



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

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

January 25, 2010

MEMORANDUM FOR: Kaja Brix
Assistant Regional Administrator
for Protected Resources

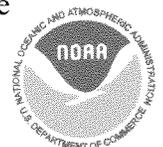
FROM: *for* Susan Salvesson *Sally Bobb*
Assistant Regional Administrator
for Sustainable Fisheries

SUBJECT: Revision to the Action for the Reinitiation of Endangered
Species Act (ESA) Section 7 Consultation for the Alaska
Groundfish Fisheries

The NMFS Alaska Region Sustainable Fisheries Division has determined that the description of the action in our April 2006 memorandum (attachment) should be changed with respect to the State of Alaska parallel groundfish fisheries. The State of Alaska (State) manages groundfish harvest in two ways, either under a State determined harvest level (guideline harvest limit or GHL) or under the federal total allowable catch amounts (TAC). The State-managed groundfish fisheries managed under the federal TAC inside State waters are managed consistent with the federal fisheries management for the same groundfish in the adjacent exclusive economic zone. These State-managed fisheries are called parallel fisheries. These parallel fisheries are managed through an emergency order issued each year by the Alaska Department of Fish and Game (example attached). Except for sector allocations, the State management of the parallel fisheries applies the same requirements as used for federal fisheries management, including applying State water harvests against the federal TACs, federal seasons, bycatch limits, allowable gear types, and closure areas for Steller sea lion and habitat protection.

The current description of the action in the draft biological opinion for the Alaska groundfish fisheries limits consideration of the State parallel fisheries to pollock, Pacific cod, and Atka mackerel. Because the action is the program-wide management of the federal groundfish fisheries, it is important to include all of the State parallel groundfish fisheries. The biological opinion should include analysis of the effects of the entire State parallel groundfish fisheries, ensuring these fisheries are included in the Section 7 consultation as part of the entire Alaska groundfish fisheries program.

Tables are attached showing the metric tons (mt) and species harvested in the 2008 and 2009 State waters groundfish fisheries in the Bering Sea and Aleutian Islands management area (BSAI) and in the Gulf of Alaska (GOA). We are not able to separate



out the parallel fisheries from the Community Development Quota fisheries and the State-managed GHL fisheries at this time. The amounts of harvest in the State parallel fisheries for species, other than pollock, Pacific cod, and Atka mackerel, are relatively small in comparison to the total harvest in the federal fisheries in the BSAI (generally less than 100 mt, except for Pacific ocean perch with up to 590 mt). Harvests in the GOA are also generally less than 100 mt, except for arrowtooth flounder, shallow water flatfish, flathead sole, sablefish, big and longnose skates, and other species. These species are harvested in the range of approximately 200 mt for big skate and flathead sole to up to approximately 1,000 mt for sablefish and arrowtooth flounder.

Because of the limited amount of harvest relative to the BSAI and GOA, interaction with marine mammals during fishing operations in State waters is not expected to be frequent in comparison to the federal waters fisheries, except for those animals that primarily occur in the same time and space as the parallel fisheries. The amounts of harvest in the parallel fisheries and the types of species are not likely to result in localized depletion and competition for prey resources for Steller sea lions as these fisheries have not been identified as harvesting principal prey species and the harvest amounts are distributed over the entire BSAI and GOA areas State waters. Because the potential exists for takes in these parallel fisheries in the form of incidental takes by flatfish trawl and sablefish hook-and-line fisheries (List of Fisheries for 2010, 74 FR 58859, November 16, 2009), it is important to ensure that these parallel groundfish fisheries are covered under the incidental take statement for the Alaska groundfish fisheries.

Attachments (3)

April 19, 2006 memorandum
State of Alaska Emergency Order
Harvest tables for the State waters groundfish fisheries.

Groundfish from State waters (includes parallel, State waters GHL, and CDQ fisheries)

BSAI Species	2008		2009		2008		2009		2008		2009	
	S	CP/M	S	CP/M	Total	% of TAC	Total	% of TAC	TAC	% of TAC	TAC	% of TAC
Alaska plaice	0	0	0	0	0	0%	0	0%	50,000	0%	50,000	0%
Arrowtooth flounder	16	23	45	28	39	73	75,000	0%	75,000	0%	75,000	0%
Other flatfish	33	4	29	2	37	31	21,600	0%	17,400	0%	17,400	0%
Flathead sole	11	1	6	0	12	6	50,000	0%	60,000	0%	60,000	0%
Greenland turbot	0	3	0	3	3	3	2,540	0%	7,380	0%	7,380	0%
Northern rockfish	3	24	1	49	27	50	8,180	0%	7,160	1%	7,160	1%
Other species	45	169	22	48	213	70	50,000	0%	50,000	0%	50,000	0%
Pacific ocean perch	59	532	4	517	590	522	19,198	3%	18,800	3%	18,800	3%
Rougheye rockfish	1	6	1	9	7	10	172	4%	539	2%	539	2%
Other rockfish	5	8	10	6	14	16	849	2%	1,040	2%	1,040	2%
Rock sole	26	16	11	48	42	60	75,000	0%	90,000	0%	90,000	0%
Sablefish	36	12	71	16	48	87	5,300	1%	4,920	2%	4,920	2%
Squid	4	1	2	0	5	3	1,675	0%	1,970	0%	1,970	0%
Shortraker rockfish	1	2	1	10	3	10	360	1%	387	3%	387	3%
Yellowfin sole	1	12	0	1	13	1	225,000	0%	210,000	0%	210,000	0%
Total	241	812	204	737	1,053	941	584,874	0%	594,596	0%	594,596	0%

GOA Species	2008		2009		2008		2009		2008		2009	
	S	CP/M	S	CP/M	Total	% of TAC	Total	% of TAC	TAC	% of TAC	TAC	% of TAC
Arrowtooth flounder	812	3	371	0	814	372	43,000	2%	43,000	1%	43,000	1%
Big skate	96	0	198	0	96	198	3,330	3%	3,330	6%	3,330	6%
Demersal sheif rockfish	74		58		74	58	382	19%	362	16%	362	16%
Deep water flatfish	3		1		3	1	8,903	0%	9,168	0%	9,168	0%
Flathead sole	228	0	148	0	229	148	11,054	2%	11,181	1%	11,181	1%
Longnose skate	73	0	171	0	73	171	2,887	3%	2,887	6%	2,887	6%
Northern rockfish	6	0	0	0	6	0	4,549	0%	4,362	0%	4,362	0%
Other species	299	4	279	0	303	279	2,104	14%	4,500	6%	4,500	6%
Pelagic sheif rockfish	19	0	8	0	19	8	5,227	0%	4,781	0%	4,781	0%
Pacific ocean perch	1	0	0	0	1	0	14,999	0%	15,111	0%	15,111	0%
Rex sole	13		9		13	9	9,132	0%	8,996	0%	8,996	0%
Rougheye rockfish	38	0	32	0	38	32	1,286	3%	1,284	3%	1,284	3%
Other rockfish	42	0	42	0	42	42	1,730	2%	1,730	2%	1,730	2%
Sablefish	1,181		969		1,181	969	12,730	9%	11,160	9%	11,160	9%
Shallow water flatfish	248	0	60	0	248	60	22,256	1%	22,256	0%	22,256	0%
Shortraker rockfish	57	0	51	0	57	51	898	6%	898	6%	898	6%
Thornyhead rockfish	52		49		52	49	1,910	3%	1,910	3%	1,910	3%
Other skates	34	10	37	7	44	44	2,104	2%	2,104	2%	2,104	2%
Total	3,277	18	2,485	8	3,294	2,493	148,481	2%	149,020	2%	149,020	2%

BSAI Species	2008		2009		2008 Total	2009 Total	2008 TAC	2008 % of TAC	2009 TAC	2009 % of TAC
	S	CP/M	S	CP/M						
Atka mackerel	2	352	0	188	354	188	60,700	76,400	0%	
Pacific cod	5,965	1,483	2,224	570	7,448	2,794	176,000	182,000	2%	
Pollock	2,578	64	7,693	73	2,642	7,765	1,019,010	834,050	1%	
Total	8,545	1,899	9,916	831	10,444	10,748	1,255,710	1,092,450	1%	

Note: The ABC instead of the TAC is listed for Pacific cod since the catch includes the State waters GHL fishery.

GOA Species	2008		2009		2008 Total	2009 Total	2008 TAC	2008 % of TAC	2009 TAC	2009 % of TAC
	S	CP/M	S	CP/M						
Atka mackerel	0	0	0	0	0	0	1,500	2,000	0%	
Pacific cod	21,823	64	21,820	30	21,887	21,850	50,269	55,300	40%	
Pollock	17,046	0	21,163	0	17,046	21,163	66,493	41,620	51%	
Total	38,869	64	42,984	30	38,933	43,014	118,262	98,920	43%	

Note: The ABC instead of the TAC is listed for Pacific cod since the catch includes the State waters GHL fishery.

For shoreside (S) catch used elandings data and ADF&G statistical areas (aktfish_v_ellr_slog_product)
 For catcher/processors and motherships (CP/M) catch used observer data
 TAC means total allowable catch
 GHL means guideline harvest level
 ABC means acceptable biological catch

COMMERCIAL FISHERIES

Emergency Order

Under Authority of AS 16.05.060

*ALASKA DEPARTMENT
OF FISH & GAME*

EMERGENCY ORDER No. 4-GF-01-10

Issued at: Kodiak, Alaska
December 31, 2009

EFFECTIVE DATE: 12:01 a.m.
Friday, January 1, 2010

Expiration Date: December 31, 2010
unless superseded by subsequent
emergency order

EXPLANATION: This emergency order defines commercial parallel groundfish fishing seasons in the Kodiak, Chignik, South Alaska Peninsula, Bering Sea-Aleutian Islands and Chukchi-Beaufort Areas. For these areas, except for the fisheries listed in 1-5 below, this emergency order adopts the groundfish seasons, bycatch limits, and allowable gear types that apply in the adjacent exclusive economic zone (EEZ).

Sector allocations in the EEZ, based on processing activity, will not be recognized in state waters. Adjacent federal waters opened to a gear type, whether to both catcher processor vessels and catcher vessels, or only one of those, will be considered open in state waters to both catcher vessels and catcher processor vessels until closed to all vessels using the designated gear type.

Inseason adjustments to federal seasons, bycatch limits, and allowable gear types will also apply in the parallel fisheries. Fishing seasons or bycatch limits may be modified from those published in the federal register by subsequent emergency order to ensure resource conservation or resource management consistent with the interest of the economy and general well being of the state.

Fishermen should take note of Steller sea lion protection areas in the parallel fisheries, including areas around sea lion haulouts and rookeries. Sea lion protection areas are set forth in federal regulations and are adopted for state waters as set forth in this emergency order. As a result, waters of Alaska that are described in the federal regulations implementing the Steller sea lion protection measures as closed to fishing or closed to gear types are so closed to all vessels, regardless of whether the vessel has a federal fishery permit.

The federal regulations implementing Steller sea lion protection measures for 2010 are posted on the National Marine Fisheries Service (NMFS) web site at <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> or available from NMFS offices in Alaska.

Fishermen should take note of vessel monitoring system requirements set forth in 5 AAC 28.087 Management Measures In Parallel Groundfish Fisheries For Protection Of Steller Sea Lions (c).

Commercial fishing gear is prohibited in certain areas to protect essential fish habitat (EFH). State-waters surrounded by EFH areas are closed by 5 AAC 39.167 Commercial Fishing Gear Prohibited In Waters Of Alaska Surrounding Essential Fish Habitat Areas. EFH areas are described in federal regulation at 50 C.F.R. 679.22, revised as of August 25, 2008.

Fishermen should also take note of seabird avoidance requirements set forth in 5 AAC 28.055 Seabird Avoidance Measures In Groundfish Fisheries. The state has adopted the federal seabird avoidance regulations, 50 C.F.R. 679.24 revised as of January 17, 2008, into state waters for longline vessels greater than 26 feet in length. The federal regulations are posted on the NMFS web site at <http://www.fakr.noaa.gov/protectedresources/seabirds/guide.htm>

Except as expressly stated, this emergency order does not supersede other groundfish provisions in Chapter 28 of the Alaska Administrative Code.

The following groundfish fisheries are not managed under parallel regulations. For the fisheries listed in 1 – 5 below, no parallel season is adopted because seasons and bycatch limits are established in this emergency order or will be established in a later emergency order.

1. The lingcod fishery;
2. The black and blue rockfish fishery in the Kodiak, Chignik, South Alaska Peninsula areas, and state waters of the Bering Sea-Aleutian Islands Area;
3. The dark rockfish fishery;
4. The state-waters season Pacific cod fishery in the Kodiak, Chignik, and South Alaska Peninsula areas, and the Aleutian Islands District of the Bering Sea-Aleutian Islands Area;
5. The state-waters sablefish fishery.

REGULATORY TEXT: Regulations 5 AAC 28.410, 5 AAC 28.510, 5 AAC 28.560, 5 AAC 28.610, 5 AAC 28.650 and 5 AAC 28.710 are superseded as follows, and 5 AAC 28 is amended by adding new sections and subsections, 5 AAC 28.450(e), 5 AAC 28.550, 5 AAC 28.590, and 5 AAC 28.750 to read as follows:

5 AAC 28.410. Fishing Seasons For Kodiak Area. (a) In 2010, except as otherwise provided in this section, groundfish may be taken in waters of the Kodiak Area only during federal fishing seasons

applicable to waters of the Exclusive Economic Zone (EEZ) adjacent to the waters of the Kodiak Area. All federally allowed gear types, bycatch limits and inseason adjustments of allowable gear types, bycatch limits and seasons as announced by the Regional Administrator, National Marine Fisheries Service, and published in the Federal Register, that are applicable to fishing in the adjacent EEZ also apply to fishing in the waters of the Kodiak Area, except that sector allocations in the EEZ based on processing activity will not be recognized in state waters. Adjacent federal waters opened to a gear type, whether to both catcher processor vessels and catcher vessels, or only one of those, will be considered open in state waters to both catcher vessels and catcher processor vessels until closed to all vessels using the designated gear type. This section does not supersede the nonpelagic trawl gear restrictions in 5 AAC 39.164.

- (b) Lingcod may be taken, in a directed fishery or as bycatch, only from July 1 through December 31.
- (c) Lingcod may only be taken as bycatch, not to exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel.
- (d) Black and blue rockfish may be taken, in a directed fishery or as bycatch from January 1 through December 31.
- (e) Black and blue rockfish taken as bycatch may not exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel, unless the vessel operator is operating in accordance with 5 AAC 28.406 (e) and 5 AAC 28.472 (b) .
- (f) Dark rockfish may only be taken as bycatch. Bycatch of dark rockfish may not exceed 20% by weight of the directed groundfish species and directed halibut on board the vessel.
- (g) Sablefish may only be taken as bycatch, not to exceed 1% by weight of the directed groundfish species and directed halibut on board the vessel.
- (h) Unless otherwise specified, the maximum bycatch limit for any species of groundfish is 20% by weight of the directed groundfish species and directed halibut on board the vessel. This subsection does not supercede the mandatory retention rules for walleye pollock and Pacific cod as provided in 5 AAC 28.070 (e).
- (i) Pacific cod may be taken during a state-waters season as provided in 5 AAC 28.467.
- (j) Groundfish may be taken with non-pelagic trawl gear in the waters of king crab registration area K, described in 5 AAC 34.400, that are not closed under 5 AAC 39.164 (b) only from
 - (1) January 20 through April 30; and
 - (2) October 1 through November 30.

5 AAC 28.450 Closed Waters In The Kodiak Area (e) Waters of the Kodiak Area that are described in the federal regulations implementing the Steller sea lion protection measures as closed to fishing or closed to gear types are so closed to all vessels, regardless of whether the vessel has a federal fishing permit. In this section, "the federal regulations" means 50 CFR 679.22 and Tables 4,5,6 and 12 in 50 CFR, Part 679, as amended through December 31, 2006. The federal regulations are posted on the National Marine Fisheries Service web site at <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> or available from NMFS offices in Alaska.

5 AAC 28.510. Fishing Seasons For Chignik Area (a) In 2010, except as otherwise provided in this section, groundfish may be taken in waters of the Chignik Area only during federal fishing seasons applicable to waters of the Exclusive Economic Zone (EEZ) adjacent to the waters of the Chignik Area. All federally allowed gear types, bycatch limits, and inseason adjustments of allowable gear types, bycatch limits, and seasons as announced by the Regional Administrator, National Marine Fisheries Service, and published in the Federal Register, that are applicable to fishing in the adjacent EEZ also apply to fishing in the waters of the Chignik Area, except that sector allocations in the EEZ based on processing activity will not be recognized in state waters. Adjacent federal waters opened to a gear type, whether to both catcher processor vessels and catcher vessels, or only one of those, will be considered open in state waters to both catcher vessels and catcher processor vessels until closed to all vessels using the designated gear type. This section does not supersede the nonpelagic trawl gear restrictions in 5 AAC 39.164.

- (b) Lingcod may be taken in a directed fishery or as bycatch, only from July 1 through December 31.
- (c) Black and blue rockfish may be taken, in a directed fishery or as bycatch, from January 1 through December 31.
- (d) Black and blue rockfish taken as bycatch may not exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel.
- (e) Dark rockfish may only be taken as bycatch. Bycatch of dark rockfish may not exceed 20% by weight of the directed groundfish species and directed halibut on board the vessel.
- (f) Sablefish may only be taken as bycatch, not to exceed 1% by weight of the directed groundfish species and directed halibut on board the vessel.
- (g) Unless otherwise specified, the maximum bycatch limit for any species of groundfish is 20% by weight of the directed groundfish species and directed halibut on board the vessel. This subsection does not supercede the mandatory retention rules for walleye pollock and Pacific cod as provided in 5 AAC 28.070 (e).
- (h) Pacific cod may be taken during a state waters season as provided in 5 AAC 28.537.

Chapter 28 is amended by adding a new section: 5 AAC 28.550 Closed Waters In The Chignik Area (a) Waters of the Chignik Area that are described in the federal regulations implementing the Steller sea lion protection measures as closed to fishing or closed to gear types are so closed to all vessels, regardless of whether the vessel has a federal fishing permit. In this section, "the federal regulations" means 50 CFR 679.22 and Tables 4,5,6 and 12 in 50 CFR, Part 679, as amended through December 31, 2006. The federal regulations are posted on the National Marine Fisheries Service web site at <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> or available from NMFS offices in Alaska.

5 AAC 28.560. Fishing Seasons For South Alaska Peninsula Area. (a) In 2010, except as otherwise provided in this section, groundfish may be taken in waters of the South Alaska Peninsula Area only during federal fishing seasons applicable to waters of the Exclusive Economic Zone (EEZ) adjacent to the waters of the South Alaska Peninsula Area. All federally allowed gear types, bycatch limits, and inseason adjustments of allowable gear types, bycatch limits, and seasons as announced by the Regional Administrator, National Marine Fisheries Service, and published in the Federal Register, that are applicable to fishing in the adjacent EEZ also apply to fishing in the waters of the South

Alaska Peninsula Area, except that sector allocations in the EEZ based on processing activity will not be recognized in state waters. Adjacent federal waters opened to a gear type, whether to both catcher processor vessels and catcher vessels, or only one of those, will be considered open in state waters to both catcher vessels and catcher processor vessels until closed to all vessels using the designated gear type. This section does not supercede the nonpelagic trawl restrictions in 5 AAC 39.164.

- (b) Lingcod may be taken in a directed fishery or as bycatch, only from January 1 through December 31.
- (c) Black and blue rockfish may be taken, in a directed fishery or as bycatch, from January 1 through December 31.
- (d) Black and blue rockfish taken as bycatch may not exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel.
- (e) Dark rockfish may only be taken as bycatch. Bycatch of dark rockfish may not exceed 20% by weight of the directed groundfish species and directed halibut on board the vessel.
- (f) Sablefish may be taken in state-waters of the Western District of the South Alaska Peninsula Area, from 12:00 noon May 15 through November 15, unless closed earlier by emergency order. Sablefish bycatch is not allowed prior to or after the directed fishery.
- (g) Sablefish may only be taken as bycatch, in state-waters of the Eastern District of the South Alaska Peninsula Area, not to exceed 1% by weight of the directed groundfish species and directed halibut on board the vessel.
- (h) Unless otherwise specified, the maximum bycatch limit for any species of groundfish is 20% by weight of the directed groundfish species and directed halibut on board the vessel. This subsection does not supercede the mandatory retention rules for walleye pollock and Pacific cod as provided in 5 AAC 28.070 (e).
- (i) Pacific cod may be taken during a state-waters season as provided in 5 AAC 28.577.

Chapter 28 is amended by adding a new section: 5 AAC 28.590 Closed Waters In The South Alaska Peninsula Area (a) Waters of the South Alaska Peninsula Area that are described in the federal regulations implementing the Steller sea lion protection measures as closed to fishing or closed to gear types are so closed to all vessels, regardless of whether the vessel has a federal fishing permit. In this section, "the federal regulations" means 50 CFR 679.22 and Tables 4,5,6 and 12 in 50 CFR, Part 679, as amended through December 31, 2006. The federal regulations are posted on the National Marine Fisheries Service web site at <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> or available from NMFS offices in Alaska.

5 AAC 28.610. Fishing Seasons For Bering Sea-Aleutian Islands Area. (a) In 2010, except as otherwise provided in this section, groundfish may be taken in waters of the Bering Sea-Aleutian Islands Area only during federal fishing seasons applicable to waters of the Exclusive Economic Zone (EEZ) adjacent to the waters of the Bering Sea-Aleutian Islands Area. All federally allowed gear types, bycatch limits, and inseason adjustments of allowable gear types, bycatch limits and fishing seasons as announced by the Regional Administrator, National Marine Fisheries Service, and published in the Federal Register, that are applicable to fishing in the adjacent EEZ also apply

to fishing in the waters of the Bering Sea-Aleutian Islands Area, except that sector allocations in the EEZ based on processing activity will not be recognized in state waters. Adjacent federal waters opened to a gear type, whether to both catcher processor vessels and catcher vessels, or only one of those, will be considered open in state waters to both catcher vessels and catcher processor vessels until closed to all vessels using the designated gear type. This section does not supercede the non-pelagic trawl gear restrictions in 5 AAC 39.164.

- (b) Lingcod may be taken only as bycatch, from January 1 through December 31.
- (c) Black and blue rockfish may be taken in state-waters of the Aleutian Islands District of the Bering Sea–Aleutian Islands Area in a directed fishery or as bycatch, from January 1 through December 31.
- (d) Black and blue rockfish taken as bycatch may not exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel.
- (e) Dark rockfish may only be taken as bycatch. Bycatch of dark rockfish may not exceed 5% by weight of the directed groundfish species and directed halibut on board the vessel.
- (f) Sablefish in state-waters of the Aleutian Islands District of the Bering Sea–Aleutian Islands Area may be taken from 12:00 noon May 15 through November 15, unless closed earlier by emergency order. Sablefish bycatch is not allowed prior to or after the directed fishery. In the Bering Sea District of the Bering Sea–Aleutian Islands Area there is no open season for directed sablefish fishing.
- (g) Pacific cod may be taken during a state-waters season as provided in 5 AAC 28.647.
- (h) Pacific cod and rockfish may be taken during the parallel fishery season in state-waters of Sitkin Sound of Adak Island as described in 5 AAC 28.690 (a) only as specified in 5 AAC 28.629 (d).
- (i) Pacific cod and rockfish may be taken during the parallel fishery season from May 1 until September 15 in state-waters of Adak Island as described in 5 AAC 28.690 (b) only as specified in 5 AAC 28.629 (e).
- (j) Pacific cod may not be taken during the parallel Pacific cod fishery by vessels longer than 58 feet in length.
- (k) Unless otherwise specified, the maximum bycatch limit for any species of groundfish is 20% by weight of the directed groundfish species and directed halibut on board the vessel. This subsection does not supercede the mandatory retention rules for walleye pollock and Pacific cod as provided in 5 AAC 28.070 (e).

5 AAC 28.650 Closed Waters In The Bering Sea-Aleutian Islands Area (b) Waters of Bering Sea-Aleutian Islands Area that are described in the federal regulations implementing the Steller sea lion protection measures as closed to fishing or closed to gear types are so closed to all vessels, regardless of whether the vessel has a federal fishing permit. In this section, “the federal regulations” means 50 CFR 679.22 and Tables 4,5,6 and 12 in 50 CFR, Part 679, as amended through December 31, 2006. The federal regulations are posted on the National Marine Fisheries Service web site at <http://www.fakr.noaa.gov/sustainablefisheries/2003hrvstspecssl.htm> or available from NMFS offices in Alaska.

5 AAC 28.710. Fishing Seasons For Chukcki-Beaufort Area. (a) In 2010, there is no open groundfish season.

Chapter 28 is amended by adding a new section: 5 AAC 28.750 Closed Waters In The Chukchi-Beaufort Area

- (a) Waters of the Chukchi-Beaufort Area are closed to all commercial groundfish fishing.

Denby Lloyd, Commissioner
Alaska Department of Fish and Game

by Delegation to:

Wayne Donaldson
Regional Groundfish Management Biologist

JUSTIFICATION: The Alaska Board of Fisheries has established fisheries for a limited number of groundfish species, and has authorized the commissioner of the Alaska Department of Fish and Game (ADF&G) to open seasons by emergency order, during which bycatch limits, area closures, and gear restrictions may be specified; see, *e.g.*, 5 AAC 28.070, .087, .467. The ADF&G does not have independent programs currently in place to ensure sustained-yield management for all groundfish species in Alaska's territorial waters of the Kodiak, Chignik, South Alaska Peninsula, Bering Sea-Aleutian Islands and Chukchi-Beaufort areas. Groundfish fisheries in these areas often target the same stocks harvested under federal regulations in adjacent waters of the Exclusive Economic Zone (EEZ).

To ensure conservation of the groundfish resources located in territorial waters, the ADF&G generally depends on the fishing season regulations established for the adjacent waters of the EEZ and administered by the National Marine Fisheries Service. The federal regulations allow for inseason adjustments of fishing seasons, closed waters, bycatch and gear to conserve the affected stocks.

To ensure compatible management of the stocks not independently managed by the state, ADF&G would need to issue emergency orders to correspond to all changes made by the federal managers. It is not practical for the department to issue corresponding emergency orders, in a timely manner, to ensure that compatible management is maintained. This would lead to confusion within the fishing industry.

To ensure sustained yield management of groundfish stocks, promote an orderly fishery, and facilitate enforcement of regulations, this emergency order modifies fishing seasons, allowable gear types, closed waters and bycatch limits in the territorial waters of the Kodiak, Chignik, South Alaska Peninsula, Bering Sea-Aleutian Islands and Chukchi-Beaufort Areas to correspond with federal fishery seasons, allowable gear types, closed waters and bycatch limits or inseason adjustments set for the adjacent waters of the EEZ, except for those fisheries independently managed by the state. However, based on the Alaska Supreme Court's decision in *Grunert*, Alaska Board of Fisheries and the ADF&G may not recognize federal sectors in state waters during parallel groundfish fisheries based on processing type.

The state has also adopted protection measures for Steller sea lions in the parallel Pacific cod, Atka mackerel and walleye pollock fisheries as provided for in 5 AAC 28.087.

Through subsequent emergency orders the department may still specify different seasons for groundfish species within these areas to ensure resource conservation or management consistent with the economy and general well being of the state.

Existing federal regulations do not include management measures for lingcod and dark rockfish or black and blue rockfish in the Gulf of Alaska and territorial waters of the Aleutian Islands and Bering Sea. State regulations will apply for these species in all waters of Alaska's territorial sea and the specified adjacent waters of the EEZ, as provided in 5 AAC 28.010 Application of groundfish regulations.

Lingcod bycatch is restricted to 5% in the Kodiak Area because of the potential for large lingcod bycatch associated with trawl landings. The rockfish and sablefish bycatch limits will coincide with the bycatch limit allowed by the Regional Administrator, National Marine Fisheries Service, except for the Aleutian Islands state-waters sablefish fishery.

The Chukchi-Beaufort Management Area is closed to all commercial fishing for groundfish because there is a lack of information on groundfish resources in this area. NMFS has closed all waters of the EEZ adjacent to the Chukchi-Beaufort Management Area to all commercial groundfish fishing under the Arctic Fishery Management Plan.

DISTRIBUTION: This emergency order was distributed to those individuals and organizations maintained on a list in the Westward Region shellfish office, 211 Mission Road, Kodiak, Alaska.

-end-



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

National Marine Fisheries Service

P.O. Box 21668

Juneau, Alaska 99802-1668

April 19, 2006

MEMORANDUM FOR: Kaja Brix
Assistant Regional Administrator
For Protected Resources

FROM: 
Susan Salveson
Assistant Regional Administrator
For Sustainable Fisheries

SUBJECT: Reinitiation of Endangered Species Act (ESA) Section 7
Consultation for the Alaska Groundfish Fishery Management Plans
(FMPs).

I request reinitiation of ESA Section 7 formal consultation on the effects of the federal groundfish fisheries on ESA-listed cetaceans, sea turtles, Steller sea lions and proposed and designated critical habitats. The section 7 consultation for Pacific salmon currently is being conducted by the NMFS Northwest Region which maintains the expertise on ESA-listed salmon species. The action being consulted on includes the State of Alaska parallel groundfish fisheries (see Attachment 1) and the Federal groundfish fisheries as authorized under the following FMPs:

- FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI), January 2005
- FMP for Groundfish of the Gulf of Alaska (GOA), January 2005

We consider this consultation to be a mid-term evaluation of fishery effects on listed species for which we already have an FMP-level biological opinion in place that was completed in November 2000 (FMP BiOp) and supplemented in 2001 with a biological opinion evaluating fishery effects on the western distinct population segment (DPS) of Steller sea lions and their critical habitat (2001 BiOp). Since the conclusion of the FMP BiOp and the 2001 BiOp, all subsequent modifications to the action have been considered through additional consultations, and thus have already undergone review under the ESA. These consultations have concluded that the current federal and parallel groundfish fisheries are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat of such species during the time period that the new FMP-level consultation is conducted.

On October 18, 2005, the Council requested that NMFS reinitiate consultation on the FMP BiOp and evaluate all new information that has developed since the previous consultations. New



information would be useful as the Council considers potential changes to the Steller sea lion protection measures implemented in the fisheries. Based on the Council's request, reinitiation of formal consultation is prudent to allow consideration of the latest information as the Council reexamines the Steller sea lion protection measures and their effectiveness.

The attached biological assessment (BA) provides the information necessary to initiate consultation. Each element required by 50 CFR 402.14(c) is addressed in parts of the BA as identified below.

- A description of the action: Section 1.0, Section 2.0., Appendices A and B
- A description of the action area: Section 2.0
- A description of ESA-listed species and critical habitat affected by the action: Section 3.0
- A description of the manner in which the action may affect ESA-listed species and critical habitat: Section 3.0
- Cumulative Effects: Section 4.0
- Relevant reports: Section 5.0 and Section 7.0

In response to your March 13, 2006, memorandum requesting assistance for the consultation, we included several items in the BA as follows:

- Updated maps of fisheries management areas: Section 2.5 and Appendix A
- Updated harvest specifications tables: Section 2.6
- Updated maximum retainable bycatch tables: Section 2.6
- Updated regulatory allocations of total allowable catch by season, gear, sector, and area: Section 2.6
- Updated maps of Steller sea lion protection areas: Appendix A
- Description of temporal dispersion of the Atka mackerel fishery by season: Appendix B

The four remaining items in your memorandum requested from Sustainable Fisheries will be provided before May 15, 2006.

Section 3 of the attached BA provides our determinations on whether the Alaska groundfish fisheries are likely to adversely affect listed species or their critical habitat. These determinations are based on evidence of historical interaction or the potential for interaction between listed species and the groundfish fisheries. We understand that our determinations will be assessed as part of the consultation process and that your expert review of the available information and data may lead to modified conclusions.

Attachments (2)

STATE OF ALASKA

FRANK H. MURKOWSKI
GOVERNOR

DEPARTMENT OF FISH AND GAME
OFFICE OF THE COMMISSIONER

P.O. BOX 115526
JUNEAU, AK 99811-5526
PHONE: (907) 465-4100
FAX: (907) 465-2332

March 31, 2006

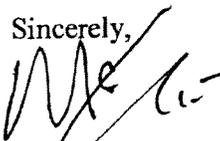
Mr. Doug Mecum, Acting Regional Administrator
National Marine Fisheries Service
NOAA, U.S. Department of Commerce
P.O. Box 21668
Juneau, AK 99802-1668

Dear ~~Mr.~~ Doug Mecum:

Thank you for your recent letter regarding the Endangered Species Act (ESA) Section 7 consultation on the effects of Alaska groundfish fisheries on ESA-listed marine mammals and sea turtles. The State of Alaska accepts the invitation to participate in the Section 7 consultation for the Bering Sea and Aleutian Islands Management Area and the Gulf of Alaska groundfish fishery management plans (FMP) with regard to the state-managed parallel groundfish fisheries. The parallel groundfish (Pacific cod, Atka mackerel, and pollock) fisheries are those fisheries managed by the state using the same harvest limits, seasons, and area restrictions as the federal fisheries.

Staff from the Alaska Department of Fish & Game will be available to work with National Marine Fisheries Service during the consultation process. We also plan to update the October 2000 overview document that described the effects of all state-managed fisheries on Steller sea lions. We look forward to participating in the FMP-level review of Alaska's groundfish fisheries.

Sincerely,



McKie Campbell
Commissioner

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Mbrown: 1/14/10, 1-22-10

Ssalveson: 1/14/10

Gaberle: 1/22/10

Jlepore: 1/25/10 no changes