

RICHARD A. SVOBODNY
 ACTING ATTORNEY GENERAL
 Bradley E. Meyen (Alaska Bar No. 8506067)
 Assistant Attorney General
 Department of Law
 1031 W. 4th Avenue, Suite 200
 Anchorage, AK 99501
 Telephone: (907) 269-5232
 Facsimile: (907) 279-2834
 Email: brad.meyen@alaska.gov

**UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ALASKA**

STATE OF ALASKA,)
)
 Plaintiff,)
)
 v.)
)
 JANE LUBCHENCO, in her official capacity)
 as Administrator, National Oceanic and)
 Atmospheric Administration; NATIONAL)
 MARINE FISHERIES SERVICE; JAMES W.)
 BALSIGER, in his official capacity as NMFS)
 Alaska Region Administrator; and GARY)
 LOCKE, in his official capacity as the United)
 States Secretary of Commerce,)
 Defendants.)
 _____)

CIVIL ACTION NO.:

**COMPLAINT FOR DECLARATORY
 JUDGMENT AND INJUNCTIVE
 RELIEF, AND PETITION FOR
 REVIEW (42 U.S.C. § 4332; 16 U.S.C.
 §§ 1535, 1536; 16 U.S.C. §§ 1801-1891d;
 5 U.S.C. §§ 601-612; 5 U.S.C. §§ 553,
 701-706)**

INTRODUCTION

1. Plaintiff State of Alaska (“Alaska” or the “State”) brings this action against Defendants Jane Lubchenco, Administrator of the National Oceanic and Atmospheric Administration (“NOAA”); the National Marine Fisheries Service (“NMFS”); James W. Balsiger, NMFS Alaska Regional Administrator; and Gary Locke, United States Secretary of Commerce (collectively, “the Service” or “Defendants”), to challenge (1) the final Biological Opinion (“BioOp”), including the Reasonable and Prudent Alternative (“RPA”), prepared under the Endangered Species Act (“ESA”), which contains NMFS’ evaluation of the effects of the Bering Sea and Aleutian Islands (“BSAI”) and Gulf of Alaska (“GOA”) groundfish fisheries management activities on the ESA-listed Steller sea lion and its designated critical habitat; (2) the accompanying final Environmental Assessment and Regulatory Impact Review (“EA/RIR”) and Finding of No Significant Impact (“FONSI”) prepared under the National Environmental Policy Act (“NEPA”), which addresses the environmental, social, and economic effects of alternative Steller sea lion protection measures for the Aleutian Island Atka mackerel and Pacific cod fisheries identified in the BioOp; and (3) the Interim Final Rule which implements the RPA in the final BioOp.

2. Alaska brings this action to address the Service’s failure, in formulating and approving the BioOp, the RPA, the EA/RIR and FONSI, and the Interim Final Rule, to comply with its legal obligations under: (1) NEPA, 42 U.S.C. § 4332; (2) ESA Section 7, 16 U.S.C. § 1536; (3) ESA Section 6, 16 U.S.C. § 1535(a); (4) the Magnuson-Stevens Fishery Conservation and Management Act (“MSA”), 16 U.S.C. §§ 1801-1891d; (5) the Regulatory Flexibility Act (“RFA”), 5 U.S.C. §§ 601-612; and (6) the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 553, 701-706.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. §§ 2201-2202 (declaratory judgment); 16 U.S.C. §§ 1855(f) & 1861(d) (MSA); and 5 U.S.C. §§ 702, 706 (APA).

4. The federal government has waived sovereign immunity in this action pursuant to 5 U.S.C. § 702 and 16 U.S.C. § 1855(f).

5. Alaska has exhausted all administrative remedies.

6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) because this action is brought against officers of agencies of the United States in their official capacities and against the Service. Plaintiff State of Alaska is located within this District, and a substantial part of the events or omissions giving rise to the claims made here occurred in this District. The NMFS Alaska Region, Juneau Office, was the lead agency for the EA/RIR and the consulting agency for the BioOp. Dr. James W. Balsiger, Administrator of the NMFS Alaska Region, is the signatory official for the BioOp and the listed responsible official for the EA/RIR.

PARTIES

Plaintiff

7. Alaska is a sovereign state with an interest in managing, conserving and regulating fish, wildlife, and other natural resources within its jurisdiction, including state-managed Atka mackerel and Pacific cod fisheries, and the Steller sea lion and its habitat. Alaska Const. Art. VIII, §§ 1, 2, 4; Alaska Stat. § 16.05.020. As a steward of its fish and wildlife resources, Alaska directly manages fish, wildlife, and habitat through its Departments of Fish and Game, Natural Resources, and Environmental Conservation.

8. Alaska's legal title and regulatory interests in its natural resources extend beyond its land area to the State's offshore submerged lands and waters. *See* 43 U.S.C. §§ 1301, 1311; *Alaska v. United States*, 545 U.S. 75, 79 (2005) (stating that Alaska is generally entitled to regulate submerged lands beneath territorial waters extending three nautical miles seaward of its coastline). Thus, Alaska's sovereign interests in its fish and wildlife resources and its management of those resources extends to coastal areas, including much of the range of the western distinct population segment ("DPS") of the Steller sea lion and its designated critical habitat. Figures showing the worldwide distribution of the Steller sea lion and the location of ESA-designated critical habitat for the western DPS are reproduced in attached Exhibit 1.

9. Alaska's fisheries regulation and management would be significantly and immediately impacted by the Service's decisions to close and restrict federal fisheries in the western and central Aleutian Islands. Alaska has an interest in both Steller sea lions and in managing state fisheries to provide for both conservation of Steller sea lions and the sustained use of fishery resources for the maximum benefit of the people of Alaska.

10. Alaska's wildlife conservation and fisheries management programs, the State's own natural resource actions, and the State's economic, revenue, and community development interests are also adversely affected by the Service's decisions challenged here.

11. Alaska participated to the extent allowed of other members of the public in the proceedings leading to the Service's decisions challenged here, including submitting through its Department of Fish and Game detailed comments on the August 2, 2010 draft NMFS BioOp and accompanying draft EA/RIR, and also through Alaska's participation on the North Pacific Fishery Management Council ("NPFMC") in reviewing and commenting on these draft documents.

12. Alaska has standing to bring this action, and the challenged agency decisions are final and ripe for review by this Court.

Defendants

13. Defendant Gary Locke is the Secretary of the United States Department of Commerce (“Commerce”) and is being sued in his official capacity. The Secretary is the official ultimately responsible for the approval of the BioOp, the RPA, the EA/RIR and FONSI, and the Interim Final Rule and for Commerce’s compliance with federal law, including the ESA, NEPA, MSA, RFA, and APA.

14. Defendant Jane Lubchenco is the Administrator of the NOAA and is being sued in her official capacity. The Secretary of Commerce has delegated responsibility to the Administrator and NOAA to ensure compliance with the ESA, NEPA, MSA, RFA and APA, which in turn has sub-delegated this responsibility to NMFS.

15. Defendant NMFS is a federal agency within Commerce and NOAA that has been delegated the responsibility for implementing the ESA, NEPA, MSA, RFA and APA, and is the federal agency that prepared and approved the BioOp, RPA, the EA/RIR and FONSI, and promulgated the Interim Final Rule.

16. Defendant James W. Balsiger is the Administrator of the NMFS Alaska Region and is being sued in his official capacity. Dr. Balsiger is the signatory official for the BioOp and the listed responsible official for the EA/RIR.

LEGAL BACKGROUND

A. National Environmental Protection Act

17. NEPA is the “basic national charter for protection of the environment.” 40 C.F.R. § 1500.1(a).

18. “The NEPA process is intended to help public officials make decisions that are based on understanding of environmental consequences, and take actions that protect, restore, and enhance the environment.” *Id.* § 1500.1(c). NEPA’s twin goals are to: (1) foster informed decisionmaking by “ensur[ing] that the agency, in reaching its decision, will have available, and will carefully consider, detailed information concerning significant environmental impacts,” and (2) promote informed public participation by requiring full disclosure of and opportunities for the public to participate in governmental decisions affecting environmental quality. *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349-50 (1989).

19. NEPA requires that a federal agency proposing a major federal action with significant environmental effects prepare a detailed statement, which must include the environmental impacts of and alternatives to the proposed action. 42 U.S.C. § 4332(2)(C)(i), (iii). This detailed written statement is an Environmental Impact Statement (“EIS”). 40 C.F.R. § 1508.11.

20. To determine whether an EIS is necessary, an agency may first prepare an Environmental Assessment (“EA”). *See id.* §§ 1501.4(c), 1508.9. An EA is a “concise public document . . . that serves to . . . [b]riefly provide sufficient evidence and analysis for determining whether to prepare an [EIS] or a finding of no significant impact.” *Id.* § 1508.9. An EA must contain sufficient information and analysis to determine whether the proposed action is likely to have significant impacts, thus requiring preparation of an EIS. *Id.*

21. If an agency concludes, based on the EA, that an EIS is not required, it must prepare a finding of no significant impact (“FONSI”), which explains the agency’s reasons for its decision. *Id.* §§ 1501.4(e), 1508.13.

22. The analysis of alternatives to a proposed agency action is “the heart of the NEPA” document, and agencies should “[r]igorously explore and objectively evaluate all reasonable alternatives.” *Id.* § 1502.14(a). The analysis must include a “no action” alternative, as well as reasonable alternatives beyond the agency’s jurisdiction. *Id.* § 1502.14(c)-(d). These alternative analysis requirements also apply to Environmental Assessments. *See, e.g., Bob Marshall Alliance v. Hodel*, 852 F.2d 1223, 1229 (9th Cir. 1998); *see also* 42 U.S.C. § 4332(2)(E); 40 C.F.R. § 1508.9(b).

23. Through the NEPA process a federal agency must take a “hard look at the potential environmental consequences of the proposed action.” *Oregon Natural Res. Council v. U.S. Bureau of Land Mgmt.*, 470 F.3d 818, 820 (9th Cir. 2006) (citation and internal quotation omitted).

24. Whether an action will have “significant” impacts requires consideration of both the context and intensity of effects. 40 C.F.R. § 1508.27. Context refers to the significance of the action to society as a whole, the affected region, the affected interests, and the locality. *Id.* § 1508.27(a). Intensity refers to the severity of the impacts. Factors considered in evaluating intensity include impacts that may be both beneficial and adverse, unique characteristics of the geographic area (such as proximity to historic and cultural resources, park lands, wetlands or ecologically critical areas), the degree to which the effects on the quality of the human environment are likely to be controversial, the degree to which the possible effects on the human environment are highly uncertain or involve unique or unknown risks, the degree to which the action may establish a precedent for future actions, whether the action is related to other actions with individually insignificant but cumulatively significant impacts, and the degree to which the

action may adversely affect an endangered or threatened species or its critical habitat. *Id.* § 1508.27(b).

25. A challenge that the Service violated NEPA is reviewable under the judicial review provisions of the APA. *See Ocean Advocates v. U.S. Army Corps of Eng'rs*, 402 F.3d 846, 858 (9th Cir. 2005).

B. Endangered Species Act

26. Section 7 of the ESA requires federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize a listed species or destroy or adversely modify its designated critical habitat. 16 U.S.C. § 1536(a)(2).

27. NMFS has defined “to jeopardize” the continued existence of a species as “to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species.” 50 C.F.R. § 402.02. Therefore, an action that is “not likely” to appreciably reduce the survival or recovery of the species does not cause jeopardy.

28. Courts have construed the ESA Section 7 “destruction or adverse modification” of critical habitat standard, 16 U.S.C. § 1536(a)(2), as requiring the Service to consider the value of critical habitat for the recovery of the listed species, and to address whether the loss of conservation function in affected habitat will appreciably diminish the value of the critical habitat overall for the species’ survival or recovery. *Butte Env'tl. Council v. U.S. Army Corps of Eng'rs*, 620 F.3d 936, 948-49 (9th Cir. 2010); *Gifford Pinchot Task Force v. U.S. Fish & Wildlife Serv.*, 378 F.3d 1059, 1070, 1075 (9th Cir. 2004).

29. If a federal agency determines that a proposed federal action may adversely affect a listed species or its designated habitat, the agency must engage in formal consultation with NMFS, 50 C.F.R. § 402.14(a), after which NMFS must issue a Biological Opinion detailing how the proposed action will affect the species or its critical habitat, 16 U.S.C. § 1536(b)(3)(A).

30. If the Biological Opinion determines that a proposed action will jeopardize the continued existence of a threatened or endangered species or destroy or adversely modify its designated critical habitat, NMFS must suggest, if possible, “reasonable and prudent alternatives” that it believes will avoid jeopardy and adverse modification and allow the agency to proceed with the action. *Id.* § 1536(a)(2), (b)(3)(A).

31. Throughout the Biological Opinion’s development and identification of any reasonable and prudent alternatives, NMFS must use the “best scientific and commercial data available.” 50 C.F.R. § 402.14(g)(8).

32. A challenge that the Service violated ESA Section 7 in rendering its Biological Opinion and identifying RPAs is reviewable under the judicial review provisions of the APA. *See Bennett v. Spear*, 520 U.S. 154, 174, 176 (1997).

33. ESA Section 6 requires that “[i]n carrying out the program authorized by this [Act], the Secretary shall cooperate to the maximum extent practicable with the States.” 16 U.S.C. § 1535(a); *see also* 59 Fed. Reg. 34274 (July 1, 1994) (Notice of Interagency Cooperative Policy Regarding the Role of the State Agencies in Endangered Species Act Activities).

34. The Service’s ESA Consultation Handbook further provides that interested parties, including affected state governments, should be involved in the development of RPAs when the Service finds that an action will jeopardize the continued existence of a species or destroy or adversely modify its critical habitat. *See FWS & NMFS, Consultation Handbook*,

Procedures for Conducting Consultation & Conference Activities Under Section 7 of the ESA, at 4-6 (Mar. 1988).

35. A challenge that the Service violated ESA Section 6 in rendering its Biological Opinion and identifying RPAs is reviewable under the judicial review provisions of the APA.

C. Magnuson-Stevens Fishery Conservation and Management Act

36. The MSA is the primary domestic legislation governing management of marine fishing activities in federal waters. 16 U.S.C. §§ 1801-1891d.

37. The MSA establishes a system for conserving and managing fish populations and fisheries. The MSA created eight regional fishery management councils that are primarily charged with preparing Fishery Management Plans (“FMPs”) and plan amendments for each managed fishery. 16 U.S.C. § 1852(a)(1).

38. The North Pacific Fishery Management Council (“NPFMC”) manages the Exclusive Economic Zone off Alaska’s coast. *See* NPFMC, *Navigating the North Pacific Council Process*, at 5, available at <http://www.fakr.noaa.gov/npfmc/>. FMPs implemented by the NPFMC govern the management of groundfish fisheries in the BSAI and GOA. *Id.*

39. The fishery management councils submit proposed FMPs and FMP amendments together with proposed implementing regulations to the Secretary of Commerce for review and approval. 15 U.S.C. §§ 1853, 1854. The Secretary, acting through NMFS, must disapprove a FMP amendment to the extent it is inconsistent with provisions of the MSA or any other applicable law. *Id.* at § 1854. The Secretary must disapprove proposed regulations to the extent they are inconsistent with the FMP, FMP amendments, or other applicable law. *Id.*

40. Approvals of FMPs, FMP amendments, and implementing regulations are subject to the procedural requirements of NEPA, 42 U.S.C. §§ 4321 et seq.; 16 U.S.C. § 1854(i).

41. The MSA requires the Secretary of Commerce to give notice of proposed rulemaking in the Federal Register and to provide an opportunity for public comment. 16 U.S.C. § 1854.

D. Administrative Procedure Act

42. The APA provides for judicial review of final agency action by persons “aggrieved” by such action. 5 U.S.C. § 702. The actions reviewable under the APA include any “preliminary, procedural, or intermediate agency action or ruling . . . on the review of the final agency action.” *Id.* § 704.

43. The APA also provides standards applicable when a federal agency proposes and adopts final rules and regulations. *Id.* §§ 553, 551(4). Specifically, agencies must provide “[g]eneral notice” of any “proposed rule making” to the public through publication in the Federal Register. That notice must include “(1) a statement of the time, place, and nature of the public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) either the terms or substance of the proposed rule or a description of the subjects and issues involved.” *Id.* § 553(b). An agency’s responsibility to consider public comments on a proposed rulemaking is required by 5 U.S.C. § 553(c).

44. Under the APA, a reviewing court shall “hold unlawful and set aside agency action, findings, and conclusions found to be . . . arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). A reviewing court shall also “hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law.” 5 U.S.C. § 706(2)(D).

E. Regulatory Flexibility Act

45. The RFA requires an agency, concurrent with proposing a new rule, to prepare a Regulatory Flexibility Analysis describing the impact of the proposed rule on small businesses and small governments. 5 U.S.C. § 601; *id.* at § 603, *amended by* Pub. L. No. 111-203, 124 Stat. 1376 (2010). After receiving public comment, the agency then prepares a final Regulatory Flexibility Analysis to be published with the final rule. *Id.* § 604.

46. The agency is also required to make an extra effort to collect the input of small businesses and small governments on the proposed rule's impact by conducting open hearings, directly notifying small entities of the proposed rules, or publishing notice in trade publications. *Id.* § 609.

FACTUAL BACKGROUND

A. The Steller Sea Lion

47. Steller sea lions are closely related to other types of sea lions and to fur seals and belong to the genus *Eumetopias*. See NMFS, *North Pacific Groundfish Fishery Biological Opinion* (Nov. 24, 2010) ("final BioOp"), at 75, available at <http://www.fakr.noaa.gov/protectedresources/stellers/esa/biop/final/1210.htm>.

48. Female Steller sea lions average 2.28 meters in length and 263 kilograms in weight, while some males are somewhat larger, at 2.8 meters and 566 kilograms. *Id.*

49. Although the Steller sea lion's full range occurs along the entire North Pacific Rim, the largest rookeries are in Southeast Alaska and British Columbia. *Id.*

50. Between the 1970s and the year 1990, the Steller sea lion experienced a population decline within the United States portion of its range, declining by 80 percent of its population. *Id.* at 78.

51. In 1990, NMFS listed the Steller sea lion as a threatened species under the ESA, and established emergency protective regulations to address the population decline and to begin recovery. *Id.*

52. In 1993, NMFS designated critical habitat for the Steller sea lion based in significant part on protecting food resources for the sea lions. *Id.* This critical habitat consists of the areas around rookeries and haulouts, which provide areas for reproduction, feeding, rest, and protection from predators and weather. *Id.* at 119.

53. In 1997, based on genetic distinctions, NMFS separated the Steller sea lion populations into the western and eastern distinct population segments. NMFS then changed the western DPS' status from threatened to endangered. *Id.* at 78.

54. In 2000 and 2001, NMFS prepared a biological opinion on the effects of the federal groundfish fisheries on Steller sea lions, which NMFS supplemented in 2003. The 2001 biological opinion and its supplement implemented Steller sea lion protection measures for the BSAI and GOA groundfish fisheries. *Id.* at 4-5.

55. In the last 10 years, the Steller sea lion population for the western DPS has increased and is trending towards recovery goals. *Id.* at 81. Recent data on population trends (2000-2008) indicate that the western DPS as a whole has stabilized and overall is increasing, but in two sub-regions at the edge of the range the populations are not increasing as rapidly as NMFS may desire. *Id.* at xxiii-xxiv, xxvi, 81.

56. A definitive cause for these limited sub-regional population numbers has not been identified. *Id.* at xxiii. Although Steller sea lion populations in some sub-regions have been slower to respond to conservation efforts, there is little to no existing information that nutritional

stress, and annual harvests of Pacific cod and Atka mackerel in particular, are the cause of slower than desired recovery.

B. Biological Opinion and Environmental Assessment/Regulatory Impact Review

57. In 2006, NMFS re-initiated formal ESA Section 7 consultation to evaluate the possible effects of current management practices for groundfish fisheries in the BSAI and GOA on Steller sea lions and other ESA-listed species in light of new information gained, management actions taken, and changes to the fisheries since the last biological opinion was supplemented in 2003. *Id.* at 5-6.

58. In 2008, NMFS prepared a Steller sea lion recovery plan, pursuant to ESA Section 4(f), which divided Alaskan waters into seven sub-regions stretching from the eastern Gulf of Alaska to Russia/Asia for purposes of determining recovery. The 2008 Recovery Plan concluded that to achieve recovery, among other things, no two adjacent western DPS sub-regions may have *significantly* declining non-pup population trends. *See* 2008 Revised Recovery Plan for the Steller Sea Lion at V-21 (Mar. 2008) (“2008 Recovery Plan”), available at www.nmfs.noaa.gov/pr/pdfs/recovery/stellersealion.pdf.

59. In August of 2010, NMFS completed a draft of the BioOp. NMFS found that changes to the Pacific cod and Atka mackerel fisheries in the Aleutian Islands were necessary to avoid the likelihood of jeopardy to the western Steller sea lion DPS’ continued existence or adverse modification of its critical habitat (the “jeopardy/adverse modification” determination). *See generally* NMFS, *Draft Biological Opinion*, at xxxvii-xxx, available at <http://www.fakr.noaa.gov/protectedresources/stellers/esa/biop/final/1210.htm>. The draft BioOp included a proposed RPA to modify groundfish management in the Aleutian Islands, specifically, by closing Atka mackerel and Pacific cod fisheries in Area 543 in the western Aleutian Islands,

and restricting such fisheries in the adjacent Areas 542 and 541 in the central Aleutian Islands. *See id.* at xxxiii-xxxiv.

60. In August 2010, NMFS released a review draft EA/RIR under NEPA to analyze the proposed RPA identified in the draft BioOp. The EA/RIR considered only three alternatives: (1) the No Action or “Status Quo” alternative, under which fisheries would continue to be managed under existing policy; (2) the “Enhanced Conservation Approach,” which would be even more protective of Steller sea lions than the RPA by closing larger areas to fishing; and (3) the “RPA Specific Approach,” which would implement the proposed RPA. *See Revisions to the Steller Sea Lion Protection Measures for the Aleutian Islands Atka Mackerel and Pacific Cod Fisheries, Council Review Draft EA/RIR (Aug. 2010) (“draft EA/RIR”), at ii-iv.*

61. On August 2, 2010, NMFS released the draft BioOp and draft EA/RIR for a limited 25-day comment period. That period was later extended by seven days. *See NOAA, NMFS, Revisions to the Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Management Area Groundfish Fisheries EA/RIR (Nov. 2010) (“final EA/RIR”), at 10-8, available at <http://www.fakr.noaa.gov/protectedresources/stellers/esa/biop/final/1210.htm>.*

62. NMFS did not, before releasing the draft BioOp, inform Alaska of the jeopardy/adverse modification determination nor specifically request the State’s input in developing the proposed RPA. Alaska formally learned of NMFS’ jeopardy/adverse modification determination on August 2, 2010, when NMFS released the draft BioOp and associated analyses for public comment. NMFS also did not involve Alaska, as a sovereign state, in the development of the BioOp, despite Alaska’s March 2006 notification to NMFS of the State’s desire to participate in the Section 7 consultation process leading to the BioOp.

63. On August 18, 2010, Alaska Governor Sean Parnell requested an extension of time until October 12, 2010, to provide more detailed comments given the size of the draft BioOp (nearly 800 pages) and draft EA/RIR (more than 240 pages) and the difficulty of providing a thorough review and meaningful comments in the short period of time provided by NMFS. NMFS provided a brief seven-day extension. *See* Final EA/RIR at 10-8.

64. Despite the short timeframe for review, the NPFMC met in August of 2010, to review and make recommendations regarding the proposed RPA. The NPFMC had little time before its meeting to analyze in detail the BioOp or understand the full ramifications of implementing NMFS' proposed RPA. Also, the draft EA/RIR was incomplete and did not provide sufficient information for an adequate analysis of the RPA's impacts.

65. Under these significant constraints, the NPFMC received public comment and considered changes to the proposed RPA for more targeted fishery restrictions based on the best available science. On August 20, 2010, 14 days before the close of NMFS' extended public comment period on the draft BioOp, the NPFMC made its proposed recommendations available to the public.

66. The NPFMC offered an additional alternative, recommended by the Advisory Panel and supported by industry groups, that included less restrictive measures still designed to support the survival and recovery of the Steller sea lion and the conservation value of its critical habitat.

67. On September 2, 2010, Alaska again requested additional time for a more thorough review of the draft BioOp and draft EA/RIR.

68. On September 2, 2010, Alaska also provided comments in response to and in disagreement with the draft BioOp, including the proposed RPA, and the draft EA/RIR. Alaska

provided the Service with, among other relevant information, scientific and commercial data supporting a determination that the jeopardy/adverse modification finding and the proposed RPA was not warranted, and that NMFS should at least adopt the less restrictive RPA developed by the NPFMC.

69. On December 8, 2010, NMFS made available for public release on its website a final BioOp, with an RPA similar to that identified in the draft BioOp with some modifications. The final BioOp was signed by James W. Balsiger, NMFS Administrator, Alaska Region, and dated November 24, 2010.

70. Specifically, the final BioOp recited negative population trends for Steller sea lion non-pups in fishery management Areas 543, 542 and 541 in the western and central Aleutian Islands. NMFS concluded that negative growth rates and counts in those areas (which differ from the sub-regions defined in the recovery plan) indicated that Steller sea lions were having difficulty maintaining or increasing their populations, and that removal of potential fisheries effects (nutritional stress) in those areas was needed to ensure fisheries activities were not likely to cause jeopardy or adverse modification. *See* Final BioOp at xxiv-xxxiii. The BioOp concluded that although two areas evaluated in the BioOp were having difficulty maintaining or increasing their populations, that no two sub-regions as defined in the 2008 Recovery Plan were experiencing significant declines.

71. The final RPA would modify groundfish management in the Aleutian Islands. The approach would close Atka mackerel and Pacific cod fisheries in Area 543 in the western Aleutian Islands, and would restrict such fisheries in the adjacent Areas 542 and 541 in the central Aleutian Islands. *See* attached Exhibit 2 for a location map of these areas; Final BioOp at xxxiv-xxxv.

72. On December 8, 2010, NMFS issued the final EA/RIR and a FONSI.

73. On December 8, 2010, NMFS, by John Oliver, Deputy Assistant Administrator for Operations, signed an Interim Final Rule to implement the fishery closure and restriction measures identified in the final RPA before the 2011 fishing season starts on January 1, 2011. *See* NOAA, *Interim Final Rule, Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Bering Sea and Aleutian Islands Groundfish Fisheries Off Alaska*, 75 Fed. Reg. 77535 (Dec. 13, 2010).

74. The Service issued the Interim Final Rule without providing the public with an opportunity to comment on the rule itself. The Service did not submit the science underlying the BioOp for independent peer review before finalizing the BioOp, nor did it respond to the State regarding the multiple comments that the State provided on the draft BioOp and EA/RIR.

C. Impacts to Alaska's Fishery Management, Economic Development, Conservation and Other Interests

75. The closure and restriction of groundfish fisheries in the western and central Aleutian Islands as called for in the final RPA will have severe and immediate adverse consequences for Alaska, its local communities, commercial fishing fleets, and the seafood processing industry. NMFS admits that implementing the RPA would cause losses in gross revenue in Alaska of up to \$83.2 million per year under the RPA alternative. Final EA/RIR at 10-134, Table 10-69. Up to 750 fishing, processing, and related jobs in Alaska may also be lost. *Id.* at 10-147. The EA/RIR claims that there may be mitigation to an unknown extent as the fishing fleet redeploys to other Bering Sea fisheries. *Id.* However, the onshore processing capacity and industry in the central Aleutians cannot redeploy and will remain adversely affected to a degree not adequately evaluated or disclosed in the EA/RIR.

76. Similarly, the State's Aleutian Island Pacific cod fishery will experience a loss of fisheries infrastructure. While NMFS predicts that some of these losses will be offset as the industry redeploys fishing vessels to other fishing areas, the communities in the western Aleutian Islands that rely on local fishing are not mobile and will be immediately and significantly affected by fishery closures and restrictions in adjacent waters. The overall impact of implementing the RPA could devastate small communities and residents in the Aleutian Islands that depend on fisheries for their livelihoods.

77. The central Aleutian Islands communities of Atka and Adak could be most significantly affected by this action. Processing Pacific cod in high volume is necessary for cod operations to be viable, and that processing capacity is necessary for the communities' long-term viability. *See, e.g., NPFMC, Initial Review Draft Regulatory Impact Review/Environmental Assessment/Initial Regulatory Flexibility Analysis for a Regulatory Amendment to Establish Aleutian Islands Pacific Cod Processing Sideboards* (Dec. 2009), at 35-43, available at <http://www.fakr.noaa.gov/npfmc/council.htm>. The existing onshore facility in Adak has been heavily reliant on Pacific cod processing, with 70 percent of its revenues coming from the "A" season Pacific cod fishery supporting a year-round market in the area. *Id.* at 37. Additionally, a raw fish tax on Pacific cod was the main source of revenue for the City of Adak. *Id.* Fuel sales also provide an important revenue stream and support for local fuel requirements. *Id.* This economic activity is jeopardized if the local fisheries are insufficient to support a market in the area. *Id.*

78. Other communities in the region, such as Dutch Harbor and Akutan in the Aleutian Islands and King Cove, Sand Point, and Chignik in the Gulf of Alaska benefit from

catcher vessel deliveries of Pacific cod from the Aleutian Islands area and the associated positive economic effects. *Id.* at xiv, xvii, 53.

79. Implementing the RPA may have significant environmental justice concerns for Alaskan Natives. Of the fisheries that would be closed or restricted under the proposed RPA, a percentage of total allowable catch is allocated to the Community Development Quota (“CDQ”) Program designed to improve the social and economic conditions in western Alaska communities by facilitating participation in the BSAI fisheries. Final EA/RIR at 10-29, 10-30. Sixty-five communities, including over 27,000 people, 87 percent of whom are Alaskan Native, participate in the CDQ Program. *Id.* at 10-30. These communities have fewer economic opportunities, chronically high unemployment rates, and are economically-depressed. *Id.* The CDQ Program allows the communities to benefit from fisheries by investing resources in the community infrastructure and providing employment opportunities to local residents. *Id.*

80. The EA/RIR acknowledges that groups receiving CDQ Program funds are likely to be adversely affected by the closure of and restrictions on fisheries, particularly the Atka mackerel fishery. But the EA/RIR but does not discuss what that lack of funding means for the 65 communities that benefit from CDQ Program, including specific Alaskan Native populations. *Id.*

FIRST CLAIM FOR RELIEF

(Violation of NEPA—Failure to Prepare Environmental Impact Statement)

81. Alaska incorporates by reference each of the allegations in paragraphs 1 through 80.

82. Defendants violated NEPA by failing to prepare an EIS for the proposed action, which may significantly affect the human environment. The Service’s decision to prepare only

an EA, which resulted in the issuance of a FONSI rather than a complete EIS, violated NEPA, 42 U.S.C. § 4332, where there is a potential for significant environmental effects to occur from the proposed action.

83. NMFS failed to adequately consider the potential for significant environmental effects from the proposed action, including but not limited to:

a. NMFS did not fully consider or properly analyze the socioeconomic effects—e.g., changes in possible employment numbers resulting from loss of and restrictions on fisheries—and did not comply with NEPA’s requirements for addressing incomplete or unavailable information, *see* 40 C.F.R. § 1502.22;

b. NMFS did not adequately assess the cumulative impacts to local communities or potential mitigation measures to ameliorate the effects of the RPA, given the variety of factors affecting fisheries and economies in the Aleutian Islands;

c. NMFS failed to properly differentiate the impacts on coastal communities from gross revenue estimates overall even though coastal communities in the BSAI and GOA will incur direct, indirect, and induced effects;

d. NMFS failed to adequately address Alaskan Native and environmental justice concerns; and

e. NMFS failed to adequately consider the context and intensity of the potential adverse environmental effects.

84. NEPA requires that NMFS prepare an EIS where there is a potential for significant environmental effects.

85. NMFS therefore violated NEPA in failing to prepare an EIS. This violation of NEPA, 42 U.S.C. § 4332(2)(C), (E), and its implementing regulations is arbitrary, capricious, an

abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, is reviewable under the APA, 5 U.S.C. §§ 701-706, and entitles Alaska to the relief requested below.

SECOND CLAIM FOR RELIEF

(Violation of NEPA—Inadequate Range of Alternatives)

86. Alaska incorporates by reference each of the allegations in paragraphs 1 through 85.

87. The Service violated NEPA, 42 U.S.C. § 4332(2), by failing to consider an adequate range of reasonable alternatives in the EA/RIR, including an alternative or alternatives more narrowly tailored to conserve fishery resources for Steller sea lions while providing opportunities for local fishing fleets.

88. The final EA/RIR considered only four alternatives and did not provide a reasoned or quantified basis for selecting an RPA that closes Area 543 and restricts fishing of Areas 541 and 542.

89. NMFS failed to adequately consider additional reasonable alternatives including the full scope of the alternative recommended by the NPFMC, which included less restrictive measures still designed to support the survival and recovery of the Steller sea lion and the conservation value of its critical habitat. This proposed alternative was supported by the science available to NMFS and provided a reasonable alternative with less impact to the Aleutian Island fishermen and their communities.

90. These violations of NEPA, 42 U.S.C. § 4332(2)(C), (E), and its implementing regulations are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with

law, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and entitle Alaska to the relief requested below.

THIRD CLAIM FOR RELIEF

(Violation of NEPA—Insufficient Opportunity for Public Comment)

91. Alaska incorporates by reference each of the allegations in paragraphs 1 through 90.

92. NMFS violated NEPA and its implementing regulations by failing to provide the public with as much environmental information as was practicable, prior to EA completion, so that the public—including Alaska—had a sufficient basis to address those areas, including environmental and socioeconomic effects, that NMFS must consider in preparing an EA, thus precluding an adequate opportunity to comment on the EA/RIR and the FONSI.

93. Among other things, NMFS effectively precluded adequate public involvement in the decisionmaking process and the opportunity to comment on the EA by providing an incomplete draft that failed to consider significant information regarding the likely environmental, economic, and social impacts of the proposed action and alternatives.

94. NMFS provided the public with an inadequate period of time within which to provide comments on the EA/RIR and the FONSI.

95. These violations of NEPA, 42 U.S.C. § 4332(2)(C), (E), are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and entitle Alaska to the relief requested below.

FOURTH CLAIM FOR RELIEF

(Violation of NEPA—Failure to Adequately Consider Potential Environmental Effects)

96. Alaska incorporates by reference each of the allegations in paragraphs 1 through 95.

97. NEPA and its implementing regulations require that an environmental document, such as the EA/RIR prepared by NMFS here, discuss the environmental impacts of the agency's proposed action and alternatives, which discussion forms the scientific and analytic basis for the document and the selection of an alternative by the agency decisionmaker. *See* 40 C.F.R. §§ 1502.16, 1508.9, 1508.10.

98. The environmental impacts discussion must include a discussion of direct effects and their significance, indirect effects and their significance, and cumulative effects and their significance. *Id.* §§ 1502.16, 1508.7, 1508.8, 1508.25.

99. Environmental effects, which term is synonymous with “environmental impacts” under the NEPA regulations, *id.* § 1508.8(b), include “ecological (such as the effects on natural resources and on the components, structures, and functioning of affected ecosystems), aesthetic, historic, cultural, economic, social, or health [effects], whether direct, indirect, or cumulative. Effects may also include those resulting from actions which may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial.” *Id.* § 1508.8(b).

100. NMFS failed to adequately consider and evaluate the complete scope and effect of the potential direct, indirect, and cumulative effects and their significance here, including potential economic, social, environmental justice, and other environmental effects.

101. NMFS' failure to adequately consider the environmental effects of its proposed action and alternatives in its EA/RIR in violation of NEPA, 42 U.S.C. § 4332(2)(C), (E), is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, and has caused or threatens serious prejudice and injury to Alaska's rights and interests, is reviewable under the APA, 5 U.S.C. §§ 701-706, and entitles Alaska to the relief requested below.

FIFTH CLAIM FOR RELIEF

(Violation of the ESA and APA—Failure to Comply with ESA Section 7 Requirements for a Biological Opinion)

102. Alaska incorporates by reference each of the allegations in paragraphs 1 through 101.

103. The Service violated ESA Section 7, 16 U.S.C. § 1536, in reaching its jeopardy/adverse modification determination and developing the RPA because, among other things: (A) NMFS did not adequately assess the current species and fishery status; (B) in formulating the RPA, NMFS failed to make a rational connection between the available information considered and its conclusions that certain Steller sea lion populations of the western DPS in the western and central Aleutian Islands are declining due to nutritional stress and that its recommended RPA will reverse declining population trends; and (C) NMFS failed to consider the relevant factors in making this determination. In particular, NMFS' specific failures include, but are not limited to:

a. NMFS based its jeopardy/adverse modification determination on the status of only two of seven Steller sea lion sub-regions without explaining the relationship and importance of these two sub-regions to the Steller sea lion species as a whole. The ESA prohibits basing Section 7 decisions on effects at less than the species level—which level here is the Steller

sea lion western DPS as a whole. The BioOp makes only conclusory, inadequately documented or inadequately supported statements that the population trend in these two sub-regions will be significant to the species as a whole. The BioOp also does not explain NMFS' jeopardy/adverse modification determination against the record-based factual background that no two adjacent sub-regions showed a significant non-pup population trend decline, which standard was adopted by NMFS in the 2008 Recovery Plan (that the non-pup population trend in any two adjacent sub-regions cannot be declining significantly) as one of the criteria for determining when the western DPS had recovered significantly to be downlisted to "threatened" or delisted under the ESA. *See* 2008 Recovery Plan at V-17, V-21.

b. NMFS' jeopardy/adverse modification determination is inconsistent given the record before the agency showing the overall western DPS population trend toward achieving population recovery goals;

c. NMFS concluded that the Steller sea lion is not meeting certain of the recovery goals in the 2008 Recovery Plan solely because the overall population *increase* is not yet statistically significant, but a steady overall population increase of 1.5 percent a year is on track to meet NMFS' recovery goals for downlisting;

d. NMFS' adverse modification determination is based solely on impacts to specific areas of "affected [critical] habitat" without adequate discussion of whether those effects will cause adverse modification to Steller sea lion critical habitat as a whole;

e. NMFS relied on some studies to the exclusion of others without explanation, cited findings that are uncertain and equivocal, and made sweeping conclusions that are unsupported by the record;

f. The best scientific and commercial data available indicates that Steller sea lions in the western and central Aleutian Islands are not experiencing nutritional stress caused by federal groundfish fisheries, and there is little or no existing information that nutritional stress, and annual harvests of Pacific cod and Atka mackerel in particular, are the cause of slower than desired Steller sea lion recovery;

g. There is insufficient documentation supporting that NMFS' proposed RPA will reverse the existing trend for outlier Steller sea lion populations; and

h. NMFS should have considered a less restrictive RPA.

104. These violations of ESA Section 7, 16 U.S.C. § 1536, are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and entitle Alaska to the relief requested below.

SIXTH CLAIM FOR RELIEF

(Violation of the ESA and APA—Failure to Cooperate With the State)

105. Alaska incorporates by reference each of the allegations in paragraphs 1 through 104.

106. The Service violated ESA Section 6, 16 U.S.C. § 1535(a), by failing to cooperate with Alaska to the maximum extent practicable in reaching the jeopardy/adverse modification determination in the final BioOp and in developing the RPA.

107. This claim is brought pursuant to the judicial review provision of the APA, 5 U.S.C. § 706.

108. This violation of ESA Section 6, 16 U.S.C. § 1535, is arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, which has caused or threatens prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and entitles Alaska to the relief requested below.

SEVENTH CLAIM FOR RELIEF

(Violation of the MSA and APA—Failure to Comply with MSA)

109. Alaska incorporates by reference each of the allegations in paragraphs 1 through 108.

110. The Service violated the MSA by promulgating a fishery management regulation that fails to comply with the substantive requirements of the MSA. The MSA requires, among other things, that any fishery management regulation shall be consistent with the national standards for fishery management and conservation. 16 U.S.C. § 1851(a). These standards require that fishery management regulations shall, among other things, be based upon the best scientific information available, consider efficiency in the utilization of fishery resources, minimize costs and unnecessary duplication, and take into account the importance of fishery resources to fishing communities by utilizing economic and social data.

111. The Interim Final Rule promulgated by the Service constitutes a "regulation," as that term is used in 16 U.S.C. § 1851(a), and fails to comply with the National Standards and other requirements of the MSA.

112. These violations of the MSA are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or without observance of procedure required by law, which has caused

or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and the MSA, 16 U.S.C. § 1855, and entitle Alaska to the relief requested below.

EIGHTH CLAIM FOR RELIEF

(Violation of the MSA and APA—Failure to Comply With Requirements for Notice-and-Comment Rulemaking)

113. Alaska incorporates by reference each of the allegations in paragraphs 1 through 112.

114. The Service violated the APA and the MSA's requirements that the Secretary give notice of any proposed rulemaking in the Federal Register and provide an opportunity for public comment. 5 U.S.C. § 553(b); 16 U.S.C. § 1854.

115. NMFS lacks good cause to excuse the APA's notice-and-comment procedures. The Interim Final Rule is inappropriate in the circumstances of this case because, among other things, any impracticability to complete normal notice-and-comment as claimed by NMFS is due to the agency's own delay in a four-year plus ESA consultation process, and not a present need for urgent action. Also, because the BioOp RPA is not supported by ESA standards, NMFS' claimed need to implement the RPA does not support abandoning the required notice-and-comment process. In particular, as identified in the comments of Alaska and others on the draft BioOp, the final BioOp's jeopardy/adverse modification determination suffers from uncertainty and controversy about, among other things, whether nutritional stress (and fisheries in particular) has caused the Steller sea lions to have difficulty in maintaining or increasing their populations in the Aleutian Islands, and whether those isolated effects will affect the species' recovery as a whole.

116. NMFS also failed to explain or provide adequate justification for why it could not comply with the normal notice-and-comment procedures prior to implementing the final rule measures before January 1, 2011, when it started the formal ESA Section 7 consultation process four-and-a-half years ago in 2006.

117. There is no indication by NMFS that allowing additional time for review of the RPA would cause harm to Steller sea lions or that urgent or immediately effective rulemaking action was required. Numerous measures are already in place for sea lion conservation and protection, and the numbers of Steller sea lions within the western DPS have steadily increased over the past decade. The final BioOp indicates that Steller sea lion concerns are localized to two sub-regions outside core habitat and there is not evidence of a range-wide or population-wide concern about the western DPS' continued viability. This situation undermines NMFS' purported justification that an interim final rule without notice and comment prior to implementation is necessary to prevent the likelihood of jeopardy to the western DPS of Steller sea lions or adversely modify its designated critical habitat.

118. These violations of the MSA and APA notice-and-comment requirements for rulemaking are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and the MSA, 16 U.S.C. § 1855, and entitle Alaska to the relief requested below.

NINTH CLAIM FOR RELIEF

(Violation of the RFA and APA—Failure to Examine Effects on Small Entities)

119. Alaska incorporates by reference each of the allegations in paragraphs 1 through 118.

120. The Service violated the RFA, 5 U.S.C. §§ 603, 604, 609, by failing to prepare a Regulatory Flexibility Analysis that adequately considers the impact of the Interim Final Rule on small businesses and small governments. Specifically, by issuing the new fisheries measures without notice and comment, NMFS failed to satisfy its obligation to examine the effect of its rules on the small businesses and governments that are crucial to Alaska's economy.

121. These violations of the RFA are arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law, which has caused or threatens serious prejudice and injury to Alaska's rights and interests, are reviewable under the APA, 5 U.S.C. §§ 701-706, and entitle Alaska to the relief requested below.

TENTH CLAIM FOR RELIEF

(Violation of the APA—Arbitrary and Capricious, Abuse of Discretion, Not in Accordance with Law)

122. Alaska incorporates by reference each of the allegations in paragraphs 1 through 121.

123. The Service's conduct in issuing the Interim Final Rule and accompanying EA/RIR, as described in the preceding Claims for Relief, was arbitrary, capricious, an abuse of discretion, otherwise not in accordance with law, or without observance of procedure required by law.

124. Under the APA, this Court has authority to “hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law,” 5 U.S.C. § 706(2)(A), and to set aside an agency decision “without observance of procedure required by law,” 5 U.S.C. § 706(2)(D). Alaska is therefore entitled to the relief requested below.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment providing the following relief:

A. Issue immediate injunctive relief, including temporary restraining order(s) and/or preliminary injunction(s), as well as a permanent injunction, to prohibit the Defendants from relying on, enforcing, or applying the BioOp, the RPA, the EA/RIR and FONSI, and the Interim Final Rule to implement changes to the groundfish fisheries in the BSAI and GOA;

B. Declare that Defendants violated the ESA, MSA, RFA, NEPA, and the APA;

C. Declare that Defendants’ actions, as set forth above, were arbitrary and capricious, an abuse of discretion, not in accordance with law, and without observance of procedure required by law;

D. Vacate and set aside the BioOp, the RPA, the EA/RIR and FONSI, and the Interim Final Rule;

E. Enjoin the Defendants from relying on or enforcing the BioOp, the RPA, the EA/RIR and FONSI, and the Interim Final Rule;

F. Vacate and set aside the Interim Final Rule to implement changes to groundfish fisheries management in the Bering Sea and Aleutian Islands and Gulf of Alaska;

G. Remand with an order with instructions requiring full compliance with the ESA, MSA, RFA, NEPA, and APA; and

H. Award Alaska its attorneys' fees and costs incurred in bringing and maintaining this action; and

I. Grant Alaska such other and further relief as the Court may deem necessary and appropriate.

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DATED this 14th day of December, 2010.

RICHARD A. SVOBODNY
ACTING ATTORNEY GENERAL

By: /s/Bradley E. Meyen
Bradley E. Meyen (Alaska Bar No. 8506067)
Assistant Attorney General
Department of Law
1031 W. 4th Avenue, Suite 200
Anchorage, AK 99501
Telephone: (907) 269-5232
Facsimile: (907) 279-2834
Email: brad.meyen@alaska.gov

HOLLAND & HART LLP

Murray D. Feldman
Holland & Hart LLP
P.O. Box 2527
Boise, ID 83701
Telephone: (208) 342-5000
Facsimile: (208) 343-8869
Email: mfeldman@hollandhart.com

Craig D. Galli
Holland & Hart LLP
60 E. South Temple, Suite 2000
Salt Lake City, UT 84111-1031
Telephone: (801) 799-5800
Facsimile: (801) 364-9124
Email: cgalli@hollandhart.com

Pro Hac Vice applications to be submitted
Counsel for Plaintiff State of Alaska

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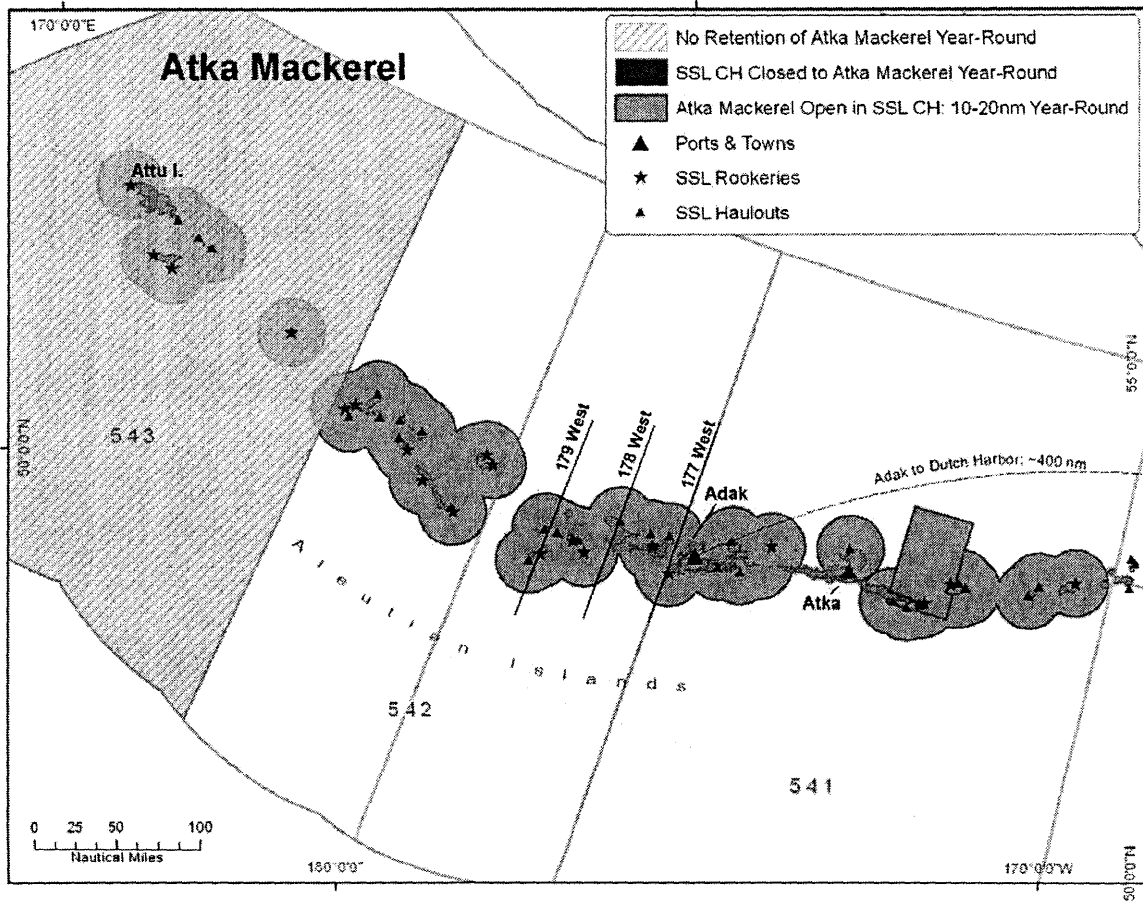


Figure 8.2. Map of the RPA for Atka mackerel fisheries in Areas 543, 542, and 541.

1/16/11

To: Alaska Board of Fish

(98)

Concerning proposal to increase lengths of seines fishing on the outside of Chignik Bay District (Western, Eastern and Central District). As permit holders who fish exclusively in Chignik Bay District, we feel if we do not get a gear increase in length as well, it would be totally unfair and would create an intercept problem within our own area.

The Board would not allow longer boats in certain areas within Bristol Bay. Why would this proposal pass, especially if these areas were potentially intercepting fish away from terminal areas.

We believe that all the arguments increasing boat size in Bristol Bay could very easily apply in this case and we appreciate very careful consideration.

Thank You,

Signed Concerned Chignik Permit Holders

CLEMENS D GRUNERT JR

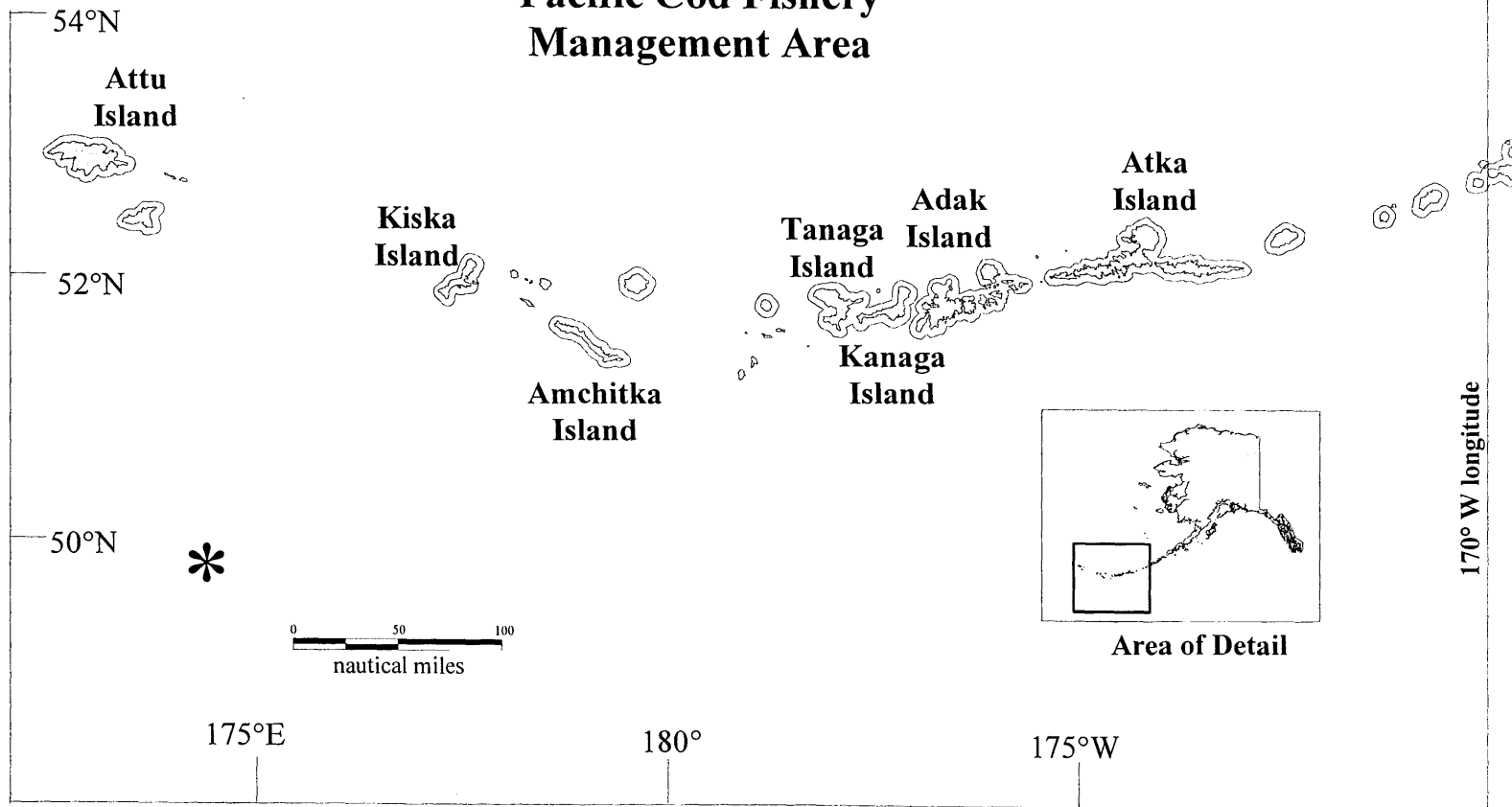
Clemens D Grunert Jr

FRANK GRUNERT

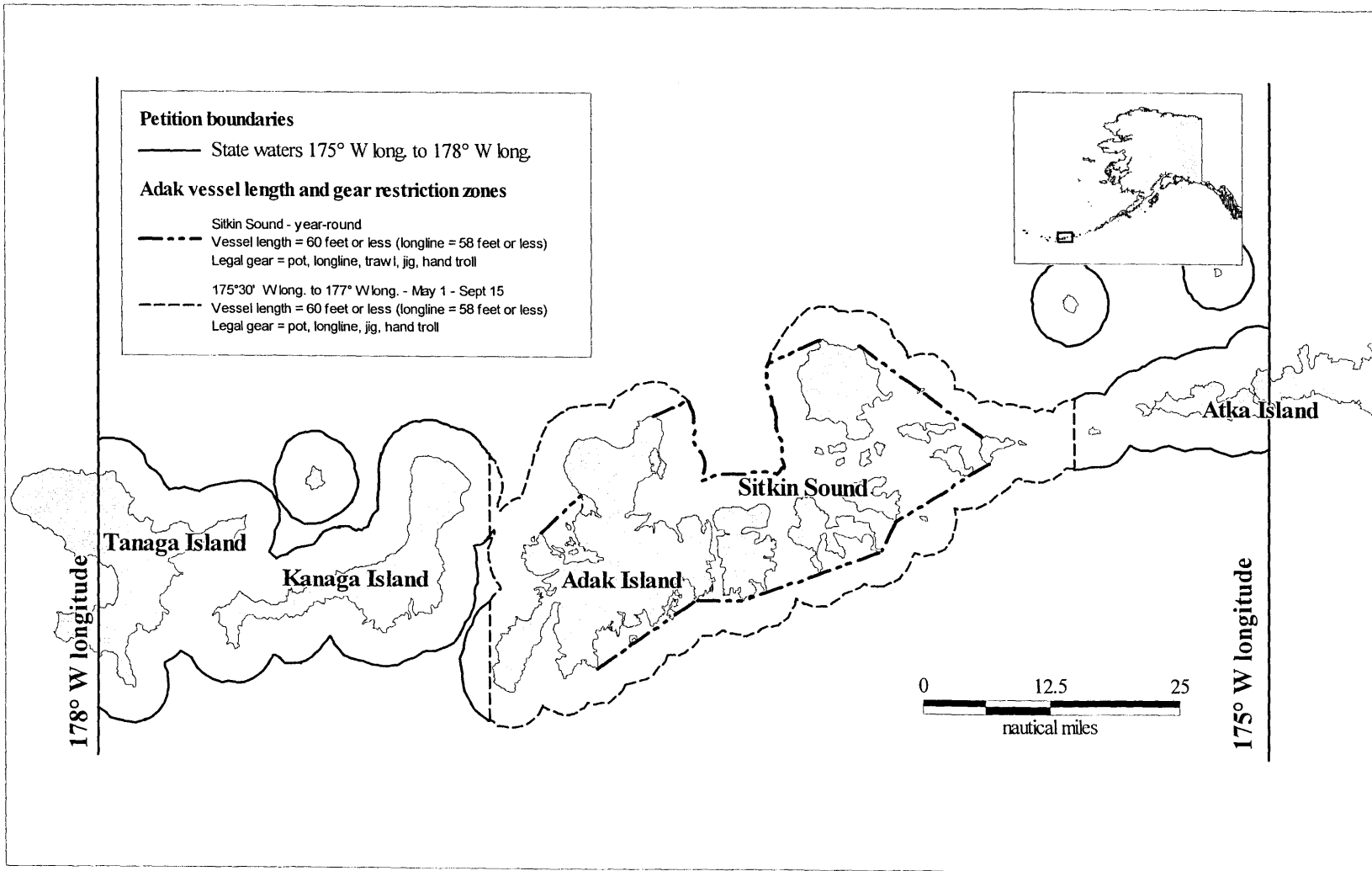
Frank Grunert

**Aleutian Islands
State-Waters
Pacific Cod Fishery
Management Area**

54°36' North latitude



12221



Proposal 95

RC- 22

Fishing Location	Current				Proposed			
	Gill Net	Hand Seine	Hook/Line	Spear	Gill Net	Hand Seine	Hook/Line	Spear
Chignik Lagoon to Mensis	X	X			X	X	X	X
Chignik River	X	X			X	X		X
Chignik Lake	X	X ^a			X	X	X	X
Lower one mile Clark River	X	X			X	X	X	X
Lower one mile Home Creek	X	X			X	X	X	X
All Chignik Lake Tributaries					X		X	X
Black River					X		X	X
Black River Tributaries					X		X	X
Black Lake					X		X	X
Black Lake Tributaries					X		X	X

^aHand seine may not have a purse line.

Submitted by the Alaska Department of Fish and Game
 Department of Commercial Fisheries

Proposal 96

RC- 23

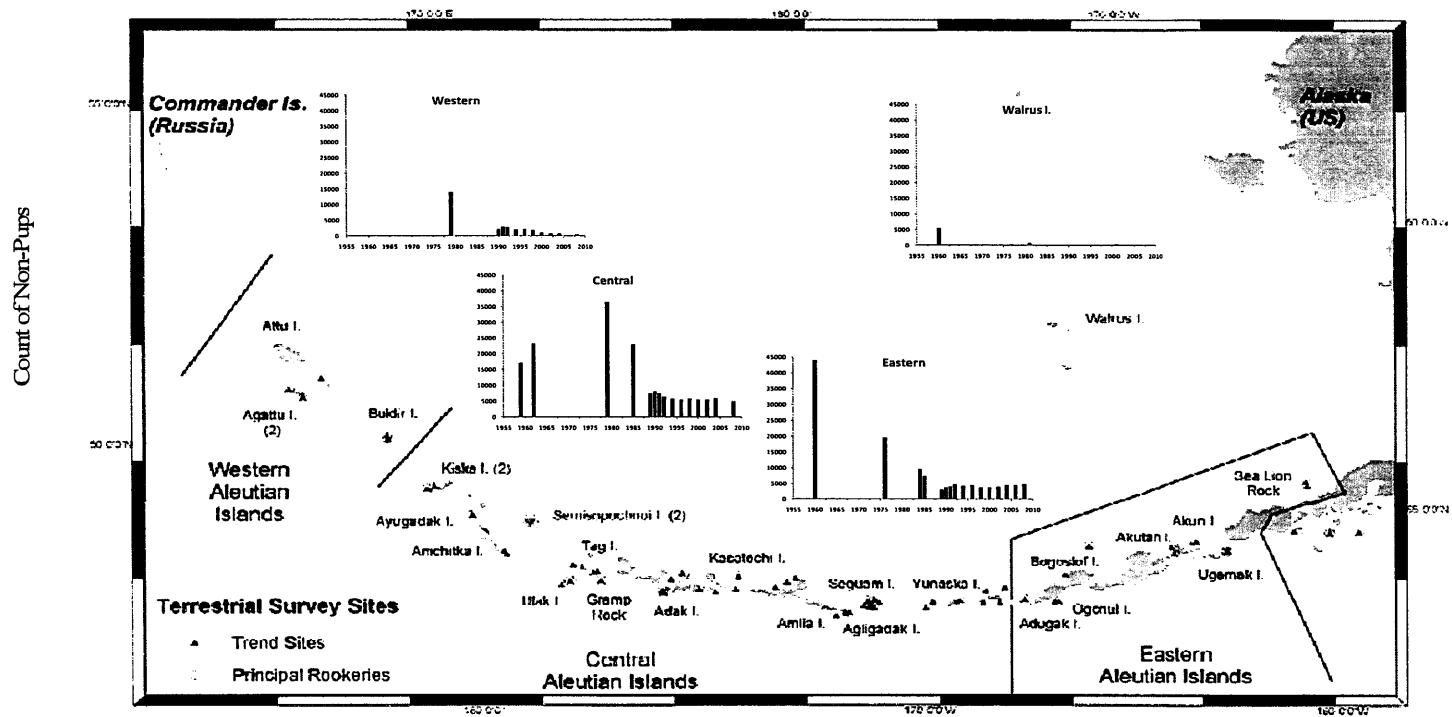
Fishing Location	Current				Proposed			
	Gill Net	Hand Seine	Hook/Line	Spear	Gill Net	Hand Seine	Hook/Line	Spear
Chignik Lagoon to Mensis	X	X			X	X	X	X
Chignik River	X	X			X	X		X
Chignik Lake	X	X ^a			X	X	X	X
Lower one mile Clark River	X	X			X		X	X
Lower one mile Home Creek	X	X			X		X	X
All Chignik Lake Tributaries							X	X
Black River							X	X
Black River Tributaries							X	X
Black Lake							X	X
Black Lake Tributaries							X	X

^aHand seine may not have a purse line.

Submitted by the Alaska Department of Fish and Game
 Department of Commercial Fisheries

RC
24

Figure 3.6. Counts of adult and juvenile Steller sea lions on western DPS trend sites in three sub-areas of the Aleutian Islands (eastern, central and western), and on Walrus Island in the eastern Bering Sea, 1950s through 2008. Principal rookeries (named) and major terrestrial haul-out trend sites are shown (NMFS 2008; Demaster 2009).



RC24

Figure 3.5. Counts of adult and juvenile Steller sea lions on western DPS trend sites in three sub-areas of the Gulf of Alaska, 1950s through 2008. Principal rookeries (named) and major terrestrial haul-out trend sites are shown (NMFS 2008; Demaster 2009).

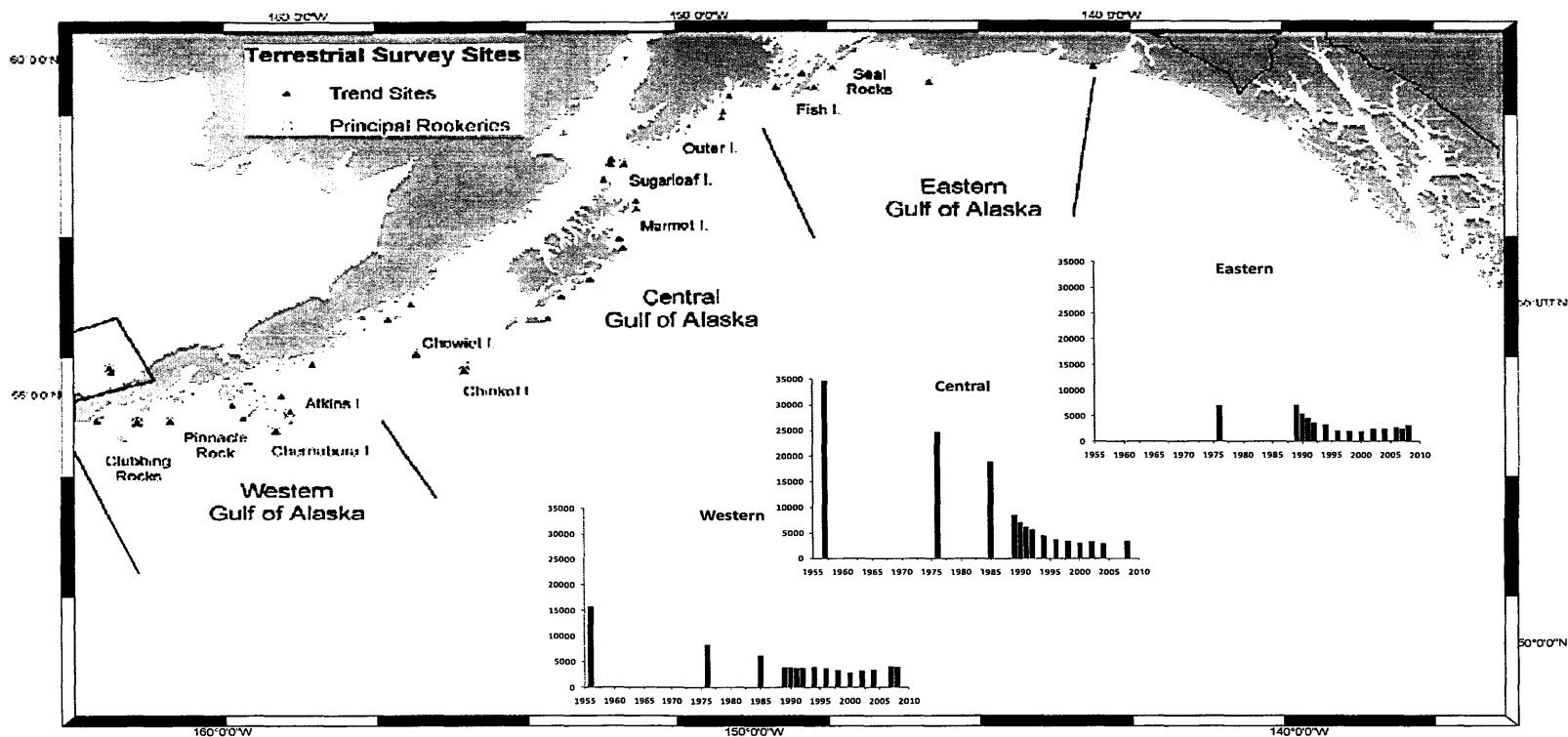


Table 5.8. Summary table of Steller sea lion biology, status, and trends and 2008 Atka mackerel, Pacific Cod, and Pollock harvest overall and in Steller sea lion critical habitat by RCA; biomass and harvest rates by NMFS Management Area.

SSL Sub-Region	Fishery Management Area	RCA	Trend Sites (n)/Rookeries (n) ¹	Non-Pup Counts at SSL Trend Sites 2008A ²	SSL Trend Sites Avg Annual Growth Rate, 2000-2008 (%)		Overall Difference in SSL Counts, 2000-2008A (%)		Pups (2009): Adult Females (2008) ³	Primary Prey (% FO) ⁴		Fraction of 2008 Harvest Amount by Zone ⁷												Estimated Biomass 2008 (top row) and Total Harvest 2008 (bottom row) ⁵			Fraction of 2008 Biomass Harvested by Fishery Management Area		
					Non-Pups ³	Pups ¹	Non-Pups ²	Pups ⁴		Summer	Winter	Atka Mackerel			Pacific Cod			Pollock			Atka Mackerel	Pacific Cod	Pollock	Atka Mackerel	Pacific Cod	Pollock			
												0-3	3-10	10-20	Foraging	0-3	3-10	10-20	Foraging	0-3							3-10	10-20	Foraging
Western AI	543	1	10/4	894	-7	-11	-45	-43	0.29			0.00	0.00	0.65	0.00	0.32	0.63	0.00	0.32	0.30	243,692	17,302	7,748	0.07	0.43	0.01			
Central AI	542	2	12/4	772	-4	-4			0.39	Atka mackerel (96), Salmon (17), Cephalopods (13), Pollock (7), P. Cod (6)	Atka mackerel (55), P. Cod (26), Irish Lord (23), Cephalopods (16), Pollock (12), Seafood (12)	0.00	0.01	0.47	0.02	0.66	0.20	0.00	0.02	0.25	268,957	20,152	32,762	0.08	0.27	0.01			
	542	3	12/4	1896	-1	-4						0.00	0.02	0.98	0.00	0.76	0.24	0.04	0.74	0.21	22,328	5,434	290						
	541	4	13/2	1351	-3	2						0.00	0.96	0.02	0.00	0.52	0.30	0.00	0.05	0.10	295,765	39,804	87,076	0.06	0.46	0.01			
	541	5	12/2	1645	2	2						0.00	0.00	0.01	0.00	0.03	0.72	0.00	0.03	0.81	18,719	18,180	872						
Eastern AI	610	6	31/7	6519	3	5	28	47	0.37	Pollock (46), Salmon (38), Herring (35), Sand Lance (34), Atka mackerel (32), Rock Sole (19), P. Cod (18)	Pollock (53), Atka mackerel (43), P. Cod (39), Irish Lord (35), Sandlance (26), Salmon (25), Arrowtooth (21)	0.00	0.11	0.79	0.01	0.00	0.02	0.06	0.00	0.00	0.07	0.17	91,670	128,512	150,084	0.02	0.16	0.11	
	610	7	16/5	5274	5	3			0.38	Sandlance (65), Salmon (57), Pollock (53), P. Cod (36), Atka mackerel (21), Arrowtooth (14)	Pollock (93), P. Cod (31), Salmon (17), Sandlance (17), Arrowtooth (7)	0.00	0.10	0.25	0.00	0.26	0.38	0.00	0.43	0.27	1,787	20,973	17,257						
Western GOA	620	8	11/3	1492	0	1	39	23				0.00	0.00	0.05	0.70	0.00	0.00	0.40	0.16	2,847	214,601	226,771							
Central GOA	630	9	18/3	2814	0	1	1	6	0.42	Salmon (56), Pollock (46), Arrowtooth (45), Sandlance (16), Capelin (13), Herring (12)	Pollock (44), P. Cod (43), Sandlance (38), Irish Lord (17)	0.00	0.12	0.36	0.00	0.01	0.00	0.72	0.00				0.11	0.17	0.15				
Eastern GOA	640	10	19/4	3675	5	4	58	57	0.38	Salmon (84), Sand Lance (39), Herring (24), Capelin (13), Pollock (8), P. Cod (5), Arrowtooth (5)	not available																		

Source Tables:
¹ AFSC 2010a
² Table 3.1(b)
³ Table 3.9
⁴ Table 3.2
⁵ Table 3.6
⁶ Table 3.16
⁷ Table IV 1999-2008 Areas 1-10
⁸ Table IV-12

**NOAA
FISHERIES
SERVICE**



2011 Kanaga Island/Ship Rock Rookery Groundfish Closure

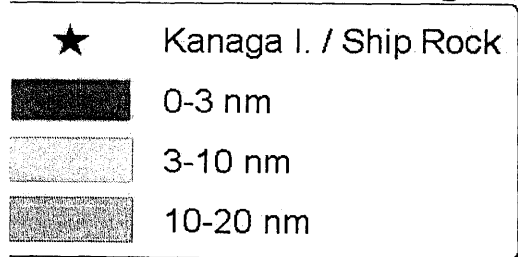
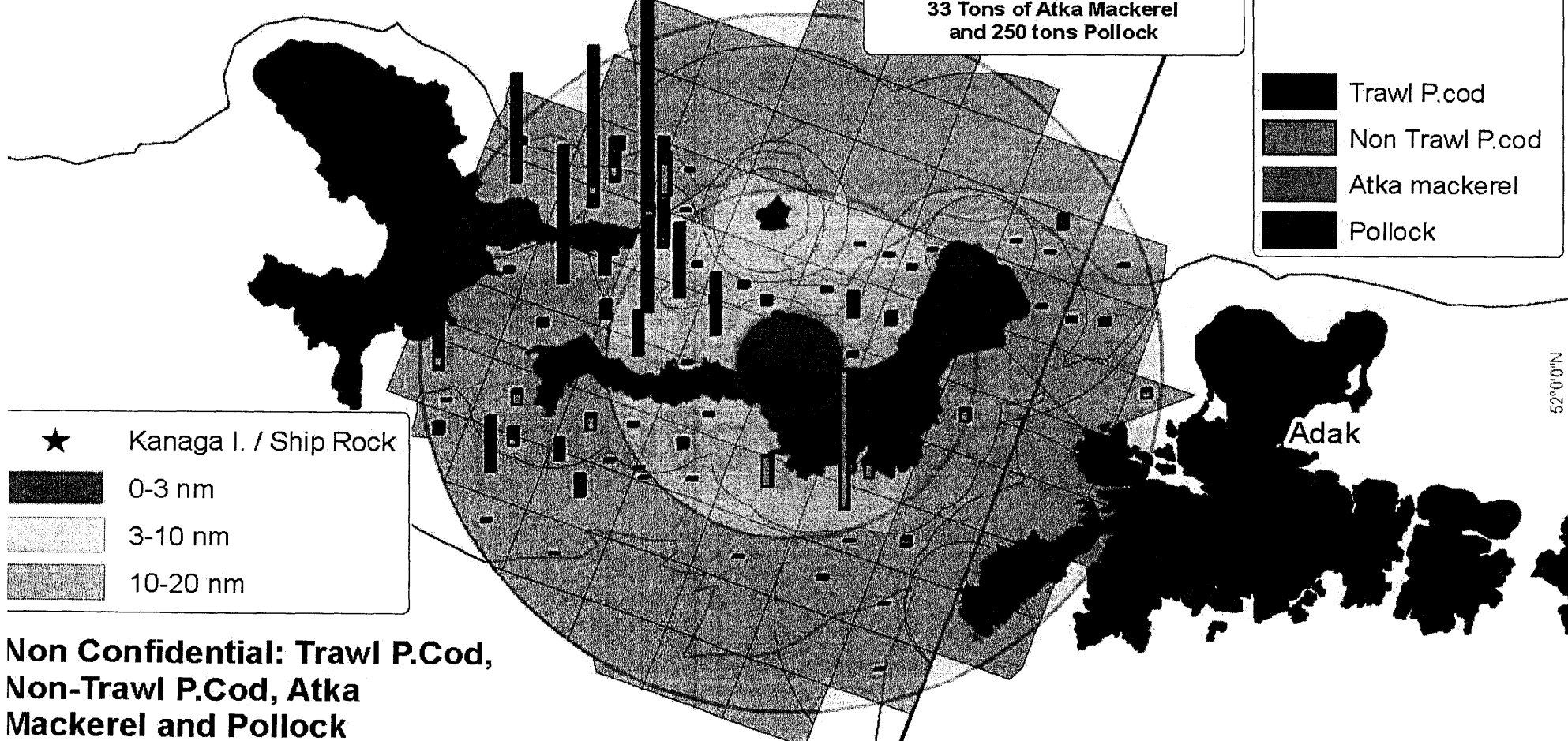
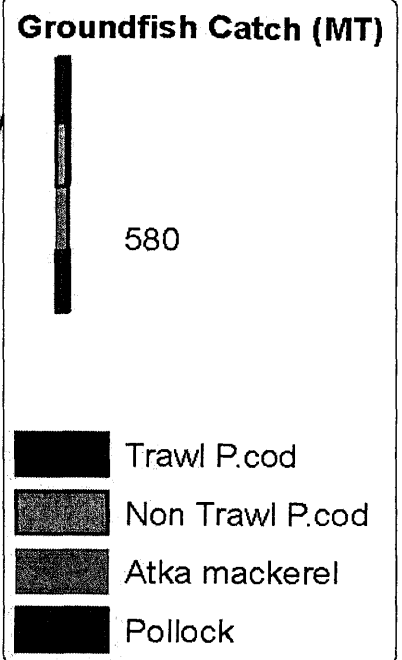
151 52

Kanaga I./Ship Rock

178°0'0"W

The length of the bar (all colors combined) represents approximately 580 tons catch. The longest bar on the map represents approximately 1200 tons of catch

Catch between 2006 and 2009, within 20nm of Kanaga I/Ship Rock was 4212 tons of Trawl P.Cod, 1134 Tons of Non-Trawl P.Cod, 33 Tons of Atka Mackerel and 250 tons Pollock



Non Confidential: Trawl P.Cod, Non-Trawl P.Cod, Atka Mackerel and Pollock Combined 2006 - 2009 Data Catch-In-Areas Database

1000 meter depth strata

178°0'0"W









N.00°29

8/25/2010

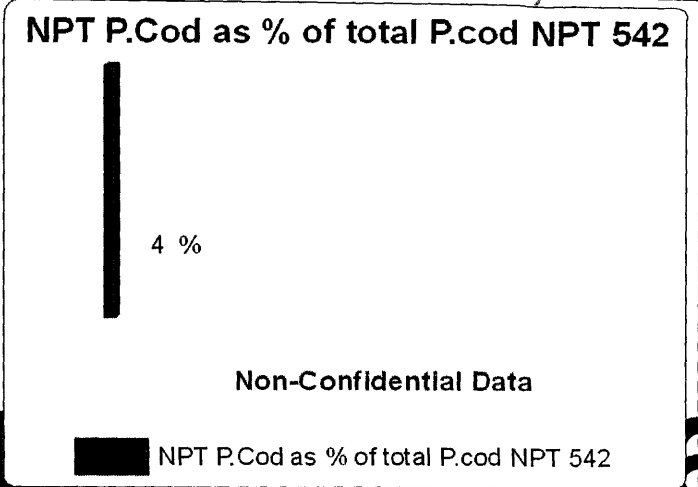


Considerations for the BOF

- Add the groundfish closure around Kanaga Island/Ship Rock rookery to
 - All parallel groundfish fisheries
 - State waters Pacific cod GHL fishery
 - State waters sablefish

-  No Retention of Atka Mackerel or P.cod Year-Round
-  SSL CH Closed to Atka Mackerel and P.cod Trawl Year-Round
-  AI: NPT Open Area
-  P.cod Trawl Open in SSL CH: 10-20nm -Jan-20 to June-10. Atka Mackerel Closed
-  P.cod Trawl Open in SSL CH: 10-20nm -Jan 20 to June 10
-  Ports & Towns
-  SSL Rookeries
-  SSL Haulouts

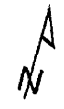
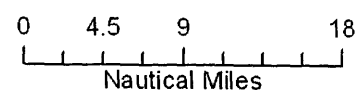
P.Cod Trawl



This one long catch bar represents about 8% of the P.Cod Trawl in 542. This catch bar is 6.7nm from the nearest Haulout; 10.3nm from Kanaga I./Ship Rock

Historically about 1/3 of the P.Cod Trawl from 542 comes from the CH area between 177w and 178w -- most of that in the zone between 3 and 10nm CH.

In the Proposed RPA, 0-10nm is closed to P.cod trawl all year



RC26

To: B.O.F
From: Dean Anderson.

Recommendation of a Formula to lower the impact by larger capacity vessels in the Chignik state water cod fishery. Example: $58 \times 23 \times 10.5 \times 0.0067 = 93.8$ tons. This tonnage in addition to the 58 foot length limit should be the largest allowable size vessel to fish in Chignik state waters.



Why Revise the SSL Protection Measures?

- Required under the Endangered Species Act
- NMFS must ensure that the AK Groundfish Fisheries are not likely to result in jeopardy of continued existence or adverse modification of critical habitat (JAM) for all ESA-listed species

NOAA
FISHERIES
SERVICE



2011 Revised Steller Sea Lion Protection Measures

Presentation to the Alaska Board of Fisheries

January 2011

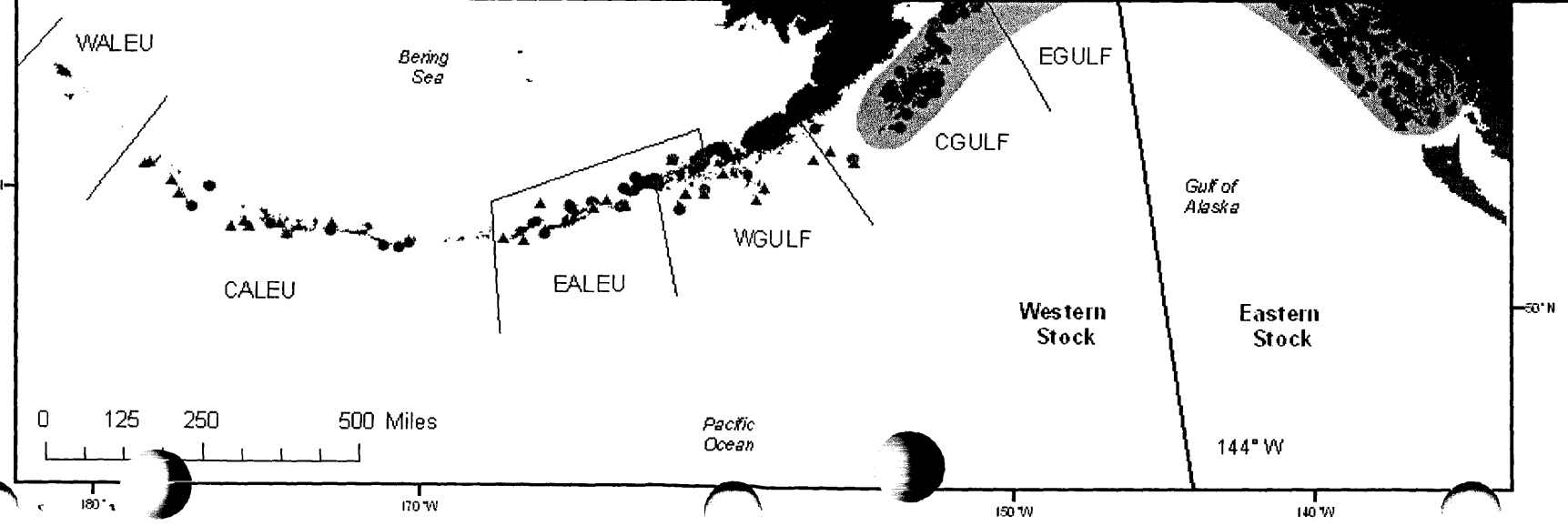
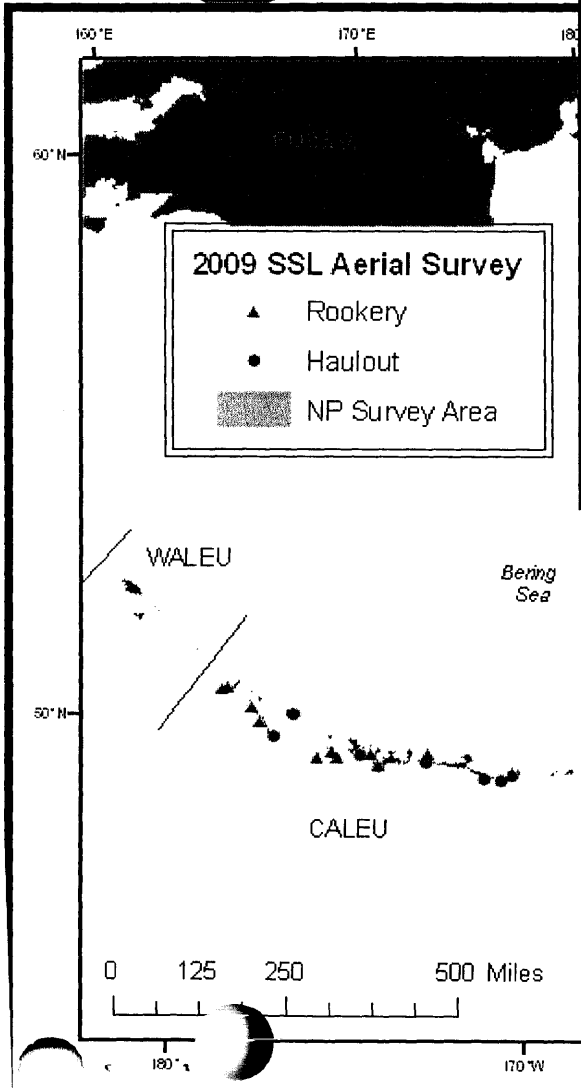
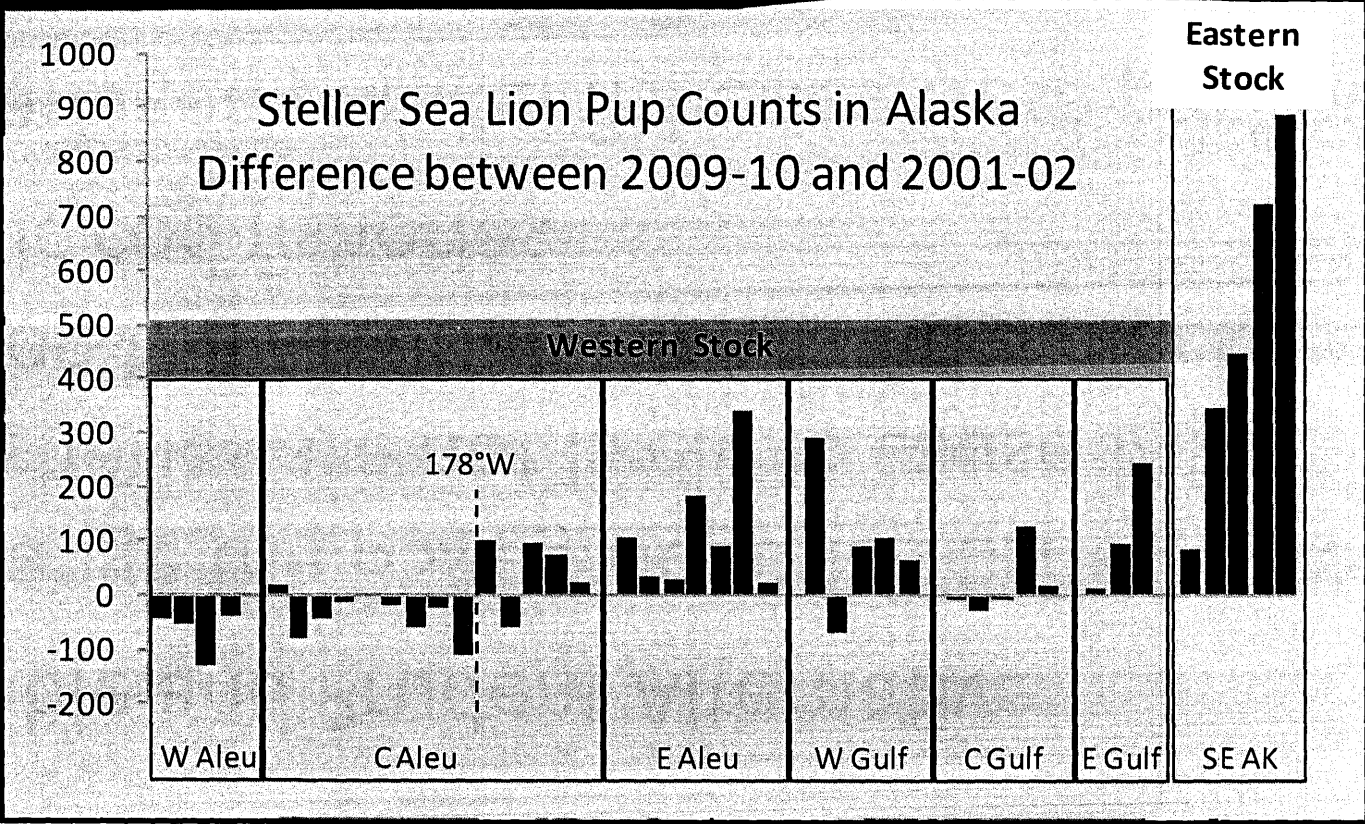
Melanie Brown

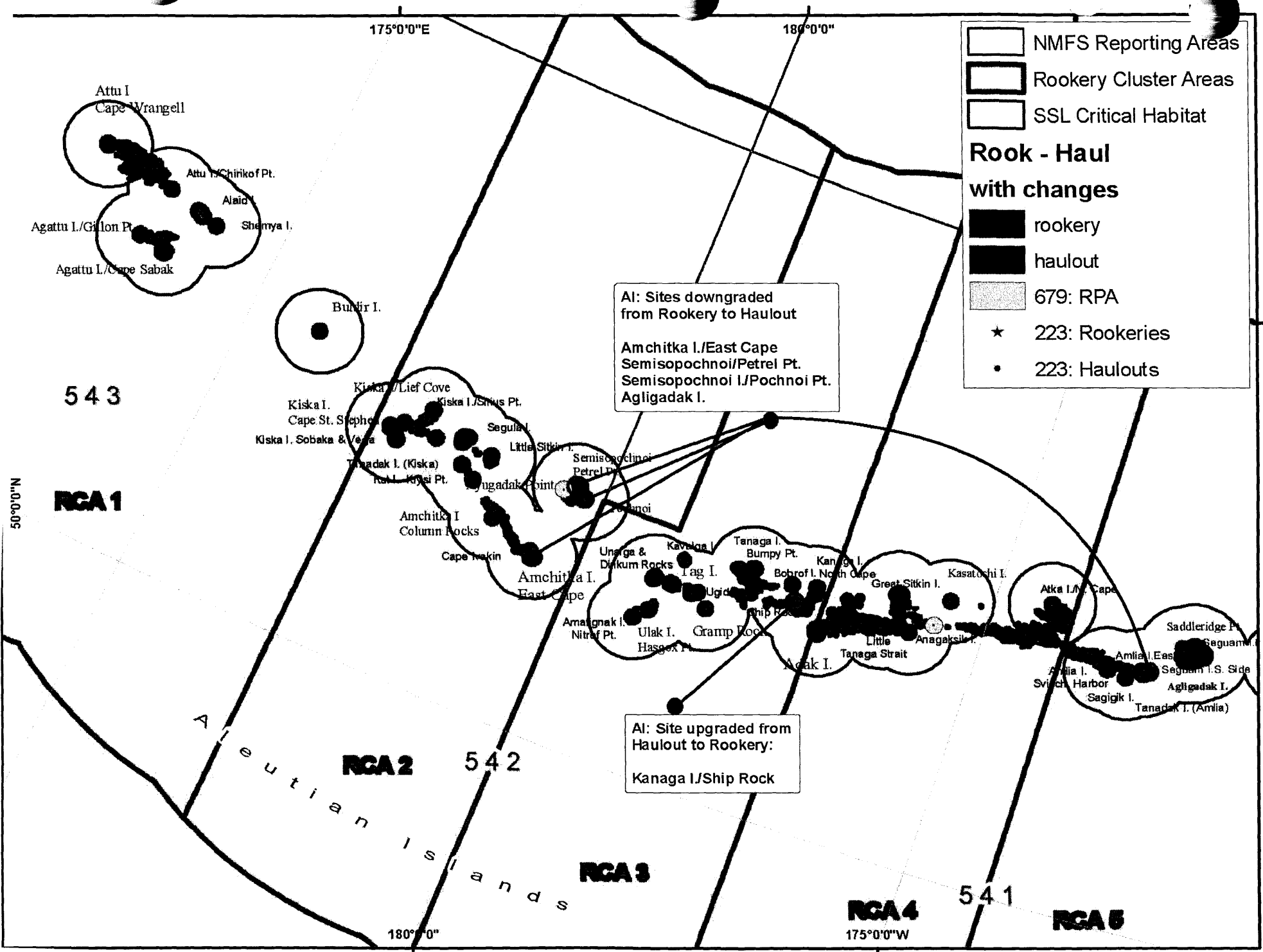
NMFS Alaska Region Sustainable Fisheries Division



Section 7 Consultation

- Resulted in the November 2010 Biological Opinion
- Reasonable and Prudent Alternative
- Must change the BSAI groundfish fisheries to ensure fisheries are not likely to cause JAM, focusing on the Aleutian Islands Atka mackerel and Pacific cod fisheries
- State-managed parallel fisheries were part of the action analyzed in the Biop





175°0'0"E

180°0'0"

NMFS Reporting Areas
 Rookery Cluster Areas
 SSL Critical Habitat
Rook - Haul with changes
 rookery
 haulout
 679: RPA
 ★ 223: Rookeries
 • 223: Haulouts

AI: Sites downgraded from Rookery to Haulout
 Amchitka I./East Cape
 Semisopchnoi/Petrel Pt.
 Semisopchnoi I./Pochnoi Pt.
 Agligadak I.

AI: Site upgraded from Haulout to Rookery:
 Kanaga I./Ship Rock

Attu I
 Cape Wrangell
 Attu I./Chirikof Pt.
 Alaid I.
 Agattu I./Gillon Pt.
 Shemya I.
 Agattu I./Cape Sabak

Bunbir I.

Kiska I./Lief Cove
 Kiska I./Sinus Pt.
 Cape St. Stephen
 Segula I.
 Kiska I. Sobaka & Vanya
 Little Sitkin I.
 Tanadak I. (Kiska)
 Petrel Pt.
 Agligadak Point
 Semisopchnoi
 Petrel Pt.
 Pochnoi

Amchitka I.
 Column Rocks
 Cape Nekin

Amchitka I. East Cape

Unalga & Dikum Rocks
 Kaveloa I.
 Tanaga I.
 Bumpy Pt.
 Kanaga I.
 Bobroff I. North Cape
 Kasatochi I.
 Ugod I.
 Ship Rock
 Ulak I.
 Gramp Rock
 Little
 Anagaksik I.
 Tanaga Strait
 Adak I.

Atka I./Cape
 Saddleridge Pt.
 Segum I.
 Amliia I. East
 Amliia I.
 Switch Harbor
 Sagigik I.
 Tanadak I. (Amliia)
 Segum I. S. Side
 Agligadak I.

543

RCA 1

50°0'0"N

RCA 2

542

RCA 3

RCA 4

541

RCA 5

180°0'0"

175°0'0"W

Aleutian Islands

2010 Nontrawl P. Cod

523

Attu I
Cape Wrangell

Attu I./Chirikof Pt.

Alaid I.

Shemya I.

Attu I./Gillon Pt.

Agattu I./Cape Sabak

Buldir I.

Kiska I./Lief Cove

Kiska I.
Cape St. Stephen

Kiska I./Sirius Pt.

Segula I.

Kiska I. Sobaka & Vega

Little Sitkin I.

Tanadak I. (Kiska)

Rat I. Krysl Pt.

Pygadak Point

Semisopochinci
Petrel Pt.

Pechnoi

Amchitka I.
Column Rocks

Cape Ivakin

Amchitka I.
East Cape

Unaga &
Dinkum Rocks

Kavagva I.

Tanaga I.
Bumpy Pt.

Tag I.

Bobrof I. North Cape

Kanaga I.

Great Sitkin I.

Kasatochi I.

Alka I./N. Cape

Amalgnak I.

Nitrof Pt.

Ulak I.

Hasgox Pt.

Gramp Rock

Ship Rock

Adak I.

Tanaga Strait

Little

Anagatsik I.

Amila I.
Svlech Harbor

Sagva I.

Bridge Pt.

Seguam I. Finch Pt.

Amukta I.
& Rocks

Tanadak I. (Amila)

Yumas

543

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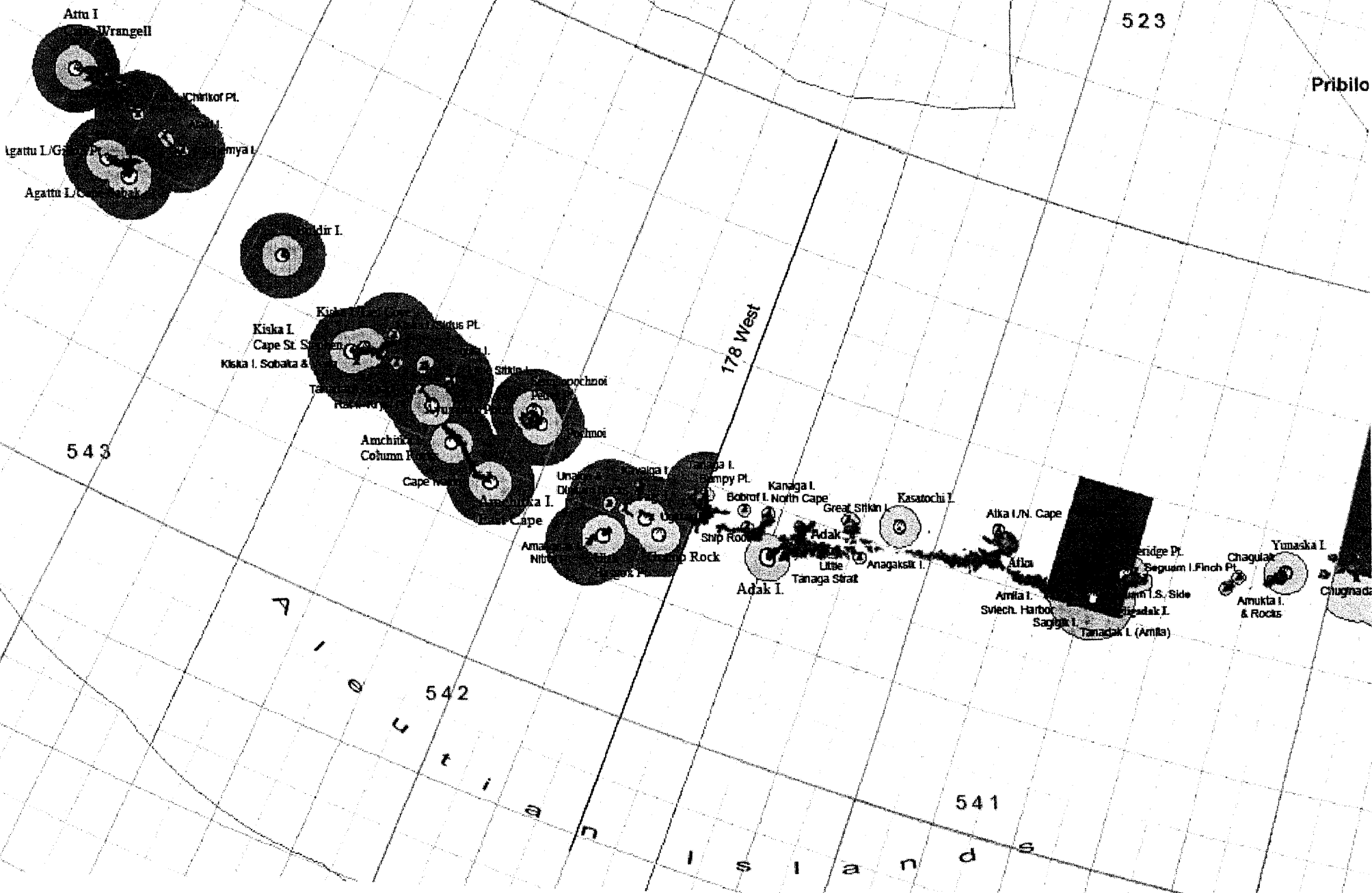
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530
2010 Trawl P. Cod





Interim Final Rule

- Implements the RPA in the Biop
- Primarily affects the Atka mackerel and Pacific cod fisheries in the Aleutian Islands
- More restrictions where population declines are larger
- Effective January 1, 2011 (75 FR 77535, 12/13/10, corrected 75 FR 81921, 12/29/10)









**NOAA
FISHERIES
SERVICE**

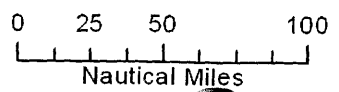
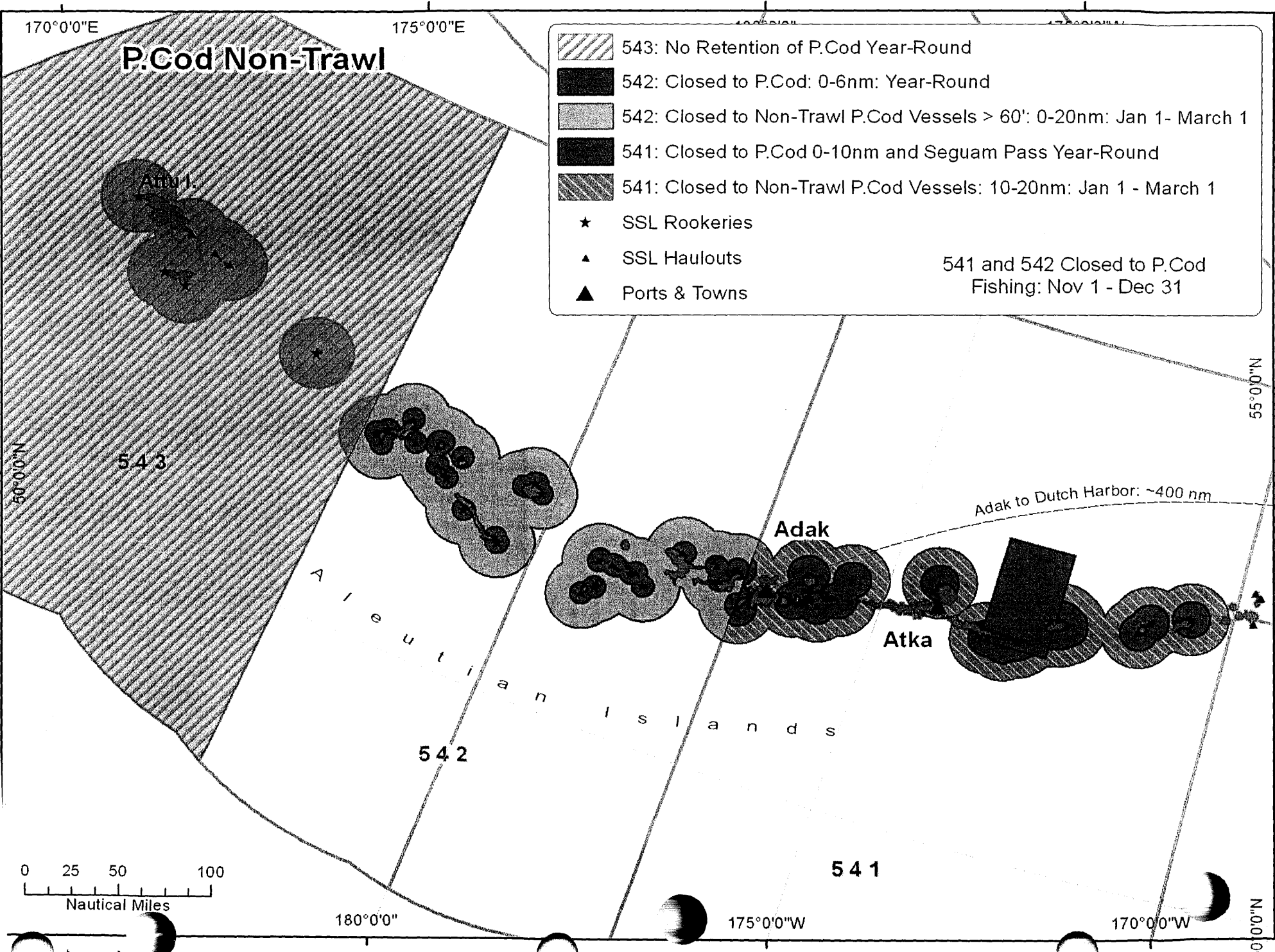


Interim Final Rule

- Comment period ends February 28, 2011 (76 FR 2027, January 12, 2011)

P.Cod Non-Trawl

-  543: No Retention of P.Cod Year-Round
 -  542: Closed to P.Cod: 0-6nm: Year-Round
 -  542: Closed to Non-Trawl P.Cod Vessels > 60': 0-20nm: Jan 1- March 1
 -  541: Closed to P.Cod 0-10nm and Seguam Pass Year-Round
 -  541: Closed to Non-Trawl P.Cod Vessels: 10-20nm: Jan 1 - March 1
 -  SSL Rookeries
 -  SSL Haulouts
 -  Ports & Towns
- 541 and 542 Closed to P.Cod Fishing: Nov 1 - Dec 31



180°0'0"

175°0'0"W

170°0'0"W

55°0'0"N

0°0'0"N

Adak to Dutch Harbor: ~400 nm

543

542

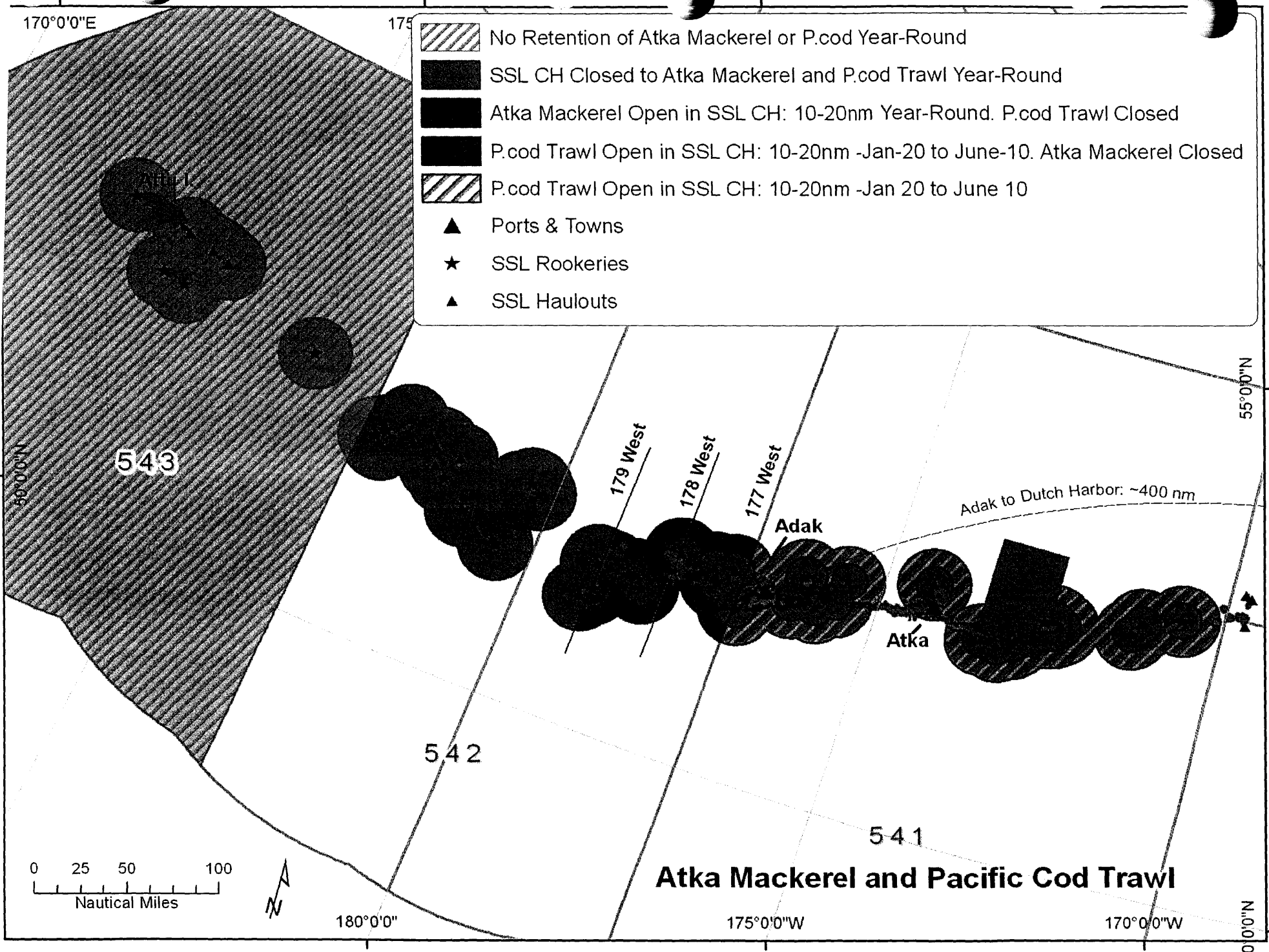
541

Atka

Adak

Atka

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-  No Retention of Atka Mackerel or P.cod Year-Round
-  SSL CH Closed to Atka Mackerel and P.cod Trawl Year-Round
-  Atka Mackerel Open in SSL CH: 10-20nm Year-Round. P.cod Trawl Closed
-  P.cod Trawl Open in SSL CH: 10-20nm -Jan-20 to June-10. Atka Mackerel Closed
-  P.cod Trawl Open in SSL CH: 10-20nm -Jan 20 to June 10
-  Ports & Towns
-  SSL Rookeries
-  SSL Haulouts

543

179 West

178 West

177 West

Adak

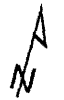
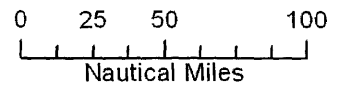
Atka

Adak to Dutch Harbor: ~400 nm

542

541

Atka Mackerel and Pacific Cod Trawl



180°0'0"

175°0'0"W

170°0'0"W



170°0'0"E

175°

55°0'0"N

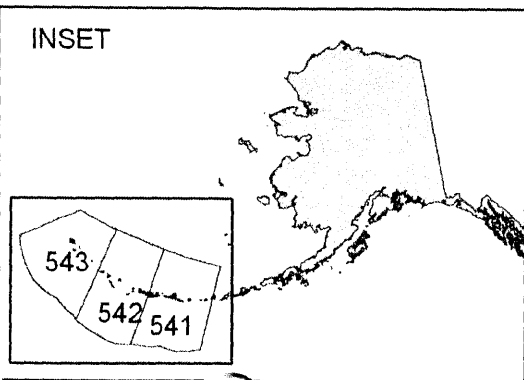
50°0'0"N

Aleutian Islands Habitat Conservation Area

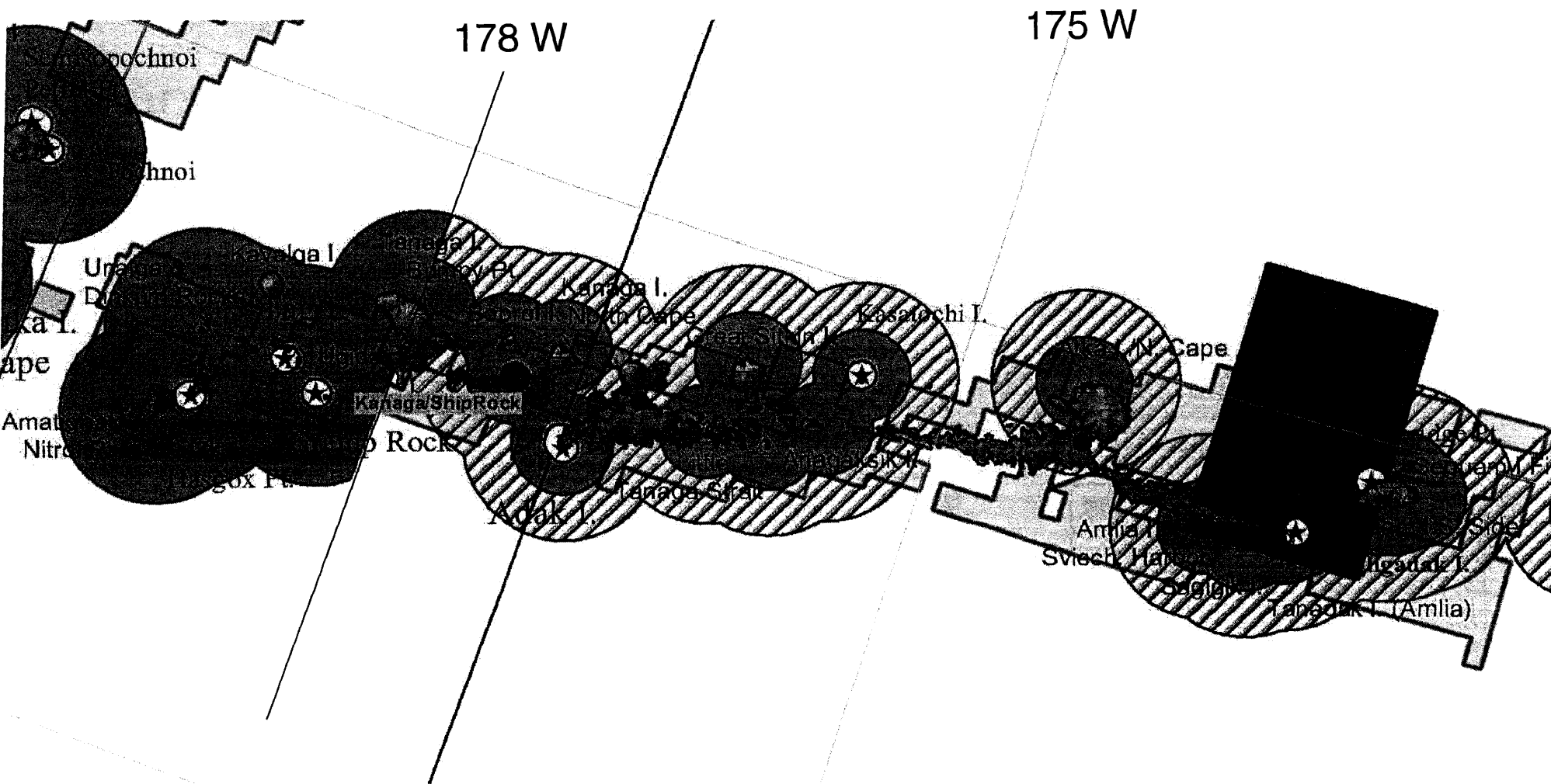
-  Open to Bottom Trawling
-  AIHCA Closed to Bottom Trawling



INSET



- Dark and light blue and white areas are closed year round,
- Lined areas are closed June 10-Dec. 31
- Only the green areas are open to bottom trawling under the Habitat Conservation Measures



Pacific Cod Trawl Management Between 178 W and 175 W Long.

75
30
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N

- Ports and Towns
- △ Haulouts
- ★ Rookeries

- AI, BS, GOA: 3nm No Transit
- AI 542: Kanaga /Ship Rock No Groundfish
- ▨ AI: Habitat Conservation Area: Open Area to NPT*
- ▩ AI, GOA: Habitat Protection Area: No Bottom Contact
- AI 541: No PCod Trawl or Non Trawl
- ▨ AI 541, 542: No Pcod Trawl June 10 - Nov 1
- Stat Inside Waters

P.Cod Trawl: Updated - January 2011
Steller Sea Lion and Habitat Protection

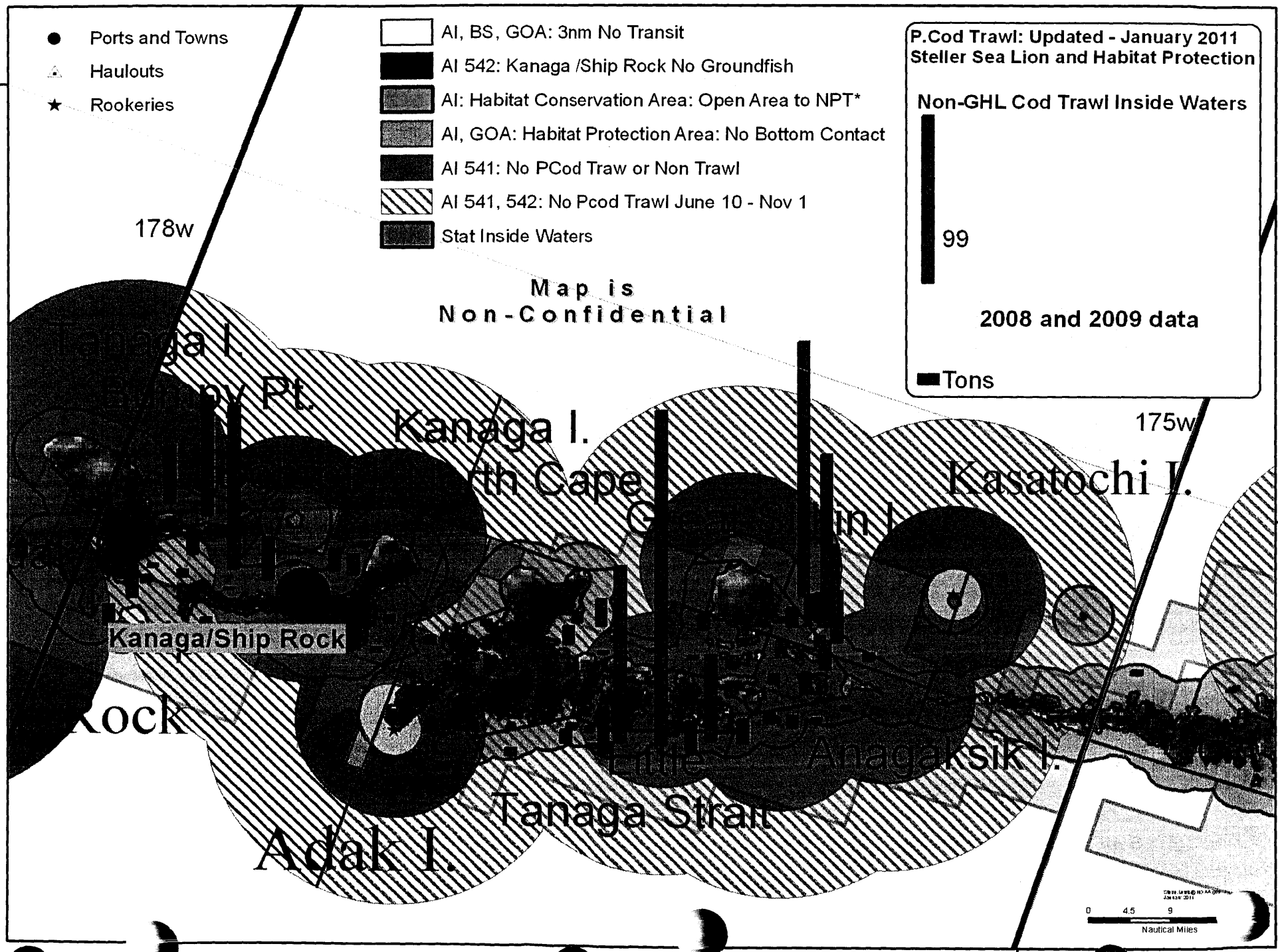
Non-GHL Cod Trawl Inside Waters

99

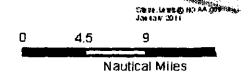
2008 and 2009 data

■ Tons

Map is
Non-Confidential










52°30'0"N



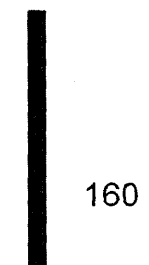
175°0'0"W

Non-GHL Cod Non-Trawl Inside Waters

-  State_Inside_Waters
-  AI, BS and GOA: 3nm No Transit
-  AI 542: Kanaga /Ship Rock No Groundfish
-  541: No Pod Non Trawl Jan1 Mar1
-  AI 541: No PCod Non Trawl
-  AI: No Non-Trawl Vesl > 60 Nov1 - Mar1 & Vesl < 60 Nov 1 - Jan1
-  AI 542: 6nm No Non-Trawl

State_Inside Waters

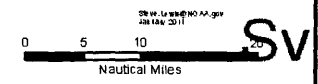
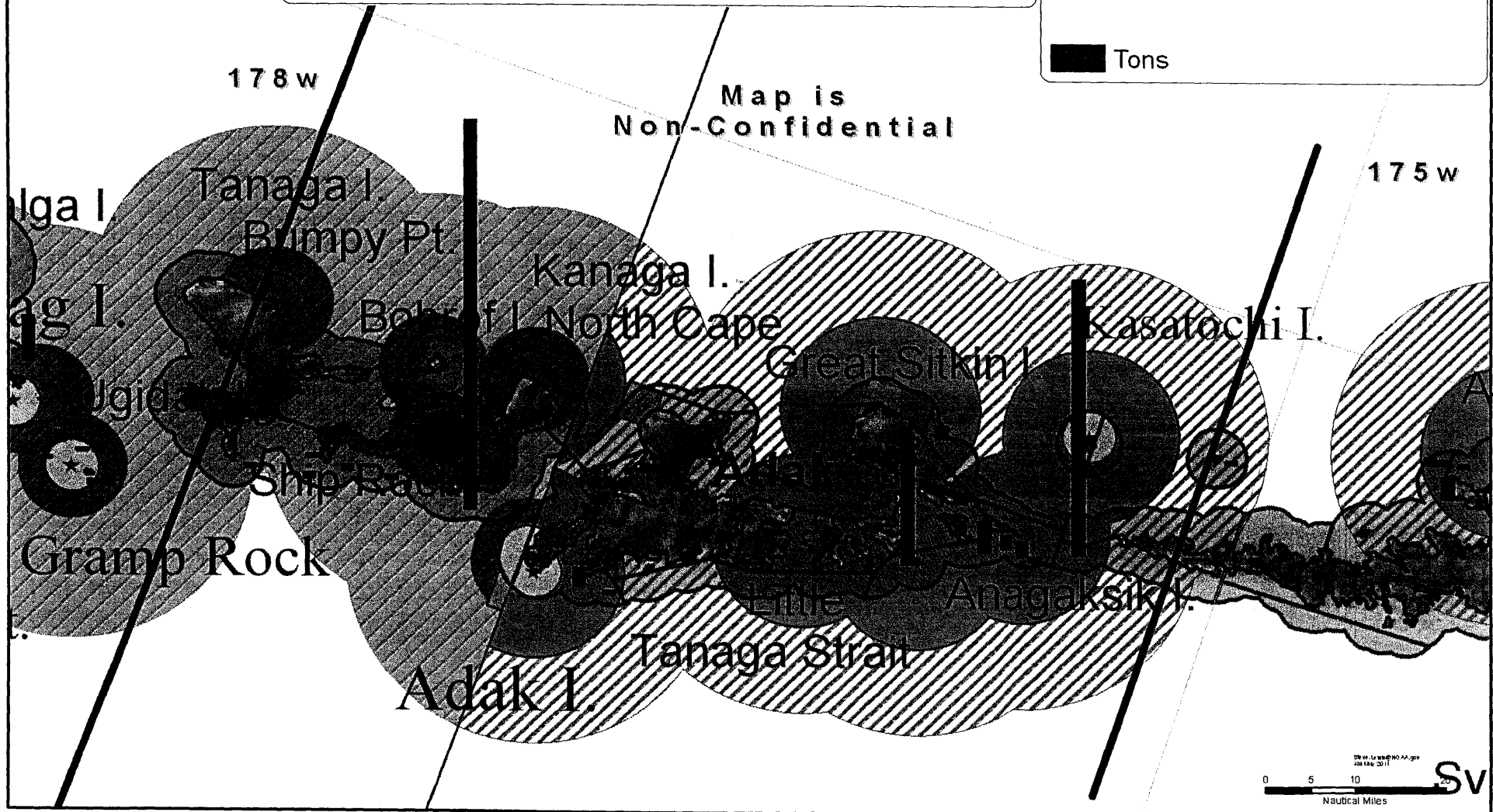
Non-GHL Cod Non-Trawl Inside Waters



160

Tons

Map is
Non-Confidential



175°0'0"W

52°30'0"N

Questions?



RC 28

Alaska Board of Fisheries
Committee Report

COMMITTEE A

Chignik Groundfish
January 17, 2011

Board Committee Members:

1. Mel Morris *Chair
2. John Jensen
3. Tom Kluberton

Alaska Department of Fish and Game Staff Members:

1. Steve Honnold – Westward Region Regional Supervisor, CF
2. Wayne Donaldson – Westward Region Groundfish Management Biologist, CF
3. Mark Stichert – Kodiak, Chignik, and South Alaska Peninsula Assistant Area Management Biologist, CF
4. Heather Fitch – BSAI Area Management Biologist, CF
5. Stefanie Moreland – Extended Jurisdiction Program Coordinator
6. Al Cain – Department Enforcement Specialist
7. Karla Bush – Fishery Biologist, Extended Jurisdiction, CF

Alaska Department of Law

1. Lance Nelson – Assistant Attorney General

Advisory Committee Members:

1. Johnny Lind (Chignik)
2. Julie Kavanaugh (Kodiak)

Public Panel Members:

1. Dale Carlson – Chignik Fisherman.
2. Al Anderson – Chignik Marketing Association.
3. Rodney Anderson – Chignik Fisherman.
4. Tony Gregorio – Chignik Fisherman.
5. Dave Fraser – ACDC
6. Patrick Kosbruk – Chignik Fisherman.
7. Dan Gunn – Commercial Fisherman.
8. Chuck McCallum – Lake and Peninsula Borough.
9. Joe Plesha – Trident Seafoods.

10. Clem Tillion – Aleut Corporation.
11. Mike Hyde – American Seafoods.

The Committee met January 17, 2011 at 11:15 a.m. and adjourned at 2:15 p.m., including a lunch break.
PROPOSALS BEFORE THE COMMITTEE WERE: (12 total) (83-88, 90-94, and 332). Public
comments on the emergency petition from the City of Adak are also included.

PROPOSAL 83 – 5 AAC 28.537. Chignik Area Pacific Cod Management Plan. Restrict vessels greater than 58 feet in length from participating in the Chignik Area Parallel Pacific cod fishery.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: None.

Record Comments: RC 12, 14, 26.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Brings Chignik into line with recent 58 foot vessel size regulation for parallel Pacific cod fishery in the South Alaska Peninsula.

Opposition: None.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 84 – 5 AAC 28.506. Chignik Area Registration. Extend superexclusive vessel registration requirement to the Chignik Area parallel Pacific cod fishery.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC.

Timely Public Comment: None.

Record Comments: RC 12, 14.

Narrative of Support and Opposition:

Department: None.

Department of Law: Board does not have authority to grandfather vessels into the fishery based on prior participation.

Federal Subsistence Representative: None.

Support:

- Fishery set up for small local boats.
- Larger vessels can fish in federal waters.

Opposition:

- Would not exclude high capacity vessels.
- Eight vessels historically fished that would be excluded.
- Would restrict vessels that participate in fall allocation rollover.


General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.
Oppose: None.



Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 85 – 5 AAC 28.537. Chignik Area Pacific Cod Management Plan. Reduce annual jig gear GHL allocation from 10% to 5% of the total Chignik Area state-waters GHL.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4, 5.

Record Comments: RC 9, 12, 13, 14, 26.

Narrative of Support and Opposition:

Department: Department would request mandatory reporting if required to managed GHLs of 5% or less. During some years, daily pot harvests can reach as much as 5% of the total GHL.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Concern for unharvested GHL.
- Chignik Advisory Committee (CAC) amended proposal (AC 1) based on vessel size (42 feet) rather than by gear type.
- Chignik Marketing Association amended CAC's proposal to 46 feet (RC 14).
- Intent of board in 1996 was to create fishery for small local fleet.
- Small vessels could fish in better weather.

Opposition:

- Limited opportunity for jig fleet.
- Chignik Marketing Association concerned with AC 1 as it allows ability for small vessels to fish small vessel allocation as well as large vessel allocation.
- Vessel size does not equate to ability to fish in rough seas, especially for shallow draft vessels.
- Needs to stay a jig/pot allocation because jig provides entry level opportunity and pot gear is a larger investment in gear.
- Would take allocation away from larger vessels during fall rollover.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 86 – 5 AAC 28.537(c)(3). Chignik Area Pacific Cod Management Plan. Rollover jig gear GHJ to all legal gear types when jig vessels do not register or participate in the fishery by April 1.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4, 5.

Record Comments: RC 12, 14.

Narrative of Support and Opposition:

Department: Pacific cod sector splits will be coordinated by the board for state-waters fisheries in October 2011.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Unutilized harvest due to low jig participation and no local markets.

Opposition:

- Weather poor in March; this would require jig gear to start before April 1 (RC 14).
- Eliminates jig vessels wishing to fish in the summer.
- April 1 rollover is too early.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 87 – 5 AAC 28.537. Chignik Area Pacific Cod Management Plan. Rollover jig gear GHIL to all legal gear types when jig vessels do not register or participate in the fishery. If jig vessels participate in the fishery allocate 95% of the total GHIL to pot vessels and 5% of the total GHIL to jig vessels.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4, 5.

Record Comments: RC 9, 12, 14, 26.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General:

- Proposer suggested withdrawing proposal and would rather address issue under proposal 85.
- Board committee chair informed proposer to submit RC to withdraw proposal.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No action based on proposer withdrawing support.

Substitute Language: None.

PROPOSAL 88 – 5 AAC 28.537. Chignik Area Pacific Cod Management Plan. Change the opening date of the Chignik Area state-waters fishery from March 1 to March 15.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4.

Record Comments: RC 12, 13, 14, 17.

Narrative of Support and Opposition:

Department: Spawn timing varies annually; see Figure 88-1 in RC 2.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Safer for smaller vessels.
- Season length getting shorter.
- March 1 only big vessels can compete.
- Season too short for small vessels – need more time due to poor weather.
- Difficulty hiring crews to work on small boats.
- GHL harvested before small boats able to fish.
- Fishery has evolved and fleet has become more efficient; less time needed to harvest full GHL (RC 17).

Opposition:

- No pattern of better weather later in March.
- Fish more marketable when not spawned out.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 90 – 5 AAC 28.506. Chignik Area Registration. Establish preseason deadline of January 15 for the Chignik Area state-waters Pacific cod fishery.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4.

Record Comments: RC 12, 13, 14.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Local fleet will benefit because proposal may limit nonlocal boats from fishing in Chignik.
- Local fleet fishes regardless of season date or fish availability.

Opposition:

- Fishermen need flexibility to respond to changing biomass, weather, and market conditions.
- All State of Alaska vessels should be considered local.
- May limit longtime participants.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: Chignik AC supports original proposal – withdraw AC amendment to change registration date to January 31.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: Consensus to oppose.

Substitute Language: None.

PROPOSAL 91 – 5 AAC 28.506. Chignik Area Registration. Require previous participation history for vessels to be eligible to register for the Chignik Area state-waters Pacific cod fishery.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: PC 4, 5.

Record Comments: RC 12, 13, 14.

Narrative of Support and Opposition:

Department: See Department of Law comments.

Department of Law: Board does not have authority to act. Requires CFEC oversight.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: No Position.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No action.

Board Committee Recommendation: No action due to no authority.

Substitute Language: None.

PROPOSAL 92 – 5 AAC 28.532. Groundfish Pot Storage Requirements. Allow groundfish pots to be stored on the fishing grounds (greater than 25 fathoms) for seven days prior to the start of the Chignik Area state-waters Pacific cod fishery.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: None.

Record Comments: RC 12, 13, 14.

Narrative of Support and Opposition:

Department: Possibility of enforcement issues although proposal generally consistent with regulations in Kodiak and South Alaska Peninsula areas.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- More economical for vessels to place gear on fishing grounds prior to season.

Opposition: None.

General:

- Difficult to enforce, but not opposed.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language: None.

PROPOSAL 93 – 5 AAC 28.530(f)(2). Lawful Gear for Chignik Area. Repeal jig gear configuration that allow for a single continuous line with more than 150 hooks.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: None.

Record Comments: RC 12, 14.

Narrative of Support and Opposition:

Department:

- Department submitted proposal.
- No documented use of single continuous line during Chignik jig fisheries.
- Confusion between single continuous line jig gear and longline gear.
- Similar proposals recently passed in South Alaska Peninsula, Cook Inlet, and Kodiak areas.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language: None.

PROPOSAL 94 – 5 AAC 28.510(a). Fishing Seasons for Chignik Area. Repeal regulation that allows groundfish to be taken at any time.

Staff Reports: RC 3, Oral Tab 1, Written Tab 6.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: Chignik AC 1.

Timely Public Comment: None.

Record Comments: RC 12, 14.

Narrative of Support and Opposition:

Department:

- Redundant language.
- Groundfish fisheries only occur during specific parallel or state-waters fisheries.
- Housekeeping in nature; similar proposals passed in South Alaska Peninsula, Bering Sea – Aleutian Islands, and Kodiak areas.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Support.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Additional Language: Amend 5 AAC 28.506(e) to include “Black rockfish may be taken from January 1 through December 31, unless closed by emergency order”.

Substitute Language: None.

PROPOSAL 332 – 5 AAC 28.640. Aleutian Islands District and Western District of the South Alaska Peninsula Area Sablefish Management Plan; and 5 AAC 28.647. Aleutian Islands District Pacific Cod Management Plan. Close waters within 3 nautical mile of the Kanaga Island/Ship Rock Steller sea lion rookery to state-managed commercial sablefish and Pacific cod fishing.

Staff Reports: RC 3, Oral Tab 1.

Staff Comments: RC 2.

Deliberation Materials: None.

AC Reports: None.

Timely Public Comment: None.

Record Comments: RC 8, 25.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- NMFS identified Kanaga Island/Ship Rock area reclassified from haulout to rookery (RC 25).
- Consistent with most past board actions to match federal rookery protection measures.
- Area currently closed to federally-permitted vessels.
- Very limited harvest in this area.

Opposition: None.

General:

- State actions to protect rookery sites ok but should not used as a rationale for avoiding jeopardy.
- Consistent with current state-waters fisheries trawl closures at same site.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.
Oppose: None.

Public Panel Recommendation: Consensus to support.

Board Committee Recommendation: Consensus to support.

Substitute Language: None.

Committee Notes for Public Comment on Emergency Petition for Aleutian Islands Parallel Pacific Cod Fishery

Staff Report: RC 5.

Deliberation Materials: None.

AC Reports: None.

Timely Public Comment: None.

Record Comments: RC 4, 8, 18, 19, 21, 24, 27.

Narrative of Support and Opposition:

Department: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Petition will allow small local vessels opportunity to fish in area impacted by recent sea lion protection measures.
- Local communities support opening closed RPA areas only to vessels 60 feet and under, as identified in petition; small boats fully capable of harvesting Pacific cod quotas.
- Industry supports opening petition area to all size vessels to facilitate full utilization of cod resources as they are historical participants in the fishery.
- Support intent but prefer current state-waters vessel size restrictions rather than 60 foot limit specific in petition.
- Board should make statement that they are opposed to federal intrusion.
- Atka mackerel fleet significantly impacted by the RPAs.
- Need areas to fish to support local fleets and communities.
- Board should work to support State of Alaska and state fishermen.

Opposition: None.

General:

- Long term fix to problem would be to expand state-waters GHL fishery.

RC 29

Alaska Board of Fisheries
Committee Report

COMMITTEE B

Chignik Management Area Finfish
January 17, 2011

Board Committee Members:

1. Karl Johnstone, *Chair
2. Mike Smith
3. Bill Brown

Alaska Department of Fish and Game Staff Members:

1. Jeff Wadle – Westward Region Finfish Management Biologist, CF
2. Todd Anderson – Chignik Area Management Biologist, CF
3. Nat Nichols – Chignik Assistant Area Management Biologist, CF
4. Trent Hartill – North Alaska Peninsula Assistant Area Management Biologist, CF
5. Matt Keyse – South Alaska Peninsula Assistant Area Management Biologist, CF
6. Mark Witteveen – Westward Region Finfish Research Biologist, CF
7. Mary Loewen – Westward Region Finfish Research Biologist, CF
8. Matt Nemeth – Westward Region Finfish Research Coordinator, CF
9. Eric Volk – Chief Fisheries Scientist Anadromous Fish
10. Steve Honnold – Westward Region Regional Supervisor, CF
11. Lisa Scarbrough – Division of Subsistence
12. Sarah Evans – Division of Subsistence
13. Jim Fall – Division of Subsistence
14. Al Cain – Department Enforcement Specialist
15. Matt Miller – Regional Fisheries Biologist, SF
16. Jim Simon – Acting Director, Subsistence
17. Sue Aspelund – Acting Director, CF
18. Tom Brookover – Deputy Director, SF

Federal Subsistence Representative

1. Rod Campbell – Office of Subsistence Management
2. Alesha Davis – Anthropologist; Office of Subsistence Management

Advisory Committee Members:

1. Chignik AC
2. Kodiak AC

Public Panel Members:

1. Richard Wilson – Bristol Bay Regional Advisory Committee
2. Jonny Lind – Chignik Advisory Committee/Self
3. Al Anderson – Self
4. Chuck McCallum – Alaska Lake and Peninsula Borough
5. Tony Gregorio – Self
6. Dale Carlson – Self
7. George Anderson – Self
8. Rodney Anderson – Self
9. Laura Stepanoff – Self
10. Julie Kavanaugh – Kodiak Advisory Committee
11. Dean Anderson – Self

The Committee met January 17, 2011 at 9:30 a.m. and adjourned at 11:00 a.m.

PROPOSALS BEFORE THE COMMITTEE WERE: (7 total) (95-101).

PROPOSAL 96 – 5 AAC 01.470(a). Lawful gear and gear specifications; and 5 AAC 01.475(2). Waters closed to subsistence fishing. Liberalize area, methods, and means to take subsistence salmon.

Staff Reports: RC 3, Oral Tab 4, Written Tab 9.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 3.

Record Comments: RC 6, 10, 23.

Narrative of Support and Opposition:

Department:

- Current regulations provide opportunity for subsistence users to meet their subsistence needs, and the department has not identified a biological concern with expanding the fishery.
- Proposal unintentionally prohibits subsistence fishing with gillnets and beach, and purse seines throughout the CMA.
- Subsistence hook and line bag limits do not always match sport fishery bag limits.
- Adoption of the proposal would likely result in improved subsistence permit reporting.
- Proposal unintentionally prohibits subsistence fishing with beach seine in the lower one mile of Home Creek and Clark River.

Enforcement:

- To date, Board of Fisheries has authorized hook and line as a legal subsistence fishing gear type in 5 of 13 subsistence districts.

Department of Law: None.

Federal Subsistence Representative:

- Support with modification. OSM staff believes the existing closures of the Chignik River above the weir up to Chignik Lake from July 1 through August 31 should be retained because it addresses conservation concerns, shared by the Alaska Department of Fish and Game for spawning king salmon. Also recommend prohibiting use of purse seines (both power and hand) in Chignik Lake. OSM staff also opposes the use of gillnets in Black and Chignik lake tributaries.
- Federal subsistence fishery is limited to qualified residents of the area.

Support:

- Member of the public wants to use hook and line gear as a means to subsistence fish.
- Intent of the proposal was to allow by law what is already currently taking place.

Opposition:

- Adopting sport fishing bag limits would not meet the intent of proposal.

- Concern that action taken on this proposal may actually be detrimental to subsistence users.

General:

- Proposal would not eliminate 300 foot closure upstream of the weir.
- Subsistence harvest in Home Creek and Clark River includes both 'spawned outs' and nonspawned outs.
- Hook and line gear is more selective allowing subsistence users to take only the amount of fish they need.
- Similar proposal before Federal Subsistence Board would only effect Chignik area residents (FP 11-10).
- Member of public noted individuals rarely harvest 25 sockeye per day in Clark River.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language:

5 AAC 01.470. Lawful gear and gear specifications

(a) Salmon may be taken by purse seines, beach seines, and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake and Chignik River upstream of Mensis Point salmon may not be taken with purse seines. A gillnet may not be set, staked, anchored, or otherwise fixed in a stream while it obstructs more than one-half of the width of the waterway and any channel or side channel of the waterway.

(d) Notwithstanding 5 AAC 01.475(2), salmon may be taken for subsistence purposes in the Chignik Management Area by spear, handline, or hook and line attached to a rod or pole, except that salmon may not be taken in the Chignik River from ADF&G regulatory markers located at Mensis Point, upstream to ADF&G regulatory markers located at the mouth of Chignik Lake.

PROPOSAL 95 – 5 AAC 01.470(a). Lawful Gear and Gear Specifications; and 5 AAC 01.475(2). Waters Closed to Subsistence Fishing. Expand area open to subsistence gillnets.

Staff Reports: RC 3, Oral Tab 4, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment, PC 3.

Record Comments: RC 6, 22.

Narrative of Support and Opposition:

Department: Reference comments from Proposal 96.

Enforcement: Reference comments from Proposal 96.

Department of Law: Reference comments from Proposal 96.

Federal Subsistence Representative: Reference comments from Proposal 96.

Support: Reference comments from Proposal 96.

Opposition: Reference comments from Proposal 96.

General: Reference comments from Proposal 96.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Reference comments from Proposal 96.

Board Committee Recommendation: No action due to action on proposal 96.

Substitute Language: Reference comments from Proposal 96.

PROPOSAL 97 – 5 AAC 15.357(e). Chignik Area Salmon Management Plan. Renew regulatory language allowing two 48-hour openings in the Western District of the Chignik Management Area.

Staff Reports: RC 3, Oral Tab 2, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 1.

Record Comments: RC 11.

Narrative of Support and Opposition:

Department:

- After review of the 2008-2010 Western District June fishing periods, the department concludes there would be no conservation or management concerns if this proposal were adopted.

Enforcement: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Allowing two 48-hour openings spreads the fleet out and provides additional opportunity for permit holders.
- Allows fleet more opportunity to fish by reducing time waiting to take 'turns'.

Opposition:

- Concern that renewal of regulations would create tension with Area M permit holders.
- Member of public does not want regulation made permanent; however, another sunset clause would be fine.

General: None.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 98 – 5 AAC 15.332. Seine specifications and operation. Increase purse seine length from 225 to 275 fathoms.

Staff Reports: RC 3, Oral Tab 2, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 1, 4.

Record Comments: RC 11, 13, 10, 20.

Narrative of Support and Opposition:

Department:

- If adopted, this proposal may increase sockeye salmon harvest outside of Chignik Bay District and limit harvest opportunities for fishermen who traditionally fish within that district. There is the potential for an increase in the incidental harvest of juvenile salmon resulting in localized fishing closures, although adoption of this proposal is not likely to affect the way the department currently manages the CMA fishery.

Enforcement:

- Confirmed seine length differences between Area K, L, and M (RC 2 Tab 9, Table 98-1), also highlighted differences in seine depth between the areas.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- Member of public would like the net length in Area K, L, and M to be the same length.

Opposition:

- CMA seiners have deeper seines than Area K.
- Member of public speculated harvest would increase in 'outside' districts.
- Smaller boats (i.e., 42 feet) cannot handle more seine. Only larger boats would benefit from adoption of this proposal.

General:

- In the CMA, it is generally accepted that a lead is attached to bunt (what is pursued).
- A member of the public would be willing to match overall seine depth with other areas.
- Member of the public noted that adoption of the proposal would allow the maximum seine length up to 275 fathoms. That length is not mandatory.
- The shorter seine length in the CMA is due to fishing in 'tighter' areas.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Neutral.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 99 – 5 AAC 65.020. Bag Limits, Possession Limits, and Size Limits for Alaska Peninsula and Aleutian Islands Area; and 5AAC 15.357. Chignik Area Salmon Management Plan. Change Chignik River king salmon sport and commercial fisheries management.

Staff Reports: RC 3, Oral Tab 2, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 1, 4.

Record Comments: RC 7, 10, 11, 15.

Narrative of Support and Opposition:

Department:

- The department has authority to restrict king salmon harvests by emergency order, including nonretention in the commercial fishery and reduced bag, possession, and annual limits in the sport fishery and has used tools as needed to achieve escapement goals.
- King salmon bag limit reduced at last Chignik BOF meeting.
- Goal has been achieved every year since 1981, and exceeded 22 of the last 30 years.

Enforcement: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support: None.

Opposition: None.

General: None.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: Consensus to oppose.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 100 – 5 AAC 65.020. Bag Limits, Possession Limits, and Size Limits for Alaska Peninsula and Aleutian Islands Area. Establish Chignik River king salmon bag limit of one per day, an annual limit of two, and prohibit use of bait.

Staff Reports: RC 3, Oral Tab 2, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 2.

Record Comments: RC 7, 10, 15.

Narrative of Support and Opposition:

Department:

- The department has authority to restrict the king salmon fishery, including bag, possession, annual limits, and use of bait by emergency order, and has used tools as needed to achieve escapement goals.
- King salmon bag limit reduced, at the last Chignik BOF meeting.
- Goal has been achieved every year since 1981, and exceeded 22 of the last 30 years.
- Annual king salmon sport harvest upstream of weir is estimated at 300.

Enforcement: None.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- The less disturbance the fish receive the better off they are.
- Member of the public is concerned about the increase in sport fishery participation.

Opposition: None.

General: None.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

PROPOSAL 101 – 5 AAC 65.022. Special Provisions for Methods and Means in the Alaska Peninsula and Aleutian Islands Area. Eliminate the use of barbed hooks and bait in the Chignik River king salmon sport fishery.

Staff Reports: RC 3, Oral Tab 2, Written Tab 7.

Staff Comments: RC 2 Tab 10.

Deliberation Materials: None.

AC Reports: RC 1, Advisory Committee Comment Tab, AC 1.

Timely Public Comment: RC 1, Public Comment Tab, PC 2.

Record Comments: RC 7, 10, 13, 15.

Narrative of Support and Opposition:

Department:

- The department has the authority to restrict the king salmon fishery, including prohibiting the use of bait and restricting hook type by emergency order, and has used these tools as needed to achieve escapement goals.
- Sport harvest below the weir is biologically less of a concern because kings taken below the weir are not counted in the king escapement.
- King salmon bag limit reduced at last Chignik BOF meeting.
- Goal has been achieved every year since 1981, and exceeded 22 of the last 30 years.
- The ratio of unguided to guided sport fisherman is approximately 1:2.
- Annual king salmon harvest above the weir is estimated at 300.

Enforcement:

- There is no place in the state where barbless hooks are required.
- If this proposal is adopted the department requests a definition of barbless hooks.

Department of Law: None.

Federal Subsistence Representative: None.

Support:

- A member of the public stated a lot of kings are harvested below the Chignik River weir, and the department doesn't know how many are actually harvested.
- Once a sport fisherman has harvested their daily bag limit they can continue catch-and-release fishing, which has mortality.
- A member of the public speculated the overall decrease in king salmon harvest above the weir is due to an increase in harvest of king salmon below the weir.

Opposition: None.

General:

- A local resident estimated there is about 50 private sport fishing boats and about 6-8 guide operated boats that target king salmon on the Chignik River.

SSFP: None.

POSITIONS AND RECOMMENDATIONS

ADF&G Position: Oppose.

AC Positions (as expressed in committee that differs from that submitted by the AC):

Support: None.

Oppose: None.

Public Panel Recommendation: No consensus.

Board Committee Recommendation: No consensus.

Substitute Language: None.

ADF&G Comments on FP11-10
November 30, 2011; Page 1 of 3

Alaska Department of Fish and Game
Comments to Federal Subsistence Board

Fisheries Proposal FP 11-10: Remove closure for federal subsistence fishing in Chignik River watershed and liberalize legal gear types used for subsistence harvest of salmon.

Introduction: Chignik Traditional Council submitted this proposal to:

1. Open the entire Chignik River watershed to federal subsistence fishing, exception waters more than one mile upriver from Chignik Lake in both Clark River and Home Creek.
2. Expand legal gear types for federal subsistence fishing in tributaries of Black and Chignik lakes (except not in Clark River and Home Creek) to include spear, hook and line that may be attached to a pole, or other gear as specified on a subsistence fishing permit.
3. Restrict use of hand seines to Chignik River and Chignik Lake and use of gillnets to Chignik River, Chignik Lake, and the lower one mile of Clark River and Home Creek.
4. Prohibit fishing with hook and line for federal subsistence in Chignik River and prohibit use of a power purse seine upstream of Mensis Point in Chignik River.
5. Eliminate the July 1 through August 31 subsistence fishery closure in Chignik River, which was originally established to protect spawning Chinook salmon.
6. Eliminate the 300-foot closure upstream of Chignik River weir, which was established for safety reasons and to prevent interference with weir operations.

Impact to Subsistence Users: If adopted as proposed, federally qualified subsistence users would be allowed to subsistence fish in the Chignik River watershed with gear types that include spear, hook and line attached to a pole, or other gear specified on a subsistence fishing permit. If adopted, federal subsistence users who choose to use a power purse seine would be restricted to fishing downstream from Mensis Point, and those who fish with a gillnet would be restricted to Chignik River, Chignik Lake, and the lower one mile of Clark River and Home Creek. The Federal Subsistence Board authorized expanded methods and means and eliminated some permit and reporting requirements in the Chignik River watershed. If this proposal is adopted, federal regulations would allow federally qualified subsistence users to utilize methods and means significantly different from those allowed under state regulations in the tributaries of Chignik and Black lakes (with the exception of Clark River and Home Creek, neither of which require a federal subsistence permit or other reporting method). Though this proposal does not request that all gear types be allowed for federal subsistence fishing in the tributaries of Chignik and Black lakes, as allowed in the Clark River and Home Creek, state regulations prohibit using spears and hook and line for subsistence fishing. Adoption of this proposal would expose federally qualified users to state citation because there are no federal public lands in the Chignik River watershed. Fishermen using methods and means not authorized under state law or who fish in areas closed to subsistence fishing in state regulations would risk being cited while standing on state and private land, including state-owned submerged lands and shorelands.

Opportunity Provided by State: Gillnets and purse seines are allowable gear under state subsistence regulations. The State of Alaska provides a subsistence preference on all lands and provides liberal salmon subsistence fisheries on the Alaska Peninsula. Subsistence fisheries in the Chignik area provide an annual household limit of 250 fish, and subsistence fishermen can be authorized to take more if needed. For the Chignik area subsistence salmon fishery, gear types

ADF&G Comments on FP11-10
November 30, 2011; Page 2 of 3

allowed include gillnets and seines, except purse seines may not be used in Chignik Lake. Gillnets may be used in Clark River and Home Creek one linear mile upstream from their confluences with Chignik Lake. Additional gear types can be added to the state subsistence permit (5 AAC 01.470).¹

State subsistence permits for each management area carry stipulations specific to that area, such as timing restrictions to separate subsistence and commercial fishing, gillnet length limits in areas open to commercial fishing, and waters closed to subsistence fishing. Commercial salmon license holders and Commercial Fisheries Entry Commission (CFEC) salmon permit holders may subsistence fish for salmon during a commercial salmon fishing period (5AAC01.485) but may not subsistence fish 12 hours before or 12 hours after each commercial fishing period. Commercial salmon license holders and CFEC permit holders in the Chignik Management Area that subsistence fish in Chignik Lagoon, Lake, or River are required to contact department staff at the Chignik weir in order to separate the reporting of subsistence and commercial harvests.

The Alaska Board of Fisheries established a combined amount reasonably necessary for subsistence for communities in the Alaska Peninsula area as 34,000—56,000 salmon annually. The combined amount necessary for subsistence for the Chignik Area (Chignik Bay and the Central and Eastern districts of the Chignik Management Area) is 7,700—14,250 salmon annually. Liberal state subsistence fisheries are allowed on all lands (state, federal, and private), so adoption of this proposal is not necessary to provide a meaningful subsistence opportunity.

Conservation Issues: No salmon stocks on the Alaska Peninsula are currently listed as “stock of concern” by the Alaska Board of Fisheries. Recent late-run sockeye salmon returns, which return primarily to Chignik Lake and its tributaries, have recently slightly decreased. If the Federal Subsistence Board approves this proposal but does not require a federal permit, increases in undocumented in-tributary exploitation would not be detectable due to the lack of a federal reporting requirement. Significant increases of unreported harvest in Chignik River watershed may lead to conservation issues that would not be detected in a timely manner and may require severe fishery restrictions when detected.

The July 1 through August 31 subsistence fishery closure was established by the Alaska Board of Fisheries in Chignik River many years ago to prevent inadvertent harvest and harassment of spawning Chinook salmon. Reopening the Chignik River to subsistence fishing with gillnets and hand seines would have immediate impacts on the Chinook salmon population that spawns in approximately 80% of the 1.8 river miles that extends from the outlet of Chignik Lake downstream to the department’s Chignik weir and near the outlet of Chignik Lake. Chinook salmon have not been found to habitually transit beyond Chignik Lake.

The Federal Subsistence Board recently liberalized allowable methods and means for federal subsistence fisheries and eliminated permitting and reporting requirements for federally qualified

¹ 5 AAC 01.470. Lawful gear and gear specifications

(a) Salmon may be taken by seines and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(b) Fish other than salmon may be taken by gear listed in 5 AAC 01.010(a), unless restricted under the terms of a subsistence fishing permit.

ADF&G Comments on FP11-10
November 30, 2011; Page 3 of 3

users who utilize rod and reel, bow and arrow, spear, bare-hand capture, and snagging. Elimination of permitting and reporting requirements by federally qualified users causes the department serious concern about localized depletion of sockeye salmon stocks in Chignik River watershed tributaries, especially if a significant increase of harvest results. Since the Federal Subsistence Board does not monitor the federal subsistence fishery in this area, authorizing additional freshwater subsistence fisheries that target unmonitored wild stocks is not consistent with principles of sound management and conservation of fish and wildlife resources.

Three Federal Subsistence Board members discussed their support of proposal FP08-11 at the December 2007 meeting because the expected increase in harvest was estimated to be reasonably small and the proponent's intent was to harvest one or two fish at a time (Federal Subsistence Board Transcripts, December 20, 2007, pages 228 and 229). Further discussion by the Federal Subsistence Board and Regional Advisory Council chairs also focused on liberalizing federal subsistence users' methods and means to allow for harvests of individual salmon for immediate sustenance while traveling light in the course of camping, berry picking, or hunting. Discussions did not consider impacts that adoption of FP08-11 would have on sockeye salmon stocks within Clark River and Home Creek, because both were closed to federal subsistence fishing at the time. The impacts of cumulative unreported harvests from creeks that are near communities and easily accessible were also not considered by the Federal Subsistence Board.

The Federal Subsistence Board approved FP08-11, which liberalized methods and means to allow snagging, bare-hand capture, and similar means for light travelers on the Alaska Peninsula and eliminated reporting requirements, based on information that suggested the level of harvest would be a small number of fish by subsistence users traveling light in the field. During 2008, the department received reports of federal subsistence users harvesting their winter supply of salmon from these tributaries of concern by federal methods and means and without the benefit of permits and harvest reporting. As stated in objections to FP08-11, the department has serious conservation concerns with unreported harvests and the liberalized methods and means. Those concerns increase with consideration of FP09-11 and FP11-10 and the potential of significant federal subsistence harvests in Home Creek and Clark River.

Jurisdiction Issues: While standing on state and private lands (including state-owned submerged lands and shorelands), persons must comply with state laws and regulations. If this proposal is adopted, detailed maps are needed that depict land ownership and specific boundaries of areas where federal regulations are claimed to apply in order to reduce risk of violation for federal subsistence fishermen. During the December 2007 Federal Subsistence Board meeting, Alaska wildlife trooper testimony (Federal Subsistence Board Transcripts December 11, 2007, pages 89-91) explained the importance of users understanding and knowing jurisdiction and land status. When an enforcement officer encounters an individual conducting an activity that is prohibited by state regulations while standing on state or private lands, including state-owned submerged lands, the person may be cited.

Other Issues: An identical proposal was submitted to the Alaska Board of Fisheries for consideration during the January 16—18, 2011, meeting in Anchorage.

Recommendation: Defer until the similar proposal is addressed by the Alaska Board of Fisheries.

Substitute Language for Proposal 96.

5 AAC 01.470(a). Lawful gear and gear specifications. is amended to read:

(a) Salmon may be taken by **purse** seines, **beach seines**, and gillnets, or with gear specified on a subsistence fishing permit, except that in Chignik Lake **and Chignik River upstream of Mensis Point** salmon may not be taken with purse seines. A gillnet may not be set, staked, anchored, or otherwise fixed in a stream while it obstructs more than one-half of the width of the waterway and any channel or side channel of the waterway.

5 AAC 01.470 is amended by adding a new subsection to read:

(d) Notwithstanding 5 AAC 01.475(2), salmon may be taken for subsistence purposes in the Chignik Management Area by spear, handline, or hook and line attached to a rod or pole, except that salmon may not be taken with spear, handline, or hook and line attached to a rod or pole, in the Chignik River from ADF&G regulatory markers located at Mensis Point, upstream to ADF&G regulatory markers located at the mouth of Chignik Lake.

From: Al Anderson
To: The Alaska Board of Fisheries

Please adopt the intent of the language below or, if not, then table the proposal with the intent to revisit on the next Board of Fish cycle after the federal board takes action.

* * *

The amended subsistence regulation should read: Salmon may be taken by seine, gillnet, spear, and/or hook and line that may be attached to a rod or pole or with gear specified on a subsistence fishing permit, ***hook and line gear may be used in Chignik River only by residents of Chignik, Chignik Lake, Chignik Lagoon, Perryville, and Ivanof Bay*** and power purse seine gear is permitted only in Chignik River from Mensis Point downstream and hand seining is permitted only in Chignik River and Chignik Lake and gillnets may be used only in Chignik River, Chignik Lake, and in the waters of Clark River and Home Creek, from each of their confluences with Chignik Lake to a point one mile upstream. A gillnet may not be staked or anchored or otherwise fixed in a stream, slough or side channel to where it obstructs more than one-half the width of that stream, slough or side channel.

From: Dale Carlson
To: Alaska Board of Fisheries

Pot Limit

If the Board is reluctant to move the opening date to March 15 from March 1 then another alternative to address the issue of increasing the opportunity of Chignik area resident fishermen to participate in the Chignik state water cod fishery would be to reduce the pot limit from 60 to 30 pots.

Most Chignik vessels can only carry a small portion of their pot limit whereas the larger vessels can carry all of the much larger and more efficient pots on their vessels. Reducing the pot limit for all vessels will help level the playing field and help the local Chignik fleet of small vessels participate in the fisheries that are on their own doorstep.

Number of 58 foot vessels that participated in the Chignik state-waters Pacific cod fishery by year, 1997-2010

Year	No. 58' Vessels
1997	2
1998	12
1999	12
2000	8
2001	6
2002	4
2003	5
2004	5
2005	6
2006	4
2007	6
2008	12
2009	5
2010	10

8034

Percent total harvest by vessel length Chingik Area (state-waters Pacific cod)

	14 TO 41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	>58
1997	1%	22%	0%	0%	0%	0%	35%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	41%	1%
1998	3%	1%	0%	2%	0%	6%	9%	0%	3%	2%	0%	0%	14%	0%	2%	8%	2%	49%	0%
1999	4%	2%	0%	1%	0%	7%	10%	0%	3%	14%	0%	1%	1%	2%	0%	6%	3%	46%	1%
2000	1%	2%	0%	0%	0%	7%	11%	0%	0%	17%	0%	0%	0%	3%	0%	4%	0%	56%	0%
2001	2%	1%	0%	4%	0%	6%	13%	0%	0%	21%	0%	1%	0%	0%	0%	2%	0%	49%	0%
2002	3%	3%	0%	0%	0%	4%	1%	0%	0%	22%	4%	0%	1%	0%	0%	0%	0%	60%	1%
2003	4%	4%	0%	0%	0%	2%	8%	0%	0%	9%	0%	5%	0%	0%	0%	11%	0%	54%	3%
2004	3%	2%	0%	0%	0%	3%	4%	0%	0%	12%	4%	0%	0%	0%	0%	10%	0%	60%	2%
2005	1%	3%	0%	0%	0%	1%	11%	0%	0%	13%	0%	5%	0%	0%	0%	0%	0%	64%	0%
2006	0%	0%	0%	0%	0%	0%	11%	0%	0%	12%	0%	13%	0%	0%	0%	11%	0%	52%	0%
2007	0%	1%	0%	0%	0%	0%	9%	1%	0%	11%	0%	0%	0%	0%	0%	18%	0%	61%	0%
2008	0%	1%	0%	0%	0%	0%	4%	2%	0%	11%	4%	0%	0%	3%	0%	14%	0%	59%	1%
2009	0%	0%	0%	0%	0%	0%	3%	0%	0%	10%	5%	0%	0%	0%	0%	18%	0%	65%	0%
2010	3%	0%	0%	0%	0%	0%	5%	2%	0%	7%	3%	0%	0%	0%	0%	6%	0%	74%	0%
AVG	2%	3%	0%	0%	0%	2%	10%	0%	0%	11%	2%	2%	1%	1%	0%	8%	0%	56%	1%

RC35

REC 36

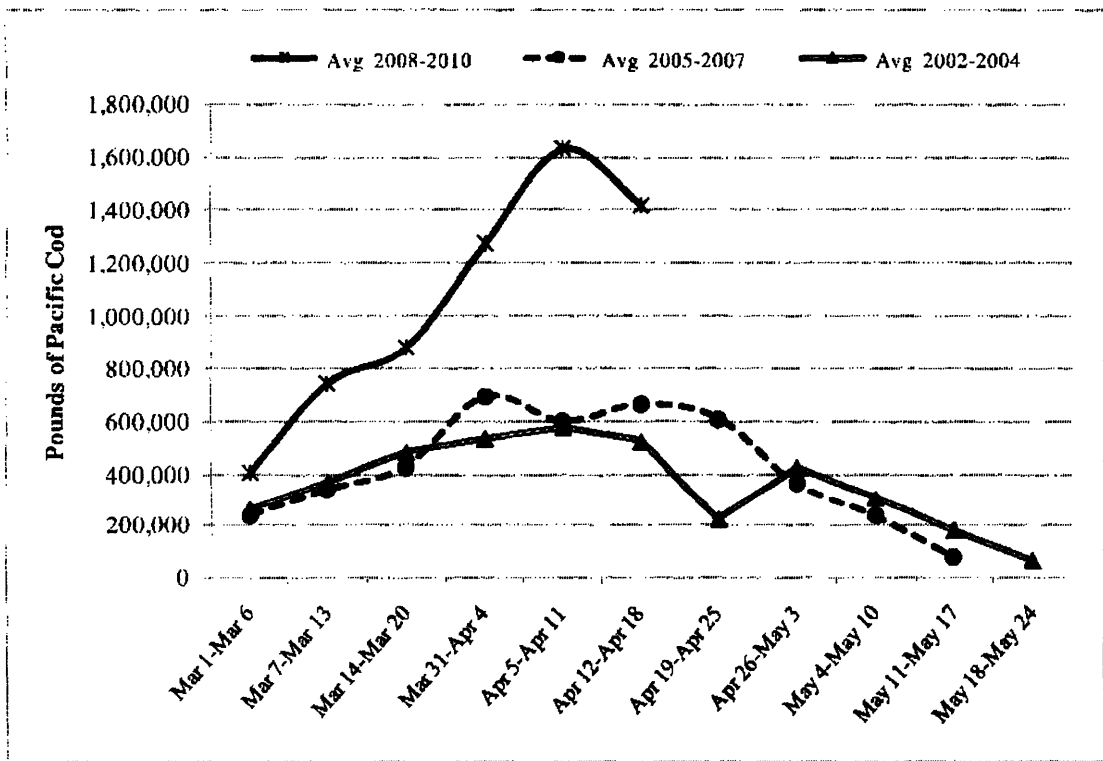


Figure 88-2.—Average weekly harvests of Pacific cod by pot vessels, 2002–2010.

From: Chignik Marketing Association
To: Alaska Board of Fisheries

The Chignik Marketing Association withdraws its support for proposal 87.

Al L. Anderson

RC 38

RC # _____

Re: Proposal 98

Provide for an effective date of August 1st for the duration of the season.

Change between 100 and 225 fathoms, to read, **between 100 and 275 fathoms effective August 1st until season is closed in the CMA, in Central, Eastern, Western and Perryville Districts.**

Sunset provision of next board cycle for Area L.

Submitted by Rodney Anderson

RC 39

From: Chignik Advisory Committee; Johnny Lind, Chairman
To: The Alaska Board of Fisheries

Please adopt the intent of the language below or, if not, then table the proposal with the intent to revisit on the next Board of Fish cycle after the federal board takes action.

* * *

The amended subsistence regulation should read: Salmon may be taken by seine, gillnet, spear, and/or hook and line that may be attached to a rod or pole or with gear specified on a subsistence fishing permit, ***hook and line gear may be used in Chignik River only by residents of Chignik, Chignik Lake, Chignik Lagoon, Perryville, and Ivanof Bay*** and power purse seine gear is permitted only in Chignik River from Mensis Point downstream and hand seining is permitted only in Chignik River and Chignik Lake and gillnets may be used only in Chignik River, Chignik Lake, and in the waters of Clark River and Home Creek, from each of their confluences with Chignik Lake to a point one mile upstream. A gillnet may not be staked or anchored or otherwise fixed in a stream, slough or side channel to where it obstructs more than one-half the width of that stream, slough or side channel.

RC # 40

Re: Proposal 98

I believe that we need to be competitive with the surrounding areas. So either our lengths of seine need to be increased or surrounding areas seines need to be reduced. If this does not happen, Chignik continues to be at a competitive disadvantage. Fuel cost more in Chignik and we are expected to compete with smaller nets. In Chignik, we see a trend, the smaller, local boats are falling by the wayside. Part of the reason is, because they have not upgraded, for example, RSW, invest in purse seine gear. They have not diversified. You can not make a living off of Salmon fishing alone. In regard to the Inside, outside boats, we all make personal choices. The bottom line is, we all have the same permit. To take it a step further, a lot of the fish which are humps, dogs, silvers, etc. are returning to our outside districts. And in all likelihood of them returning, via Lagoon is unlikely. If we had to goto a larger net because the other areas would not come down in size, it would be easier to catch these fish.

Submitted by Al Anderson

TO BOF
RE Prop. 84

We are in support of Committee A's recommendation to oppose proposition 84. We would refer to Committee comments that the proposal has unintended consequences and that no viable substitute language was offered. It is our opinion that the recommendation submitted to the Board by Dean Anderson is a better solution.

Julie Kavanaugh
F/V Sylvia Star
1533 Sawmill Circle
Kodiak AK 99615
907-486 5061

TO: BOF
RE 85-87

RC 42

We are supportive of Committee A's recommendation to oppose 85 & 86 and take no action on 87. We found the concerns of managing to 5% of the GTL to potentially be more difficult than stated and that daily reporting may not suffice. It is also our opinion that the GTL is fully utilized and opportunity to harvest the roll over begins Aug 15th providing a "safe weather" window of opportunity for smaller pot vessels prior to the ~~to~~ larger vessels appearance. We also found AC 1 and RC 14 did not reflect a historical catch history similar to the reasoning for the vessel size allocation in Kodiak.

Julie Kavanaugh
FV Sylvia Star

RC 44

January 16, 2011

Dr. Jim Balsiger
Regional Administrator
National Marine Fisheries Service, Alaska Region
P.O. Box 21668
Juneau, AK 99820-1668

Dear Dr. Balsiger:

The National Marine Fisheries Service has requested the Board of Fisheries close waters around the Steller sea lion haulout at Kanaga Island/Ship Rock during the state waters parallel and state guideline harvest limit (GHL) groundfish fisheries. The request is based on the agency's determination that the site is now used as a rookery and warrants the same protection measures as other rookeries in the area.

The department has adopted the closure under parallel emergency order authority for the parallel fishery this year, by mirroring federal closures in place for 2011 during the federal season. We manage state GHL fisheries for two groundfish fisheries in the area: Pacific cod and sablefish. In order to accommodate your request to close waters around the Kanaga Island site, we must specifically add the closure to each of those two management plans. This is inconsistent with our regulatory closures of all other rookery sites, which are closed to all transit, not just fishing. Other rookery closures in state waters are closed to vessel transit through reference to the listing of rookeries in federal regulation.

We request that the agency officially classify the Kanaga site, and any future new rookery sites, as rookeries through federal regulations so that we are able to treat Steller sea lion rookery sites consistently in our state regulations.

Sincerely,

Vince Webster
Chairman

RC 45

From: Dan Gunn

To: Alaska Board of Fish

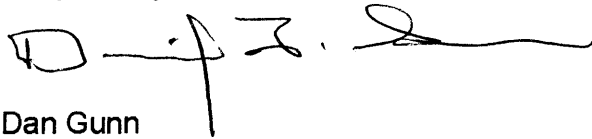
Proposal for Amendment to Emergency Petition from the City of Adak
date 12/10/2010

Chairman Webster and Board members

I would like to express my support for the Adak petition and to propose an amendment to that petition that would allow Pacific Cod to be taken with pot gear by vessels 100 feet or less in length in state waters at those times during which there is a parallel fishery between 170 west and 177 east longitude.

Thank you very much for considering this proposal.

Respectfully,

A handwritten signature in black ink, appearing to read 'Dan Gunn', with a long horizontal flourish extending to the right.

Dan Gunn