

***Action Plan for Meeting the Conditions  
For Continued Certification of the  
Bering Sea/Aleutian Islands (BS/AI) Pollock Fishery***

The At-sea Processors Association (APA) submits this Action Plan for Meeting the Conditions for Continued Certification of the Bering Sea/Aleutian Islands (BS/AI) pollock fishery. APA agrees to make a good faith effort to meet the intent of the Conditions set forth in the certifier's June 2004 Final Report determining that the BS/AI Alaska pollock fishery is sustainably managed under the MSC Principles and Criteria. Furthermore, APA recognizes its responsibility as the Applicant/Licensee in the certified fishery to comply with annual surveillance audits by an accredited MSC certification body.

Pursuant to an understanding between APA and the certification body, Scientific Certification Systems, Inc., and consistent with MSC policy, APA is willing to assign MSC logo and labeling rights to non-APA BS/AI pollock producers who agree to share the cost of maintaining the certification and to join in good faith efforts to meet the Conditions.

While APA agrees to undertake good faith efforts to meet the Conditions, the association is on record challenging the basis for certain Conditions, questioning the feasibility of the management authority to undertake certain actions, and asserting that some Conditions exceed the scope of the assessment process. APA's concerns were expressed in comments on the Draft Report submitted on November 21, 2003. Similar comments were submitted to the certification body by other participants in the BS/AI pollock fishery as well as by the NOAA Fisheries. APA appreciates the consideration provided by the assessment team and certifier to issues raised by all stakeholders in the process. However, we note that a number of concerns raised by Alaska pollock producers and NOAA Fisheries with regard to the Conditions remain, and we request that the certification body continue to consider new information and remain flexible and adaptive in permitting us to meet the intent of the Conditions.

Some of the concerns expressed by APA relate to shortcomings in the structure and administration of the MSC program. On July 8, 2004, APA co-signed a letter to the MSC suggesting needed improvements in the program. At least two of the issues raised in that letter pertain to the development of Conditions for the BS/AI pollock fishery. The first issue is that the MSC must establish consistency among assessments. In APA's view, the BS/AI pollock fishery is being held to a different and much higher standard than any other Applicant fishery, creating competitive disadvantages that should not be present in either a science-based or market-based program.

A second issue is that APA, as a private sector Applicant, is not always in a position to effectuate the changes in management that the certification body may seek. Under such circumstances, the MSC certification methodology should require certification bodies to consult and cooperate fully with both the Applicant and the affected management authorities in drafting Conditions. Without such collaboration the assessment team is deprived of insight and expertise needed to propose improvements in candidate fisheries that best achieve conservation and management objectives in domestic law as well as the MSC's sustainability standard.

**APA's Approach to Meeting the Conditions for Continued Certification.**

APA will establish immediately the Alaska Pollock MSC Certification Committee to develop and direct a program to give effect to this Action Plan for meeting the Conditions for the BS/AI pollock fishery. The Alaska Pollock MSC Certification Committee is composed of participants in the BS/AI pollock fishery and association staff. The Committee could also enlist outside experts to assist with tasks needed to meet obligations under the Action Plan.

The Alaska Pollock MSC Certification Committee will consider the range of resources available to assist in the task of responding to Conditions, including possible collaboration with the Pollock Conservation Cooperative's (PCC's) Research Committee. The PCC's membership is substantially the same as the membership of APA. Among other responsibilities, the PCC Research Committee is the principal conduit between the PCC and the University of Alaska/Fairbanks (UAF), both of which entered into a partnership in 2000 to support a comprehensive marine research grants program. The UAF/PCC Research Center is funded by APA/PCC member companies and is reportedly the largest private sector marine research program in Alaska. To the extent that certain Conditions can be achieved through private sector initiatives, the UAF/PCC Research Center could be an important partner.

APA also works closely with other North Pacific marine research organizations, including the North Pacific Research Consortium, the North Pacific Research Board, the Alaska SeaLife Center and various other organizations committed to improving understanding of the BS/AI ecosystem. Many of the issues raised in the Conditions are being addressed by work conducted by, or sponsored by, the organizations identified above. APA will provide to the certifier information and findings developed by these respected organizations relevant to Conditions established for the BS/AI Alaska pollock fishery.

Most importantly, the MSC Certification Committee will coordinate with the NOAA Fisheries' Alaska Region office and Alaska Fisheries Science Center (AFSC), the North Pacific Fishery Management Council (the Council), and other participants in the

management process, as necessary, in an effort to meet the Conditions established by the certification body.

### **Proposed APA Activities in Achieving the Conditions.**

There is necessarily overlap among Performance Indicators, resulting in duplication of Conditions as well. After considering redundancies, the Final Report essentially sets out fifteen (15) Conditions. The following details how APA will address each of these 15 Conditions.

### **MSC Principle One.**

#### **Condition #1—**

**Indicator 1.1.1.3.** [The harvest control rule results in appropriate reductions in exploitation rate at low stock sizes.](#)

**Condition:** To meet this condition, the fishery must ensure that the Aleutian Islands (AI) stock is above the minimum threshold ( $B_{msy}$  or a suitable proxy) before the fishery can be reopened, and that any ABC and TAC established for the Aleutian Islands is at least as precautionary as that which would be achieved by applying the harvest control rule used by the management authority for establishing the ABC and TAC for the EBS pollock fishery, which explicitly takes into account uncertainties in the assessment.

Should the AI portion of the fishery be re-opened under the above state circumstances, the fishery needs to additionally meet one of the two alternatives shown below before the area is fished for a second year:

- Improve the assessment for the AI stock so that it meets at least tier 3 information requirements, and also implement zero ABCs at stock sizes below  $B_{20\%}$ , (as for EBS and GOA stocks); or
- Formalize a revised harvest control rule, applicable at level 5 information requirements, which will protect the stock at low stock sizes at least as well as the current strategies for EBS and GOA stocks (which involve reductions in exploitation rate below  $B_{MSY}$  and closure below  $B_{20\%}$ ).

If the first alternative is adopted, the resulting harvest strategy should subsequently be tested for robustness as outlined in the condition for scoring indicator 1.1.1.5 (as part of meeting that condition and on the same time frame as the condition for 1.1.1.5). If the second alternative is adopted, the fishery should not be opened until the new proposed strategy has been tested as outlined for condition 1.1.1.5.

**APA's Plan for Condition #1.** Since 1999, the Total Allowable Catch (TAC) for the Aleutian Islands (AI) pollock fishery has been set at a low level, effectively eliminating a directed pollock fishery and allocating only enough fish to cover "bycatch" needs in the non-pollock AI fisheries. The modest TAC level was part of a package of precautionary regulatory measures and discretionary Council-imposed actions intended to reduce possible fishing impacts on Steller sea lion (SSL) populations, although discontinuing a directed AI pollock fishery was not identified as a necessary measure in the original Biological Opinion (Bi-Op) developed by NOAA Fisheries. While the scientific justification was lacking for closing the AI directed pollock fishery, the stated rationale was to reduce possible fishing impacts on SSL stocks. For purposes of this discussion, it is important to note that the directed pollock fishery was not closed because of concerns about AI pollock stocks.

Notwithstanding the circumstances described above for closing the AI directed pollock fishery, the certification body establishes a Condition for re-opening the AI directed pollock fishery that relates to the status of the AI pollock stock. (As noted above, only the directed AI pollock fishery has been closed, and we assume that it is the directed pollock fishery that is the subject of the Condition.) The North Pacific Council has signaled its intention to recommend a 19,000 m.t. AI pollock fishing quota in 2005, which would allow for a directed fishery. NOAA Fisheries and the Council prepared an Environmental Assessment (EA) of Amendment 82 to the BS/AI Groundfish FMP to analyze re-opening the directed AI pollock fishery and allocating the harvest to the Aleut Corporation. The expected re-opening of the AI pollock fishery in 2005 meets the identified tests that the stock be above the minimum threshold and that the TAC setting process be at least as precautionary as the TAC setting process for the EBS pollock fishery.

With respect to the status of the AI pollock stock, the EA states, "The 2004 female spawning biomass was estimated at 160,000 mt, well above the B<sub>35%</sub> estimate of 60,000 mt." Consistent with its overall approach to fisheries management, the Council's plan for re-opening the AI directed pollock fishery includes numerous precautionary measures. For example, the AI pollock harvest will be counted under the 2 million metric ton groundfish optimum yield cap. The TAC and incidental catch allowance combined shall not exceed the ABC, and no more than 40% of the annual ABC shall be taken in the "A" season. Also, areas previously closed to reduce possible effects of fishing on foraging sea lions remain closed. The EA for Amendment 82 is available at [http://www.fakr.noaa.gov/analyses/amd82/BSAI82\\_1104.pdf](http://www.fakr.noaa.gov/analyses/amd82/BSAI82_1104.pdf).

We believe that the AI directed pollock fishery might already meet the Condition set forth above for a directed fishery in 2006. Within 6 months of issuance of the certificate, APA will provide to the certification body a report with appended documents prepared by AFSC pertaining to the two alternative approaches suggested by the certification body. Any outstanding issues raised in the consultation with the certifier at six months, will be resolved by the annual audit. APA fully expects that these activities

*will provide the necessary information to meet the condition. If the certification body deems it necessary to require additional work, APA will ensure meeting the condition in as quick and efficient a manner as practical,*

**Condition #2—**

**Indicator 1.1.1.5--**The harvest strategy can be shown to be precautionary.

**Condition:** To improve the deficiencies in performance for this indicator, SCS requires that formal evaluation and testing of the robustness of current and any proposed new harvest strategies used to manage EBS and AI pollock be undertaken, using methods similar to those recommended by Goodman et al. (2002). The SCS evaluation team requires that any plans to correct this deficiency lay out a step-wise plan with timelines such that at least three stages of work would be available for evaluation:

1. Prepare detailed specifications for the evaluation.
2. Undertake the evaluations.
3. Modify harvest strategies as appropriate from the results of the evaluations.  
(Uptake to follow NPFMC due process).

Notes related to tasks:

Designing and implementing a management strategy evaluation study is a complex task, and the SCS evaluation team does not seek to prescribe precisely how it should be done. Nevertheless, the SCS team sees this condition as the key one that will help overcome most of their concerns with regard to Principle 1, and wishes to maintain an active involvement in monitoring progress in meeting the condition. The SCS team also considers it prudent that there be suitable opportunity for input from key stakeholders in the fishery. (Where there is substantial disagreement between stakeholders, the SCS team will be the final arbiters). Whoever is contracted to undertake the task would do well to consult and be guided by the fairly detailed proposal in sections 3.10 and 3.11 of Goodman et al (2002) as this will be used by the SCS team as a benchmark, noting that those specifications are for testing generic NPFMC harvest strategies, and will need to be adapted for the specific circumstances of EBS and AI pollock.

In general, task 1 will involve specifying the set of performance measures against which the harvest strategies will be judged, the set of robustness tests to be undertaken, the detailed specifications of the operating models to be used, and the range of harvest strategies to be evaluated. The latter should include monitoring and assessment models as well as harvest control laws, noting that some simplification of detailed assessment models may be required for computational efficiency in testing harvest strategies. The robustness tests should include, at a minimum, alternative but credible assumptions about spatial dynamics of pollock in the Bering Sea (including overlaps into the Russian fishing

zone), and the impacts of regime shifts. They should deal explicitly with key issues and uncertainties identified elsewhere in this report and cross referenced to this condition. Consideration should be given to including operating models that go beyond single species dynamics, where these are available or can be developed in suitable timeframes, and performance measures should include consideration of impacts on predators. The detailed specifications and proposal for work should be presented and discussed at an open workshop as soon as practical following certification. The proposal should specify who will undertake the work, the timelines involved, and the resources allocated to the task. At least one member of the SCS evaluation team should attend the workshop.

The work program is to be agreed by the SCS evaluation team and the group undertaking the evaluations. The timelines can not be pre-specified, but will depend on the nature and complexity of the agreed work program. To maintain certification, progress on agreed tasks will be checked during surveillance visits at the specified time frames, or at the annual audits required by MSC if the time frames coincide.

The results of the evaluations will be made available to NPFMC, and will be presented at a second open workshop. Appropriate responses to the evaluations, including suggested changes to current harvest strategies, will be discussed and agreed in principle. Uptake of changes will follow through the due process of NPFMC decision making.

*APA's Plan for Condition #2: The assessment of the Alaska pollock fisheries began in January 2001. In September 2003, the certification body issued a comprehensive Draft Report recommending certification of the BS/AI pollock fishery. A Final Report was published in June 2004, and the Objections process concluded on September 30, 2004 with a finding that a Further Objection to the sustainability determination was not warranted. Necessarily, the assessment team had to conclude its consideration of new information pertaining to this dynamic and ever-improving fishery and make its determination about the fishery's compliance with the MSC's sustainability standard. With some exceptions, the certification is based on information available to the assessment team when the BS/AI fishery was scored in 2002. As a result, there is considerable new information to provide to the certification body on changes and improvements in fishery management practices. Condition #2 is a good example of where substantial new information exists and should be considered by the certification body during the first annual audit.*

*APA will provide the contracted certification body with the final AFSC report relating to issues identified in the Goodman report within 1 month of its availability. If the AFSC report is not available within 6 months of the issuance of the MSC certificate, APA will request a meeting between APA, NMFS, and the certification body to discuss the status and progress of the AFSC report. If the AFSC report is available within 6 months of the issuance of the certificate, APA will request a meeting between APA, NMFS, and the certification body to discuss what actions will be taken in follow-up to the AFSC report and how these actions will correspond to the requirements of the condition.*

*Within 3 months after the meeting between APA, NMFS, and the certification body, APA will provide the certification body with a plan for meeting the remaining objectives of the condition.*

**Condition #3—**

**Indicator 1.1.2.3.3.** Stock assessments explore sensitivities to assumptions, parameters and data, and key sensitivities are taken into account in the harvest strategy.

**Condition:** To improve the deficiencies in performance for this indicator, SCS requires that the author of the SAFE report for EBS/AI evaluate the sensitivity of the assessment to the impacts of Russian catches on the EBS stock, and present the specific results with a thorough explanation in all future SAFE reports following certification. This issue should also be addressed in the evaluation of the robustness of the current assessment method and harvest strategy, as outlined in the conditions for indicator 1.1.1.5. If the assessment is found to be sensitive to the impact of Russian catches, then this needs to be addressed by appropriate modifications to harvest strategies.

*APA's Plan for Condition #3. Within the context of an Alaska pollock fishery with a conservative and precautionary ABC setting process and a TAC that is well below the ABC level, the certifier raises a valid issue about the effects of Russian pollock catches on U.S.-origin pollock stocks. We believe that the agency may have already addressed issues relating to the Condition in its draft 2004 SAFE document. Reportedly, the annual stock assessment document includes an analysis of Russian catches and possible effects on the EBS pollock resource. (AFSC has implicitly considered the potential impacts of Russian catches of U.S.-origin pollock in prior years. AFSC is now making that consideration explicit.) APA will provide the final 2004 SAFE document to the certification body within 1 month of its availability. If the 2004 SAFE report does not meet the condition, APA will request a meeting with the SAFE report authors, the association and the certifier to develop a course of action that will ensure meeting the condition in as quick and efficient a manner as practical.*

**MSC Principle Two.**

**Condition #4—**

**Indicator 1.1.** There is a management plan with ecosystem considerations that identifies impacts of the fishery on the ecosystem and sets reasonable upper bounds for the identified impacts.

**Condition:** To improve the deficiencies in performance for this indicator, the fishery is required to specifically and explicitly develop and implement a plan for using the

information contained in the Ecosystem Chapter of the SAFE document to develop ABCs for the pollock fisheries.

Fisheries science is still developing methodologies for introducing environmental parameters into fisheries models and the state of current scientific knowledge remains insufficient to accommodate the conditions required under this indicator without further such development, and so some time is required to allow the necessary developments (see below).

The plan must show how the authors of the ‘Ecosystem Considerations’ chapter explicit recommendations will be used in setting limits on ABCs based on each of the ecosystem data sets under review in the chapter where the data indicate that a constraint on pollock harvest may be an appropriate response to the pattern displayed by the data set. The evaluation team would request consideration of introducing more use of scenario planning in developing management strategies that are robust under several possible futures.

*APA’s Plan for Condition #4. The certification report notes that the “state of current scientific knowledge remains insufficient to accommodate the conditions required under this indicator without further ...development (of fisheries science)”. Importantly, the Final Report also notes repeatedly that management in the North Pacific is widely viewed as progressive and precautionary. Recognizing that the AFSC is consistently recognized for its leading edge practices, APA proposes this step-wise approach to meeting the Condition.*

*APA will have a qualified individual, including contracting with an outside expert if necessary, review the literature to evaluate what constitutes state of the art practices in incorporating ecological indices into estimation of ABCs. Furthermore, APA will assess the extent to which AFSC incorporates such information into its annual SAFE report recommendations for groundfish fisheries, including recommendations on the pollock ABC. Based on its review of existing knowledge and methodologies, APA will identify in what areas, if any, AFSC’s analysis could be enhanced. APA will have the report peer reviewed by at least one expert chosen in consultation with the certification body. APA will present its findings to the certifier at the first annual audit, and if the certifier agrees that the report is appropriate, APA will share its findings with AFSC and urge the agency to consider including such revisions in its annual SAFE reports. Furthermore, prior to the first annual audit APA will meet with AFSC staff to better understand the resources available to the agency and developments in ecological theory and provide to the certifier an assessment of the AFSC’s long-term plan for further incorporating ecological indices in the ABC setting process.*

## Condition #5—

**Indicator 1.2.1.** Assessments are conducted to identify and estimate impacts of the fishery on habitats, especially on essential fish habitat (EFH) or critical habitat for protected, endangered, threatened or icon species, which are necessary to manage the fishery to minimize identified impacts.

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must improve assessments of impacts on habitats as follows:

1. Provide the certification body with information on ongoing research projects to determine the impact of pollock fishing, if any, on SSL critical habitat with particular emphasis on the effects of fishing, if any, on foraging sea lions.
2. Meet Condition 3.1 – thus provide a thorough written review of gear loss from pollock fishers and its impacts on habitats, including those habitats used by fur seals.
3. Provide a thorough written review of discarding from pollock fishing as a food supply affecting scavenging seabirds. We require that the certification body be provided a summary of the current state of knowledge on the identified issue areas of concern and that targeted, clearly defined research programs be undertaken, if necessary, after consultation between the certification body and the fishery based on the findings of the written reviews.

*APA’s Plan for Condition #5: Within 12 months, APA will provide to the certification body a comprehensive report documenting research completed since summer 2002 on the effects of pollock fishing, if any, on SSL critical habitat as well as discussion of ongoing research projects relating to the impact of pollock fishing, if any, on foraging sea lions. AFSC informs APA that the agency conducted research in 2004 (the so-called Chiniak study) on this specific issue. The report will include also discussion of research results reported in 2004 indicating that localized depletion of Pacific cod was not evident in an AFSC experiment that included control areas and areas in which cod trawling occurred.*

*APA believes that it would be beneficial also to provide to the certifier an update on research on competing, and perhaps more salient, hypotheses relating to SSL populations, including effects of “regime shifts” and killer whale predation on SSL populations.*

*The provision of this Condition pertaining to effects of gear loss, if any, on northern fur seal populations is addressed under comments on Condition #11.*

*APA will also provide a written review prior to the first annual audit by the certifier of the effects, if any, of the de minimis amount of fish discarded by BS/AI pollock fishing vessels on scavenging seabirds. AFSC reports that a post doctoral*

*fellow will be conducting relevant research on this topic. APA will provide to the certifier progress reports prepared by the researcher as well as the project's findings. Additionally, APA is participating in a seabird study that will include an inquiry into seabird foraging activities and potential interactions with pollock catcher/processor vessels. This study is partially funded through a grant by NOAA Fisheries. APA will present the results of this NOAA Fisheries-funded research program to the certifier prior to the first annual audit.*

## **Condition #6—**

**Indicator 1.2.3.** Research is carried out to allow impacts of the fishery on the biodiversity and structure of invertebrate and vertebrate communities in relevant habitats to be identified, measured, and understood in terms of functional relationships.

**Condition:** To improve the deficiencies in performance for this indicator, research must be implemented to describe:

1. Relationships between Steller sea lion and fur seal foraging behavior (especially as this relates to foraging economics or sea lion/fur seal foraging distribution) and pollock prey abundance at the regional scale related to stock size and stock geographical distribution;
2. Relationships between Steller sea lion and fur seal foraging behavior (especially as this relates to foraging economics or sea lion/fur seal foraging distribution) and pollock prey abundance at the local scale related to putative fish school disruption in localized areas caused by trawling;
3. Meet Condition for 3.1

If new research has become available between the time of this report and the first surveillance, the client shall provide that research for the certification body's review. If the questions listed above are adequately answered, then the certification body may alter the condition. Where research is still required, the action plan should ensure that this research is begun by 2006.

Where research leads to new information relevant to management, appropriate changes in management will be required.

***APA's Plan for Condition #6.** APA will provide a thorough written report to the certification body within 6 months of the issuance of the certificate on the status of research relating to SSL and northern fur seal foraging behavior and pollock prey abundance at the regional and local scales. While the Condition calls for research to be "implemented," APA believes that the accounting of NOAA Fisheries' research program provided under APA's responses to Conditions #6 and #10 will satisfy this Condition.*

*APA will include in its report an assessment of work on this issue funded by the FY 2005 appropriations bill for NOAA, which was enacted in late November 2004.*

*APA proposes that the certifier focus on this issue at the first annual audit. APA will request a meeting with relevant AFSC staff, the certifier and APA so that the certifier can understand fully the agency's program with regard to this issue.*

*In addition, APA will consult with the certifier about the utility of the certifier or an appropriate designee attending the scheduled January 2005 scientific conference, Alaska Marine Science Symposium, in Anchorage where researchers will convene to share findings on a range of issues pertaining to, among other things, North Pacific marine mammal populations and fishing activities.*

*Tasks performed under Condition #5 and Condition #10 will be coordinated with the response to Condition #6.*

#### **Condition #7—**

**Indicator 1.3.3.** *Data on spatial and temporal variations in abundances of animal populations and communities have been synthesized into a set of internally consistent explanatory hypotheses that can provide the basis for making predictions about future system states and consequences of management actions.*

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must:

- Write a report examining if there are significant issues of concern related to the effect of pollock fishing on northern fur seals. (Concerns regarding the relationship between the pollock fisheries and SSL are dealt with under Indicator 2.3.1).
- Meet Condition 3.1.

It is our impression that the data necessary to carry out the review are already available, though not necessarily yet brought together in the appropriate format.

If the report identifies that the fishery is probably contributing to fur seal population decrease, appropriate management responses will be made.

***APA Plan on Condition #7.** APA will provide a written report by the first annual audit examining whether there are significant issues of concern related to the effect of pollock fishing on northern fur seals. APA's planned response to Condition #5; Condition #6 and Condition #11 will be coordinated with APA's response under this Condition. The report is expected to include a discussion about NOAA Fisheries*

*undertaking development of an Environmental Impact Statement (EIS) in 2005 to analyze the impacts, if any, of Alaska groundfish fisheries and the recovery of northern fur seals.*

**Condition #8—**

**Indicator 2.1.** The fishery is conducted in a manner, which does not have unacceptable impacts on biological diversity at the genetic, species or population level of endangered, threatened or protected species.

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must:

1. Adjust management as described in the Conditions under Indicator 1.1.
2. Improve published reports by management agency on bycatch taken by the pollock fishery by structuring the reports to show data by species, vessel type, location of hauls, time of hauls, relationship to SSLCH, and by quarters, while protecting the rights afforded fishers under the law to protect against the release of certain proprietary information.

*APA's Plan for Condition #8. Item #1 of this Condition is discussed in Condition #4 in the Action Plan. Item #2 above contains an apparent contradiction by requesting that NOAA Fisheries publish information on bycatch in the pollock fishery on a vessel-by-vessel basis while noting that such action would violate confidentiality rights provided to fishers under the Magnuson-Stevens Act. The reports correctly note the de minimis discard levels in the BS/AI pollock fishery and note that the agency maintains an excellent pollock catch data programs as part of NOAA Fisheries' precautionary approach to minimizing the impacts of fishing on the environment.*

*In February 2005, APA will provide the certification body with the detailed pollock bycatch information contained in the annual report of the Pollock Conservation Cooperative to the North Pacific Council. This information is provided at a greater level of detail than information protected under the Magnuson-Stevens Act's confidentiality provision and should be responsive to the certifier's request. If necessary, APA will consult with the catcher vessel sector to inquire about the availability of such data and that sector's willingness to make it available.*

*In addition, APA suggests that if the certification body can identify specific areas of concern relating to the effects of such de minimis catch on the environment, APA will investigate the possibility of engaging SeaState, Inc., a private firm that conducts various voluntary industry bycatch reduction programs and has access to federal observer data collected from harvests in the BS/AI directed pollock fishery. APA will work with member and non-member companies that authorize SeaState, Inc. to access*

*confidential data in efforts to address discrete, substantive issues of concern to the certifier.*

*Finally, along with providing information from the PCC Annual Report to the North Pacific Council, APA will report on the “skipper reward” program, an annual competition among captains of BS/AI pollock catcher/processor vessels to achieve low bycatch amounts as well as the PCC’s involvement in an inter-cooperative effort to minimize the bycatch of salmon in the BS/AI pollock fishery—an effort that is being coordinated through SeaState.*

## **Condition #9—**

**Indicator 2.2.1.** *The management system keeps impacts of the fishery on protected species within agreed and reasonable bounds, and keeps impacts on threatened or endangered species within the limits set by the Endangered Species Act.*

**Condition:** With regard to Steller sea lion (SSLs), current management measures regulating fishing in SSL critical habitat were developed, in large part, based on satellite telemetry data collected to define important SSL foraging areas. The team calls for rigorous peer review of the telemetry data analysis given the significant role of the telemetry data in setting the regulatory regime. With regard to northern fur seals, the condition goes to questions raised about possible fur seal entanglement mortality in lost fishing gear or other debris from fishing vessels. Given these considerations, the evaluation team sets for the following conditions:

1. The analysis of the satellite telemetry data and results used to justify the 2001 BiOp should be subject to external peer review and the results of such review shall be available to the certifier within 6 months of issuance of the certificate for the BS/AI fishery. NOAA Fisheries should submit the telemetry data analysis to the Center of Independent Experts (CIE). The University of Miami’s CIE administers a review process, drawing from a formal pool of qualified scientific experts, ensuring the selection of a panel free from the influence of either NOAA Fisheries or other groups with a vested interest in the review’s findings. It is very important that the panel should contain 2 or members with expertise in the analysis of PTT data from marine vertebrates.
2. The management system should consider the input received from the CIE review and act appropriately.
3. Meet Condition 3.1 under Principle 2.

*APA’s Plan for Condition #9. APA believes that significant internal and external peer review of the referenced telemetry data has occurred since the initial drafting of this Condition in 2002, including reviews conducted under the auspices of the Center for Independent Experts (CIE). Should the CIE reviews not be published by the first annual*

*audit, APA will request of NMFS that the certification body be allowed to review draft reports or that NMFS provide a presentation to the certification body summarizing the CIE findings. APA will also submit to the certification body reviews conducted under the CIE program when such reviews are published. APA will also provide summaries of other relevant papers, articles or other published material relating to this subject. APA will consult with the certification body on the findings and determine whether follow-up discussion with AFSC is necessary.*

*As a side note, the certification body should also be aware that presentations by NOAA Fisheries' scientists at a September 2004 Sea Lions of the World Conference in Anchorage reported promising results of increases in sea lion populations in the BS/AI and GOA areas. Noting the National Research Council's 2003 report determined that fishing activity is a second-tier hypothesis proposed to explain the decline of SSL populations and recent NOAA Fisheries reports of increasing SSL populations, the certification body might consider re-evaluating the scope of work required under this and other similar Conditions after reviewing scientific findings since 2002.*

*The reference to fur seal entanglement under this Condition is addressed in Condition #11 for Indicator 3.1.*

#### **Condition #10—**

**Indicator 2.3.1.** Assessments are conducted to identify and estimate impacts of the fishery on protected, endangered, threatened or icon species.

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must design and carry out experiment(s) to test the possible impact of the pollock fishery on Steller sea lions by comparing outcomes of regulated levels of fishing in experimental and control areas on SSL behavior, breeding and population trends. The NRC report (Committee on the Alaska Groundfish Fishery and Steller sea lions, 2002) recommends that the fishery should design and carry out an experimental test of the hypothesis that fishing influences SSL population dynamics. We support the goals and objectives of the NRC's prescribed action, but appreciate that it would be inappropriate to suggest increasing pollock fishing intensity to levels that increase jeopardy (in the legal sense) to SSL populations and that there are complex scientific and legal issues involved. Therefore, it will be necessary to design this experiment in such a way that comparison can be made between areas where fishing intensity is reduced with areas where it is maintained at levels comparable to those in the recent past (but perhaps within this limit still increased by as much as the decrease in harvest lost to industry from reduced fishing areas). The hypothesis to test would then be that SSL numbers or productivity in reduced fishing areas would show a positive deviation relative to values in fished areas, and the null hypothesis that performance of SSL would be no different between areas. Such an experiment should be underway no later than 2006.

*APA's Plan for Condition #10. The Final Report on BS/AI Alaska pollock recognizes the legal and practical impediments identified by fishery management authorities and scientists to conducting the controlled area experiments proposed by the National Research Council (NRC) in 2002. In addition, NOAA Fisheries' scientists have provided fishery management authorities with a detailed analysis of the substantial cost of such experiments, the decades-long commitment required for such a program and the likely prospect that the findings would be inconclusive.*

*Notwithstanding the issues identified above, APA is aware that AFSC is in its fourth year of research testing the localized depletion hypothesis and will continue with its program if FY 2005 funding is available through Congressional appropriation. (See discussion under Condition #5 above.) NOAA Fisheries' previous work on possible fishing effects on SSLs has examined fisheries for Alaska pollock, Pacific cod and Atka mackerel. APA will request a meeting with AFSC and the certifier within six months to review research results to date and to discuss ongoing research. APA will consult with the certifier and AFSC prior to the meeting to ensure all issues relevant to both groups are addressed at the meeting. In addition, APA will propose that the meeting include a thorough discussion on the current state of research on hypotheses relating to possible effects of pollock fishing on foraging sea lions, including agency-sponsored research and research projects conducted under the auspices of the Alaska SeaLife Center, the Pollock Conservation Cooperative Research Center, the North Pacific Research Consortium, and other noted authorities. By the first annual audit, APA will prepare and provide a report to the certification body detailing actions and timelines for meeting the objectives of this condition should the results of the meeting between APA, NMFS and the certification body identify continuing research needs to meet the condition.*

*Tasks performed under this Condition will be coordinated with the responses to Condition #5, Condition #6 and Condition #7.*

## **Condition #11—**

**Indicator 3.1.** Management strategies include provision for restrictions to the fishery to enable recovery of populations of impacted species that have been depleted by previous actions of this fishery.

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must assess the link, if any, between the declines in fur seals and the loss of pollock fishing gear and fishing related wastes. To accomplish this requirement, several steps are required:

1. An assessment of the significance, if any, of gear loss and at-sea fishery processing waste of plastics. This assessment should be performed by the industry, who will

consult with the certification body on the findings of such assessment. If the assessment suggests that losses from the U.S. pollock fishery may significantly contribute to the risk of fur seal entanglement, this should result in development of an action plan based on points 3 and 4 below.

2. Implement a beach-cleaning program in the Pribilof Islands and any other location where fishing gear is known to cause extensive entanglements. The clean-up program will be used to identify the amounts of different types of debris that are collected, and the likely origins of the fishing related debris in order to identify how much, if any, comes from the U.S. pollock fishery fleet. This will permit a better assessment of the extent to which fishery and non-fishery sources contribute to this problem, and which fisheries are responsible. If this operation indicates that the waste is not derived from the U.S. Pollock fishery, then this condition should immediately be lifted. Otherwise, the clean-up should continue on a regular basis if it is found that pollock fishery waste is a major component of the waste.
3. If the U.S. Pollock fishery is implicated as a major contributor of the waste either as a result of 1 or 2 above, the fishery will develop and implement a program for improved monitoring and data collection regarding gear loss and at-sea wastes from individual pollock fishers, and a plan for reducing gear loss and other at-sea wastes.
4. If the study of waste and fur seal entanglement shows that the pollock fishery is a major contributor to this problem, then entanglement rates of fur seals and other marine mammals must be monitored using statistically valid strategies to analyze the effect of entanglement on populations of affected species.

*APA's Plan for Condition #11. APA views this Condition as a "fishing expedition," if you will, by disaffected stakeholders. No evidence was provided in the stakeholder consultation process to substantiate allegations that the U.S. pollock fishery is impacting fur seal populations. We remind the certification body that stakeholders' past assertions that the pollock fishery was "overfished" and that the fishery adversely affected sea lions have not been supported by science. Now stakeholders assert—without any supporting evidence—that pollock fishing activities result in fur seal entanglement in lost fishing nets and other plastic materials. Not only is there no evidence of the pollock fishery being responsible for entanglements, APA has provided information to the certification body showing that entanglement—from any source—is not a likely cause of declines of fur seal populations.*

*Notwithstanding our continued belief that this Condition extends beyond the reasonable scope for Conditions, APA will address Item #1 of this Condition by consulting with member companies and other industry sectors, as needed, to determine what data is available from industry sources (such as logbook records) and from reports filed by federal fishery observers or the U.S. Coast Guard that document gear loss or other inadvertent loss of plastic materials during pollock fishing operations. (As noted in APA's original submission, disposal of plastics at sea is prohibited by law, and there is no evidence to suggest that the pollock fishing industry is not complying with the law.)*

*APA will provide information quantifying gear loss or loss of plastic materials and assess the significance of this information. This task will be completed by the first annual audit.*

*With regard to Item #2, APA provides significant funding to the Marine Conservation Alliance (MCA), which among other conservation initiatives, conducts a beach clean-up program on the Pribilof Islands. APA will hire a fishing gear expert to examine recovered fishing gear from the beach clean-up in an effort to determine whether such gear came from U.S. pollock fishing vessels. APA will endeavor to complete this project for review by the certification body at the first annual audit.*

*Items #3 and #4, if applicable, will be discussed with the certification body at the annual audit when the information obtained from tasks under Item #1 and #2 is available, providing a basis to consider the need for further action.*

#### **Condition #12—**

**Indicator 3.3.** There are sufficient data, and understanding of functional relationships, to determine what changes in fishery management are necessary to recover depleted populations of impacted species.

**Condition:** To improve the deficiencies in performance for this indicator, it is important that the fishery be able to determine the effects of pollock fishing on other species in the area other than Steller Sea Lions. Specifically, SCS is requiring that the fishery also collect data on fur seals, harbor seals, kittiwakes and murrelets, when conducting the work required under Condition 2.3.1.

*APA's Plan for Condition #12. The tasks identified under Condition #5, Condition #6, Condition #7 and Condition #10 are relevant to this Condition. The tasks performed in meeting those Conditions will be completed in such manner as to fulfill obligations identified under Condition #12.*

#### **MSC Principle Three.**

#### **Condition #13—**

**Indicator 2.2.** The fishery is managed and conducted in a manner that respects domestic law [*Relates to MSC Criterion 3.16*]

**Condition:** To improve the deficiencies in performance for this indicator, the fishery is required to remain in compliance with the pertinent outstanding orders of the U.S. District Court for the Western District of Washington and the settlement reached before the U.S. District Court for the District of Columbia in the EFH controversy. The fishery

must, in particular, meet the terms of the Order dated April 1, 2003, which sets specific deadlines in 2003 and 2004 for completion of ESA- and NEPA-related analyses and procedures. That Order requires NOAA Fisheries to revise its 2001 Steller sea lion biological opinion not later than June 30, 2003 and to issue the final PSEIS (and a decision based on the analysis) not later than September 1, 2004. The revised Steller sea lion biological opinion was signed on June 19, 2003.<sup>1</sup> As of May 2004, NOAA Fisheries reports that it expects to release the final PSEIS in June 2004, and will issue a final Record of Decision based on the EIS not later than September 1, 2004.<sup>2</sup>

The assessment team advises that it will be strongly inclined to reconsider the score for this indicator if harvest regimes are set for upcoming years that have the result of placing harvest activities in areas of designated critical habitat for ESA-listed species unless the impacts of those activities on listed species are analyzed and documented in a manner consistent with the high standards of scientific technique and public involvement of which the fishery management system is capable. The scoring of this indicator will be revisited, and likely revised downward, if a court finds that the fishery is being managed in a manner that fails to comply with any significant provision of applicable law, whether or not the issue in question has been the subject of prior disputes.

*APA's Plan for Condition #13. On August 26, 2004, NOAA Fisheries issued a Record of Decision documenting its decision to select the Preferred Alternative set forth in the Alaska Groundfish Fisheries Final Programmatic Supplemental Environmental Impact Statement (PSEIS) for the management of the BS/AI and GOA groundfish fisheries. Within 2 months of the issuance of a certificate, APA will provide to the certifier all pertinent Court and agency documents. We believe that this material will demonstrate to the certifier that the Condition has been met. APA will also organize a meeting between APA and the certification body to review the materials and determine if further actions are required to meet the condition.*

## **Condition #14—**

**Indicator 3.1.** The management system solicits and takes account of relevant information [Relates to MSC Criterion 3.2]

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must take affirmative steps to ensure that information and opinions submitted by stakeholders who do not represent the interests of the commercial fishing industry are given fair, professional, and transparent evaluation at all levels of the management system. The assessment team requires that the management system, ideally NOAA Fisheries or the Council, commission, publish, and openly review an independent

---

<sup>1</sup> <http://www.fakr.noaa.gov/protectedresources/stellers/biop2002/703remand.pdf>

<sup>2</sup> <http://www.fakr.noaa.gov/sustainablefisheries/seis/news13.pdf>

evaluation of the manner in which non-industry stakeholder information and opinions have been addressed in a representative set of circumstances identified by stakeholder interests. The evaluation should identify opportunities for procedural and substantive improvements, including measures to provide greater transparency and accountability to the process. The assessment team believes that the North Pacific Council and NOAA Fisheries both would benefit from a candid evaluation of the quality and character of the procedures and practices by which the various layers of the management system invite and accommodate information that challenges the status quo. The management system should consider this type of inquiry to be fundamental to achieving continual improvement in the quality of its management practices and, thus, its service to the public. Though not a requirement, the assessment team recommends that the independent review consider the recommendations for improvement in Council processes proposed by the Heinz Center in 2002, the Pew Oceans Commission in 2003, and the U.S. Commission on Ocean Policy in 2004.

The evaluation required by this condition must be performed and published not later than 18 months following finalization of this assessment report. The North Pacific Council must consider and discuss in a regularly-scheduled public meeting the evaluation report, including all recommendations, not later than 6 months following publication of the report. The Council's actions, if any, in response to the report will weigh heavily in future reviews of the fishery management system and may significantly affect the score for this indicator.

*APA's Plan for Condition #14. There are few Conditions where APA disagrees more with the certification body's action than on this matter. In its original submission, APA noted that the Magnuson-Stevens Act, the Administrative Procedure Act, the National Environmental Policy Act, the Endangered Species Act and numerous other federal laws provide extensive opportunities for stakeholder participation and comment in the fishery management process. At the regional level, environmental stakeholders participate in standing and ad hoc council committees and are provided extensive opportunities for influencing Plan Teams, the SSC and the Council. Moreover, the culture in NOAA Fisheries at the national and regional level is to encourage dialogue with all stakeholders, and the legitimate concerns of stakeholders are weighed equally.*

*Unfortunately, certain environmental stakeholders are not content when NOAA Fisheries or the Council declines to adopt stakeholder recommendations that are not supported by science. The assessment team should not be surprised that certain environmental stakeholders, particularly those funded by the Pew Trusts ocean campaign, criticize the management system when their views are not adopted wholesale by managers. Remember, these are the same organizations that petitioned the MSC to bar the Alaska pollock fisheries from being assessed under the MSC program. Also, when the assessment team and peer reviewers, who were selected from a list of candidates agreeable to environmental stakeholders, did not endorse many of the same*

*unsupportable positions previously put to the management authority, environmental stakeholders continued bad faith efforts to undermine the sustainability determination.*

*Nonetheless, the certification body raises issues of transparency and accountability in the management system. As with issues raised in other Conditions, there have been significant developments to consider since this Condition was drafted. Most prominently, the Pew Trusts' oceans campaign is lobbying aggressively to take away the authority from regional councils to develop conservation and management measures. Legislation was introduced in Congress in June 2004 that would accomplish Pew's goal, and while it was not enacted, it is likely that such legislation will be offered in the upcoming Congress.*

*In September 2004, the U.S. Commission on Ocean Policy (USCOP) published its final report with recommendations intended to strengthen U.S. ocean policy, including improving fisheries management. Among other recommendations, the USCOP would enhance the authority of Councils' scientific panels and require governors to nominate non-fishing representatives as council candidates.*

*Congress is expected to begin work early in 2005 to reauthorize the Magnuson-Stevens Fishery Conservation and Management Act. With Congress poised to consider proposals that could dramatically transform the council system, it would not be a useful exercise to review the existing system. APA will provide quarterly updates to the certification body on Congressional action relating to Magnuson-Stevens Act reauthorization, specifically, legislative activity focusing on the structure and authority of regional fishery management councils.*

*If for some reason, the Magnuson-Stevens reauthorization process is not moving forward, APA will meet with the certifier as soon as practical after receiving a quarterly update that reports such information, and determine the appropriate course of action for meeting the objective of this Condition.*

## **Condition #15—**

**Indicator 5.1.** [The management system provides for internal assessment and review](#)  
[\[Relates to MSC Criterion 3.3\]](#)

**Condition:** To improve the deficiencies in performance for this indicator, the fishery must demonstrate the existence of a periodic, candid and authoritative internal review process for pollock fishery management procedures and outcomes and publish the results of such a review process. The initial review must address the issues expressed and implied by the five questions posed above. A subsequent review must be performed not later than two years following the initial review. The managers may wish to consult with the U.S. Institute for Environmental Conflict Resolution or other entities with expertise in

dispute resolution in the context of natural resource management. The terms of this condition must be fulfilled within one year after final approval of this assessment report.

***APA's Plan for Condition #15.** APA will meet with NOAA Fisheries officials within 6 months of the issuance of the certificate to discuss the feasibility of the internal review proposed in this Condition, including the availability of funding and the practicality of incorporating additional internal reviews into the management process. At the first annual audit, APA and the certification body will discuss the outcome of APA's consultations with the agency. APA will then submit a revised action plan and timelines within 3 months of the first annual audit ensuring that the objectives of this condition are met by the second annual audit. APA will also provide the certification body with a progress report at 6 months after the first annual audit detailing work to date on meeting the condition.*

Submitted on January 13, 2005 by the At-Sea Processors Association