Executive Director's Report

Report on Chair/ED meeting with NMFS

Week before last Chairman Benton, Vice-Chairman Austin, and myself attended the annual Council Chair and Executive Directors meeting hosted by the Carribean Fisheries Management Council. All the Regional Councils were represented, along with representatives from NOAA Fisheries including, Dr. Bill Hogarth, Rebecca Lent, and Jack Dunnigan. A number of national level issues were discussed including: MSA reauthorization; Regulatory Streamlining Process (RSP), which is still under development and will have implications for our process (see attachment under D-3); NOAA and Council budget issues; National Standard 1 guidelines; separation of the Science Centers from the Regions; EFH/MPA issues; recent litigation issues; Coast Guard role; our national conference in DC this fall; and, generally, responding to recent news articles and reports regarding fisheries management. A meeting summary will be provided to the Council when it becomes available.

Update on DC Conference

At the Council Chair/Executive Director's meeting, one of the major topics of discussion was our national conference to be held this fall in Washington, D.C. We discussed a number of issues related to that meeting, and a revised meeting format/agenda was developed. An initial press release came out in mid-May, and it is attached as Item B-1(a), along with a revised meeting format/agenda summary. We are in the process of finalizing invited speakers, panel participants, and a number of other specifics. We are also developing a WEB-site for conference information and registration which should be up and running by the end of June. Additional information and details will be forthcoming as things develop further.

Report to Congress on Crab Rationalization

Following the April Council meeting, where we finalized the trailing amendments related to crab rationalization, we completed an addendum report to Congress which was sent to Congress and sent out in a Council mailing. The draft EIS, which was originally scheduled for review at this meeting, is now in the final stages of completion - we need to determine whether to hold this document for review this fall, or go ahead and make it available to the public, as well as to Congress, recognizing formal review would occur by the Council at a future meeting this fall, prior to release as a formal draft EIS for public comment. By this fall we hope to have Congressional action which would authorize various aspects of the program, and place us in a better position to identify the Preferred Alternative for formal public comment.

Subsistence Halibut C&T Findings

As you probably have heard by now, halibut subsistence regulations became effective on May 15, 2003 (68 FR 18145). These were based on recommendations made by the Council in October 2000, to allow "the non-commercial, long-term customary and traditional use of halibut." The final rule for the program is attached as Item B-1(b). By definition, subsistence halibut is "halibut caught by eligible individuals for direct personal or family consumption as food or customary trade." "Customary trade" is "the non-commercial exchange of subsistence halibut for anything other than items of significant value." Under customary trade, subsistence halibut may **not** be used for commercial purposes, and may **not** be sold or otherwise enter commerce. A qualified subsistence fisher may engage in customary trade through monetary exchange limited to $400 per year. As of June 3, 2003, nearly 4,000 subsistence fishery permits (2,081 rural; 1,838 Tribal) have been issued. A trailing amendment, which was partially based on BOF recommendations, was adopted by the Council in April 2002. Regulations to implement those changes have not been drafted.

Since the fishery opened, Council and NMFS staff have received numerous calls and e-mails from Alaska communities/residents who are ineligible for the program and are seeking inclusion. Most of these calls are from residents of rural places with fewer than 25 people, below the minimum for identification as a census designated place (e.g., Funter Bay on Admiralty Island, Herring Cove near Saxman, Port Tongass Village near Ketchikan). Other ineligible communities are census designated places near others that are eligible (e.g., Naukati Bay on Prince of Wales Island). Residents of Ninilchik, Cooper Landing, and Nikolaevsk also wish to be included. An ineligible Tribe (Qutekcak Native Tribe) in Seward also seeks inclusion. Staff began directing these calls to the Alaska Board of fisheries and Federal Subsistence Boards, according to Council policy for those rural residents and Tribal members not included on the original lists. Staff have received notification from staff of both boards that neither is willing to accept proposals of appeal (i.e., to determine C&T findings) to the Council's lists of eligible rural places or Tribes[1]. In the absence of a working appeals process for ineligible rural residents or tribes, Council staff has advised individuals to submit letters of appeal directly to the Council. These are attached to this memo (Item B-1(c)).

Two issues warrant Council attention. The first is the Council's appeals policy, since neither the BOF or FSB will accept proposals on the Council's behalf. We need to determine whether and how to set up such a process. Initially, I propose that we include this item for discussion by our Joint Protocol Committee and see whether they can come up with a recommendation. The second is the monetary customary *trade* limit and the issue of *sale* of subsistence halibut. Prohibition on sale of subsistence-caught halibut was of great concern to the Council. A report of sale of subsistence-caught halibut was in the May 30, 2003 edition of the *Kodiak Mirror*. While Council intent is clear in the proposed and final rule that commercial sale of subsistence-caught halibut is not allowed, NOAA Fisheries Enforcement advised at the time of Council action that the limit was not enforceable for increments less than $400 that eventually exceed the upper limit. Enforcement staff currently advises that the sale of subsistence halibut is considered a legal activity, as they are unable to distinguish between customary trade for cash, and sale. If the Council wishes to revisit these issues, in terms of possible regulatory changes, we will need to put this on the agenda for a future meeting.

A third issue relates to groundfish bycatch in the halibut subsistence fishery in state waters, which will be addressed under the NMFS management report (B-3).

Rockfish/other species Committee

This is simply a reminder that the Council intends to appoint a Committee to interact with staff working on management options relative to the non-target species categories (other species, breaking out species assemblages, sharks and skates, etc). There will be a report later on this agenda on their progress, and it looks as though progress will be sufficient by this fall to bring in the Council Committee. Nominations for this Committee are due by June 20.

Horrors of the Deep and PEW Commission report

Several articles have appeared recently regarding status of fisheries and/or fisheries management, including "Horrors of the Deep", courtesy of the Marine Fish Conservation Network, and the report from the PEW commission. I have provided copies of both of these (Item B-1(d) and Item B-1(e)), respectively. We have not responded to either report, either directly or in the form of our own press release, but may wish to do so following this meeting.

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[1]On May 20, 2003, USFWS staff sent a letter to Mr. David Tyner of Ninilchik clarifying that Ninilchik did meet the FSB criteria for rural and halibut customary and traditional use.

NAEP Award to AK Region and Council

In late May, the National Association of Environmental Professionals (NAEP) announced that they are awarding their 2003 award for environmental excellence in NEPA to NOAA Fisheries Alaska Region and the North Pacific Fishery Management Council for our Steller sea lion protective measures SEIS. This project was chosen from over 50 nominations from various agencies around the country. In addition to the SEIS itself, the award committee was impressed with the open public process that we employed, including the use of a unique stakeholder constituent committee to develop the alternatives. The award ceremony will take place on June 24 in San Antonio, TX in conjunction with their annual meeting. By coincidence, your Executive Director will be in San Antonio that week on family vacation and could represent the Council at the ceremony.

Aleutian Islands Pollock Issue

In October 2002 the Council reviewed an analysis of trailing amendments related to SSL protective measures, which included alternatives related to re-opening the Aleutian Islands area to directed pollock fishing (under 2001 measures previously approved, the AI pollock fishery would automatically re-open in 2003). In October 2002 the Council voted to maintain the AI pollock closure for an additional year (through 2003), and requested a number of additional items for analysis to be reviewed in April 2003. It was not possible to complete all of the additional analyses requested by the Council due to other priorities, and in April 2003 we reviewed a letter from NMFS suggesting that much of the analyses requested by the Council would be contained in other ongoing analyses and agency initiatives, including the remand process for the 2001 BiOp and the current DPSEIS. That letter, and the October 2002 motion by the Council, are attached as Item B-1(f).

The analysis that was in front of the Council last year is also in your notebooks as B-1 Supplemental. In April 2003 you requested that we discuss this issue again in June, and determine whether we needed to pursue a separate, expanded analysis to address the issues contained in the Council's October 2002 motion, which go well beyond the specific issue of impacts to Steller sea lions. The existing analysis determines that re-opening the Aleutian Islands to pollock fishing (assuming seasonal splits) is within the bounds of the approved RPA measures and would not require Section 7 reconsultation. As it now stands, the AI pollock closure is being effected through the specifications process (setting TAC at bycatch-only levels), and given current pollock ABC levels in the eastern Bering Sea, along with the 2 million mt OY cap, it is likely that this process would continue to work for at least the next few years. However, the Council may wish to make the closure more explicit for conservation and management reasons that are in addition to any Steller sea lion related concerns. If so, this issue would likely need to be considered again under staff tasking, as it would constitute a significant commitment of Council and NMFS staff resources.

Resolution on Halibut Bycatch Donation

Item B-1(g) is a copy of a resolution from the State Legislature requesting that NMFS and the Council support issuance of a Prohibited Species Donation permit, using halibut bycatch from vessels with observers. We raised this issue back in April, noting that existing IPHC regulations prohibit the retention of trawl-caught halibut. I'm not sure what we can do with this request, other than forward it to the IPHC for further consideration.

Events this week

On Wednesday the 11th at noon, Governor Murkowski will address the Council and public, and will take the opportunity with this audience present to sign a few pieces of key fisheries legislation. Wednesday evening starting at 6:00 pm there will be a community reception at the Elks Lodge. During that reception we will also devote some time to recognize departing Council members.

On Thursday, beginning at around 5:30 pm here in the Council meeting room, there will be a presentation, and question/answer session, from the U.S. Department of Agriculture. Under-Secretary of Agriculture, Mr Bill Hawks, and others will be on hand to discuss pending regulations related to seafood labeling. This session should be of high interest to many Council and AP members, and to the numerous folks on hand from various corners of the seafood industry.

On Friday afternoon Dr. Bill Hogarth will be addressing the Council and industry during a constituent workshop starting after lunch and continuing until about 5:00 pm. This will be continued Friday evening in the form of a reception from 6:00 to 8:00 pm. On Saturday evening at 6:00 pm in the Harbor Room at the Kodiak Inn, the Coast Guard will hold a listening session seeking input from all sectors of the fishing industry on it fisheries law enforcement strategy. A notice and summary related to those workshops is attached as Item B-1(h).

Fisheries Management
MEDIA ADVISORY

FOR IMMEDIATE RELEASE
May 20, 2003

Contact: **Susan Buchanan**
301-713-2370

SAVE THE DATE!

Nation's Federal Marine Fisheries Managers to Host Fisheries Conference in November

Mark your calendar and save the date to attend the first-ever fisheries management conference co-sponsored by the eight Regional Fishery Management Councils and the National Marine Fisheries Service (NOAA Fisheries). The conference is open to the public and will be held in Washington, D.C., Nov. 13-15, 2003.

The conference, titled *Managing Our Nation's Marine Fisheries – Past, Present, and Future*, promises to be an educational and insightful experience. Whether you are a fisherman, an environmental advocate, a policymaker or a reporter who covers the fisheries beat, you will find the conference sessions to be pertinent and informative as Congress considers the re-authorization of the Magnuson-Stevens Fishery Conservation and Management Act, which governs management decisions for our nation's marine fisheries.

The conference aims to educate the public and the media on the fishery management process and current management research initiatives, and to help bridge the gap between perception and reality regarding management of our nation's fisheries. The conference also will provide a forum for information exchange and examination of a wide range of perspectives on future management and marine research directions.

Whether you are interested in regional bycatch issues, have concerns about human impacts on fish habitats, want to learn more about ecosystem management, marine research or conservation of protected species, you will find what you are looking for this November in Washington, D.C.

The conference will offer the opportunity to meet with Council executive directors and chairmen, as well as others involved in living marine resource management.

Conference Logistics
When: November 13-15, 2003
Where: Omni-Shoreham Hotel and Conference Center, 2500 Calvert Street, Washington D.C.
Registration: Advance registration requested. Attendance is free of charge.

Don't miss this opportunity! We will send you more information when the conference web site is posted and online registration is available.

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WESTERN PACIFIC REGIONAL FISHERY MANAGEMENT COUNCIL

South Atlantic Fishery Management Council

New England Fishery Management Council

MID-ATLANTIC FISHERY MANAGEMENT COUNCIL

CFMC

Gulf of Mexico Fishery Management Council

NOAA Fisheries

DRAFT (revised May 27, 2003)

Outline for Proposed Conference in D.C. - November 2003

Conference Title: 'Managing Our Nation's Marine Fisheries - Past, Present, and Future'. Format (draft attached) will be keynote speakers, followed by regional perspective from each Council/Region; followed by workshop/panel discussions on specific issue areas. Other activities or sessions may run concurrently.

Objective: (1) to educate the public, policy makers, and media on the fishery management process, successful management examples by region, protected resource issues, and current management and research initiatives; (2) to help bridge the gap between perception and reality regarding our management of the fisheries; and, (3) to provide a forum for information exchange and to solicit a wide range of perspectives on future management and marine research directions.

Sponsors: Regional Fishery Management Councils and NOAA Fisheries will be sponsors. NPFMC will take the lead on conference planning and logistics, with assistance from an Organizing Committee.

Dates/venue: The Conference will be November 13-15, 2003, at the Omni-Shoreham Hotel and Conference Center, 2500 Calvert Street, Washington, D.C.

Target Attendees: We expect to attract Congressional members and their staffs, U.S. Ocean Commissioners, PEW Commissioners, fishing industry, environmental organizations, Native/Community interests, regional Council members and staff, federal and state fisheries agencies, academics, researchers, interested public, and media.

Funding: Funding would come from contributions by sponsors (regional Councils and NOAA Fisheries). NPFMC proposes to cover the majority of direct conference expenses (meeting rooms, logistics, proceedings, invited speaker travel, coffee, banquet, etc). Each Council/NOAA may need to contribute minimal amount, 5k to 15k for example. Each Council/NOAA would have to cover travel/hotel room/per diem expenses for their attendees. We currently have a total of 250 rooms blocked at a conference rate of $179/nite.

Key Assumptions: We need to make this more than a 'press conference' - we want to highlight the success of the current system, but we have to make this a forum to accommodate discussion and different perspectives for future actions. NOAA Fisheries must be involved as partner in this conference.

Key Logistic Questions: How best to get the conference publicized well in advance? How do we ensure that our target audiences participate? How will we utilize the results of the conference?

NOAA Public Affairs is taking a lead role in the public notification/media aspects of the conference, with the help of a Communications SubCommittee (led by Susan Buchanan and Marla Trollan). Work is progressing in the following areas:

-An initial press release announcing the conference. Expected by end of May. Detailed press release will follow.

-Development of a conference logo and creation of a conference WEB-site. Alaska Region has offered to be the creator and caretaker of this WEBSITE, which will be linked to all council and NOAA sites. either one of the Councils or NMFS with links to all. Can be updated as events get firmed up. Target end of June for this to be on-line.

-Develop a conference brochure for public distribution, press, etc.

-Develop article for trade magazines and fisheries publications.

-Direct contact with the media (Council and NOAA public affairs).

-Specifically distribute word to some of our primary target audiences listed above. Particular focus on Congressional attendance.

-Send out formal invitations to keynote speakers/panel moderators/panel participants. Panel participants to be determined by end of May.

-Coordination of conference registration, fun activities, and conference goodies. No registration fee, but charge (to be determined) for the evening reception/banquet.

-Planning for post-conference book of proceedings. Need to determine whether NOAA can underwrite publication of this book. Details forthcoming on proposed format.

REVISED DRAFT FORMAT/AGENDA (revised May 27, 2003)

First half of Day 1 devoted to welcome and keynote speaker, and to an opening panel titled "Fisheries Governance". Opening remarks by Council representative and Under-Secretary of Commerce, Admiral Lautenbacher/Dr. Hogarth (invited). Keynote speaker for Day 1 (invited) would be Senator Ted Stevens. Governance panel will be key to set the stage and would include one or two representatives from US Ocean Commission, two Council reps, NOAA fisheries reps (management and/or science), and two or three others (industry, NGO, etc), and a moderator. This panel will not focus only on perception gap, but would address basic fisheries governance issues, guided by specific questions. Moderator will be key, and we may also include invited, privileged questioners, which would feed into wrap-up panel. Key will be to get Congressional types and their staffs to attend, as well as media.

Latter half of Day 1 devoted to 8 regional presentations at about half hour each. Overarching theme would be where we've been, where we're going, and gap between perception and reality. NOAA Fisheries regional perspectives could be integrated into these regional presentations – NOAA Fisheries national perspectives could be addressed separately, as part of opening remarks/keynote, or as a separate presentation. NOAA fisheries will also be represented on various panels. Evening reception/banquet would also include a keynote speaker (and Days 2 and 3 would also kick off with keynote speakers) - Keynote speakers (invited) to include a representative from the US Ocean Commission, Coast Guard Commandant, and Congressional representatives. We will attempt to invite other high-profile persons.

Day 2 devoted to keynote speaker and 6 panel discussions (some concurrently). We will also have a separate 'press work room', where impromptu interviews can be held and where media reps can work and have access to phones, faxes, modems, etc. We will also have space (either a separate room or hallway) where poster presentations will be welcomed, and/or where informational booths can be set up (this latter is optional and needs further discussion).

Day 3 devoted to keynote speaker, wrap-up panel, and closing remarks. Focus on this wrap-up should be gathered from previous panels, but should focus on identifying and discussing where we can do better.

Other notes:
-specific panelists will be determined by Organizing Committee with input from Executive Directors and NOAA reps.
-need special effort to invite and get confirmation from key attendees.
-posters must focus on conference panel themes.
-funding needs to be further discusses, including potential NOAA $ support.
-post-Conference publication will be crucial.
-perception vs reality should be overarching theme of each panel.
-impacts to fishing participants and communities needs to be integrated.

Thursday, November 13 - Plenary Session Main Ballroom - 8:00 am to 5:30 pm

8:00 am to 8:45 am - Opening remarks from Council rep/Lautenbacher/Hogarth
8:45 am - 9:15 am - Senator Stevens Keynote
9:30 am - noon – Major panel on Fisheries Governance:
Intent is to have a panel consisting of one or two US Ocean Commissioners, two Council representatives, NOAA representatives (manager and/or scientist), and two or three other invited participants (to be determined - maybe one industry and one NGO), to be moderated by a national, well-known media representative. Each panel member would be given the same set of questions, allowed to present their view, and then engage in an open discussion, followed by audience questions.

1:00 pm to 5:30 pm - Regional presentations (8 presentations at half hour each).
6:30 pm - 9:00 pm - Reception/banquet (including additional speaker)

Friday, November 14 - Panel Discussions - 8:00 am to 5:30 pm

Six panel sessions will be held, in three sets of two concurrent sessions. This will allow for ample time for each panel and choices for the audience. We anticipate the following 6 panel discussions, with 5-6 participants on each panel (allowing time for initial presentation of invited speaker/moderator, 10 minute talk for each participant, half hour of panel discussion, then half hour of questions from the audience). Each panel should have mix of industry, scientific, environmental, government, management, etc.
-Bycatch Issues
-Addressing Habitat Concerns
-Ecosystem Planning - What's Realistic?
-Marine Research
-Consideration of ESA and other applicable laws
-IFQs and other Rights-based management systems
8:00 am – 9:15 am – Two keynote speakers
9:30 – noon - Panels on Bycatch and Marine Research
1:00 pm – 3:15 pm – Panels on Habitat and Consideration of ESA/other laws
3:30 pm – 5:30 pm – Panels on Ecosystem considerations and IFQs/rights based management

Saturday, November 15 - Panel Discussion and Wrap-Up - Main Ballroom - 8:00 am to 12:30 pm

8:00 am - 9:15 am – Two keynote speakers
9:30 am - noon - Wrap-up Panel and closing remarks
The Wrap-up Panel Discussion will consist of the moderators from all previous panels (and possibly Council reps). With help from rappateurs, they will summarize results of each panel and then have an open discussion, by topic area, and discuss possible future directions for improvements.

officials in states to be affected by actions taken pursuant to the DAM program. Federalism issues raised by state officials were addressed in the final rule implementing the DAM program. A copy of the federalism Summary Impact Statement for that final rule is available upon request (ADDRESSES).

Authority: 16 U.S.C. 1361 *et seq.* and 50 CFR 229.32(g)(3).

Dated: April 9, 2003.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 03–9222 Filed 4–10–03; 3:34 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 679

[Docket No. 020801186–3073–02; I.D. 053102D]

RIN 0648–AQ09

Pacific Halibut Fisheries; Subsistence Fishing

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to authorize and manage a subsistence fishery for Pacific halibut in waters in and off Alaska. This action is necessary to allow qualified persons to practice the long-term customary and traditional harvest of Pacific halibut for food in a non-commercial manner. This action is intended to meet the conservation and management requirements of the Northern Pacific Halibut Act of 1982 (Halibut Act).

DATES: Effective on May 15, 2003.

ADDRESSES: Copies of the environmental assessment/regulatory impact review (EA/RIR) prepared for this action are available from NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall, or NMFS, Alaska Region, 709 West 9th Street, Room 453, Juneau, AK 99801, or by calling the Sustainable Fisheries Division, Alaska Region, NMFS, at 907–586–7228. Send comments on collection-of-information requirements to the same address and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC. 20503 (Attention: NOAA Desk Officer). Comments may also be sent via facsimile (fax) to 907–586–7465. Comments will not be accepted if submitted via e-mail or the internet.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7172 or jay.ginter@noaa.gov.

SUPPLEMENTARY INFORMATION: Management of the fisheries for Pacific halibut (Hippoglossus stenolepis, hereafter halibut) in waters in and off Alaska is based on an international agreement between Canada and the United States. This agreement, titled the "Convention between United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea" (Convention), was signed at Ottawa, Canada on March 2, 1953, and amended by the "Protocol Amending the Convention," signed at Washington, D.C., March 29, 1979. This Convention, administered by the International Pacific Halibut Commission (IPHC), is given effect in the United States by the Halibut Act (16 U.S.C. 773c(c)). Generally, fishery management regulations governing the halibut fisheries are developed by the IPHC and recommended to the U.S. Secretary of State. When approved, these regulations are published by NMFS in the **Federal Register** as annual management measures. The annual management measures for 2003 were published March 7, 2003 (68 FR 10989).

Section 773(c) of the Halibut Act also provides for the North Pacific Fishery Management Council (Council) to develop halibut fishery regulations, including limited access regulations, in its geographic area of concern that would apply to nationals or vessels of the U.S. Such action by the Council is limited only to those regulations that are in addition to, and not in conflict with, IPHC regulations, and must be approved and implemented by the U.S. Secretary of Commerce (Secretary). Any allocation of halibut fishing privileges must be fair and equitable and consistent with other applicable Federal law. This is the authority under which the Council acted in October 2000, to adopt a subsistence halibut policy.

The Council does not have a "fishery management plan" (FMP) for the halibut fishery. Hence, halibut fishery management regulations developed by the Council do not follow the FMP amendment procedures set out in the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Instead, a regulatory amendment process is followed. This process requires submission of the Council recommendation to the Secretary as a draft proposed rule for publication in the **Federal Register** along with supporting analyses as required by other applicable law.

The Council's recommended subsistence halibut policy was submitted for Secretarial review on May 30, 2002, and a proposed rule to implement the recommended policy was published in the **Federal Register** on August 26, 2002 (67 FR 54767). Comments on the proposed rule were invited through September 25, 2002. Fourteen letters were received that included 43 separate comments, which are summarized and responded to below.

The historical context of the Council's subsistence recommendation in October 2000, is summarized in the preamble to the proposed rule (on page 54768) and not repeated here. In April 2002, the Council adopted modifications to its original (i.e., October 2000) subsistence recommendation. These modifications will be the subject of a subsequent regulatory action. They were not included in the proposed rule published August 26, 2002 (67 FR 54767) and are not included in this final rule action.

The principal elements of the subsistence halibut rule are fully described and explained in the preamble to the proposed rule and for brevity are not repeated here. In brief, these elements include: (a) definition of "subsistence" and "subsistence halibut," (b) specification of who is eligible to conduct fishing for subsistence halibut, (c) description of non-subsistence areas in which subsistence halibut fishing is not allowed, (d) definition of legal gear for harvesting subsistence halibut, (e) daily harvest limit of subsistence halibut, (f) annual monetary limit on customary trade of subsistence halibut, and (g) provisions for monitoring subsistence halibut harvests.

In addition, this action restructures certain halibut fishery regulations as described in the preamble to the proposed rule to better distinguish rules affecting IPHC regulatory Area 2C from those affecting the other IPHC areas off Alaska. This final rule is substantively the same as the August 26, 2002 proposed rule (67 FR 54767), except that certain technical changes have been made in response to comments received on the proposed rule. These changes are explained below in the response to the comments and in changes from the proposed rule.

Response to Comments

The Alaska Region, NMFS received 14 letters of comment from various

agencies, Alaska Native organizations, and individuals that contained 43 separate comments. The following summarizes and responds to these comments.

Comment 1: The State of Alaska Department of Fish and Game (ADF&G) strongly urges the harvest survey design to record harvest of all species from ADF&G groundfish statistical areas. This information (more detailed than harvest data based on IPHC areas) will be critical in the development of the future local area management plans and will provide management biologists with more specific information of the removals on a spatial scale each year when making in-season management decisions on commercial, sport, personal use, and State subsistence groundfish fisheries.

Response: The subsistence halibut harvest survey instrument was developed concurrently with the proposed rule to comply with the Paperwork Reduction Act of 1995 (PRA) (Pub. L. 104–13). Under the PRA, NMFS is obligated to minimize paperwork requirements and ensure that the affected public is not overly burdened with requests for information. The Federal Office of Management and Budget (OMB) oversees agency compliance with the PRA and must review and authorize each collection of information. Hence, NMFS must carefully balance its need for information from persons affected by its rules with the relative burden on the affected public of reporting that information.

The design of the subsistence halibut harvest survey instrument was guided by this balance. The survey is designed to be as unintrusive as possible to foster the cooperation of subsistence fishers and to capture the basic information needed of how much halibut was harvested, how much lingcod and rockfish was harvested incidental to subsistence halibut, generally where was it harvested, and whether it was caught in sport fishing or subsistence fishing. Collecting this much information from most of the registered subsistence fishers will vastly improve existing estimates of subsistence halibut harvest. Requesting more information and in finer detail throughout the State of Alaska could be viewed as being an excessive reporting burden. For example, NMFS would have to consider why the data on the geographic distribution of subsistence harvests of halibut should be more detailed than the geographic distribution data from sport fishing harvests of halibut, especially in light of the fact that subsistence harvests are estimated to be less than one tenth of the sport harvests.

NMFS agrees, however, that future management questions may arise in which data on the specific locality of subsistence halibut harvests are important. To this end, NMFS intends to work closely with the ADF&G Subsistence Division, affected tribes, and community groups to refine information on the location and species composition of subsistence halibut harvests. The survey instrument may be refined for this purpose in the future. In anticipation of refinements to the survey instrument, the OMB has authorized this survey for one year as a pilot information collection program. Renewal of OMB authority to conduct the subsistence halibut harvest survey under the PRA will depend on a review of the conduct of the survey and the quality of the data produced during the first year. Efforts to refine the data collected by the survey are likely best focused in certain parts of IPHC Areas 2C and 3A where subsistence, commercial, and sport halibut harvests will be higher relative to more western areas.

Comment 2: The harvest assessment survey design should include the number of lingcod and rockfish retained and released as well as separating rockfish by assemblage, such as "pelagic species" and "other" (demersal and slope) species.

Response: Based on the experience of ADF&G Subsistence Division personnel, the vast majority of the lingcod and rockfish caught incidental to subsistence halibut will be retained. This harvest of lingcod and rockfish while subsistence fishing for halibut would be reported in the annual subsistence halibut survey. Requesting more detailed information from subsistence fishers about the species composition of their incidental rockfish harvest raises the same PRA question of balance discussed above.

Comment 3: The definitions of "commercial fishing," "customary trade," and "subsistence halibut" do not sufficiently distinguish between sale and barter for commercial or subsistence purposes. It is not clear when the exchange of halibut for money is a commercial exchange or a subsistence exchange.

Response: The distinction between commercial fishing for halibut and subsistence fishing for halibut should be clear. Halibut harvested in commercial fishing are intended to enter commerce. The harvest, landing, and distribution of these fish must comply with relevant IPHC, State, and Federal fishing and reporting requirements. Halibut harvested in subsistence fishing are intended for the sustenance of the fisher, his family and community in accordance with cultural traditions of Alaska Natives and rural lifestyles. To preserve this distinction, this rule requires that subsistence halibut must not enter commerce and must not be intermixed with commercial fish, except under limited conditions in Areas 4D and 4E.

The definitions of "commercial fishing" and "subsistence halibut" were derived from the IPHC definition of "commercial fishing" which "means fishing [other than customary and traditional fishing] the resulting catch of which is sold or bartered, or is intended to be sold or bartered"(67 FR 12885, March 20, 2002). "Subsistence," on the other hand, is defined in this rule to be "...the non-commercial, long-term, customary and traditional use of halibut." Subsistence halibut, however, may be used in customary trade because customary trade is a customary and traditional use of halibut. Customary trade may include bartering and limited exchanges of money, but this does not mean that any bartering or exchange of money necessarily implies a commercial transaction. Exchanging halibut for items of significant value or for sale or marketing purposes likely constitute a significant commercial enterprise. Such halibut would not be used in a customary and traditional manner and therefore would not be confused with subsistence halibut.

Comment 4: The proposed legal gear limit of "set and hand-held gear of not more than 30 hooks" does not specify whether this limit applies per person or per vessel.

Response: NMFS understands that the Council's original policy intent was for the hook limit to apply to each person engaged in subsistence halibut fishing. Although this was implied in the preamble to the proposed rule (67 FR 54767, August 26, 2002), NMFS agrees that the proposed rule language did not explicitly state whether the hook limit was to apply per person or per vessel. Therefore, NMFS changed the final rule to make this personal hook limit explicit.

Comment 5: The marking of buoys used in the subsistence halibut fishery should include a large "S" in addition to the fisher's name and address to designate that the gear is being used for Federal subsistence halibut fishing rather than a State commercial fishery.

Response: NMFS agrees that requiring an additional "S" character on the markings of setline marker buoys would serve a justifiable purpose of distinguishing subsistence gear from

commercial gear and has incorporated this requirement in the final rule.

Comment 6: Although the need for a subsistence halibut harvest in Alaska is recognized, the proposed rule should be changed. Without an annual limit on the harvest of each individual, a daily limit of 20 halibut per day, per person is unquestionably excessive. The subsistence halibut rules should include an annual individual harvest limit.

Response: The 20–halibut-per-day catch limit is not considered excessive in light of its purpose, which is to provide a reasonable daily catch limit for a subsistence fisher to supply food for his family and community. Proxy fishing is not provided for in this rule. Therefore, the daily catch limit should be sufficient to allow the fisher to supply fish to persons other than himself. Moreover, subsistence fishers typically do not harvest more fish than they actually need and will use. The customary and traditional practice of subsistence fishing does not include wasting fish.

Nevertheless, subsistence use of halibut may conflict with other uses of the resource, particularly in more populated areas of Alaska. In response to this concern, the Council studied various alternative approaches and in April 2002, adopted a recommendation to NMFS to revise the 20–halibut-per-day catch limit in certain parts of IPHC regulatory areas 2C and 3A. This and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the **Federal Register** for public comment.

Comment 7: The definition of "customary trade" wrongly suggests that the sale of any fish could be something other than a commercial activity and that $400 worth of halibut is not significant. Allowing the sale of subsistence halibut should be eliminated.

Response: NMFS disagrees. Customary trade is a customary and traditional use of halibut and should be an integral part of any subsistence policy. The Council recommended and NMFS approved this customary trade policy and the $400–per-year monetary limit because it was considered an insignificant amount. The Council determined and NMFS agrees that the $400 limit would allow a subsistence fisher to be reimbursed for the cost of his or her fuel or other incidental expenses incurred while subsistence fishing for halibut. Such customary trade can occur without subsistence halibut being deemed as entering commerce.

Comment 8: Subsistence halibut should be required to be marked or identified in some manner, and mandatory logs or reports of fishing locations, quantities harvested and amounts of gear used should be required.

Response: The overall harvest of subsistence halibut and certain species taken incidental to subsistence halibut fishing will be estimated under this rule based on surveys of subsistence fishers. NMFS disagrees, however, that the estimation of subsistence harvests needs to be any more precise or the reporting requirements any more robust than those used for estimating the sport harvest of halibut which is estimated to be substantially larger than subsistence harvests.

Comment 9: These liberal subsistence rules will be unenforceable and will not prevent subsistence halibut from entering commercial venues. These rules could apply to the most remote and isolated rural areas without much risk of abuse, but in larger communities with road and airline connections, enforcement will be much more difficult if not impossible. In Sitka, for example, where a cash economy and subsistence harvest are blended in a population of many thousands, the individual harvest limit of 20 fish per day could result in hundreds of thousands of pounds being bartered for goods and services anywhere because the rule does not limit customary trade to the rural community where the fish are caught. This presents a potential to reduce or eliminate the volume of halibut available to commercial IFQ fishers.

Response: Enforcement of the subsistence rules in larger rural communities, such as Sitka, may be more challenging than in smaller rural communities. NMFS intends to cooperate with Alaska Native tribes and community organizations in publicizing subsistence halibut rules, and some Alaska Native tribes already have indicated their intent for their members to fully comply with the subsistence rules. Non-compliance likely would result in the Council recommending and NMFS approving more restrictive subsistence rules. NMFS further intends to monitor subsistence harvests in cooperation with State of Alaska, tribal and community agencies to provide reasonable estimates of fishing mortality from this fishery for conservation and management purposes. Although it is possible in theory for the subsistence fishery to preempt the commercial fishery, it is highly unlikely. Subsistence halibut harvests overall are expected to be about one percent or less of the total catch of halibut, substantially less than the sport halibut harvest and virtually insignificant compared to the commercial halibut harvest and other sources of halibut fishing mortality.

Comment 10: Subsistence fishers need to be able to set out 50 hooks overnight about four times a year, and need to trade or get money for about 200 pounds of fish four times a year.

Response: The Council considered alternative hook limits ranging from 2 to 60 hooks (see final EA/RIR/FRFA). Based on an analysis of the potential impacts of the alternative hook limits and public testimony, the Council recommended a 30–hook limit as a reasonable balance of the interests of subsistence and commercial fishers. Although some subsistence fishers may prefer no hook limit, most appear to find the 30–hook limit to be acceptable.

The rule specifies no limit on customary trade in terms of pounds of halibut that may be traded per year. The only specified limit on customary trade is on the amount of money that may be received by a subsistence fisher for subsistence halibut in a year. Subsistence halibut could be exchanged for goods other than money. In developing this policy, the Council chose not to recommend a non-monetary limit on the value of goods or services that may be exchanged in customary trade for subsistence halibut. The Council was clear, however, that it did not intend for items of significant value (*e.g.*, a new car or truck) to be traded for subsistence halibut, although it did not specify the meaning of "significant value." Trading subsistence halibut for items of significant value would suggest a commercial enterprise, which is prohibited. Hence, 200 pounds of subsistence halibut could be exchanged in customary trade each year providing that any monetary payment for this fish does not exceed $400.

Comment 11: A recent survey conducted by the Yakutat Tlingit Tribe and Division of Subsistence (ADF&G) indicates halibut is the top subsistence species for the community of Yakutat.

Response: NMFS notes this indication of the importance of subsistence halibut in the community of Yakutat, Alaska.

Comment 12: There needs to be a valid subsistence halibut registration certificate to allow fishing for subsistence halibut. It is not clear, however, whether the requirement to "hold" a certificate means that a subsistence fisher must have the certificate in possession during fishing or to simply obtain a certificate prior to fishing.

Response: The proposed rule (67 FR 54767, August 26, 2002) at section

300.65(h) requires a subsistence halibut fisher to "...possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut...." Also in the proposed rule at section 300.66(e), subsistence halibut fishing would be unlawful unless the fisher "...is qualified...and possesses a valid subsistence halibut registration certificate...." NMFS agrees, however, that the term "possess" in this language does not indicate clearly if a subsistence fisher would be required to carry his or her registration certificate while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of "possess" by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip.

Comment 13: A multi-year registration would minimize paperwork for the affected fishers, however, it is not clear what would be the basis for determining that a fisher had ceased his subsistence fishing activity. Apparently, ceasing to fish is presumed when a fisher does not re-register for the certificate.

Response: A person eligible to do subsistence halibut fishing but who does not intend to do so presumably would not apply for a subsistence halibut registration certificate (SHARC). Also, a person who has a valid SHARC may fish for subsistence halibut one year but not in succeeding years in which the multi-year SHARC remains valid. The rate of such unused SHARCs in any year could be estimated from responses to the subsistence halibut harvest survey.

Comment 14: The conduct of the harvest survey is critical to obtaining an accurate estimate of subsistence harvest. No details of the harvest survey methodology are provided but its design must be statistically sound with validation procedures to produce a precise and unbiased estimate.

Response: NMFS agrees, and initially intends to contract with the Subsistence Division of the Alaska Department of Fish and Game to carry out the harvest survey. This work will be conducted by social scientists who are experienced in researching the subsistence use of fish and game throughout the State of Alaska. The survey instrument was designed to be simple to understand and easy to respond to, which should foster the cooperation of subsistence fishers. Also, the survey is designed to contact virtually all of those persons who have been issued SHARCs and actually harvested subsistence halibut.

Comment 15: Subsistence harvest estimates will be produced from a post-season survey of registered fishers which will be based on their memory of what they caught. Another approach could be the use of a catch record card (CRC). The CRC could be attached to the registration form, and catches would be recorded on it by the fisher. Each fisher would mail in his or her completed CRC following each subsistence season. Follow-up contact still would be made to determine the harvests of non-responders. The advantages of an annual CRC include: (1) initial harvest estimates are made without agency action based on returned CRC, (2) better harvest estimates are likely as fishers would be recording their harvests shortly after making them rather than several months later based on memory for the survey, (3) the CRC could be used as an independent check on a mail or phone survey of a random sample of registrants, and (4) the subsistence fishing community will be more precisely known each year as the annual registration and CRCs are applied for and distributed. A multi-year registration certificate could involve distributing multiple CRCs so that a CRC could be returned each year.

Response: The suggested CRC method for estimating subsistence harvests is a reasonable alternative to the survey methodology that NMFS intends to use, at least initially, but the CRC method would be slightly more complex and burdensome for the subsistence fisher. This burden may be justified in the future, based on experience with the survey method, but for now is deemed unnecessary. In response to the purported advantages: (1) agency action nevertheless would be required to record and calculate the data reported on the CRCs, (2) the CRC method may produce a marginal increase in the precision and accuracy of the subsistence halibut harvest estimates, but surveying registered fishers is the same methodology used to estimate sport halibut harvests in Alaska and it is not clear why the subsistence halibut fishery should be subjected to a more robust estimation procedure than the sport halibut fishery when the latter will likely harvest several times as many halibut as the former, (3) conducting a mail survey in parallel with a CRC requirement would substantially increase the reporting burden on affected fishers (see also response to comment 1), and (4) the SHARC system serves the same purpose, i.e. to distinguish the group of persons who intend to fish for subsistence halibut from the universe of those eligible to do so.

Comment 16: Language in the proposed regulatory text (at sec. 300.65(g)(3)) would prevent subsistence halibut fishing in the IPHC closed area in the Bering Sea. The closed area applies only to commercial fishing. Sport fishing is allowed in this area and subsistence fishing also would be acceptable.

Response: NMFS agrees that neither the Council nor the IPHC ever indicated that subsistence halibut fishing should be prohibited in the area of the Bering Sea adjacent to and south of IPHC Area 4E which is closed to commercial halibut fishing by the IPHC regulations (section 10 of the annual management measures at 67 FR 12885, March 20, 2002). The proposed rule included this unintended restriction because the closed area is not part of any of the IPHC regulatory areas defined in section 6 of the annual management measures. The regulatory text in this action, therefore, is changed to allow subsistence halibut fishing in the closed area.

Comment 17: The catch sharing plan described in the proposed regulatory text (at section 300.63) is for the 2001 fishery. In 2002, regulations provided for an incidental catch of halibut during the sablefish fishery north of Point Chehalis, WA.

Response: NMFS agrees that proposed regulatory text at section 300.63(b) pertaining to the Area 2A Catch Sharing Plan should be exactly as it existed in section 300.63(a) before this rule. The restructuring of section 300.63 was discussed in the preamble to the proposed rule (67 FR 54767, August 26, 2002). This restructuring is intended to have no effect on existing regulations implementing the Area 2A Catch Sharing Plan.

Comment 18: The proposed monitoring plan would identify harvest at the level of IPHC regulatory areas, which would not provide the level of resolution needed to develop a Local Area Management Plan (LAMP). Data collection for subsistence harvests would be more useful at a higher level of resolution, *e.g.*, groundfish statistical area.

Response: NMFS disagrees that subsistence harvest data should be reported geographically at the level of the ADF&G groundfish statistical areas for the same reasons presented in response to comment 1. NMFS agrees, however, that management questions may arise that will require more detailed information as to the locality of subsistence harvests than is provided at the level of IPHC regulatory areas.

Therefore, NMFS may refine the survey instrument to serve this purpose.

Comment 19: Subsistence harvesters should be required to possess a registration certificate while conducting subsistence fishing to provide enforcement staff with a means to directly verify the eligibility of a fisher on the water.

Response: NMFS agrees that the term "possess," as used in the proposed rule at sections 300.65(h) and section 300.66(e), did not clearly indicate if a subsistence fisher would be required to have his or her registration certificate physically present while conducting subsistence halibut fishing. Therefore, this rule clarifies the meaning of "possess" by requiring a registration certificate to be made available for inspection by an authorized officer during a subsistence halibut fishing trip (see response to comment 12).

Comment 20: Allowing subsistence halibut in a commercial buying or processing plant presents an unacceptable risk of subsistence fish getting into the commercial market. Subsistence halibut should not be allowed on the premises of commercial fish buyers, with the exception of the existing practice of landing small halibut with Area 4D and Area 4E CDQ fish and landed within a port in those areas.

Response: The risk of subsistence halibut getting into the commercial market also was a concern of the Council's in developing its subsistence policy. As discussed in the preamble to the proposed rule the Council recommended prohibiting customary trade of subsistence halibut on the premises of commercial fish buying operations. The preamble discussion of this issue noted three exceptions to this prohibition. One was the exception noted in the comment. Another was an exception for a commercial fish buyer who is eligible to harvest subsistence halibut. And the third was an exception for using commercial fish processing facilities to process subsistence products. A related Council recommendation was to prohibit subsistence halibut that was exchanged in customary trade from entering commerce at any point. That is, subsistence halibut given away or bartered by the fisher who caught it, could not be subsequently sold or otherwise enter the commerce market. Due to the significance of this risk, NMFS specifically requested comments on how best to give effect to the intention of preventing movement of subsistence halibut into the commercial sector.

Neither of these prohibitions were explicitly stated in the proposed rule prohibitions. Language in proposed section 300.66(j), however, was designed to incorporate both of the Council's recommended prohibitions by stating that it would be unlawful to "retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes". The exception for Area 4D and Area 4E fishers to land small halibut with harvests of CDQ halibut is included in the prohibitions section 300.66(h). This regulatory language likely will be sufficient to enforce against the movement of subsistence halibut into commerce without complicated exception language.

Comment 21: The proposed subsistence program is significantly more permissive than is currently allowed under existing regulations. Hence, the rule would allow subsistence harvesters to significantly increase their fishing power which will likely lead to greater subsistence harvests than occur at present. This underscores the need for effective monitoring programs and more comprehensive reporting than is presented in the proposed rule.

Response: Previously, without the provisions of this rule, subsistence halibut harvesting fishing could occur legally only under authority of IPHC sport fishing regulations which allow a daily catch limit per person of two halibut (annual management measures section 24(2), published at 67 FR 10989, March 7, 2003). Alternatively, subsistence halibut may have been taken illegally or taken as commercial harvest. In any case, information about subsistence halibut harvests was likely biased because subsistence fish may have been double counted as subsistence and sport halibut harvest, counted as commercial harvest or not reported at all because it was harvested illegally. Hence, the presumption that subsistence harvests of halibut will be significantly increased under this rule because it allows fishers to harvest up to 20 fish per day instead of two fish per day is not necessarily correct.

The subsistence fishery is expected to be self limiting because subsistence fishers typically harvest no more than they need to satisfy food needs. To harvest more than that simply because they can would be wasteful of the resource, their time and effort. Allowing subsistence fishers to harvest more fish in a day than they would be able to legally under current sport fishing rules will allow subsistence fishers to be more efficient, spending fewer days fishing to satisfy food needs, and will foster compliance with fishery management regulations. Although it is true that legal subsistence fishing power will be enhanced by this rule, NMFS does not assume that this enhancement will automatically lead to significantly larger subsistence harvests. The subsistence harvest of halibut is expected to be roughly one percent of the total take of halibut by all sources of fishing mortality, substantially less than the sport harvest of halibut. Of course, effective monitoring of this harvest, like any authorized harvest of halibut, is important. The monitoring system that NMFS intends to implement will be sufficiently comprehensive to monitor the relative magnitude of this fishery, and will likely produce far more reliable information about the total subsistence harvest of halibut in Alaska than is currently available.

Comment 22: Commercial fishing for halibut will be harmed by the subsistence rules. If only 10 percent of the people eligible to do subsistence fishing for halibut take their daily quota of 20 fish twice a year, then about 15 million pounds of halibut will be taken by subsistence fishers. The 30–hook limit will likely take between one-third and one-half of the IPHC Area 2C commercial catch limit. Please consider reducing the hook limit to eight and reconsider the rules if the subsistence harvest exceeds a given percentage of the commercial catch limit.

Response: The purpose of this action is to authorize a fishery for the customary and traditional use of halibut. Although in certain localized parts of the IPHC regulatory areas, subsistence fishing for halibut may compete with commercial and sport fishing for halibut, this action is not intended to constitute a large-scale allocation of the halibut resource away from either the commercial or sport fisheries to the subsistence fishery. Such an allocation is not likely because subsistence fishers are not likely to harvest all of the halibut permitted under these rules. The subsistence halibut fishery is expected to be limited more by the amount of halibut that can be used in a customary and traditional manner than by the catch and hook limits imposed by this rule.

Of course, the subsistence halibut harvest also will not likely be evenly distributed, and some areas may experience higher subsistence harvest rates than others. These areas are likely to be near the larger communities in IPHC Areas 2C and 3A. In response to these concerns, the Council, in April 2002, adopted recommendations to

reduce the harvest and hook limits in certain parts of these areas. These and other recommendations made by the Council at that time are under review and proposed implementing rules will be published in the Federal Register for public comment.

Comment 23: The commercial fishing fleet has not been adequately informed and represented in forming the proposed subsistence rules.

Response: The Council took up the issue of subsistence halibut initially in December 1996, and at 3 of its 5 meetings in 1997. In June 1997, the Council deferred action out of deference to the State of Alaska which was attempting to resolve subsistence issues generally with State legislation. After State action on subsistence did not occur, the Council revisited the halibut subsistence issue in October 1999, and scheduled further discussions and public comment on the alternatives under consideration throughout 2000. The Council addressed subsistence halibut at 4 of its 5 meetings in 2000, reviewing and revising alternatives for analysis and receiving public testimony at all meetings. In total, the Council discussed subsistence at 9 of its meetings. All of these meetings were advertised and open to the public. Many of the 11 voting Council members represent commercial interests in fisheries. In addition, the Council takes advice from its Halibut Subsistence Committee and Advisory Panel, which include members with commercial interests in fisheries, and comments directly from the public. Hence, members of the commercial fishing fleet, as any other member of the affected public, have had ample opportunity to involve themselves and influence the development of the subsistence policy implemented by this action.

Comment 24: Ninilchik should be listed as a rural community in section 300.65(f)(1). The Federal Subsistence Board has found Ninilchik to be a rural area and eligible for subsistence uses. With a 2002 census of about 772 persons, Ninilchik is much smaller than other communities that are listed as rural and would have minimal impact on the halibut resource.

Response: Ninilchik, Alaska is located on the Kenai Peninsula within the Anchorage-Matsu-Kenai non-rural or non-subsistence area as defined by the Alaska Joint Board of Fisheries and Game. In developing criteria for this and the other non-rural areas, the Council considered criteria established by the Federal Subsistence Board but instead chose to model its criteria on those used by the State for determining non-subsistence areas and rural areas in which a subsistence lifestyle may be practiced. Further, the Council specifically named the communities outside of the non-rural areas that it considered rural and to have a customary and traditional use of halibut. Ninilchik was not named as such a community, however, Ninilchik Village was named as one of the Alaska Native tribal entities with customary and traditional uses of halibut. This means that members of the Ninilchik Village Tribe may conduct subsistence fishing outside of any of the non-subsistence areas, but non-Native residents of Ninilchik may not participate in this fishery.

The Council recognized in recommending this action that some rural communities not explicitly named in its initial list may seek a finding of customary and traditional use of halibut and thereby secure subsistence eligibility for its non-Native residents. The Council specifically stated that such communities may petition the Council for such eligibility after it receives a finding of customary and traditional use of halibut from the appropriate State or Federal bodies. Hence, if the Federal Subsistence Board has made such a finding, then Ninilchik should proceed with petitioning the Council for inclusion as a rural community with a customary and traditional use of halibut. If the Council agrees with the petition and recommends such inclusion, NMFS will review the recommendation and publish a proposed rule to change the list of rural communities contained in this action.

Comment 25: As a life-long subsistence fisher, the commentator favors the proposed subsistence rules as written.

Response: NMFS notes this support.

Comment 26: What is customary trade? Customary means what Native people have done throughout their history. Customary is traditional and traditional means traditional ways of the Alaska Native Indian, and does not include (non-Native) rural communities. Tradition means since the beginning; rural is less than a century. Rural is not customary. Whenever something is done to benefit Alaska Natives, it either gets loaded up with stipulations or gets offered to non-Natives as well. Non-Alaska Natives have no subsistence rights because Alaska is not their ancestral land.

Response: Customary trade is defined in this rule as "the non-commercial exchange of subsistence halibut for money or anything other than items of significant value." The term describes the customary and traditional use of halibut in barter for other foods or items necessary for the sustenance of the fisher, his family and community. For example, subsistence halibut may be traded for moose meat, wild berries, fish roe, or other food items collected by other people who have a subsistence lifestyle. This practice represents a natural tendency toward efficiency in organizing human work. Those persons who are particularly talented at catching fish typically would supply the fish for their family and community while others particularly talented at hunting game, for example, would supply the meat. This sharing is not limited to foods but could extend to other goods and services also. When this subsistence economy combines with a cash economy as it does today, this traditional sharing of natural resources may involve a monetary payment to reimburse the harvester's expenses in return for subsistence food or services. For example, a subsistence fisher may receive a nominal payment for his vessel's fuel cost in return for the fish provided.

An important distinction between this type of subsistence bartering and commercial trading is that subsistence bartering does not necessarily increase the overall wealth of the individuals involved but provides for the long-term sustenance of both the harvester and person(s) receiving fish through barter. Commercial trading, however, assumes that at least one of the participating parties enjoys an increase in wealth or profit as a result of the trade, otherwise the trading would not occur or continue. Hence, commercial trading is motivated by profit seeking and wealth accumulation, while customary trade is motivated by a long-term need for basic survival.

Alaska Natives are recognized as having developed customary trade as an essential part of their subsistence lifestyle probably thousands of years before the first non-Natives started to populate what is now the State of Alaska. Of course, in these early years, all of this area was what would be considered now as rural, and many non-Alaska Natives adopted the subsistence lifestyle also as a means of survival. Hence, the conditions that cause or lead to a subsistence lifestyle are based as much on living in a rural setting with relatively few or limited commercial sources for food as they are based in Alaska Native culture. For this reason, the Council determined that persons who live in rural communities with customary and traditional uses of halibut should be equally eligible to harvest subsistence halibut with persons

who are members of Federally recognized Alaska Native tribes that have customary and traditional uses of halibut. NMFS has agreed with this Council policy. Other persons, Native and non-Native, will not be granted this subsistence fishing privilege.

The conditions and constraints on subsistence halibut fishing imposed by this rule are relatively modest compared to the total population of persons eligible for a subsistence halibut fishing privilege. They are designed to be unintrusive and reasonably balanced with other uses of fishery resources while providing recognition of a fishery and use of halibut that historically extends back in time long before the present.

Comment 27: The limit of $400 per year on customary trade is too limiting. Non-Natives do not live on $400 per year.

Response: The purpose of the monetary limit on customary trade is to allow subsistence fishers to be nominally reimbursed for their expenses in supplying subsistence halibut to their community without that reimbursement being considered a commercial transaction. The Council recommended and NMFS approved the $400 limit on cash exchanges in customary trade of subsistence halibut as a reasonable balance between no cash exchanges being allowed and higher limits that suggest significant economic value to, and possibly commercial enterprise in, subsistence halibut. Neither Alaska Natives nor non-Natives are expected to be able to make a living in an economic sense by harvesting subsistence halibut. Anyone intending to make a living by fishing for halibut may do so by entering the commercial IFQ fishery (or the CDQ fishery in the Bering Sea) for halibut.

Comment 28: The commercial IFQ fishers are not constrained by hook and daily bag limits so why should subsistence fishers have 30–hook and 20–fish per day limits. Commercial halibut fishers are allowed a percentage of sablefish bycatch. Subsistence halibut fishers also should be allowed to retain a percentage of sablefish as this species has been a part of the Native diet and customary trade throughout history.

Response: Commercial IFQ fishers are constrained by fishing gear and harvest restrictions. A basic tenant of the IFQ rules is that an IFQ fisher must not harvest more halibut than is specified on his or her IFQ permit. Although IFQ fishers may not be constrained by a daily harvest limit, they are constrained by the total amount of halibut they may harvest in a year. Likewise, commercial halibut fishers must not retain other species of fish that are taken incidental to halibut unless they have a permit and authority to do so. For sablefish, this would be sablefish IFQ. Similarly, subsistence halibut fishers may retain species caught incidental to halibut to the extent they are authorized to do so by State of Alaska and other Federal agencies that manage the subsistence harvests of other species.

Comment 29: In response to the NMFS request for comment on how best to prevent movement of subsistence halibut into the commercial sector (67 FR 54770), NMFS should consult with affected tribal governments and users. NMFS is commended for engaging in meaningful tribal consultation on development of the proposed rule and this consultation should be continued.

Response: NMFS notes this support and reiterates its intent to continue consultation with Alaska Native tribal representatives on subsistence halibut management issues pursuant to guidance and requirements under Executive Order (E.O.) 13175 and other applicable law.

Comment 30: Mandatory registration is not necessary, particularly in remote areas (i.e., IPHC Areas 3B, 4A, 4B, 4C, 4D, and 4E), either to identify eligible tribal subsistence users or for gathering harvest information. A tribal identification card would suffice to prove eligibility. Cooperative agreements between NMFS and tribes for harvest information is the best way to collect harvest data. If registration is necessary in some areas, the regulations appear to provide an avenue to minimize this burden on tribal subsistence users through cooperative agreements with tribes. NMFS should extend the time for re-registration to well beyond 4 years.

Response: The principal purpose of the registration system is to provide a basis for collecting information on participation and harvest in the subsistence halibut fishery. A secondary purpose is to distinguish between persons who are eligible and persons who are not eligible to harvest subsistence halibut. Although most persons in remote areas likely will be eligible, for data collection purposes, these subsistence fishers should be in the registration system along with those from less remote areas.

NMFS considered the option of relying on tribal identification cards to demonstrate the eligibility of subsistence halibut fishers who are members of Federally recognized Alaska Native tribes with customary and traditional use of halibut. Other non-Native residents of the specified rural communities who also would be eligible to harvest subsistence halibut would not necessarily have tribal identification cards. Therefore, a single SHARC that would be used by all eligible fishers would be more efficient for distinguishing eligible from non-eligible persons. NMFS intends to cooperate with tribal and other entities to distribute information and forms that will facilitate registration. As explained in the preamble to the proposed rule, NMFS will determine the eligibility of each applicant for a SHARC. The reason for limiting the duration of a registration is to keep the list of registered individuals limited to those who actually intend to harvest subsistence halibut and to maintain current contact and address information. Although an Alaska Native tribal member may be eligible to fish for subsistence halibut throughout his or her life, he or she may choose not to participate in the fishery during various periods of his or her life. For example, the very young and the very old may not be personally involved in harvesting subsistence halibut. In that event, a lapsed registration would indicate no participation in the fishery and therefore no need to participate in the subsistence halibut harvest survey. An eligible individual's lapsed registration could be renewed at any time thereby indicating that the individual should be included in the survey. Longer periods of registration validity would produce a larger universe of registered persons who are no longer actual participants in the fishery.

Comment 31: Although a voluntary reporting system and authority to enter into cooperative agreements with affected tribes is good, it is not clear why the harvest survey would require information about the subsistence fisher's identity. Due to a long history of government suppression of tribal subsistence practices, some tribal subsistence fishers may resist complying with surveys that require such personal identification. For example, a community harvester may be reluctant to disclose his full harvest if he expects that doing so will, by comparison with sport harvesters, bring negative attention to his practice of supplying subsistence food for his community. Tribes could provide NMFS and the IPHC with complete and accurate harvest information without identifying the particular tribal members who did the harvesting. NMFS should modify the regulations to allow for, but not require, identification of individual harvesters in the harvest survey.

Response: Personal identification information is needed on the survey form to prevent confusion of harvest

information supplied by persons with the same or similar names. It prevents double counting or not counting some harvest data. NMFS is sensitive to the need for confidentiality of personal identification data and data about the volume and location of subsistence harvests. Existing State and Federal confidentiality laws and regulations effectively prevent revealing harvest data, whether supplied by individual commercial, sport, or subsistence fishers. Published reports of subsistence harvest data will contain only aggregated information which will not indicate the harvests of any particular fisher. Nevertheless, NMFS intends to continue consultation with Alaska Native tribal representatives to resolve any questions of confidentiality.

Comment 32: Figure 1 of the proposed rule mistakenly portrays the Sitka Sound LAMP area as a "non-subsistence area." This is not consistent with the Council's action or the description of the four non-rural areas in the proposed regulatory text.

Response: This inadvertent error in Figure 1 is corrected in this rule.

Comment 33: In the proposed regulatory text at section 300.65(g)(3) (67 FR 54776), the phrase "in any Commission regulatory area" could be interpreted to mean that subsistence halibut fishing would be prohibited from that part of Bristol Bay that is not included within an IPHC area.

Response: NMFS agrees that this phrase (used in several places in the proposed rule) unintentionally would have prevented subsistence halibut fishing in the closed area. This error is corrected in this rule (see also response to comment 16).

Comment 34: Although most Native subsistence halibut users support fully the collection of harvest information necessary to the health and conservation of halibut stocks, modification to the proposed rules is necessary to lessen the burden on tribal harvesters and result in better information. Cooperative agreements with the affected tribes that maximize their participation in registering and collecting harvest information is essential to the success of this program.

Response: NMFS has made every effort to minimize the reporting burden of information collected on the harvest survey forms, as is required by the PRA (see also response to comment 1). Further, NMFS agrees that cooperation with the Alaska Native tribes affected by this rule is essential to assure high quality information from the subsistence halibut harvest survey. Tribal entities could, for example, assist with this effort by cooperating on the registration process and providing corroborating information that could verify or contest preliminary survey data. NMFS intends to continue consulting with Alaska Native tribal representatives with a view toward enhancing the quality of subsistence harvest data.

Comment 35: Thirty hooks per skate and 20 halibut per day is a reasonable limit for subsistence halibut harvest. The latest Council action on subsistence, however, would seriously restrict subsistence halibut harvest in the Sitka LAMP area. This action has caused concern among Sitka Natives.

Response: The latest Council action on subsistence was taken in April 2002, which will be addressed in a separate proposed rule and considered by NMFS separately from this rule.

Comment 36: No significant difference in harvest numbers will occur when subsistence halibut harvest is legalized in Sitka Sound. The Sitka Tribe proposes to collect data and assist with administering of the subsistence halibut permit system.

Response: NMFS notes this forecast of subsistence halibut harvest and welcomes the cooperation of the Sitka Tribe.

Comment 37: NMFS has made significant effort to consult with Native tribes in the development of the subsistence halibut proposed rule. Although subsistence halibut fishing will be open to all rural residents, it is important to recognize the unique relationship that tribal governments have with the Federal government. The subsistence rules should include a section on meaningful tribal consultation and reiterate the commitment of NMFS to continue consulting and working cooperatively with Alaska tribes on regulatory and other issues related to the subsistence halibut fishery. Establishing cooperative agreements with the affected tribes for harvest data collection, issuing permits, monitoring and research of subsistence halibut stocks and generally including tribes in the management and decision-making process will strengthen the overall management effort.

Response: NMFS agrees that cooperating with the affected Alaska Native tribes will foster trust between the agency and subsistence fishers and generally assure the success of the subsistence halibut program. In developing its subsistence policy, the Council specifically recommended cooperative agreements with tribal, State and Federal governments for harvest monitoring and general oversight of issues affecting subsistence halibut fishing. NMFS intends to follow the Council's guidance. As already noted, the agency consulted with Alaska Native tribes in the development of the proposed rule. NMFS also has implemented contracts with the Rural Alaska Community Action Program (RurALCAP) for purposes of consulting with Alaska Native representatives and with the Subsistence Division of ADF&G for subsistence harvest survey and estimation. As this program is launched, NMFS likely will need the cooperation of the affected tribal entities to distribute information about registration, reporting harvest information, and general compliance with the rules which may be best achieved through ongoing consultation with the affected tribes.

Comment 38: Although registration of subsistence halibut fishers could be a valuable management tool it should not be mandatory. A tribal identification card issued to each member of a tribe authorized to conduct subsistence fishing should be considered adequate documentation of eligibility. Cooperative agreements with the tribes would allow them to provide harvest data and to identify eligible subsistence fishers who are not members of the tribe.

Response: NMFS discussed this question at length among its divisions that would be involved in implementing the subsistence rules and with other agencies. Ultimately, the agency decided that a mandatory registration system was preferred primarily so that information on participation and harvest could be collected in a uniform and comparable manner. As discussed in the preamble to the proposed rule, the primary objective of the mandatory registration system is to provide a basis for surveying the harvest of subsistence halibut. NMFS has no intention of using the registration system as a means to prevent otherwise eligible persons from fishing for subsistence halibut. A secondary purpose of the registration system is to distinguish between persons who are eligible to fish for subsistence halibut and those who are not eligible to do so.

Comment 39: Requiring a subsistence fisher's identity, date of birth, etc., as part of the harvest survey is not necessary and could be counter productive. Based on tribal experience in conducting subsistence harvest surveys, collecting accurate data is enhanced by not requesting personal information. Alternatively, the affected tribes could provide NMFS and the IPHC with full and accurate harvest information without identifying a tribal member that harvested fish or linking him or her to a particular amount of fish harvested. The research design and

survey instrument for collecting traditional subsistence harvest data should be left up to each individual tribe.

Response: NMFS has made every effort to minimize the amount of information collected on the harvest survey forms, as is required by the PRA (see response to comment 1). Identifying information about the subsistence fisher is required only to the extent necessary to prevent confusing the harvests of persons with the same or similar names. The data collected on subsistence halibut harvests will be aggregated for purposes of reporting to the public. Existing State and Federal confidentiality standards will be strictly complied with to prevent the harvests of individual fishers from becoming generally available. Commercial halibut and sport halibut harvest data are held to the same standards of confidentiality. NMFS is hopeful that further cooperation with affected fishers and explanation of the survey design and data handling techniques will demonstrate that the risk of a confidentiality breach by a cooperating State or Federal agency is low. The relative accuracy and comparability of subsistence halibut harvest estimates will be increased to the extent that the same survey methods are used comprehensively. Relying on a variety of survey instruments and methodologies, such as may happen if each tribe developed its own harvest estimation technique, would prevent comparison of subsistence halibut harvest rates among different areas.

Comment 40: The creation of a new subsistence halibut fishery would create another special user group with unequal rights to harvest resources that belong to all Alaskans. The fishery should be open to all Alaskans, without regards to racial origin or place of residence.

Response: The halibut resource is, in fact, open to all persons in some respect, and this action does not limit existing public access to the resource. For example, anyone with a State sport fishing license, may sport fish for halibut and retain two fish per day. Any U.S. citizen may participate in the commercial halibut IFQ fishery off Alaska if he or she meets the criteria and receives an IFQ allocation. Likewise, the subsistence fishing authority provided by this action may be enjoyed by anyone who is or becomes a resident in one of the rural communities with customary and traditional uses of halibut listed in this rule. The other group of persons eligible to conduct subsistence halibut fishing are members of Federally recognized Alaska Native tribes with customary and traditional uses of halibut. Participation in the subsistence halibut fishery as a member of this group may not be possible to anyone except by chance of birth or adoption, but this is not a new user group of the halibut resource. The ancestors of this group have used this resource, among others, for sustenance for thousands of years before the first non-Alaska Natives appeared in Alaska and began to do likewise. Although this action provides for a special subsistence harvesting privilege for certain individuals and not for others, it does not create a new user group and will likely not significantly affect the harvesting privileges of other users of the resource. Essentially, this action formally recognizes the long term practice of using the halibut resource for subsistence purposes as being as equally valid a use as are the commercial and sport uses.

Comment 41: NMFS is commended for proposing these rules to apply in Alaska. The Alaska National Interest Lands Conservation Act recognizes subsistence, but discriminates against Natives based on where they live and not the lifestyles they lead. The subsistence rules are a step in the right direction.

Response: NMFS notes this support.

Comment 42: The number of hooks allowed to be used by a subsistence fisher should be increased if that person is proxy fishing.

Response: This rule is silent on proxy fishing, a formal mechanism to allow fishing on behalf of another person. The Council purposely avoided issues pertaining to proxy fishing by providing for relatively liberal hook and harvest limits. In developing this policy, the Council understood that a subsistence halibut fisher would likely share his harvest with others and, therefore, proxy fishing was not deemed to be necessary.

Comment 43: The Alaska Department of Fish and Game should not play any part in the enforcement of these rules because ADF&G enforcement has demonstrated minimal sensitivity to people living in a rural setting.

Response: These rules, like other halibut fishery management rules, may be enforced by any authorized officer. The term "authorized officer" is defined, with respect to fishing off Alaska, to mean "...any State, Federal, or Provincial officer authorized to enforce these regulations including but not limited to, the National Marine Fisheries Service,...Alaska Division of Fish and Wildlife Protection,...[and the] United States Coast Guard..." (67 FR 12885, March 20, 2002).

Changes From the Proposed Rule

NMFS invited public comment on the proposed rule implementing the subsistence halibut program from August 26, 2002, through September 25, 2002 (67 FR 54767, August 26, 2002). The 43 comments received are summarized and responded to above. Several of these comments made technical suggestions or pointed out errors in the proposed rule with which NMFS agrees. Hence, NMFS has changed regulatory text in this action from what was published in the proposed rule. All of these changes are of a technical nature that correct errors in the proposed rule, improve the effectiveness of the rules, or improve their parity with the Council's intent and regulations developed by the IPHC. None of these make substantive changes to the subsistence halibut management program described in the preamble to the proposed rule. These changes are identified and explained as follows.

1. The proposed rule text in several places described the general area in which subsistence halibut fishing would occur in waters in and off Alaska. Although the context in each instance varied, the implication of phrases like "Commission regulatory area" or the naming of regulatory areas was that subsistence halibut fishing could occur only in Commission regulatory areas in waters in and off Alaska and nowhere else in waters in and off Alaska. The proposed rule failed to recognize that an area closed to commercial halibut fishing in the Bering Sea is defined by IPHC regulations to be outside of any of the Commission regulatory areas that are in waters in and off Alaska (see annual management measures at sections 6 and 10 (68 FR 10989, March 7, 2003)).

Any implication that subsistence halibut fishing also should not occur in the closed area was wrong and unintentional. The Council never indicated that intent, and the IPHC regulations make clear that the closed area applies only to commercial halibut fishing. This error was pointed out in comments 16 and 33. The error was found in the proposed rule text in: the definitions of "sport fishing" and "subsistence" at § 300.61, the heading at § 300.65, § 300.65(g)(3), § 300.65(g)(4), § 300.65(g)(4)(iii), and § 300.65(h). In this rule, with one exception, the phrase "Commission regulatory area" was removed from these places. The exception is at § 300.65(g)(4)(iii) where the phrase "or the Bering Sea closed area" is added to maintain the intended context.

2. The proposed regulatory restructuring at § 300.63 erred by including obsolete text in paragraph (b). The purpose of this restructuring, detailed more completely in the preamble of the proposed rule, is to better distinguish halibut fishery management measures that are applicable to IPHC Area 2A from those that are applicable to waters in and off Alaska. Until now, these management measures, all of which were developed by either the Pacific Fishery Management Council or the North Pacific Fishery Management Council under authority of the Halibut Act and approved by NMFS, have been implemented primarily by regulations at § 300.63. The addition of these subsistence rules would make this section structurally too cumbersome. This action will distinguish Area 2A management measures from those applicable to waters in and off Alaska by moving the "Alaska" provisions formerly in § 300.63 to a revised § 300.65 and a new § 300.66 (prohibitions).

This restructuring is intended to have no effect on the Area 2A management measures. To avoid confusion in the amendatory text of each instruction in the proposed rule, the full text of each paragraph in § 300.63 was reiterated in the proposed rule. Unfortunately, some of that text was obsolete by the time the proposed rule was published. If that mistake were repeated in this final rule, it would unintentionally undermine the halibut fishery management program in Area 2A. Hence, to avoid that mistake, this final rule does not attempt to republish existing regulatory text in § 300.63 pertaining to Area 2A because it may be changed again before this final rule becomes effective. Only revised text in the introductory paragraph (which is redesignated as paragraph (a)) is published in this final rule and unrevised text in former paragraph (a) or redesignated paragraph (b) is indicated by 3 stars.

3. Comment 32 indicated that Figure 1 mistakenly depicts Sitka Sound as a non-rural area in which subsistence fishing would be prohibited. Based on the description of the four non-subsistence areas in the preamble to the proposed rule and the proposed rule text, Figure 1 in the proposed rule is clearly wrong. This was caused by a technical error in transferring graphic data files for publication and was not meant to add a new non-subsistence area not otherwise described and explained. This technical mistake is corrected in this action by publishing Figure 1 as originally intended. Figure 1 is not substantially different from the previously existing Figure 1 in § 300.65 and its purpose is to depict the boundaries of the Sitka Sound LAMP. It is republished in this rule as part of the restructuring of regulatory text described in the preamble to the proposed rule in which the text description of the Sitka Sound LAMP is moved from § 300.63(d) to § 300.65(d).

A separate but related change in the proposed rule is made to correct an inadvertent error in the text description of the Sitka Sound LAMP. Due to a drafting oversight in the proposed rule text at § 300.65(d)(1)(i)(C), Cape Edgecumbe was incorrectly described at 57° 59' 54" N. latitude, 135° 51' 27" W. longitude. Although this was the coordinate originally published in the LAMP implementing rule, it was later corrected to be 56° 59' 54" N. latitude, 135° 51' 27" W. longitude (66 FR 36208, July 11, 2001). Hence, this rule makes a technical change to include the correct coordinate for Cape Edgecumbe.

4. The limitation on using more than 30 hooks on fishing gear to harvest subsistence halibut applies to each authorized subsistence halibut fisher. This limitation was clear in the Council's recommendation and was clear in the preamble to the proposed rule. The regulatory text published in the proposed rule, however, was not clear. This lack of specificity and potential ambiguity in the proposed regulatory text was pointed out in comment 4. Hence, the regulatory text at § 300.65(g)(1)(i) is changed from the proposed rule to clarify that the hook limitation applies to each person eligible to conduct subsistence halibut fishing under this rule.

5. A minor technical change was suggested in comment 5 to require setline gear used for subsistence halibut fishing to be identified as such by including an "S" on the buoys marking the gear. This labeling requirement is in addition to the name and address of the fisher. This additional marking requirement is intended to help distinguish subsistence halibut fishing gear from commercial halibut fishing gear, to which a hook limit does not apply.

6. Another technical change in the harvest survey instrument, based on recommendations in comments 1 and 18, would provide a finer level of geographic specificity than the IPHC regulatory area. This specificity is desirable to be able to respond to potential grounds preemption and allocation questions that may arise in the future. Hence, NMFS changed the regulatory text at § 300.65(h)(4) from what was published in the proposed rule to include the local water body where subsistence halibut harvests were made in the harvest survey. A local water body would be, for example, Sitka Sound (in Area 2A), Kachemak Bay (in Area 3A), or Beaver Inlet (in Area 4A).

7. The proposed rule at §§ 300.65(h) and 300.66(e) indicates that a subsistence halibut fisher must possess a valid SHARC before he or she begins subsistence halibut fishing. The term "possess" was meant to indicate that a subsistence halibut fisher must have the SHARC physically with him or her while fishing. Comments 12 and 19 note, however, that this meaning is not necessarily clear. Hence, NMFS changed text from the proposed rule at § 300.66(e) to clarify the original intent of being able to document authority to conduct subsistence halibut fishing while fishing for subsistence halibut. This clarification is made by requiring a valid SHARC to be available for inspection by an authorized officer.

Making this clarifying change in this rule is consistent with the rationale for the registration system given in the preamble to the proposed rule. Although the primary purpose for requiring the registration of subsistence halibut fishers is to provide the basis for collecting subsistence halibut harvest data, an important secondary purpose is to be able to distinguish between those persons who are eligible to fish for subsistence halibut and those who are not eligible. Although possession of a registration certificate on a vessel conducting subsistence halibut fishing is not necessary for the first purpose, it is necessary for the second purpose.

8. The proposed rule preamble (67 FR 54770, column 2, last paragraph) described the SHARC as being valid for either 2 or 4 years depending on a person's basis for being eligible for a SHARC as a resident of a specified rural community or member of a specified Alaska Native tribe, respectively. The preamble also described the rational for a multi-year SHARC and reason for having different expiration periods. Due to a drafting oversight, however, the regulatory text of the proposed rule failed to specifically provide for denominating SHARCs with dates of eligibility. Therefore, this action corrects that oversight with language at section 300.65(h)(3) that allows NMFS to specify on the certificate the period of time during which the SHARC will be valid. This new regulatory text also clarifies that persons eligible to harvest subsistence halibut may renew their SHARCs that are expired or will soon (within 3 months) expire by following the specified registration procedures. This change is consistent with the explanation and rationale of the

subsistence halibut registration system given in the preamble to the proposed rule and as contemplated in the response to comments 13 and 30 above.

9. Section 300.65(g)(1) describes the type of gear to be used for subsistence halibut fishing. The proposed rule contained a typographical error using the word "jigging" to describe jig gear. Because this section lists gear types and not activities, the word "jigging" in the proposed rule is changed to "jig" in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

10. Section 300.65(h)(2) describes the registration process for subsistence halibut fishing. The proposed rule stated that a person may submit an application to a cooperative Alaska Native tribal government or other entity designated by NMFS or directly to NMFS. Only NMFS has the authority to register participants in the subsistence fishery. Application may be submitted to a cooperative Alaska Native tribal government or other entity designated by NMFS which may forward the applications to NMFS for registration. The text in § 300.65(h)(2) is corrected in the final rule to indicate that the cooperative Alaska Native tribal government or other entity designated by NMFS will forward the applications to NMFS. This correction will ensure that participants understand that the application must ultimately arrive at NMFS to complete the registration process. This correction does not substantively change the requirements of this section, only clarifies the area of responsibility in the registration process.

11. Section 300.66 is changed from the proposed rule in the final rule by adding paragraph (j) that prohibits the filleting, mutilating, or disfiguring of subsistence halibut. This prohibition is consistent with prohibitions already in place for commercially and sport caught halibut and is necessary to allow the counting of subsistence halibut to determine compliance with the bag limits at 50 CFR 300.65(g)(2). The fish can not be counted if they are filleted, mutilated, or disfigured. Therefore, compliance with the bag limits are enforceable only with this prohibition.

12. Section 300.65(g)(3)(iii) is changed from the proposed rule by substituting the word "excludes" for the word "includes." This change makes this paragraph of the regulatory text consistent with Figure 4. This paragraph describes the Anchorage/Matsu/Kenai non-subsistence area in Cook Inlet which is depicted in Figure 4. The description of this non-subsistence area is based on the existing definition in the Alaska Administrative Code at 5 AAC 01.555(b), May 14, 1993. In the State regulation, the Tyonek Subdistrict is excluded from the Anchorage/Matsu/Kenai non-subsistence area as it is correctly depicted in Figure 4. The text of the proposed rule at section 300.65(g)(3)(iii), however, indicated that the Tyonek Subdistrict would be included in the Anchorage/Matsu/Kenai non-subsistence area, although this text was not explicitly labeled as the Tyonek Subdistrict. Changing "included" in the proposed rule to "excluded" in this final rule corrects the inconsistence between the regulatory text and Figure 4. The regulatory text that specifies the Tyonek Subdistrict is further labeled as such by adding "Tyonek Subdistrict" in parentheses to further clarify the regulatory text with Figure 4.

This change from the proposed rule will have no practical effect because halibut are not typically found within the Tyonek Subdistrict due to the high silt content of the water in that part of Cook Inlet. Hence, Tyonek is not a community with customary and traditional uses of halibut and is not listed in section 300.65(f)(1).

13. The proposed rule at 300.65(f)(2) identified persons eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe as identified in the table. The proposed rule contained a typographical error in Halibut Regulatory Area 4E, identifying "Nuna Iqua" under the Sheldon Point Tribal Headquarters to describe "Nunam Iqua". Similarly, the Organized Tribal Entity for that Headquarters was identified as "Native Village of Sheldon's Point", instead of "Native Village of Sheldon Point". These errors are corrected in this final rule. This correction does not substantively change the requirements of this paragraph, only corrects a typographical error.

14. Section 600.725 describes the authorized gear types to be used for the Pacific halibut fishery. The proposed rule contained a typographical error using the word "jigging" to describe jig gear under paragraph C. Because this section lists authorized gear types, and not activities, the word "jigging" in the proposed rule is changed to "jig" in the final rule. This correction does not substantively change the requirements of this paragraph, only corrects a grammatical error.

Classification

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by OMB under control number 0648–0460. These requirements and their associated burden estimates per response are: 10 minutes for Subsistence halibut registration; 30 minutes for Subsistence halibut harvest report/survey; and 15 minutes for Subsistence halibut gear marking. These response times include 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**).

Notwithstanding any other provision 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 rule has been determined to be not significant for purposes of E.O. 12866.

In developing this rule, NMFS consulted with Alaska Native tribes, as defined in this rule, pursuant to E.O. 13175. This consultation was conducted through direct mailings to the affected tribes, meetings with the Alaska Native Subsistence Halibut Working Group organized by the Rural Alaska Community Action Program to represent all Native subsistence halibut users, and public meetings of the Council and its advisory bodies including the Halibut Subsistence Committee.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule for this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule. No regulatory flexibility analysis (RFA) was prepared. No comments or new information were received during the comment period that caused us to reevaluate the basis for the original determination, or to prepare a RFA.

List of Subjects

50 CFR Part 300

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 600

Fisheries, Fishing.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: April 2, 2003.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 300, 600, and 679 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS, SUBPART E PACIFIC HALIBUT FISHERIES

■ 1. The authority citation for 50 CFR part 300, Subpart E, continues to read as follows:

Authority: 16 U.S.C. 773–773k.

■ 2. In § 300.61 new definitions for "Alaska Native tribe," "Commission," "Commission regulatory area," "Customary trade," "Rural," "Rural resident," "Subsistence," and "Subsistence halibut," are added in alphabetical order, and existing definitions for "Commercial fishing," "IFQ halibut," and "Sport fishing" are revised to read as follows:

§ 300.61 Definitions.

* * * * *

Alaska Native tribe means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a Federally recognized Alaska Native tribe that has customary and traditional use of halibut and that is listed in § 300.65(f)(2) of this part.

* * * * *

Commercial fishing means fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing.

Commission means the International Pacific Halibut Commission.

Commission regulatory area means an area defined by the Commission for purposes of the Convention identified in 50 CFR 300.60 and prescribed in the annual management measures published pursuant to 50 CFR 300.62.

Customary trade means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, the non-commercial exchange of subsistence halibut for anything other than items of significant value.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined at § 679.2 of this title.

* * * * *

Rural means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a community or area of Alaska in which the non-commercial, customary and traditional use of fish and game for personal or family consumption is a principal characteristic of the economy or area and in which there is a long-term, customary and traditional use of halibut, and that is listed in § 300.65(f)(1).

Rural resident means, for purposes of the subsistence fishery for Pacific halibut in waters in and off Alaska, a person domiciled in a rural community listed in the table in § 300.65(f)(1) of this part and who has maintained a domicile in a rural community listed in the table in § 300.65(f)(1) for the 12 consecutive months immediately preceding the time when the assertion of residence is made, and who is not claiming residency in another state, territory, or country.

Sport fishing means:

(1) In regulatory area 2A, all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing; and

(2) In waters in and off Alaska, all fishing other than commercial fishing and subsistence fishing.

* * * * *

Subsistence means, with respect to waters in and off Alaska, the non-commercial, long-term, customary and traditional use of halibut.

Subsistence halibut means halibut caught by a rural resident or a member of an Alaska Native tribe for direct personal or family consumption as food, sharing for personal or family consumption as food, or customary trade.

* * * * *

■ 3. In § 300.63, the section heading is revised; paragraphs (b), (c), (d), and (e) are removed; paragraph (a) introductory text is revised to read as follows; and paragraphs (a)(1) through (a)(5) are redesignated as paragraphs (b)(1), (b)(2), (b)(3), (b)(4), and (b)(5):

§ 300.63 Catch sharing plan and domestic management measures in Area 2A.

(a) A catch sharing plan (CSP) may be developed by the Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Northwest Region, NMFS.

* * * * *

■ 4. Section 300.65 is redesignated as § 300.66 and revised and a new § 300.65 is added to read as follows:

§ 300.65 Catch sharing plan and domestic management measures in waters in and off Alaska.

(a) A catch sharing plan (CSP) may be developed by the North Pacific Fishery Management Council and approved by NMFS for portions of the fishery. Any approved CSP may be obtained from the Administrator, Alaska Region, NMFS.

(b) The catch sharing plan for Commission regulatory area 4 allocates the annual TAC among area 4 subareas and will be implemented by the Commission in annual management measures published pursuant to 50 CFR 300.62.

(c) A person authorized to conduct subsistence fishing under paragraph (f) of this section may retain subsistence halibut that are taken with setline gear in Commission regulatory areas 4D or 4E and that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62, provided that:

(1) The total annual halibut harvest of that person is landed in regulatory areas 4D or 4E; and

(2) No person may sell such halibut outside the limits prescribed for customary and traditional exchange of subsistence halibut prescribed at 50 CFR 300.66.

(d) The Local Area Management Plan (LAMP) for Sitka Sound provides guidelines for participation in the halibut fishery in Sitka Sound.

(1) For purposes of this section, Sitka Sound means (See Figure 1 to subpart E):

(i) With respect to paragraph (d)(2) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to Chichagof Island at 57°22′03″ N. lat., 135°43′00″ W. long., and

(B) By a line from Chichagof Island at 57°22′35″ N. lat., 135°41′18″ W. long. to Baranof Island at 57°22′17″ N. lat., 135°40′57″ W. long.; and

(C) That is enclosed on the south and west by a line from Cape Edgecumbe at 56°59′54″ N. lat., 135°51′27″ W. long. to Vasilief Rock at 56°48′56″ N. lat., 135°32′30″ W. long., and

(D) To the green day marker in Dorothy Narrows at 56°49′17″ N. lat., 135°22′45″ W. long. to Baranof Island at 56°49′17″ N. lat., 135°22′36″ W. long.

(ii) With respect to paragraphs (d)(3) and (d)(4) of this section, that part of the Commission regulatory area 2C that is enclosed on the north and east:

(A) By a line from Kruzof Island at 57°20′30″ N. lat., 135°45′10″ W. long. to

Chichagof Island at 57°22'03" N. lat., 135°43'00" W. long., and

(B) A line from Chichagof Island at 57°22'35" N. lat., 135°41'18" W. long. to Baranof Island at 57°22'17" N. lat., 135°40'57" W. lat.; and

(C) That is enclosed on the south and west by a line from Sitka Point at 56°59'23" N. lat., 135°49'34" W. long., to Hanus Point at 56°51'55" N. lat., 135°30'30" W. long.,

(D) To the green day marker in Dorothy Narrows at 56°49'17" N. lat., 135°22'45" W. long. to Baranof Island at 56°49'17" N. lat., 135°22'36" W. long.

(2) A person using a vessel greater than 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61, is prohibited from fishing for IFQ halibut with setline gear, as defined at 50 CFR 300.61, within Sitka Sound as defined in paragraph (d)(1)(i) of this section.

(3) A person using a vessel less than or equal to 35 ft (10.7 m) in overall length, as defined at 50 CFR 300.61:

(i) Is prohibited from fishing for IFQ halibut with setline gear within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31; and

(ii) Is prohibited, during the remainder of the designated IFQ season, from retaining more than 2,000 lb (0.91 mt) of IFQ halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, per IFQ fishing trip, as defined in 50 CFR 300.61.

(4) No charter vessel, as defined at 50 CFR 300.61, shall engage in sport fishing, as defined at 50 CFR 300.61(b), for halibut within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(i) No charter vessel shall retain halibut caught while engaged in sport fishing, as defined at 50 CFR 300.61(b), for other species, within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(ii) Notwithstanding paragraphs (d)(4) and (d)(4)(i) of this section, halibut harvested outside Sitka Sound, as defined in (d)(1)(ii) of this section, may be retained onboard a charter vessel engaged in sport fishing, as defined in 50 CFR 300.61(b), for other species within Sitka Sound, as defined in paragraph (d)(1)(ii) of this section, from June 1 through August 31.

(e) Sitka Pinnacles Marine Reserve. (1) For purposes of this paragraph (e), the Sitka Pinnacles Marine Reserve means an area totaling 2.5 square nm off Cape Edgecumbe, defined by straight lines connecting the following points in a counterclockwise manner:

56°55.5'N lat., 135°54.0'W long;
56°57.0'N lat., 135°54.0'W long;
56°57.0'N lat., 135°57.0'W long;
56°55.5'N lat., 135°57.0'W long.

(2) No person shall engage in commercial, sport or subsistence fishing, as defined at § 300.61, for halibut within the Sitka Pinnacles Marine Reserve.

(3) No person shall anchor a vessel within the Sitka Pinnacles Marine Reserve if halibut is on board.

(f) *Subsistence fishing in and off Alaska.* No person shall engage in subsistence fishing for halibut unless that person meets the requirements in paragraphs (f)(1) or (f)(2) of this section.

(1) A person is eligible to harvest subsistence halibut if he or she is a rural resident of a community with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Rural Community	Organized Entity
Angoon	Municipality
Coffman Cove	Municipality
Craig	Municipality
Edna Bay	Census Designated Place
Elfin Cove	Census Designated Place
Gustavus	Census Designated Place
Haines	Municipality
Hollis	Census Designated Place
Hoonah	Municipality
Hydaburg	Municipality
Hyder	Census Designated Place
Kake	Municipality
Kasaan	Municipality
Klawock	Municipality
Klukwan	Census Designated Place
Metlakatla	Census Designated Place
Meyers Chuck	Census Designated Place
Pelican	Municipality
Petersburg	Municipality
Point Baker	Census Designated Place
Port Alexander	Municipality
Port Protection	Census Designated Place
Saxman	Municipality
Sitka	Municipality
Skagway	Municipality
Tenakee Springs	Municipality
Thorne Bay	Municipality
Whale Pass	Census Designated Place
Wrangell	Municipality

HALIBUT REGULATORY AREA 3A

Rural Community	Organized Entity
Akhiok	Municipality
Chenega Bay	Census Designated Place
Cordova	Municipality
Karluk	Census Designated Place
Kodiak City	Municipality
Larsen Bay	Municipality
Nanwalek	Census Designated Place
Old Harbor	Municipality
Ouzinkie	Municipality
Port Graham	Census Designated Place
Port Lions	Municipality
Seldovia	Municipality
Tatitlek	Census Designated Place
Yakutat	Municipality

HALIBUT REGULATORY AREA 3B

Rural Community	Organized Entity
Chignik Bay	Municipality
Chignik Lagoon	Census Designated Place
Chignik Lake	Census Designated Place
Cold Bay	Municipality
False Pass	Municipality
Ivanof Bay	Census Designated Place
King Cove	Municipality
Nelson Lagoon	Census Designated Place
Perryville	Census Designated Place
Sand Point	Municipality

HALIBUT REGULATORY AREA 4A

Rural Community	Organized Entity
Akutan	Municipality
Nikolski	Census Designated Place
Unalaska	Municipality

HALIBUT REGULATORY AREA 4B

Rural Community	Organized Entity
Adak	Census Designated Place
Atka	Municipality

HALIBUT REGULATORY AREA 4C

Rural Community	Organized Entity
St. George	Municipality
St. Paul	Municipality

HALIBUT REGULATORY AREA 4D

Rural Community	Organized Entity
Gambell	Municipality
Savoonga	Municipality

HALIBUT REGULATORY AREA 4D—Continued

Rural Community	Organized Entity
Diomede (Inalik)	Municipality

HALIBUT REGULATORY AREA 4E

Rural Community	Organized Entity
Alakanuk	Municipality
Aleknegik	Municipality
Bethel	Municipality
Brevig Mission	Municipality
Chefornak	Municipality
Chevak	Municipality
Clark's Point	Municipality
Council	Census Designated Place
Dillingham	Municipality
Eek	Municipality
Egegik	Municipality
Elim	Municipality
Emmonak	Municipality
Golovin	Municipality
Goodnews Bay	Municipality
Hooper Bay	Municipality
King Salmon	Census Designated Place
Kipnuk	Census Designated Place
Kongiganak	Census Designated Place
Kotlik	Municipality
Koyuk	Municipality
Kwigillingok	Census Designated Place
Levelock	Census Designated Place
Manokotak	Municipality
Mekoryak	Municipality
Naknek	Census Designated Place
Napakiak	Municipality
Napaskiak	Municipality
Newtok	Census Designated Place
Nightmute	Municipality
Nome	Municipality
Oscarville	Census Designated Place
Pilot Point	Municipality
Platinum	Municipality
Port Heiden	Municipality
Quinhagak	Municipality
Scammon Bay	Municipality
Shaktoolik	Municipality
Sheldon Point (Nunam Iqua).	Municipality
Shishmaref	Municipality
Solomon	Census Designated Place
South Naknek	Census Designated Place
St. Michael	Municipality
Stebbins	Municipality
Teller	Municipality
Togiak	Municipality
Toksook Bay	Municipality
Tuntutuliak	Census Designated Place
Tununak	Census Designated Place

HALIBUT REGULATORY AREA 4E—Continued

Rural Community	Organized Entity
Twin Hills	Census Designated Place
Ugashik	Census Designated Place
Unalakleet	Municipality
Wales	Municipality
White Mountain	Municipality

(2) A person is eligible to harvest subsistence halibut if he or she is a member of an Alaska Native tribe with customary and traditional uses of halibut listed in the following table:

HALIBUT REGULATORY AREA 2C

Place with Tribal Headquarters	Organized Tribal Entity
Angoon	Angoon Community Association
Craig	Craig Community Association
Haines	Chilkoot Indian Association
Hoonah	Hoonah Indian Association
Hydaburg	Hydaburg Cooperative Association
Juneau	Aukquan Traditional Council
	Central Council Tlingit and Haida Indian Tribes
	Douglas Indian Association
Kake	Organized Village of Kake
Kasaan	Organized Village of Kasaan
Ketchikan	Ketchikan Indian Corporation
Klawock	Klawock Cooperative Association
Klukwan	Chilkat Indian Village
Metlakatla	Metlakatla Indian Community, Annette Island Reserve
Petersburg	Petersburg Indian Association
Saxman	Organized Village of Saxman
Sitka	Sitka Tribe of Alaska
Skagway	Skagway Village
Wrangell	Wrangell Cooperative Association

HALIBUT REGULATORY AREA 3A

Place with Tribal Headquarters	Organized Tribal Entity
Akhiok	Native Village of Akhiok
Chenega Bay	Native Village of Chanega

HALIBUT REGULATORY AREA 3A—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Cordova	Native Village of Eyak
Karluk	Native Village of Karluk
Kenai-Soldotna	Kenaitze Indian Tribe
	Village of Salamatoff
Kodiak City	Lesnoi Village (Woody Island)
	Native Village of Afognak
	Shoonaq' Tribe of Kodiak
Larsen Bay	Native Village of Larsen Bay
Nanwalek	Native Village of Nanwalek
Ninilchik	Ninilchik Village
Old Harbor	Village of Old Harbor
Ouzinkie	Native Village of Ouzinkie
Port Graham	Native Village of Port Graham
Port Lions	Native Village of Port Lions
Seldovia	Seldovia Village Tribe
Tatitlek	Native Village of Tatitlek
Yakutat	Yakutat Tlingit Tribe

HALIBUT REGULATORY AREA 3B

Place with Tribal Headquarters	Organized Tribal Entity
Chignik Bay	Native Village of Chignik
Chignik Lagoon	Native Village of Chignik Lagoon
Chignik Lake	Chignik Lake Village
False Pass	Native Village of False Pass
Ivanof Bay	Ivanoff Bay Village
King Cove	Agdaagux Tribe of King Cove
	Native Village of Belkofski
Nelson Lagoon	Native Village of Nelson Lagoon
Perryville	Native Village of Perryville
Sand Point	Pauloff Harbor Village
	Native Village of Unga
	Qagan Toyagungin Tribe of Sand Point Village

HALIBUT REGULATORY AREA 4A

Place with Tribal Headquarters	Organized Tribal Entity
Akutan	Native Village of Akutan
Nikolski	Native Village of Nikolski
Unalaska	Qawalingin Tribe of Unalaska

HALIBUT REGULATORY AREA 4B

Place with Tribal Headquarters	Organized Tribal Entity
Atka	Native Village of Atka

HALIBUT REGULATORY AREA 4C

Place with Tribal Headquarters	Organized Tribal Entity
St. George	Pribilof Islands Aleut Communities of St. Paul Island and St. George Island
St. Paul	

HALIBUT REGULATORY AREA 4D

Place with Tribal Headquarters	Organized Tribal Entity
Gambell	Native Village of Gambell
Savoonga	Native Village of Savoonga
Diomede (Inalik)	Native Village of Diomede (Inalik)

HALIBUT REGULATORY AREA 4E

Place with Tribal Headquarters	Organized Tribal Entity
Alakanuk	Village of Alakanuk
Aleknagik	Native Village of Aleknagik
Bethel	Orutsararmuit Native Village
Brevig Mission	Native Village of Brevig Mission
Chefornak	Village of Chefornak
Chevak	Chevak Native Village
Clark's Point	Village of Clark's Point
Council	Native Village of Council
Dillingham	Native Village of Dillingham
	Native Village of Ekuk
	Native Village of Kanakanak
Eek	Native Village of Eek
Egegik	Egegik Village
	Village of Kanatak

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Elim	Native Village of Elim
Emmonak	Chuloonawick Native Village
	Emmonak Village
Golovin	Chinik Eskimo Community
Goodnews Bay	Native Village of Goodnews Bay
Hooper Bay	Native Village of Hooper Bay
	Native Village of Paimiut
King Salmon	King Salmon Tribal Council
Kipnuk	Native Village of Kipnuk
Kongiganak	Native Village of Kongiganak
Kotlik	Native Village of Hamilton
	Village of Bill Moore's Slough
	Village of Kotlik
Koyuk	Native Village of Koyuk
Kwigillingok	Native Village of Kwigillingok
Levelock	Levelock Village
Manokotak	Manokotak Village
Mekoryak	Native Village of Mekoryak
Naknek	Naknek Native Village
Napakiak	Native Village of Napakiak
Napaskiak	Native Village of Napaskiak
Newtok	Newtok Village
Nightmute	Native Village of Nightmute
	Umkumiute Native Village
Nome	King Island Native Community
	Nome Eskimo Community
Oscarville	Oscarville Traditional Village
Pilot Point	Native Village of Pilot Point
Platinum	Platinum Traditional Village
Port Heiden	Native Village of Port Heiden
Quinhagak	Native Village of Kwinhagak
Scammon Bay	Native Village of Scammon Bay
Shaktoolik	Native Village of Shaktoolik
Sheldon Point (Nunalqua)	Native Village of Sheldon's Point
Shishmaref	Native Village of Shishmaref
Solomon	Village of Solomon
South Naknek	South Naknek Village
St. Michael	Native Village of Saint Michael

HALIBUT REGULATORY AREA 4E—Continued

Place with Tribal Headquarters	Organized Tribal Entity
Stebbins	Stebbins Community Association
Teller	Native Village of Mary's Igloo
	Native Village of Teller
Togiak	Traditional Village of Togiak
Toksook Bay	Native Village of Toksook Bay
Tuntutuliak	Native Village of Tuntutuliak
Tununak	Native Village of Tununak
Twin Hills	Twin Hills Village
Ugashik	Ugashik Village
Unalakleet	Native Village of Unalakleet
Wales	Native Village of Wales
White Mountain	Native Village of White Mountain

(g) *Limitations on subsistence fishing.* Subsistence fishing for halibut may be conducted only by persons who qualify for such fishing pursuant to paragraph (f) of this section and who hold a valid subsistence halibut registration certificate in that person's name issued by NMFS pursuant to paragraph (h) of this section, provided that such fishing is consistent with the following limitations.

(1) Subsistence fishing is limited to setline gear and hand-held gear, including longline, handline, rod and reel, spear, jig and hand-troll gear.

(i) Subsistence fishing gear must not have more than 30 hooks per person registered in accordance with paragraph (h) of this section and on board the vessel from which gear is being set or retrieved.

(ii) All setline gear marker buoys carried on board or used by any vessel regulated under this section shall be marked with the following: first initial, last name, and address (street, city, and state), followed by the letter "S" to indicate that it is used to harvest subsistence halibut.

(iii) Markings on setline marker buoys shall be in characters at least 4 inches (10.16 cm) in height and 0.5 inch (1.27 cm) in width in a contrasting color visible above the water line and shall be maintained so the markings are clearly visible.

(2) The daily retention of subsistence halibut in rural areas is limited to no more than 20 fish per person eligible to conduct subsistence fishing for halibut under paragraph (g) of this section,

except that no daily retention limit applies in Areas 4C, 4D, and 4E.

(3) Subsistence fishing may be conducted in any waters in and off Alaska except for the following four non-rural areas defined as follows:

(i) *Ketchikan non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 2 to subpart E) is defined as those waters between a line from Caamano Point at 55° 29.90' N. lat., 131° 58.25' W. long. to Point Higgins at 55° 27.42' N. lat., 131° 50.00' W. long. and a point at 55° 11.78' N. lat., 131° 05.13' W. long., located on Point Sykes to a point at 55° 12.22' N. lat., 131° 05.70' W. long., located one-half mile northwest of Point Sykes to Point Alava at 55° 11.54' N. lat., 131° 11.00' W. long. and within one mile of the mainland and the Gravina and Revillagigedo Island shorelines, including within one mile of the Cleveland Peninsula shoreline and east of the longitude of Niblack Point at 132° 07.23' W. long., and north of the latitude of the southernmost tip of Mary Island at 55° 02.66' N. lat.;

(ii) *Juneau non-subsistence marine waters area in Commission regulatory area 2C* (see Figure 3 to subpart E) is defined as those waters of Stephens Passage and contiguous waters north of the latitude of Midway Island Light (57° 50.21' N. lat.), including the waters of Taku Inlet, Port Snettisham, Saginaw Channel, and Favorite Channel, and those waters of Lynn Canal and contiguous waters south of the latitude of the northernmost entrance of Berners Bay (58° 43.07' N. lat.), including the waters of Berners Bay and Echo Cove, and those waters of Chatham Strait and contiguous waters north of the latitude of Point Marsden (58° 03.42' N. lat.), and east of a line from Point Couverden at 58° 11.38' N. lat., 135° 03.40' W. long., to Point Augusta at 58° 02.38' N. lat., 134° 57.11' W. long.;

(iii) *Anchorage-Matsu-Kenai non-subsistence marine waters area in Commission regulatory area 3A* (see Figure 4 to subpart E) is defined as all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51.10' N. lat.), and a line extending south from Cape Fairfield (148° 50.25' W. long.) except those waters north of Point Bede which are west of a line from the eastern most point of Jakolof Bay (151° 32.00' W. long.) north the western most point of Hesketh Island (59° 30.04' N. lat., 151° 31.09' W. long.) including Jakolof Bay and south of a line west from Hesketh Island (59° 30.04' N. lat. extending to the boundary of the territorial sea); the waters south of Point Bede which are west of the eastern most point of Rocky Bay (from the mainland along 151° 18.41' W. long. to the intersection with the territorial sea); but excludes those waters within mean lower low tide from a point one mile south of the southern edge of the Chuitna River (61° 05.00' N. lat., 151° 01.00' W. long.) south to the easternmost tip of Granite Point (61° 01.00' N. lat., 151° 23.00' W. long.) (Tyonek subdistrict, as defined in Alaska Administrative Code, 5 AAC 01.555(b), May 14, 1993); and

(iv) *Valdez non-subsistence marine waters area Commission regulatory area 3A* (see Figure 5 to subpart E) is defined as the waters of Port Valdez and Valdez Arm located north of 61° 02.24' N. lat., and east of 146° 43.80' W. long.

(4) Waters in and off Alaska that are not specifically identified as non-rural in paragraph (g)(3) of this section are rural for purposes of subsistence fishing for halibut. Subsistence fishing may be conducted in any rural area by any person with a valid subsistence halibut registration certificate in his or her name issued by NMFS under paragraph (h) of this section, except that:

(i) A person who is not a rural resident but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(ii) A person who is a resident outside the State of Alaska but who is a member of an Alaska Native tribe that is located in a rural area and that is listed in the table in paragraph (f)(2) of this section is limited to conducting subsistence fishing for halibut only in his or her area of tribal membership.

(iii) For purposes of this paragraph, "area of tribal membership" means rural areas of the Commission regulatory area or the Bering Sea closed area in which the Alaska Native tribal headquarters is located.

(h) *Subsistence registration.* A person must register as a subsistence halibut fisher and possess a valid subsistence halibut registration certificate in his or her name issued by NMFS before he or she begins subsistence fishing for halibut in waters in and off Alaska.

(1) A subsistence halibut registration certificate will be issued to any person who registers according to paragraph (h)(2) of this section and who is qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section. The Alaska Region, NMFS, may enter into cooperative agreements with Alaska Native tribal governments or their representative organizations for purposes of identifying persons qualified to conduct subsistence fishing for halibut according to paragraph (f) of this section.

(2) *Registration.* To register as a subsistence halibut fisher, a person may request a cooperating Alaska Native tribal government or other entity designated by NMFS to submit an application on his or her behalf to the Alaska Region, NMFS. Alternatively, a person may apply by submitting a completed application to the Alaska Region, NMFS. Applications must be mailed to: Restricted Access Management Program, NMFS, Alaska Region, PO Box 21668, Juneau, AK 99802–1668. The following information is required to be submitted with the application:

(i) For a Rural Resident Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence (the rural community or residence from 50 CFR 300.65(f)(1) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a "rural resident" as that term is defined at § 300.61, and signature and date of signature.

(ii) For an Alaska Native Tribal Registration, the person must submit his or her full name, date of birth, mailing address (number and street, city and state, zip code), Alaska Native tribe (the name of the Alaska Native Tribe from 50 CFR 300.65(f)(2) that qualifies the fisher as eligible to fish for subsistence halibut), daytime telephone number, certification that he or she is a member of an "Alaska Native tribe" as that term is defined at § 300.61, and signature and date of signature.

(3) *Expiration of registration.* Each subsistence halibut registration certificate will be valid only for the period of time specified on the certificate. A person eligible to harvest subsistence halibut under paragraph (f) of this section may renew his or her registration certificate that is expired or will expire within 3 months by following the procedures described in paragraph (h)(2) of this section. A subsistence halibut registration certificate will expire:

(i) 2 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(1) of this section, and

(ii) 4 years from the date of its issuance to a person eligible to harvest subsistence halibut under paragraph (f)(2) of this section.

(4) The Administrator, Alaska Region, NMFS, or an authorized representative, may conduct periodic surveys of persons who hold valid subsistence

halibut registration certificates to estimate the annual harvest of subsistence halibut and related catch and effort information. For purposes of this paragraph, an authorized representative of NMFS may include employees of, or contract workers for, the State of Alaska or a Federal agency or an Alaska Native tribal government representative as may be prescribed by cooperative agreement with NMFS. Responding to a subsistence halibut harvest survey will be voluntary and may include providing information on:

(i) The subsistence fisher's identity including his or her full name, date of birth, mailing address (number and street, city and state, zip code), community of residence, daytime phone number, and tribal identity (if appropriate);

(ii) The subsistence halibut harvest, including whether the participant fished for subsistence halibut during the year and, if so, the number and weight (in pounds) of halibut harvested, the type of gear and number of hooks usually used, the Commission regulatory area and local water body from which the halibut were harvested, and the number of ling cod and rockfish caught while subsistence fishing for halibut; and

(iii) Any sport halibut harvest, including whether the participant sport fished for halibut during the year and the number and weight (in pounds) of halibut harvested while sport fishing.

§ 300.66 Prohibitions.

■ In addition to the general prohibitions specified in 50 CFR 300.4, it is unlawful for any person to do any of the following:

(a) Fish for halibut except in accordance with the annual management measures published pursuant to 50 CFR 300.62.

(b) Fish for halibut except in accordance with the catch sharing plans and domestic management measures implemented under 50 CFR 300.63 and 50 CFR 300.65.

(c) Fish for halibut in Sitka Sound in violation of the Sitka Sound LAMP implemented under 50 CFR 300.65(d).

(d) Fish for halibut or anchor a vessel with halibut on board within the Sitka Pinnacles Marine Reserve defined at 50 CFR 300.65(e).

(e) Fish for subsistence halibut in and off Alaska unless the person is qualified to do so under 50 CFR 300.65(f), has in his or her possession a valid subsistence halibut registration certificate pursuant to 50 CFR 300.65(h), and makes this certificate available for inspection by an authorized officer on request.

(f) Fish for subsistence halibut in and off Alaska with gear other than that described at 50 CFR 300.65(g)(1) and retain more halibut than specified at 50 CFR 300.65(g)(2).

(g) Fish for subsistence halibut in and off Alaska in a non-rural area specified at 50 CFR 300.65(g)(3).

(h) Retain, on board the harvesting vessel, halibut harvested from subsistence fishing with halibut harvested from commercial fishing or from sport fishing, as defined at 50 CFR 300.61(b), except that persons who land their total annual harvest of halibut in Commission regulatory area 4D or 4E may retain, with harvests of CDQ halibut, halibut harvested in Commission regulatory areas 4D or 4E that are smaller than the size limit specified in the annual management measures published pursuant to 50 CFR 300.62.

(i) Retain subsistence halibut that were harvested using a charter vessel.

(j) Retain or possess subsistence halibut for commercial purposes, cause subsistence halibut to be sold, bartered or otherwise enter commerce or solicit exchange of subsistence halibut for commercial purposes, except that a person who qualified to conduct subsistence fishing for halibut under 50 CFR 300.65(f), and who holds a subsistence halibut registration certificate in the person's name under 50 CFR 300.65(h) may engage in the customary trade of subsistence halibut through monetary exchange of no more than $400 per year.

(k) Fillet, mutilate, or otherwise disfigure subsistence halibut in any manner that prevents the determination of the number of fish caught, possessed, or landed.

■ 5. Figure 1 to subpart E is revised; Figure 2 through 5 to subpart E are added to read as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for part 600 is amended to read as follows:

Authority: 5 U.S.C 561, 16 U.S.C. 773 *et seq.*, and 16 U.S.C. 1801 *et seq.*

■ 2. In § 600.725, table VII in paragraph (v) is revised to read as follows:

§ 600.725 General Prohibitions.

* * * * *

(v) * * *

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL

Fishery	Allowable gear types
1. Alaska Scallop Fishery (FMP).	Dredge.
2. Bering Sea (BS) and Aleutian Islands (AI) King and Tanner Crab Fishery (FMP):	
Pot fishery	Pot.
3. BS and AI King and Tanner Crab Fishery (Non-FMP):	
Recreational fishery	Pot.
4. BS and AI Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line, and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. BS and AI pot and trap fishery.	D. Pot, trap.
5. BS and AI Groundfish Recreational Fishery (Non-FMP)..	Handline, rod and reel, hook and line, pot, trap.
6. Gulf of Alaska (GOA) Groundfish Fishery (FMP):	
A. Groundfish trawl fishery	A. Trawl.
B. Bottomfish hook-and-line and handline fishery.	B. Hook and line, handline.
C. Longline fishery	C. Longline.
D. GOA pot and trap fishery.	D. Pot, trap.
E. Recreational fishery	E. Handline, rod and reel, hook and line, pot, trap.
7. Pacific Halibut Fishery (Non-FMP):	
A. Commercial (IFQ and CDQ).	A. Hook and line.
B. Recreational	B. Single line with no more than 2 hooks attached or spear.
C. Subsistence	C. Setline gear and hand held gear of not more than 30 hooks, including longline, handline, rod and reel, spear, jig, and hand-troll gear.
8. Alaska High Seas Salmon Hook and Line Fishery:	
(FMP)	Hook and line.
9. Alaska Salmon Fishery (Non-FMP):	
A. Hook-and-line fishery	A. Hook and line.
B. Gillnet fishery	B. Gillnet.
C. Purse seine fishery.	C. Purse seine.
D. Recreational fishery	D. Handline, rod and reel, hook and line.
10. Finfish Purse Seine Fishery (Non-FMP)..	Purse seine.

VII. NORTH PACIFIC FISHERY MANAGEMENT COUNCIL—Continued

Fishery	Allowable gear types
11. Octopus/Squid Longline Fishery (Non-FMP)..	Longline.
12. Finfish Handline and Hook-and-line Fishery (Non-FMP).	Handline, hook and line.
13. Recreational Fishery (Non-FMP).	Handline, rod and reel, hook line.
14. Commercial Fishery (Non-FMP).	Trawl, gillnet, hook and line, longline, handline, rod and reel, bandit gear, cast net, spear.

* * * * *

PART 679— FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*; 1801 *et seq.*; and 3631 *et seq.*; Title II of Division C, Pub. L. 105–277; Sec. 3027, Pub. L. 106–31; 113 Stat. 57; 16 U.S.C. 1540(f); and Sec. 209 Pub. L. 106–554.

■ 2. In § 679.2, the definitions for "commercial fishing" and "IFQ halibut" are revised as follows:

§ 679.2 Definitions.

* * * * *

Commercial fishing means:

(1) For purposes of the High Seas Salmon Fishery, fishing for fish for sale or barter; and

(2) For purposes of the Pacific halibut fishery, fishing, the resulting catch of which either is, or is intended to be, sold or bartered but does not include subsistence fishing for halibut, as defined at 50 CFR 300.61.

* * * * *

IFQ halibut means any halibut that is harvested with setline or other hook and line gear while commercial fishing in any IFQ regulatory area defined in this section.

* * * * *

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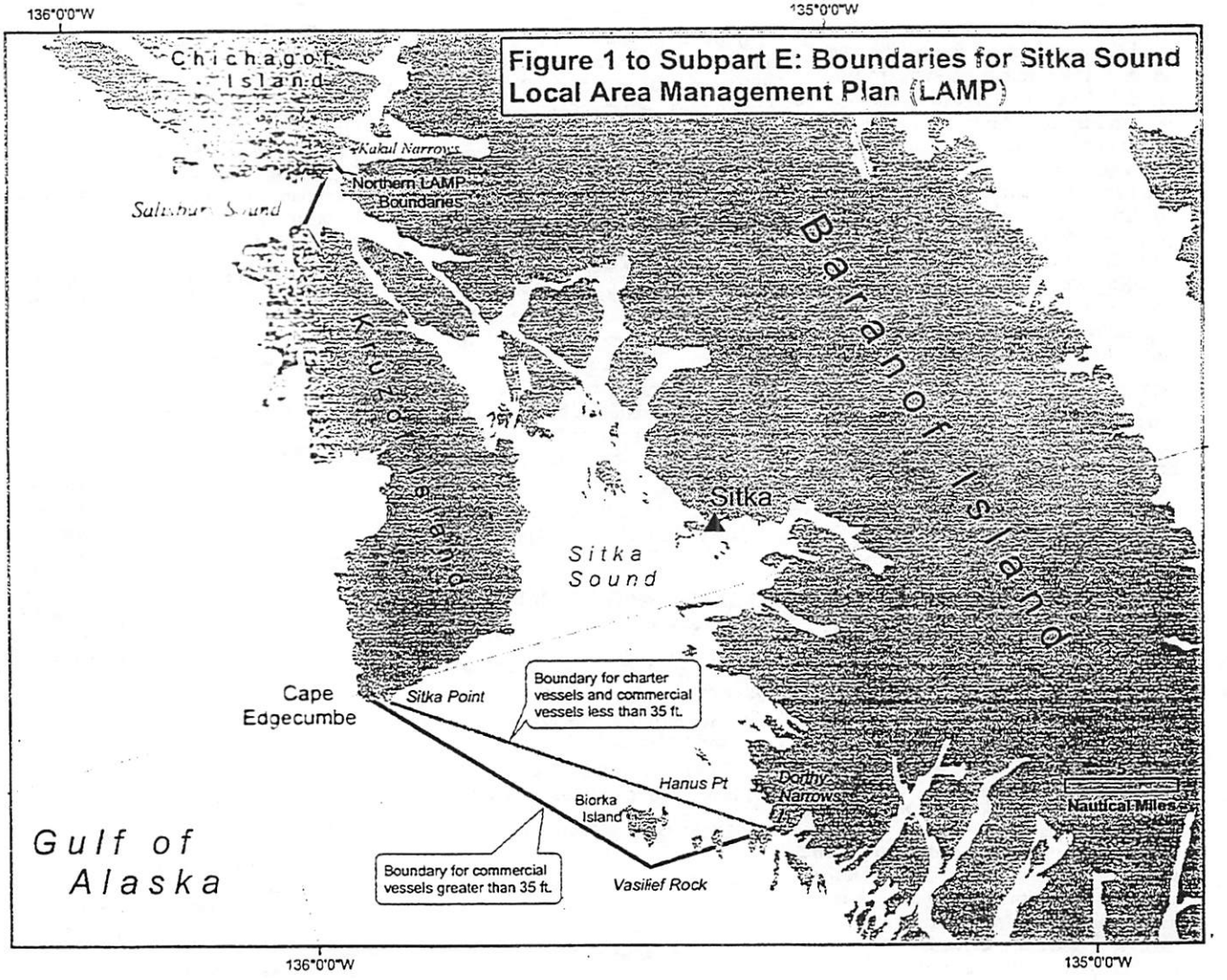

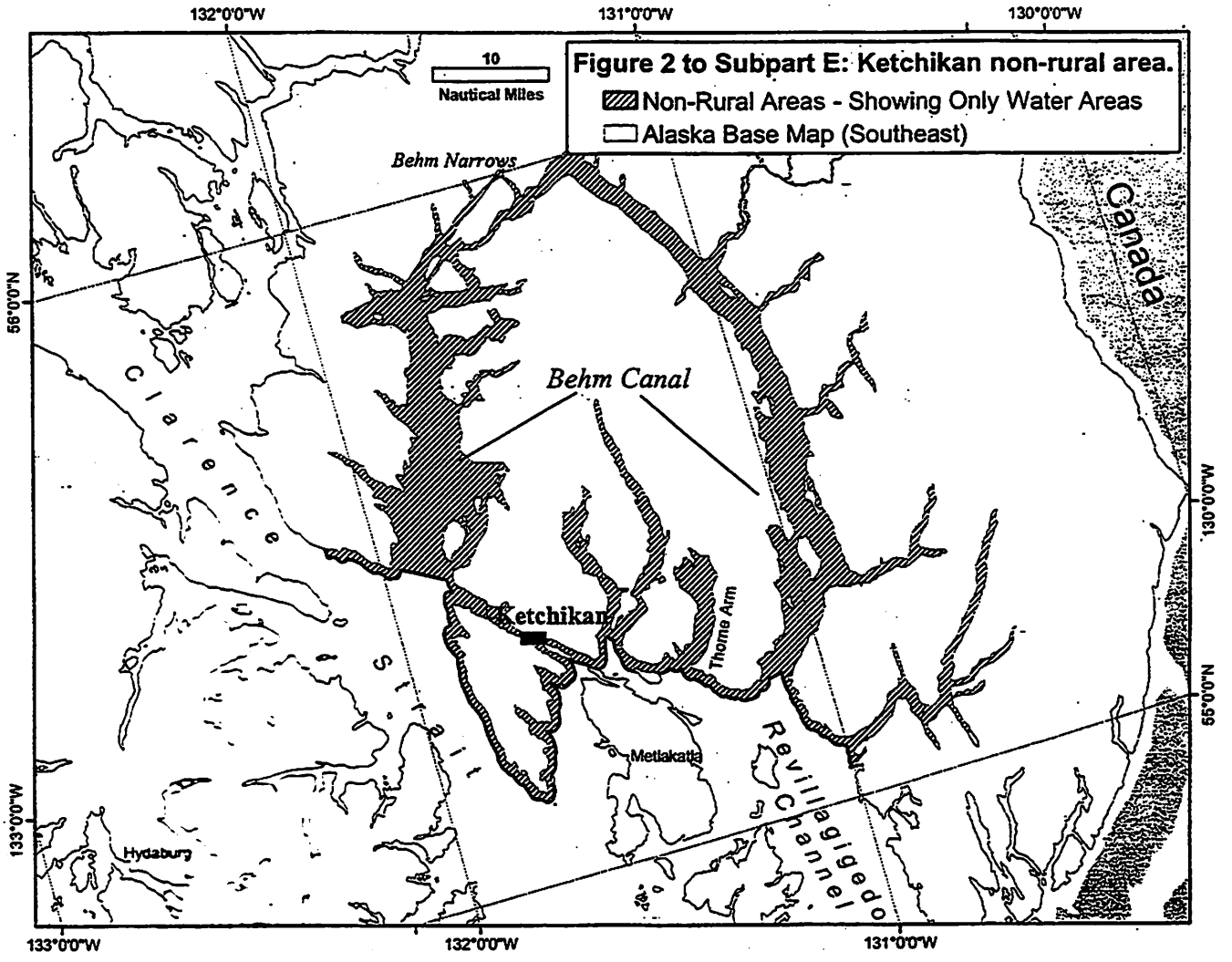
132°0'0"W
131°0'0"W
130°0'0"W
10
Nautical Miles
Figure 2 to Subpart E: Ketchikan non-rural area.
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map (Southeast)
Behm Narrows
Canada
56°0'0"N
Behm Canal
Clarence Strait
Ketchikan
Thorne Arm
Metlakatla
Revillagigedo Channel
Hydaburg
133°0'0"W
55°0'0"N
130°0'0"W
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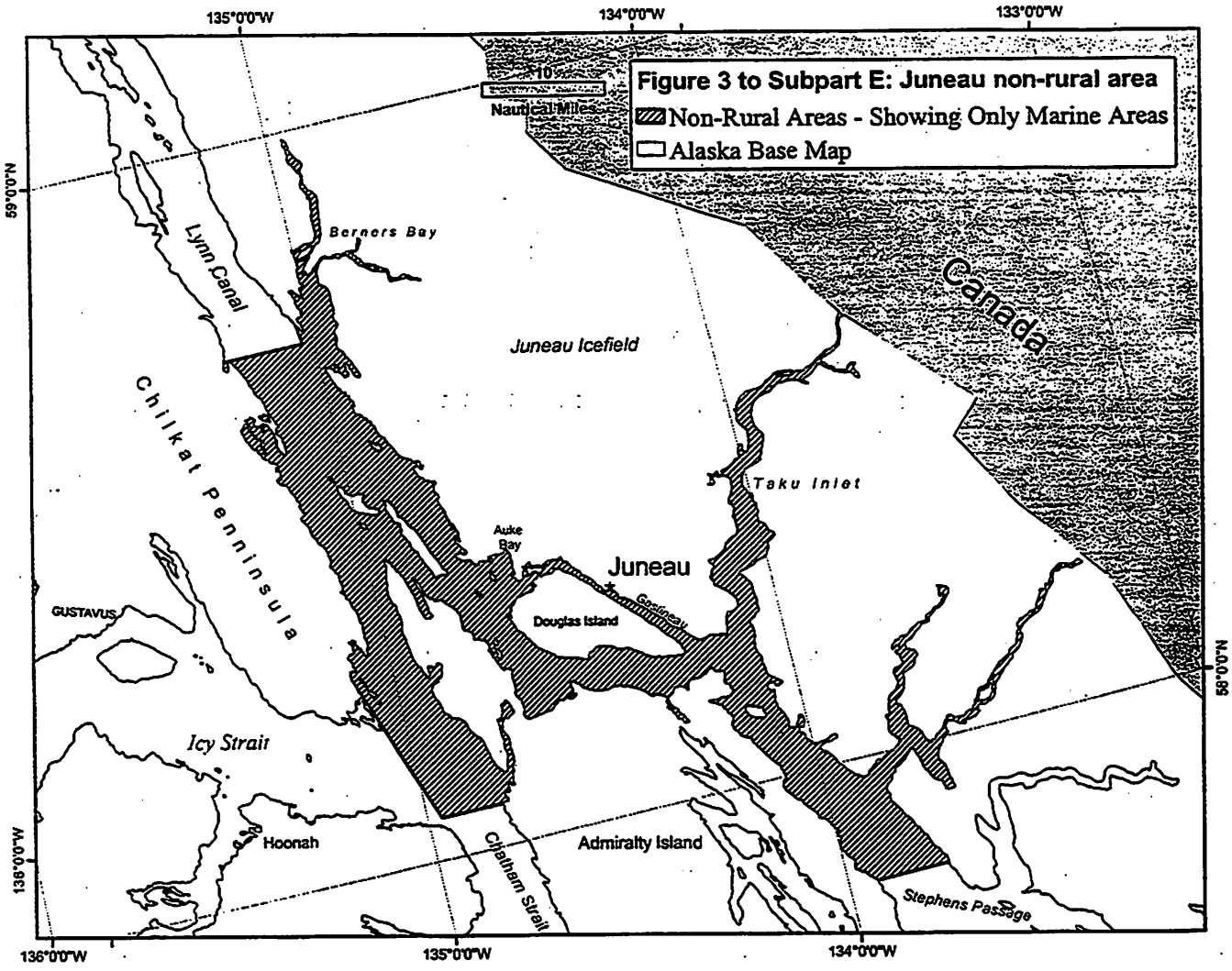
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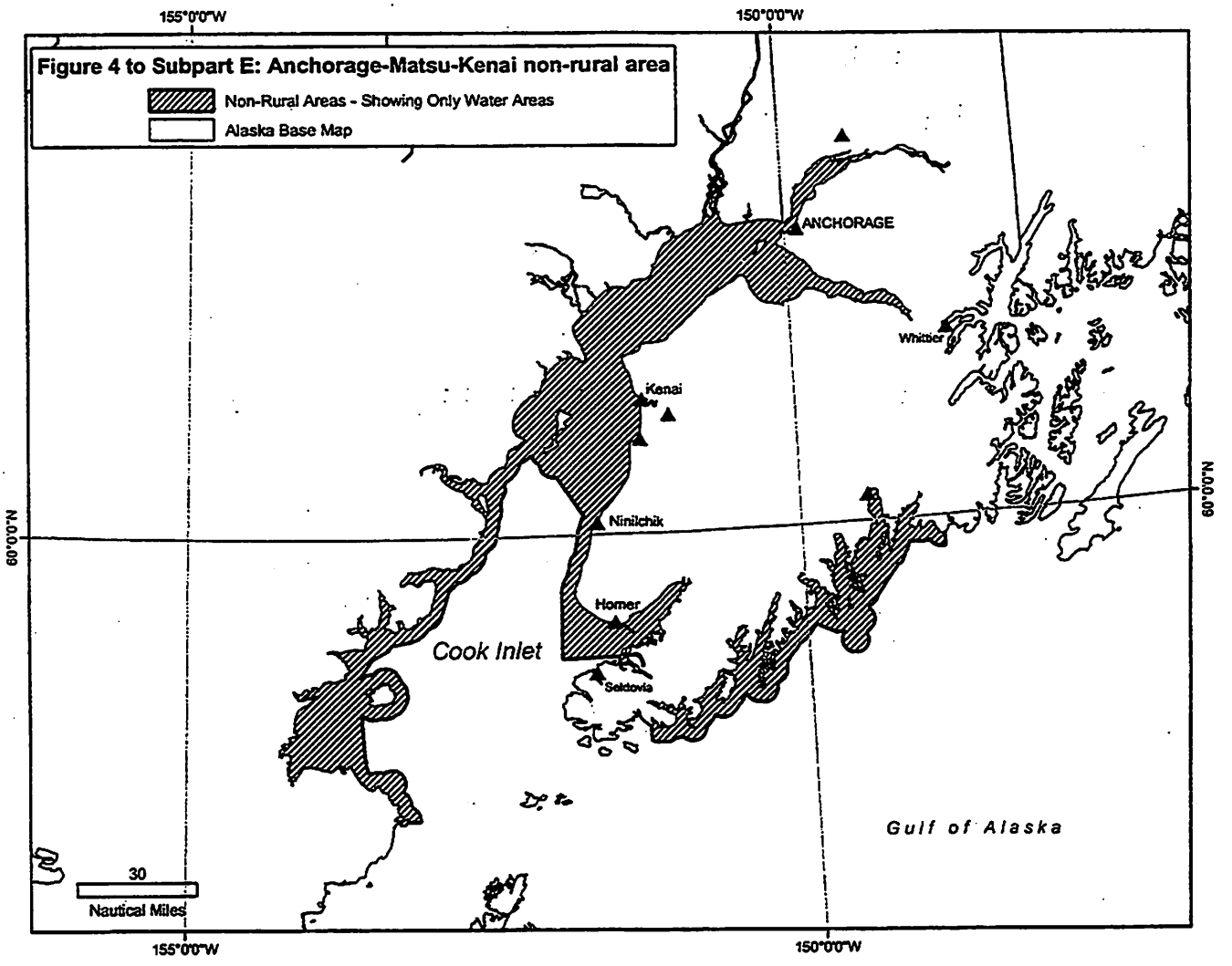
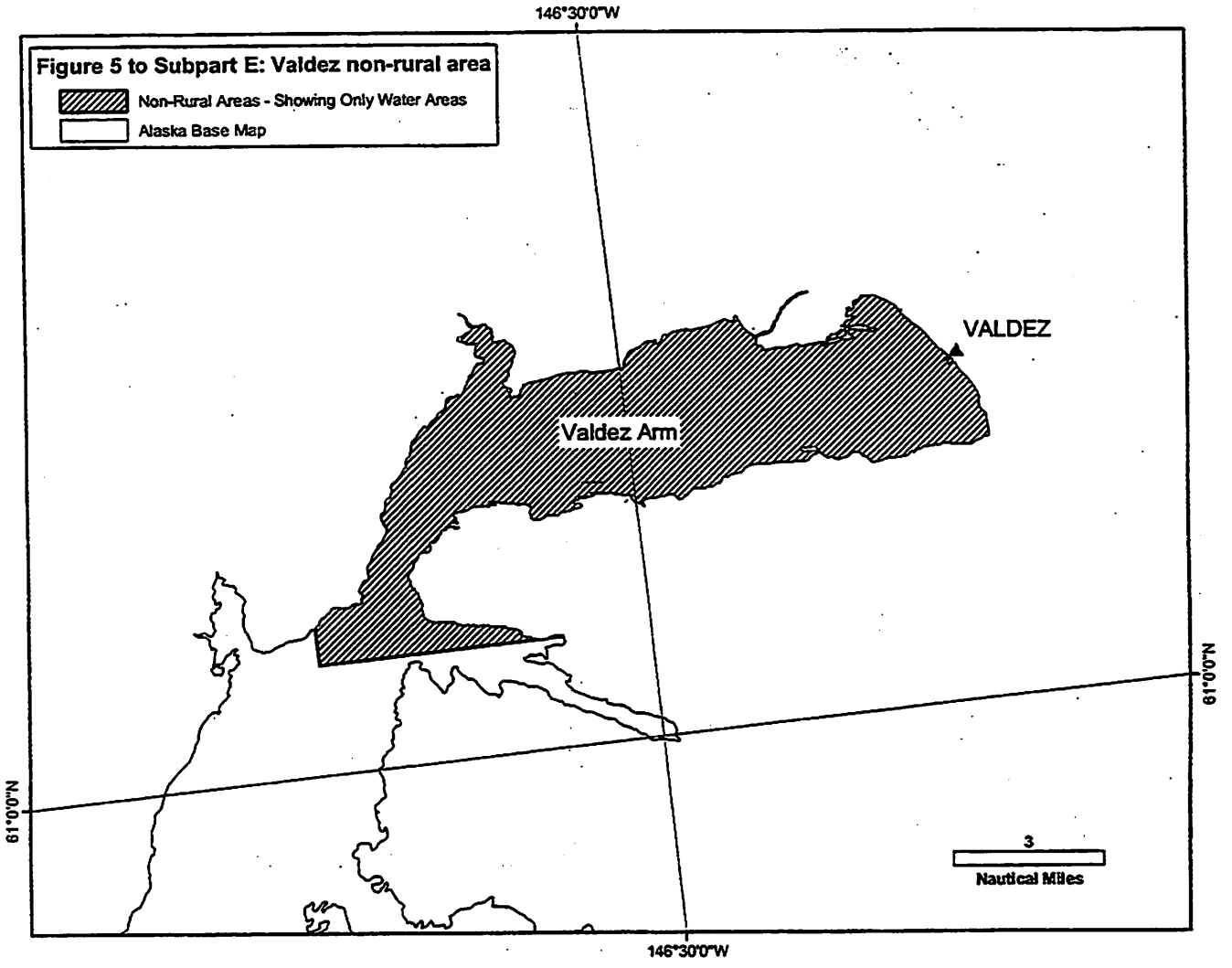
133°0'0"W
59°0'0"N
59°0'0"N
136°0'0"W
136°0'0"W
135°0'0"W
134°0'0"W
10
Nautical Miles
Figure 3 to Subpart E: Juneau non-rural area
Non-Rural Areas - Showing Only Marine Areas
Alaska Base Map
Lynn Canal
Berners Bay
Juneau Icefield
Canada
Chilkat Peninsula
Taku Inlet
Auke Bay
Juneau
Douglas Island
GUSTAVUS
Icy Strait
Hoonah
Chatham Strait
Admiralty Island
Stephens Passage


155°0'0"W
150°0'0"W
Figure 4 to Subpart E: Anchorage-Matsu-Kenai non-rural area
Non-Rural Areas - Showing Only Water Areas
Alaska Base Map
ANCHORAGE
Whittier
Kenai
Ninilchik
Homer
Seldovia
Cook Inlet
Gulf of Alaska
60°0'0"N
30
Nautical Miles
155°0'0"W
150°0'0"W



[FR Doc. 03–8822 Filed 4–14–03; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atomospheric Administration

50 CFR Part 660

[Docket No. 021209300–3048–02; I.D. 112502C]

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on March 7, 2003, for the Pacific Coast groundfish fishery.

DATES: Effective April 15, 2003.

FOR FURTHER INFORMATION CONTACT: Carrie Nordeen or Jamie Goen (NMFS, Northwest Region), 206–526–6140.

SUPPLEMENTARY INFORMATION: The specifications and management measures for the 2003 fishing year (January 1 - December 31, 2003) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2003 (68 FR 908, January 7, 2003), and as a proposed rule for March 1 - December 31, 2003 (68 FR 936, January 7, 2003). The emergency rule was amended at 68 FR 4719, January 30, 2003, and the final rule for March 1 - December 31, 2003, was published in the **Federal Register** on March 7, 2003 (68 FR 11182).

Management measures for the Pacific Coast groundfish fishery, effective March 1 - December 31, 2003 (68 FR 11182, March 7, 2003), contained remnant sablefish size limit language and typographical and transposing errors in the boundary coordinates for the Rockfish Conservation Areas (RCA) that require correction. Coordinates for the following lines are corrected in this document: the 60–fm (110–m) depth contour used between 40°10′ N. lat. and 34°27′ N. lat. as an eastern boundary for the trawl RCA in March through October; the 75–fm (137–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA in the months of July and August; and the 100–fm (183–m) depth contour used north of 40°10′ N. lat. as an eastern boundary for the trawl RCA and as a western boundary for the non-trawl RCA. In addition, this correction removes language referring to size limits and size limit conversions for sablefish. The 2003 management measures do not include a size limit for sablefish.

United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

FWS/OSM/rd

MAY 20 2003

Mr. Dave Tyner
P.O. Box 39151
Ninilchik, Alaska 99639

Dear Mr. Tyner:

I received your letter dated April 23, 2003 requesting a response from the Federal Subsistence Board regarding the rural determination of the community of Ninilchik and the status of customary and traditional use determinations for halibut for rural residents living within the Cook Inlet Area have. Because your information request deals with information pertaining to regulations already adopted by the Federal Subsistence Board this letter will serve the stated purpose as outlined in your letter in providing the Board's interpretation of these regulations.

The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 51' 06" N. Latitude) and a line extending south from Cape Fairfield (148° 50' 15" W. Longitude). The community of Ninilchik is located within this area. Federal regulations (50 CFR 100.23) recognize rural communities by defining the nonrural areas. A community is considered to be rural if it is not specifically identified in Federal regulations as a nonrural area. Nonrural areas within the Cook Inlet Area include Anchorage Municipality Area (including communities of Eklutna, Chugiak, Eagle River, Anchorage, Girdwood, and Portage), Homer Area (including communities of Homer, Anchor Point, Kachemak City and Fritz Creek), Kenai area (including communities of Clam Gulch, Kalifornsky, Kasilof, Kenai, Nikiski, Salamatof, Soldotna, and Sterling), Seward area (including communities of Moose Pass and Seward) and the Matanuska Susitna area (including communities of Sutton, Moose Creek, Palmer, Bodenburg Butte, Palmer, Wasilla, Knik, Big Lake, and Houston). Ninilchik and the surrounding area are considered to be rural because this community and area do not fall within the boundaries of one of the above nonrural areas described.

For residents of the Cook Inlet Area, there is a customary and traditional use determination for all fish other than salmon, Dolly Varden, trout, char, grayling, and burbot (50 CFR 100.24 (a) (2). Unless otherwise specifically noted by species, halibut would be included in the customary and traditional use determination for all fish.

I hope I have provided the regulatory clarification you seek which clearly establishes Ninilchik as a rural community and rural residents residing in this area have a customary and traditional use determination for halibut. If you have any questions or need further assistance, please contact Pete Probasco at 1-800-478-1456.

Sincerely,

Thomas H. Boyd
Assistant Regional Director

Port Tongass village assn.
Po Box 8311
Ketchikan
AK. 99901

Attn:
David Benton

Sir

We are writing you today as we have been told that (Port Tongass village) is not on your Substance List.

We would like to know we are on the Substance List we are apx 53 miles South of Ketchikan at Lincoln channel (chart #17437)

Thank you

Doe E Hahn

QUTEKCAK NATIVE TRIBE
Changing with the tides, in harmony with our people, land and heritage.
P.O. Box 1467, Seward AK 99664 ~ Ph (907) 224-3118 * Fax (907) 224-5874

May 28, 2003

David Benton, Chairman
North Pacific Fishery Management Council
605 West Fourth Avenue, Suite 3306
Anchorage, Alaska 99501

Dear Chairman Benton,

The Qutekcak Native Tribe (QNT) would like to receive a Tribal Halibut Subsistence Permit to assist those tribal members who are not able to perform subsistence activities for themselves. We have discussed our eligibility with Jane Dicosimo and she stated we would need to write to you documenting our customary and traditional use here within the Seward and Resurrection Bay area.

Our Tribal history within the Seward area is well documented even though we are not Federally Recognized Tribe, we are formally organized and are waiting for the Department of Interior to respond to our application.

The Qutekcak Native Tribe was formed in 1972 as the Mount Marathon Native Association. The Seward area Natives are a part of the Chugach Alaska Corporation and received government funding at least sixty years ago as members of the Chugach Native Association. The tribe finally realized it needed to force the world to recognize the existence of a continuing sovereign group and formed the Mount Marathon Native Association (MMNA). The formation of the MMNA was only a paper effort to formally document an already existing Native organization, cohesiveness, ancestral ties, and common bonds of association, use, occupancy and residence.

In regards to our status as "rural residents of a community" we would respectfully, referr to the City of Kodiak, which is ruled as a "rural community". The City of Seward is substantially less in population, only being 2,700 area residents compared to the City of Kodiak at approximately 6,500. The Seward population is inclusive of the Spring Creek Correctional Facility inmates which number approximately 560. Although, we are located on the road system, we are still an isolated community 130 miles south of Anchorage and depend on the availability of a State maintained highway. The cost of living is that of a rural community and can easily be documented.

To try to summarize a thousand year history is difficult at best. We have included with this letter, "The History of the Qutekcak Native Tribe- A Compilation". We do realize

this is more information than you would like to receive, but feel it was important to our cause for the Halibut Subsistence Permit.

If you need further information, have questions or concerns, please contact Connie Pavloff, Tribal Administrator at 907-224-3118. We thank you in advance for your time, consideration and assistance in this matter.

Sincerely,
QUTEKCAK NATIVE TRIBE

Esther Ronne
Council President

Philip Emerson
Donna Emerson
Gabe Emerson
Megan Emerson
3 Crab Cove
Funter Bay, AK 99850-0140

Chairman David Benton
North Pacific Fisheries Management Council
605 West 4th Ave., Suite 306
Anchorage, AK 99501

June 4, 2003

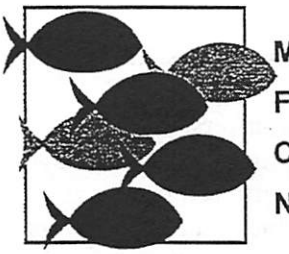
Dear Chairman Benton,

We are a family living in Funter Bay, on the northwest coast of Admiralty Island. We have lived in our own home here since 1972. We are dismayed to discover our participation in the subsistence halibut fishery that has recently been established is blocked by the fact that Funter Bay is not a state recognized community with historical use of halibut for subsistence. We live a subsistence lifestyle, harvesting deer and all kinds of seafood, including halibut, for our own use. We feel it is grossly unfair to exclude a family simply because of the state's lack of recognition of our existence.

We feel it would be right for your council to take whatever action is necessary to allow us and others in a similar situation to participate in this program. Please notify us of any steps we need to take to facilitate this inclusion.

Sincerely,

Donna Emerson
Phil Emerson
Gabe Emerson
Megan Emerson



Marine
Fish
Conservation
Network

FOR IMMEDIATE RELEASE
May 21, 2003

Contact: Damien Newton,
202-543-5509
dnewton@conservefish.org

Ocean Conservation Coalition Calls for Overhaul of Federal Fisheries Management System

Current Management "Failing Us", Marine Fish Conservation Network Says

WASHINGTON, DC (May 21, 2003) – In the face of the steady decline of ocean resources from Alaska to the Caribbean, the Marine Fish Conservation Network (Network) today released a report concluding that current federal ocean fish management is "failing us" and that, "the only solution is to fundamentally reform our ocean management system."

The report's blunt statement that "we see no hope for further Band-Aid solutions" is a departure from the group's past seven years of efforts to strengthen, close loopholes in, and cajole federal managers to aggressively enforce the 1996 Sustainable Fisheries Act (SFA) amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

"The great hope of the SFA was that it would once and for all end the overexploitation of marine resources," said Lee Crockett, Executive Director of the Network, a coalition representing a broad range of fishermen, scientists, conservationists, and others. "The SFA was a direct response to the cycle of overfishing that led to the rapid depletion of one fish stock after another. The intent of Congress was clear: end overfishing; stop the indiscriminate killing of non-target wildlife, also called 'bycatch'; and protect ocean habitat."

Almost from the start, however, the promise of the SFA gave way to the sad realities of conflict of interest, lax oversight, mismanagement, disregard for science, and a regional system of management councils dominated by the fishing industry. The new report – *Horrors of the Deep: Chilling Tales of Denial, Conflict of Interest and Mismanagement of America's Ocean Resources* – chronicles eight representative examples of consistently poor management by federal regulators and the often disastrous problems that result. The report details the impacts this mismanagement has had not only on fish populations, but also on the people who depend on healthy oceans for their livelihood.

Drawing one example from each management region in the country, the report chronicles how 77 tons of annual bycatch in Alaska were simply defined away; how fishermen in New England were encouraged to catch and market previously considered "trash fish", only to see those populations crash soon after they were exploited; and how managers ignored looming dangers to rockfish populations off the west coast which led to huge area closures that have idled fishermen up and down the coast.

Citing these and other case studies, the report concludes that "Our oceans – and the intricate web of life they support, including our own – are in very real and very serious trouble."

(over)

However, the Network says it remains hopeful that its call for fundamental change will be heard.

Legislators seem poised to finally take this issue seriously. In 2000, federal lawmakers created the U.S. Commission on Ocean Policy. By all accounts, the Commission is very earnestly pursuing its charge to conduct a thorough review of current policies and recommend meaningful reform. Its report is due out later this year. In a parallel process, the Pew Oceans Commission, which includes a diverse range of policy experts, premier scientists, and national leaders, has also studied ocean management and is preparing a set of recommendations to be unveiled on June 4, 2003.

Echoing the expected recommendations of the two major reports, the Network believes that future ocean resource management must include plans to:

- **Reform the law by placing conservation of ocean ecosystems before extraction.**
- **Create a new Department of the Oceans to administer the law.**
- **Develop regional planning mechanisms to help implement the law.**
- **Make regional fishery management councils more representative of the public interest.**
- **Insulate the determination of the health of ecosystems from commercial and political considerations.**

"While our oceans are facing a truly dire situation, we have reason for hope," said Gerry Leape, Vice President for Ocean Programs at National Environmental Trust and Co-Chair of the Network. "However, we are convinced that such hope will not be realized by tinkering with current law. An overhaul of our management system – replacing it with one that truly puts the long-term health of our ocean resources above the short-term gain of a few – is the only solution."

For a copy of the Network's report, visit www.conservefish.org.

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The Marine Fish Conservation Network is a national coalition of more than 150 commercial and recreational fishing associations, environmental organizations, aquariums, and marine scientists dedicated to promoting the long-term sustainability of marine fish, representing more than 5 million people. For more information, visit www.conservefish.org.

What are people saying about the Marine Fish Conservation Network?

> *"The MFCN not only keeps it's members fully informed about pending fishery management proposals and pending fishery legislation, but they represent their fishing organization and environmental members extremely well in Washington."*
>
> **--Mike Leech**, Ambassador at Large, International Game Fish Association; Miami, FL

> *"Working with the Network has allowed me the opportunity to work with commercial fishermen from across the country on a variety of conservation and management issues."*
>
> **--Michael Brooks**, Commercial Fisherman and Processor; Homer, AK

Other reports by **MARINE FISH CONSERVATION NETWORK** include:

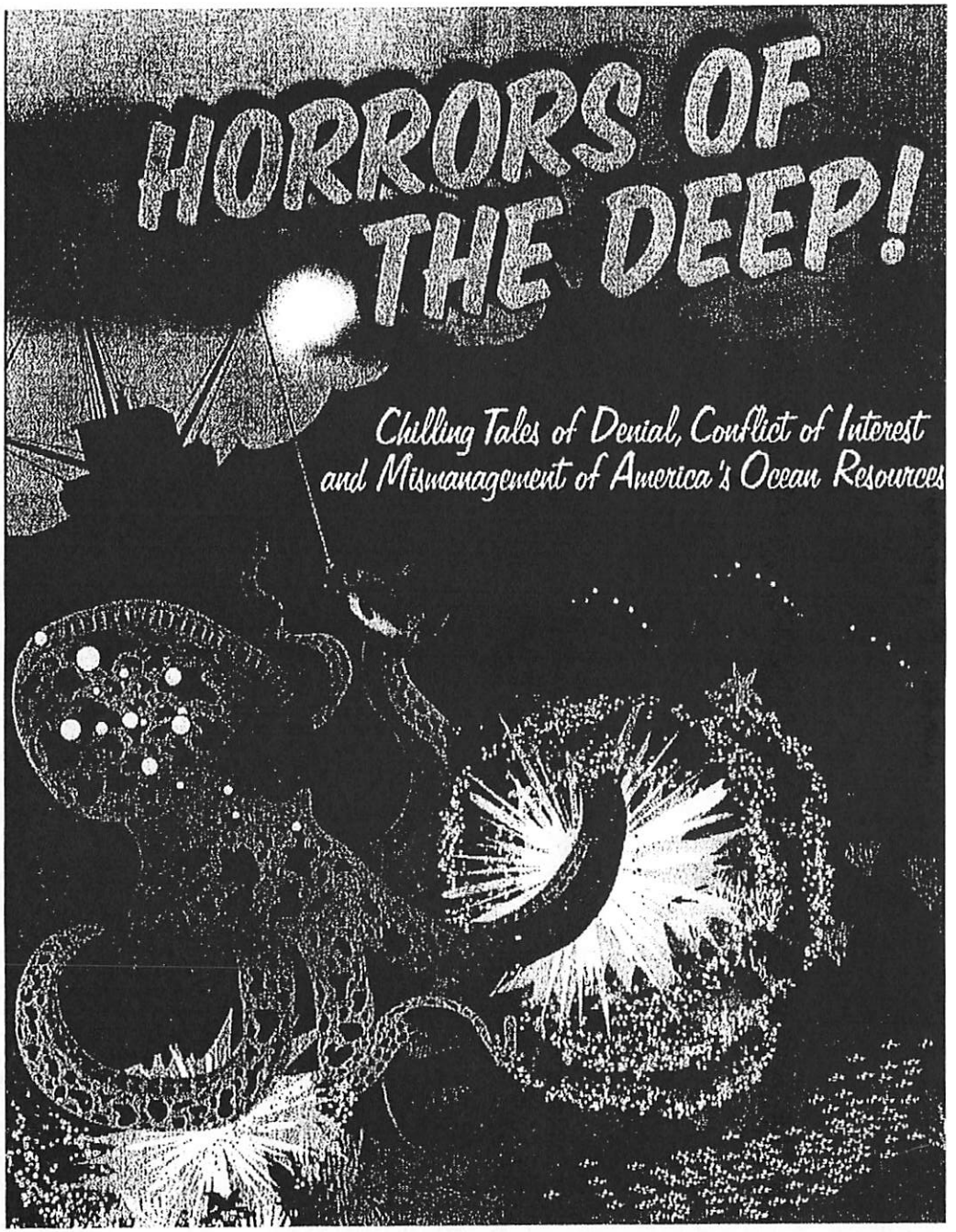
Missing the Boat **(January, 1999).** A report in cooperation with the Center for Marine Conservation that detailed how the eight regional fishery management councils responsible for fishery management in the U.S. have failed to enforce the conservation requirements of the Sustainable Fisheries Act.

Lost at Sea **(September, 1999).** A follow-up to Missing the Boat that exposed the lackluster response of the National Marine Fisheries Service to the clear failures of the regional councils in implementing the Sustainable Fisheries Act.

Caught in the Act **(October, 2001).** Released in conjunction with the five-year anniversary of the Sustainable Fisheries Act, this report outlines the repeated failures of managers to enforce the law and the devastating effects that lax enforcement has wrought on marine fish populations.

Marine Fish Conservation Network

600 Pennsylvania Ave, SE
Suite 210
Washington, DC 20003
www.conservefish.org



Introduction

More than a quarter century has passed since the Magnuson Fishery Conservation and Management Act was signed into law on April 13, 1976. During that time, much has changed in America's ocean and coastal waters.

Sadly, many of those changes have been negative ones.

Yes, gone are the foreign factory trawlers that provided the impetus for Congress to pass the original Magnuson Act. But in their place is a U.S. fishing fleet – complete with its own factory trawlers – with the capacity to far out-fish the combined domestic and foreign fishing fleets of the 1970s.

Gone are the days when the greatest challenge we thought we faced was the collapse of a single overfished stock. Today we understand that there is a complex web of negative consequences that cascade through the marine environment when even one species is overfished to unsustainably low levels.

> "It has turned out that the bounty of the sea was more readily harvested than conserved, and the fisheries management system was forced to transition from allocating surpluses to rationing scarcity."
>
> **National Academy of Public Administration**, July 2002

Gone is the naïve belief that the world's oceans contain a limitless supply of exploitable resources. We now know that many species of once-abundant fish – like groundfish off of New England and the West Coast, grouper in the South Atlantic, and red snapper in the Gulf of Mexico – are so overfished that their recovery will take decades. Some may never recover.

At the same time, fish unknown to consumers in 1976, like monkfish and cape sharks (a.k.a. dogfish) have been "discovered," promoted and overexploited. Many species of ocean wildlife such as the short-tailed albatross and leatherback sea turtle face extinction because each year untold numbers are killed by non-selective, industrial fishing practices. Critical underwater habitats like deepwater corals and rock pinnacles that fishermen used to avoid for fear of losing their gear are now targeted by trawlers with specially designed equipment to roll over the sea floor with tires more appropriate for hauling freight on the highway.

In 1996, Congress attempted to change the historical focus of fish management from promoting fishing to conserving fish. Amid much hope, the Sustainable Fisheries Act (SFA) amendments to the Magnuson Act were passed. The SFA gave managers clear directions to end overfishing and rebuild overfished stocks, minimize the catching and killing of non-target ocean wildlife (innocuously known as "bycatch") and identify and protect essential fish habitats.

Continued

As detailed in three previous reports by the Marine Fish Conservation Network – *Missing the Boat* (January, 1999), *Lost at Sea* (September, 1999), and *Caught in the Act* (October, 2001), managers in too many instances have failed to implement these mandates as Congress intended. The impact has been devastating on fish, fish habitats and the people and communities that depend on a sustainable fishing industry to earn their livelihoods.

Despite the SFA's clear conservation mandates, managers are still focused on maximizing commercial production, encouraging the development of "underutilized" fish species, and promoting economic "efficiency," which they define as the highest catch with the least effort, regardless of the long-term biological impact. In addition, the very commercial interests the system is charged with regulating dominate the decision-making process.

Even in this flawed system, there are examples of effective conservation. Prior to the enactment of the SFA in 1996, virtually all stock abundances were in a downward trajectory. Where managers have implemented the conservation mandates of the SFA, albeit grudgingly, fish stocks have responded, e.g., haddock and yellowtail flounder in Georges Bank and summer flounder in the Mid-Atlantic. Conservation does work.

But in the main, things have changed for the worse.

The abundance in America's oceans – a vital shared legacy passed down for generations – face the real risk of becoming a shadow of their former selves. The case studies presented in this report are illustrative of a quarter-century of missed opportunities, broken promises and environmental and economic decline.

The original intent of Congress – to promote the U.S. fishing industry – needs to be revisited. We see no hope for further Band-Aid solutions because fundamental reforms are necessary. The conclusions we draw at the end of this document are a departure from our past recommendations for reforming the Magnuson-Stevens Fishery Conservation and Management Act. The system that worked so well in times of plenty is failing us in these lean times. The only solution is to fundamentally reform our ocean management system.

A Mismanagement Circumnavigation of the Country

Tale Number 1

The Haunting Story of the Habitually Overfished Fish

Groundfish in New England

It was a dark and stormy decade. From the mid-1960s until the mid-1970s, New England's groundfish stocks – cod, haddock and flounder – were driven to near-collapse by the overfishing of foreign factory trawlers.

But hope dawned in 1976 when Congress passed the Magnuson Fishery Conservation and Management Act. The law called for the phase-out of foreign fishing and the promotion of the U.S. fishing industry. It also established a system of user-dominated fishery management councils.

By the mid-1980s, foreign fishing for New England groundfish had essentially ended.

However, the era of U.S. overfishing had now begun. Although it was clear to scientists, environmentalists and many fishermen that the well-intentioned Magnuson Act had just traded one problem for another, it took until 1989 for record-low catches to force the New England Fishery Management Council to officially declare groundfish overfished.

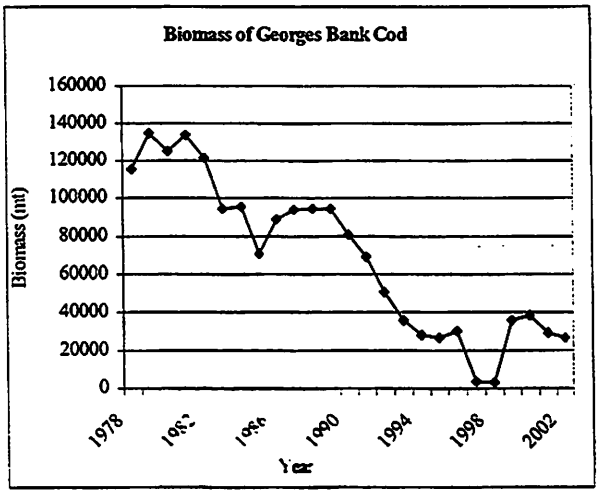
Scientists ultimately recommended a 50 percent reduction in fishing pressure to stem the losses, but the Council failed to make the required cuts. In 1991, a lawsuit finally compelled the Council to act. The resulting settlement was simple enough: the Council was ordered to quickly develop a management plan that would eliminate overfishing.

After much foot-dragging and delay, the new groundfish management plan was finally put into place three years later. This of course was well *after* the collapse of Georges Bank haddock and yellowtail flounder populations in 1993, and Georges Bank cod in the summer of 1994. In response, NOAA Fisheries issued an emergency rule closing nearly 6,600 square miles of fishing ground on and south of Georges Bank that December.

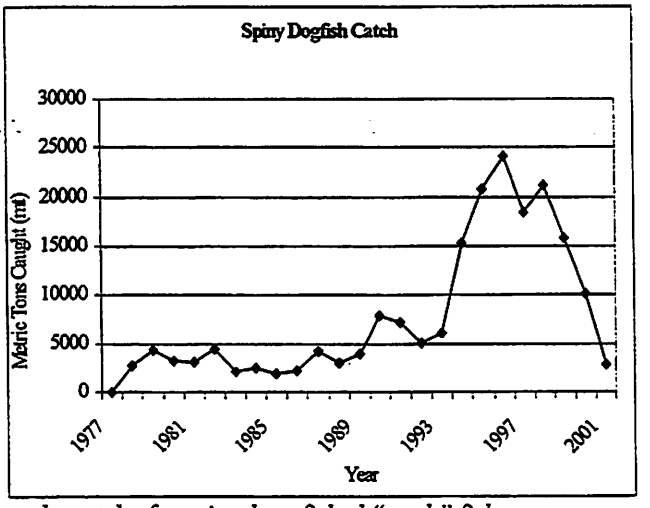
Fresh on the heels of the groundfish collapse and all its economic hardship, managers came up with a "solution" for fishermen: promote spiny dogfish as the target of a new U.S. fishery. Unfortunately, no one thought through the implications of allowing the rapid and uncontrolled fishing of large mature females in a species known to have low productivity. Within no time, dogfish were experiencing reproductive failure. Almost as soon as it began, the dogfish fishery was declared overfished, thus proving the old adage that history always repeats itself.

Passage of the Sustainable Fisheries Act in 1996 clearly and unequivocally required the Council to prohibit overfishing and rebuild stocks. Despite these mandates, the Council continued to violate its own rebuilding plans and was again sued in May of 2000. As a result, in December of 2001, a

Continued



While the biomass of cod crashed to new lows in the 1990's...



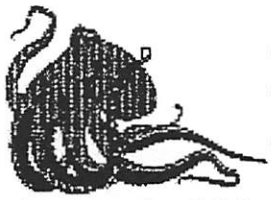
...the catch of previously unfished "trash" fish rose and crashed, imperiling these vulnerable species.

Federal court ordered NOAA Fisheries and the Council to once and for all take steps to prevent overfishing, rebuild overfished populations and assess and minimize bycatch.

True to form, rather than comply, some members of the Council are now actively trying to weaken the law in order to delay rebuilding deadlines and lower population size recovery targets, thus preventing their recovery.

Meanwhile, groundfish stocks remain perilously low, a whole new problem has been created as fishermen have become economically dependent on an unsustainable dogfish catch and the future of a generations-old way of life in New England is in question.

Mi$management Scary Fact:
The collapse of groundfish stocks in New England has cost American taxpayers **$81.5 million**. Learn more about the cost of mismanagement at www.conservefish.org



Tale Number 2
The Loophole That Swallowed a Conservation Plan
Bluefish Management in the Mid-Atlantic

As recreational fishermen in the Mid-Atlantic voluntarily helped rebuild bluefish stocks, an insidious, seemingly unstoppable force has worked tirelessly against them.

The 1989 bluefish management plan to rebuild the severely overfished stock allocated 80 percent of the total allowable landings for the traditional recreational fishery and the remaining 20 percent for commercial fishing. However, the commercial fishing industry has been allowed to exceed its allotted share and currently consumes half the catch.

How did this happen? Recreational fishermen opted to step up the pace of bluefish rebuilding by releasing seven of every 10 bluefish they caught. In response, the Council cynically allowed fishing mortality to increase dramatically by choosing to transfer these savings to the commercial sector, thereby making sure as many fish as the law allows – in letter, but certainly not in spirit – are caught and killed.

When recreational fishermen voluntarily placed conservation limits on themselves, Mid-Atlantic fisheries managers were quick to seize the opportunity – they just let commercial fishermen catch more.

The end result is that managers are promoting the catching and killing of as many fish as possible, regardless of the conservation needs of the fish population, not to mention the mandates of federal law to end overfishing and rebuild overfished populations as quickly as possible.

And anyone who doubts what some managers think about the laws they are supposed to enforce need only look at the public record. In the November 2001 issue of *Commercial Fisheries News* – and again in its own annual report – the Mid-Atlantic Council's Executive Director boasted that outright disregard for the law had actually benefited one fish stock. (Though he forgets to mention that the success in question was largely the result of a court-ordered rebuilding plan.)

Meanwhile, the recreational fishing community is essentially being punished for making voluntary conservation efforts, as its self-restraint is being negated by commercially dominated regulators.

Should the bottom line in federal fishery management be to catch and kill as many fish as possible or to encourage conservation of the resource for future generations?

Mid-Atlantic fisheries managers had the opportunity to consider this question. Their answer clearly indicates where their priorities lie.

Tale Number 3
The Curse of a Seaweed They Thought Was a Fish
Sargassum Protection in the South Atlantic

Welcome to the bizarro world of fisheries management – where a plant is a fish, a council trying to be proactive for a change is quashed by federal managers, and the fate of an essential habitat floats – if ever so absurdly – in the balance.

It took thirteen years, three attempts, and untold thousands of dollars for federal managers to develop a fish management plan for a plant, sargassum. It might have been easier if they stuck with managing fish, starting with the 116 species of fish that rely on sargassum for their survival... especially since nobody 'fishes' for sargassum.

Sargassum is not a poster species for marine conservation. It is a brown alga that forms large floating mats off the coast of the South Atlantic. But it is an indispensable part of an intricate web of life, supporting, among other things, many pelagic fish species managed by the South Atlantic Council.

Since 1990, the Council has been working to develop a management plan for sargassum. Conservationists' hopes were raised in 1996 when the Council put forth a plan to give the plant full protection by outright prohibiting its take.

In stepped the feds. NOAA Fisheries objected, arguing that because of a quirk in the law sargassum is defined as a "fish" under the Magnuson-Stevens Act. Rather than seek an exception or look for a solution, they said the Council must allow a "catch" of sargassum as long as it is not "overfished."

In response, the Council earnestly developed a separate sargassum "fishery management plan" that phased out harvest completely over time. NOAA Fisheries rejected the plan again and sent it back to the Council for revision.

Between March of 2000 and March 2001 NOAA Fisheries and the Council tried to work out the Agency's problems with the plan. The Council submitted a rewritten sargassum plan to the federal agency in November 2002. Finally, in May 2003, 6 months after the Council submitted the plan, and in spite of clear requirements for NOAA Fisheries to review such plans "immediately," the feds finally began an official review process.

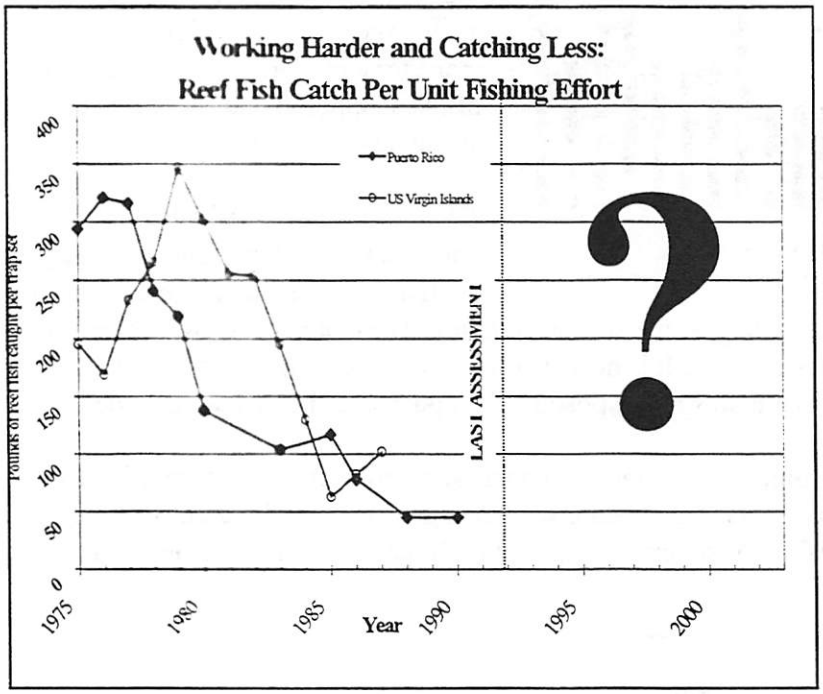
The sargassum experience offered NOAA Fisheries a rare chance to protect an essential fish habitat with little economic impact. But instead of doing the sensible thing, NOAA Fisheries chose to hide behind technicalities.

Tale Number 4
Ignorance is not Bliss
Caribbean Fisheries Management

Ahh, the Caribbean – clear blue waters, vivid coral reefs, spectacular tropical fish. A veritable fish paradise. But, right under the less-than-watchful eye of NOAA Fisheries, beneath that apparent calm lies a future that is murky and full of doubt.

For unclear reasons, NOAA Fisheries has chosen to all but ignore the health of the U.S. Caribbean, the region that should be the crown jewel of U.S. fisheries management. The net result has been a disturbing paucity of even the most basic information upon which to make science-based management decisions, or even to determine what problems might currently be pressing. Of the eight fishery management councils, the U.S. Caribbean region – with all its fragile ecosystems – has the least amount of information available on the health of its marine life.

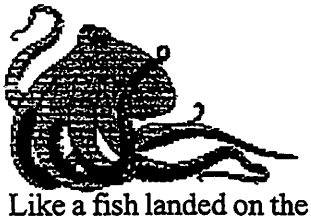
It is unknown, for example, whether overfishing is occurring in 94 percent of the fish and 41 percent of the shark populations – simply because the information has never been gathered. Of the 140 reef fish in their jurisdiction, only two – goliath grouper and Nassau grouper – have a status determination, and those two are classified as "overfished." All other reef fish species are classified as "unknown."



It's been more than 11 years since the last stock assessment was done in the Caribbean. During that time, other councils have seen stocks crash, fisheries collapse and species pushed to the brink of extinction. To believe the Caribbean is somehow immune to these pressures is incredulous.

Neither the Council nor NOAA Fisheries has bothered to do much to address this appalling lack of information.

The Federal government may believe that ignorance is bliss. But for the fish of the U.S. Caribbean – and the communities that depend on them for their livelihoods – what we don't know almost surely will hurt them.

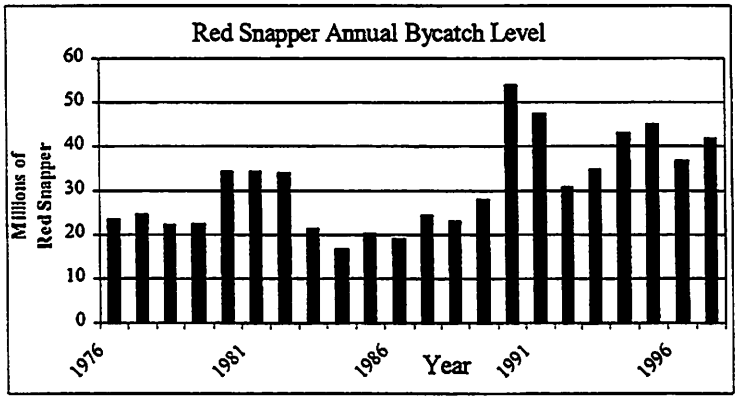


Tale Number 5
Fish Now Pay Later
Red snapper management in the Gulf of Mexico

Like a fish landed on the deck of a boat, flailing about and desperately gasping for air, red snapper management plans in the Gulf of Mexico have languished for more than 14 years.

The status of red snapper was first formally assessed in the late 1980s. At that time, scientists found the fish to be severely depleted and recommended that the number killed unintentionally in shrimp trawl nets (*i.e.,* bycatch) and the number of fish caught as the target of directed fisheries be reduced. After briefly cutting back catch levels, managers ultimately succumbed to political pressure and raised them to at least 3 million pounds higher than those recommended by independent, nonpartisan scientists participating in a Congressionally mandated peer review of the problem.

The smoke screen managers hid behind to justify raising the catch levels was the claim that bycatch reduction devices introduced into the shrimp fishery would exclude 60 percent of the red snapper previously caught and killed in shrimp trawl nets. To date, and as indicated by the table below, the devices just haven't worked that well.



Under the 1996 Sustainable Fisheries Act, the Gulf of Mexico Fishery Management Council was required to amend the existing reef fish management plan to end overfishing of red snapper and allow it to recover as quickly as possible.

According to NOAA Fisheries, repeated Council attempts to manage the fishery have fallen short of these legal requirements, and amendments to the plan are still outstanding. The Council has twice submitted faulty rebuilding plans that have been rejected. It is now working on a new plan that will not be available until 2004, six years after the plan was supposed to be updated and overfishing ended.

For nearly 15 years now, the red snapper management plan has allowed near-term overexploitation while pushing off true rebuilding for years. This "fish now, pay later" strategy threatens the long-term viability for this tasty game fish – for so long a staple of both recreational fishermen and restaurant diners.

Mi$management Scary Fact:
Disaster relief, necessitated by poor management and international competition, to the shrimp industry in the Gulf of Mexico has cost American taxpayers **$35 million.** Learn more about the cost of mismanagement at www.conservefish.org.

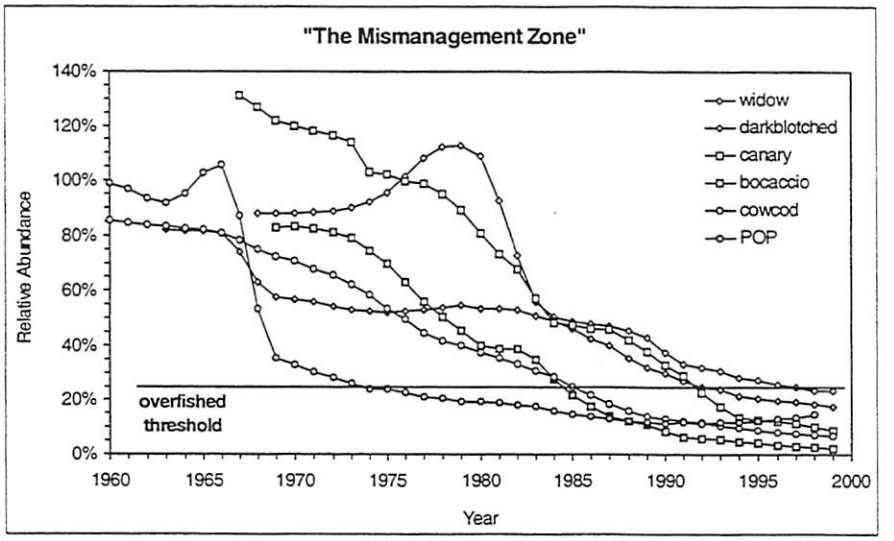
Tale Number 6
Beware, You Are Now Entering the "Conservation Mismanagement Zone"
Pacific Groundfish

The time: The not-very-distant past.
The place: The U.S. West Coast Groundfish Fishery.
The scenario: Once-abundant groundfish have faced catastrophic declines. The Pacific Fishery Management Council steps up to the plate to "solve" the problem.

Hold on tight – you've now entered "The Mismanagement Zone."

The solution developed by the Pacific Fishery Management Council – dominated by the fishing industry – was to impose limits on the amount of a depleted species that could be brought to shore, such as bocaccio rockfish, canary rockfish, yellow-eye rockfish and darkblotched rockfish. However, managers did nothing to control the collateral damage to these depleted species caused by unselective fishing in the areas where these fish live. The inevitable – and absolutely predictable result – was further decline.

Unsustainably high catch levels and excessive "bycatch" of depleted stocks have left bocaccio rockfish at less than 4 percent of their historical levels. Under the very best conditions, it will take them more than a century to recover.



The Pacific groundfish collapse was caused by the Council's refusal to put adequate limits on the groundfish gold rush and their "head in the sand"approach of only counting the fish that were sold, not the tons and tons of fish that were discarded, dead or dying, as bycatch. This was done at the behest of some fishermen, fish processors and Council members who demanded unsustainably high catch levels and preferred the use of large, unselective bottom trawls to catch the highest possible volume of fish, with little regard for the wasteful discarding that resulted.

Over the next few years, and over the strenuous objections of some in the fishing industry, conservation-minded activists with the law on their side ultimately won the right to quantify the impact of bycatch on groundfish stocks. The first results from this observer program were released in January 2003, and showed extremely high discard levels of some badly depleted species.

Continued, page 9

Unfortunately, the findings were too little and too late. The tragic result of mismanagement by the Council is that rebuilding plans require severe restrictions or closures for most forms of bottom fishing, including recreational fishing.

The Pacific Council mortgaged the future of bottom fishing on the west coast for a quick buck, and now the bill has come due. In the end, the aggressive and risky policies of this industry-dominated Council have hurt the very people they were supposed to help – fishermen.

Mi$management Scary Fact:
Consistent mismanagement the Pacific groundfish fishery has cost American taxpayers just over **$42 million**. Learn more about the cost of mismanagement at www.conservefish.org.

Tale Number 7
A New Solution to Bycatch – Stop Calling it Bycatch!
Yellowfin Sole and Rock Sole in the North Pacific

From the murky depths of the legislative process arose a law with a clear mandate: fishermen should avoid bycatch, the catching and killing of non-target ocean wildlife.

The 1996 Sustainable Fisheries Act required managers to minimize bycatch in two ways: whenever possible, avoid catching animals you don't intend to catch in the first place. When that can't be prevented, at least don't kill them. Managers were required to implement this mandate by the fall of 1998.

However, an average of 74 million pounds of yellowfin sole and rock sole are still discarded annually in Alaska's bottom trawl fisheries. This represents some of the highest bycatch rates in any of the region's groundfish fisheries. Most of the bycatch is juvenile fish too small for the processing machinery. The primary fleet targeting rock sole throws away at least half the rock sole catch because only females can supply eggs for the Asian roe market which renders the male rock sole worthless.

Over the last five years, 370 million pounds of yellowfin sole and rock sole were discarded dead or dying in the North Pacific.

In 1998, the North Pacific Fishery Management Council adopted regulations that – instead of requiring cleaner fishing practices and a monitoring plan to ensure unwanted fish were avoided - required groundfish vessels to retain and utilize all yellowfin sole and rock sole caught. The industry had a generous five years to comply. The stated purpose of this delay was to give the industry time to develop markets for what amounts to a quarter-million pounds of wasted fish for every day of the year.

After making little progress, in 2002 the industry again pleaded for more time and a different plan. The Council acquiesced, offering an additional two years to come into compliance with the law. Other options for reducing bycatch are now under development. The 1998 regulations were waived and there are currently no rules to minimize bycatch in this fishery.

By the time a new plan is in place, nine years will have passed since Congress required managers to minimize bycatch. Meanwhile the industry continues to catch and discard tens of millions of pounds of yellowfin sole and rock sole every year because of the economics of foreign markets.

Mi$management Scary Fact:
Consistent mismanagement of U.S. North Pacific fisheries has cost American taxpayers just over **$100 million**. Learn more about the cost of mismanagement at www.conservefish.org.

Tale Number 8
When The Fox *Owns* the Hen House
Shark Finning in the Western Pacific

Some practices are just so horrifying that the story tells itself.

Take shark finning for example, the practice of cutting off the fins of sharks and throwing the mutilated animals back overboard dead or dying. The shark fins are used to make shark fin soup, an Asian delicacy. From 1991 to 1998 this practice increased by 2500 percent until a total of 60,000 blue sharks were being killed annually for their fins. Since the sharks are not the targets of a fishery, they are defined as "bycatch" under the Magnuson-Stevens Act and mangers are required to minimize their catching and killing.

Virtually everyone – NOAA Fisheries, Congress, environmentalists and numerous other interested parties – agreed that the practice is egregious, illegal, and should be banned. Everyone, that is, except the Western Pacific Fishery Management Council. The Council ignored legal requirements to minimize shark bycatch, and bycatch mortality. In addition, the Council actively opposed a bill before the Hawaii legislature that would have effectively ended the practice. The Chairman testified against the bill before the state legislature, and the staff sent numerous faxes in opposition on Council stationery. And as if that behavior wasn't questionable enough, the Council Chairman had a direct economic stake in the issue, owning eight fishing vessels whose crew caught and killed sharks just for their valuable fins.

Their efforts were in large measure responsible for killing the anti-shark finning bill in the Hawaii legislature in 1999.

Still, this story comes to at least a moderately happy close. Despite the strenuous lobbying of the Council, reason and common sense ultimately won out and the Hawaii state legislature banned the landing of shark fins in 2000. This legislative victory was crucial to the subsequent passage of a federal law prohibiting this practice, since the Aloha state was the last in the nation where shark finning was permitted.

Mi$management Scary Fact:
Avoidable sea turtle crisis in the Western Pacific has cost American taxpayers **$8 million**. Learn more about the cost of mismanagement at www.conservefish.org.

Conclusion

This nationwide review of fish mismanagement *Horror Stories* showcases several common themes.

First, **conservation of our fish resources usually takes a back seat to exploiting them**. The sargassum example, where the presence of a single fishing operation was excuse enough to thwart conservation efforts for more than a decade, is a clear demonstration of this problem. The bluefish case also shows that managers still seek to maximize commercial landings, even of an overfished species, regardless of whether those actions punish conservation-minded fishermen for their efforts.

Second, **managers often duck hard decisions, especially those that will cause short-term economic sacrifice**. Managers may directly avoid making tough decisions as the long and sad history of New England's groundfish fishery demonstrates, or they may develop the appropriate regulation, but fail to follow it as demonstrated in the red snapper fishery in the Gulf.

Third, **lack of knowledge regarding the health of a resource or the impact of fishing on that resource rarely impedes exploitation**. The case of Pacific groundfish clearly shows how this philosophy can lead to fish population crashes and severe economic hardships, while the Caribbean example shows that managers rarely learn from the mistakes of other councils.

Fourth, **managers often ignore legal mandates**, as demonstrated in Alaska where requirements to minimize bycatch have been ignored for years.

Finally, **the system is rife with conflicts of interest**, as vividly demonstrated by the activities of the Western Pacific Council in attempting to block efforts to end shark finning.

Solutions May Finally Be on the Horizon

As our shared marine resources continue their *silent collapse* under the weight of mismanagement, we must find effective solutions. The problems cited in this report – and in many other studies– are indeed dire, but they *can be solved.*

Several recent developments offer rays of hope. Legislators appear poised to take their responsibilities for protecting ocean life and habitat seriously. In a Congressionally mandated study of NOAA Fisheries and "its ability to meet its legal missions and requirements," the National Academy of Public Administration (NAPA) found that, "In a real sense, the fisheries management system is in disarray."

Specific NAPA recommendations included improving the diversity and objectivity of council members; tightening the conflict-of-interest rules for council members; clarifying the leadership responsibility of NOAA Fisheries in management decisions; and streamlining the management process to allow for more timely decisions.

Meanwhile, both The Pew Oceans Commission and the Congressionally chartered U.S. Commission

Continued

on Ocean Policy are also conducting serious reviews of current policies and the reforms that will be required to protect living marine resources in U.S. waters. Findings from both groups will be out later this year.

As these high-level reviews near completion, what recommendations should we look for to address the well-documented problems with federal fisheries management? Below is a list of the top six areas where the Commissions could provide much-needed guidance.

1) Put fish conservation ahead of resource exploitation.
Fish managers have dual mandates to promote the fishing industry and conserve the resource. Many believe that this mandate should be clarified to emphasize conservation of marine ecosystems.

2) Encode this new principle into law.
To effectively carry out a mandate to conserve marine ecosystems, new legal authority is required. One suggestion is to create a legal requirement to conserve marine ecosystems along with a requirement that only allows exploitation of marine resources when it is consistent with the long-term conservation of marine ecosystems.

3) Create a new Department-level federal agency to enforce the law.
Elevating ocean resource management to the Cabinet level will ensure better visibility, adequate funding, and closer coordination of federal actions.

4) Create new regional level planning mechanisms to ensure that the law is carried out.
Regional involvement in the implementation of a mandate to conserve marine ecosystems will ensure that regional differences are considered and stakeholders are involved in the process.

5) Reform, and clarify the role of, regional fisheries management councils.
The councils have a role to play in gathering information about the fisheries and the allocation of resources, but their composition and decision-making procedures must be changed.

6) Insulate the science of ecosystem health from commercial and political considerations.
Many believe that separating scientific determinations of ecosystem health from decisions on how to exploit those resources would significantly improve conservation and management.

The facts are in. The stories are true. The conclusions are obvious. Our oceans – and the intricate web of life they support, including our own – are in very real, and very serious, trouble. That trouble has been caused by years of human neglect and mismanagement. The good news is that this trouble can be overcome.

If we have the vision, the foresight and the collective will, we can undo the damage that has been done. Instead of squandering this great shared resource that has provided food, employment, inspiration and awe since the dawn of civilization, we can pass the wealth on to future generations, and they in turn can do the same.

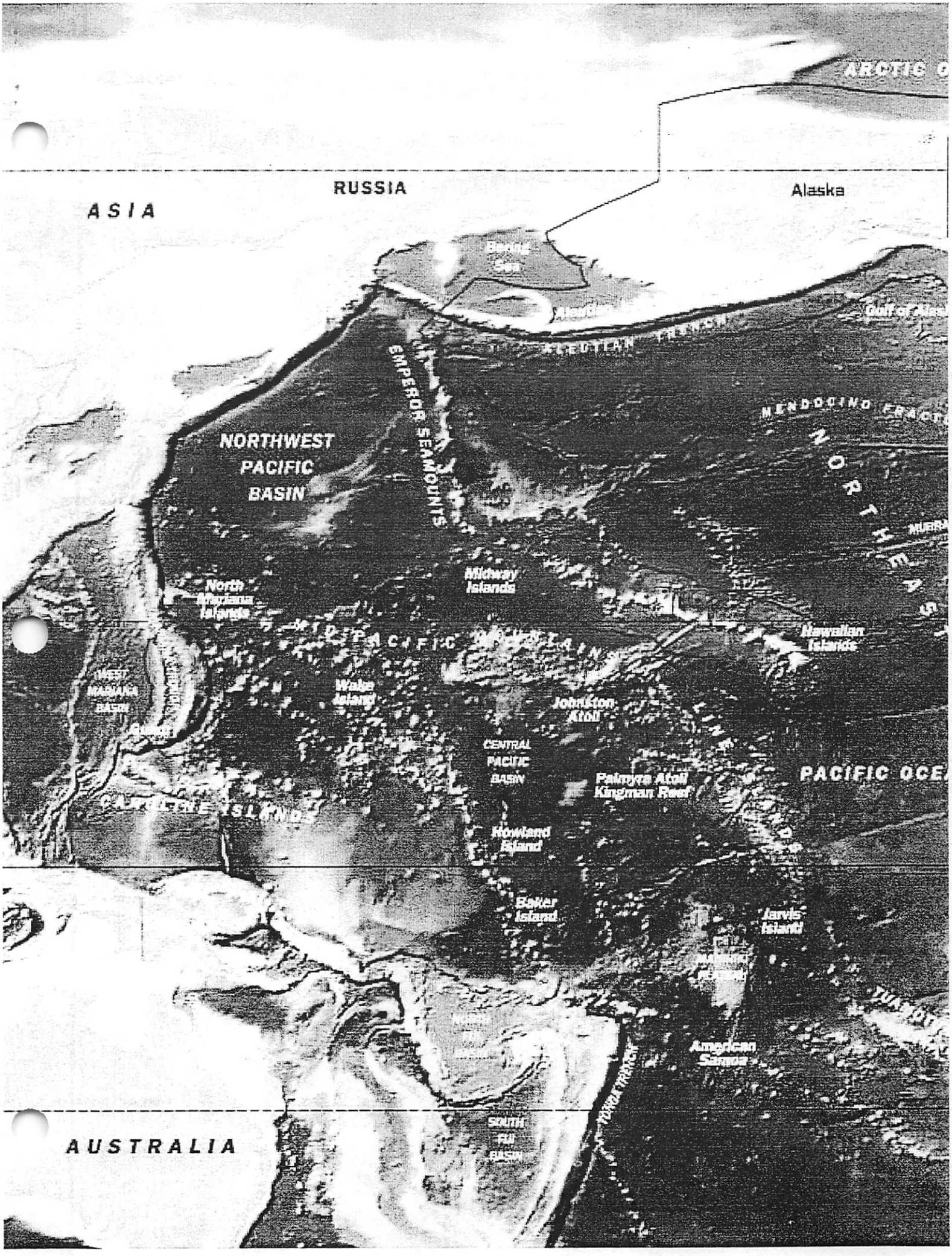
America's Living Oceans

CHARTING A COURSE FOR SEA CHANGE

A Report to the Nation
Recommendations for a
New Ocean Policy
May 2003

PEW
OCEANS
COMMISSION

Leon E. Panetta, Chair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Hawaiian Islands
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CENTRAL PACIFIC BASIN
Palmyra Atoll
Kingman Reef
PACIFIC OCE
Howland Island
Baker Island
Jarvis Island
American Samoa
SOUTH FIJI BASIN
AUSTRALIA

AMERICA'S OCEAN REALM

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Sea otter with starfish, Central California coast
Tom & Pat Leeson

Steve Simonsen/Marine Scenes

Cushion sea star, Hurricane Hole, U.S. Virgin Islands

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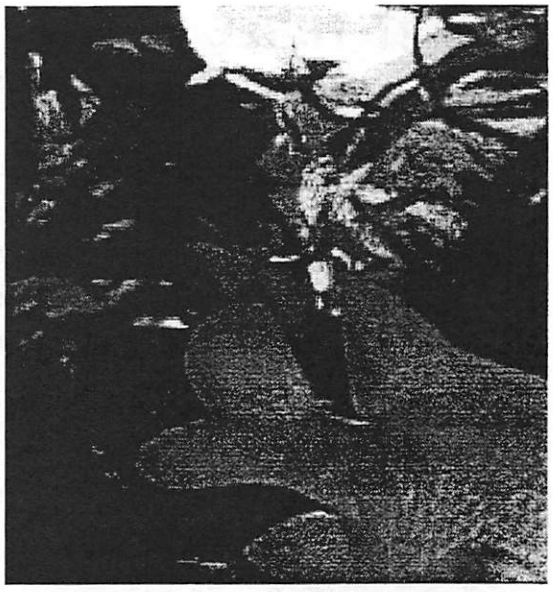
State of America's Oceans



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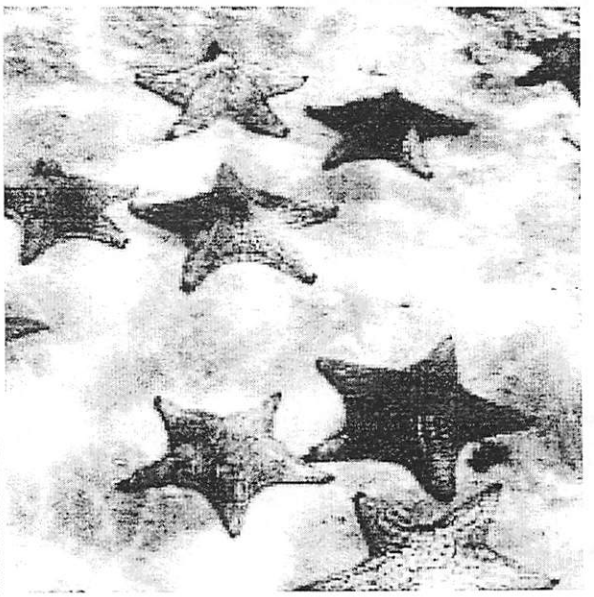
California garibaldi in a kelp forest, Santa Catalina Island, California



Steve Simonsen/Marine Scenes

Cushion sea stars, Virgin Islands National Park, U.S. Virgin Islands

PART TWO

A Public Good at Risk

PART THREE

Detailed Recommendations

Foreword

Oregon Dunes National Recreation Area, Florence, Oregon

At the heart of the American Dream is a desire to secure a better future for our children.

That is what my grandfather sought as he sailed the oceans in great sailing ships and fished off California and Alaska. That is what my immigrant parents worked for when they moved their family from Italy to central California. And, that is the commitment my wife and I have made for our children.

There can be no legacy without caring for those things most important to us. In our family, preserving the oceans' beauty and bounty for future generations is an obligation to be honored.

I grew up and live in Monterey, California—a community made famous by John Steinbeck's *Cannery Row*—where boundless catches of sardines, bustling canneries, large fishing fleets of purse seiners, and busy wharves and shops served and supported fishermen and their families. When the sardine industry collapsed, the lives and businesses that depended on that seemingly endless resource also collapsed.

My goal has been to end this kind of devastation, which threatens other fishing communities along our coasts. For 16 years, I represented coastal residents in Congress, fighting to protect the oceans and those whose livelihoods depend upon them. One of my proudest accomplishments is the creation of the Monterey Bay National Marine Sanctuary to restore, protect, and sustain the living resources so vital to the beauty and economy of this coast.

Nearly three years ago, my love for the oceans brought me to the Pew Oceans Commission. I am joined in this effort by a distinguished group of individuals, each with a special connection to the oceans. They bring many lifetimes of leadership and accomplishment from the worlds of science, fishing, conservation, government, education, business, and philanthropy. They are bipartisan and independent, hailing from the North Atlantic to the South Pacific.

Based on our careful review of the laws, policies, and institutions affecting life off our shores, we advocate a fundamental change in this nation's posture toward its oceans. The recommendations presented here reflect the testimony of hundreds of individuals who joined us in public hearings and other gatherings across the country. We also solicited the best thinking of leading scientists and the firsthand experiences of fishermen, conservationists, and businesspeople.

Jeff Sedlik/Workbookstock.com

The oceans are a national trust we must preserve for this and future generations.

There is consensus that our oceans are in crisis and that reforms are essential. In the 1960s, the Stratton Commission reviewed U.S. ocean policy, found it lacking, and the nation responded. Much has changed in the ensuing years, and once again a commitment is needed to protect and preserve this national trust.

A century ago, President Theodore Roosevelt committed the nation to the critical objective of preserving our land. Today, we have a similar responsibility to the seas that cover about 71 percent of our planet. These recommendations provide an opportunity and the means to meet our obligation and provide for our children a bountiful ocean legacy.

Leon E. Panetta
Chair, Pew Oceans Commission

Preface

DEEP WATER: AMERICA'S OCEANS IN TROUBLE

Digital Vision

Americans have always loved the ocean. Half of us live in coastal communities and the other half come to visit. Perhaps, as President John F. Kennedy once suggested, it is "the salt in our veins."

When we stand at the water's edge, we stare longingly out to sea—for the boat to return, for the tides to shift, for the winds to arrive, for the fish to bite, for the sun to rise or set—beyond the far horizon.

Inspired by their majesty and mystery, we depend on our oceans and their coasts, not just for pleasure and food—although these uses are central—but also as a counterweight to extremes of heat and cold on land, as a sponge for absorbing excess carbon, and as a generator of life-giving oxygen. Although we often view the ocean as starting where the land ends, that separation is arbitrary. Land and oceans are part of the same global system. Activities on one profoundly affect the other.

Just as the 20th century brought us into knowledgeable contact with outer space, the 21st will almost certainly connect us more intimately to our oceans. In fact, it is imperative because—as much as we love our oceans—our ignorance has been destroying them. We love clean beaches, but what we discharge into the oceans befouls them. We destroy the very coastal wetlands we need to buffer storms and filter fresh water. A nation of seafood lovers, we are careless about how we treat the ocean's "nurseries" and brood stocks that replenish our fish supply.

Furthermore, the size of the world's human population and the extent of our technological creativity have created enormously damaging impacts on all of the oceans. We are now capable of altering the ocean's chemistry, stripping it of fish and the many other organisms which comprise its amazingly rich biodiversity, exploding and bleaching away its coral nurseries, and even reprogramming the ocean's delicate background noise.

We love our freedom to move about the ocean surface where no streets, signs, or fences impede us, yet our sense that no one owns this vast realm has allowed us to tolerate no one caring for it.

During the 20th century our nation has come to regard the air we breathe, the fresh water we drink, and the open lands as "common goods," part of our public trust. Now we must acknowledge that the oceans, too, are part of our common heritage and our common responsibility.

The report of the Pew Oceans Commission outlines a national agenda for protecting and restoring our oceans. It is a vision that projects an equilibrium of goods withdrawn from and goods regenerated within the ocean. It is a vision that abhors the careless—no less the systematic—extinction of vital sea species. It is a vision of clean water and clear horizons. Both comprehensive and detailed, the report presents a new direction for governing our oceans. From identifying the nonpoint pollutants that rush down our waterways into our coastal bays to proposing protected zones for critical marine life, the Commission has confronted the most challenging aspects of ocean policy. If its recommendations are accepted and acted upon, we can anticipate a future when fish will again be plentiful and fishing communities will thrive, when beaches will be clean again, and now-impoverished coral reefs will teem with life.

We invite the American public to embrace this vision and to join with us to launch a national effort in behalf of future generations—to understand and protect our vast and bountiful, fragile and mysterious seas.

Steve Simonsen/Marine Scenes

Pacific double-saddle butterfly fish, Western Shoals, Agana Harbor, Guam

David Rockefeller, Jr.
Vice Chair, National Park Foundation
Member, Pew Oceans Commission

Members
OF THE PEW OCEANS COMMISSION

Kenai Fjords National Park, Alaska
Deb Antonini/Pew Oceans Commission

The Honorable Leon E. Panetta, Chair
He is director of the California State University Panetta Institute for Public Policy. He served in Congress for eight terms. He chaired the House Budget Committee and served as White House chief of staff.

John H. Adams
He is the founder and president of the Natural Resources Defense Council —one of the nation's leading environmental organizations. In 1998, he was named one of Audubon's 100 Champions of Conservation.

The Honorable Eileen Claussen
She is president of the Pew Center on Global Climate Change. She is a former assistant secretary of state for oceans, environment, and science.

The Honorable Carlotta Leon Guerrero
She is a former member of the Guam Senate where she chaired committees with jurisdiction over transportation, telecommunications, and Micronesian affairs. She is currently co-director of the Ayuda Foundation, a nonprofit health care organization in Guam.

The Honorable Mike Hayden
He is the secretary of the Kansas Department of Wildlife and Parks. The former governor of Kansas served as president and CEO of the American Sportfishing Association, a recreational fishing group.

Geoffrey Heal, Ph.D.
He is the Garrett Professor of Public Policy and Corporate Responsibility and professor of economics and finance at the Graduate School of Business at Columbia University. One of his major research interests is the interaction of human societies and their natural resources.

Charles F. Kennel, Ph.D.
He is director of the Scripps Institution for Oceanography and the author of more than 250 publications in plasma physics, planetary science, and astrophysics. He has been both a Fulbright and Guggenheim Scholar.

The Honorable Tony Knowles
He recently completed his second term as governor of Alaska. He was the mayor of Anchorage and served on the North Pacific Fishery Management Council, where he was instrumental in efforts to reduce bycatch.

Jane Lubchenco, Ph.D.
She is an Oregon State University professor of marine biology, a MacArthur Fellow, and past president of both the American Association for the Advancement of Science and the Ecological Society of America. She is president-elect of the International Council for Science, and recipient of the 2002 Heinz Award for the Environment.

Julie Packard
She is the founder and executive director of the Monterey Bay Aquarium and vice chair of the David and Lucile Packard Foundation. She is the 1998 recipient of the Audubon Medal for Conservation.

The Honorable Pietro Parravano
He is a commercial fisherman and owner of the *Anne B.* He is the president of the Pacific Coast Federation of Fishermen's Associations and an elected member of the San Mateo County Harbor Commission.

The Honorable George E. Pataki
He is currently serving his second term as governor of New York. After graduating from Columbia Law School, he served ten years in the state legislature and was mayor of the city of Peekskill, his hometown.

The Honorable Joseph P. Riley, Jr.
He is serving his sixth term as mayor of Charleston, South Carolina. He has served as the president of the U.S. Conference of Mayors and has received many awards, including the Outstanding Mayors Award from the National Urban Coalition.

David Rockefeller, Jr.
He is director and former chair of Rockefeller Co., Inc., and is an active participant in the nonprofit fields of art, philanthropy, and the environment. He is a vice chair of the National Park Foundation and trustee of the Rockefeller Brothers Fund.

Vice Admiral Roger T. Rufe, Jr., U.S. Coast Guard (Retired)
He is the president and CEO of The Ocean Conservancy. While in the U.S. Coast Guard, he led offices responsible for marine conservation in Alaska and the Southeast U.S.

Kathryn D. Sullivan, Ph.D.
She is the president and CEO of COSI, a hands-on science center in Columbus, Ohio. As a NASA astronaut, she was the first U.S. woman to walk in space. She served as NOAA's chief scientist from 1992 to 1996. She has a Ph.D. in geology.

Marilyn Ware
She is the chairman of the board of American Water Works Company, the nation's largest private drinking water utility. She is a former newspaper editor and publisher, and currently serves on the board of the American Enterprise Institute.

Patten (Pat) D. White
He is a commercial fisherman and CEO of the Maine Lobstermen's Association. He is a member of the Atlantic States Marine Fisheries Commission, and serves on the editorial board of *National Fisherman.*

Executive Summary

Bocaccio, Channel Islands National Marine Sanctuary, California
Richard Herrmann

America's oceans are in crisis and the stakes could not be higher. More than half the U.S. population lives in coastal counties. The resident population in this area is expected to increase by 25 million people by 2015. More than 180 million people visit the shore for recreation every year.

Though a price tag has never been assigned to our coastal economy, it is clear that it contributes significantly to the nation's overall economic activity. Tens of thousands of jobs in fishing, recreation, and tourism depend on healthy, functioning coastal ecosystems. Now, thousands of jobs and billions of dollars of investment have either been lost or are jeopardized by collapsing fisheries. Pollution and sprawl threaten ocean-related tourism and recreation, far and away the largest component of the coastal economy.

Ron Niebrugge/wildnaturelmages.com

Fishing figures prominently in the economies of many coastal communities, including Seward, Alaska, where anglers fish for salmon in Resurrection Bay.

But more than jobs are at stake. All Americans depend on the oceans and affect the oceans, regardless of where they live. Ocean currents circulate the energy and water that regulate the Earth's climate and weather and, thus, affect every aspect of the human experience. Our very dependence on and use of ocean resources are exposing limits in natural systems once viewed as too vast and inexhaustible to be harmed by human activity. Without reform, our daily actions will increasingly jeopardize a valuable natural resource and an invaluable aspect of our national heritage.

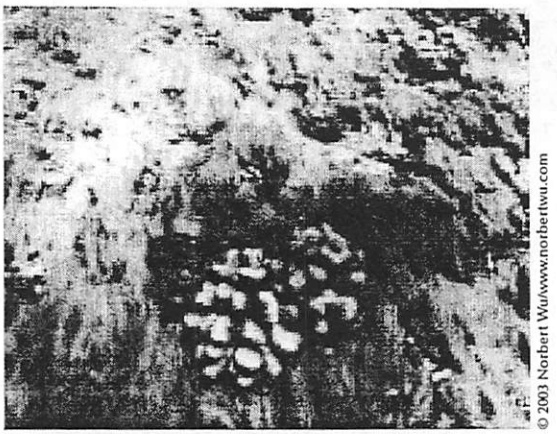
In the midst of crisis, there are expressions of hope and signs of success. Striped bass, severely depleted along our Atlantic shores, made a striking comeback when given a chance. North Atlantic swordfish recently did the same in response to lower catch limits and closed nursery areas. Seabirds, kelp beds, and fish communities returned to the coastal waters off Los Angeles after waste discharges were reduced. Proven, workable solutions to the crisis in our oceans exist but such successes will remain the exception rather than the rule until we chart a new course for ocean management.

THE EVIDENCE

The evidence that our oceans face a greater array of problems than ever before in our nation's history surrounds us. Marine life and vital coastal habitats are straining under the increasing pressure of our use. We have reached a crossroads where the cumulative effect of what we take from, and put into, the ocean substantially reduces the ability of marine ecosystems to produce the economic and ecological goods and services that we desire and need. What we once considered inexhaustible and resilient is, in fact, finite and fragile.

The crisis confronting our oceans has many dimensions.

- Coastal development and associated sprawl destroy and endanger coastal wetlands and estuaries that serve as nurseries for many valuable fishery species. More than 20,000 acres of these sensitive habitats disappear each year. Paved surfaces have created expressways for oil, grease, and toxic pollutants into coastal waters. Every eight months, nearly 11 million gallons of oil run off our streets and driveways into our waters—the equivalent of the *Exxon Valdez* oil spill.
- More than 60 percent of our coastal rivers and bays are moderately to severely degraded by nutrient runoff. This runoff creates harmful algal blooms and leads to the degradation or loss of seagrass and kelp beds as well as coral reefs that are important spawning and nursery grounds for fish. Each summer, nutrient pollution creates a dead zone the size of Massachusetts in the Gulf of Mexico. These types of problems occur in almost every coastal state* and the trends are not favorable. If current practices continue, nitrogen inputs to U.S. coastal waters in 2030 may be as much as 30 percent higher than at present and more than twice what they were in 1960.
- Many ecologically and commercially crucial fish species, including groundfish and salmon populations along the Atlantic and Pacific Coasts, face overfishing and numerous other threats. Thirty percent of the fish populations that have been assessed are overfished or are being fished unsustainably. An increasing number of these species are being driven toward extinction. Already depleted sea turtle, marine mammal, seabird, and noncommercial fish populations are endangered by incidental capture in fishing gear. Destructive fishing practices are damaging vital habitat upon which fish and other living resources depend. Combined, these aspects of fishing are changing relationships among species in food webs and altering the functioning of marine ecosystems.
- Invasive species are establishing themselves in our coastal waters, often crowding out native species and altering habitat and food webs. More than 175 introduced species thrive in San Francisco Bay alone. Nearly one million Atlantic salmon escaped from farm pens on the western coast of North America in the last 15 years. The species is now successfully



Nutrient pollution of coastal waters causes excessive algae growth on coral reefs, such as this one off Hawaii. Other major threats to reefs include climate change, overfishing, and sediment runoff resulting from development and agriculture.

*As used in this report, the terms "state" or "states" mean any or all of the fifty states, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, the Virgin Islands, Guam, and any other commonwealth, territory, or possession of the United States.

reproducing in British Columbia rivers and diluting the gene pool of native species by hybridizing with Pacific salmon. New species are regularly finding a home around our coastlines as hitchhikers in ship ballast water or on ship hulls, escapees from fish farms, and even as discarded home aquarium plants and animals. Of the 374 documented invasive species in U.S. waters, 150 have arrived since 1970.

In addition to these varied threats, climate change over the next century is projected to profoundly impact coastal and marine ecosystems. Sea-level rise will gradually inundate highly productive coastal wetlands, estuaries, and mangrove forests. Coral reefs that harbor exceptional biodiversity will likely experience increased bleaching due to higher water temperatures. Changes in ocean and atmospheric circulation attributable to climate change could adversely affect coastal upwelling and productivity and have significant local, regional, and global implications on the distribution and abundance of living marine resources.

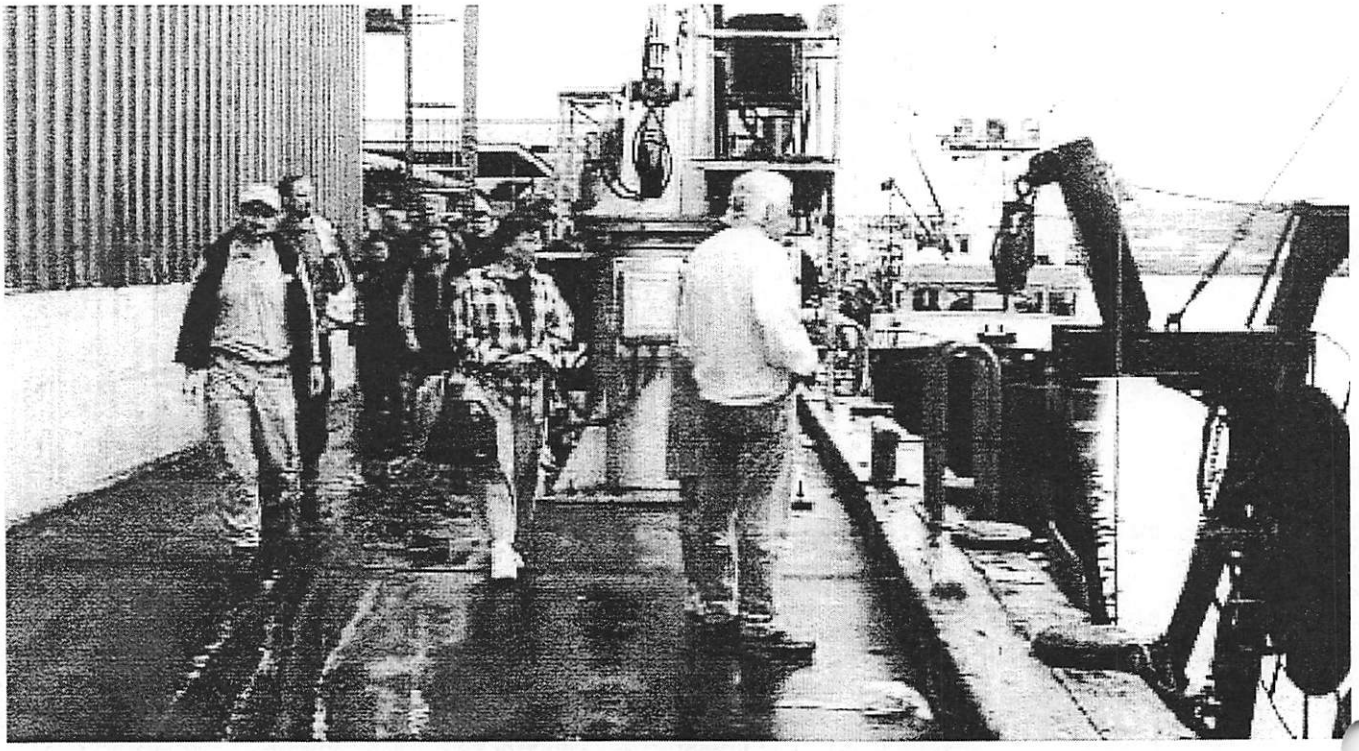
These are just some of the signs that our interactions with the oceans are unsustainable. Our activities, from those that release pollutants into rivers and bays to the overfishing of the seas, are altering and threatening the structure and functioning of marine ecosystems—from which all marine life springs and upon which all living things, including humans, depend.

SEEDS OF CRISIS

The root cause of this crisis is a failure of both perspective and governance. We have failed to conceive of the oceans as our largest public domain, to be managed holistically for the greater public good in perpetuity. Our oceans span nearly 4.5 million square miles,* an area 23 percent larger than the nation's land area. Similarly, we have only begun to recognize how vital our oceans and coasts are to our economy as well as to the cultural heritage of our nation. Finally, we have come too slowly to recognize the interdependence of land and sea and how easily activities far inland can disrupt the many benefits provided by coastal ecosystems.

The foundation of U.S. ocean policy was laid in a very different context than exists today. The principal laws to protect our coastal zones, endangered marine mammals, ocean waters, and fisheries were enacted 30 years ago, on a crisis-by-crisis, sector-by-sector basis. Much of what exists of an ocean governance system in this country can be traced to recommendations of the Stratton Commission—the nation's first review of ocean policy in 1969. Driven by the need to ensure the "full and wise use of the marine environment," Stratton focused on oceans as a frontier with vast resources, and largely rec-

*This is the approximate area (in square statute miles) of the United States Exclusive Economic Zone (EEZ)—the area of the oceans over which the United States exercises exclusive environmental and economic jurisdiction. The U.S. EEZ was established by Presidential Proclamation in 1983. The establishment of an EEZ extending 200 nautical miles from the shoreline of a coastal nation is recognized and accepted under the United Nations Convention on the Law of the Sea.



Deb Antonini/Pew Oceans Commission

Commissioners tour a cannery in Kodiak, Alaska, home port for more than 700 trawl, longline, and crab vessels.

ommended policies to coordinate the development of ocean resources.

Reflecting the understanding and values of this earlier era, we have continued to approach our oceans with a frontier mentality. The result is a hodgepodge of ocean laws and programs that do not provide unified, clearly stated goals and measurable objectives. Authority over marine resources is fragmented geographically and institutionally. Principles of ecosystem health and integrity, sustainability, and precaution have been lost in the fray. Furthermore, the nation has substantially underinvested in understanding and managing our oceans. The information we do have in hand is often underutilized. Plagued with systemic problems, U.S. ocean governance is in disarray.

A 30-YEAR REVIEW OF OCEAN POLICY

More than 30 years after the Stratton Commission issued its recommendations, the state of our oceans and coasts is vastly altered. Although some of the problems that were considered 30 years ago remain with us today, new environmental, economic, and policy challenges have emerged. These challenges exceed the capacity of today's governance framework and management regimes.

Our perspective on ocean resources and policy has also changed over 30 years. We are increasingly aware that development activities can change marine environments. We are learning more about complex interactions in marine ecosystems and the need to maintain the diversity and resilience of those complex and adaptive natural systems. Today, there is a

clear sense that we must do a better job of protecting the oceans if we hope to continue to enjoy their benefits.

The Pew Oceans Commission, a bipartisan, independent group of American leaders, was created to chart a new course for the nation's ocean policy. Our mission is to identify policies and practices necessary to restore and protect living marine resources in U.S. waters and the ocean and coastal habitats on which they depend. The Commission was also charged with raising public awareness of the principal threats to marine biodiversity and of the importance of ocean and coastal resources to the U.S. economy.

Chris Mann/Pew Oceans Commission

Senator Ernest Hollings (D-SC) welcomes Leon Panetta, Dana Beach of the South Carolina Coastal Conservation League, and Deb Antonini of the Pew Oceans Commission at the release of Mr. Beach's report on coastal sprawl.

The Commission brought together a diverse group of American leaders from the worlds of science, fishing, conservation, government, education, business, and philanthropy. It secured the help of leading scientists to determine priority issues and to write reports summarizing the best scientific information available on those subjects (see list of publications on page 136). The Commission organized into four committees to review the core issues of governance, fishing, pollution, and coastal development. It also investigated marine aquaculture, invasive species, ocean zoning, climate change, science, and education.

For more than two years, the Commission conducted a national dialogue on ocean issues. We convened a series of 15 regional meetings, public hearings, and workshops to listen to those who live and work along the coasts. From Maine to Hawaii, Alaska to the Gulf of Mexico, we spoke with hundreds of citizens, fishermen, scientists, government officials, tourism operators, and business leaders. Commissioners held a series of 12 focus groups with fishermen, including one in Kodiak, Alaska, which is among the nation's oldest and largest fishing communities. Believing that experience is the best teacher, Commissioners went lobster fishing in Maine, toured a pineapple plantation in Hawaii to learn about ways to control polluted runoff, and visited coastal habitat restoration projects in New York and South Carolina.

By speaking with those who live and work along the coasts and around the country, and by collecting the best scientific information available, the Commission learned a great deal about the problems facing our oceans, the consequences to coastal communities and the nation if we fail to act, and actions needed to overcome the crisis facing our oceans. The status quo is unacceptable. Future generations will judge this generation on whether it shoulders its responsibility.

CONCLUSIONS AND RECOMMENDATIONS

The fundamental conclusion of the Pew Oceans Commission is that this nation needs to ensure healthy, productive, and resilient marine ecosystems for present and future generations. In the long term, economic sustain-

ability depends on ecological sustainability.

To achieve and maintain healthy ecosystems requires that we change our perspective and extend an ethic of stewardship and responsibility toward the oceans. Most importantly, we must treat our oceans as a public trust. The oceans are a vast public domain that is vitally important to our environmental and economic security as a nation. The public has entrusted the government with the stewardship of our oceans, and the government should exercise its authority with a broad sense of responsibility toward all citizens and their long-term interests.

These changes in our perspective must be reflected in a reformed U.S. ocean policy. National ocean policy and governance must be realigned to reflect and apply principles of ecosystem health and integrity, sustainability, and precaution. We must redefine our relationship with the ocean to reflect an understanding of the land-sea connection and organize institutions and forums capable of managing on an ecosystem basis. These forums must be accessible, inclusive, and accountable. Decisions should be founded upon the best available science and flow from processes that are equitable, transparent, and collaborative.

To embrace these reforms and achieve our goal, the nation must realize five priority objectives:

1. Declare a principled, unified national ocean policy based on protecting ecosystem health and requiring sustainable use of ocean resources.
2. Encourage comprehensive and coordinated governance of ocean resources and uses at scales appropriate to the problems to be solved.
   a. The regional scale of large marine ecosystems is most appropriate for fisheries management and for governance generally.
   b. Coastal development and pollution control is most appropriately addressed at the watershed level.
3. Restructure fishery management institutions and reorient fisheries policy to protect and sustain the ecosystems on which our fisheries depend.
4. Protect important habitat and manage coastal development to minimize habitat damage and water quality impairment.
5. Control sources of pollution, particularly nutrients, that are harming marine ecosystems.

The Commission recommends the following actions to achieve these objectives.

Governance for Sustainable Seas

1. Enact a National Ocean Policy Act to protect, maintain, and restore the health, integrity, resilience, and productivity of our oceans.
2. Establish regional ocean ecosystem councils to develop and implement enforceable regional ocean governance plans.
3. Establish a national system of fully protected marine reserves.
4. Establish an independent national oceans agency.

5. Establish a permanent federal interagency oceans council.

Restoring America's Fisheries

1. Redefine the principal objective of American marine fishery policy to protect marine ecosystems.
2. Separate conservation and allocation decisions.
3. Implement ecosystem-based planning and marine zoning.
4. Regulate the use of fishing gear that is destructive to marine habitats.
5. Require bycatch monitoring and management plans as a condition of fishing.
6. Require comprehensive access and allocation planning as a condition of fishing.
7. Establish a permanent fishery conservation and management trust fund.

Preserving Our Coasts

1. Develop an action plan to address nonpoint source pollution and protect water quality on a watershed basis.
2. Identify and protect from development habitat critical for the functioning of coastal ecosystems.
3. Institute effective mechanisms at all levels of government to manage development and minimize its impact on coastal ecosystems.
4. Redirect government programs and subsidies away from harmful coastal development and toward beneficial activities, including restoration.

Cleaning Coastal Waters

1. Revise, strengthen, and expand pollution laws to focus on nonpoint source pollution.
2. Address unabated point sources of pollution, such as concentrated animal feeding operations and cruise ships.
3. Create a flexible framework to address emerging and nontraditional sources of pollution, such as invasive species and noise.
4. Strengthen control over toxic pollution.

Guiding Sustainable Marine Aquaculture

1. Implement a new national marine aquaculture policy based on sound conservation principles and standards.
2. Set a standard, and provide international leadership, for ecologically sound marine aquaculture practices.

Science, Education, and Funding

1. Develop and implement a comprehensive national ocean research and monitoring strategy.
2. Double funding for basic ocean science and research.
3. Improve the use of existing scientific information by creating a mechanism or institution that regularly provides independent scientific oversight of ocean and coastal management.
4. Broaden ocean education and awareness through a commitment to teach and learn about our oceans, at all levels of society.

This nation must decide how it will choose to meet the crisis in our oceans. Fundamentally, this is not a decision about us. It is about our children, and actions we must take to bequeath them thriving oceans and healthy coastlines.

This is our challenge. To meet this challenge, the nation must substantially increase its investment in understanding and managing its oceans. We need a much greater financial commitment to strengthen governance and management infrastructure, to improve our scientific understanding of marine ecosystems and human impacts, and to educate all Americans about the oceans.

If properly executed, this investment will be paid back manyfold in the form of abundant living ocean resources for centuries ahead. Without this investment, we risk further decline in ocean ecosystem health and serious consequences for human well-being far into the future.

Justin Kenney/Pew Oceans Commission

Commissioner Carlotta Leon Guerrero (above) joined Hawaiian schoolchildren for a taping of KidScience, *produced jointly by the Hawaii Department of Education and Hawaii Public Television, during the Commission's visit to Hawaii in February 2001.*

National Oceanic and Atmospheric A
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

March 13, 2003

David Benton, Chairman
North Pacific Fishery Management Council
605 W. 4th Avenue
Anchorage, AK 99501-2252

Dear Mr. Benton,

At its October 8, 2002, meeting, the Council adopted a motion (attached) for a "work plan" to assess the potential effects of an Aleutian Islands (AI) pollock fishery outside of Steller sea lion critical habitat (CH), as currently authorized under Steller sea lion (SSL) protection measures. The Council acknowledged that the AI pollock fishery has been closed since 1999 under the annual harvest specifications to address pollock resource and fishery management concerns. It also expressed concern about the continued potential for a fishery outside CH under SSL protection measures and whether the authorization of this fishery was prudent without further review of the effects of the fishery on SSLs, on other fisheries, as well as potential cumulative impacts of a pollock fishery on other components of the AI biological ecosystem. The Council requested that a report on these issues be provided for Council consideration at its April 2003 meeting.

The Council assumed that NMFS would take the lead on this assessment, which largely is appropriate given the nature of the questions being asked. As we informed the Council at its February 2003 meeting, other staff workload priorities conflicted with the Council's expectation for NMFS staff to develop a separate analysis that responds specifically to the Council's October 2002 motion. We continue to support the premises of the 2001 biological opinion with respect to actions necessary to protect SSLs and the determination that fishing activities conducted under the SSL protection measures are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. We are continuing to evaluate the effect of fishing activities on endangered SSLs in response to the December 30, 2002, court order concerning the 2001 BiOp and the associated remand that requires NMFS to provide additional information by June 30, 2003.

The work undertaken by NMFS, as part of the remand, will partially address the Council's motion and will reiterate that pollock closures in the Aleutian Islands beyond critical habitat are not an integral part of the conservation strategy for SSLs. In the draft section 7 consultation on the Steller sea lion conservation measures (August 2001) which was reviewed by the Council, NMFS determined that a pollock fishery outside of critical habitat would not jeopardize the continued existence of the species and would not destroy or adversely modify its critical habitat. Conversely, closures for AI pollock within critical habitat and seasonal distribution of catch are consistent with the overall management strategy for SSL protection measures. Thus, our initial review is that the opening of an AI pollock fishery outside of critical habitat (under the AFA and

with a seasonal apportionment of 40/60) would not require re-consultation under section 7 of the ESA, because the action of having a pollock fishery beyond critical habitat has already been considered (2001 BiOp). Additionally, the area beyond critical habitat lies almost entirely off the continental shelf break, and the probability of adverse effects on the population are unlikely.

Moving beyond the 2001 BiOp and associated remand, we anticipate reinitiating consultation on the effects of fishing activities on SSLs and other listed species within the next year. The agency will need to consult on the programmatic supplemental environmental impact statement (PSEIS) that currently is being developed. We anticipate that this would be a new FMP level BiOp based on the Council's preferred alternative and will be a significant undertaking. In addition to the ESA-focused assessment of a new FMP level BiOp, other components of the PSEIS analysis would assess broader ecosystem and fishery related impacts. For example, Alternative 2.1 of the PSEIS (which sets TAC=OFL, and OY cap=sum of OFL) examines the impacts of reopening the AI pollock fishery. The scope of this alternative is broad and results of the analysis of impacts would have to be carefully interpreted with respect to the AI pollock fishery alone, but the analysis should provide additional insight into the ecosystem and fishery effects of an AI pollock fishery.

Additional consultations and analyses in the near future also could be responsive to the Council's request to more fully assess the effects of an AI pollock fishery. For example, the Council's response to the National Academy of Sciences Report on the decline of SSLs could result in the investigation of control areas in the North Pacific, including consideration of an Aleutian Islands closure to fishing for pollock, Pacific cod and Atka mackerel at an appropriate scale. Control areas also may be an effective response to Essential Fish Habitat (EFH) concerns currently under investigation.

Although results of new and ongoing research related to SSL issues is anticipated, no information received to date would cause us to reinitiate consultation on the BSAI and GOA fisheries. Nonetheless, we will be continually evaluating new information to determine if it is sufficiently significant to trigger consultation. Similarly, any new management action under Council consideration that potentially may adversely affect Steller sea lions would trigger consultation and will be reviewed on a case by case basis as required by the ESA.

In summary, we believe that the intent of the Council's October 2002 motion to reassess the impacts of a potential AI pollock fishery outside critical habitat is being addressed by a number of agency initiatives. These initiatives include the remand process on the 2001 BiOp, PSEIS analyses of alternatives and consultation on the Council's preferred alternative, and ongoing evaluation of new information relative to the impacts to listed species under the ESA.

Sincerely,

James W. Balsiger
Administrator, Alaska Region

Attachment

Work Plan for Aleutian Islands Pollock Trawl Closure Under C-2, Steller Sea Lion Measures

October 8, 2002

In April 2002, the SSC recommended modifications to the Steller sea lion (SSL) trailing amendments to address certain deficiencies prior to the document going out for public review. In particular, the request was to provide a historical perspective as to why the Aleutian Islands pollock fishery was originally closed, and what has changed since that time that would warrant reopening.

The SSC in their October 2002 meeting cautioned that it was too soon to conclude that the western population of SSLs was recovering, and that the pup counts in this area continue to decline in the 2002 SSL population survey.

The Aleutian Islands pollock fishery has been closed for the past four years. Reopening the fishery under the proposed SSL measures will result in markedly different spatial and temporal fishing patterns in the Aleutian Islands fishery. A comprehensive review of the effects of reopening the fishery needs to be done prior to authorizing the new fishery.

This review should build on the recent Environmental Assessment developed by staff, and should include a description of: the current SSL stock structure within the Aleutian Islands; a consideration of the current theory and information regarding localized fishery depletions and SSL prey densities; the importance of such prey densities and forage availability to weaned pups and nursing females; the most current telemetry information on weaned pups and foraging outside of critical habitat in the Aleutian Islands; and the cumulative effects on these SSL age classes resulting from multiple fisheries on SSL prey in the Aleutian Islands (Atka mackerel, Pacific cod and Pollock).

In addition, the review should include an analysis of cumulative impacts arising from re-opening the Aleutian Islands pollock fishery on bycatch of target and non-target species, forage fish or other prey of SSLs, and potential impacts on other fisheries. This should include such issues as changes in fishing patterns in the other Aleutian Islands fisheries which have come about during the period of the pollock closure, any changes in spatial and temporal distribution in the pollock fishery arising from proposed SSL measures, and any impacts which might affect participants in other fisheries in the region as a result from reopening the pollock fisheries.

This report should be provided to the Council for consideration at the April 2003 meeting.

FRANK H. MURKOWSKI
GOVERNOR
GOVERNOR@GOV.STATE.AK.US

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

May 19, 2003

The Honorable Loren Leman
Lieutenant Governor
State of Alaska
State Capitol
Juneau, AK 99801-1182

Dear Lieutenant Governor Leman:

The House and Senate have passed the following and I am transmitting the engrossed and enrolled copies to you for permanent filing:

HCS for CS for Senate Joint Resolution No. 12(FSH)

Supporting the halibut bycatch utilization project of the Alaska Food Coalition

Legislative Resolve No. 14

Sincerely,

Frank H. Murkowski
Governor

STATE OF ALASKA
THE LEGISLATURE

2003

Source
HCS CSSJR 12(FSH)

Legislative Resolve No.
14

Supporting the halibut bycatch utilization project of the Alaska Food Coalition.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS fishermen operating trawl vessels are prohibited from retaining accidentally caught halibut; and

WHEREAS these fishermen are required by federal regulation to dump halibut bycatch, even dead halibut, at sea; and

WHEREAS these fishermen, who would receive no personal profit, gain, or benefit, except the intrinsic satisfaction derived of noble action, desire, at the expense of their labor and time, to retain and donate halibut bycatch to charitable food relief agencies; and

WHEREAS Kodiak processors are willing to handle and process otherwise at-sea-discarded halibut bycatch for charitable purposes; and

WHEREAS the Alaska Food Coalition, a network of charitable food relief organizations, has established a plan, has acquired funds, and is ready to distribute the halibut bycatch to assist Alaskans in need;

BE IT RESOLVED that the Alaska State Legislature supports the Alaska Food Coalition in its efforts to see that the dead halibut bycatch, which is otherwise an unutilized

resource, is put to use to support our Alaska families in need; and be it

FURTHER RESOLVED that the Alaska State Legislature commends Kodiak fishermen and processors for their efforts and willingness to see that halibut bycatch is responsibly disposed of through charitable donations; and be it

FURTHER RESOLVED that the Alaska State Legislature respectfully requests the National Marine Fisheries Service and the North Pacific Fishery Management Council to support the issuance of a Prohibited Species Donation Permit using halibut bycatch from vessels with observers.

COPIES of this resolution shall be sent to Susan J. Salveson, Assistant Regional Administrator, Alaska Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce; Kenneth D. Hansen, Assistant-Special-Agent-in-Charge, Alaska Region, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, United States Department of Commerce; David Benton, Chair, North Pacific Fishery Management Council; Alvin Burch, Executive Director, Alaska Draggers Association; Mitch Kilborn, Manager, Western Alaska Fisheries; Matt Moir, Manager, Alaska Pacific Seafoods; Greg D. Hathaway, Manager, Trident Seafoods Corporation; and Trevor Jones, Chair, Alaska Food Coalition.

NOAA and US Coast Guard Meeting Announcements

NOAA Fisheries announces eight regional constituent sessions to be held in conjunction with Fishery Management Council meetings from June through September 2003. The sessions are intended to gather public input on ways to improve the effectiveness of NOAA Fisheries. The regional sessions will be a collaborative effort involving all major marine fisheries interests - councils, commercial and recreational fishermen, tribal, tribal representatives, and environmental organizations and federal and state government. The primary objective is to assemble and provide a comprehensive analysis of the diverse opinions, attitudes, and perspectives of marine resource stakeholders as they relate to broad themes in management and daily operations. The secondary objective is to identify performance measures.

The NOAA Fisheries 2003 Regional Constituent Session in conjunction with the North Pacific Council meeting will be June 13 (2pm-5pm and 6pm-8 pm) at the Kodiak Inn, Kodiak Alaska.

For more information, contact Patricia Lawson 301-713-2239 or patricia.lawson@noaa.gov. Visit the NOAA fisheries website for periodic updates on the regional sessions and to submit e-comments http://www.nmfs.noaa.gov/constit_sessions_2003.html

U. S. Coast Guard FOR IMMEDIATE RELEASE March 7, 2003. Contact: LT Ron Mench, 202-267-0932 Coast Guard to hold listening sessions on fisheries law enforcement plan WASHINGTON, D.C. The Coast Guard will hold listening sessions around the country beginning the end of March seeking input from all sectors of the fishing industry on its fisheries law enforcement strategy, especially as it relates to current fisheries trends and future challenges.

At the listening sessions, the Coast Guard will discuss its fisheries strategic plan, known as Ocean Guardian, which outlines the Coast Guard's strategy for effective and professional fisheries law enforcement. The Coast Guard enforces fisheries laws and regulations in the 200-mile Exclusive Economic Zone (3.4 million sq.mi.) and on the high seas.

Ocean Guardian is revalidated every five years to ensure it is properly aligned with domestic and international enforcement needs. The Coast Guard encourages commercial and recreational fishers, managers, conservationists, and enforcement partners to participate.

The listening sessions will consist of a brief presentation on Ocean Guardian followed by a facilitated discussion of issues. During the discussion, all participants will be given the opportunity to identify and comment upon important issues affecting the industry now or in the future. They will also be asked to express their ideas for improving the Coast Guard's fisheries law enforcement strategy. Interested persons who are unable to attend the listening sessions may send comments via e-mail through a special Ocean Guardian website, http://www.uscg.mil/hq/g-o/g-opl/mle/LMR/htm. A copy of the current Ocean Guardian Strategic Plan, and a report on key outcomes from each listening session can also be found at the site.

The listening session for Alaska will be on Saturday June 14 in Kodiak, Alaska at 6:00pm in the Harbor Room at the Kodiak Inn (in conjunction with the June meeting of the NPFMC).

B-1

United States Department of the Interior

U.S. FISH AND WILDLIFE SERVICE
Office of Subsistence Management
3601 C Street, Suite 1030
Anchorage, Alaska 99503

FWS/OSM/halibut

JUN 10 2003

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

Dear Chris:

I received your letter dated May 23, 2003 requesting clarification from the Federal Subsistence Board (Board) on whether it is willing to review and issue findings, if requested, by residents of communities not currently on the list of eligible rural places for halibut subsistence as established by the NPFMC (Council). As you noted in your letter, you have received a copy of my response to Mr. David Tyner dated May 20, 2003, regarding his request for rural determination and finding of halibut customary and traditional use for the community of Ninilchik. This letter serves as a good example of how the Office of Subsistence Management is able to respond to a public request clarifying current Federal subsistence regulations pertaining to rural determination and customary and traditional use of halibut. My office will continue to respond to these types of requests whenever they are received.

The Federal Subsistence Board can address proposals to change customary and traditional use determinations for halibut for harvests that occur within the Board's jurisdiction. However, requests to establish a specific customary and traditional use determination for halibut would be handled only during the Board's annual fisheries proposal period. The fisheries proposal period opens in early January and closes in March of each calendar year. During September and October, the Regional Advisory Councils will hold their fall meetings to review these proposals and make recommendation to the Board. The Board meets in December to consider staff and public comments and review Regional Council recommendations before establishing the final regulations for the following regulatory year.

Hopefully, this has answered your request. On behalf of OSM and the Board we will continue to work with the Council to assist in clarifying halibut subsistence regulations. If you need further assistance please call me, or Pete Probasco at 786-3357.

Sincerely,

Thomas H. Boyd
Assistant Regional Director

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668

AGENDA B-1
Supplemental

May 22, 2003

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

Dear Mr. Oliver:

Enclosed for your records are the May 15, 2003, transmittal letter to All Interested Government Agencies and Public Groups; May 13, 2003, Finding of No Significant Environmental Impact (FONSI); May 13, 2003, Memorandum for Joyce Wood, NOAA Office of Strategic Planning, from William Hogarth, re. FONSI, with concurrence on May 15, 2003; and the March 2003, EA/RIR/IRFA for a regulatory Amendment to change the management of the Aleutian Islands pollock fishery and exemption of Pacific cod vessels using pot gear from two haulout protection areas in the Gulf of Alaska.

Sincerely,

Lori Durall
Records Manager,
Alaska Region

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
Office of the Assistant Secretary for
Oceans and Atmosphere
Washington, D.C. 20230

MAY 15 2003

To All Interested Government Agencies and Public Groups:

Under the National Environmental Policy Act, an environmental review has been performed on the following action:

TITLE: Approval of a Final Rule to Implement Removal of Restrictions to Pacific Cod Pot Gear Fishing in Waters Near Cape Barnabas and Caton Island in the Gulf of Alaska

LOCATION: Waters within 3 nautical miles of Cape Barnabas and Caton Island in the Gulf of Alaska

SUMMARY: The EA/FRFA analyzes the impacts of opening waters within 3 nautical miles of Cape Barnabas and Caton Island in the Gulf of Alaska, which are currently closed to Pacific cod fishing by vessels using pot gear and named on a Federal fisheries permit. This action is necessary to provide consistency between State and Federal fishing restrictions and to relieve a potential burden on the Pacific cod pot gear fishing sector.

RESPONSIBLE OFFICIAL: James W. Balsiger
Administrator, Alaska Region
National Marine Fisheries Service
P.O. Box 21668
Juneau, AK 99802
Phone: (907) 586-7221

The environmental review process led us to conclude that this action will not have a significant impact on the environment. Therefore, an environmental impact statement was not prepared. A copy of the finding of no significant impact, including the environmental assessment, is enclosed for your information and comment to the Responsible Official listed above. Also, please send one copy of your comment to me at the NOAA Office of Strategic Planning, PPI/SP, SSMC3 Room 15603, 1315 East-West Hwy, Silver Spring, MD 20910.

Sincerely,

Joyce Wood
NEPA Coordinator

Enclosure

Finding of No Significant Impact (FONSI)

from the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) for a Proposed Amendment to Regulations Implementing the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska

Proposed Changes to the Management of the Aleutian Islands Pollock Fishery and Proposed Exemption of Pacific Cod Vessels Using Pot Gear from Two Haulout Protection Areas in the Gulf of Alaska, March 2003

This action is the removal of restrictions to directed fishing for Pacific cod using pot gear in waters within 3 nm of Caton Island and Cape Barnabas in the Gulf of Alaska (GOA). The EA/RIR/IRFA also analyzed the changes to management of the Aleutian Islands pollock fishery, but this action and this FONSI are limited to the Pacific cod pot gear fishery portion of the analysis. The Council will be provided additional analysis of the Aleutian Islands pollock fishery with the Programmatic Supplemental Environmental Impact Statement for the Alaska Groundfish Fisheries that is currently being prepared and the subsequent Section 7 biological opinion. The Council has completed its review of the Pacific cod pot gear fishery portion of this analysis and recommended removal of restrictions on such fishery around the Caton Island and Cape Barnabas haulouts.

One of the purposes of an EA is to provide the evidence and analysis necessary to decide whether an agency must prepare an environmental impact statement (EIS). This FONSI is the decision maker's determination that the proposed action will not result in significant impacts to the human environment; and therefore, further analysis in an EIS is not needed. The Council on Environmental Quality regulations define significance in terms of context and intensity (40 CFR 1508.27). An action must be evaluated at different spatial scales and settings to determine the context of the action. Intensity is evaluated with respect to the nature of impacts and the resources or environmental components affected by the action. NOAA Administrative Order (NAO) 216-6 provides guidance on National Environmental Policy Act (NEPA) specific to line agencies within NOAA. It further specifies the definition of significance in the fishery management context by listing factors that should be used to test the significance of fishery management actions (NAO 216-6 § 6.01 and 6.02). These factors form the basis of the analysis presented in Section 2.0 of the attached EA/RIR/IRFA, titled "Environmental Assessment." The results of that analysis specific to the Pacific cod pot fishery are summarized here for each factor.

Context: Adjustments to Steller sea lion protection measures would be implemented for the groundfish fisheries of the GOA. Any effects of the action are limited to this area. The effects on society within this area are on individuals directly and indirectly participating in the Pacific cod pot gear fishery and on those who use the ocean resources. The action is the relief of restrictions on the Pacific cod pot gear fishery near two Steller sea lion haulouts in the GOA, involving relatively small amounts of Pacific cod harvest by relatively few vessels and is unlikely to have localized or regional impacts on society.

Intensity: Listings of considerations to determine intensity of the impacts are in 50 CFR §

1508.27 (b) and in the NAO 216-6, Section 6. Each consideration is addressed below in order as it appears in the regulations. Citations are detailed in Section 5.0 of the EA/RIR/IRFA.

1. **Adverse or beneficial impact on marine resources, including sustainability of target and nontarget species, damage to ocean or coastal habitat or essential fish habitat, effects on biodiversity and ecosystems, and marine mammals.** Adverse or beneficial impact determinations accruing under Steller sea lion protection measures are described in the Steller Sea Lion Protection Measures EIS (SSL EIS) (NMFS 2001a, Chapter 4, pages 4-1 to 4-628). The alternatives considered in this EA for this action would have incremental effects that are sufficiently minor on the spatial and temporal harvest of Pacific cod so as to not deviate from the conclusions presented in the SSL SEIS.

2 **Public health and safety** will not be affected in any way not evaluated under previous actions or disproportionally.

3 **Cultural resources and ecologically critical areas:** This action takes place in 2 small geographic areas of the Gulf of Alaska, generally from 0 to 3 nm offshore. The land adjacent to these areas may contain cultural resources and ecologically critical areas. The marine waters where this fishery occur contain ecologically critical area. Effects on the unique characteristics of these areas are not anticipated to occur with this action and mitigation measures are part of existing fisheries management measures.

4 **Controversiality:** This action deals with temporal and spatial distribution of fisheries as deemed necessary to avoid jeopardy of extinction or adverse modification of critical habitat for the western distinct population segment of Steller sea lions. Differences of opinion exist among various industry, environmental, management, and scientific groups on the level of fishery restrictions necessary to accomplish an adequate level of protection while minimizing burden on the fishing industry. This action is a small component of the total suite of management measures implemented for SSL protection which are considered controversial. The action would not result in effects that have not already been analyzed in the SSL SEIS or follow up ESA consultations. The alternatives for this action would have minor impacts on the human environment and are not considered controversial for that reason.

5 **Risks to the human environment including social and economic effects.** Risks to the human environment by current fishing activities, particularly those targeting important SSL prey items such as pollock, Pacific cod, and Atka mackerel fisheries, are described in the SSL SEIS (NMFS 2001a, Chapter 4, Section 4.12, pages 4-342 to 4-439). Additional risks also are described in detail in the Draft Programmatic SEIS (NMFS 2001c). Because of the mitigation measures implemented with every past action, it is anticipated that there will be minimal or no risk to the human environment beyond that disclosed in these prior NEPA documents. Section 2.7 of the EA/RIR/IRFA describes the effects of this action on the human environment. Minimal risk is anticipated with the implementation of this action.

6 **Future actions** related to this action may result in impacts. Additional information

regarding marine species or fisheries may make it necessary to change management measures. Any changes in management measures that could impact the effectiveness of Steller sea lion protections may result in significant impacts. Pursuant to NEPA, appropriate environmental analysis documents (EA or EIS) will be prepared to inform the decision makers of potential impacts to the human environment and will strive to implement mitigation measures to avoid significant adverse impacts.

7 **Cumulatively significant impacts including those on target and nontarget species** Cumulatively significant impacts beyond those described in SSL Protection Measures SEIS (NMFS 2001a, Chapter 4, Section 4.13, pages 4-440 to 4-628) are not anticipated with this action.

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

9 **Impact on Endangered Species Act (ESA) listed species and designated critical habitat.** ESA listed species that range into the fishery management areas are listed in Appendix 2 of the EA/RIR/IRFA. The alternatives considered for this action would not impact any listed species to an extent not previously considered in the 2001 biological opinion (2001 BiOp) on Steller sea lion protection measures or the subsequent informal consultation. The status of section 7 consultations is summarized below by group: marine mammals, Pacific salmon, and seabirds.

ESA Listed Marine Mammals The 2001 BiOp was written on Alternative 4 (the chosen alternative) for the Steller Sea Lion Protection Measures SEIS (NMFS 2001a, Appendix A). The 2001 BiOp concludes the Alternative 4 suite of management measures would not likely jeopardize the continued existence of the western or eastern populations of Steller sea lions, nor would it adversely modify the designated critical habitat of either population. It is important to point out that the 2001 BiOp does not ask if Alternative 4 helps the Steller sea lion population size recover to some specified level so that the species could be delisted, but rather asks if Alternative 4 will jeopardize the Steller sea lion's chances of survival or recovery in the wild. While the 2001 BiOp has concluded that Alternative 4 does not jeopardize the continued survival and recovery of Steller sea lions, it nevertheless identified four reasonable and prudent measures to include with Alternative 4 as necessary and appropriate to minimize impacts of the fisheries to Steller sea lions. The measures are: (1) monitoring the take of Steller sea lions incidental to the BSAI and GOA groundfish fisheries; (2) monitoring all groundfish landings; (3) monitoring the location of all groundfish catch to record whether the catch was taken inside critical habitat; and (4) monitoring vessels fishing for groundfish inside areas closed to pollock, Pacific cod and Atka mackerel to see if they are illegally fishing for those species. These protection measures were implemented by final rule effective January 1, 2003, (68 FR 204, January 2, 2003).

On December 18, 2002, the United States District Court for the Western District of Washington remanded to NMFS the 2001 BiOp for the groundfish fisheries managed pursuant to the Steller sea lion protection measures published on January 2, 2003 (68 FR 204). Greenpeace, et al. v. National Marine Fisheries Service, No.C98–492Z (W.D. Wash.). The Court held that the biological opinion's findings of no jeopardy to the continued existence of endangered Steller sea lions and no adverse modification of their critical habitat were arbitrary and capricious. On December 30, 2002, the Court issued an Order declaring that the 2001 BiOp "shall remain effective until June 30, 2003," while NMFS completes the remand. The response to the remand will evaluate the effects of fishing activities authorized pursuant to the final rule for Steller sea lion protection measures and this action, on listed species and critical habitat.

ESA Listed Pacific Salmon When the first Section 7 consultations for ESA listed Pacific salmon taken by the groundfish fisheries were done, only three evolutionary significant units (ESU)s of Pacific salmon were listed that ranged into the fishery management areas. Additional ESUs of Pacific salmon and steelhead were listed under the ESA in 1997, 1998 and 1999. Only the Snake River fall chinook salmon has designated critical habitat and none of that designated habitat is marine habitat. In 2000, formal consultation was initiated for all twelve ESUs of ESA listed Pacific salmon that are thought to range into Alaskan waters for the authorization of the groundfish fisheries under the FMPs for the GOA and BSAI (NMFS 2000). A determination of not likely to jeopardize the continued existence is in the resulting biological opinion. The FMP level consultation (NMFS 2000) included reconsideration of all the listed species of Pacific salmon thought to range into the management area and redetermined no jeopardy for all ESUs. The Incidental Take Statements accompanying the biological opinions state the catch of listed fish will be limited specifically by the measures proposed to limit the total bycatch of chinook salmon. Bycatch should be minimized to the extent possible and in any case should not exceed 40,000 chinook salmon per year in the GOA fisheries.

ESA Listed Seabirds Two section 7 consultations regarding seabirds were reinitiated with the U. S. Fish and Wildlife Service (USFWS) in 2000. Consultations have not been concluded as yet. The first is an FMP-level consultation on the effects of the BSAI and GOA FMPs in their entirety on the listed species (and any designated critical habitat) under the jurisdiction of the USFWS. The second consultation is action-specific and is on the effects of the 2001 to 2004 Total Allowable Catch (TAC) specifications for the BSAI and GOA groundfish fisheries on the listed species (and any critical habitat) under the jurisdiction of the USFWS. This action-specific consultation will incorporate the alternatives proposed in this SSL Protection Measures SEIS and the 2002 TACs for the groundfish fisheries. The most recent biological opinion on the effects of the groundfish fisheries on listed seabird species expired December 31, 2000. NMFS requested and was granted an extension of that biological opinion and its accompanying Incidental Take Statement (USFWS 2001). USFWS intends to issue a biological opinion in 2003. This will allow for the consideration of new information: recommendations by Washington Sea Grant Program on suggested regulatory changes to seabird avoidance measures based on a two-year research program as well as modifications to fishery management measure decisions informed by the SSL SEIS.

Reinitiation of Section 7 Consultation Section 7 consultations for ESA listed marine mammals or Pacific salmon are not being reinitiated for this action because changes in fishing activities that result from this action do not rise to the level to warrant reinitiation. Changes that would warrant reinitiation include: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in the biological opinion; and (4) a new species is listed or critical habitat designated that may be affected by the identified action. In instances where the amount or extent of incidental take is exceeded, the action agency must immediately reinitiate formal consultation. An informal consultation on this action was completed on December 11, 2001 with a finding that the action was unlikely to adversely affect ESA listed species or modify of destroy critical habitat.

10 **There is no known violation of Federal, state, or local law** with this action. This action will bring greater consistency between Federal and State fishery management regulations.

11 **No introduction or spread of non-indigenous species:** This action will not result in the introduction or spread of a non-indigenous species beyond what already has been considered in the SSL SEIS.

Comparison of Alternatives and Selection of a Preferred Alternative

The preferred alternative (Alternative 5) removes the restriction to directed fishing for Pacific cod by vessels using pot gear in waters within 3 nm of Caton Island and Cape Barnabas. The No Action alternative (Alternative 4) would have continued the closure to pot fishing around these haulouts for vessels named on a Federal fishing permit and using pot gear for directed fishing for Pacific cod. Alternatives 5 and 4 were not likely to have adverse impacts on the environment. Alternative 4 maintained restrictions on the Pacific cod pot fishery that were determined to be not necessary to avoid the likelihood of jeopardy for Steller sea lions or adverse modification of their critical habitat. Alternative 5 was chosen over Alternative 4 because it provides consistency between State and Federal fishing regulations and it relieves a restriction for participants in the Pacific cod pot fishery while ensuring that adverse effects on Steller sea lions and their critical habitat is unlikely.

Based on the information contained in the EA/RIR/IRFA titled a Proposed Amendment to Regulations Implementing the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska, Proposed Changes to the Management of the Aleutian Islands Pollock Fishery and Proposed Exemption of Pacific Cod Vessels Using Pot Gear from Two Haulout Protection Areas in the Gulf of Alaska, March 2003, and summarized here, I have determined that the proposed alternative would not significantly affect the quality of the human environment, and therefore, preparation of an environmental impact statement is not required under the National Environmental Policy Act or its implementing regulations. Therefore, a FONSI is appropriate.

5-13-03

for William T. Hogarth, Ph.D.
NOAA Assistant Administrator for
Fisheries

Date

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
1315 East-West Highway
Silver Spring, Maryland 20910

THE DIRECTOR

MAY 13 2003

MEMORANDUM FOR: Joyce Wood
Director
NOAA Office of Strategic Planning

FROM: William T. Hogarth, Ph.D.

SUBJECT: Finding of No Significant Impact from the Environmental Assessment/ Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) for a Regulatory Amendment to Remove Restrictions to Pacific Cod Pot Gear Fishing in Waters Near Cape Barnabas and Caton Island in the Gulf of Alaska–DECISION MEMORANDUM

The action analyzed is the removal of Pacific cod pot gear fishing restrictions in waters within 3 nm of Caton Island and Cape Barnabas in the Gulf of Alaska. This regulatory amendment is necessary to ensure consistency between Federal and state fishing regulations and to reduce potential burdens on the Pacific cod pot fishery. To determine the significance of impacts of the action, NMFS applied the requirements of the National Environmental Policy Act, 50 CFR § 1508.27, and NOAA Administrative Order 216-6 by considering the context of the action and the intensity of impacts. This analysis and conclusions are in Section 2.0 of the EA and in the attached FONSI. Even though the EA/RIR/FRFA analyzed two potential amendments, this action is limited to the Pacific cod pot gear fishery restrictions. The analysis indicated that no significant impacts from the action are expected.

Based on the EA/RIR/FRFA titled a Proposed Amendment to Regulations Implementing the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska, Proposed Changes to the Management of the Aleutian Islands Pollock Fishery and Proposed Exemption of Pacific Cod Vessels Using Pot Gear from Two Haulout Protection Areas in the Gulf of Alaska, March

THE ASSISTANT ADMINISTRATOR
FOR FISHERIES

2003, I have determined that no significant impacts will result from the action. I request your concurrence in this determination by signing below. Please return this memorandum for our files.

1. I concur: Tonya Wood May 15, 03
Date

2. I do not concur. _____
Date

Attachment

ENVIRONMENTAL ASSESSMENT/ REGULATORY IMPACT REVIEW/ INITIAL REGULATORY FLEXIBILITY ANALYSIS

for a Proposed Amendment to Regulations Implementing the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska

Proposed Changes to the Management of the Aleutian Islands Pollock Fishery and Proposed Exemption of Pacific Cod Vessels Using Pot Gear from Two Haulout Protection Areas in the Gulf of Alaska

Date: March 2003

Lead Agency: National Marine Fisheries Service
Alaska Regional Office
Juneau, Alaska

Responsible Official: Jim Balsiger, Alaska Regional Administrator

For More Information contact: Ben Muse, National Marine Fisheries Service
Susan Salveson, National Marine Fisheries Service
Melanie Brown, National Marine Fisheries Service

Abstract: This Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) considers two changes to Steller sea lion protection measures adopted by the North Pacific Fishery Management Council (Council) in October 2001. Five alternatives are reviewed. Three of these are alternatives for the management of the Aleutian Islands pollock fishery, and two of these are alternatives for the management of Pacific cod pot gear fishing at two haulouts in the Gulf of Alaska. The Council acted on the Pacific cod portion of this analysis in October 2002, recommending the preferred alternative. Potential action on the Aleutian Islands pollock fishery will be considered after additional analysis is developed in the future. This EA/RIR/IRFA meets the requirements of the National Environmental Policy Act, Presidential Executive Order 12866, and the Regulatory Flexibility Act.

EXECUTIVE SUMMARY

Introduction

This EA/RIR/IRFA assesses the likely impacts of changing existing restrictions on the Aleutian Islands pollock fishery and modification of the Steller sea lion (SSL) protection measures around Caton Island and Cape Barnabas in the Gulf of Alaska (GOA) to mirror changes by the Alaska State Board of Fisheries (BOF). The Aleutian Islands pollock fishery is authorized outside critical habitat with a 40/60 seasonal apportionment of total allowable catch (TAC). The Council will be provided additional analysis of the Aleutian Islands pollock fishery with the Programmatic Supplemental Environmental Impact Statement for the Alaska Groundfish Fisheries that is currently being prepared and the subsequent Section 7 biological opinion. For the Pacific cod pot gear fishery around Cape Barnabas and Caton Island, the Council recommended in October 2002 to open these areas to fishing to mirror the BOF action. Council response to the BOF action is important because federal and State regulations concerning Steller sea lion protection areas currently are in conflict and a potential unnecessary burden on pot gear vessels can be avoided.

Environmental Assessment

The objectives of this action are to provide for access to fisheries while: (1) maintaining protection for the western distinct population segment (DPS) of Steller sea lions (i.e., avoid jeopardy to the western DPS of Steller sea lions or result in the destruction or adverse modification of its critical habitat), (2) avoid unnecessary burdens on the fishing industry, and (3) avoid confusion and regulatory compliance issues by facilitating consistency between federal and state regulations. Any changes to the pollock, Pacific cod, or Atka mackerel fisheries must not erode Steller sea lion protection measures in order to provide economic benefits to the fishing industry without having reasonable mitigation measures such as other closure areas.

Alternatives 1-3 deal with the Aleutian Islands pollock fishery, while Alternatives 4 and 5 deal with Pacific cod pot fishing in the Gulf of Alaska. Alternatives 1-3 are mutually exclusive, as are Alternatives 4 and 5. However, either one of Alternatives 1-3 may be chosen in combination with either Alternative 4 or 5.

> Alternative 1. No action alternative for the Aleutian Islands pollock fishery. Under this alternative, the Council's October 2001 recommendation to allow a directed fishery for pollock outside SSL critical habitat in 2003 and beyond would be implemented. The Aleutian Island total allowable catch (TAC) would be apportioned as follows: 40% to the A season and 60% to the B season.
>
> Alternative 2. Continue to prohibit a directed fishery for pollock in the Aleutian Islands Subarea in 2003 and beyond. A directed fishery for pollock in the Aleutian Islands subarea has been prohibited since 1999.
>
> Alternative 3. Similar to the no action alternative, allow a directed fishery for Aleutian Islands area pollock outside critical habitat. However, the annual TAC would not be seasonally apportioned, thus allowing for the full TAC to be harvested at anytime during the fishing year (likely in the winter time period).

Alternative 4. No action alternative for GOA haulouts. Federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts.

Alternative 5. Allow federally permitted vessels using pot gear in a directed fishery for Pacific cod to fish within 3 nm of the Caton Island and Cape Barnabas haulouts. This action would provide consistency between federal and state regulations governing fishing restrictions within Steller seas lion protection areas.

NMFS has determined through the Steller sea lion protection measures supplemental environmental impact statement (SSL SEIS) (NMFS 2001a), the associated draft and final biological opinions, and subsequent informal consultation on the BOF action that the implementation of Alternatives 1 or 2, and 4 or 5 would fall under the umbrella of actions that have already been analyzed and comport with both the ESA and NEPA. Further analyses are not warranted. With the exception of Alternative 3, the alternatives considered in this EA would have incremental effects that are sufficiently minor on the spatial and temporal harvest of pollock, Pacific cod, or other groundfish so as to not deviate from the conclusions of the cumulative impact assessment presented in the SSL SEIS.

However, Alternative 3 falls outside of the scope of both the SSL SEIS and the associated biological opinion. NMFS has initially determined that this action may result in adverse effects to Steller sea lions not previously considered and would trigger formal consultation under the ESA. Alternative 3 could increase the intensity of the impacts associated with an Aleutian Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. If consultation resulted in a jeopardy or adverse modification determination, a mitigating reasonable and prudent alternative (RPA) would be included as required under the ESA. Such an RPA could be a seasonal apportionment of TAC as already adopted under the no action alternative (Alternative 1). Assuming these mitigating measures, neither the state nor federal fisheries would be likely to cause cumulative effects beyond those described in the SSL SEIS.

Regulatory Impact Review

Alternative 1 is the status quo/no action/baseline alternative. This would allow pollock fishing outside of critical habitat in the Aleutians Islands area. Fishing would be subject to a seasonal restriction - 40% of the TAC could be taken from January 20 to June 10, and 60% of the TAC could be taken between June 10 and November 1. Since this is the baseline alternative, impacts on the resource, benefits, and costs were not estimated separately for this alternative. The impacts on the resource, benefits and costs of Alternatives 2 and 3 were measured as differences from Alternative 1. Alternative 1 would not jeopardize the continued existence of the Steller sea lions or adversely modify critical habitat. It would not reduce the burden on the industry. This alternative would not trigger E.O. 12866 significance criteria.

Alternative 2 would close the directed pollock fishery in the Aleutian Islands. This would reduce the pollock harvest in the Aleutians, although harvests of pollock in the Bering Sea, or of other species in the Bering Sea and Aleutian Islands, might increase. The reduction in the harvest in the Aleutians may benefit the Steller sea lions there, however the benefits, if any, are likely to be small. There is no jeopardy or adverse modification now under the status quo. Moreover, the reduction may be offset by an increase in the harvest of another species in the BSAI, and this may offset the benefits. Total costs of a

shutdown could reach $16 million - the value of the TAC if fully taken under Alternative 1. However, costs are unlikely to be this high since they may be offset by increased harvests of pollock or other species elsewhere, and because, given critical habitat and seasonal limits on harvests under Alternative 1, fishermen might have trouble harvesting the full TAC. This alternative would not meet the program objectives of reducing the burden on the industry and may not bring about any change in protection to Steller sea lions. This Alternative would not trigger E.O. 12866 significance criteria since the maximum revenue impact is likely to be $16 million at the outside.

Alternative 3 would permit fishing for pollock outside of critical habitat and would lift the seasonal constraint on this fishing. Under this alternative, harvest is likely to become concentrated in the first part of the year. This would have a benefit to the industry because pollock have more value at that time. This benefit may be as large as $5.9 million. On the other hand, Alternative 3 could increase the intensity of the impacts associated with an Aleutian Islands pollock fishery by not providing for a temporal dispersion of catch outside critical habitat. Implementation of this action would likely result in a re-initiation of formal section 7 consultation under the ESA. If any re-initiation of consultation resulted in a jeopardy determination, a mitigating reasonable and prudent alternative would be included as required by the ESA. Alternative 3 would achieve the objective of relieving the burden on the fishermen, but as noted, it might contribute to jeopardy and adverse modification. This alternative would not trigger E.O. 12866 significance criteria since the maximum revenue impact is likely to be $5.9 million at the outside.

Alternative 4 is the status quo/no action/baseline alternative for GOA haulout restrictions. Under this alternative, Pacific cod pot fishermen in the GOA could not fish within three nautical miles of haulouts at Caton Island and Cape Barnabas. Since this is the baseline alternative, impacts on the resource, benefits, and costs were not estimated separately for this alternative. The impacts on the resource, benefits and costs of Alternative 5 were measured as a difference from Alternative 4. This alternative would not jeopardize the continued existence of the Steller sea lions or adversely modify critical habitat. It would not reduce the burden on the industry. This alternative would not trigger E.O. 12866 significance criteria.

Alternative 5 would allow federally permitted vessels used to participate in the GOA Pacific cod pot fishery to fish within three nautical miles of the haulouts at Caton Island and Cape Barnabas. This would reduce the Pacific cod revenues placed "at risk" by the restrictions of Alternative 4 by up to $63,000. This in fact overstates the likely size of the net benefits, because the areas in question are small parts of larger fishing areas, and fishermen may currently be making up a large part of the harvest foreclosed by the restrictions by fishing elsewhere. Alternative 5 is not likely to cause jeopardy for the Steller sea lions or adversely modify its critical habitat. This alternative would not trigger E.O. 12866 significance criteria since the maximum revenue impact is likely to be $63,000 at the outside.

Initial Regulatory Flexibility Analysis

Alternatives 1 through 3 affect the Aleutian Islands pollock fishery. Many of the entities in this area have gross revenues large enough to make them large entities, or are affiliated with other entities (such as processors or AFA fishing cooperatives) that do. It was estimated that, of 140 entities, 12 were small. The small entities included one AFA catcher vessel delivering to a mothership only, five AFA catcher vessels delivering to catcher/processors, and six CDQ groups. Alternatives 4 and 5 affect Pacific cod pot vessels fishing within three miles of Caton Island and Cape Barnabas during the State's parallel groundfish fishery. It was estimated that there were six of these, and that they were all small for RFA

purposes.

Aleutian Islands pollock Alternative 2 may adversely impact six catcher vessels and six CDQ groups in comparison with the "status quo/baseline/no action" Alternative 1. However, at its greatest, the Aleutian TAC would be very small compared to the Eastern Bering Sea TAC, fishing operations precluded from fishing within critical habitat may not be able to harvest a large part of it if it is available, and closure of directed fishing may be offset by increased pollock TACs elsewhere. However, without more information on how the TAC freed up by eliminating directed pollock fishing in the Aleutians would be used under the BSAI optimal yield (OY) ceiling, it is impossible to know for sure if Alternative 2 would have a significant impact on small entities. If an adverse impact results, it likely would be small.

Aleutian Islands pollock Alternative 3 has no adverse impacts on small entities in comparison with the "status quo/baseline/no action" Alternative 1. Alternative 3 lifts seasonal restrictions on trawl fishing for pollock in the Aleutian Islands and is expected to result in the pollock harvest being taken during the high valued winter fishery.

The Caton Island/Cape Barnabas Alternative 5 has no adverse impacts on small entities in comparison with "status quo/baseline/no action" Alternative 4. Alternative 5 lifts restrictions on fishing with pots for Pacific cod and provides small entities somewhat more flexibility. It is not clear if lifting the restrictions will increase revenues or reduce costs for these operations significantly. These operations have other inshore areas nearby - including within the same State of Alaska statistical reporting areas - within which they could fish. The volumes of fish taken from these areas in the past are modest compared to overall harvests from other Alaska inshore waters in those areas.

The EA/RIR/IRFA analyzed two options that may be less burdensome for directly regulated small entities in the Aleutian Island pollock fishery. Under Alternative 3 the seasonal restriction on harvests from the pollock fishery would be lifted, and it is likely that almost all of the harvest would be taken in the first half of the year, and probably in February and March when the roe quality is highest. While this would increase the value of the TAC for the industry, it would increase the concentration of the fishery in time. This may impose important costs if it jeopardizes the continued survival of the western DPS of Steller sea lions. As noted in Section 2.8 of this EA/RIR/IRFA,

> "Alternative 3 could increase the intensity of the impacts associated with an Aleutian Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. Implementation of this action would likely result in a re-initiation of formal section 7 consultation under the ESA ... if any re-initiation of consultation resulted in a jeopardy determination, a mitigating reasonable and prudent alternative would be included as required by the ESA "

Alternative 5 might be less burdensome for some small Pacific cod pot fishing vessels in the Gulf of Alaska. These would have somewhat more area to fish in during the State parallel fishery.

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1.0 INTRODUCTION

Under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone, which extends between 3 and 200 nautical miles from the baseline used to measure the territorial sea (federal waters). The management of these marine resources is vested in the Secretary of Commerce and in regional fishery management councils. In Federal waters off Alaska, the North Pacific Fishery Management Council (Council) has the responsibility to prepare fishery management plans for the marine fisheries it finds that require conservation and management. The National Marine Fisheries Service (NMFS) is charged with carrying out the federal mandates of the Department of Commerce with regard to marine fish.

The groundfish fisheries in federal waters off Alaska are managed under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The Council prepared the FMPs under the authority of the Magnuson-Stevens Act, 16 U.S.C. 1801, et seq. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679. NMFS also has management responsibility for certain threatened and endangered species, including Steller sea lions, under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 1531, et seq., and the authority to promulgate regulations to enforce provisions of the ESA to protect such species.

Actions taken to amend the FMPs or their implementing regulations must meet the requirements of federal laws and regulations. In additional to the Magnuson-Stevens Act, the most important of these are the National Environmental Policy Act (NEPA), the ESA, the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, the Regulatory Flexibility Act (RFA) and the American Fisheries Act (AFA).

This environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA) is prepared in consideration of these federal laws and regulations. The purpose of this EA/RIR/IRFA is to reassesses Steller sea lion protection measures adopted by the Council in October 2001 to determine whether the proposed allowance for an Aleutian Islands pollock fishery in 2003 is appropriate in consideration of potential relief measures being considered by the Council for other vessel sectors fishing for Bering Sea and Aleutian Islands management area (BSAI) or Gulf of Alaska (GOA) pollock, Pacific cod, or Atka mackerel. The Council also requested staff to assess an Alaska Board of Fisheries (BOF) action that declined to implement pot gear restrictions in State waters around two Steller sea lion (SSL) haulouts in the Gulf of Alaska.

This EA tiers off the Supplemental Environmental Impact Statement prepared by NMFS on the Steller sea lion protection measures in the Federal groundfish fisheries off Alaska (SSL SEIS)(NMFS 2001a). Under the ESA, a section 7 consultation resulted in a biological opinion (2001 BiOp) appended to the SSL SEIS which evaluated the impacts of the preferred alternative on ESA listed species. The SSL SEIS also included a regulatory impact review as required under E.O. 12866.

2.0 ENVIRONMENTAL ASSESSMENT

2.1 Introduction

At its October 2001 meeting, the Council recommended SSL protection measures for 2002 and beyond. These measures were developed by a Council-appointed committee (hereafter referred to as the SSL Committee, but was formerly called the "RPA Committee"). In developing its recommendations, the SSL Committee first assessed the needs of Steller sea lions to avoid jeopardy or destruction or adverse modification of their critical habitat based on the best scientific information available. The SSL Committee then crafted groundfish fisheries management measures that first provided protection for Steller sea lions. If some flexibility existed, the measures were crafted to minimize economic impacts to affected fishermen and fishing communities, as long as protection for Steller sea lions was maintained, as required by the ESA.

These recommendations included a revised harvest control rule for pollock, Pacific cod and Atka mackerel; closed areas and seasons based on the location, fishery, and gear type; critical habitat harvest limits for the pollock and Atka mackerel fisheries in certain areas of critical habitat; and requirements to allow for monitoring of pollock, Pacific cod and Atka mackerel directed fishing. The recommendations of the SSL Committee were further modified by the Council. The complete set of recommendations by the Council is detailed in Appendix 1.

NMFS formally consulted under section 7 of the ESA on the SSL protection measures. A biological opinion (2001 BiOp) was appended to the SSL SEIS which evaluated the effects of the preferred alternative on ESA listed species. The SSL SEIS also included an RIR. The agency determined in the BiOp that the protection measures proposed by the Council were not likely to jeopardize the continued existence of the western distinct population segment (DPS) of Steller sea lions or result in the destruction or adverse modification of its critical habitat. Based on this BiOp and the environmental impacts disclosed in the SSL SEIS, the Council adopted the preferred alternative (with modifications) and forwarded it to NMFS for approval and implementation. NMFS implemented the preferred alternative by emergency interim rule prior to the start of the 2002 fishing year (67 FR 956, January 8, 2002, amended 67 FR 21600, May 1, 2002). NMFS intends to implement these measures through proposed and final rulemaking in 2002, which would supercede the emergency rule.

At its October 2001 meeting, the Council also identified 8 individual actions that it requested to be analyzed by staff, for possible implementation in 2002, that would amend the SSL protection measures. These measures are intended to provide relief to specified segments of the fishing fleet and include:

1. Area 8 exemption for catcher vessels using hook-and-line gear to fish 3-10 nm;
2. Area 4 exemption for vessels $\leq$ 60 ft using hook-and-line or pot gear in Chignik;
3. Stand down provisions between A/B and C/D seasons for Gulf of Alaska (GOA) pollock;
4. Exemption from Steller sea lion protection measures for all vessels < 60 ft;
5. Alternative seasonal splits for GOA Pacific cod;
6. Alternative critical habitat harvest limits for Atka mackerel in the Aleutians;
7. Alternative prohibitions on directed fishing for pollock in the Aleutian Islands; and
8. Alternative Pacific cod harvest limits in Area 9 for pot, hook-and-line and jig gear.

In order for the preferred alternative under the SSL SEIS to be fully implemented, the BOF would have had to enact parallel regulations providing for closures in State waters (0-3 nm) during the State parallel fishery (See section 2.7.1.2 for a definition of the parallel fishery). Therefore, in November 2001, the

BOF adopted a series of fishery closure areas (with some exceptions) which mirrored those areas requested by the Council under the SSL protection measures. The federal regulations (implementing the Council's preferred alternative) contained closures for Pacific cod fisheries using pot gear at Caton Island and Cape Barnabas (Kodiak) within 3 nm of those ESA listed haulouts. However, the BOF action did not contain these closures, weakening the SSL protection measures by allowing vessels without a federal fishing permit to fish in those areas under Alaska State law. This resulted in conflicting Federal and State regulations, as well as being different from the action that was consulted on under the ESA. In November, NMFS informally consulted on these changes and determined that they were not of sufficient extent to re-initiate formal consultation.[1]

At its February 2002 meeting, the Council began discussions on the 8 "trailing amendments" with the addition of the changes required by the BOF action. NMFS staff expressed the agency's view that most of these proposals would erode (to some extent) the SSL protection measures implemented by emergency interim rule in 2002. NMFS has stated on the record that it sees erosion of these measures as a serious concern. Taken individually, any of the above changes might seem minimal. However, when taken together over a span of a few years, these measures might reach a cumulative impact level which could trigger jeopardy and/or adverse modification. Pending the conclusion of section 7 consultation, NMFS likely would require mitigation of these changes as they are implemented in order to avoid future cumulative impact problems and maintain a consistent level of protection for the western DPS of Steller sea lions.

Of the 8 proposals identified by the Council in October 2001, with the addition of the BOF action, three different classes of effects were described by NMFS at the February meeting:

(1) Major adverse impacts: proposal 4 would likely result in a major adverse impact because it would remove Steller sea lion protection measures throughout the 13 management areas used to develop Steller sea protection measures, thus having a negative effect on the entire western DPS.

(2) Moderate adverse impacts: proposals 3, 5, 6, and 7 likely would have moderate adverse effects given that they would relieve protection measures in as few as 2, but as many as 6 of the management areas.

(3) Minor adverse impacts or previously considered actions: proposals 1, 2, and 8 likely could have minor adverse effects (depending upon the suboptions chosen). Some of these actions and the BOF action have already been considered under the ESA (Payne, December 11, 2001, memorandum for the BOF action). These actions would only affect a single management area, and therefore would have smaller effects on the western DPS.

NMFS informed the Council at the February meeting that no new scientific analyses were necessary in order to consider extending the closure of Aleutian Islands pollock fishery beyond 2002 (item 7) and the BOF action on GOA haulouts, therefore, the Council requested that an analysis be developed immediately for an action to implement item 7 (restrictions on the Aleutian Islands pollock fishery) and the BOF action. These two measures are the subject of this EA. With the exception of proposal 4, the remaining measures are scheduled to be considered by the Council's SSL Committee this summer. The Council may adjust the participants on the SSL Committee to ensure adequate input from all the involved

[1]December 11, 2001, memorandum from Michael Payne, Assistant Regional Administrator for Protected Resources to Susan Salveson, Assistant Regional Administrator for Sustainable Fisheries.

interest groups.

Figure 1 presents an overview of SSL critical habitat and the closure areas developed by NMFS and the Council for the BSAI and GOA. This includes 13 specified areas (1-13), used to manage fishery closure areas. Caton Island is located in Area 6 and Cape Barnabas (Kodiak) in Area 3 [BOF action], and the Aleutian Islands Pollock fishery in Areas 12 and 13 [proposal 7].

2.2 Purpose and need for the action

The purpose and need for this action and its objective are as follows:

Need for the Proposed Action: The Council has requested an analysis that assesses the likely impacts of changing existing restrictions on the Aleutian Islands pollock fishery and modifying the SSL protection measures around Caton Island and Cape Barnabas to mirror the BOF changes. Without taking action for the Aleutian Islands pollock fishery, the current closure of this fishery would sunset on January 1, 2003, and the fishery would be authorized outside critical habitat with a 40/60 seasonal apportionment of total allowable catch (TAC). The Council intends to reconsider the allowance for an Aleutian Islands pollock fishery under a range of alternatives. Council response to the BOF action is important because federal and State regulations concerning Steller sea lion protection areas currently are in conflict.

Objectives: The objectives of this action are to provide for access to fisheries while: (1) maintaining protection for the western DPS of Steller sea lions (i.e., avoid jeopardy to the western DPS of Steller sea lions or result in the destruction or adverse modification of its critical habitat), (2) avoid unnecessary burdens on the fishing industry, and (3) avoid confusion and regulatory compliance issues by facilitating consistency between federal and state regulations. Any changes to the pollock, Pacific cod, or Atka mackerel fisheries must not erode Steller sea lion protection measures in order to provide economic benefits to the fishing industry without having reasonable mitigation measures such as other closure areas.

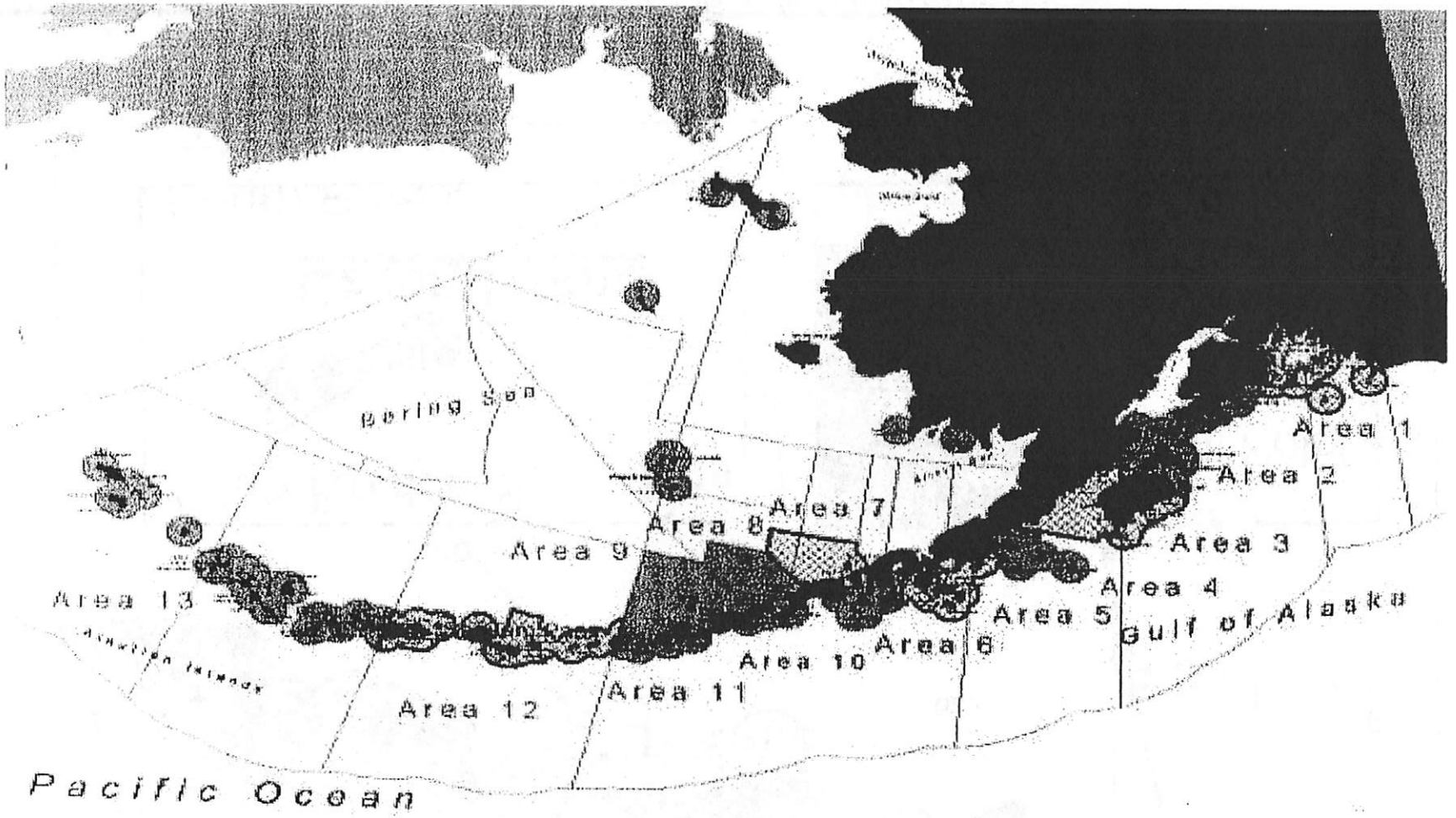

Figure 1. Critical habitat for the depleted population segment of the Steller sea lion showing the 13 areas used to develop Steller Sea lion protection measures

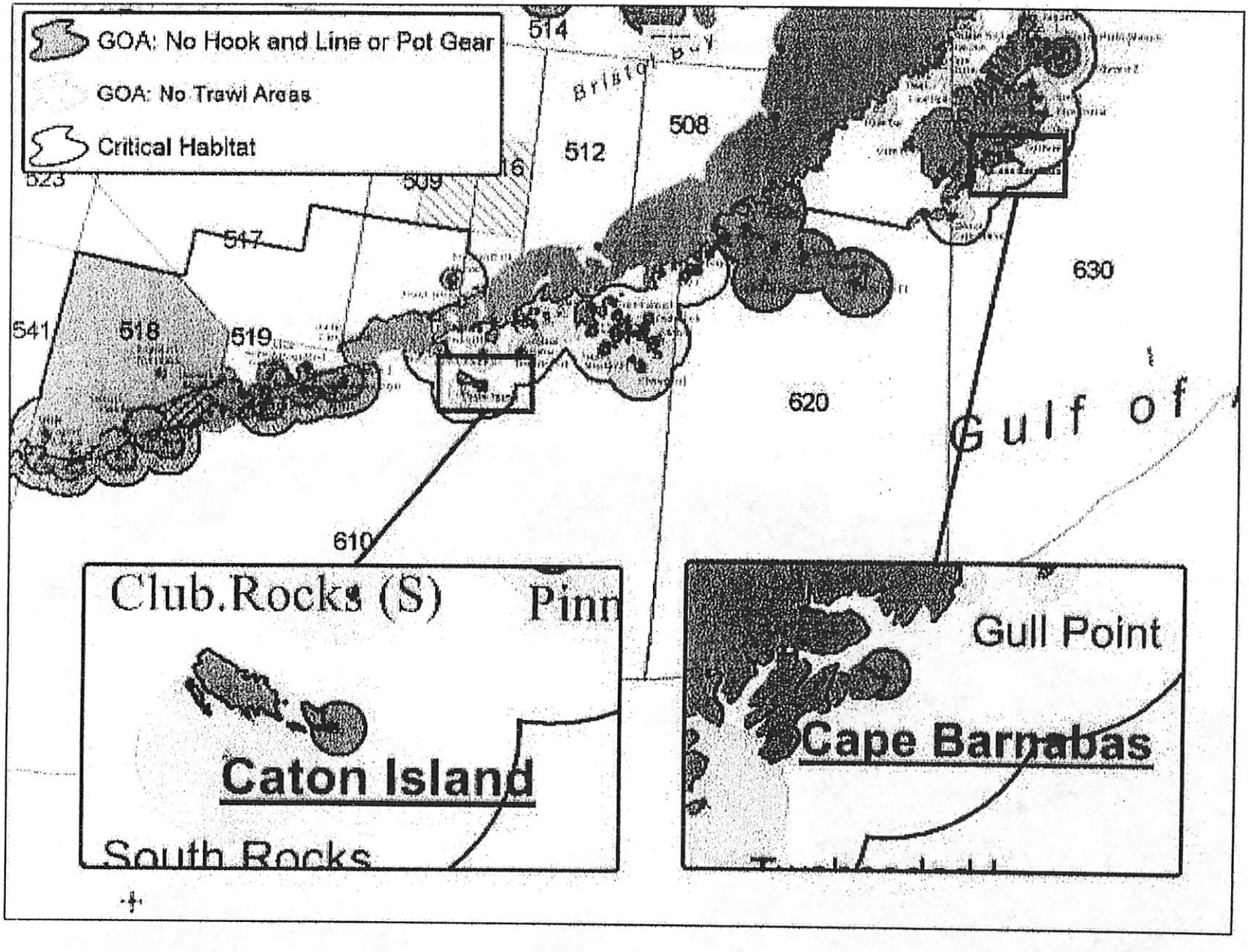

Figure 2. Geographic location of Caton Island and Cape Barnabas haulouts in the Gulf of Alaska

2.3 Related NEPA Documents

The original EISs for the BSAI and GOA FMPs were completed in 1981 and 1979, respectively. An additional draft programmatic SEIS has been prepared and circulated for public review and comments (NMFS 2001b). The analysis evaluates the BSAI and GOA groundfish FMPs in their entirety against policy level alternatives. The programmatic SEIS provides insight as to what environmental effects would result from other fisheries management regimes within an analytical framework. Findings of that analysis could result in FMP amendments that could lead to formal rulemaking and implementation of changes to the current management policy governing the groundfish fisheries off Alaska. The public comment period on the draft programmatic SEIS was from January 25, 2001, through July 25, 2001.

On November 27, 2001, NMFS announced its intent to revise the Alaska Groundfish Fisheries draft Programmatic SEIS. After reviewing more than 21,000 comment letters received on the draft Programmatic SEIS, NMFS determined that revisions to the draft Programmatic SEIS are appropriate and necessary. NMFS also determined that these revisions will require the release of a revised draft Programmatic SEIS. Based on these decisions, NMFS announced a new series of dates that extend into 2003 for preparing the revised draft, preparing the final programmatic SEIS, and issuing the Record of Decision.

A supplemental environmental impact statement was prepared in 2001 (NMFS 2001a) to evaluate modifications of fishery management measures to mitigate impacts on Steller sea lions. The purpose of that SEIS was to provide information on potential environmental impacts that could occur from implementing a suite of fishery management measures such that the existence of the western Steller sea lion DPS is not jeopardized nor its critical habitat adversely modified by the groundfish fisheries in the GOA and the BSAI. Fisheries management measures were designed to allow commercial groundfish fishing in the North Pacific while assuring that the fisheries would neither jeopardize the continued existence of Steller sea lions nor adversely affect their critical habitat. Alternative 4, the area and fishery specific approach, was selected as the preferred alternative. The modifications to fishery management measures encompassed in that alternative were enacted by emergency rule for the 2002 fishing year (67 FR 956, January 8, 2002, amended and corrected May 1, 2002, 67 FR 21600).

2.4 Description of the Fisheries

Detailed descriptions of the fisheries that are the subject of this analysis, i.e., the Aleutian Islands pollock fishery and the GOA pot gear fishery for Pacific cod, are contained in section 3.6 of this document. Descriptions of these and other groundfish fisheries also may be found in the following reports (all readily available in printed form or over the Internet at links given in the references):

Alaska Groundfish Fisheries. Draft Programmatic Supplemental Environmental Impact Statement (NMFS 2001b). This report contains detailed fishery descriptions and statistics in Section 3.10, "Social and Economic Conditions," and in its Appendix I, "Sector and Regional Profiles of the North Pacific Groundfish Fisheries."

"Economic Status of the Groundfish Fisheries off Alaska, 2000" (Hiatt *et al.* 2001). Is also known as the "2001 Economic SAFE Report." This document is produced and updated each fall in the NMFS Alaska Fisheries Science Center. The 2001 edition contains 49 historical data tables summarizing a wide range of fishery information through the year 2000.

Steller Sea Lion Protection Measures Supplemental Environmental Impact Statement (NMFS 2001a) contains several sections with groundfish fishery descriptions focused on three species - pollock, Pacific cod, and Atka mackerel. Section 2.3 goes through a complete set of calculations for TAC by area, species, season, and gear using 2001 stock assessment to show what will result from the modifications to management measures to avoid jeopardy to Steller sea lions and adverse modification of critical habitat. Section 3.12.2 provides extensive background on existing social conditions, Appendix C provides extensive information on fishery economics, Appendix D provides extensive background information on groundfish markets, Appendix E documents harvest amounts and location by week throughout one fishing year.

Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8 (NMFS 2002) provides a survey of the Bering Sea and Aleutian Islands groundfish fishery paying particular attention to the pollock fishery and the management changes introduced into it following the American Fisheries Act. The fisheries information is contained in Section 3.3, "Features of the human environment."

2.5 Description of the Alternatives

Alternatives 1-3 are mutually exclusive, as are Alternatives 4 and 5. However, either one of Alternatives 1-3 may be chosen in combination with either Alternative 4 or 5.

2.5.1 Alternatives addressing the Aleutian Islands area pollock fishery

Alternative 1. No action alternative for the Aleutian Islands pollock fishery. Under this alternative, the Council's October 2001 recommendation to allow a directed fishery for pollock outside SSL critical habitat in 2003 and beyond would be implemented. The Aleutian Island TAC would be apportioned as follows: 40% to the A season and 60% to the B season.

Alternative 2. Continue to prohibit a directed fishery for pollock in the Aleutian Islands Subarea in 2003 and beyond. A directed fishery for pollock in the Aleutian Islands subarea has been prohibited since 1999.

Alternative 3. Similar to the no action alternative, allow a directed fishery for Aleutian Islands area pollock outside critical habitat. However, the annual TAC would not be seasonally apportioned, thus allowing for the full TAC to be harvested at anytime during the fishing year (likely in the winter time period).

2.5.2 Alternatives addressing Alaska State BOF action to exempt Pacific cod pot gear restrictions in two Gulf of Alaska SSL haulout protection areas

Alternative 4. No action alternative for GOA haulouts. Federally permitted vessels using pot gear for Pacific cod directed fishing would continue to be prohibited from fishing within 3 nm of the Caton Island and Cape Barnabas haulouts.

Alternative 5. Allow federally permitted vessels using pot gear in a directed fishery for Pacific cod to fish within 3 nm of the Caton Island and Cape Barnabas haulouts. This action would provide consistency between federal and state regulations governing fishing restrictions within Steller seas lion protection areas.

2.6 Affected Environment

The other NEPA documents listed in section 2.3 contain extensive information on the fishery management areas, marine resources, ecosystem, social and economic parameters of the pollock, Pacific cod and other groundfish fisheries. Rather than duplicate an affected environment description here, readers are referred to those documents, particularly section 3 of the SSL SEIS (NMFS 2001a).

2.7 Environmental and Socio-economic Impacts of the Alternatives

2.7.1 Environmental impacts of the alternatives

Other than effects on the western DPS of Steller sea lions, none of the alternatives would be expected to have any effect on the environment, or species listed under the ESA, that has not previously been considered in the SSL SEIS and associated Section 7 consultations. Appendix 2 shows ESA listed and candidate species that range into the BSAI or GOA groundfish management areas and whether Reinitiation of Section 7 Consultation is ongoing or would be required under any of the alternatives considered in this EA. Alternatives 1 and 2 were addressed in the SSL SEIS and considered in the accompanying biological opinion (NMFS 2001a). Thus, the analysis of direct, indirect, and cumulative effects of these alternatives on the environment are fully described in the SSL SEIS; no new information exists that would alter the determinations and conclusions in the SSL SEIS. These effects are summarized in the executive summary of the SSL SEIS, and treated in detail in Chapter 4.13.

Alternatives 3 through 5 were not specifically considered in the SSL EIS. With respect to fisheries and the physical and biological environment, the effects of these proposed activities would be imperceptibly small so as not to result in additional environmental effects beyond those already presented in the SSL SEIS. The possible effects on the western DPS of Steller sea lions which are likely to result from the implementation of these alternatives are discussed below.

2.7.1.1 Aleutian Islands Pollock Fishery

The description of the Aleutian Islands pollock fishery in section 3.6 of this analysis notes that this fishery has been prohibited since 1999. However, during the four years leading up to the fishery prohibition, typical fishery operations included harvest of nearly all of the total allowable catch within a several week period during the roe, or winter season. Further, most of this harvest occurred within SSL critical habitat.

Originally, closure of the Aleutian Islands Subarea to fishing for pollock was not mandated by NMFS' December 3, 1998 biological opinion (NMFS 1998a) as necessary for the protection of Steller sea lions. That BiOp contained a set of reasonable and prudent alternatives which provided a framework to avoid the likelihood of jeopardizing Steller sea lions or adversely modifying their critical habitat. This framework provided the Council some flexibility to develop specific management measures for the pollock fishery. The framework from the RPAs used three main principles: (1) preclude fisheries

competition for prey resources around rookeries and major haulouts, (2) disperse fisheries temporally to minimize the likelihood of locally-depleting the pollock resource, and (3) disperse the fisheries spatially to further minimize the likelihood of locally depleting pollock. Based on these principles, the Council provided recommendations for management measures at its December 1998 meeting that included closure of the pollock fishery in the Aleutian Islands subarea. NMFS incorporated these recommendations, including the closure of the Aleutian Islands pollock fishery, into the RPAs for the final 1998 biological opinion (NMFS 1998b) and into an emergency rule regulating the fisheries in 1999. The Aleutian Islands subarea has remained closed to the pollock fishery since then.

In the draft biological opinion prepared on the preferred alternative in the draft SSL SEIS (August 2001), a draft finding of no jeopardy or adverse modification was found for the proposed action at that time, which included an Aleutian Islands pollock fishery outside of critical habitat (NMFS 2001c). This was considered by NMFS to have a negligible impact on Steller sea lions through indirect (i.e., competitive) mechanisms. In October 2001, the Council revised the proposed action and recommended that the Aleutian Islands pollock fishery be closed in 2002 and then be opened again in 2003 with restrictions. In 2003 and beyond, the fishery would be limited to operating outside critical habitat and TAC would be seasonally apportioned 40/60 into two seasons.

NMFS prepared a final biological opinion on the modified Steller sea lion protection measures (NMFS 2001a, Appendix A) and resulted in a finding of no jeopardy or adverse modification of critical habitat. NMFS did not accrue any additional conservation benefits to Steller sea lions by the closure of the AI pollock fishery in 2002. Because NMFS considers a dispersed fishery outside of critical habitat to have negligible impacts to Steller sea lions (via competitive interactions for prey), a total closure would have only marginal increased benefits to Steller sea lions. Closure of the Aleutian Islands subarea certainly is a more risk-averse approach to sea lion conservation, but as a rule, NMFS does not see this as a necessary tool in supporting the survival and recovery of the species. Furthermore, closures outside of critical habitat, although more beneficial for sea lions, can not be used as mitigative measures to allow more fishing inside of Steller sea lion critical habitat. Therefore, Alternatives 1 and 2 are roughly equally protective of the western DPS of Steller sea lions.

Alternative 3 is likely to result in a perceptible adverse change to the existing conservation package for Steller sea lions. The result of having no seasonal restrictions would be a concentrated fishery in the winter period, which is the season of most concern regarding the possible effects of prey depletions for foraging juvenile sea lions and lactating females (NMFS 2001a). A concentrated winter fishery for pollock is likely to have adverse affects on foraging Steller sea lions because they are known to do a significant amount of foraging outside of critical habitat in the winter months (NMFS 2001a, Table 5.1a and 5.1b). A proposed action that included this alternative would not be considered viable by NMFS. Therefore, if this alternative was forwarded to NMFS it would trigger re-consultation under the ESA. It is likely, without any mitigating factors, that a consultation would result in a jeopardy determination based on seasonal concentration. Because this fishery would be authorized only outside of critical habitat, adverse modification of critical habitat is not likely to be an issue. From initial informal consultation discussions, Alternatives 1 or 2 provide reasonable alternatives to Alternative 3.

Table 8 in section 3.8 of this analysis summarizes the potential differences in temporal dispersion of harvest of Aleutian Islands pollock under Alternatives 1-3 by different pollock fishing sectors. A continued prohibition on a directed fishery for pollock in the Aleutians (Alternative 2) would have an unknown net impact on SSL given that the resulting reduced harvest amounts of pollock in the Aleutian

Islands could be offset by an increase in the harvest of another species so that overall TAC for BSAI groundfish remains at the specified optimum yield level of 2 million mt.

2.7.1.2 BOF action to exempt Pacific cod pot gear vessels from specified GOA protection areas

The Council proposed an action that assumed that identical protection measures would be implemented in State managed waters during the parallel fisheries for pollock, Pacific cod and Atka mackerel. The term "parallel groundfish fishery" is defined as the Pacific cod, walleye pollock, and Atka mackerel fisheries in State waters opened by the Commissioner of the Alaska Department of Fish and Game (ADF&G), under emergency order authority to correspond with the times, area, and unless otherwise specified, the gear of the federal season in adjacent federal waters (Alaska Administrative code 5 AAC 28.087(c), January 3, 2002). In a parallel fishery, harvest in State waters is credited against the federal total allowable catch (TAC) amount specified for that species. The parallel fishery does not include fishing for groundfish in State waters under a separate State-managed guideline harvest level.

At its November 13-14 meeting, the BOF reviewed the Council's recommendation for Steller sea lion protection measures. These measures generally consist of fishery or gear specific directed fishing closures within 3, 10, or 20 nautical miles (nm) of Steller sea lion rookeries or haulouts. NMFS and the Council expected that the BOF would mirror these regulations in State waters during the parallel fisheries for pollock, Atka mackerel and Pacific cod. This is necessary to implement the protection measures that included fishery prohibitions that extended into State waters.

The BOF responded by authorizing the Commissioner of the ADF&G, through emergency order, to open and close seasons and areas as necessary to mirror federal regulations for the purpose of protecting Steller sea lions. However, the BOF did provide two exemptions for vessels fishing for Pacific cod with pot gear around the Caton Island and Cape Barnabas haulouts (discussed further below). In addition, the BOF changed the opening date of the State managed Chignik Pacific cod jig and pot gear fishery to provide access to a fishery in the winter that had been closed by the Council's proposed action. The BOF exemptions, as well as ADF&G authority to mirror federal protection measures in State waters were made permanently effective December 29,2002 (Alaska Administrative Code, 5 AAC 28.087).

The two exceptions in the parallel fishery would allow directed fishing for Pacific cod with pot gear between 0-3 nm of the Caton Island and Cape Barnabas haulouts (Figure 2). The proposed action recommended by the Council, and assessed in the 2001 BiOp, closed 0-3 nm to all gear types except vessels using jig gear. Thus, the BOF action authorizes pot gear fishing within 0-3 nm of two haulouts that was not considered or assessed in the 2001 BiOp.

The rationale stated by the BOF for this discrepancy was that few animals have been seen at these two sites over the last decade (Table 1); these sites are haulouts instead of rookeries; and that other sites in the region would remain closed to pot gear fishing inside 3 nm of haulouts. Hook-and-line gear was not included in the exemption because this gear type is not authorized in the State-managed Pacific cod fishery.

Table 1. Steller sea lion non-pup counts from summer and winter aerial surveys at Cape Barnabas and Caton haulouts.

	Cape Barnabas		Caton	
Year	Summer	Winter	Summer	Winter
1957	1598			
1976	364			
1985	107			
1986	44		847	
1989	0		0	
1990	1			
1991	0			
1992	1		0	
1993		0		
1994	0	124		
1996	0			
1997	0		0	
1998	0			
1999		30		0
2000	0		257	

Table 2 shows the amounts of Pacific cod harvested near Caton Island and Cape Barnabas in 1999 and 2000. This information is based on fish ticket data and assumes that the harvest of fish in a statistical area is evenly dispersed in the area. It is likely that harvest is not evenly dispersed in a statistical area (as assumed by this analysis) and more or less harvest may come from the 0-3 nm areas around these haulouts. All of the pot harvest in the state parallel fishery around these haulouts is from vessels less than 60 feet LOA.

Table 2. Estimated Pacific cod pot harvest within 3nm of the Caton Island and Cape Barnabas haulouts in the State Parallel Fishery in 1999 and 2000

	1999	2000
Haulouts	Amount in mt	Amount in mt
Western and Central area combined TACs	66,565	54,705
Caton Island and Cape Barnabas	42	18

Note: The estimated harvests for Caton Island and Cape Barnabas have been aggregated, even though these areas are relatively widely separated, in order to protect data confidentiality. TAC specifications obtained from NMFS Alaska Region web page: http://www.fakr.noaa.gov/sustainablefisheries/catchstats.htm .

These data suggest that the expected catch amounts are relatively small when compared to the Gulf of Alaska TACs. Total harvests were estimated to be 42 metric tons in 1999, compared to a TAC of 66,565 metric tons, and a catch of 18 metric tons in 2000, compared to a TAC of 54,705 metric tons. This is roughly 0.06% of the TAC. Because these areas are adjacent to other haulouts which have no fishery prohibitions, effort is not expected to increase in this two haulouts beyond the historical amounts. Further, section 5.3.1.6 of the 2001 BiOp (NMFS 2001a) indicated that pot gear removals typically do not reflect high catch rates (compared to trawl), and are unlikely to affect patches of sea lion prey similar to trawl gear. Under this scenario, fishing is likely to occur close to the shore of these haulouts, but at a relatively low harvest rate by gear types that are less likely to result in localized depletions that would adversely affect a foraging Steller sea lion. Furthermore, recent surveys of these haulouts has shown them to be minor haulouts, with sporadic usage. Therefore, these exemptions should have minimal effects on Steller sea lions.

Questions have been posed about the projected catch by pot vessels within 3 nm of Caton Island and Cape Barnabas as a proportion of the fish available to be caught near each area. The question is whether adequate forage exists within critical habitat, or portions thereof, to support Steller sea lions and commercial fishing operations, even operations as minimal as the Caton Island and Cape Barnabas pot gear fisheries. This issue generally was explored in the 2001 BiOp and no new information is available from that already devoted to this question in section 5.3 of the BiOp. Although attempts have been made to compare the ratio of biomass consumed by Steller sea lions to the biomass of groundfish available within critical habitat (section 5.3.3 of the 2001 BiOp), the spatial scale of such forage ratio analyses are too large to be applicable to specific haulouts; data are not available on a spatial or temporal scale that would allow further refinement of this approach in a manner that would make it useful for analysis of the BOF pot gear exemptions considered in this EA.

However, NMFS is considering the effects of fisheries on Steller sea lions based on the overall effects on the western population. This approach is due to the fact that no available information exists on prey biomass at scales related to individual rookeries and haulouts. Of the twelve haulouts in the area around Kodiak Island, only two were closed to pot gear out to 3 nm under the 2002 protection measures. The proposed action would open one of the two closure areas (Cape Barnabas). Clearly, the cumulative impact of opening the additional haulout is very small given that most of the area around haulouts is currently open to pot fisheries. The reasoning for reduced closure areas for pot, jig, and longline gear as opposed to trawl gear is provided in the 2001 BiOp

(NMFS 2001a). The opening of the Caton Island and Cape Barnabas haulouts to fishing with pot gear would affect the population trajectory index used in the development of the protection measures associated with pollock, Pacific cod, and Atka mackerel fisheries and pushes it further negative toward a value that the Council's SSL committee determined was too low to ensure adequate protection for Steller sea lions. Further adverse changes to the Steller sea lion conservation program through future eroding of existing protection measures could result in the trajectory index reaching this line. If this occurs, mitigation measures would be required in order to proceed with that proposed action.

The BOF action was considered in a follow-up informal consultation to the 2001 BiOp that concluded that the additional changes by the BOF would not significantly alter the overall level of protection for Steller sea lions (see Section 2.1) in a manner which would change the conclusion of the opinion.

2.7.1.3 Conclusions

As the above discussions describe, two separate actions are being considered; changes to restrictions that would authorize an AI pollock fishery outside of critical habitat and an exemption for pot gear in the Cape Barnabas and Caton Island haulouts. Both of these actions have been described in various NEPA and ESA documents including section 7 formal and informal biological opinions, and an EIS. In this EA we consider implementing various sub-options of each alternative together. The goal of course is to avoid jeopardizing the continued existence of Steller sea lions, avoid destroying or adversely modifying their critical habitat, and avoid over burdening the various fishery interests with overly conservative actions.

In this document we have shown that Alternative 3 is not a viable option for consideration by the Council without reinitiation of formal section 7 consultation under the ESA. Alternative 1 is that status-quo which would allow a seasonal distributed pollock fishery to occur outside of critical habitat in the AI. NMFS has determined that fisheries seasonally distributed, and occurring outside of critical habitat, to be sufficiently risk averse in avoiding adverse impacts to foraging Steller sea lions. Alternative 2 is a more risk averse approach - the complete closure of the AI pollock fishery. It follows then that this must be more protective for Steller sea lions. However, NMFS cannot determine that any conservation gain for Steller sea lions would accrue from this closure such that other areas inside critical habitat could be opened with any substantial fishery activity.

As described above in section 2.7.1.2, an exemption for vessels using pot gear for Pacific cod around Cape Barnabas and Caton Island haulouts has been discussed through informal consultation with the agency. Although the action would potentially have an effect on foraging sea lions, it would be extremely minor and would not jeopardize this species survival or recovery. A modeling exercise (DeMaster pers. comm.), also indicated that this effect would be very small. The adoption of this alternative by the Council and eventually by NMFS is not likely to increase the amount of fishing effort in these areas beyond what has been described in previous informal consultations and that described in this document. No adverse impacts not previously considered are likely.

Considering the possible scenarios that could be chosen by the Council and NMFS, and given the information contained in this document, the combination of choosing either Alternatives 1 or 2 with Alternative 5 appears to be both conservative under the ESA and responsive to Magnuson-Stevens Act concerns. The most beneficial scenario of these two options, with respect to the survival and recovery of

the endangered Steller sea lion, is likely to be the more risk-averse approach of choosing Alternatives 2 and 5 together. However, it is important to re-iterate the fact that the marginal benefit from closing the AI pollock fishery from the status-quo alternative is unknown. NMFS does not see this as a necessary component of any conservation plan, yet it could in some instances offer additional protection.

2.7.2 Socio-economic impacts

A description of the BSAI pollock trawl and GOA Pacific cod fisheries and analyses of the socio-economic impacts of these alternatives may be found in Sections 3 and 4. Section 3 contains a Regulatory Impact Review (RIR), conducted to review the costs and benefits of the alternatives in accordance with the requirements of E.O. 12866. Summaries of the cost and benefit analyses may be found in Tables 6 and 7. Section 4 contains an Initial Regulatory Flexibility Analysis, conducted to evaluate the impacts of the preferred alternatives on small entities, in accordance with the provisions of the Regulatory Flexibility Act.

2.8 Cumulative Effects

Opening Date of Chignik Pacific Cod State Managed Fishery – A State action that is related to federal management of the GOA Pacific cod fishery and associated Steller sea lion protection measures.

The State managed Pacific cod fishery in the Chignik area historically has opened seven days following the closure of the directed federal season in the Central Gulf of Alaska. The exception adopted by the BOF will allow the state managed fishery to open earlier than in previous years. The State managed Pacific cod fishery in the Chignik area opened March 21 in 1999 and March 11 in 2000 and 2001. The State parallel fishery that operates off the federal TAC would close under State regulation with the opening of the State managed fishery. The BOF changed the opening date to allow Chignik jig and pot fishermen maximum opportunity to harvest cod during better market conditions, earlier in the year. The State managed Pacific cod pot fishery is limited to 60 pots while the parallel fishery has no pot limit. The rate of harvest will continue to be limited by the 60 pots per vessels restriction, and the total amount taken will continue to be managed under the State's guideline harvest limit (GHL). Because this action is limited to the State managed fishery which has a pot limitation and the GHL, the earlier harvest of Pacific cod in the Chignik area State managed fishery should not have an adverse effects on Steller sea lions.

Cumulative effects

The SSL SEIS (NMFS 2001a) presents an assessment of cumulative effects of alternative SSL protection measures in Section 4.13. The SEIS assesses cumulative effects of environmental factors; external factors and consequences; incidental take/entanglements of Steller sea lions, other marine mammals and birds; spatial/temporal harvest of prey; and disturbance of prey by fishing activities. The alternatives considered in this EA would change these effects only to the extent that they change the spatial and temporal harvest of Steller sea lion prey.

With the exception of Alternative 3, the alternatives considered in this EA would have incremental effects that are sufficiently minor on the spatial and temporal harvest of pollock, Pacific cod, or other groundfish so as to not deviate from the conclusions of the cumulative impact assessment presented in the SSL SEIS. Alternative 3 could increase the intensity of the impacts associated with an Aleutian

Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. Implementation of this action would likely result in a re-initiation of formal section 7 consultation under the ESA. Thus, the state and federal fisheries are not likely to cause cumulative effects beyond those described in the SSL SEIS. Of course, if any re-initiation of consultation resulted in a jeopardy determination, a mitigating reasonable and prudent alternative would be included as required by the ESA.

A summary of the SEIS's cumulative effects determinations on spatial and temporal harvest of prey follows:

> Spatial and temporal concentrations of fishery harvest under [existing protection measures (Alternative 4 of the SSL EIS)], is addressed by fishery specific closed areas around rookeries and haulout sites, together with season and catch apportionments. Daily removal rates are fairly uniform throughout the year, but in the Aleutian Islands, the daily catch rates for prey species, including pollock, are the largest of all alternatives considered, especially in the critical spring period. A series of closures and removal rates further spreads out the catch. [Areas 4 and 9 (see Figure 1 of this EA)] and the Seguam foraging area are closed to fishing for pollock, Pacific cod and Atka mackerel and within 20 nm of five northern Bering Sea haulouts. The closure of these areas is not likely to be of great benefit to Steller sea lions, however, as the amount of pollock and Pacific cod catch and Atka mackerel fishing effort [in these areas]has been minimal. Closures around rookeries and haulouts result in spatial separation between fisheries and foraging habitat. Direct effect on spatial and temporal concentration of fisheries for the [current protection measures (Alternative 4 in the SSL EIS)] was considered insignificant.
>
> Cumulative effects were identified for spatial/temporal concentration of fisheries harvest of prey. The difference between [current protection measures (alternative 4 in the SEIS)] and [the no action alternative (no protection measures under Alternative 1 in the SEIS)] is likely indistinguishable on the population level. Cumulative effects, therefore, are similar to Alternative 1 and considered conditionally significant adverse.

2.9 Conclusions

The Council will further consider analysis for the Aleutian Islands pollock fishery in the Programmatic Supplemental Environmental Impact Statement for the Alaska Groundfish Fisheries and the subsequent Section 7 biological opinion. Conclusions below regarding the Aleutian Islands pollock fishery is in the context of the analysis presented in this document. Additional analysis in response to the work plan issued by the Council October 8, 2002, may or may not confirm the findings in this EA for the Aleutian Islands pollock fishery (NPFMC 2002). In October 2002, the Council completed its review of the Pacific cod pot gear fishery portion of this analysis and recommended opening the Caton Island and Cape Barnabas haulouts to directed fishing for Pacific cod by vessels using pot gear.

To determine the significance of impacts of the actions analyzed in this EA, we considered the following as required by NEPA, 50 CFR § 1508.27, and NOAA Administrative Order 216-6:

Context: Adjustments to Steller sea lion protection measures would be implemented for the groundfish fisheries of the BSAI and GOA. Any effects of the action are limited to these areas. The effects on society within these areas are on individuals directly and indirectly participating in the groundfish fisheries and on those who use the ocean resources. The action is to consider more or less restrictive

measures on the Aleutian Islands pollock fishery or relieve restrictions on the Pacific cod pot gear fishery near two haulouts in the GOA. The proposed actions involve relatively small amounts of groundfish harvest, although they still could have localized or regional impacts on society.

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

1 **Adverse or beneficial impact determinations for marine resources, including sustainability of target and nontarget species, damage to ocean or coastal habitat or essential fish habitat, effects on biodiversity and ecosystems, and marine mammals.** Adverse or beneficial impact determinations accruing under Steller sea lion protection measures are described in the SSL EIS (NMFS 2001a, Chapter 4, pages 4-1 to 4-628). With the exception of Alternative 3, the alternatives considered in this EA would have incremental effects that are sufficiently minor on the spatial and temporal harvest of pollock and Pacific cod so as to not deviate from the conclusions presented in the SSL SEIS. Alternative 3 could increase the intensity of the impacts associated with an Aleutian Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. Implementation of Alternative 3 would likely result in a re-initiation of formal section 7 consultation under the ESA.

2 **Public health and safety** will not be affected in any way not evaluated under previous actions or disproportionally.

3 **Cultural resources and ecologically critical areas:** This action takes place in the geographic areas of the Aleutian Islands and Gulf of Alaska, generally from 3 nm to 200 nm offshore. The land adjacent to these areas contain cultural resources and ecologically critical areas. The marine waters where the fisheries occur contain ecologically critical area. Effects on the unique characteristics of these areas are not anticipated to occur with this action and mitigation measures are part of existing fisheries management measures.

4 **Controversiality:** This action deals with temporal and spatial distribution of fisheries as deemed necessary to protect the western DPS of Steller sea lions and avoid jeopardy or adverse modification of its critical habitat. Differences of opinion exist among various industry, environmental, management, and scientific groups on the level of fishery restrictions necessary to accomplish an adequate level of protection while minimizing burden on the fishing industry. This action is a small component of the total suite of management measures implemented for SSL protection which are considered controversial. Except for Alternative 3, the proposed actions would not result in effects that have not already been analyzed in the SSL SEIS or follow up ESA consultations. None of the alternatives would have other than minor impacts on the human environment and are not considered controversial for that reason.

5 **Risks to the human environment, including social and economic effects** by current fishing activities, particularly those targeting important SSL prey items such as pollock, Pacific cod and Atka mackerel fisheries, are described in the SSL SEIS (NMFS 2001a, Chapter 4, Section 4.12, pages 4-342 to 4-439). Additional risks also are described in detail in the Draft Programmatic SEIS (NMFS 2001c). Because of the mitigation measures implemented with every past action, it is anticipated that there will be minimal or no risk to the human environment beyond that

disclosed in these prior NEPA documents. Section 2.7 of this EA/RIR/IRFA describes the effects of this action on the human environment. With the exception of Alternative 3, minimal risk is anticipated with the implementation of the remaining alternatives.

6 **Future actions** related to this action may result in impacts. Additional information regarding marine species or fisheries may make it necessary to change management measures. Any changes in management measures that could impact the effectiveness of Steller sea lion protections may result in significant impacts. Pursuant to NEPA, appropriate environmental analysis documents (EA or EIS) will be prepared to inform the decision makers of potential impacts to the human environment and will strive to implement mitigation measures to avoid significant adverse impacts.

7 **Cumulatively significant impacts, including those on target and nontarget species**, beyond those described in SSL Protection Measures SEIS (NMFS 2001a, Chapter 4, Section 4.13, pages 4-440 to 4-628) are not anticipated with this action.

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

9 **Impact on ESA listed species and designated critical habitat:** ESA listed species that range into the fishery management areas are listed in Appendix 2. With the exception of Alternative 3, none of the alternatives considered in this EA would impact any listed species to an extent not previously considered in the 2001 biological opinion on Steller sea lion protection measures. The status of section 7 consultations is summarized below by group: marine mammals, Pacific salmon, and seabirds.

ESA Listed Marine Mammals A Biological Opinion was written on Alternative 4 (the chosen alternative) for the Steller Sea Lion Protection Measures SEIS (NMFS 2001a, Appendix A). The 2001 Biological Opinion concludes the Alternative 4 suite of management measures would not likely jeopardize the continued existence of the western or eastern populations of Steller sea lions, nor would it adversely modify the designated critical habitat of either population. It is important to point out that the 2001 Biological Opinion does not ask if Alternative 4 helps the Steller sea lion population size recover to some specified level so that the species could be delisted, but rather asks if Alternative 4 will jeopardize the Steller sea lion's chances of survival or recovery in the wild. While the Biological Opinion has concluded that Alternative 4 does not jeopardize the continued survival and recovery of Steller sea lions, it nevertheless identified four reasonable and prudent measures to include with Alternative 4 as necessary and appropriate to minimize impacts of the fisheries to Steller sea lions. The measures are: (1) monitoring the take of Steller sea lions incidental to the BSAI and GOA groundfish fisheries; (2) monitoring all groundfish landings; (3) monitoring the location of all groundfish catch to record whether the catch was taken inside critical habitat; and (4) monitoring vessels fishing for groundfish inside areas closed to pollock, Pacific cod and Atka mackerel to see if they are illegally fishing for those species.

ESA Listed Pacific Salmon When the first Section 7 consultations for ESA listed Pacific salmon taken by the groundfish fisheries were done, only three evolutionary significant units (ESU)s of Pacific salmon were listed that ranged into the fishery management areas. Additional ESUs of Pacific salmon and steelhead were listed under the ESA in 1997, 1998 and 1999. Only the Snake River fall chinook salmon has designated critical habitat and none of that designated habitat is marine habitat. In 2000, formal consultation was initiated for all twelve ESUs of ESA listed Pacific salmon that are thought to range into Alaskan waters for the authorization of the groundfish fisheries under the FMPs for the GOA and BSAI (NMFS 2000). A determination of not likely to jeopardize the continued existence is in the resulting biological opinion. The FMP level consultation (NMFS 2000) included reconsideration of all the listed species of Pacific salmon thought to range into the management area and redetermined no jeopardy for all ESUs. The Incidental Take Statements accompanying the biological opinions state the catch of listed fish will be limited specifically by the measures proposed to limit the total bycatch of chinook salmon. Bycatch should be minimized to the extent possible and in any case should not exceed 55,000 chinook salmon per year in the BSAI fisheries or 40,000 chinook salmon per year in the GOA fisheries.

ESA Listed Seabirds Two section 7 consultations regarding seabirds were reinitiated with USFWS in 2000. Consultations have not been concluded as yet. The first is an FMP-level consultation on the effects of the BSAI and GOA FMPs in their entirety on the listed species (and any designated critical habitat) under the jurisdiction of the USFWS. The second consultation is action-specific and is on the effects of the 2001 to 2004 TAC specifications for the BSAI and GOA groundfish fisheries on the listed species (and any critical habitat) under the jurisdiction of the USFWS. This action-specific consultation will incorporate the alternatives proposed in this SSL Protection Measures SEIS and the 2002 TACs for the groundfish fisheries. The most recent Biological Opinion on the effects of the groundfish fisheries on listed seabird species expired December 31, 2000. NMFS requested and was granted an extension of that Biological Opinion and its accompanying Incidental Take Statement (USFWS 2001). USFWS intends to issue a Biological Opinion in 2002. This will allow for the consideration of new information: recommendations by Washington Sea Grant Program on suggested regulatory changes to seabird avoidance measures based on a two-year research program as well as modifications to fishery management measure decisions informed by the Steller sea lion Protection Measures.

Reinitiation of Section 7 Consultation With the exception of potential impacts on Steller sea lions under Alternative 3, section 7 consultations for ESA listed marine mammals or Pacific salmon are not being reinitiated for this action because changes in fishing activities would not occur that would result in effects sufficient to trigger reinitiation. Those triggers include: (1) the amount or extent of incidental take is exceeded; (2) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (3) the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat that was not considered in the biological opinion; and (4) a new species is listed or critical habitat designated that may be affected by the identified action. In instances where the amount or extent of incidental take is exceeded, the action agency must immediately reinitiate formal consultation.

10 This action **does not violate Federal, State, or local law or requirements.** Alternative 5 would

bring greater consistency between Federal and State fishery management regulations. If the Council chooses Alternative 3 as the preferred alternative, NMFS will initiate formal consultation and prepare a biological opinion on the impacts of that action on the western DPS of Steller sea lions and its critical habitat. If the preferred alternative requires an RPA, NMFS will work with the Council to arrive at appropriate mitigating measures, including maintaining the status quo alternative of seasonal apportionments of Aleutian Islands pollock TAC.

11 This action **will not result in the introduction or spread of a non-indigenous species** beyond what already has been considered in the SSL SEIS.

3.0 REGULATORY IMPACT REVIEW

3.1 Introduction

This Regulatory Impact Review (RIR) examines the costs and benefits of two proposals to modify the Steller sea lion protection measures adopted by the North Pacific Fishery Management Council (Council) at its October 2001 meeting (the October protection measures are summarized in the Appendix to this EA/RIR/IRFA).

One of these proposals would allow pot fishing for Pacific cod within three nautical miles of haulouts at Cape Barnabas on Kodiak Island and at Caton Island, southwest of King Cove on the Alaskan Peninsula. Under the October protection measures, pot fishing is not allowed in these areas.

The other proposal would change the regulations governing pollock trawling in the Aleutian Islands. Under the October protection measures, directed pollock trawling is to be permitted outside of critical habitat in the Aleutians in 2003 for the first time since 1998. The fishery is to be conducted in two seasons; 40% of the TAC is to be made available to the fishery from January 20 to June 10, and 60% is to be made available from June 10 to November 1. One of the alternative proposals evaluated in this RIR would close the directed fishery, while the other would open it without the seasonal constraints.

3.2 What is a Regulatory Impact Review?

This RIR is required under Presidential Executive Order (E.O.) 12866 (58 *FR* 51735; October 4, 1993). The requirements for all regulatory actions specified in E.O. 12866 are summarized in the following statement from the order:

> In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nonetheless essential to consider. Further, in choosing among alternative regulatory approaches agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

E.O. 12866 requires that the Office of Management and Budget review proposed regulatory programs that are considered to be "significant". A "significant regulatory action" is one that is likely to:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, local or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

In part, the Regulatory Impact Review (RIR) is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

3.3 Statutory authority

The statutory authority for these actions was described in detail in Section 1.0 of this EA/RIR/IRFA. Under the Magnuson-Stevens Act the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the Regional Fishery Management Councils. The groundfish fisheries in the Exclusive Economic Zone off Alaska are managed under the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Bering Sea and Aleutian Islands Area Groundfish.

3.4 Purpose and need for action

Aleutian Islands pollock

The objectives of this action are twofold: (1) To protect the western DPS of the Steller sea lion from jeopardy and to protect its habitat from adverse modification, and (2) avoid unnecessary burdens on the fishing industry. Unnecessary burdens may be imposed if Steller sea lion protections are greater than those necessary to prevent jeopardy and adverse modification. While the action has two purposes, there is not an intention to tradeoff protection to the Steller sea lions against the economic burden on the industry. Prevention of jeopardy and adverse modification is paramount and not conditioned by economic considerations. The intent of the action is to minimize the burden on industry, given that jeopardy and adverse modification have been prevented.

Through 1998 there was an active directed pollock trawl fishery in the Aleutian Islands. A description of this fishery may be found in Section 3.6 of this EA/RIR/IRFA.

In a December 3, 1998 Biological Opinion (BiOp), issued pursuant to the ESA, NMFS concluded that the pollock fishery in the BSAI was likely to jeopardize the continued existence of the western distinct population segment (DPS) of the Steller sea lion and was likely to adversely modify sea lion critical habitat. Based on the RPA framework in the BiOp, the Council recommended and NMFS implemented a closure of directed fishing for pollock in the Aleutian Islands. This closure was aimed at reducing the concentration of the pollock fishery in time and space. (BiOp 12-3-98, page 114; BiOp, 12-22-98, page 115). This closure was implemented in an emergency interim rule in 1999 (64 *FR* 3437; January 22, 1999), and remained in place from 1999 through 2002. An incidental catch allowance of 2,000 mt was

retained in 1999, but reduced in subsequent years.

In October 2001, the Council adopted a new set of measures to protect the Steller sea lions from the potential effects of the pollock fishery. In this new set of measures, the Aleutian Islands pollock closure was continued through 2002 and then lifted in 2003. Under these new proposals, a directed fishery will be allowed for pollock in the Aleutian Islands in 2003. This fishery will take place outside of critical habitat, and will allocated between two seasons. The first season, which will run from January 20 to June 10 will be allowed to take 40% of the TAC, while the second season, which will run from June 10 to November 1, will be allowed to take 60% of the TAC. (67 *FR* 956; January 8, 2002) In a Biological Opinion (BiOp) issued on October 19, 2001, NMFS found that the new set of measures to protect the Steller sea lions, including the provisions regarding directed pollock fishing in the Aleutians in 2003 was not likely to jeopardize the continued existence of the western DPS of the Steller sea lion or adversely modify its designated critical habitat. (NMFS 2001a, Appendix A, page 185).

Caton Island - Cape Barnabas Pacific cod pot

The objectives of this action are threefold: (1) To protect the western DPS of the Steller sea lion from jeopardy and to protect its habitat from adverse modification,(2) avoid unnecessary burdens on the fishing industry, and (3) bring about consistency between Federal and Alaska regulations governing pot fishing within three miles of the two haulouts.

Among the Steller sea lion protection measures the Council adopted at its October 2001 meeting were two that prohibited the use of pot gear within three miles of haulouts at Caton Island (to the southwest of King Cove on the Alaska Peninsula) and at Cape Barnabas (on the south shore of Kodiak Island). The waters closed to pot gear by these provisions are waters of the State of Alaska that are open for fishing during the "parallel" fisheries for groundfish that operate in State waters while the groundfish fisheries in Federal waters are open. While the Council measures bound vessels fishing in State waters under a Federal fishing permit, they did not bind vessels fishing with pots under State permits and licenses, but without a Federal permit. Similar limitations affected other Federal provisions that extended to State waters.

The Alaska Board of Fisheries met in November 2001, and among other issues, addressed potential conflicts between Federal and State regulations rising from the Steller sea lion protection provisions. Although the Board adopted regulations which generally led to congruence between the State and Federal regulations, it did not do so for the Caton Island and Cape Barnabas haulout pot closures. The BOF's reasoning is discussed in Section 2.7 of the EA.

Market failure rationale

U.S. Office of Management and Budget guidelines for analyses under E.O. 12866 state that

> ...in order to establish the need for the proposed action, the analysis should discuss whether the problem constitutes a significant market failure. If the problem does not constitute a market failure, the analysis should provide an alternative demonstration of compelling public need, such as improving governmental processes or addressing distributional concerns. If the proposed action is a result of a statutory or judicial

directive, that should be so stated.[2]

The management programs that will be modified by the alternatives reviewed in this RIR are a response to a (a) fisheries common property market failure, and a (b) "public goods"[3] market failure interfering with the ability of the private sector to adequately protect an endangered species (Steller sea lion). The alternatives reviewed here are not, in themselves, responses to new market failures, but are efforts to modify the overall management program to solve the problems resulting from the market failures.

3.5 Alternatives considered

The alternatives were described in detail in Section 2.5 of the EA. Maps in Figures 1 and 2 in that section show the areas covered by the alternatives. As described in Section 2.5, Alternatives 1 to 3 are mutually exclusive and Alternatives 4 and 5 are mutually exclusive. However, any of Alternatives 1 to 3 may be chosen in combination with either Alternative 4 or 5. In summary:

Aleutian Islands pollock

Three alternatives are under consideration for the Aleutian Islands pollock fishery: This analysis assumes that January 1, 2003 would be the effective date for these alternatives.

(1) A split season outside of critical habitat with (a) 40% of the TAC from January 20 to June 10, and (b) 60% of the TAC from June 10 to November 1 (Status Quo)
(2) Closure of the fishery
(3) A single season outside of critical habitat.

Critical habitat for the western DPS of the Steller sea lion is shown in Figure 1. Under Alternatives 1 and 3, pollock fishermen would be allowed to fish in the Aleutian Islands outside of the critical habitat areas designated in the map.

Caton Island - Cape Barnabas Pacific cod pot

Two alternatives are under consideration for the Caton Island and Cape Barnabas pot fishing vessels. This analysis assumes that January 1, 2003 would be the effective date for these alternatives.

(4) No exemption for these vessels (status quo)
(5) Exempt pot fishing vessels from SSL closures from 0 to 3 nautical miles around Caton Island and Cape Barnabas

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[2]Memorandum from Jacob Lew, OMB director, March 22, 2000. "Guidelines to Standardize Measures of Costs and Benefits and the Format of Accounting Statements," Section 1.

[3]"Public goods" has a technical meaning in economics. It refers to goods that have two characteristics: (a) one person's consumption doesn't interfere with another person's consumption, and (b) if the good is provided at all, no one can be prevented from enjoying it. Goods that have these characteristics may be underprovided by the private sector leading to a market failure. The continued existence of the Steller sea lion is a good that has both these characteristics.

The Caton Island haulout is on Caton Island to the southwest of King Cove on the Alaskan Peninsula, while Cape Barnabas is a haulout on the south side of Kodiak Island. The locations of these, and the areas within three miles of each, are shown in Figure 2.

3.6 Description of fishery

Section 2.4 of this EA/RIR/IRFA lists recent reports with comprehensive descriptions of the social and economic backgrounds of the groundfish fisheries off of Alaska. This section provides detailed descriptions of the two fisheries that may be affected by these alternatives.

Aleutian Islands pollock

The directed fishery for pollock in the Aleutian Islands was not given pollock allocations in the years from 1999 to 2002. When it did receive allocations, prior to 1999, the fishery took small volumes of pollock compared to the larger, adjacent, Eastern Bering Sea pollock fishery. Relative volumes from the two fisheries are shown in the following Figure 3 (Ianelli, *et al.* Table 1.1, page 1.25).

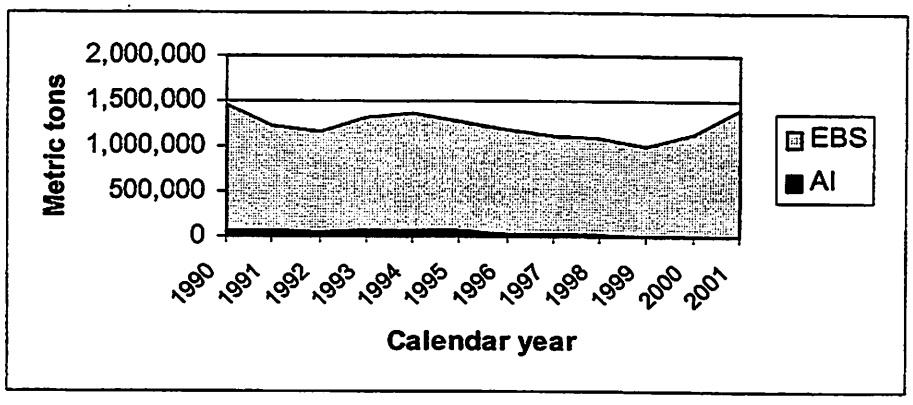

Figure 3. Metric tons of pollock caught in the Eastern Bering Sea and Aleutian Islands pollock fisheries, 1990-2001.

In the last years that it took place, the directed Aleutian Islands trawl fishery took most of its catch from within Steller sea lion critical habitat. From 1995 to 1998, catcher vessels took between 78% and 88% of their annual catches from within critical habitat, while catcher/processor vessels took between 74% and 99% of their annual harvest from critical habitat. In part, the large proportion of the harvest coming from within critical habitat may be due to the narrow continental shelf in the Aleutian Islands area. Vessel operators are forced to fish closer inshore.

This fishery also took almost all of its harvest within the "A" season. Of the four years, it was only in 1998 that any pollock appears to have been taken in the "B" season, and then the total was less than 1% of the annual harvest. (NMFS-SF-AKR "Catch by vessel" data set)

In 1999, the numbers of vessels of different types that were active in the Aleutian Islands pollock fishery from 1996 to 1998 were described in the following terms (NMFS 1999, page 219):

"In 1996, for example, one mothership, twenty-three catcher/processors, and four inshore processors recorded pollock landings deriving from the Aleutian Islands management area, according to NMFS Blend data files. The mothership was greater than 155' length overall (LOA), as were 22 of the 23 catcher/processors. One catcher/processor was reportedly less than 124' (LOA). ADF&G Fish Ticket data indicate that 22 catcher vessels delivered pollock to inshore processors from the Aleutian Islands area in that year. Of these, four were less than 124' (LOA), 13 were in the 124' to 155' LOA class, and five were greater than 155' in length.

"The same data sources reveal that in 1997, there were no motherships participating in this fishery. There were 19 catcher/processors (all of which were greater than 155' LOA), while four inshore processors received pollock from the Aleutian Islands management area, and were supported by 19 catcher boats (four under 124' LOA, 11 in the 124' to 155' length category, and four greater than 155' LOA).

"The 1998 data show no participation by the mothership sector. Six C/Ps were present, while three inshore processors reported deliveries from the AI fishery in that year. A total of 26 catcher boats were credited with deliveries of pollock from the AI target fishery in 1998.[4] Three catcher boats reportedly delivered only "over-the-side" to C/Ps, while as many as 14 catcher boats are reported to have delivered pollock catch to both at-sea and inshore processors. Nine boats delivered exclusively to inshore operations from the Aleutian Islands management area, that year. NORPAC and ADF&G data suggest that this "fleet" of catcher boats was comprised of 3 vessels 60' to 99' LOA, 9 in the 100' to 124' LOA class, and 14 vessels 125' or greater."

Industry sources have indicated that the pollock taken in the Aleutian Islands fishery are larger than those in the Eastern Bering Sea, and may have a higher roe content.[5] The fish in the Aleutians tend to be older than those in the Eastern Bering Sea and so harvests may well contain larger fish on average. It is not clear whether Aleutian Islands fish have a average higher roe content as individuals.[6] Any given volume of fish harvested may have a higher roe content due to the larger proportion of older fish. Moreover, during the years the Aleutian Islands fishery took place, the harvest took place later in the season than the Eastern Bering Sea winter harvest, and may have tended to be composed of riper pollock. Larger fish and higher roe yields may have generated higher prices for Aleutian Islands pollock (larger fish may produce higher recovery rates or be more suitable for fillet production). However, vessels operating in the Aleutians, dependent on inshore processors, would have been further from port and processing facilities than vessels operating in the southern Bering Sea. This may have led to higher operating costs, for inshore catcher vessels.

Entry to the pollock fishery in the BSAI is now controlled by the provisions of the American Fisheries

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[4] Source: NMFS NORPAC and ADF&G fish tickets. Inshore targets calculated by Alaska Fisheries Science Center, on a per vessel basis. At-sea vessels delivering to pollock target processors during the pollock season opening are assumed to be catching pollock.

[5] Dr. Lewis Queirolo, NMFS-AKR. Personal communication 2-28-02.

[6] James Ianelli. NMFS-Alaska Science Center. Personal communication 2-28-02.

Act of 1998 (AFA). Among other things, the AFA specifically listed the vessels that would be allowed to participate in the fishery, allocated the available TAC between the different fleet segments, encouraged fishing operations to fish cooperatively for pollock, and placed barriers in the way of expansion into new fisheries by pollock operations, once they were fishing for pollock more efficiently under the AFA.

Any of the pollock vessels eligible to fish or operate in the Bering Sea under the AFA would be eligible to fish in an Aleutian Islands directed fishery. Currently this includes 112 catcher vessels, 19 catcher/processors, and 3 motherships. (NMFS, 2002, pages 4-176 to 4-183). The Bering Sea pollock fishery caught 1.134 million metric tons of pollock in 2000, with an estimated ex-vessel value of $234 million[7] (Hiatt, *et al.* Table 1, page 14 and Table 19, page 48), and with a first wholesale value of about $800 million.[8]

Through the Community Development Quota (CDQ) program, the North Pacific Fishery Management Council and NMFS allocate a portion of the BSAI groundfish, prohibited species, halibut and crab TAC limits to 65 eligible Western Alaska communities. These communities work through six non-profit CDQ Groups to use the proceeds from the CDQ allocations to start or support commercial fishery activities that will result in ongoing, regionally based, commercial fishery or related businesses. The CDQ program began in 1992 with the allocation of 7.5% of the BSAI pollock TAC. The fixed gear halibut and sablefish CDQ allocations began in 1995, as part of the halibut and sablefish Individual Fishing Quota Program. In 1998, allocations of 7.5% of the remaining groundfish TACs, 7.5% of the prohibited species catch limits, and 7.5% of the crab guideline harvest levels were added to the CDQ program, while the CDQ allocation of pollock increased to 10% of the TAC.

Caton Island - Cape Barnabas Pacific cod pot

Table 3 summarizes information on gross revenues and vessel numbers for the Pacific cod pot fishery in the entire GOA.

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[7]Many operations are catcher/processors which process their own catch and do not sell it in arms length transactions to processors. The ex-vessel (or price when the fish is sold from the vessel) doesn't exist in these cases. This estimate has been prepared by extrapolating prices from catcher vessel sales to catcher/processor production.

[8]Estimate made using the volume of harvest reported earlier and a 2000 price of $701.50 mt based on data supplied by the Alaska Science Center.

Table 3. Gross Revenues and Vessel Numbers in the GOA Pacific cod pot fishery

Year	Catcher vessel gross (millions)	Catcher/ processor gross (millions)	Number of catcher vessels (vessels)	Number of catcher/ processors (vessels)	Average gross revenues for catcher vessels (thousands)	Average gross revenues for catcher/ processors
1996	$4.7	0	145	1	$30	0
1997	$5.5	0	141	4	$40	0
1998	$6.6	0	166	1	$40	0
1999	$11.6	$2.9	200	11	$60	$26
2000	$14.9	$0.9	247	5	$60	$18

Notes: Total gross revenues from Hiatt *et al,* Table 19, page 47; Numbers of vessels from Hiatt *et al.* Table 27, page 58.

The numbers of vessels actually fishing in the area of Caton Island or Cape Barnabas are smaller. Caton Island lies within the State of Alaska's South Peninsula groundfish management area, while Cape Barnabas lies within the State's Kodiak groundfish management area. The numbers of vessels fishing within the waters of these management areas, within State waters (inside three miles) within these areas, and within the Alaska statistical area within which the relevant haulout is located, are summarized in Table 4 below.[9]

The waters within three miles of Caton Island and Cape Barnabas are Alaska state waters. Two types of fisheries occur in these waters. When the Federal fisheries are open, Alaska opens its adjacent waters for "parallel" fisheries. that operate under the same rules, and fish from the same TACs, as the Federal fisheries. When the Federal fisheries are closed, Alaska opens "state managed" fisheries; state-managed fisheries operate under regulations adopted by the Alaska Board of Fisheries. The current prohibition on pot fishing within three miles of Caton Island and Cape Barnabas applies to the parallel fishery but not to the state-managed fishery. Table 4, therefore, only includes information about vessels fishing during the parallel fishery.

Vessel size information is not provided in Table 4. However, in the South Peninsula management area 90% of the vessels fishing in state waters during the parallel fishery in 1999 were less than 60 feet long, while 63% were in 2000. In the Kodiak management area, about 71% of the vessels fishing inside state waters during the parallel fishery in 1999 were under 60 feet, while 64% were in 2000. In the State of Alaska statistical reporting areas containing the Caton Island and Cape Barnabas haulouts, all of the pot vessels were less than 60 feet. (NMFS-SF-AKR "catch by vessel" data set).

[9]It is impossible to tell how many vessels may have been active within three miles of the the Cape Barnabas and Caton Island haulouts. The most disaggregated data on location of fishing activity is by State of Alaska statistical reporting area. The three mile zone around each of these haulouts only takes up part of the statistical reporting area in which it is located.

Table 4. Numbers of Pacific cod pot fishing vessels in the State of Alaska's South Peninsula and Kodiak groundfish management areas during the parallel fisheries

	South Peninsula management area		Kodiak management area		Sum of vessels fishing within Caton Island statistical area and within Cape Barnabas statistical area
Year	All waters	State waters	All waters	State waters	
1999	31	31	66	41	6
2000	65	51	85	44	6

Notes: Vessels counts generated from NMFS-SF-AKR "Catch by vessel" data set. "All waters" differ from "state waters" since the State management areas can include Federal waters. "Statistical areas" are State of Alaska statistical reporting areas within which Caton Island or Cape Barnabas are located. Due to the small numbers of observations, confidentiality rules prevent reporting of Caton Island and Cape Barnabas vessel numbers separately. The numbers fishing in each area have been summed. This may provide a slight overestimate of the number of unique vessels fishing in these areas.

The volumes of Pacific cod caught with pot gear near the Caton Island and Cape Barnabas haulouts during the parallel fisheries appear to be relatively small compared to total Pacific cod harvests in the respective State of Alaska management areas during the parallel fisheries.[10] Table 5 compares 1999 and 2000 estimated harvests from the Caton Island and Cape Barnabas haulout closure areas with total harvests from Alaska waters within the Alaska management areas where the haulouts are located.

[10]At least in the Caton Island area, this is in contrast to the situation during the state managed fisheries. Alaska landings estimates suggest that during these fisheries the Caton Island statistical area is one of the more important. (Jackson and Ruccio, Figure 7, page 37). There may be several reasons why the pot fishery is more significant during the state managed fishery than during the parallel fishery. Many of the vessels that fish in this area tend to fish with trawl gear during the period when the parallel fishery is open and with pot gear when the State managed fishery is open. Thus there are fewer vessels working with pots during the parallel fishery. Weather makes the Caton Island area less accessible during the parallel fishery than during the state managed fishery. The Pacific cod aggregations also change between the two fisheries in a way that makes it more productive to target them in the Caton Island area during the state managed fishery. (Michael Ruccio, Alaska Department of Fish and Game, personal communication, March 3, 2002.)

Table 5. Caton Island and Cape Barnabas State parallel fishery harvests in pounds in 1999 and 2000

	South Alaska Peninsula Area state waters	Kodiak Area state waters	Sum of South Alaska Peninsula and Kodiak	Caton Island plus Cape Barnabas	Caton and Barnabas as a percent of S. Peninsula and Kodiak
1999	3,076,651	5,925,404	9,002,055	92,594	1.03%
2000	5,329,545	4,335,868	9,665,413	39,683	0.41%

Notes: Total Area harvests are from Jackson and Ruccio, Tables 20 and 22, page 29. Harvests from the haulouts are estimated using NMFS-SF-AKR "Catch by vessel" data set. The "catch by vessel" catch data can't be disaggregated further than State of Alaska statistical reporting area. This was extrapolated to the haulout level (a portion of a statistical area) on the basis of the relative surface areas (a) within three miles of the haulout, and (b) in the statistical area. Note that these harvest estimates do not include harvests from the State managed fisheries that open after the Federal fisheries close. Caton Island and Cape Barnabas harvests have been aggregated to protect fishing vessel revenue confidentiality.

The pot vessels fishing in the Kodiak and South Peninsula management areas fish a diversified group of fisheries. Many use their pot gear to fish for Tanner crab. Some use it to fish for other groundfish species. Vessels under 58 feet may be involved in Alaska salmon seine fisheries. Some of these vessels can switch to trawl gear for groundfish fishing.

In general, gross revenues from pot fishing for Pacific cod appear to be a relatively small source of revenues for these operations. Vessels under 33 feet that fished for Pacific cod with pots in the Central Gulf (where Kodiak is located) earned between one percent and 6.3% of their gross revenues from Pacific cod between 1995 and 1999[11]; they earned over 85% of their revenues from non-groundfish species in each of these years. Vessels between 33 and 60 feet showed more dependence on Pacific cod pot revenues. These vessels earned over 20% of their annual revenues from this source in each of these years. Vessels between 60 and 124 feet fall between these two extremes. These vessels earned between 9.2% and 20.6% from pot fishing for Pacific cod, depending on the year. (NMFS, 2001c, Table C-40, page C-115, Table C-44, page C-119, and Table C-49, page C-124).

These patterns are somewhat different for vessels fishing for Pacific cod with pot gear in the Western Gulf, where the Caton Island haulout is located. The smallest vessels, between 33 and 60 feet, have about the same dependence on Pacific cod pot harvests as their counterparts in the Central Gulf in the 1995-1999. The two larger pot vessel classes, however, have somewhat smaller dependence on it. The 33 to 59 foot pot vessels have percentages that range from 6.5% to 23.2% depending on the year. The pot vessels between 60 and 124 feet have dependence percentages that never reach 5%. (NMFS, 2001c, Table C-40, page C-115, Table C-44, page C-119, and Table C-49, page C-124).

3.7 Summary of the benefits and costs

The benefits and costs of the alternatives are summarized below in Tables 6 and 7. These impacts are discussed more carefully in Sections 3.8 (Benefits), and 3.9 (Costs). The final section of the RIR,

[11]Some of the tables cited have data for 2000 and some do not. Because they are only available for some tables they are not cited here. When they are available they do not substantially alter the conclusions.

Section 3.10, summarizes the implications for the E.O. 12866 significance analysis. These alternatives are not significant within the meaning of E.O. 12866.

In general the information on operating behavior and costs that would make it possible to predict how fishermen and markets will react to the new regulation, and how their costs and revenues will change, is not available. Therefore, this analysis of benefits and costs must be primarily qualitative.

Table 6. Summary of the cost and benefit analysis for Aleutian Islands pollock restrictions

	Alternative 1	Alternative 2	Alternative 3
	Permit fishing outside of critical habitat - 40% of TAC from January 20 to June 10, 60% of TAC from June 10 to Nov. 1.	*Directed pollock fishery closure in Aleutian Islands*	*Permit fishing outside of critical habitat - no seasonal restrictions*
Impacts on resource management (See section 3.8)	none	Reduces pollock harvest in Aleutian Islands. Harvest of other species in Aleutians or Eastern Bering Sea likely to increase.	Aleutians pollock harvest is likely to become concentrated in the first part of the year.
Benefits (See section 3.8)	none	Reduction in harvest of pollock in Aleutians may benefit Steller sea lions there. However benefits are likely to be small. There is no jeopardy or adverse modification under the status quo. Moreover, the reduction may be offset by an increase in the harvest of another species in the BSAI, and this may offset the benefits. Net impact on Steller sea lions not known.	Up to $5.9 million in additional revenue to the industry since more fishing will take place in the roe season
Costs (see Section 3.9)	none	Less than $16 million.	Potential jeopardy to western DPS of Steller sea lions and adverse modification of critical habitat - potential reduction in non-use values
Net benefits	none	Qualitative analysis doesn't permit estimate	Qualitative analysis doesn't permit estimate
Program objectives (See Section 3.4)	Doesn't affect jeopardy or adverse modification of habitat. Doesn't change burden on AFA and CDQ fishing operations	Doesn't relieve burden on AFA and CDQ fishing operations. May not provide much protection to Steller sea lions.	Relieves burden on the BSAI AFA and CDQ pollock fishing operations but may contribute to jeopardy and adverse modification for SSL.
E.O. 12866 significance (see Section 3.10)	not significant	not significant: maximum gross revenue impact is $16 million	not significant: maximum gross revenue impact is $5.9 million
Notes: In the absence of any action, Alternative 1 will take effect in 2003, therefore Alternative 1 is the status quo and no action alternative. Alternative 1 has been used as the baseline against which the costs and benefits of the two other alternatives have been compared.			

Table 7. Summary of the cost and benefit analysis for Caton Island and Cape Barnabas pot gear restrictions

	Alternative 4	Alternative 5
	No exemption for these vessels (status quo)	*Exempt pot fishing vessels from SSL closures from 0 to 3 nautical miles around Caton Island and Cape Barnabas*
Impacts on resource management (See section 3.8)	None	Small additional access by Pacific cod pot vessels inside critical habitat
Benefits (See section 3.8)	None	Reduction in gross revenues "at risk" up to about $63,000. This overstates the likely net benefits.
Costs (see Section 3.9)	None	None
Net benefits	None	Net benefits between $0 and $63,000
Program objectives (See Section 3.4)	Prevents jeopardy and adverse modification, does not provide increased relief to industry, inconsistency between State and Federal regulations remains	Does not jeopardize Steller sea lions or adversely modify their habitat, provides some additional relief to industry, removes inconsistency between State and Federal regulations.
E.O. 12866 significance (see Section 3.10)	Not significant	Not significant: maximum total gross revenue impact is $63,000
Notes: Alternative 4 (status quo) is the no action alternative and provides the baseline against which the costs and benefits for action alternatives have been estimated.		

3.8 Benefits of the alternatives

Aleutian Islands pollock

The no action alternative, which will be effective on January 1, 2003 if no action is taken, is Alternative 1. Alternative 1 allows pollock fishing in the Aleutian Islands to resume. The TAC is divided into two seasonal allocations: 40% in a January 20 to June 10 season, and 60% in a June 10 to November 1 season. Alternative 1 is used as a baseline against which the impacts of the other two alternatives are measured. Alternative 2 is more restrictive than Alternative 1, while Alternative 3 is less restrictive.

Alternative 2 would close directed fishing for pollock in the Aleutian Islands, leaving only an incidental catch allowance (ICA). The benefits from Alternative 2 would flow from the improved protection to the western DPS of the Steller sea lion by reducing the impacts of the fishery. Eliminating the directed fishery under Alternative 2 might provide a benefit by eliminating the removal of some pollock biomass in this area.

These benefits may be small. There are three reasons to believe this. First, Alternative 1 (which would allow a seasonally apportioned directed pollock fishery, outside of critical habitat in the Aleutian Islands) does not now impose jeopardy or adversely modify critical habitat. Under these circumstances an even more restrictive management approach, as envisioned under the Aleutian Islands closure, may accomplish little. Second, while the closure of the fishery in the Aleutians could reduce the impact of fishing on the Steller sea lions in the Aleutians, the potential additional protection in the Aleutians may be offset by increased harvesting efforts and production for other species. Third, time and area

restrictions in place under Alternative 1 (e.g. outside critical habitat, 40/60 seasonal split) mean that the fleet may have difficulty harvesting the full TAC.

The second reason is relevant since all groundfish fishery TACs in the BSAI are interrelated, because all are subject to a 2 million mt Optimal Yield (OY). Recalling that, for purposes of this analysis, the "no action" baseline assumes an Aleutian Island pollock fishery is authorized, this means that total groundfish harvests from the entire BSAI cannot total more than 2 million mt. The total groundfish OY is currently completely divided up among groundfish TACs. If the baseline pollock fishery in the Aleutians were eliminated, as proposed under Alternative 2, groundfish OY equal to 22,850 metric tons would be released for reallocation among the groundfish fisheries. This might be reallocated to the TAC for another species, or it might be reallocated to AFA pollock fishermen in the Eastern Bering Sea.[12]

It cannot be assumed, however, that OY released from use for Aleutian Islands pollock would be converted into Eastern Bering Sea pollock TAC. The Aleutian Islands and Eastern Bering Sea stocks of pollock are treated as separate stocks by managers. They are modeled separately, and the ABCs and TACs are set separately and independently. Aleutian Islands pollock TAC reductions could only be reallocated to the Eastern Bering Sea, if the Eastern Bering Sea pollock TAC was less than its ABC. This was the case in 2002, but this is not the case every year, and it cannot be assumed to be the case in 2003. Moreover, the allocation decision as to whether or not to reallocate the "available" tonnage to EBS pollock, or some other species, would be worked out in the Council process and it is not clear how the various criteria used to make these decisions would work in this case.[13]

The difficulties in determining the indirect effect on TACs for other species associated with the elimination of the directed pollock fishery in the Aleutians add considerably to the difficulty of estimating the degree of benefit of Alternative 2 to the western DPS of Steller sea lions. Increased effort elsewhere may offset a large part of the benefits.

The third reason is that constraints on time and place of harvest under Alternative 1 may make it hard for the fleet to take the full Aleutian Islands pollock TAC. In the description of this fishery it was pointed out that in the last years in which there was a directed harvest, most of the harvest came from within critical habitat. From 1995 to 1998, the catcher vessel fleet never took less than 78% of its harvest from critical habitat, while the catcher/processor fleet never took less than 74% of its harvest from critical habitat.[14] This raises the possibility that under Alternative 1, the fleet may not be able to harvest the full TAC because of time or area restrictions. If so, the impact of a closure of the Aleutian Islands pollock fishery under Alternative 2 would be reduced.

Moreover, most of the harvest in those years came from the "A" season. The amounts harvested in the "B" season were trivial. In fact, from 1995 to 1997, over 60% of the harvest appears to have been concentrated in two statistical weeks at the end of February and the start of March. The harvest in 1998 was less concentrated, but was also essentially complete by mid-March. (NMFS-SF-AKR in-season

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[12]A third alternative, that the sum of the TACS for the different groundfish species would be allowed to fall below the OY is also logically possible, but extremely unlikely.

[13]Ianelli, pers. comm.

[14]Seasonal and critical habitat harvests identified using the NMFS-SF-AKR "catch by vessel" data set.

management data set). If this is the case, the fleet may not be able to fully harvest the 60% of the TAC that is allocated to the "B" season under Alternative 1. If so, the impact of a closure of the Aleutian Islands fishery under Alternative 2 would be reduced, as compared to the no action baseline. On the other hand, if time constraints associated with Alternative 1's seasonal allocations interfered with the harvest of part of the TAC, the lifting of the time constraints under Alternative 3 would be more attractive (i.e. beneficial) to the fleet.

Estimated Aleutian Islands harvests by the different BSAI AFA fleet sectors under the different alternatives are summarized in Table 8. The projected ABC for the Aleutians in 2002 was 23,750 mt (SAFE, page 1.2). The incidental catch allowance (ICA) in 2001 was 900 mt. Both of these were adopted and projected to 2003 to serve as the basis for the calculations. The CDQ TAC was estimated to be 10% of the ABC for the Aleutians. The catcher vessel TAC was 50% of the TAC net of the ICA and the CDQ allowance, the catcher/processor TAC was 40% of the net, and the mothership allowance was 10% of the net. The catcher/processor TAC was divided between the catcher/processors and the catcher vessels delivering to the catcher/processors.

Table 8. Aleutian Islands pollock allocations under the three alternatives

Fleet sector	Alternative 1		Alternative 2	Alternative 3	
	Permit fishing outside of critical habitat - 40% of TAC from January 20 to June 10; 60% of TAC after June 10.		*Directed pollock fishery closure in Aleutian Islands*	*Permit fishing outside of critical habitat - no seasonal restrictions*	
	Jan 20-June 10	June 10-Nov 1	No fishing	Jan 20-June 10	June 10-Nov 1
CDQ	950	1,425	0	2,375	0
AFA - CV	4,095	6,143	0	10,238	0
AFA - CP	2,580	3,870	0	6,450	0
AFA - CV-CP	696	1,044	0	1,740	0
AFA-Mothership	819	1,229	0	2,048	0
ICA	900		900	900	
Total	23,750		0	23,750	

Notes: Under Alternative 3 it is assumed that all fishing for the directed TAC would take place in the first half of the year because of the higher pollock prices during that season. ICA is 2002 ICA. Total is 2002 Aleutian Islands ABC from Ianelli *et al*, page 1.2. CDQ allocation is 10% of the ABC. AFA allocation is ABC minus CDQ reserve and ICA. AFA fleet sub-allocations: 50% to CVs, 31.5% to CPs, 8.5% to CVs delivering to CPs, and 10% to motherships. These sub-allocations follow the practices of the Council under the AFA.

Table 8 shows that Alternatives 1 and 3 are expected to produce the same amounts of pollock, 23,750 metric tons. However, there are no restrictions on when it may be harvested under Alternative 3. Under Alternative 3, fishing operations are assumed to harvest the pollock in the first half of the year in order to take advantage of the higher prices for the roe bearing pollock at that time. Alternative 1, however, forces fishing operations to defer 60% of their harvest until the second half of the year, when prices are lower. Therefore, Alternative 3 is expected to produce higher gross revenues for the fishing operations than Alternative 1. Alternative 3 is estimated to produce about $5.9 million more in gross revenues for

the fleet than Alternative 1.[15] This estimate of the gross revenues from substituting Alternative 3 for Alternative 1 is a high measure of the benefits from that action since it does not take account of costs.

Caton Island, Cape Barnabas Pacific cod pot

In some previous analyses of area closures for Steller sea lion protection, the volumes of fish that it is estimated would have been taken from a restricted area if the area had been unrestricted, are described as volumes of fish placed "at risk" by the restriction. Similarly, the revenues associated with those fish are revenues placed "at risk." They are described as "at risk", rather than foregone, because it may be possible for the fleet to shift its effort somewhat and harvest equivalent fish in other areas. Under these circumstances, a closure may lead to no reduction in harvest, to some reduction in harvest, or (if reallocation of effort was not possible) to a total elimination of the harvest. Since no models were available which would have permitted an examination of the way fishing effort would respond to area restrictions, it was not possible to predict what would happen to fish production. These revenues were therefore described as "at risk".

Under Alternative 4, the status quo, an estimated 18 tons of Pacific cod would have been placed "at risk" for fisheries in the Caton Island and Cape Barnabas haulouts in 2000 through restrictions on vessels fishing with pots. Using an estimated first wholesale value for Pacific cod caught with fixed gear in the Gulf of Alaska in 2000 of about $1,500, the gross value of the harvest placed "at risk" by the restrictions was about $27,000.[16] The first wholesale price is the product price received by the processors per ton of delivered raw material, revenues to fishing operations (ex-vessel revenues) would be less than this. Harvests vary somewhat from year to year. The first wholesale value of the 1999 harvest (using 2000 prices) would have been about $63,000. Note that these are estimates of the maximum amounts of fish and revenues placed "at risk."

These estimates are maximum estimates because not all revenues placed "at risk" may be lost, if the fleet is able to redirect its efforts to other areas that are not as heavily restricted, and is able to make up some fraction of the fish placed "at risk." The areas around the Caton Island and Cape Barnabas haulouts are relatively small portions of the total area within State waters that the pot fishermen could exploit during the parallel fishery.

3.9 Costs of the alternatives

Aleutian Islands pollock trawl

It is impossible to predict the cost to the industry if Alternative 2 is substituted for Alternative 1. The

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[15]These first wholesale gross revenues are based on estimates of the 2000 first wholesale prices per delivered metric ton on pollock prepared by the NMFS Alaska Science Center. The prices for catcher/processors were $1,062.3 per ton in the first half of the year and $454 per ton in the second half. The prices for catcher vessels were $893.4 per ton in the first half of the year and $577.3 in the second half. CDQ harvests were valued using the catcher/processor prices. Prices were estimated using weight data from blend estimates and value data from weekly and annual processors reports.

[16]Volume of production supplied by the NMFS-SF-AKR "catch by vessel" database. The estimated first wholesale price supplied by the NMFS Alaska Science Center.

value of the gross revenues lost could be regarded as a maximum estimate for three reasons. First, gross revenues exceed net revenues. Second, some of the revenue may be made up with increased fishing on another BSAI stock. Third, spatial and temporal constraints may make it difficult for the fleet to fully capture the Aleutian Islands TAC under Alternative 1, therefore, the incremental cost of adopting Alternative 2, as compared to the actual catch under Alternative 1, would be smaller than the value of the entire TAC. Given these considerations, the maximum loss from shutting down the fishery would be $16 million (the total value of the Aleutian Island's TAC under Alternative 1 assuming the whole TAC is caught).[17] The actual loss is probably less.

Under Alternative 2, if the change does involve a shift of the TAC from Aleutian Islands pollock to a species in the Bering Sea other than pollock, the burden of the change in alternatives would fall on the AFA qualified pollock fleet, while some other fleet would benefit from the change.

Under Alternative 3 the seasonal restriction on pollock fishery harvests would be lifted, and it is likely that almost all of the harvest would be taken in the first half of the year, probably in February and March, when the roe quality is highest. While this would increase the value of the TAC for the industry, it would increase the concentration of the fishery in time. This may impose important costs if it jeopardizes the continued survival of the western DPS of Steller sea lions, or adversely modifies its critical habitat. As noted in Section 2.8 of this EA/RIR/IRFA,

> "Alternative 3 could increase the intensity of the impacts associated with an Aleutian Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. Implementation of this action would likely result in a re-initiation of formal section 7 consultation under the ESA ... if any re-initiation of consultation resulted in a jeopardy determination, a mitigating reasonable and prudent alternative would be included as required by the ESA "

Caton Island, Cape Barnabas Pacific cod pot

As noted in the EA, in an "informal consultation" between the Sustainable Fisheries Division of the NMFS and the Protected Resources Division, in December 2001, it was determined that opening the areas to vessels using pot gear to fish for Pacific cod would have "...no appreciable adverse impacts to Steller sea lions or their critical habitat..." (Payne, Dec. 11, 2001, memorandum) Thus, Alternative 5 is assumed to cause no reduction in the use or non-use values associated with the Steller sea lion resource compared to Alternative 4.

3.10 Summary of the significance criteria

A "significant regulatory action" under E.O. 12866 means any action that is likely to result in a rule that

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[17]These first wholesale gross revenues are based on estimates of the 2000 first wholesale prices per delivered metric ton on pollock prepared by the NMFS Alaska Science Center. The prices for catcher/processors were $1,062.3 per ton in the first half of the year and $454 per ton in the second half. The prices for catcher vessels were $893.4 per ton in the first half of the year and $577.3 in the second half. CDQ harvests were valued using the catcher/processor prices. Prices were estimated using weight data from blend estimates and value data from weekly and annual processors reports.

may:

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order.

These actions will not produce an effect on the economy of $100 million or more, or "adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities." The Aleutian Islands pollock actions proposed in the alternatives would not have significant impacts (as defined in E.O. 12866). Compared to the Aleutian Islands pollock baseline (Alternative 1), Alternative 2 might have revenue impacts as high as $16 million, while Alternative 3 might have revenue impacts as high as about $6 million. The Caton Island, Cape Barnabas proposal has potential maximum effect on gross ex-vessel revenues of about $63,000, and even these are believed to be a high estimate. In none of these cases would any conceivable sensitivity analysis bring the impacts to the $100 million level.

NMFS has not identified any factors that would (a) "Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency"; (b) "Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof"; or (c) "Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the executive order."

4.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

4.1 Introduction

This Initial Regulatory Flexibility Analysis (IRFA) examines the impacts on small entities of two proposals to modify the Steller sea lion protection measures adopted by the North Pacific Fishery Management Council (Council) at its October 2001 meeting. One of these proposals would allow pot fishing for Pacific cod within three nautical miles of haulouts at Cape Barnabas on Kodiak Island and Caton Island, south of King Cove. Currently pot fishing is not allowed in these areas. The other would change the regulations governing pollock trawling in the Aleutian Islands. Currently directed pollock trawling is to be permitted in the Aleutians in 2003 for the first time since 1998. The fishery is to be conducted in two seasons; 40% of the TAC is to be made available to the fishery from January 20 to June 10, and 60% is to be made available from June 10 to November 1. One of the alternative proposals evaluated in this IRFA would close the directed fishery, while the other would open it without the seasonal constraints.

4.2 The purpose of an IRFA

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to place the burden on the government to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete. The RFA recognizes that the size of a business, unit of government, or nonprofit organization frequently has a bearing on its ability to comply with a Federal regulation. Major goals of the RFA are: (1) to increase agency awareness and understanding of the impact of their regulations on small business, (2) to require that agencies communicate and explain their findings to the public, and (3) to encourage agencies to use flexibility and to provide regulatory relief to small entities. The RFA emphasizes predicting impacts on small entities as a group distinct from other entities and on the consideration of alternatives that may minimize the impacts while still achieving the stated objective of the action.

On March 29, 1996, President Clinton signed the Small Business Regulatory Enforcement Fairness Act. Among other things, the new law amended the RFA to allow judicial review of an agency's compliance with the RFA. The 1996 amendments also updated the requirements for a final regulatory flexibility analysis, including a description of the steps an agency must take to minimize the significant economic impact on small entities. Finally, the 1996 amendments expanded the authority of the Chief Counsel for Advocacy of the Small Business Administration (SBA) to file *amicus* briefs in court proceedings involving an agency's violation of the RFA.

In determining the scope, or 'universe', of the entities to be considered in an IRFA, NMFS generally includes only those entities that can reasonably be expected to be directly regulated by the proposed action. If the effects of the rule fall primarily on a distinct segment, or portion thereof, of the industry (e.g., user group, gear type, geographic area), that segment would be considered the universe for the purpose of this analysis. NMFS interprets the intent of the RFA to address negative economic impacts, not beneficial impacts, and thus such a focus exists in analyses that are designed to address RFA compliance.

Data on cost structure, affiliation, and operational procedures and strategies in the fishing sectors subject to the proposed regulatory action are insufficient, at present, to permit preparation of a "factual basis" upon which to certify that the preferred alternative does not have the potential to result in "significant adverse impacts on a substantial number of small entities" (as those terms are defined under RFA). Because, based on all available information, it is not possible to 'certify' this outcome, should the proposed action be adopted, a formal IRFA has been prepared and is included in this package for Secretarial review.

4.3 What is required in an IRFA?

Under 5 U.S.C., Section 603(b) of the RFA, each IRFA is required to contain:

- A description of the reasons why action by the agency is being considered;
- A succinct statement of the objectives of, and the legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply (including a profile of the industry divided into industry segments, if appropriate);
- A description of the projected reporting, record keeping and other compliance requirements of

the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule;
- A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the proposed action, consistent with applicable statutes, and that would minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of applicable statutes, the analysis shall discuss significant alternatives, such as:

1. The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

2. The clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

3. The use of performance rather than design standards;

4. An exemption from coverage of the rule, or any part thereof, for such small entities.

4.4 What is a small entity?

The RFA recognizes and defines three kinds of small entities: (1) small businesses, (2) small non-profit organizations, and (3) small government jurisdictions.

Small businesses. Section 601(3) of the RFA defines a 'small business' as having the same meaning as 'small business concern' which is defined under Section 3 of the Small Business Act. 'Small business' or 'small business concern' includes any firm that is independently owned and operated and not dominant in its field of operation. The SBA has further defined a "small business concern" as one "organized for profit, with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor...A small business concern may be in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that where the firm is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture."

The SBA has established size criteria for all major industry sectors in the US including fish harvesting and fish processing businesses. A business involved in fish harvesting is a small business if it is independently owned and operated and not dominant in its field of operation (including its affiliates) and if it has combined annual receipts not in excess of $3.5 million for all its affiliated operations worldwide. A seafood processor is a small business if it is independently owned and operated, not dominant in its field of operation, and employs 500 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide. A business involved in both the harvesting and processing of seafood products is a small business if it meets the $3.5 million criterion for fish harvesting operations. Finally a wholesale business servicing the fishing industry is a small businesses if it employs 100 or fewer persons on a full-time, part-time, temporary, or other basis, at all its affiliated operations worldwide.

The SBA has established "principles of affiliation" to determine whether a business concern is "independently owned and operated." In general, business concerns are affiliates of each other when one concern controls or has the power to control the other, or a third party controls or has the power to control both. The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. Individuals or firms that have identical or substantially identical business or economic interests, such as family members, persons with common investments, or firms that are economically dependent through contractual or other relationships, are treated as one party with such interests aggregated when measuring the size of the concern in question. The SBA counts the receipts or employees of the concern whose size is at issue and those of all its domestic and foreign affiliates, regardless of whether the affiliates are organized for profit, in determining the concern's size. However, business concerns owned and controlled by Indian Tribes, Alaska Regional or Village Corporations organized pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601), Native Hawaiian Organizations, or Community Development Corporations authorized by 42 U.S.C. 9805 are not considered affiliates of such entities, or with other concerns owned by these entities solely because of their common ownership.

Affiliation may be based on stock ownership when (1) A person is an affiliate of a concern if the person owns or controls, or has the power to control 50 percent or more of its voting stock, or a block of stock which affords control because it is large compared to other outstanding blocks of stock, or (2) If two or more persons each owns, controls or has the power to control less than 50 percent of the voting stock of a concern, with minority holdings that are equal or approximately equal in size, but the aggregate of these minority holdings is large as compared with any other stock holding, each such person is presumed to be an affiliate of the concern.

Affiliation may be based on common management or joint venture arrangements. Affiliation arises where one or more officers, directors or general partners controls the board of directors and/or the management of another concern. Parties to a joint venture also may be affiliates. A contractor and subcontractor are treated as joint venturers if the ostensible subcontractor will perform primary and vital requirements of a contract or if the prime contractor is unusually reliant upon the ostensible subcontractor. All requirements of the contract are considered in reviewing such relationship, including contract management, technical responsibilities, and the percentage of subcontracted work.

Small organizations The RFA defines "small organizations" as any not-for-profit enterprise that is independently owned and operated and is not dominant in its field.

Small governmental jurisdictions The RFA defines small governmental jurisdictions as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000.

4.5 What is this action?

The alternatives were described in detail in Section 1.5 of the EA and summarized in Section 2.5 of the RIR. To repeat:

Aleutian Islands pollock

Three alternatives are under consideration for the Aleutian Islands pollock fishery: This analysis assumes

that January 1, 2003 would be the effective date for these alternatives.

(1) A split season outside of critical habitat with (a) 40% of the TAC from January 20 to June 10, and (b) 60% of the TAC from June 10 to November 1 (Status Quo)
(2) Closure of the fishery
(3) A single season outside of critical habitat.

Caton Island - Cape Barnabas Pacific cod pot

Two alternatives are under consideration for the Caton Island and Cape Barnabas pot fishing vessels. This analysis assumes that January 1, 2003 would be the effective date for these alternatives.

(4) No exemption for these vessels (status quo)
(5) Exempt pot fishing vessels from SSL closures from 0 to 3 nautical miles around Caton Island and Cape Barnabas

The Caton Island haulout is on Caton Island to the southwest of King Cove on the Alaskan Peninsula, while Cape Barnabas is a haulout on the south side of Kodiak Island.

4.6 Reason for considering the proposed action

The reasons for considering the proposed actions were discussed in detail in Section 2.2 of the EA and in Section 3.4 of the RIR. Briefly, in October 2001 the Council adopted a set of management measures designed to permit the Atka mackerel, pollock, and Pacific cod fisheries in the GOA and BSAI proceed without jeopardizing the western DPS of the Steller sea lion or adversely modifying its critical habitat. Subsequently, at its February 2002 meeting the Council requested a review of actions pertaining to the management of the Aleutian Islands pollock fishery and the restriction of Pacific cod fishing with pot gear near two sea lion haulouts in the GOA. These reviews represent an effort by the Council to ensure that once the sea lions have been protected, undue burden are not placed on the fishing industry and to minimize conflicts between Federal and State fishing regulations.

4.7 Objectives of, and legal basis for, the proposed action

As noted in the EA and the RIR, the objectives of these actions are: (1) avoid jeopardizing the continued existence of Steller sea lions and avoid adverse modification to Steller sea lion habitat, and (2) given that jeopardy and adverse modification are avoided, minimize the economic burden of the Steller sea lion protection measures on fishing vessels. The action affecting pot fishing within three miles of the Caton Island and Cape Barnabas haulouts has an additional objective: bring about consistency between Federal and Alaska regulations governing pot fishermen operating within three miles of the two haulouts.

The legal basis for the proposed action was discussed in Section 1.0 of this EA/RIR/IRFA. Under the Magnuson-Stevens Act the United States has exclusive fishery management authority over all marine fishery resources found within the exclusive economic zone (EEZ). The management of these marine resources is vested in the Secretary of Commerce (Secretary) and in the Regional Fishery Management Councils. The groundfish fisheries in the Exclusive Economic Zone off Alaska are managed under the Fishery Management Plans for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Bering Sea and Aleutian Islands Area Groundfish.

4.8 Number and description of small entities affected by the proposed action

The estimated numbers of large and small entities involved in the fisheries that are the subject of this action may be found in Table 9 below. Discussions of the numbers of entities, and brief descriptions may be found following the table. More detailed descriptions of the entities in these fisheries may be found in Section 3.6 of this EA/RIR/IRFA.

Table 9. Numbers of large and small entities affected by the action

Class of entity	Number small entities	Number large entities	Total entities
AFA catcher vessels delivering to inshore processors	0	8 (with 100 vessels)	8 (with 100 vessels)
AFA catcher vessels delivering to motherships only	1	≤4 (with 4 vessels)	≤5 (with 4 vessels)
AFA catcher vessels delivering to catcher/processors	5	≤2 (with 2 vessels)	≤7 (with 7 vessels)
AFA catcher/processors	0	8 (with 19 vessels)	8 (with 19 vessels)
AFA motherships	0	3	3
CDQ groups	6	0	6
Caton Island and Cape Barnabas Pacific cod pot vessel entities	≤ 6 operating near the haulouts	0	≤ 6 operating near the haulouts
Notes: SBA criteria use $3.5 million in gross revenues as the large entity threshold for catcher vessels and catcher processors. As noted in the text, the methodology in use may have led to an overestimate of the number of small entities. CDQ groups are non-profits and are therefore small by definition. The AFA estimates are based on NMFS, 2002, Table 4.6.2, page 4-183.			

The entities that would be regulated by the proposals to change the rules governing access to the Aleutian Islands pollock would the (a) CDQ groups that operate trawl vessels in the fisheries, (b) the cooperatives into which many pollock vessels and processing firms are organized under the provisions of the American Fisheries Act, and (c) entities owning pollock fishing vessels that are fishing independently of the cooperatives.

There were 112 catcher vessels active in the fishery. One hundred of these delivered to shoreside processors and motherships, five delivered only to motherships, and seven delivered to catcher/processors. All of the catcher vessels delivering shoreside were involved in fishery cooperatives. Because of their affiliations with other catcher vessels and with processors through these cooperatives, these have been treated as large entities. One of the five delivering to motherships was a small entity, and five of the seven delivering to catcher/processors were small entities. All of the motherships and catcher/processors are large entities. (NMFS, 2002, pages 176-183).[18]

[18]These estimates are based on estimates made in the IRFA that was included as a part of the AFA EIS. This IRFA was prepared in 2001 and these estimates are thus 2001 estimates. They may slightly underestimate the numbers of small entities among the catcher vessels delivering to motherships and to catcher/processors since the small entity threshold has recently been increased from $3 million to $3.5 million (67 *FR* 3041, January 23, 2002)

There are six CDQ groups that share in the 10% of the pollock TAC that has been set aside for the CDQ fisheries. These CDQ groups earned $33 million in royalties from their pollock CDQ in 2000. These groups thus averaged $5.5 million from these royalties.(Alaska DOC report, page 66). Although these earnings are above the $3.5 million threshold the SBA uses to define large entities, these are technically non-profit operations and by definition are small.

The entities that would be regulated by the proposals to allow vessels fishing Pacific cod with pots to operate within three nautical miles of Cape Barnabas and Caton Island are the entities operating vessels fishing for Pacific cod with pot gear in the GOA. The best source of information on the size classification of groundfish vessels in the GOA are unpublished tables prepared by the NMFS Alaska Science Center. These show that in 2000, 252 pot catcher vessels and four pot catcher/processors fished for groundfish in the GOA. All of these were classified as small entities according to the SBA criteria. There are good reasons to believe that these tables overestimate the numbers of small entities.[19] The NMFS Alaska Science Center also provides related tables showing estimated gross revenues for large and small entities. These tables show that the small catcher vessels grossed an average of about $80,000 in 2000, while the small catcher/processors grossed an average of $310,000 in 2000. These estimates of gross revenues only include revenues from groundfish fisheries and may therefore be underestimates of actual gross revenues.[20]

While the actual number of vessels fishing with pot gear in the GOA is 256, the numbers fishing near the waters that may be opened under Alternative 5 is smaller. Table 4 in this EA/RIR/IRFA presented counts of vessels fishing within the State of Alaska management areas within which Caton Island and Cape Barnabas are located, counts of vessels fishing within Alaska waters within those management areas, and counts of the vessels fishing within the State of Alaska statistical reporting areas within which the two haulouts and their closed waters were located. These are three different approaches to defining the numbers of entities that may be affected by the alternatives. The numbers reported here are those estimated to be fishing within the Alaska statistical reporting areas within which the haulouts were located.

4.9 Adverse economic impacts on small entities

Aleutian Islands pollock Alternative 2 may adversely impact a total of 12 "small entities", six catcher vessels and six CDQ groups in comparison with the "status quo/baseline/no action" Alternative 1. However, at its greatest, the Aleutian TAC would be very small compared to the Eastern Bering Sea TAC. Moreover, provisions of Alternative 1 which preclude fishing within critical habitat may result in the fleet being unable to harvest a large part of the TAC even if it is available. Therefore, it seems likely that the attributable adverse impact of adopting Alternative 2, as compared to the baseline case, would be small.

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[19]For one thing, the determination in the NMFS tables is based on groundfish revenues only. These vessels may well have revenues from other Alaskan fisheries. In this case, given the use of pot gear, these vessels may have revenues from shellfish fisheries. The tables are known to be subject to other shortcomings as well. They do not take account of revenues that may have been earned in fisheries outside of Alaska and they do not take account of affiliations that may exist between vessels, or between vessels and processors.

[20]Because revenues from other fisheries, or the impact of affiliations, are not accounted for.

Aleutian Islands pollock Alternative 3 has no adverse impacts on small entities in comparison with the "status quo/baseline/no action" Alternative 1. Alternative 3 lifts seasonal restrictions on trawl fishing for pollock in the Aleutian Islands and is expected to result in the pollock harvest being taken during the high valued winter fishery.

The Caton Island/Cape Barnabas Alternative 5 has no adverse impacts on small entities in comparison with "status quo/baseline/no action" Alternative 4. Alternative 5 lifts restrictions on fishing with pots for Pacific cod and provides small entities somewhat more flexibility. It is not clear if lifting the restrictions will increase revenues or reduce costs for these operations significantly. These operations have other inshore areas nearby - including within the same State of Alaska statistical reporting areas - within which they could fish. The volumes of fish taken from these areas in the past are modest compared to overall harvests from other Alaska inshore waters in those areas.

4.10 Recordkeeping and reporting requirements

The IRFA should include "a description of the projected reporting, record keeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record..."

This regulation does not impose new recordkeeping or reporting requirements on the regulated small entities.

4.11 Federal rules that may duplicate, overlap, or conflict with proposed action

An IRFA should include "An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap or conflict with the proposed rule..."

This analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

4.12 Description of significant alternatives

An IRFA should include "A description of any significant alternatives to the proposed rule that accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that would minimize any significant economic impact of the proposed rule on small entities."

The EA/RIR/IRFA analyzed two options that would be less burdensome for directly regulated small entities in the Aleutian Island pollock fishery. Under Alternative 3 the seasonal restriction on harvests from the pollock fishery would be lifted, and it is likely that almost all of the harvest would be taken in the first half of the year, and probably in February and March when the roe quality is highest. While this would increase the value of the TAC for the industry, it would increase the concentration of the fishery in time. This may impose important costs if it jeopardizes the continued survival of the western DPS of Steller sea lions, or adversely modifies its critical habitat. As noted in Section 2.8 of this EA/RIR/IRFA,

> "Alternative 3 could increase the intensity of the impacts associated with an Aleutian

Islands pollock fishery by not providing for a seasonal distribution of catch outside critical habitat. Implementation of this action would likely result in a re-initiation of formal section 7 consultation under the ESA ... if any re-initiation of consultation resulted in a jeopardy determination, a mitigating reasonable and prudent alternative would be included as required by the ESA "

Alternative 5 might be less burdensome for some small Pacific cod pot fishing vessels in the Gulf of Alaska. These would have somewhat more area to fish in during the State parallel fishery.

5.0 REFERENCES

Alaska Department of Commerce and Economic Development. (2001) "Western Alaska Community Development Quota Handbook." Juneau: May 29, 2001.

Hiatt, Terry, Ron Felthoven and Joe Terry. (2001) "Stock Assessment and Fishery Evaluation Report for the Groundfish Fisheries of the Gulf of Alaska and Bering Sea/Aleutian Island Area: Economic Status of the Groundfish Fisheries off Alaska, 2000." Socioeconomic Assessments Program. Resource Ecology and Fisheries Management Division, Alaska Fisheries Science Center, NMFS. Seattle: November, 2001.

Ianelli, James N., Troy Buckly, Taina Honkolehto, Gary Walters, and Neal Williamson. 2001. "Eastern Bering Sesa Walleye Pollock Stock Assessment." SAFE report. November 20, 2001.

Jackson, David R. and Michael P. Ruccio. 2001. "Annual Management Report for the Kodiak, Chignik, and South Alaska Peninsula Area Groundfish Fisheries, 2000." Alaska Department of Fish and Game, Division of Commercial Fisheries. Regional Information Report No 4K01-44. Kodiak: September 2001.

North Pacific Fishery Management Council (NPFMC) (2002). Work Plan for the Aleutian Islands Pollock Trawl Closure Under C-2, Steller Sea Lion Measures. October 8, 2002. NPFMC, 605 West 4th, Suite 306, Anchorage, Alaska 99501-2252.

NMFS. (1998a). Section 7 consultation on the authorization of the Bering Sea and Aleutian Islands groundfish fishery for walleye pollock under the BSAI FMP, on the authorization of the Bering Sea and Aleutian Islands Atka mackerel fishery under the BSAI FMP, and the authorization of the Gulf of Alaska groundfish fishery for walleye pollock under the GOA FMP, between 1999 and 2002. Office of Protected Resources, NMFS. December 3, 1998.

NMFS. (1998b). Revised reasonable and prudent alternative for the 1998 biological opinion on NMFS' authorization of a pollock fishery under the Bering Sea-Aleutian Island groundfish Fishery Management Plan , and authorization of a pollock fishery under the Gulf of Alaska groundfish Fishery Management Plan.

NMFS. (1999). "Draft for Secretarial Review. Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis for The Extension of an Emergency Rule to Implement Reasonable and Prudent Steller Sea Lion Protection Measures in the Pollock Fisheries of the Bering Sea and Aleutian Islands Area and the Gulf of Alaska." DOC, NOAA, National

Marine Fisheries Service, AK Region. P.O. Box 21668, Juneau, AK 99802-1668. June 25, 1999.

NMFS. (2000). "Endangered Species Act - Section 7 Initiation of Consultation Biological Opinion and Incidental Take Statement: Authorization of Groundfish Fisheries Conducted under the Bering Sea and Aleutian Islands and Gulf of Alaska Fishery Management Plans of the North Pacific Fishery Management Council.", November 30, 200, NMFS AK Region. P.O. Box 21668, Juneau, AK 99802-1668. p. 352.

NMFS. (2001a). Steller Sea Lion Protection Measures Final Supplemental Environmental Impact Statement. November 2001. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668.

NMFS. (2001b). Alaska Groundfish Fisheries Draft Programmatic Supplemental Environmental Impact Statement. January 2001. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668. pp. Volumes I-VIII approx 3300.

NMFS. (2001c). Draft Steller sea lion protection measures supplemental environmental impact statement. October 2001. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668.

NMFS. (2002). Final Environmental Impact Statement for American Fisheries Act Amendments 61/61/13/8. February 2002. DOC, NOAA, National Marine Fisheries Service, AK Region, P.O. Box 21668, Juneau, AK 99802-1668.

Payne, P. Michael. 2001. Memo from P. Michael Payne, NMFS Assistant Regional Administrator (Alaska Region) for Protected Resources, to Susan Salveson, NMFS Assistant Regional Administrator (Alaska Region) for Sustainable Fisheries, on "Endangered Species Act (ESA) Informal Consultation for the Alaska Pollock, Atka Mackerel, and Pacific cod fisheries under Fishery Management Plans (FMPS) for the groundfish Fisheries of the Bering Sea and Aleutian Islands Area and Gulf of Alaska." Dated December 11, 2001.

Ruccio, Michael P. 2002. Alaska Department of Fish and Game, Kodiak. Personal communication. March 8, 2002.

USFWS. (2001). Endangered Species Act Formal Consultation for the 2001-2004 Total Allowable Catch Specifications for the Gulf of Alaska and Bering Sea/Aleutian Island Groundfish Fisheries. Letter from Ann G. Rappoport to James W. Balsiger. 1011 E. Tudor Road, Suite 219, Anchorage, AK 99503. FWS Log No. WAES-01016.

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APPENDIX 1 The Council's recommended Steller sea lion protection measures

Applicable to all fisheries:

No transit zones around 37 rookeries and no groundfish fishing within 3 nm of 39 rookeries.

Applicable to all pollock, cod, and mackerel fisheries:

(6) A modified harvest control rule would be applied. If the spawning biomass of pollock, Pacific cod, or Atka mackerel in the BSAI or GOA is estimated to be less than 20% of the projected unfished biomass, directed fishing for that species would be prohibited. The TAC would be limited to amounts needed for bycatch in other fisheries. Essentially, the ABC control rule would remain unchanged, but the regulations would specify that should biomass fall below $B_{20\%}$ for one of these species, then directed fishing for that species in the relevant management area would be prohibited.

(7) The Seguam Pass foraging area, Area 9 (Bogoslof) and Area 4 (Chignik), would be closed to all gear types fishing for pollock, Pacific cod, and Atka mackerel. The Area 4 (Chignik) restriction does not apply to vessels using jig gear.

(8) No pollock, Pacific cod, or Atka mackerel fishing within 0-20 nm of the 5 northern haulouts in the Bering Sea, except jig gear. These include the Round (Walrus Islands), Cape Newenham, Hall Island, St Lawrence SW Cape, and St. Lawrence Island, South Punuk Island haulouts.

(9) The 19 additional "RPA" haulouts would be treated consistently with CH haulouts for the purpose of these regulatory changes affecting the pollock, Pacific cod, and Atka mackerel fisheries.

(10) Participants in the pollock, Pacific cod, or Atka mackerel directed fisheries must register with NMFS and have an operable vessel monitoring system.

Applicable to AI pollock fisheries:

Closure of the Aleutian Islands to directed pollock fishing West of 170 West Longitude.

Applicable to BSAI cod fisheries:

1. Establish seasons and TAC apportionments by gear type:

trawl:	January 20 to April 1 (60%), April 1 to June 10 (20%), June 10 through October 31 (20%)
trawl CV	January 20 to April 1 (70%), April 1 to June 10 (10%), June 10 through October 31 (20%)
trawl CP	January 20 to April 1 (50%), April 1 to June 10 (30%), June 10 through October 31 (20%)
hook-and-line, jig:	January 1 to June 10 (60%), June 10 through December 31 (40%)
pot:	January 1 to June 10 (60%), September 1 through December 31 (40%)
pot CDQ	January 1 through December 31

pot or H&L < 60 ft LOA January 1 to December 31
[*Note: the harvest of cod by the <60' pot and hook-and-line vessels accounts towards the 1.4% quota when the season for vessels >=60' using pot or hook-and-line gear is closed. At other times it counts to the 18.3% or 0.3% quotas as appropriate.*]

2. Pacific cod rollover in the BSAI: Unharvested cod TAC can be rolled over from one season to the next, consistent with bycatch consideration objectives of optimizing catch by gear groups and sectors.

3. Roll over the seasonal apportionments of TAC so as to maximize the opportunities for Pacific cod harvests by the trawl sector. Cod rollovers within the trawl sector would occur within a season prior to allocating to other gear types. Such rollovers would continue into subsequent seasons, but may be reallocated if one sector is unable to reach its TAC.

4. Establish area restrictions based on gear type:

<u>In the Aleutian Islands</u>

Hook-and-line and Pot: No fishing in critical habitat east of 173° West to western boundary of Area 9, 0-10 nm closures at Buldir, 0-20 nm closure at Agligadak.

Trawl: East of 178° West longitude: 0-10 nm closures around rookeries, except 0-20 nm at Agligadak; 0-3 nm closures around haulouts.

Trawl West of 178° West longitude: 0-20 nm closures around haulouts and rookeries until the Atka mackerel fishery inside the harvest limit area (HLA) A or B season, respectively, is completed, at which time trawling for cod can occur outside 3 nm of haulouts and 10 nm of rookeries within the HLA.

<u>In the Bering Sea:</u>

0-3 nm closures around all rookeries and haulouts (except with jig gear around haulouts).

0-10 nm closures around all rookeries and haulouts for trawl gear (except the Pribilof haulouts that would be closed 0-3 nm).

0-7 nm closure around Amak rookeries for hook-and-line and pot gear.

0-10 nm closure around Bishop Point and Reef Lava haulouts in Area 8 for vessels >= 60 ft using hook-and-line gear.

Bering Sea Pacific cod exemption area. A fishing zone for Pacific cod in the Dutch Harbor area (area 9)for jig, and hook-and-line catcher vessels less than 60 ft. This fishing zone would encompass all waters of the Bering Sea south of the line connecting the point 3 nm north of Bishop Point to Cape Tanak. This would include a 10 nm radius closure around the Bishop Pt haulout in Area 9. This area would fish under a 250,000 lbs. Pacific cod harvest cap.

Applicable to BSAI Atka mackerel fisheries:

1. Establish two seasons and TAC apportionments: January 20 - April 15 (50%), September 1 - November 1 (50%). For the CDQ fisheries, CDQ Atka mackerel fishing would occur during a single season.

2. TAC would be further apportioned inside and outside of the HLA (critical habitat and RPA sites), with 60% inside and 40% outside.

3. During each season, fishing would begin first in Area 541. Fishing would begin in Areas 542 and 543 48 hours following the closure of Area 541.

4. A system of grouping vessels for critical habitat fishing would be implemented for Areas 542 and 543 in each season.

   Vessels wishing to fish in the HLA would register with NMFS to fish in Area 542, in Area 543, or in both Areas 542 and 543. The vessels registering to fish in an area would be assigned to the "group" for that area. There would be an Area 542 group and an Area 543 group. Vessels registering for both areas would be placed in both groups.

   Two directed fisheries would be defined for each area. Directed fisheries in an area would take place in sequence with defined start and stop dates; directed fisheries could last no longer than 14 days.

   Half of the vessels in each group would be assigned (at random) to a "platoon" to participate in each of the directed fisheries (although one platoon would have one more vessel than the other if there were an odd number of vessels in the group). A vessel wishing to fish in the HLA in Area 542 and Area 543 would be first assigned to an Area 542 platoon at random. That vessel would then be automatically assigned to a platoon in Area 543 that participated in a directed fishery taking place at a different time. Thus a vessel in the 542 and 543 groups that was assigned, at random, to the platoon for the first directed fishery in Area 542 would automatically be in the platoon for the second directed fishery in Area 543. If the vessel had been randomly assigned to the platoon for the second directed fishery in Area 542, it would be in the platoon for the first directed fishery in Area 543.

   Once registered for an HLA directed fishery in a season, vessels would be prohibited from fishing in any other fishery until the first assigned HLA fishery is closed. If they have registered for both areas, this applies only to the first directed fishery to which they are assigned.

   The HLA limit (60% of the annual TAC) for the area is divided between the platoons in proportion to the number of vessels in the platoon compared to the number of vessels in the area group. Directed fisheries close when the TAC limit to the fishery has been reached or the closure date is reached.

   The platoon system does not extend to waters outside of the HLA. These waters remain

open to the operations of vessels in either platoon or vessels that are not in either platoon.

5. No directed fishing for Atka mackerel in critical habitat east of 178° West longitude (including critical habitat in the Bering Sea management area and excluding the Steller sea lion conservation area (SCA)).

6. 0-10 nm closures around rookeries west of 178° West longitude, and 0-15 nm at Buldir.

7. 0-3 nm closures around haulouts (except with jig gear).

8. Two observers are required for each vessel fishing in the HLA.

Applicable to Bering Sea pollock fisheries:

1. Establish seasons and TAC apportionments: January 20 to June 10 (40%), June 10 to November 1 (60%).

2. No fishing for pollock during the A season within an area north of Alaska peninsula and Aleutian Islands chain approximately 10 nm from shore, based on a series of straight lines that are tangent to haulouts in the area. (Bering Sea Pollock Restriction Area (BSPRA))

3. 0-10 nm closures around all rookeries and haulouts (except the Pribilof haulouts that would be closed 0-3nm).

4. The 'Catcher Vessel Operational Area' would be closed to trawl catcher/processors during the B season (June 10 to November 1).

5. A limit on the amount of pollock taken within the SCA would be established at no more than 28% of the annual pollock directed fishing allowance (PDFA) prior to April 1 each year. The remaining portion of TAC available prior to June 10, or 12% of the annual PDFA, may be harvested outside of the SCA before April 1 or inside SCA after April 1. If the 28% was not taken in the SCA prior to April 1, the remainder is available to be taken inside after April 1. The SCA harvest limits would be allocated to sectors proportionately, so that each sector can harvest no more than 28% of its allocation prior to April 1 in the SCA.

6. Set aside such A season pollock quota in the SCA as needed for vessels < 99 feet LOA to harvest their full A season pollock quota in the SCA during the period from January 20th through March 31.

7. Catcher vessel exclusive fishing seasons for Bering Sea and GOA pollock would continue so that catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction when fishing east of 157°00' W. long.

If you own or operate a catcher vessel and engage in directed fishing for pollock in the	During the...	Then you are prohibited from using that vessel for subsequently engaging in directed fishing for pollock in the...
Bering Sea subarea	A season (1/ 20 - 6/ 10)	GOA until the following C season (8/25)
	B season (6/10 - 11/1)	GOA until the A season of the next year (1/20)
GOA	A season (1/20 - 2/25)	BS until the following B season (6/10)
	B season (3/10 - 5/31)	BS until the following B season (6/10)
	C season (8/25 - 9/15)	BS until the A season of the following year (1/20)
	D season (10/1 - 11/1)	BS until the A season of the following year (1/20)

Applicable to Gulf of Alaska pollock fisheries:

1. Establish seasons and TAC apportionments:
   A season = January 20 to February 25 (25%)
   B season = March 10 to May 31 (25%)
   C season = August 25 to September 15 (25%)
   D season = October 1 to November 1 (25%)
   [Note: Rollovers of TAC apportionment are allowed, provided that no rollover is more than 30% of annual TAC for an individual management area.]

2. Catcher vessels would continue to be prohibited from retaining on board, at any time during a trip, more than 300,000 pounds (136 mt) of unprocessed pollock. Tender vessels would continue to be prohibited from (i) operating as a tender vessel east of 157° W. longitude and (ii) operating as a tender vessel west of 157° W longitude while retaining on board at any time more than 600,000 pounds (272 mt) of unprocessed pollock.

3. Catcher vessel exclusive fishing seasons for BS and GOA pollock would continue (see Bering Sea pollock fisheries).

4. No directed pollock fishing in the areas listed:

   Area 1: 0-20 nm from all rookeries and haulouts, except 0-10 nm around Middleton Island

   Area 2: 0-10 nm from all haulouts. 0-20 nm closures at Pye Island and Sugarloaf

rookeries. 0-15 nm closures at Marmot Island in the first half of the year, and 0-20 nm in the second half of the year.

Area 3: 0-10 nm from all rookeries and haulouts except 0-3 nm at Cape Barnabas and Cape Ikolik. 0-10 nm closures at Gull Point and Ugak Island during the first half of the year and 0-3 nm during the second half of the year.

Area 4: 0-20 nm from all haulouts and rookeries.

Area 5: 0-20 nm from all rookeries and haulouts, except 0-3 nm at Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, and Castle Rock..

Area 6: 0-10 nm from all rookeries and haulouts, except 0-3 nm at Caton and the Pinnacles.

Areas 10 and 11: 0-20 nm from all rookeries and haulouts

Applicable to Gulf of Alaska cod fisheries:

1. Establish seasons and TAC apportionments:
   A-season = 60% of TAC: January 1 hook-and-line, pot, or jig, January 20 trawl, until June 10, at which time directed fishing for Pacific cod by all gear would be prohibited until September 1.
   B-season = 40% of TAC: September 1 all gear types to November 1 for trawl gear and December 31 for nontrawl gear. Pacific cod bycatch taken between June 10 and August 31 will be subtracted from the B season apportionment.

2. No trawling for cod in the areas listed:

   Area 1: 0-20 nm from all rookeries and haulouts, except 0-10 nm around Middleton Island.

   Area 2: 0-10 nm from all haulouts. 0-20 nm closures at Pye Island and Sugarloaf rookeries. 0-15 nm closures at Marmot Island in the first half of the year, and 0-20 nm in the second half of the year.

   Area 3: 0-10 nm from all rookeries and haulouts except 0-3 nm at Cape Barnabas and Cape Ikolik. 0-10 nm closures at Gull Point and Ugak Island during the first half of the year and 0-3 nm during the second half of the year.

   Area 4: 0-20 nm from all haulouts and rookeries.

   Area 5: 0-20 nm from all rookeries and haulouts, except 0-3 nm at Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, and Castle Rock.

   Area 6: 0-10 nm from all rookeries and haulouts, except 0-3 nm at Caton and the Pinnacles.

Areas 10 and 11: 0-20 nm from all rookeries and haulouts.

3. No jig gear fishing from 0-3 nm of all rookeries.

4. No directed fishing for cod with pot or hook-and-line gear in the areas listed.

Area 1: 0-3 nm from all rookeries.

Area 2: 0-10 nm closures at Pye Island, Sugarloaf, and Marmot.

Area 3: 0-3 nm around Cape Barnabas and Cape Ikolik haulouts.

Area 4: 0-20 nm from all haulouts and rookeries.

Area 5: 0-3 nm from all rookeries and Mitrofania, Spitz, Whaleback, Sea Lion Rocks, Mountain Point, and Castle Rock haulouts.

Area 6: 0-3 nm at Caton and the Pinnacles.

Areas 10 and 11: 0-20 nm from all rookeries and haulouts for pot gear; 0-10 nm from all rookeries and haulouts for hook-and-line gear.

APPENDIX 2 ESA listed and candidate species that range into the BSAI or GOA groundfish management areas and whether Reinitiation of Section 7 Consultation is occurring

Common Name	Scientific Name	ESA Status	Whether Reinitiation of ESA Consultation is occurring
Blue Whale	*Balaenoptera musculus*	Endangered	No
Bowhead Whale	*Balaena mysticetus*	Endangered	No
Fin Whale	*Balaenoptera physalus*	Endangered	No
Humpback Whale	*Megaptera novaeangliae*	Endangered	No
Right Whale	*Balaena glacialis*	Endangered	No
Sei Whale	*Balaenoptera borealis*	Endangered	No
Sperm Whale	*Physeter macrocephalus*	Endangered	No
Steller Sea Lion (WesternPopulation)	*Eumetopias jubatus*	Endangered	No - unless Alternative 3 chosen
Steller Sea Lion (Eastern Population)	*Eumetopias jubatus*	Threatened	No
Chinook Salmon (Puget Sound)	*Oncorhynchus tshawytscha*	Threatened	No
Chinook Salmon (Lower Columbia R.)	*Oncorhynchus tshawytscha*	Threatened	No
Chinook Salmon (Upper Columbia R. Spring)	*Oncorhynchus tshawytscha*	Endangered	No
Chinook Salmon (Upper Willamette .)	*Oncorhynchus tshawytscha*	Threatened	No
Chinook Salmon (Snake River Spring/Summer)	*Oncorhynchus tshawytscha*	Threatened	No
Chinook Salmon (Snake River Fall)	*Oncorhynchus tshawytscha*	Threatened	No
Sockeye Salmon (Snake River)	*Oncorhynchus nerka*	Endangered	No
Steelhead (Upper Columbia River)	*Onchorynchus mykiss*	Endangered	No
Steelhead (Middle Columbia River)	*Onchorynchus mykiss*	Threatened	No
Steelhead (Lower Columbia River)	*Onchorynchus mykiss*	Threatened	No
Steelhead (Upper Willamette River)	*Onchorynchus mykiss*	Threatened	No
Steelhead (Snake River Basin)	*Onchorynchus mykiss*	Threatened	No
Steller's Eider [1]	*Polysticta stelleri*	Threatened	Ongoing
Short-tailed Albatross [1]	*Phoebaotria albatrus*	Endangered	Ongoing
Spectacled Eider[1]	*Somateria fishcheri*	Threatened	Ongoing
Northern Sea Otter[1]	*Enhydra lutris*	Candidate	No

[1]The Steller's eider, short-tailed albatross, spectacled eider, and Northern sea otter are species under the jurisdiction of the U.S. Fish and Wildlife Service. For the bird species, critical habitat has been proposed only for the Steller's eider (65 FR 13262). The northern sea otter has been proposed by USFWS as a candidate species (November 9, 2000; 65 FR 67343).

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