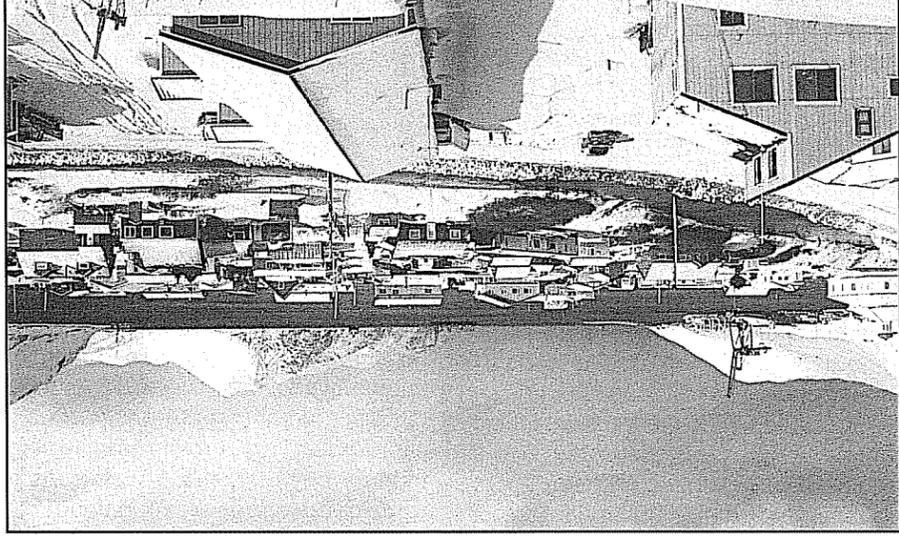


# Resource Review

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 A periodic publication of the Resource Development Council, Inc.

## Environmentalists target fishery

*Fishing industry, Southwest Alaska communities brace for new Steller sea lion restrictions*



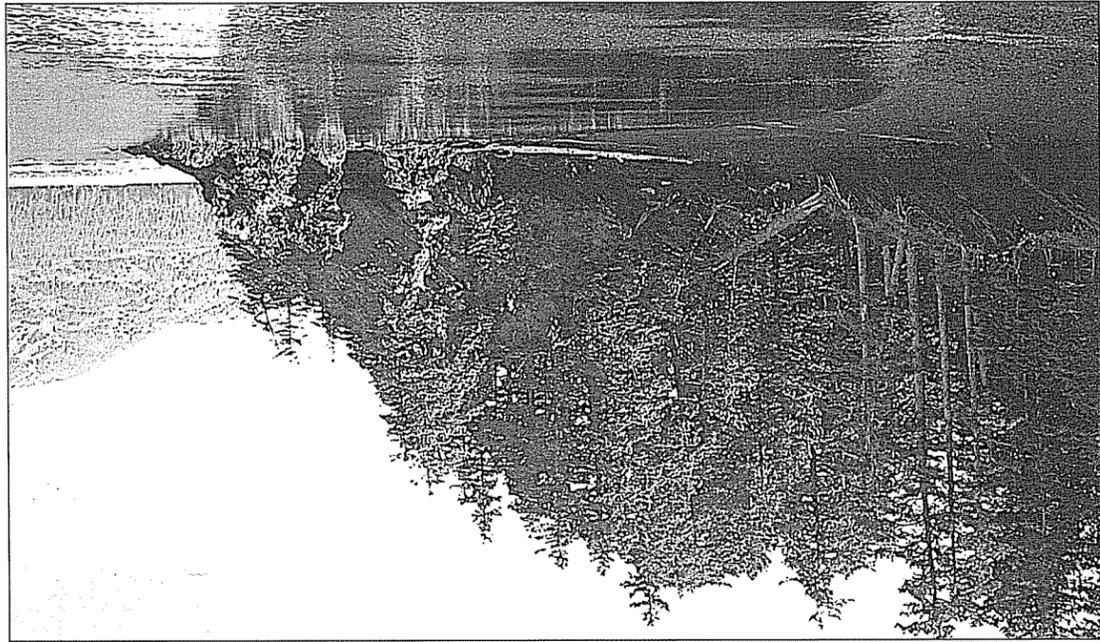
*New measures to protect the Steller sea lion will prohibit pollock trawling in the Aleutian Islands region, resulting in significant impacts to communities like Unalaska-Dutch Harbor. The restrictions will cost the fishing industry \$100 million annually and put fishermen at increased risk as they are forced further offshore seeking alternative fishing areas. (Photo by Carl Fortman)*

\$650 million. The fishery is managed by the North Pacific Fishery Management Council (NPFMC) and ultimately, by NMFS. The region is also home to the western population of Steller sea lions. During 1991-93, the environmental industry filed suit against NMFS for failure to adequately protect the sea lion population which suffered periods of decline since the 1970s. The agency possessed no information linking pollock trawling and sea lion decline beyond (Continued to page 4)

agency determines the existence/recovery of a species is "jeopardized," it is required to develop a mitigation strategy to alleviate the problem. The agencies are required to "use the best scientific and commercial data available" in their ESA decision-making processes. The Gulf of Alaska and Bering Sea/Aleutian Island region is home base for Alaska's commercial pollock fishery. The fishery is one of the largest in the U.S., accounting for harvests in excess of one million metric tons worth

After more than a quarter century, the Endangered Species Act (ESA) remains one of the most significant forces in federal law. Widely viewed by industries nationwide as excessive and inflexible, the ESA has achieved true omnipotence throughout the environmental industry whose "Green Lobby" has found it an easy target. The ESA exposes federal agencies to litigation by its inherent dysfunction and lack of accountability. The "Green Lobby's" exploitation of the ESA is an economy killer across the nation. Sadly, Alaska's small coastal communities cannot escape unscathed. The National Marine Fisheries Service (NMFS) is one of two federal agencies responsible for administering the ESA, the U.S. Fish & Wildlife Service (USFWS) being the other. A central tenet of the ESA requires these agencies to ensure that human actions do not "jeopardize" the recovery or adversely modify the critical habitat of threatened and endangered species. One need only recall snail darters and the Tellico Dam in the southeast, and spotted owls and logging in the Pacific Northwest to be mindful of the ESA's far-reaching implications. The ESA requires NMFS and USFWS to consult with any federal agency regarding activities that may harm protected species. Whenever an

By Rick Marks



## Why Does Alaska's Forest Practices Act Continue To Change?

At Koncor Forest Products Company, we're committed to using the best science available. And, that's why we support ongoing changes to Alaska's Forest Practices Act. Changes based on scientific stream monitoring and extensive collaborative efforts serve to strengthen upstream fish habitat and enhance water quality. Changes to the Forest Practices Act are recommended to the legislature and are the result of years of stream research and monitoring as well as cooperative work between state and federal agencies, forest products companies, fishing groups, environmentalists and concerned individuals.

Over the past five years, Alaska's forest products industry has contributed over \$500,000 toward this type of research. And, we continue to fund studies to ensure stream protection. By working together, we are ensuring Alaska's Forest Practices Act remains state of the art.

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## Message from the Executive Director by Ken Freeman

### Site-specific criteria is a win-win situation for Anchorage

An important regulatory issue that will likely spark the interest of many is the renewal of EPA's wastewater discharge permit for the Municipality of Anchorage's (MOA) sewage treatment plant at Point Woronzof.

The Alaska Department of Environmental Conservation must certify the waters in the area of the discharge comply with state water quality standards in order for the MOA to receive its federal wastewater discharge permit. The Alaska Department of Environmental Conservation (ADEC) is proposing to adopt site-specific water quality criteria for upper Cook Inlet that would consider Cook Inlet's unique circumstances.

Cook Inlet receives large quantities of glacial till from various rivers and

streams and is subject to extremely forceful tides. These factors combine to produce naturally high levels of metals and turbidity. Therefore, test results using the total recoverable method usually exceed the state's water quality standards.

Cook Inlet's naturally high levels of particulate metals do not cause toxicity nor are they bio-available. Fish and whale tissue samples are low in metals including mercury and extensive monitoring has demonstrated no effect on the environment from the treatment plant's discharge.

MOA has proposed criteria be developed based on dissolved metals rather than total recoverable metals. The EPA has determined testing for dissolved metals provides a better measure of metals available to aquatic life.

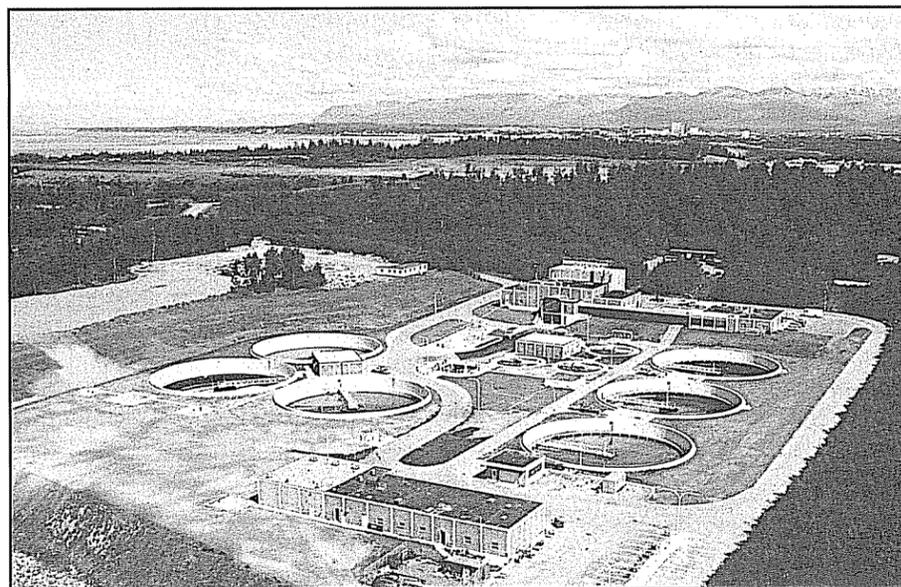
The alternative to adopting site-specific criteria is construction of a very expensive wastewater treatment facility, perhaps costing as much as \$500 million,

leading to a possible three-fold increase in Anchorage sewage rates. The minimal environmental benefits of such a facility are far outweighed by the extreme economic costs.

RDC has long advocated for reasonable water quality regulations based on sound science and has closely tracked this issue. ADEC has the regulatory flexibility to provide site-specific criteria when natural conditions alone produce non-compliance with state water quality standards. The wastewater treatment facility in upper Cook Inlet presents just such a scenario.

RDC commends the ADEC for the careful and extensive work that has gone into the proposed site-specific criteria that presents a win-win situation for the environment and the residents of Anchorage. The next step is EPA renewal.

We will continue to update Resource Review readers as the development of this issue unfolds.



Pictured above is the Anchorage Water and Wastewater utility Aspland Wastewater Treatment Plant at Point Woronzof.

**Resource Review** is the official periodic publication of the Resource Development Council (RDC), Alaska's largest privately funded nonprofit economic development organization working to develop Alaska's natural resources in an orderly manner and to create a broad-based, diversified economy while protecting and enhancing the environment.

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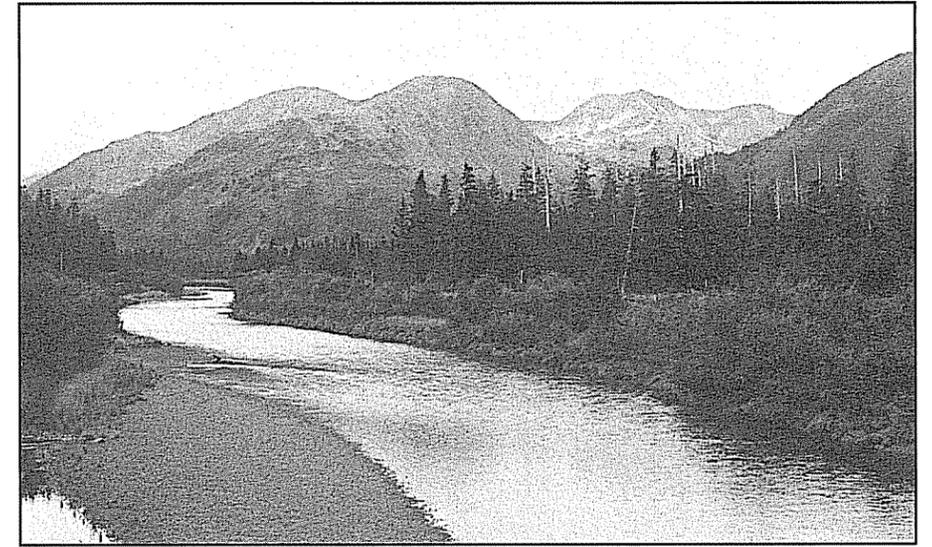
## RDC supports improvements to Alaska forest law

The Resource Development Council is urging legislators to pass a bill that would make improvements to the Forest Practices Act.

Senate Bill 12 is the result of a cooperative effort by forest users to evaluate the effectiveness and suitability of the Forest Practices Act and recommend improvement that would strengthen the protection of Alaska's streams and water quality. The modifications outlined in the bill are based on sound science, according to RDC Executive Director Ken Freeman.

"RDC is a strong proponent of reasonable regulations based on sound science and economic feasibility," said Freeman. "SB 12 meets these tests and we urge its passage."

In 1996, the Board of Forestry established a science and technical committee, comprised of scientists from the timber, commercial fishing and environmental interests, as well as state and federal agencies, to review and assess concerns about the adequacy of the act's provisions. The committee's two-year study identified several opportunities to improve salmon habitat and water quality. A stakeholders committee then convened to incorporate these findings into recommendations to the Board. The board subsequently endorsed the recommendations and requested legislative approval of the measures.



Proposed modifications to the Forest Practices Act would enhance protection measures for Alaska streams and salmon habitat while providing predictability to the timber industry in its harvesting activities.

SB 12 affects only the spruce and hemlock forests under the Department of Natural Resources jurisdiction in coastal areas between Ketchikan and Kodiak. Under current regulations, all anadromous streams are protected, although exceptions are allowed for marginal streams. SB 12 will eliminate all exceptions and provide additional protections. The bill accomplishes several goals:

- It assigns a "type" classification that covers all streams, putting to rest concerns that some segments of anadromous streams were not included

for protection.

- It extends the no-harvest, riparian buffer zone to ALL anadromous fish streams, relative to "type."

- It requires the retention of low-value timber along certain tributaries where prudent, so that trees may eventually fall into streams, forming natural pools downstream that are important to fish rearing.

Senator Jerry Mackie, sponsor of the bill, says the legislation is "a cooperative step forward in the protection and wise utilization of our resources."

## Hearing on Pogo prospect draws support

Teck Resources, Inc., recently applied for the necessary permits for an advanced exploration program at the Pogo gold prospect near Delta Junction. Preliminary information suggests that a gold resource of 5.2 million ounces exists at Pogo. The method of mining this deposit would be underground with a surface footprint much smaller than many open pit mines.

Teck is seeking permission through the permitting process to begin work in March on construction of a 2,000-foot access road and a 5,500-foot tunnel.

The tunnel would provide access to the deposit in order to obtain the information needed to determine the economic viability of the project, the extent of mineralization, practicality of potential mining methods and mine design. Teck's advanced exploration proposal requests approval for a five-year exploration program, including surface exploration drilling and underground activities. If early exploration results prove feasible, Teck may begin design and submit a permit application for a full scale mine before the proposed five-

year permit ends.

A hard rock mine and mill at Pogo would create approximately 350 construction jobs and 250 permanent year-round jobs during its operational life.

At a public hearing in Fairbanks January 28, RDC testified in support of a site-specific criterion for Total Dissolved Solids (TDS) of 650 mg/L, which reflects the natural background condition for TDS levels in the groundwater at the site.

Some 50 people attended the hearing. Nearly all favored the project.

# Open house highlights Carbon Mountain

Open houses were held last month in Cordova and Anchorage to provide local residents with new information on a proposed access road to Chugach Alaska Corporation's timber resources in the Carbon Mountain area.

CAC and its contractor, Koncor Forest Products, are in the early stages of planning for an access road into Carbon Mountain, located 60 miles east of Cordova and 20 miles north of the Gulf of Alaska. The tract encompasses 73,000 acres, 8,000 acres of which contain stands of merchantable timber.

Development in this area had previously been limited by the lack of surface access to the property as the only road in the region, the Copper River Highway, passes some 25 miles to the west.

For the past several years, CAC and Koncor have been working to identify the best route into the Carbon Mountain tract from the existing road system. Road access is guaranteed to CAC under the terms of the Alaska Native Claims Settlement Act, the Alaska National Interest Lands Conservation Act and the 1982 Chugach Natives, Inc., Settlement



Anne Leggett, HDR Alaska, Inc., answers questions from Scott Anaya of the National Wildlife Federation on the Carbon Mountain easement application documentation which was presented to the public in Anchorage and Cordova last month. The documents detail the environmental and engineering studies conducted to support the application. Also pictured is Valerie Brown, representing Trustees for Alaska and Rick Rogers of CAC.

Agreement.

CAC has elected to pursue an easement in the upper Johnson River Valley, one of three alternative evaluated for that segment of the Carbon Mountain easement. Public comment from Cordova residents and concerns for minimizing wetlands crossing and impacts on fish habitat prompted this decision, according to CAC. The result will be a net reduction in 36 fish stream crossings and avoidance of wetlands with high habitat values.

The new upper alternative will add approximately four additional miles of road and a difficult bridge crossing requiring a 150 foot clear span. The Forest Service concurs with CAC's route

selection.

According to Forest Service Road Engineer, Jim Rhodes, "the entire corridor traverses forested lateral and end moraines and has minimum road within open wetlands and other areas of high resource value."

Approximately 50 people attended the Cordova and Anchorage open houses. Many residents in Cordova look forward to the new jobs and economic benefits the road project and subsequent timber harvesting will bring. Others supported provisions that allow for public use of the right-of-way.

A host of federal and state agencies have regulatory oversight of the project.

RDC staff is closely tracking and participating in a process currently undertaken by the Forest Service in finalizing management prescriptions for the Chugach National Forest Land Management Plan.

The new plan will dictate multiple uses in the forest over the next ten years. RDC has been strongly advocating for multiple use, including timber harvesting, mining, helicopter landings and access for recreation.

At this time there are 21 different prescriptions ranging from "Primitive"

to "Resource Development" that outline the various management objectives of the forest. The prescriptions will be used to develop rough alternatives which will be available for public comment in March.

After reviewing public comments and incorporating the latest science assessments, the Forest Service will draft alternatives and recommend a preferred alternative in July. The draft environmental impact statement and draft forest plan will be released in January 2000.

## RDC closely tracking Chugach Forest Plan revisions

*Rough alternatives to be out for public comment in March*



## Thoughts from the President by Allen Bingham

# Governor, Legislature face big challenge

*Solving Alaska's fiscal gap is high RDC priority*

Last month a new state legislature opened in Juneau and Governor Tony Knowles unveiled priorities for his second four-year term in the traditional state-of-the-state address. A top priority of the Governor and the Legislature is getting a handle on Alaska's serious fiscal situation. A solution to Alaska's budget problems is perhaps one of the greatest responsibilities the Governor and any Legislature will ever face.

With record low oil prices, Alaska is confronted with one of its most serious fiscal challenges ever — a \$1 billion budget deficit projected in each of the next three years. During this period, the state's cash reserves outside of the Permanent Fund will be exhausted unless significant actions are taken this spring to head off disaster. These actions will require tough decisions from our elected leaders in Juneau. Some of these decisions will be unpopular, but leadership and unity will be required to meet the challenges. Sooner the better because the situation is grave and cannot wait until the tense, closing hours of the session.

Slumping oil prices and a weak Asian economy have hit Alaska hard. The private sector has already taken action to tighten its belt. Both BP and ARCO have substantially cut spending and more than a thousand Alaskans who either work directly for an oil company or in the support industry have lost or will soon be losing their jobs.

Unfortunately, the recent financial straits are not confined to oil. The timber and fishing industries are in the tank, both hit hard by weak Asian markets. Timber production is down by 70 percent or more in some areas, budgets have been drastically cut and industry employment has fallen to all-time lows. Meanwhile, the mining industry, which

has shown record growth and production over the last several years, is now struggling to cope with low commodity prices across the board.

While Alaska's economy may be more diversified today compared to the mid-1980s when low oil prices sparked a statewide recession, the full effects of the current downturn have yet to hit the general economy. However, in keeping the big picture in mind, Alaska has a lot going for it. In fact, some argue Alaska is rich, not poor. After all, how many states have a \$25 billion savings account and billions in reserve accounts?

Alaska's financial challenges can be met, but it will require our elected leaders to make tough choices in using the revenue and budget tools that are available but which are politically unpopular. More budget cuts and increases in state efficiencies will help, but Alaskans know there is no way the state can realistically cut \$1 billion from the current \$2.3 billion state budget. New taxes on industry are not the answer either as such action would discourage investment and harm a business climate severely shaken by global economic events. The fiscal gap itself is a significant hurdle in attracting investment capital here. Wary investors will think twice about Alaska if they believe there is a serious risk of higher taxation as a consequence of an unsustainable gap between state revenues and spending.

The solution can be found in using a combination of tools to solve the problem. No one tool — a state income tax, budget cuts, or use of Permanent Fund earnings — solves the problem entirely. The dilemma is which tool to use first.

RDC applauds Governor Knowles for putting a plan on the table and for

encouraging debate on the issue. RDC also applauds the Legislature for making this issue a top priority and getting down to business. We are pleased to see the administration and the legislature work together as a team to find a solution. As Senator Drue Pearce and Rep. Brian Porter recently said, "we all have a stake in setting a new direction for the 21st Century. We look forward to the challenge and stand ready for the work ahead."

Alaska is looking into the hourglass, but RDC is confident Juneau will come to grips with this problem and do what is in the best interest of our state. RDC is working with the Knowles Administration and the Legislature on the fiscal plan issue. We need to act now while we have options rather than waiting until we are faced with tougher choices down the road.

## RDC objects to changes in Bering Sea pollock fishery

In a recent letter to the National Marine Fisheries Service (NMFS), RDC objected to new restrictions on the pollock fishery that will impact the economies of many Southwest Alaska communities and the livelihoods of thousands of Alaskans.

Pollock, the largest and most valuable fishery in Alaska, is the economic engine of many communities.

"Some of the measures being implemented by NMFS could significantly impact our economy without demonstrated benefit to the Steller sea lion," RDC noted. The Steller sea lion populations are in decline, but what has caused that decline remains unknown.

# ESA litigation forces new action to protect Steller sea lions

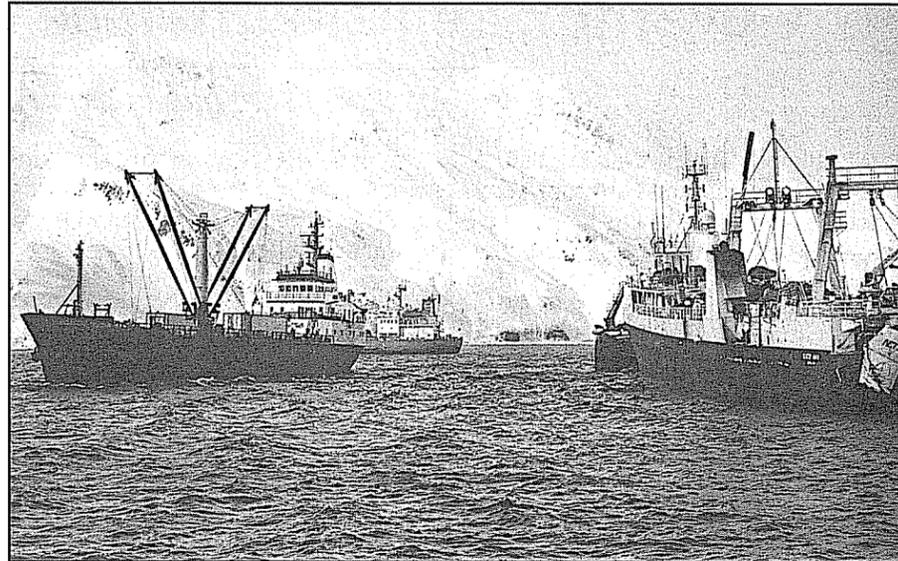
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the fact they both occurred in similar space and time. Lacking sound scientific justification but under legal pressure, NMFS unilaterally instituted a series of 10 and 20 nautical mile pollock "trawl exclusion" zones to protect sea lion rookery areas in the Gulf of Alaska and Bering Sea/Aleutian Islands, respectively. Alaska's commercial fishermen and coastal communities had no alternative but to comply with the new measures, hoping it would be enough. It was, but the respite was short-lived.

The mid-1990s was marked by a period of relative calm regarding commercial fishing and sea lions. The NPFMC and NMFS continued to successfully manage the pollock fishery, the U.S. Coast Guard enforced the new trawl exclusion zones, and NMFS saw fit not to increase sea lion protection with further restrictions on the fishery. The agency went on record in a 1998 report to the U.S. Congress indicating that additional protective measures would not be considered until the current measures were examined to determine their effectiveness. This continued until 1998 when the environmental industry took the agency back to court.

This second "green" lawsuit was filed by the Earthjustice Legal Defense Fund on behalf of Greenpeace, Sierra Club, and the American Oceans Campaign (AOC). The primary objective of the ESA suit was to stop the January 1999 opening of the Alaskan commercial pollock trawl fishery by citing the agency's failure to adequately protect sea lions and their habitat from the impacts of commercial trawling.

NMFS found itself in a precarious position under tremendous time constraint — the first wave of SSL protective measures had not yet been assessed, increased federal funding for sea lion research/recovery was never secured by the agency, and conflicting scientific hypotheses/data now existed



The Gulf of Alaska and the Bering Sea/Aleutian Island region is home base for Alaska's commercial pollock trawl fishery. The fishery is one of the largest in the U.S., accounting for harvests in excess of one million metric tons worth \$650 million. (Photo by Carl Portman)

which undermined the agency's linchpin argument that fishing was the problem.

Despite scientifically viable alternative hypotheses, NMFS marine mammal scientists took a hardline position — that pollock trawling was the sole cause of the problem. NMFS, being both the acting and "offending" federal agency, was in a position of consulting with itself on the issue and could therefore reject other explanations without validation.

The absence of independent scientific peer review requirements injects a level of dysfunction into the ESA process. In this situation, NMFS was completely free to determine internally what impact the fishery was having on sea lions, what constituted the best available information, and what management measures were necessary to mitigate the impacts of pollock trawling. The agency then appeared in court to defend its position that the additional measures would be sufficient to address the problem. In ESA cases, the courts generally defer to agency expertise on these matters.

*"Ironically, Alaska's commercial fishing industry and fishing-based coastal communities, which depend on a healthy ecosystem and are actively working to seek independent science-based answers to sea lion questions, stand to lose the most in this process."*

This is precisely how the process has played out in southwest Alaska. The environmental industry once again forced a federal agency into premature action through ESA litigation. In this instance, the agency was vulnerable and ill-prepared, having generated little scientific information during the last 8 years. Despite never establishing a



The fishing industry contends that the latest environmental lawsuit will kill jobs and damage the economy in rural Alaska.

direct correlation between fishing and sea lion decline, the agency had no choice but to reverse its position of the last several years and issue a determination that commercial pollock trawling was now jeopardizing sea lion existence/recovery.

The agency internally fast-tracked a series of mitigation measures even more restrictive than the first set implemented during 1991-93. The new measures for the GOA include over 40 new trawl exclusion zones. Starting in 1999, pollock trawling is completely prohibited in the Aleutian Islands region, and the fishing season opening dates will be changed.

The majority of traditional commercial fishing grounds will now be trawl exclusion zones, and the percentage of pollock that can be taken by trawling from sea lion critical habitat will be reduced to 50 percent, down from current levels of 70 percent. These changes will whipsaw the shore-based workforce, cost the industry in excess of \$100 million annually, and put fishermen at increased risk as they are forced further offshore seeking alternative fishing areas.

On December 18, 1998, District Court Judge Zilly issued a stay to permit Alaska's pollock trawl fishery to open on January 20, 1999 under the agency's mitigation plan. Not surprising to anyone, the AOC and Greenpeace have

*"The big winner in the final analysis will be the group that never had anything at stake to begin with — the environmental industry will tout the sea lion 'Victory' to raise more money from well-intentioned folks who just don't seem to realize the sawbuck they gave Greenpeace last year was used to put an Alaskan fisherman out of business this year, will make trouble for a Maine lobster man next year and a Gulf of Mexico red snapper fisherman in the next millennium."*

vowed to file an injunction to stop Alaska's pollock fishery. A final ruling is expected in February 1999.

The big winner in the final analysis will be the group that never had anything at stake to begin with — the environmental industry will tout the sea lion "victory" to raise more money from well-intentioned folks who just don't seem to realize the sawbuck they gave Greenpeace last year was used to put an Alaskan fisherman out of business this year, will make trouble for a Maine lobster man next year and a Gulf of Mexico red snapper fisherman in the next millennium.

At first glance, escaping an embarrassing ESA court defeat would appear to cede the federal agency a narrow margin of victory. However, placing increased restrictions on Alaska's southwest communities by operating in an internal vacuum absent of accountability and failing to utilize the best scientific and commercial information available does little for the agency's dwindling credibility.

Amazingly, sea lions may also lose in this dysfunctional exercise. The federal government has never bothered to scientifically determine what the impacts — positive, negative, or neutral, these management measures actually have on the animals or the ecosystem. It is certainly within the realm of possibility these measures will have no quantifiable affect on sea lions whatsoever.

Ironically, Alaska's commercial fishing industry and fishing-based coastal communities, which depend on a healthy ecosystem and are actively

working to seek independent science-based answers to sea lion questions, stand to lose the most in this process. As Alaskan fishermen are pushed further offshore the communities will continue to lose them in weather-related accidents. This problem, already prevalent in commercial fishing operations, is being exacerbated by NMFS and Greenpeace and will continue for as long as the ESA remains unimproved.

In an effort to remain viable both economically and culturally, the coastal communities of southwest Alaska have banded together in the face of runaway environmentalism and the omnipresent ESA. The communities have formed a "Steller Sea Lion Caucus" and initiated public information and political action campaigns designed to promote an independent scientific-based Steller sea lion research program, and inform members of Congress and other community leaders throughout the U.S. that despite overtures toward promoting sustainable resource use, Greenpeace and the "Green Lobby" are using the ESA to trash the economy and kill jobs in rural Alaska.

The future is unclear but one thing is certain — the battle is joined, the gloves are off, and for the long term.

*Rick E. Marks is a marine scientist and professional staff member at Robertson, Monagle and Eastaugh's Virginia office. Staff in ROMEA's Virginia office are assisting southwest Alaska's coastal communities with the Steller sea lion issue. Mr. Marks addressed the Steller sea lion issue at a December breakfast meeting of the Resource Development Council.*