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

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JAN 28 1999

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: Emergency Interim Rule to Implement Requirements of the American Fisheries Act Related to the Community Development Quota Program

LOCATION: Federal Waters of the Bering Sea and Aleutian Islands

SUMMARY: The emergency interim rule temporarily amends NMFS regulations to (1) allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and (2) remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

RESPONSIBLE OFFICIAL: Steven Pennoyer
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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. Also, please send one copy of your comment to me in Room 5805, PSP, U.S. Department of Commerce, Washington, D.C. 20230.

Sincerely,

Margaret P. McCall
for Susan Fruchter, Director
Director of the Office of Policy
and Strategic Planning

Enclosure



**Environmental Assessment/Regulatory Impact Review
(EA/RIR)
for an Emergency Interim Rule to Implement CDQ-Program Related
Requirements of the American Fisheries**

January 6, 1999

1.0 Introduction

The groundfish fisheries in the Exclusive Economic Zone (EEZ) (3 to 200 miles offshore) off Alaska are managed under the Fishery Management Plan for the Groundfish Fisheries of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fisheries of the Bering Sea and Aleutian Islands Area. Both fishery management plans (FMP) were developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Gulf of Alaska (GOA) FMP was approved by the Secretary of Commerce and became effective in 1978 and the Bering Sea and Aleutian Islands Area (BSAI) FMP became effective in 1982.

Actions taken to amend FMPs or implement other regulations governing the groundfish fisheries must meet the requirements of Federal laws and regulations. In addition to the Magnuson-Stevens Act and the American Fisheries Act (AFA), the most important of these are the National Environmental Policy Act (NEPA), the Endangered Species Act (ESA), the Marine Mammal Protection Act (MMPA), Executive Order (E.O.) 12866, and the Regulatory Flexibility Act (RFA).

This Environmental Assessment/Regulatory Impact Review (EA/RIR) analyzes the impact of an emergency interim rule amending 50 CFR part 679 to implement some requirements of the AFA within the Omnibus Appropriations Bill FY99 (Pub. L. No. 105-277) that affect the Western Alaska Community Development Quota (CDQ) Program and are required to be implemented by January 1999.

1.1 Purpose of and Need for the Action

Section 206(a) of the AFA requires that:

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

Section 206(b) of the AFA requires that pollock bycatch in non-pollock CDQ fisheries will not accrue against the pollock CDQ allocation created in section 206(a). Finally, section 213(a) of the AFA, with one limited exception at section 213(c)(2), requires that the 10% pollock CDQ allocation remain in effect until December 31, 2004.

The AFA's 10% allocation of the pollock total allowable catch (TAC) to the pollock CDQ reserve will be implemented through the groundfish specifications for 1999 and is not a part of this emergency interim rule. Therefore, no analysis of the environmental or socioeconomic impacts of the increase in the pollock CDQ allocation from 7.5% of the TAC to 10% of the TAC is considered in this analysis.

This emergency interim rule temporarily amends NMFS regulations to (1) allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and (2) remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

1.2 Description of the Alternatives

Alternative 1: No Action Do not amend 50 CFR 679 to be consistent with the requirements of the AFA.

Under the AFA, this alternative cannot be selected by NMFS because it would result in regulations that conflicted with statute.

Alternative 2: THE PREFERRED ALTERNATIVE
Implement emergency regulations that would:

(1) allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and

(2) remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

Accounting for the Catch of Pollock in the CDO Fisheries

The AFA requires NMFS to distinguish between pollock harvested in a directed fishery for pollock CDQ and pollock harvested in the non-pollock, groundfish CDQ fisheries. Pollock harvested in the directed fisheries for pollock CDQ will accrue against the CDQ group's pollock CDQ allocation. Pollock harvested in other, non-pollock CDQ fisheries will not accrue against the pollock CDQ,

but will accrue against the "pollock bycatch setaside," which refers to the portion of the pollock TAC that is allocated for pollock bycatch needs in the non-pollock open access fisheries and the non-pollock CDQ fisheries.

NMFS considered two options for defining directed fishing for pollock CDQ. The first option was to define directed fishing for pollock CDQ on the basis of the amount of pollock that is retained by a vessel while CDQ fishing. If pollock retention exceeded the maximum retainable bycatch (MRB) amount, then the vessel would be considered directed fishing for pollock CDQ. If pollock retention was below the MRB amount, any catch of pollock by the vessel would not accrue against the pollock CDQ. However, NMFS decided not to pursue this option for two reasons. First, using MRB amounts would lead to regulatory discards by vessels that catch pollock, but do not want to have their pollock catch accrue to the pollock CDQ. Second, several sections of the regulations governing directed fishing and the calculation of MRB amounts for the open access fisheries would have to be revised to accommodate the application of MRBs in the CDQ fisheries. These revisions would add complexity to already complex regulations and increase the difficulty of managing the open access and CDQ fisheries.

The second option for defining directed fishing for pollock CDQ would be to base the definition on the species composition of the haul by catcher/processors or the delivery by catcher vessels. If the catch of pollock exceeded a certain percentage, then the vessel would be considered directed fishing for pollock CDQ. NMFS selected this option because it does not require revisions to regulations governing the open access fisheries, it is simple to understand and apply, and it would not require regulatory discards of pollock.

Two sets of haul-by-haul observer data were examined to select an appropriate threshold percentage. The first data set included all hauls in the 1998 pollock CDQ fisheries. The second data set included all observed hauls in the 1998, BSAI, non-pollock groundfish fisheries by the ten trawl catcher/processors who currently are eligible to participate in the non-pollock CDQ fisheries.

Table 1 provides information about the 1,335 trawl hauls that were taken in the 1998 pollock CDQ fisheries. Pollock as a percent of total groundfish catch was calculated for each haul. The hauls were placed in one of ten categories representing the percentage of pollock in the catch. For example, all hauls in which pollock represented between 90 percent and 100 percent of the total groundfish were placed in the category titled "90 - 100%". For each category, the following information was provided: number of hauls (out of the 1,335 total), percent of hauls, total pollock catch in all of the hauls in the category,

Table 1. 1998 Pollock CDQ Fishery - Pollock as a Percent of Total Groundfish Catch in Each Haul.

Pollock as a % of Total Groundfish in the Haul	Number of Hauls	Percent of Hauls	Total Pollock (mt)	Percent of Catch
90 - 100%	1,105	83%	74,512	97%
80 - 89%	51	4%	1,718	2%
70 - 79%	26	2%	541	1%
60 - 69%	9	1%	198	<1%
50 - 59%	4	<1%	15	<1%
40 - 49%	3	<1%	56	<1%
30 - 39%	2	<1%	25	<1%
20 - 29%	3	<1%	40	<1%
10 - 19%	11	1%	22	<1%
< 10%	121	9%	28	2%
Total	1,335	100%	77,155	100%

Source: NMFS observer data, 1998

Shaded area shows the hauls in which pollock represents less than 40 percent of the weight of groundfish in the haul.

and the percent of the total pollock catch in all hauls (77,155 mt) in each category.

These data showed that 83 percent of the hauls and 97 percent of the pollock catch in the 1998 pollock CDQ fisheries occurred in hauls that were at least 90 percent pollock by weight.

Table 2 summarizes similar observer data for observed hauls from ten trawl catcher/processors eligible for the MS CDQ fisheries in the 1998 BSAI groundfish fisheries. Observer data from these vessels was examined to provide information about the percent pollock represents in hauls from non-pollock groundfish fisheries. Six of the ten vessels are 100% observed and four of them are 30% observed (less than 124' LOA). The data examined does not include unobserved hauls by these vessels. A total of 2,346 hauls were identified for these catcher/processors.

"Blend"¹ estimates of catch were used to eliminate from the data set all hauls that occurred during a week in which the particular catcher/processor was assigned to a pollock target fishery based on their catch composition for the weekly reporting period. A total of 183 hauls were eliminated through this process, leaving 2,163 non-pollock hauls in the data set. Approximately 42,627 mt total catch and 3,613 mt of pollock were caught in these hauls. Pollock as a percent of total catch averaged 8.5 percent (3,616 mt pollock divided by 42,627 mt total catch times 100), and ranged from close to 0 percent to 81 percent.

In Table 2, the 2,163 hauls are placed into one of ten categories, based on pollock as a percent of total catch in each haul. For each category, the following information was provided: number of hauls (out of the 2,163 total), percent of hauls, total pollock catch in all of the hauls in the category, and the percent of the total pollock catch in all hauls (3,613 mt) in each category.

¹"Blend" estimates refer to the estimate of weekly groundfish catch by species for each processor made by the Alaska Regional Office based on comparing observer data and the Weekly Production Report submitted to NMFS by the processor.

Table 2. Summary of the distribution of pollock in 2,163 hauls by ten MS CDQ trawl catcher/processors in the 1998 BSAI non-pollock groundfish fisheries.

Pollock as a % of Total Catch in the Haul	Number of Hauls	Percent of Hauls	Total Pollock (mt)	Percent of Pollock
90 - 100%	0	0%	0	0%
80 - 89%	1	<1%	26	<1%
70 - 79%	3	<1%	64	2%
60 - 69%	15	<1%	216	6%
50 - 59%	21	<1%	303	8%
40 - 49%	27	1%	336	9%
30 - 39%	44	2%	341	9%
20 - 29%	109	5%	562	16%
10 - 19%	299	14%	801	22%
< 10%	1,644	76%	964	27%
Total	2,163	100%	3,613	100%

Source: NMFS observer data, 1998

Shaded area shows the hauls in which pollock represents 40 percent or more of the weight of all catch in the haul.

The appropriate percentage threshold distinguishing directed fishing for pollock CDQ from other CDQ fisheries would minimize situations in which (1) a haul or delivery by a vessel intending to target pollock would not meet the definition of directed fishing for pollock CDQ, and (2) a haul or delivery by a vessel not intending to target pollock CDQ would meet the definition of directed fishing for pollock CDQ. However, regardless of the percentage threshold selected, some pollock caught by vessels intending to target pollock will occur in hauls or deliveries that do not meet the definition of directed fishing for pollock CDQ and will, therefore, accrue against the pollock bycatch setaside. The opposite situation also will occur. Some pollock caught by vessels not intending to target pollock CDQ will occur in hauls or deliveries that exceed the selected percentage, in which case, this pollock will accrue against the CDQ group's pollock CDQ allocation.

Based on the information provided in Tables 1 and 2, NMFS selected 40 percent as an appropriate threshold percentage to distinguish directed fishing for pollock from directed fishing for other species in the CDQ fisheries. Table 1 shows that, if the 40 percent threshold were applied in 1998, approximately 10 percent of the hauls and 0.20 percent of the pollock catch would not have been defined as occurring in the directed fishery for pollock CDQ. The 115 metric tons (mt) of pollock caught in these hauls, which did accrue to the 1998 pollock CDQ, would not have accrued to the pollock CDQ under the 40 percent threshold definition of directed fishing for pollock CDQ.

Table 2 shows that, based on the catch composition of a selected group of trawl catcher/processors, 3 percent of the hauls and 26 percent of the total pollock catch by these processors in the 1998 BSAI non-pollock groundfish fisheries would have met the 40 percent pollock threshold. Although the future groundfish CDQ fisheries will not have the exact same amounts of total catch, catch composition, or fishing conditions, the distribution of pollock in the 1998 non-pollock fisheries is the best predictor of the results of the 40 percent threshold.

Based on this information, NMFS believes that the 40 percent threshold provides a balance. It would result in most of the pollock catch by vessels intending to target pollock accruing to the pollock CDQ and it would minimize the amount of pollock caught by vessels not intending to directed fish for pollock that accrued to the pollock CDQ.

A new definition for directed fishing for pollock CDQ will be added under this emergency rule. Directed fishing for pollock CDQ will be defined as fishing that results in the following catch composition:

(a) For each haul by a catcher/processor, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish in the haul.

(b) For each delivery by a catcher vessel, the round weight of pollock represents 40 percent or more by weight of the total weight of all groundfish delivered to a processor from a fishing trip.

The CDQ groups will be required to examine the catch composition of each haul or delivery by vessels using trawl gear and determine whether the haul or delivery meets the definition of directed fishing for pollock CDQ. If the haul or delivery meets this definition, then the CDQ group is required to report this pollock catch to NMFS on their CDQ catch report and NMFS will subtract this pollock catch from the amount available under the pollock CDQ allocation. If the haul or delivery does not meet the definition of directed fishing for pollock CDQ, the CDQ group is required to not report any pollock catch on the CDQ catch report for that particular haul or delivery. NMFS will examine observer data from all CDQ vessels to (1) verify the accuracy of the CDQ catch report, and (2) add up the pollock caught by CDQ vessels that were not directed fishing for pollock CDQ and subtract that amount from the pollock bycatch setaside.

Removing Squid as a CDO Species

The current 7.5-percent squid CDQ allocation has been identified in public comment to NMFS and the Council as a likely constraint to the full harvest of the current 7.5-percent pollock CDQ allocation. Most of the squid caught in the CDQ fisheries will be caught in the pollock CDQ fishery, and changes in fishing practices to reduce the incidental catch of squid in other groundfish CDQ fisheries are not expected to prevent attainment of the 7.5-percent squid CDQ allocation before attainment of the 7.5-percent pollock CDQ allocation. Therefore, an increase in the pollock CDQ allocation to 10 percent of the pollock TAC without an increase in the squid CDQ allocation is very likely to constrain harvest of the AFA's allocation of pollock CDQ.

Table 3 summarizes the 1998 allocations of groundfish CDQ and halibut prohibited species quota, and catch in the pollock CDQ fisheries through November 6, 1998.

Table 3. 1998 CDQ Allocations and Catch in the Pollock CDQ Fisheries (Catch through November 6, 1998) in Metric Tons (mt).

CDQ/PSQ Category ^{1/}	1998 CDQ Allocation (mt)	Catch in the 1998 Pollock CDQ Fisheries (mt)
BS Sablefish (from trawl)	49	<0.5
AI Sablefish (from trawl)	26	0
BS Pollock	83,251	75,741
AI Pollock	1,785	1,750
Pacific Cod	15,750	231
WAI Atka Mackerel	2,025	0
CAI Atka Mackerel	1,680	0
EAI/BS Atka Mackerel	1,118	81
Yellowfin Sole	16,500	17
Rock Sole	7,500	9
BS Greenland Turbot	754	17
AI Greenland Turbot	371	0.5
Arrowtooth Flounder	1,200	39
Flathead Sole	7,500	64
Other Flatfish	6,708	18
BS Pacific Ocean Perch	105	65
WAI Pacific Ocean Perch	419	0
CAI Pacific Ocean Perch	259	1
EAI Pacific Ocean Perch	230	2
BS Other Red Rockfish	20	1
AI Sharpchin/Northern	317	0
AI Shortraker/Rougheye	72	0.6
BS Other Rockfish	28	0.6
AI Other Rockfish	51	<0.5
Squid	148	339
Other Species	1,935	46
Halibut PSQ (mt of mortality)	351	5

^{1/} BS = Bering Sea

AI = Aleutian Islands (W=Western, C=Central, E=Eastern)

Table 3 shows that approximately 339 mt of squid was caught in the 1998 pollock CDQ fisheries. The allocation of squid to the Multispecies CDQ program in 1998 was 148 mt. In 1998, squid bycatch in the pollock CDQ fisheries did not accrue against the squid CDQ allocation. However, starting in 1999, under regulations implemented prior to the AFA, all squid bycatch in the pollock CDQ fisheries would accrue against the squid CDQ and the CDQ groups would be prohibited from exceeding their squid CDQ. If the squid CDQ was reached before the pollock CDQ, existing CDQ regulations would require the CDQ groups to stop fishing in any groundfish CDQ fisheries in which additional squid bycatch would be expected. Under existing regulations, the bycatch of squid would very likely prevent the CDQ groups from catching their full pollock CDQ allocation. Based on the information in Table 3, no other CDQ or PSQ allocation is as likely to result in the same type of limitation on the catch of pollock CDQ.

An increase of the squid CDQ allocation corresponding to the AFA's increased pollock CDQ allocation is not an available management measure. Section 305(i)(1)(C)(ii)(II) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that, until October 1, 2001, the percentage of a groundfish TAC allocated to the CDQ Program cannot exceed the amount approved by the Council prior to October 1, 1995. Therefore, in order to implement the increased pollock CDQ allocation of the AFA and the Magnuson-Stevens Act CDQ provisions not superceded by the AFA, NMFS must remove squid from the CDQ Program. Removal of squid from the CDQ Program would eliminate this likely constraint to harvest of the AFA's pollock CDQ allocation and would further the ability of the CDQ Program to accomplish its economic, social, and developmental goals. If squid is removed from the CDQ Program, the catch of squid by vessels CDQ fishing would accrue against the overall squid TAC, the squid TAC would continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TAC and does not exceed the overfishing limit and that no CDQ fishery would be constrained by a squid CDQ quota.

2.0 NEPA REQUIREMENTS: ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives were discussed in Sections 1.1 and 1.2. The list of preparers is in Section 5. This section contains the discussion of the environmental impacts of the alternatives including impacts on threatened and endangered species and marine mammals.

2.1 Environmental Impacts of the Alternatives

The environmental impacts generally associated with fishery management actions are effects resulting from (1) harvest of fish stocks which may result in changes in food availability to predators and scavengers, changes in the population structure of target fish stocks, and changes in the marine ecosystem community structure; (2) changes in the physical and biological structure of the marine environment as a result of fishing practices, e.g., effects of gear use and fish processing discards; and (3) entanglement/entrapment of non-target organisms in active or inactive fishing gear.

A summary of the effects of the annual groundfish total allowable catch amounts on the biological environment and associated impacts on marine mammals, seabirds, and other threatened or endangered species are discussed in the Final Supplemental Environmental Impact Statement (FSEIS) for the groundfish total allowable catch specifications and prohibited species catch limits under the authority of the FMPs for the GOA and BSAI (December 1998). Additional environmental impacts resulting from the 1999 groundfish fisheries in the GOA and BSAI are discussed in an environmental assessment for the 1999 groundfish total allowable catch specifications.

Additional information about the environmental impacts of the allocation of pollock to the CDQ Program is addressed in the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis for Amendment 45 to the Fishery

Management Plan for Groundfish in the Bering Sea and Aleutian Islands Area.

The emergency interim regulatory amendments addressed in this analysis under Alternative 2 are (1) to allow pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b), and (2) to remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance.

These measures will not change the overall catch of pollock or squid, nor will it change the location or timing of this catch. The total catch of pollock and squid will continue to be managed to ensure that catch in CDQ and non-CDQ fisheries remains within the TACs and does not exceed the overfishing limit. The effect of these emergency regulations is to change the quotas or portions of quotas against which the catch of pollock and squid in the CDQ fisheries accrue. Therefore, this emergency interim rule does not have additional environmental impacts that are not considered in previous environmental impact statements or environmental assessments for the CDQ fisheries and the BSAI groundfish fisheries in general.

2.2 Impacts on Endangered or Threatened Species

Background. The ESA provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by NMFS for most marine species, and the US Fish and Wildlife Service (FWS) for terrestrial and freshwater species.

The ESA procedure for identifying or listing imperiled species involves a two-tiered process, classifying species as either threatened or endangered, based on the biological health of a species. Threatened species are those likely to become endangered in the foreseeable future [16 U.S.C. § 1532(20)]. Endangered species are those in danger of becoming extinct throughout all or a significant portion of their range [16 U.S.C. § 1532(20)]. The Secretary of Commerce, acting through NMFS, is authorized to list marine mammal and fish species. The Secretary of the Interior, acting through the FWS, is authorized to list all other organisms.

In addition to listing species under the ESA, the critical habitat of a newly listed species must be designated concurrent with its listing to the "maximum extent prudent and determinable" [16 U.S.C. § 1533(b)(1)(A)]. The ESA defines critical habitat as those specific areas that are essential to the conservation of a listed species and that may be in need of special consideration. The primary benefit of critical habitat

designation is that it informs Federal agencies that listed species are dependent upon these areas for their continued existence, and that consultation with NMFS on any Federal action that may affect these areas is required. Some species, primarily the cetaceans, listed in 1969 under the Endangered Species Conservation Act and carried forward as endangered under the ESA, have not received critical habitat designations.

Listed Species. The following species are currently listed as endangered or threatened under the ESA and occur in the GOA and/or BSAI:

Endangered

Northern Right Whale	<i>Balaena glacialis</i>
Bowhead Whale ²	<i>Balaena mysticetus</i>
Sei Whale	<i>Balaenoptera borealis</i>
Blue Whale	<i>Balaenoptera musculus</i>
Fin Whale	<i>Balaenoptera physalus</i>
Humpback Whale	<i>Megaptera novaeangliae</i>
Sperm Whale	<i>Physeter macrocephalus</i>
Snake River Sockeye Salmon	<i>Oncorhynchus nerka</i>
Short-tailed Albatross	<i>Diomedea albatrus</i>
Steller Sea Lion ³	<i>Eumetopias jubatus</i>

Threatened

Snake River Fall Chinook Salmon	<i>Oncorhynchus tshawytscha</i>
Snake River Spring/Summer Chinook Salmon	<i>Oncorhynchus tshawytscha</i>
Steller Sea Lion ⁴	<i>Eumetopias jubatus</i>
Spectacled Eider	<i>Somateria fishcheri</i>
Steller Eider	<i>Polysticta stelleri</i>

Section 7 consultations have been done for all the above listed species, some individually and some as groups. Below are summaries of consultations recently completed or currently underway. See the FSEIS, section 3.8, for summaries of all previous section 7 consultations and Biological Opinions.

²species is present in Bering Sea area only.

³listed as endangered west of Cape Suckling.

⁴listed as threatened east of Cape Suckling.

NMFS 1998 Biological Opinion, Authorization of the Pollock and Atka Mackerel Fisheries for 1999-2002

On December 3, 1998, NMFS issued its Biological Opinion on the 1999-2002 authorization of the BSAI Atka mackerel fishery, the BSAI pollock fishery, and the GOA pollock fishery under their respective groundfish fishery management plans (NMFS, 1998b). The opinion analyzes the effects of these actions on the endangered western population of Steller sea lions and its critical habitat. After reviewing (1) the 1998 status of ESA listed species, (2) the environmental baseline for the action area, (3) the effects of the proposed 1999-2002 fisheries, and (4) the recommendations of the NPFMC, NMFS' Biological Opinion concludes that the Atka mackerel fisheries will not jeopardize the continued existence of current ESA listed species or adversely modify their critical habitat if current proposed mitigation measures are effective in 1999 (see below). However, for the proposed 1999-2002 BSAI and GOA pollock fisheries, NMFS' Biological Opinion concluded that the action, as proposed, are likely to jeopardize the continued existence of the western population of Steller sea lions and adversely modify its critical habitat.

For the pollock fisheries, NMFS established RPAs to avoid jeopardizing Steller sea lions and presented those RPAs to the Council during its December meeting. Mitigation measures for the pollock fisheries were proposed by the Council and then modified by NMFS. These modified RPAs were issued by NMFS in a memorandum dated December 16, 1998 from Gary Matlock, Director, Office of Sustainable Fisheries. NMFS has determined that these mitigation measures would, if implemented, allow the proposed fishery to occur without jeopardizing the continued existence of Steller sea lions and avoid adverse modification of its critical habitat. NMFS is preparing an emergency rule that will implement the RPA actions as proposed by the Council and modified by NMFS. This emergency rule will be effective prior to the start of the 1999 pollock trawl fisheries, scheduled to start on January 20, 1999. However, if the emergency rule is not effective prior to the scheduled regulatory opening of the pollock trawl fisheries, NMFS will close trawl fishing for pollock by emergency rule. The emergency rule to implement the RPAs will be accompanied by an EA that will address the environmental and socioeconomic impacts of the proposed changes to the fishery. These changes would disperse the fishery in time and space, distributing effort more evenly than the pulse fisheries of the past. The RPAs will not contain any changes to the 1999 annual TAC amounts.

At its June 1998 meeting, the Council considered an analysis presented by NMFS regarding alternative measures in the Atka mackerel fishery that would mitigate fishery competition for prey with the endangered Steller sea lions. Six alternatives

were presented to the Council, the alternative recommended would (1) divide the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) reduce the percentage of Atka mackerel TAC taken from Steller sea lion critical habitat over a 4-year period in the Western and Central Districts of the Aleutian Islands Subarea, and (3) extend the seasonal 20 nm no-trawl zone around the Seguam and Agligadak rookeries in the Eastern District of the Aleutian Islands into a year-round closure. The proposed rule was published in the Federal Register on November 9, 1998 (63 FR 60288). This rule, if approved, would limit the amount of catch within Steller sea lion critical habitat as discussed above, but would not alter the overall TAC amounts. A final rule is expected by NMFS to be published in the Federal Register before the scheduled start of the trawl fisheries on January 20, 1999. The determination of the Biological Opinion requires that these mitigation measures be effective prior to the start of the fishery to avoid jeopardy. This EA assumes that those measures will be implemented. If the Atka mackerel mitigation measures are not effective prior to January 20, 1999, NMFS, by emergency rule under authority of the Magnuson-Stevens Act, will close directed fishing with trawl gear in the BSAI and GOA until such time that the mitigation measures can be implemented.

NMFS 1998 Biological Opinion, Authorization of the BSAI and GOA Groundfish Fisheries for 1999

Pursuant to the ESA, NMFS has prepared a section 7 consultation Biological Opinion on the 1999 BSAI and GOA groundfish fisheries. The Biological Opinion examined the 1999 proposed TAC specifications for the BSAI and GOA and the effect of this action on ESA listed species. The Biological Opinion concluded that mitigation measures recommended by the Council and modified by NMFS, for the BSAI and GOA pollock fisheries and the BSAI Atka mackerel fisheries, are sufficient to avoid jeopardizing the continued existence of the western population of Steller sea lions and avoid adverse modification to its critical habitat. This conclusion requires that NMFS, implement the recommended revised reasonable and prudent alternatives before the scheduled regulatory start of the 1999 BSAI and GOA trawl fisheries (see discussion above regarding Atka mackerel and pollock mitigation measures). NMFS Biological Opinion concluded that implementation of the BSAI and GOA groundfish fisheries, as outlined under the FMPs and amended by the Steller sea lion mitigation measures for pollock and Atka mackerel, would not jeopardize the continued existence of Steller sea lions or other ESA listed marine mammals. If the recommended mitigation measures are not effective prior to January 20, 1999, NMFS, by emergency rule under authority of the Magnuson-Stevens Act, will close directed fishing with trawl gear in the BSAI and GOA until such time that the mitigation measures can be implemented.

Biological Opinion on Potential Impacts of BSAI and GOA
Groundfish Fisheries on ESA Listed Salmon

In a letter dated December 1, 1998, Mr. William W. Stelle (NMFS, 1998d) concluded under an informal section 7 consultation that the continued implementation of the BSAI and GOA groundfish FMPs were unlikely to significantly impact endangered salmon species. Additional chinook and chum salmon have been proposed for listings, however, an assessment of impacts to these salmon will be better made once the listing decisions are known. NMFS must reinitiate this ESA consultation if new information becomes available or circumstances occur that may affect listed species or their critical habitat in a manner or to an extent not previously considered, or a new species is listed or critical habitat is designated that may be affected by the action.

USFWS Biological Opinion on the BSAI Trawl and Hook-and-Line
Fisheries

In a letter dated December 2, 1998 (USFWS, 1998), the Fish and Wildlife Service extended the 1997-1998 Biological Opinion on the BSAI hook-and-line groundfish fishery and the BSAI trawl groundfish fishery for the ESA listed short-tailed albatross, until it is superseded by a subsequent amendment to that opinion. Based on current information available to the USFWS, they do not anticipate that their final Biological Opinion will determine that the 1999 BSAI groundfish fishery places the short-tailed albatross in jeopardy of extinction. The statutory receipt of a final BO and incidental take statement for the BSAI hook and line groundfish fishery is Friday, March 19, 1999.

A jeopardy finding for Steller sea lions is a significant effect that would require the preparation of an SEIS. NMFS acknowledges that certain mitigation measures must be in place before the start of the 1999 BSAI and GOA groundfish fisheries so that a finding of no significant impact can be reached. These measures include a final rule implementing changes to the Atka mackerel fishery in the BSAI to avoid jeopardizing the continued existence of endangered Steller sea lions, and an emergency interim rule implementing the revised reasonable and prudent alternatives for the BSAI and GOA Walleye pollock fisheries as outlined by NMFS in the 1998 Biological Opinion (NMFS, 1998b), and as updated in a memorandum on December 16, 1998 (NMFS, 1998e). If the recommended mitigation measures are not effective prior to scheduled regulatory opening of the trawl fisheries on January 20, 1999, NMFS, by emergency rule under authority of the Magnuson-Stevens Act, will close directed fishing with trawl gear in the BSAI and GOA until such time that these mitigation measures can be implemented. NMFS believes implementation of these measures will relieve Steller sea lions from the activity that jeopardizes their continued existence and therefore remove all significant impacts associated with the

pollock and Atka mackerel fisheries. A separate EA will address each of these pending rules, and will analyze the effects of that action on the human environment.

Alternative 2, the preferred alternative will not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish fisheries.

2.3 Impacts on Marine Mammals Not Listed Under the ESA

Marine mammals not listed under the ESA that may be present in the GOA and BSAI include cetaceans, [minke whale (*Balaenoptera acutorostrata*), killer whale (*Orcinus orca*), Dall's porpoise (*Phocoenoides dalli*), harbor porpoise (*Phocoena phocoena*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), and the beaked whales (e.g., *Berardius bairdii* and *Mesoplodon spp.*)] as well as pinnipeds [northern fur seals (*Callorhinus ursinus*), and Pacific harbor seals (*Phoca vitulina*)] and the sea otter (*Enhydra lutris*).

Alternative 2, the preferred alternative, will not have impacts in addition to those analyzed in the FSEIS and the EA for the 1999 groundfish total allowable catches. Therefore, this alternative is not expected to have a significant impact on marine mammals not listed under the ESA.

2.4 Coastal Zone Management Act

Implementation of the preferred alternative would be conducted in a manner consistent, to the maximum extent practicable, with the Alaska Coastal Management Program within the meaning of Section 30(c)(1) of the Coastal Zone Management Act of 1972 and its implementing regulations.

2.5 Conclusions or Finding of No Significant Impact

Alternative 2, the preferred alternative, is not likely to significantly affect the quality of the human environment, and the preparation of an environmental impact statement for the proposed action is not required by Section 102(2)(C) of the National Environmental Policy Act or its implementing regulations.


Assistant Administrator for Fisheries, NOAA

JAN 22 1999

Date

3.0 Regulatory Impact Review

The requirements for all regulatory actions specified in Executive Order (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 nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environment, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

Executive Order 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:

1. 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;
2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

A regulatory program is "economically significant" if it is likely to result in any of the effects described above. In part, the RIR is designed to provide information to determine whether the proposed regulation is likely to be "economically significant."

The emergency interim regulatory amendments in Alternative 2 make two changes in the regulations governing the CDQ fisheries. First, they implement the requirement in the AFA that allows pollock bycatch in the non-pollock groundfish CDQ fisheries to accrue against the allowance for incidental catch of pollock established by section 206(b). Second, they remove the allocation of squid from the CDQ Program to allow the CDQ groups to fully harvest the pollock CDQ directed fishing allowance. This alternative relieves restrictions in the pollock CDQ fisheries, consistent with the requirements of the AFA, to maximize the opportunity for the CDQ groups to fully harvest their pollock CDQ allocations. Therefore, the CDQ groups are expected to benefit economically from the preferred alternative. Therefore, based on the criteria listed in section 3.0, NMFS determines that the emergency interim regulatory amendments to implement Alternative 2 are not significant for purposes of E.O. 12866.

4.0 References

Economic Status of the Groundfish Fisheries off Alaska, 1997 refers to:

Greig, A., et al., 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, 1997. NOAA, NMFS, Alaska Fisheries Science Center, REFM. Seattle, WA. November 25, 1998.

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