This analysis should be combined with the analysis for option #2 under the AP recommendation in Item #9 for mitigating adverse impacts on non-pollock processors. **The excessive harvest and processing share caps are important safeguards that should be included under Item #9 in the Council's recommendations to the Secretary in June.**

With respect to the concerns raised by Alec Brindle in his letter of December 3, 1998, the Coalition points out that the safeguards they seek are not punitive and are based on the plain language of the statute. Section 210(e)(3) of the AFA *requires* the Administrator of MarAd to use a 10 percent ownership interest for determining a single entity in its analysis of excessive harvesting and processing shares. Further, section 210(e)(2) establishes 17.5 percent as the upper limit that the Council may establish for excessive processing shares, and clearly indicates that a percentage lower than that may be established by the Council (with any entity actually processing above such percentage grandfathered). Congress permitted the Council to establish lower caps to safeguard other processors and ensure competitive markets for fishermen, and it is appropriate for the Council to conduct analysis of 10, 12, 15 and 17.5 percent caps.

Item #12 – Measures to Mitigate AFA Impacts

The Council should not adopt the AP recommendation regarding the Alaska Groundfish Data Bank proposal to develop measures to create a closed class of processors in the Gulf of Alaska and limit who a fisherman or coop may sell their fish to. Regardless of the merits, **the Council does not have the legal authority under the AFA or the Magnuson-Stevens Act to implement an AFA exclusive quota fishery coop or closed processor class regime for the Gulf of Alaska.** (See attached legal summary)

The Coalition is sympathetic to the adverse AFA impacts the Alaska Groundfish Databank proposal seeks to address. The Coalition seeks to address those same impacts. However, the Coalition is concerned that a Council recommendation to analyze such a proposal will create even more adverse impacts. In order to protect their right to participate in a closed class regime, fishermen and processors will have no choice but to start or increase fishing and processing activities in the Gulf to establish their history in case such a regime is actively considered by the Council. Given the lack of clear legal authority (as was provided for BSAI pollock by the AFA), it would be counter to the best interests of the fishery and the Gulf for the Council to engage in a speculative analysis of such a proposal.

The North Pacific Fishery Management Council Lacks Authority to Implement a exclusive quota fishery cooperative or closed class of processors in the Gulf of Alaska

- Nothing in section 211 or 213 of the American Fisheries Act (AFA) grants the Council the authority to waive any requirements of the Magnuson-Stevens Fishery Conservation and Management Act (MSA). To the contrary, sections 213(a) and 213(c) of the AFA state that actions by the Council and the Secretary to supercede or extend the provisions of the AFA must be done in accordance with the MSA.

- The AFA establishes a specific regime for the Bering Sea pollock fisheries. The AFA was needed because that regime could not be established by the Council under the MSA. While sections 211 and 213 do grant the Council broad authority to supercede elements of the AFA Bering Sea pollock regime in order to mitigate adverse impacts on fishermen and non-BSAI processors, that authority cannot be interpreted to waive requirements of the MSA.

- Section 303(d)(1)(A) of the MSA prohibits the Council from recommending, and the Secretary from approving, any individual fishing quota program prior to October 1, 2000. An individual fishing quota is defined in section 3(21) of the MSA as a percentage of the total allowable catch that may be held for exclusive use by any person. A person is defined in section 3(31) of the MSA to include any "association or other entity." A person under the MSA includes a fishery cooperative.

- A recommendation by the Council to establish a fishery cooperative similar to the cooperative established for Bering Sea pollock in section 210(b) of the AFA would clearly violate the IFQ prohibition in section 303(d) if made before October 1, 2001, due to the set aside of fish for the exclusive use of the fishery cooperative.

- Likewise, a recommendation by the Council to establish a closed class of processors would exceed the Council's authority under the MSA. Such a proposal would violate several National Standard requirements set forth in section 301 of the MSA, including National Standard 4 requirements that the provision be "fair and equitable," "designed to promote conservation," and not result in an "excessive share" for any individual; the National Standard 5 prohibition on any conservation and management measure that has "economic allocation as its sole purpose;" and National Standard 8 requirements to ensure "sustained participation of communities" and "minimize adverse economic impacts."

- Further, it is not clear that the Council has the authority under section 303(a) or section 303(b) to establish any limitation on processor entry. The authority in both of those sections specifically distinguishes between measures applicable to fishing and fishing vessels and those applicable to fish processors and "participants in the fishery." Compare sections 303(a)(4) and 303(a)(5) and sections 303(b)(1)(C), 303(b)(2), 303(b)6), and 303(b)(7), which explicitly reference fishing, fishing vessels, fish processors, and participants in a fishery.

- Fishing under section 3(15) does not include processing. See section 3(17)(B) which explicitly refers to processing as an "activity related to fishing." Section 3(41) defining United States fish processors explicitly distinguishes between facilities and vessels. The result is that the Council could, if necessary for conservation or management of a fishery and consistent with the National Standards, create a closed class of processing vessels. However, it does not have authority under the MSA to create a closed class of processing facilities.

Gulf of Alaska Coastal Communities Coalition, Inc.

P. O. Box 201236
Anchorage, Alaska 99520
December 13, 1998

Testimony before the NPFMC on S. 1221, The American Fisheries Act

Thank you Mr. Chairman, members of The Council. For the record, my name is Thomas H. Abel, I am the Chairman of the Gulf of Alaska Coastal Communities Coalition. I am here to provide you with our opinions and our recommendations on S. 1221, The American Fisheries Act.

You have heard from many erudite and experienced people on the Act already; and, I hope that my remarks might add to what has been already said and illuminate some of the points made in our letter, which has been presented to you. On September 24, 1998 we began focusing much of our energy and resources on S. 1221. Despite our best efforts, most of our recommendations were not in the version passed. Our recommendations are expressed in the attachments to our letter.

We reiterate to you here today the same concerns we related to our Senators, that our organization remains adamantly opposed to any spillover effects in the Gulf of Alaska. In our opinion it is imperative that the unknown impacts on coastal communities be first identified and the impacts analyzed before regulatory changes are proposed for promulgation. Coupled with the potential for draconian measures to ensure Stellar Sea Lion protection and the economic disasters which would follow, it is surely incumbent upon the Council to develop and propose to the Secretary not only recommendations which have the least adverse impacts; but to also develop and propose recommendations which would benefit those fisheries dependent communities.

We believe that it is within the Council's mandate to protect our fisheries dependent communities from adverse impacts; and, to ensure that unknown impacts are, to the extent possible, clarified and any adverse impacts eliminated or mitigated. For instance, as drafted, it would appear that section 211(b)(4) would tend to create zones of exclusivity for some processors. Also, it would appear that some processors would be limited or excluded from other areas. We believe that it is incumbent upon the Council to establish some means of gathering, collating, correlating and analyzing and utilizing the necessary or pertinent data, be it scientific or anecdotal, before establishing rights in fisheries which may have long term adverse effects not only upon those communities dependent upon marine resources for their economies; but also for those processors excluded from participating in the economic benefits of a public common resource.

We ask and recommend that the NPFMC exercise the authority granted under sections 211(a) and 213(c) for the purposes of subjecting the provisions of section 211(b)(4), and any other provisions which would cause or allow "spillover" effects in or on the Gulf of Alaska, to the NPFMC review process, specifically that the NPFMC first conduct the

requisite socio-economic impact analysis in order to first ascertain what the impact on the fisheries dependent communities would be; and, second, the Council create a body to look at community impacts created or caused by S. 1221 and provide recommendations to the NPFMC for consideration before regulatory changes are begun.

Section 211(a) appears to provide latitude for the Council to make recommendations designed to mitigate or prevent any adverse impacts caused by the Act on, *"...other fisheries...and participants in those fisheries...."*

Section 213(c) allows the Council to make recommendations which may supersede the provisions of the title, save sections 206 and 208. (These sections are also identified as eligible for future consideration by the Council.) We understand this to say that the Council may subject implementation of parts of S. 1221 to the normal public process, provided that the justifications set forth in the law are met. Those criteria would appear to be , *"...for conservation purposes or to mitigate adverse effects in fisheries or on owners of fewer than three vessels in the directed pollock fishery,...."*

Our understanding is that these clauses were inserted to allow an avenue for concerned groups such as the Gulf Coalition to work with the Council to make the American Fisheries Act better legislation.

As we have stated previously in various papers, statements and presentations, there is already a potentially devastating economic situation developing in the coastal communities on the Gulf of Alaska; and, we do not believe that it was the intent of Congress to make an already bad situation worse. We do not believe that it was the intent of Congress to cause adverse impacts on our communities. Yet, if the provisions which affect the Gulf of Alaska are implemented without consideration of impacts on the communities, such will be the result. Coupled with the Stellar Sea Lion issue S. 1221 has the potential to devastate, if not eliminate entirely, the locally based community fisheries.

To reiterate, Stellar Sea Lions and adverse impacts caused by S. 1221 spillover effects have the potential to devastate some local economies which are already in a fragile state due to low prices and other cumulative negative impacts such as increased costs, loss of markets to farmed fish, not to mention federal and State budget cuts. There are already five communities on the GOA coast which face closure of their schools and extinction. We recommend that the Council work in concert with any other socio-economic work being conducted in order that we all benefit from work which is more in depth rather than duplicative. A timely analysis would help focus discussion and provide a firm basis for forwarding mitigating recommendations to the Secretary.

In addition to the comments above I believe that it would be helpful if the members of the Council would refer to mandates and provisions of the Magnuson-Stevens Fisheries Conservation and Management Act (MSFCMA) in its decision making process, particularly as it relates to coastal communities. MSFCMA now defines a, *"...fishing community..."*, as, *"...a community which is substantially dependent on or substantially*

engaged in the harvest or processing of fishery resources to meet social and economic needs...." We believe that our communities should be afforded at least the same protections as those granted to Pacific Insular Areas in MSFCMA; namely, that they, "*...be explored, developed, conserved, and managed for the benefit of the people of such area and for the benefit of the people of the United States.*"

As we have expressed, our organization is community based and focused on fishery issues. We have members from Akutan to Metlakatla; and, we intend to increase our membership to encompass all 60 communities in some way. Our wide geographic area includes many climate differences, geographic differences and cultural, as well as economic, diversity; therefore, we request that, should a group be created or formed, that we be considered for membership, remembering that we cover a wide range of territory and our respective areas may have differing needs. We would hope that, if a decision to form such a group is made, that we would have adequate time to forward names in nomination to you for consideration.

I would make two other comments here Mr. Chairman. First, I am sure you noticed that we did not comment on the Stellar Sea Lion issue. Our communities did that themselves; and, we support them. Secondly, we are aware of and in support of the efforts made by the Fair Fish Coalition; and, we intend to work closely with them as well as with the environmental community.

In closing let me reiterate what I said before the Advisory Panel. We are here to vigorously and assiduously represent our membership and to fully participate in the public process. We intend to become a valued, if not always agreed with, part of your process; and, we hope that together with yourself, the committees and other participants that we might jointly develop good sound public policy.

Thank you Mr. Chairman, members of the Council. If there are any questions I would be happy to answer them.

Ralph Hoard/ Earl Comstock

C-2

WESTERN ALASKA CRAB PROCESSING HISTORY

(some dates are approximate)

Late 1940s to Early 1950s

"Deep Sea" (Wakefield) first king crab processing. Did both catching and processing from Dutch to Slime Bank to Adak and back.

Mid 1950s

"Deep Sea" (Wakefield) stayed in Akutan to process.

Mid 1950s to Early 1960s

"Reefer King" (Wakefield) was second in the business after "Deep Sea". Started processing in Atka and later to Akutan and False Pass.

Early 1960s

"Mercator"/"Alaska Trader" (Pan Alaska); "Theresa Lee" (Resoff); "Deep Sea" (Wakefield) processed crab from Kodiak to Dutch to Adak.

Cap Thompson operated the "Little Dipper" barge in Dutch where Unisea is today. Stopped operating about 1969.

The "Nelco I" (later "Sea Producer") operated in Adak for the Nelson Brothers until about 1966.

The "Akutan" (Wakefield) started in Port Wakefield in 1962 and soon thereafter went on the Dutch/Adak circuit.

Late 1960s

Wakefield buys Captains Bay plant from San Juan Seafoods.

Pan Alaska shore plant started in 1966.

Aleutian Cold Storage in Sand Point (leased by Wakefield) started processing.

PAF's plants in King Cove and Squaw Harbor started processing.

"Alaska Shell" (Ritter/Jones) started in Jap Bay and then to Mitrofania and finally ended up in Akutan in 1972.

Late 1960s, cont'd

"Kalakala" (Resoff) processed a year or two from the Robinson property in Unalaska.

HUNT WESSON buys Wakefield in 1968.

"Aleutian Fjord' (Fufford) joins in Dutch to Adak processing run.

1970

Vita (**BROWN AND WILLIAMSON**/Gilmans) opens in Dutch with the "Vita" and "Viceroy".

Wakefield starts processing at their Captains Bay shore plant.

1971

"Northgate" (**WESTGATE**, San Diego) started in Kodiak and then ran the Dutch-Adak processing route until All Alaskan bought in 1976.

Bendiksen starts processing crab from Dutch to Adak on the "Eastpoint".

Pan Alaska leases the "Aleutian Fjord" to process crab at Adak.

1972

New England Fish Company buys the "Theresa Lee" from Resoff/ American Freezerships/**W.R. GRACE** and processes crab from Dutch to Adak.

Resoff starts Sea Alaska Products at Dutch and Adak using the floaters, "Sea Alaska" and "Sea Producer".

Pan Alaska converts "Seafreeze Atlantic" to crab and renames "Royal Sea". Processed mainly in Dutch area.

1973

"Royal Alaskan" added to Pan Alaska's Dutch to Adak processing capacity.

Trident buys the "Aleutian Fjord" ("Mr. J") and starts processing crab in Akutan.

"Deep Sea" sold to Sjong, Boggs and partners and remained processing in Akutan. Boggs takes over in 1981.

1973, cont'd

Whitney Fidalgo (**KYOKUYO**) starts processing in Dutch with the "Mokahana" at the Robinson site and later at Margaret's Bay site.

1974

Unisea (**NIPPON SUISAN**) started at Dutch with the "Unisea" and "Galaxy".

Trident starts first catcher/processor, the "Billiken" in the Bering Sea.

Alaska Shell (Ritter/Jones, et al) started processing in Akutan on the "Alaska Shell".

Last year of major red crab fishery in Adak.

1975

Pan Alaska sold to **CASTLE & COOKE**.

"Aleutian Monarch" (Rasmusson, et al) operation starts in Beaver Inlet.

Pan Alaska starts processing on "Royal Venture" ("Pacific Shrimper") in Bering Sea/Dutch areas.

1976

All Alaskan buys the "Northgate" and starts processing crab in Akutan.

Unisea (**NIPPON SUISAN**) buys out Vita from **BROWN & WILLIAMSON**.

Jerry Anderson starts processing crab on the "Clipperton" in False Pass and later Akutan.

Pacific Pearl (**AMFAC**) bought Wakefield from **HUNT WESSON**.

Francis Miller operates the catcher/processor "Priscilla Ann" in the Bering Sea.

1977

Alaska Shell adds the "Northern Shell" to their Akutan operation.

1977, cont'd

Sea Alaska Products adds the "Robert E. Resoff" to their Dutch Harbor processing.

Whitney Fidalgo (**KYOKUYO**) adds the "Whitney" to their Dutch Harbor processing operation.

Eastpoint opens their Dutch Harbor shore plant.

Pacific Pearl (**AMFAC**) opened new shore plant in Dutch.

1978

Trident starts processing at their Akutan shore plant.

"Ultra Processor" (Alaska Packers/**DEL MONTE**) starts processing in Akutan.

"Tempest" added to Trident's processing fleet.

1979

Sea Alaska Products sold to **CONAGRA**.

Icicle starts crab operations in Akutan with "Arctic Star" and "Bering Star".

"Northland" (Nori) started processing in Akutan.

"Pacific Pride" (Dick Johnson, et al) processes in Port Moller.

Arctic Alaska starts processing crab on its catcher/processor fleet, starting with the "Alaskan Enterprise".

1980

"Mr. B" starts processing for Eastpoint in Dutch.

Pelican (**NORTON CLAPP**) bought Sand Point plant from Pacific Pearl (**AMFAC**).

Francis Miller operates "Arctic Producer" in Beaver Inlet and English Bay for two years, after this the vessel became the "Arctic Enterprise" and never processed crab again.

1981

Trident opens new shore plant in Akutan (after fire).

Unisea (**NIPPON SUISAN**) buys Pacific Pearl plant in Dutch from **AMFAC**.

1982

Alaska Packers/**DEL MONTE** sells/leases assets to **CONAGRA**.

Trident buys "Neptune" ("Ultra Processor").

1986

Trident buys Sand Point plant from Pelican (**NORTON CLAPP**).

"All Alaska" goes on the rocks in the Pribilofs.

"Yardarm Knot" (Chaffee, et al) buys vessel from Whitney Fidalgo and starts processing in Bering Sea.

Arctic Alaska goes public.

1987

Sea Alaska sold to Trident and merged with **CONAGRA**. "Alaska Packer" added to Trident's processing capability.

NorQuest and Deep Sea started processing on the "Aleutian Falcon" in the Bering Sea.

Royal Aleutian started in Dutch by buying the "Whitney".

1988

Pribilof Island Processors (PIP) started on St. Paul by Scott Sasaki in Anderson plant on a small basis. Expanded production in 1991 and in 1993.

Icicle starts processing on "Arctic Star" in Dutch.

1989

New "All Alaska" in service in Bering Sea.

Icicle starts processing on "Coastal Star" in Bering Sea.

1989, cont'd

"Blue Wave (Peter Pan//**NICHIRO**) starts processing in Dutch.

1990

CASTLE & COOKE sold Pan Alaska Dutch Harbor plant to Wards Cove/**MARUBENI** who started Alyeska, along with **MARUHA**.

"Ocean Pride" started processing for Ocean Beauty in Bering Sea.

"Omni Sea" ("Royal Venture") added to Unisea's (**NIPPON SUISAN**) processing capability in the Bering Sea.

Arctic Alaska sold to **TYSON**.

1991

Westward Seafoods (**MARUHA**) starts in Dutch.

"Northern Alaska" ("Northern Shell") starts processing for All Alaskan at St. George.

HILLSDOWN invests in All Alaskan.

"Independence" added to Trident's processing vessels.

1992

SnoPac starts processing on the "SnoPac" at St. George

Dragnet Fisheries started processing with "Alaskan I" in the Bering Sea.

1993

NorQuest buys out Deep Sea in "Aleutian Falcon".

"Stellar Sea" (Peter Pan/**NICHIRO**) starts processing in the Bering Sea.

1994

Scott Sasaki expanded operation to St. Paul harbor and ran in conjunction with Anderson plant. Now called UniPak.

Icicle starts processing on St. Paul with the "Arctic Star".

1994

"Blue Wave" (Peter Pan/**NICHIRO**) starts operation on St. George.

Unisea (**NIPPON SUISAN**) takes the vessel, "Unisea", to St. Paul for processing.

1995

Trident buys UniPak plant on St. Paul.

1998

"Northern Victor" starts processing crab in Beaver Inlet.