

MEMORANDUM

TO: Council, SSC and AP Members

FROM: Chris Oliver *Chris*
Executive Director

DATE: February 1, 2005

SUBJECT: Protected Resources Report

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

Receive report on Protected Resources issues and take action as necessary.

BACKGROUND

A. List of Fisheries for 2005

As required by the Marine Mammal Protection Act, NMFS annually publishes a List of Fisheries (LOF) that places all U.S. commercial fisheries into one of three categories based on the level of serious injury or mortality to marine mammals that occur in each fishery. The Proposed Rule was published December 2, 2004 (69 FR 70094)(Item B-7(a)). NMFS is considering changes that will affect certain Alaskan groundfish fisheries; the agency proposes to place the following fisheries into Category II:

- BSAI Pacific cod longline
- BSAI Greenland turbot longline
- BSAI pollock trawl
- BSAI flatfish trawl
- Bering Sea sablefish pot

The Proposed Rule also includes a proposal to add two marine mammal stocks to the list of marine mammal species and stocks that interact with the BSAI P. cod longline fishery: eastern North Pacific resident killer whale and eastern North Pacific transient killer whale.

In October, the Council received more information on the proposed LOF for 2005, including a report on the data and analysis underpinning the proposed changes that will affect the above five fisheries. Based on public testimony and comments from the SSC (Item B-7(b)), the Council asked NMFS to extend the comment period to allow more time for public review and SSC review and an opportunity to revisit this issue at its February 2005 meeting.

NMFS has agreed to a 60-day extension of the comment period (Item B-7(c)). The SSC will take up this issue again at this meeting. If the Council wishes to comment on the LOF, comments are due March 4, 2005.

NMFS staff will be available to provide additional information and to answer questions.

B. Fur Seals

NMFS EIS on Fur Seal Harvest and Management in the Pribilof Islands

At its October 2004 meeting, the Council received a report from its Fur Seal Committee on the status of the Committee's review of a draft EIS (dEIS) on renewing the Pribilof Island fur seal subsistence harvest regulations. The Committee made no specific recommendations for comments on the dEIS other than to agree with the agency's choice of a preferred alternative and to support expediting the renewal of the harvest regulations. At that meeting the Council was advised by NMFS that the agency planned to prepare a follow-up and more broadly focused dEIS on revising fur seal management on the Pribilof Islands. The Council and the public expressed considerable interest in this "second dEIS" in that it would contain an analysis of commercial fishery interactions with fur seals. The Council requested that NMFS allow for Council review as the dEIS progressed.

NMFS has determined that it will not pursue the development of this second dEIS at this time. NMFS wishes to wait until it has more time to review options for fur seal management. NMFS staff will be available to answer questions.

Pribilof Island Collaborative Meeting

The Pribilof Islands Collaborative met January 28-30 in Anchorage to review and discuss available data on fur seals, commercial fisheries, and potential factors affecting northern fur seals in the Bering Sea (the agenda for that meeting is attached as Item B-7(d)). The group heard presentations from many scientists and local residents and developed a preliminary conceptual model of the "fur seal ecosystem". The model seeks to provide a common understanding of how the various components of the Bering Sea interact with fur seals and what role ocean climate, predation, disease and contaminants, winter pelagic foraging conditions, Pribilof Island development, and commercial fisheries might play in that system. The Collaborative also received a presentation on a draft Northern Fur Seal Conservation Plan from NMFS. The conservation plan is still in the final stages of preparation, but will be released for public review soon. The Collaborative outlined research needs, heard presentations of proposed or ongoing research for 2005, and agreed to meet again to finalize the conceptual model and determine the next course of action.

C. Seabirds

State of Alaska Seabird Avoidance Regulations

The State recently issued a notice that it is adopting Federal regulations requiring groundfish longline vessels to use seabird avoidance measures to reduce incidental injury and mortality during fishing activities (Item B-7(e)). The State's regulations adopt by reference 50 CFR 679.24 and require seabird avoidance measures in all groundfish longline fisheries in State waters.

Petition to List the Black-footed Albatross under the ESA

On September 28, 2004, The Center for Biological Diversity, Turtle Island Restoration Network, and Earthjustice petitioned the Secretary of Interior, through the U.S. Fish & Wildlife Service, to list the black-footed albatross as threatened or endangered under the Endangered Species Act. The petitioners cited its rapidly declining population and concerns over human interactions with this seabird. On December 3, 2004 the USFWS notified the petitioners that an emergency listing is not warranted at this time (Item B-7(f)). Black-footed albatross are taken incidentally in some Alaskan groundfish longline fisheries, primarily in the GOA. None have been taken in Alaskan groundfish trawl fisheries since 1998. Current seabird avoidance measures implemented by the halibut and groundfish longline fleets have reduced injury and mortality to this species. Annual mortality of black-footed albatross in GOA groundfish longline fisheries during 1993-2003 ranged from 133-216 (average 175) birds and from 1999-

2003 ranged from 72-169 (average 121) birds. In these fisheries in the BSAI, estimated take of black-footed albatross in 1993-2003 was 12-25 (average 18) birds and over the period 1999-2003 was 4-16 (average 10) birds. The worldwide black-footed albatross population size is estimated to range from 275,000 to 327,753 (abundance estimates vary depending on reporting organization).

New Research on Seabird Interactions with Discards and Offal from Alaskan Groundfish Fisheries

The Alaska Fisheries Science Center has begun a study of the nutritional value of offal and discards from Alaskan groundfish fisheries on seabirds. The study, initiated during the fall 2004, focuses on the pot, trawl, and longline fisheries in the GOA and BSAI, concentrating on fishery interactions with black-footed and Laysan albatrosses. Dr. Ann Edwards, a National Research Council Research Associate and Visiting Scholar with the University of Washington's School of Aquatic and Fisheries Science, plans to provide the SSC a brief report summarizing the objectives of this research, and would like to give the Council an overview of this research in a future Council meeting.

D. North Pacific Right Whale

In April 2003, NMFS published a Final Rule that changed the way right whales were listed under the Endangered Species Act by splitting the endangered northern right whale into two species: the North Atlantic right whale and the North Pacific right whale. However, on January 11, 2005, NMFS published a Final Rule that rescinds the April 2003 decision to split the northern right whale into two stocks (Item B-7(g)). NMFS has determined that issuance of the April 2003 Final Rule did not meet the procedural requirements of the Endangered Species Act. NMFS states that it failed to follow public notice and comment requirements, did not appropriately conduct a required review of the threatened or endangered status of each species, and did not have authority to change the Federal regulations where the listing was published. Details are in the attached Federal Register notice. This action reverts the ESA designation of the right whale to what it was prior to the April 2003 rule – endangered northern right whale (with no split into North Atlantic and North Pacific) and endangered southern right whale. It is unknown how this decision may affect the October 25, 2004 petition from the Center for Biological Diversity that NMFS proceed with designating critical habitat for the right whale in the North Pacific.

E. State of Alaska Parallel Pollock Trawl Fishery on BOF Agenda

The Alaska Board of Fisheries (BOF) has received a request from the Aleut Enterprise Corporation for changes in State commercial fishing regulations to open certain State waters to a State parallel pollock trawl fishery in two regions in the Aleutian Islands, one in the Shumagin Islands area and another in the Adak/Atka area. The BOF also has received a request for a similar action in State waters near Seward. These two requests are attached as Item B-7(h). In both petitions, the BOF is being asked to open to pollock trawling certain State waters that currently are closed to pollock trawling under the Federal Steller sea lion protection measures. On January 10, 2005 the BOF voted to place both requests on the agenda for their March 7-13, 2005 meeting. The BOF notified the Council about this proposed action in a letter dated January 28, 2005 with an attached "Proposal 455" that summarizes the action before the BOF (see Item B-7(i)). Maps of these areas are Item B-7(j). At the March 7-13 meeting, the BOF will make a decision on Proposal 455 which would be effective for the remainder of the 2005 calendar year.

On February 1, 2005, NMFS sent a letter to the Council outlining their concerns over the proposed BOF action. The NMFS letter is attached as Item B-7(k). NMFS staff will be available to answer questions.

Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. In § 117.1007 revise paragraph (a) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk Southern Railroad Bridge (NS #V2.8), mile 2.7 at Norfolk, shall operate as follows:

(1) The draw shall remain in the open position for navigation. The draw shall only be closed for train crossings or periodic maintenance authorized in accordance with Subpart A of this part.

(2) The bridge shall be operated by the controller at the Norfolk Southern Railroad Bridge (NS #5), mile 1.1, over the Eastern Branch of the Elizabeth River in Norfolk, VA. The controller shall monitor vessel traffic with closed circuit cameras and infrared sensors covering the swing radius. Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 446-5320.

(3) The bridge shall not be operated from the remote location in the following events: Failure or obstruction of the infrared sensors, closed-circuit cameras or marine-radio communications, or when controller visibility is less than 3/4 of a mile. In these situations, a bridge tender must be called to operate the bridge on-site.

(4) Before the bridge closes for any reason, the remote operator will monitor waterway traffic in the area. The bridge shall only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area. While the bridge is moving, the operator shall maintain constant surveillance of the navigation channel.

(5) Before closing the draw, the channel traffic lights will change from flashing green to flashing red, the horn will sound five short blasts, and an audio voice warning stating, "Norfolk Southern's Railroad Bridge over the Eastern Branch of the Elizabeth River at milepost 2.7 will be closing to river traffic." Five short blasts of the horn will continue until the bridge is seated

and locked down to vessels, the channel traffic lights will continue to flash red.

(6) When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate the draw is opening to vessel traffic. During the opening swing movement, the channel traffic lights will flash red until the bridge returns to the fully open position. In the full open position to vessels, the bridge channel lights will flash green followed by an announcement stating, "Security, security, security, the Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic."

* * * * *

Dated: November 22 2004.
Ben R. Thomason, III,
Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.
[FR Doc. 04-26520 Filed 12-1-04; 8:45 am]
BILLING CODE 4910-15-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310-4310-01; I.D. 100104H]

RIN 0648-AS78

List of Fisheries for 2005

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Proposed rule.

SUMMARY: The National Marine Fisheries Service (NMFS) is publishing the proposed List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2005 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments must be received by January 3, 2005.

ADDRESSES: You may send comments by any of the following methods:

- Mail: Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

- E-mail: 2005LOF.comments@noaa.gov.

- Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov or by fax to 202-395-7285.

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802; or

NMFS, Pacific Islands Region, Protected Resources Division, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700.

FOR FURTHER INFORMATION CONTACT: Kristy Long, Office of Protected Resources, 301-713-1401; David Gouveia, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Tamra Faris, Pacific Islands Region, 808-973-2937. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

What is the List of Fisheries?

Section 118 of the MMPA requires that NMFS place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals that occurs in each fishery (16 U.S.C. 1387 (c)(1)). The categorization of a fishery in the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements. NMFS must reexamine the LOF annually, considering new information in the Stock Assessment Reports, other relevant sources, and the LOF, and publish in the *Federal Register* any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387 (c)(3)).

How Does NMFS Determine in which Category a Fishery is Placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362 (20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 at 50 CFR 229.2.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Since fisheries are categorized on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically categorized on the LOF at its highest level of classification (e.g., a fishery that qualifies for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality qualifies for Category II by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries (50 CFR 229.2).

How Do I Find Out if a Specific Fishery is in Category I, II, or III?

This proposed rule includes two tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the fisheries in the Pacific Ocean (including Alaska). Table 2 lists all of the fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

Am I Required to Register Under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization from NMFS in order to lawfully incidentally take a marine mammal in a commercial

fishery. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How Do I Register?

Fishers must register with the Marine Mammal Authorization Program (MMAP) by contacting the relevant NMFS Regional Office (see ADDRESSES) unless they participate in a fishery that has an integrated registration program (described below). Upon receipt of a completed registration, NMFS will issue vessel or gear owners physical evidence of a current and valid registration that must be displayed or in the possession of the master of each vessel while fishing in accordance with section 118 of the MMPA (16 U.S.C. 1387(c)(3)(A)).

What is the Process for Registering in an Integrated Fishery?

For some fisheries, NMFS has integrated the MMPA registration process with existing state and Federal fishery license, registration, or permit systems and related programs. Participants in these fisheries are automatically registered under the MMPA and are not required to submit registration or renewal materials or pay the \$25 registration fee. Following is a list of integrated fisheries and a summary of the integration process for each Region. Fishers who operate in an integrated fishery and have not received registration materials should contact their NMFS Regional Office (see ADDRESSES).

Which Fisheries Have Integrated Registration Programs?

The following fisheries have integrated registration programs under the MMPA:

1. All Alaska Category II fisheries;
2. All Washington and Oregon Category II fisheries;
3. Northeast Regional fisheries for which a state or Federal permit is required. Individuals fishing in fisheries for which no state or Federal permit is required must register with NMFS by contacting the Northeast Regional Office (see ADDRESSES); and
4. All North Carolina, South Carolina, Georgia, and Florida Category I and II fisheries for which a state permit is required.
5. The Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set line Fishery (Hawaii longline fishery) was elevated to Category I in the 2004 LOF. The Pacific Islands Regional Office is integrating the MMPA registration process with the existing Hawaii longline fishery limited entry permit

process. Participants in this fishery will be automatically registered under the MMPA and will not be required to submit registration or pay the \$25 registration fee.

How Do I Renew My Registration Under the MMPA?

Regional Offices, except for the Northeast Region, annually send renewal packets to participants in Category I or II fisheries that have previously registered; however, it is the responsibility of the fisher to ensure that registration or renewal forms are completed and submitted to NMFS at least 30 days in advance of fishing. Individuals who have not received a renewal packet by January 1 or are registering for the first time should request a registration form from the appropriate Regional Office (see ADDRESSES).

Am I Required to Submit Reports When I Injure or Kill a Marine Mammal During the Course of Commercial Fishing Operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or fisher (in the case of non-vessel fisheries), participating in a Category I, II, or III fishery must report all incidental injuries or mortalities of marine mammals that occur during commercial fishing operations to NMFS. "Injury" is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the absence of any wound or other evidence of an injury, and must be reported. Instructions on how to submit reports can be found in 50 CFR 229.6.

Am I Required to Take an Observer Aboard My Vessel?

Fishers participating in a Category I or II fishery are required to accommodate an observer aboard vessel(s) upon request. Observer requirements can be found in 50 CFR 229.7.

Am I Required to Comply With Any Take Reduction Plan Regulations?

Fishers participating in a Category I or II fishery are required to comply with any applicable take reduction plans. NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all

Sources of Information Reviewed for the Proposed 2005 LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the Stock Assessment Reports (SARs) for all

observed fisheries to determine whether changes in fishery classification were warranted. NMFS SARs are based on the best scientific information available at the time of preparation for the information presented in the SARs, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels of marine mammal stocks. NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, and other information that is not included in the SARs.

The information contained in the SARs is reviewed by regional scientific review groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that goes into SARs, and to advise NMFS on population status and trends, stock structure, uncertainties in the science, research needs, and other issues.

The proposed LOF for 2005 was based, among other things, on information provided in the final SARs for 1996 (63 FR 60, January 2, 1998), the final SARs for 2001 (67 FR 10671, March 8, 2002), the final SARs for 2002 (68 FR 17920, April 14, 2003), and the final SARs for 2003 (69 FR 54262, September 8, 2004).

Summary of Changes to the Proposed LOF for 2005

The following summarizes changes in fishery classification including fisheries listed on the LOF, the number of participants in a particular fishery, and the species and/or stocks that are incidentally killed or seriously injured in a particular fishery that are proposed for the 2005 LOF. The placement and definitions of U.S. commercial fisheries proposed for 2005 are identical to those provided in the LOF for 2004 with the following exceptions:

Commercial Fisheries in the Pacific Ocean: Fishery Classification

The List of Fisheries from 1990 through 2003 included the Alaska groundfish fisheries as large combinations of fisheries. In the 2003 final LOF (68 FR 41725, July 15, 2003), NMFS indicated we would review the existing fishery delineations in the LOF for Federal and state fisheries in Alaska. The decision to review Alaska fisheries was based, in part, on NMFS' recognition that the large fishery groups previously included in the LOF are not a homogeneous fishery, but rather a

diverse group of fisheries that operate during different seasons and target different groundfish species within the Bering Sea and Gulf of Alaska. Marine mammal interactions are known to vary among Alaska groundfish fisheries based on time and area of operations, method of gear deployment, and target groundfish species. Therefore, the identification of these fisheries on a finer scale will allow for improved resolution of factors affecting incidental mortality and serious injury of marine mammals in these fisheries.

NMFS reviewed the Bering Sea/Aleutian Islands (BSAI) groundfish trawl, Gulf of Alaska (GOA) Groundfish Trawl, Bering Sea and GOA Finfish Pot, AK Crustacean Pot, BSAI Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish), and GOA Groundfish Longline/Set Line (federally regulated waters, including miscellaneous finfish and sablefish) fisheries. Based on this review, the 2004 final LOF (69 FR 48407, August 10, 2004) delineated these fisheries by target species and gear type. An analysis to assign each of these newly delineated fisheries to the appropriate LOF category was deferred until the 2005 LOF and all newly designated fisheries were placed in Category III pending the results of the analysis.

NMFS has completed an analysis of past incidental mortality and serious injury for each of the Federal fisheries specified in the 2004 LOF in accordance with the fishery classification criteria set forth in the implementation regulations of section 118 of the MMPA (50 CFR part 229). Based on these analyses, NMFS proposes that five of the Federal fisheries newly delineated in the 2004 LOF be reclassified as Category II fisheries and the remainder of the fisheries newly delineated in the 2004 LOF remain as Category III fisheries.

AK Bering Sea Aleutian Islands Flatfish Trawl Fishery
NMFS proposes elevating the BSAI Flatfish trawl fishery from Category III to Category II based on documented interactions between the fishery and the western U.S. stock of Steller sea lions and the eastern North Pacific resident and transient stocks of killer whales.
Tier I Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the following stocks: western U.S. stock of Steller sea lions, eastern North Pacific resident stock of killer whales, and eastern North Pacific transient stock of killer whales.

Therefore, the BSAI flatfish trawl fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of the western U.S. stock of the Steller sea lions in this fishery is 3.1 animals per year or 1.48% of the stock's PBR (209 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.5 animals per year or 6.94% of the stock's PBR (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales by the BSAI flatfish trawl fishery is 0.5 animals per year or 17.86% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Pollock Trawl Fishery

NMFS proposes elevating the BSAI pollock trawl fishery from Category III to Category II based on the following analysis of the takes of five stocks of marine mammals: western U.S. stock of Steller sea lions, eastern North Pacific resident and transient stocks of killer whales, and the central and western North Pacific stocks of humpback whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the following stocks: western U.S. stock of Steller sea lions, eastern North Pacific resident stock of killer whales, eastern North Pacific transient stock of killer whales, central North Pacific stock of humpback whales, and western North Pacific stock of humpback whales. Therefore, the BSAI pollock trawl fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of the western U.S. stock of the Steller sea lions in this fishery is 2.5 animals per year or 1.2% of the stock's PBR (209 animals). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year or 8.33% of the stock's PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year or 21.43% of the stock's PBR level (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of central North Pacific stock of humpback whales in this fishery is 0.3 animals per year or 4.05% of the stock's PBR level (7.4 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of western North Pacific stock of humpback whales in this fishery is 0.3 animals per year or 42.86% of the stock's PBR level (0.7 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of this stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for all marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Greenland Turbot Longline Fishery

NMFS proposes elevating the AK BSAI Greenland turbot longline fishery from Category III to Category II fishery based on the following analysis of takes of the eastern North Pacific resident and transient stocks of killer whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury

across all fisheries is greater than 10% of the PBR levels for the eastern North Pacific resident and transient stocks of killer whales. Therefore, the AK BSAI Greenland turbot longline fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.6 animals per year or 8.33% of the stock's PBR level (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.6 animals per year or 21.43% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for the marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Aleutian Islands Pacific Cod Longline Fishery

NMFS proposes elevating the AK BSAI Pacific cod longline fishery from Category III to Category II based on the following analysis of interactions between the fishery and the eastern North Pacific resident and transient stocks of killer whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the eastern North Pacific resident and transient stocks of killer whales. Therefore, the AK BSAI Pacific cod longline fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of eastern North Pacific resident stock of killer whales in this fishery is 0.8 animals per year or 11.11% of the stock's PBR (7.2 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of eastern North Pacific transient stock of killer whales in this fishery is 0.8 animals per

year or 28.57% of the stock's PBR (2.8 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for two of the marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

AK Bering Sea Sablefish Pot Fishery

NMFS proposes elevating the AK Bering Sea sablefish pot fishery from Category III to Category II based on the following analysis of interactions between this fishery and the central and western North Pacific stocks of humpback whales.

Tier 1 Evaluation: The total estimated annual mortality and serious injury across all fisheries is greater than 10% of the PBR levels for the central and western North Pacific stocks of humpback whales. Therefore, the AK Bering Sea sablefish pot fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: The average annual estimated mortality and serious injury of central North Pacific stock of humpback whales in this fishery is 0.2 animals per year or 2.7% of the stock's PBR (7.4 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

The average annual estimated mortality and serious injury of western North Pacific stock of humpback whales in this fishery is 0.2 animals per year or 28.57% of the stock's PBR (0.7 animals per year). Because this level of mortality and serious injury exceeds 1% but is less than 50% of the stock's PBR level, this fishery qualifies for classification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR level for both marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as a Category II fishery.

CA/OR Thresher Shark/Swordfish Drift Gillnet Fishery (≥ 14 in. mesh)

NMFS proposes to elevate the CA/OR thresher shark/swordfish drift gillnet fishery from Category II to Category I. The CA/OR thresher shark/swordfish drift gillnet fishery includes all vessels

using drift gillnets of greater than or equal to 14 inch stretched mesh to target thresher shark and swordfish off of California and Oregon. This fishery primarily operates outside of state waters to about 150 miles offshore, ranging from the U.S.-Mexico border to northward of the Columbia River in Oregon. This fishery is the subject of the Pacific Offshore Cetacean Take Reduction Team (POCTRT), which was convened by NMFS in 1996 to reduce the take of marine mammals incidental to this fishery. The Pacific Offshore Cetacean Take Reduction Plan took effect in 1997 and has resulted in a significant reduction in the number of marine mammals taken in this fishery. As a result of this reduction in marine mammal mortality and serious injury, NMFS changed the classification of this fishery from Category I to Category II in the 2003 LOF (68 FR 41725, July 15, 2003).

Based on data collected during a fall 2002 research cruise, NMFS developed revised abundance estimates and PBR levels for several marine mammal stocks in the Pacific Ocean and incorporated these into the 2003 SARs. As a result of these changes, the PBR level for the CA/OR/WA stock of short-finned pilot whales was revised from 5.1 animals per year to 1.19 animals per year.

NMFS' analysis of the incidental marine mammal mortality and serious injury for this fishery is based on NMFS observer data from 1999 through 2003. Based on these observer data, the NMFS Southwest Fisheries Science Center produced annual reports providing estimates of marine mammal mortality and serious injury for this fishery. These reports were presented to the Pacific SRG and the POCTRT and are incorporated into the SARs as they are updated. The annual mortality reports for 1997-2003 are available on the internet at: <http://swfsc.nmfs.noaa.gov/PRD/PROGRAMS/CMMP/default.htm>.

Overall, the incidental take of marine mammal stocks in the CA/OR thresher shark/swordfish drift gillnet fishery has continued to decrease. However, based on the recent revised PBR level for short-finned pilot whales and the incidental take of one short-finned pilot whale by the fishery in 2003, NMFS is proposing to elevate this fishery to Category I. NMFS intends to continue placing observers on vessels participating in this fishery and to continue working with the POCTRT to address the entanglement of marine mammals in this fishery. In addition, NMFS will be conducting a research cruise in fall 2005 that will result in revised abundance estimates and PBR levels for several marine mammal stocks

in the Pacific Ocean, including the CA/OR/WA stock of short-finned pilot whales.

Tier 1 Evaluation: NMFS observer data indicate that animals from the following marine mammal stocks were killed or seriously injured incidental to the CA/OR thresher shark/swordfish drift gillnet fishery from 1999-2003: California sea lion (U.S. stock), northern elephant seal (CA breeding stock), Dall's porpoise (CA/OR/WA stock), Pacific white-sided dolphin (CA/OR/WA Northern and Southern stocks), Risso's dolphin (CA/OR/WA stock), short-beaked common dolphin (CA/OR/WA stock), long-beaked common dolphin (CA/OR/WA stock), northern right whale dolphin (CA/OR/WA stock), short-finned pilot whale (CA/OR/WA stock), and gray whale (eastern North Pacific stock). According to the best available information, the estimated annual mortality and serious injury across all fisheries is greater than 10 percent of the PBR levels for the following stocks: California sea lion (U.S. stock), northern right whale dolphin (CA/OR/WA stock), short-finned pilot whale (CA/OR/WA stock), and fin whale (CA/OR/WA stock); therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: NMFS analysis of the incidental marine mammal mortality and serious injury for this fishery is based on NMFS observer data from 1999 through 2003. The average annual estimated mortality and serious injury of California sea lions incidental to this fishery during this period was 36.6 animals per year, which represents 0.4 percent of the PBR level for California sea lions (8,333 animals). The average annual estimated mortality and serious injury of northern right whale dolphins incidental to this fishery is 21.2 animals per year, which represents 12.9 percent of the PBR level for this stock (164 animals). The average annual estimated mortality and serious injury of short-finned pilot whales incidental to this fishery during this period is 1 animal per year, which represents 84 percent of the PBR level for this stock (1.19 animals). The average annual estimated mortality and serious injury of fin whales incidental to this fishery is 0.9 animals per year, which represents 17.6 percent of the PBR level for this stock (5.1 animals).

Because the level of mortality and serious injury is greater than 50 percent of the PBR level for short-finned pilot whales, this fishery qualifies for reclassification as a Category I fishery.

Fishery Name and Organizational Changes and Clarifications**Bering Sea and Aleutian Islands Cod Longline Fishery**

NMFS proposes to modify the name of the "Bering Sea and Aleutian Islands cod longline fishery" to the "Bering Sea and Aleutian Islands Pacific cod longline fishery" to correct an error in the final 2004 LOF (69 FR 48407, August 10, 2004) in which "Pacific" was mistakenly omitted.

Number of Vessels/Persons

The estimated number of participants in the "OR Swordfish Floating Longline Fishery" is updated to 0 based on 2004 permit data.

The estimated number of participants in the CA/OR thresher shark/swordfish drift gillnet fishery is updated to 85 based on recent permit data.

The estimated number of participants in the CA anchovy, mackerel, tuna purse seine fishery is updated to 110 based on recent permit data.

The estimated number of participants in the California pelagic longline fishery is updated to 6 based on recent permit data.

The estimated number of participants in the California sardine purse seine fishery is updated to 110 based on recent permit data.

The estimated number of participants in the California swordfish harpoon fishery is updated to 30 based on recent permit data.

List of Species that are Incidentally Injured or Killed

NMFS proposes to add the Eastern North Pacific stock of gray whales to the list of marine mammal species and stocks incidentally injured or killed by the WA, OR, CA crab pot fishery. An interaction between this stock and the WA, OR, CA crab pot fishery was documented by the marine mammal health and stranding network and NOAA's Office of Law Enforcement.

NMFS proposes to add the CA/OR/WA stocks of long-beaked and short-beaked common dolphins, and California sea lions to the list of marine mammal species and stocks that interact with the CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery. An interaction between this stock and this fishery was documented by the NMFS observer program.

NMFS proposes to add the CA/OR/WA stock of Risso's dolphin to the list of marine mammal species and stocks that interact with the California pelagic longline fishery. An interaction between this stock and this fishery was

documented by the NMFS observer program.

NMFS proposes to add the U.S. stock of California sea lions to the list of marine mammal species and stocks that interact with the California sardine purse seine fishery. An interaction between this stock and this fishery was documented by the NMFS observer program.

NMFS proposes to add the eastern North Pacific resident and transient stocks of killer whales to the list of marine mammal species and stocks that interact with the AK BSAI Pacific cod longline fishery. Interactions between these stocks and this fishery have been documented in recent SARs.

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean: Fishery Classification**Mid-Atlantic Bottom Trawl Fishery**

NMFS proposes elevating the "Mid-Atlantic bottom trawl fishery" (proposed name change from "Mid-Atlantic mixed species trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) from Category III to Category II based on documented interactions between the fishery and the Western North Atlantic stocks of common dolphins and pilot whales.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of PBR levels for the following stocks: Western North Atlantic stocks of common dolphins, long-finned and short-finned pilot whales. Therefore, this fishery is subject to Tier 2 analysis for these stocks.

Tier 2 Evaluation: Total fishery-related mortality and serious injury of pilot whales cannot be estimated separately for long-finned and short-finned pilot whales because fishery observers cannot reliably identify pilot whales to species as they are very similar in appearance. Therefore, the average annual estimated mortality and serious injury of these two species of pilot whales in the Western North Atlantic (*Globicephala spp.*) incidental to the Mid-Atlantic bottom trawl fishery during 1997-2001 was 46 animals per year, or 42.59 percent of the PBR level for pilot whales (108 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

The average annual estimated mortality and serious injury of the Western North Atlantic stock of common dolphins incidental to the

Mid-Atlantic bottom trawl fishery during 1997-2001 was 19 animals per year, or 8.37 percent of the PBR level for common dolphins (227 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery.

Since the annual estimated level of marine mammal mortality and serious injury incidental to this fishery is less than 50 percent and greater than 1 percent of the PBR levels of both marine mammal stocks described in the Tier 2 analysis, NMFS proposes to reclassify this fishery as Category II.

Northeast Bottom Trawl Fishery

NMFS proposes elevating the "Northeast bottom trawl fishery," (proposed name change from "North Atlantic bottom trawl fishery," see Fishery Name and Organizational Changes and Clarifications section) from Category III to Category II based on documented interactions between the fishery and the Western North Atlantic stock of Atlantic white-sided dolphins.

Tier 1 Evaluation: Total annual incidental mortality and serious injury across all fisheries is greater than or equal to 10 percent of PBR levels for the Western North Atlantic stock of Atlantic white-sided dolphins. Therefore, this fishery is subject to Tier 2 analysis for this stock.

Tier 2 Evaluation: The annual observed mortality and serious injury of the Western North Atlantic stock of Atlantic white-sided dolphins incidental to the Northeast bottom trawl fishery during 2003 was 12 animals, or 3.3 percent of the PBR level for white-sided dolphins (364 animals per year). Because this level of mortality and serious injury exceeds 1 percent of the PBR level but is less than 50 percent of the PBR level, this fishery qualifies for reclassification as a Category II fishery. Therefore, NMFS proposes to reclassify this fishery as Category II.

Addition of Fisheries to the LOF**Atlantic Shellfish Bottom Trawl Fishery**

NMFS proposes to add the "Atlantic shellfish bottom trawl fishery" to the LOF to encompass the calico scallops trawl fishery, crab trawl fishery, Georgia/South Carolina/Maryland whelk trawl fishery, Gulf of Maine/Mid-Atlantic sea scallops trawl fishery, and Gulf of Maine northern shrimp trawl fishery. Additionally, NMFS proposes to list the Atlantic shellfish bottom trawl fishery as a Category III fishery because all fisheries proposed to be combined

are currently Category III fisheries and have no documented interactions with marine mammals.

Removal of Fisheries from the LOF

NMFS proposes to remove the "U.S. Atlantic monkfish trawl fishery" from the LOF. This fishery is currently a Category III fishery that operates throughout the Mid-Atlantic and Northeast regions. Both the North Atlantic bottom trawl fishery (proposed name change to Northeast bottom trawl fishery, see Fishery Name and Organizational Changes and Clarifications section) and Mid-Atlantic mixed species trawl fishery (proposed name change to Mid-Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarifications section) descriptions include fishing gear managed under the monkfish fishery management plans as well as other groundfish fishery management plans. Therefore, NMFS proposes deleting this fishery and incorporating any trawl fisheries that target monkfish in the Atlantic under existing trawl fisheries on the LOF, e.g., the Northeast bottom trawl fishery or the Mid-Atlantic bottom trawl fishery.

NMFS proposes to delete the following trawl fisheries from the 2005 LOF: "Calico Scallops Trawl Fishery," "Crab Trawl Fishery," "Georgia/South Carolina/Maryland Whelk Trawl Fishery," "Gulf of Maine/Mid-Atlantic Sea Scallops Trawl Fishery," and "Gulf of Maine Northern Shrimp Trawl Fishery." NMFS proposes to combine these fisheries under one listing in the LOF as the "Atlantic shellfish bottom trawl fishery" (see Addition of Fisheries section).

Fishery Name and Organizational Changes and Clarifications

Atlantic Herring Mid-Water Trawl Fishery (Including Pair Trawl)

NMFS proposes to modify the name of the "Atlantic herring mid-water trawl fishery (including pair trawl)" to the "Northeast mid-water trawl fishery." This fishery primarily operates in the Gulf of Maine and George's Bank regions. There have been occasional interactions documented between this fishery and marine mammals and, thus, the fishery is currently classified as a Category II fishery. NMFS proposes to modify the name of this fishery in order to appropriately classify all similar mid-water trawl fisheries operating in the Northeast region, with home ports between Connecticut and Maine, that may be interacting with marine mammals.

Atlantic Squid, Mackerel, and Butterfish Trawl Fishery

NMFS proposes to modify the name of the "Atlantic squid, mackerel, and butterfish trawl fishery" to the "Mid-Atlantic mid-water trawl fishery." Trawl fisheries targeting squid occur mainly in southern New England and Mid-Atlantic waters and typically use small-mesh otter trawls throughout the water column. Trawl fisheries targeting mackerel occur mainly in southern New England and Mid-Atlantic waters and generally operate in mid-water. Butterfish are predominately caught incidental to directed squid and mackerel trawls fisheries. There have been frequent interactions documented between this fishery and several species/stocks of marine mammals and, thus, the fishery is currently classified as a Category I fishery. NMFS proposes to modify the name of this fishery in order to appropriately classify all similar mid-water trawl fisheries operating in the Mid-Atlantic region, with home ports between New York and North Carolina, that may be interacting with marine mammals.

Delaware Bay Inshore Gillnet Fishery

NMFS proposes to modify the name of the "Delaware Bay inshore gillnet fishery" to the "Delaware River inshore gillnet fishery." The Delaware Bay inshore gillnet fishery is currently a Category III fishery. The Atlantic Large Whale Take Reduction Plan (ALWTRP) regulations apply to all waters inside Delaware Bay between the COLREGS and a line from the southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE. This proposed change would therefore place all gillnet fisheries operating in Delaware Bay outside of the line between the southern point of Nantuxent Cove, NJ to the southern end of Kelley Island, Port Mahon, DE in the Category I "Mid-Atlantic gillnet fishery" (proposed name change from Mid-Atlantic coastal gillnet fishery; see below) and, as such, would be regulated under the ALWTRP. Moreover, gillnet fisheries operating inland of the COLREGS would be placed in the "Delaware River inshore gillnet fishery" and would not be subject to ALWTRP regulations.

Gulf of Maine Tub Trawl Groundfish Bottom Longline/Hook-and-Line Fishery

NMFS proposes to modify the name of the "Gulf of Maine tub trawl groundfish bottom longline/hook-and-line fishery" to the "Northeast/Mid-Atlantic bottom longline/hook-and-line fishery." The fishery is currently in

Category III and predominately operates between Cape Cod, MA and George's Bank, in an area extending beyond the Gulf of Maine. Therefore, NMFS proposes to delete the reference to the "Gulf of Maine" in the fishery name. Additionally, NMFS solicits public comment regarding interactions between this fishery and marine mammals.

Mid-Atlantic Coastal Gillnet Fishery

NMFS proposes to modify the name of the "Mid-Atlantic coastal gillnet fishery" to the "Mid-Atlantic gillnet fishery." Currently, the Mid-Atlantic coastal gillnet fishery is a Category I fishery that includes all fisheries using any type of gillnet gear, west of 72°30' W and north of a line extending due east from the North Carolina/South Carolina border, except for inshore gillnet fisheries currently placed in Category III. This area includes both nearshore waters (under State jurisdiction) and offshore waters (under Federal jurisdiction). Therefore, NMFS proposes to remove the reference to "coastal" waters in the name of this fishery.

Mid-Atlantic Mixed Species Trawl Fishery

NMFS proposes to modify the name of the "Mid-Atlantic mixed species trawl fishery" to the "Mid-Atlantic bottom trawl fishery" to encompass similar bottom trawl fisheries operating in the region that potentially interact with marine mammals.

North Atlantic Bottom Trawl Fishery

NMFS proposes to modify the name of the "North Atlantic bottom trawl fishery" to the "Northeast bottom trawl fishery" to encompass similar bottom trawl fisheries operating in the region that potentially interact with marine mammals.

Number of Vessels/Persons

The estimated number of participants in the "Atlantic shellfish bottom trawl fishery" is 972.

List of Species that are Incidentally Injured or Killed

Atlantic Mixed Species Trap/Pot Fishery

NMFS proposes to remove the Canadian east coast stock of minke whales and the Gulf of Maine/Bay of Fundy stock of harbor porpoise from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic mixed species trap/pot fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Atlantic Ocean, Caribbean, and Gulf of Mexico Large Pelagics Longline Fishery

NMFS proposes to remove the Western North Atlantic stock of striped dolphins, the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Western North Atlantic stock of humpback whales, and the Canadian East coast stock of minke whales from the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stocks of mesoplodon beaked whales and Cuvier's beaked whales, and the Northern Gulf of Mexico stock of short-finned pilot whales to the list of marine mammal species and stocks incidentally injured or killed by the Atlantic Ocean, Caribbean, and Gulf of Mexico large pelagics longline fishery. Interactions between pilot whales and this fishery have been documented in recent SARs while interactions between beaked whales and a Balaenopterid whale and this fishery have been documented by the observer program.

Chesapeake Bay Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise from the list of marine mammal species and stocks incidentally injured or killed by the Chesapeake Bay inshore gillnet fishery. Interactions between this marine mammal stock and this fishery have not been documented in recent years.

Delaware River Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Delaware River inshore gillnet fishery (proposed name change from Delaware Bay inshore gillnet fishery, see Fishery Name and Organizational Changes and Clarifications section). Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Gulf of Maine Herring and Atlantic Mackerel Stop Seine/Weir Fishery

NMFS proposes to remove the Western North Atlantic stocks of humpback whales and North Atlantic right whales from the list of marine

mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stock of Atlantic white-sided dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Maine herring and Atlantic mackerel stop seine/weir fishery. Interactions between this marine mammal stock and this fishery have been documented in recent years.

Gulf of Mexico Butterfish Trawl Fishery

NMFS proposes to remove the Eastern Gulf of Mexico stocks of Atlantic spotted dolphins and pantropical spotted dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery. Interactions between these marine mammal stocks and this fishery have not been documented in recent years.

NMFS proposes to add the Northern Gulf of Mexico outer continental shelf stock and Northern Gulf of Mexico continental shelf edge and slope stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico butterfish trawl fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS proposes to add the Eastern Gulf of Mexico coastal stock of bottlenose dolphins and the Gulf of Mexico bay, sound and estuarine stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Gulf of Mexico menhaden purse seine fishery. Interactions between these marine mammal stocks and this fishery have been documented in recent SARs.

Long Island Sound Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Long Island Sound inshore gillnet fishery. Interactions between each of these marine mammal stocks and this

fishery have not been documented in recent years.

Mid-Atlantic Bottom Trawl Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and common dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic bottom trawl fishery. Interactions between each of these marine mammal stocks and this fishery have been documented in recent SARs.

Mid-Atlantic Gillnet Fishery

NMFS proposes to add the Western North Atlantic stock of gray seals and the Western North Atlantic stock of fin whales to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic gillnet fishery. Interactions between the Western North Atlantic stock of gray seals and this fishery have been documented in recent SARs and interactions between the Western North Atlantic stock of fin whales and this fishery have been documented by the NMFS Observer Program.

Mid-Atlantic Menhaden Purse Seine Fishery

NMFS proposes to remove the Western North Atlantic stock of humpback whales from the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic purse seine fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Mid-Atlantic Mid-water Trawl Fishery

NMFS proposes to add the Western North Atlantic offshore stock of bottlenose dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Mid-Atlantic mid-water trawl fishery. Interactions between this marine mammal stock and this fishery have been documented in recent SARs.

Northeast Bottom Trawl Fishery

NMFS proposes to add the Western North Atlantic stock of harp seals and the Gulf of Maine/Bay of Fundy stock of harbor porpoise to the list of marine mammal species and stocks incidentally injured or killed by the Northeast bottom trawl fishery (proposed name change from North Atlantic bottom trawl fishery, see Fishery Name and Organizational Changes and Clarification section). Interactions between each of these marine mammal

stocks and this fishery have been documented in recent SARs.

Northeast/Mid-Atlantic Bottom Longline/Hook-and-Line Fishery

NMFS proposes to remove the Western North Atlantic stocks of harbor seals, gray seals, and humpback whales from the list of marine mammal species and stocks incidentally injured or killed by the Northeast/Mid-Atlantic bottom longline/hook-and-line fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Northeast Mid-water Trawl Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned pilot whales, short-finned pilot whales, and Atlantic white-sided dolphins to the list of marine mammal species and stocks incidentally injured or killed by the Northeast mid-water trawl fishery. Interactions between each of these marine mammal stocks and this fishery have been documented in recent SARs.

Northeast Sink Gillnet Fishery

NMFS proposes to remove the Western North Atlantic stocks of killer whales, spotted dolphins, and false killer whales from the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery. Interactions between each of these marine mammal stocks/species and this fishery have not been documented in recent years.

NMFS proposes to add the Western North Atlantic stocks of Risso's dolphins and hooded seals to the list of marine mammal species and stocks incidentally injured or killed by the Northeast sink gillnet fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) Inshore Gillnet Fishery

NMFS proposes to remove the Gulf of Maine/Bay of Fundy stock of harbor porpoise, the Gulf of Maine stock of humpback whales, and the Western North Atlantic coastal stock of bottlenose dolphins from the list of marine mammal species and stocks incidentally injured or killed by the Rhode Island, Southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fishery. Interactions between each of these marine mammal stocks and this fishery have not been documented in recent years.

Southeastern U.S. Atlantic and Gulf of Mexico Shrimp Trawl Fishery

NMFS proposes to add the Western Gulf of Mexico coastal stock of bottlenose dolphins, the Eastern Gulf of Mexico coastal stock of bottlenose dolphins, the Gulf of Mexico bay, sound, and estuarine stock of bottlenose dolphins, and the Florida stock of the West Indian manatee to the list of marine mammal species and stocks incidentally injured or killed by the Southeastern U.S. Atlantic and Gulf of Mexico shrimp trawl fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

U.S. Atlantic Tuna Purse Seine Fishery

NMFS proposes to add the Western North Atlantic stocks of long-finned and short-finned pilot whales to the list of marine mammal species and stocks incidentally injured or killed by the U.S. Atlantic tuna purse seine fishery. Interactions between each of these marine mammal stocks/species and this fishery have been documented in recent SARs.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels/participants is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the most recent LOF is used.

The tables also list the marine mammal species and stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fisher reports. This list includes all species or stocks known to experience injury or mortality in a given fishery, but also includes species or stocks for which there are anecdotal or historical, but not necessarily current, records of interaction. Additionally, species identified by logbook entries may not be verified. Not all species or stocks identified are the reason for a fishery's placement in a given category. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of "Category II fishery" in 50 CFR 229.2.

Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean.

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Table 1 - List of Fisheries Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
<u>GILLNET FISHERIES:</u>		
CA angel shark/halibut and other species set gillnet (>3.5 in. mesh)	58	California sea lion, U.S. Common dolphin, long-beaked CA Common dolphin, short-beaked, CA/OR/WA Harbor seal, CA Harbor porpoise, Central CA Northern elephant seal, CA breeding Sea otter, CA
CA/OR thresher shark/swordfish drift gillnet (≥ 14 in. mesh)	85	Baird's beaked whale, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Cuvier's beaked whale, CA/OR/WA Dall's porpoise, CA/OR/WA Fin whale, CA/OR/WA Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA-Mexico Killer whale, CA/OR/WA Pacific coast Long-beaked common dolphin, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Northern elephant seal, CA breeding Northern fur seal, San Miguel Island Northern Pacific white-sided dolphin, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pygmy sperm whale, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA Southern Pacific white-sided dolphin, CA/OR/WA Sperm whale, CA/OR/WA Steller sea lion, Eastern U.S. Striped dolphin, CA/OR/WA
<u>LOGLINE/SET LINE FISHERIES:</u>		
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line	140	Bottlenose dolphin, HI False killer whales, HI Humpback whale, Central North Pacific Risso's dolphin, HI Short-finned pilot whale, HI Spinner dolphin, HI Sperm whale, HI
Category II		
<u>GILLNET FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,903	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.
AK Bristol Bay salmon set gillnet	1,014	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Cook Inlet salmon drift gillnet	576	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA Harbor seal, GOA Sea otter, AK
AK Metlakatla/Annette Island salmon drift gillnet	60	None documented
AK Peninsula/Aleutian Islands salmon drift gillnet	164	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet	116	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	541	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea Otter, AK Steller sea lion, Western U.S.
AK Southeast salmon drift gillnet	481	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet	170	Gray whale, Eastern North Pacific Harbor seal, Southeast AK
CA yellowtail, barracuda, white seabass, and tuna drift gillnet fishery (mesh size > 3.5 inches and < 14 inches)	24	California sea lion, U.S. Long-beaked common dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA Harbor seal, WA inland
<u>PURSE SEINE FISHERIES:</u>		
AK Southeast salmon purse seine	416	Humpback whale, Central North Pacific
CA anchovy, mackerel, tuna purse seine	110	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA
<u>TRAWL FISHERIES:</u>		
AK miscellaneous finfish pair trawl	2	None documented
AK Bering Sea, Aleutian Islands flatfish trawl	26	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands pollock trawl	120	Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient Steller sea lion, Western U.S.
<u>LONGLINE/SET LINE FISHERIES:</u>		
AK Bering Sea, Aleutian Islands Greenland turbot longline	36	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
AK Bering Sea, Aleutian Islands Pacific cod longline	114	Killer whale, Eastern North Pacific resident Killer whale, Eastern North Pacific transient
CA pelagic longline	6	California sea lion, U.S. Risso's dolphin, CA/OR/WA
OR swordfish floating longline	0	None documented
OR blue shark floating longline	1	None documented
<u>POT, RING NET, AND TRAP FISHERIES:</u>		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific Humpback whale, Western North Pacific
Category III		
<u>GILLNET FISHERIES:</u>		
AK Cook Inlet salmon set gillnet	745	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Steller sea lion, Western U.S.

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	1,922	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	2,034	None documented
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less	341	None documented
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA, OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
<u>PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:</u>		
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	3	None documented
AK octopus/squid purse seine	2	None documented
AK roe herring and food/bait herring beach seine	8	None documented
AK roe herring and food/bait herring purse seine	624	None documented
AK salmon beach seine	34	None documented
AK salmon purse seine (except Southeast Alaska, which is in Category II)	953	Harbor seal, GOA
CA herring purse seine	100	California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	110	California sea lion, U.S.
HI opelu/akule net	16	None documented
HI purse seine	18	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI throw net, cast net	47	None documented
WA (all species) beach seine or drag seine	235	None documented
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
<u>DIP NET FISHERIES:</u>		
CA squid dip net	115	None documented
WA, OR smelt, herring dip net	119	None documented
<u>MARINE AQUACULTURE FISHERIES:</u>		
CA salmon enhancement rearing pen	>1	None documented
OR salmon ranch	1	None documented
WA, OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
<u>TROLL FISHERIES:</u>		
AK North Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries	1,530 (330 AK)	None documented
AK salmon troll	2,335	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
Guam tuna troll	50	None documented
HI net unclassified	106	None documented
HI trolling, rod and reel	1,795	None documented
<u>LONGLINE/SET LINE FISHERIES:</u>		
AK Bering Sea, Aleutian Islands rockfish longline	17	None documented
AK Bering Sea, Aleutian Islands sablefish longline	63	None documented
AK Gulf of Alaska halibut longline	1302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Gulf of Alaska rockfish longline	421	None documented
AK Gulf of Alaska sablefish longline	412	None documented
AK halibut longline/set line (State and Federal waters)	3,079	Steller sea lion, Western U.S.
AK octopus/squid longline	7	None documented
AK state-managed waters groundfish longline/setline (including sablefish, rockfish, and miscellaneous finfish)	731	None documented
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
WA, OR North Pacific halibut longline/set line	350	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	8	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	87	None documented
AK Bering Sea, Aleutian Islands rockfish trawl	9	None documented
AK Gulf of Alaska flatfish trawl	52	None documented
AK Gulf of Alaska Pacific cod trawl	101	None documented
AK Gulf of Alaska pollock trawl	83	None documented
AK Gulf of Alaska rockfish trawl	45	None documented
AK food/bait herring trawl	3	None documented
AK miscellaneous finfish otter or beam trawl	6	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	58	None documented
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
WA, OR, CA groundfish trawl	585	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, Central North Pacific Steller sea lion, Western U.S.
WA, OR, CA shrimp trawl	300	None documented
POT, RING NET, AND TRAP FISHERIES:		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	76	None documented
AK Bering Sea, Aleutian Islands crab pot	329	None documented
AK Gulf of Alaska crab pot	unknown	None documented
AK Gulf of Alaska Pacific cod pot	154	None documented
AK Southeast Alaska crab pot	unknown	None documented
AK Southeast Alaska shrimp pot	unknown	None documented
AK octopus/squid pot	72	None documented
AK snail pot	2	None documented
CA lobster, prawn, shrimp, rock crab, fish pot	608	Sea otter, CA
OR, CA hagfish pot or trap	25	None documented
WA, OR, CA crab pot	1,478	Gray whale, Eastern North Pacific
WA, OR, CA sablefish pot	176	None documented
WA, OR shrimp pot & trap	254	None documented
HI crab trap	22	None documented
HI fish trap	19	None documented
HI lobster trap	15	Hawaiian monk seal
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline and mechanical jig	100	None documented
AK North Pacific halibut handline and mechanical jig	93	None documented
AK octopus/squid handline	2	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	<50	None documented
HI aku boat, pole and line	54	None documented
HI deep sea bottomfish	434	Hawaiian monk seal
HI inshore handline	650	Bottlenose dolphin, HI

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
HI tuna	144	Bottlenose dolphin, HI Hawaiian monk seal Rough-toothed dolphin, HI
WA groundfish, bottomfish jig	679	None documented
<u>HARPOON FISHERIES:</u>		
CA swordfish harpoon	30	None documented
<u>POUND NET/WEIR FISHERIES:</u>		
AK herring spawn on kelp pound net	452	None documented
AK Southeast herring roe/food/bait pound net	3	None documented
WA herring brush weir	1	None documented
<u>BAIT PENS:</u>		
WA/OR/CA bait pens	13	None documented
<u>DREDGE FISHERIES:</u>		
Coastwide scallop dredge	108 (12 AK)	None documented
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
AK abalone	1	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK dungeness crab	3	None documented
AK herring spawn on kelp	363	None documented
AK urchin and other fish/shellfish	471	None documented
CA abalone	111	None documented
CA sea urchin	583	None documented
HI coral diving	2	None documented
HI fish pond	10	None documented
HI handpick	135	None documented
HI lobster diving	6	None documented
HI squidding, spear	267	None documented
WA, CA kelp	4	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
<u>COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:</u>		
AK, WA, OR, CA commercial passenger fishing vessel	>7,000 (1,107 AK)	None documented
HI "other"	114	None documented
<u>LIVE FINFISH/SHELLFISH FISHERIES:</u>		
CA finfish and shellfish live trap/hook-and-line	93	None documented

List of Abbreviations Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington

Table 2 - List of Fisheries Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Category I		
<u>GILLNET FISHERIES:</u>		
Mid-Atlantic gillnet	>655	Bottlenose dolphin, WNA coastal Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	341	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
<u>LONGLINE FISHERIES:</u>		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline	<200	Atlantic spotted dolphin, Northern GMX Atlantic spotted dolphin, WNA Bottlenose dolphin, GMX outer continental shelf Bottlenose dolphin, GMX continental shelf edge and slope Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Pygmy sperm whale, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA
<u>TRAP/POT FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Northeast/Mid-Atlantic American lobster trap/pot	13,000	Fin whale, WNA Harbor seal, WNA Humpback whale, WNA Minke whale, Canadian east coast North Atlantic right whale, WNA
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic mid-water trawl	620	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Category II		
<u>GILLNET FISHERIES:</u>		
Gulf of Mexico gillnet	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal
Northeast anchored float gillnet	133	Harbor seal, WNA Humpback whale, WNA White-sided dolphin, WNA
Northeast drift gillnet	unknown	None documented
Southeast Atlantic gillnet	779	Bottlenose dolphin, WNA coastal
Southeastern U.S. Atlantic shark gillnet	6	Atlantic spotted dolphin, WNA Bottlenose dolphin, WNA coastal North Atlantic right whale, WNA
<u>TRAWL FISHERIES:</u>		
Mid-Atlantic bottom trawl	>1,000	Common dolphin, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Northeast mid-water trawl (including pair trawl)	17	Harbor seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast bottom trawl	1,052	Bottlenose dolphin, WNA offshore Common dolphin, WNA Harbor porpoise, GME/BF Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA Striped dolphin, WNA White-sided dolphin, WNA
<u>TRAP/POT FISHERIES:</u>		

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Atlantic blue crab trap/pot	>16,000	Bottlenose dolphin, WNA coastal West Indian manatee, FL
Atlantic mixed species trap/pot	unknown	Fin whale, WNA Humpback whale, Gulf of Maine
<u>PURSE SEINE FISHERIES:</u>		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Mid-Atlantic haul/beach seine	25	Bottlenose dolphin, WNA coastal Harbor porpoise, GME/BF
North Carolina long haul seine	33	Bottlenose dolphin, WNA coastal
<u>STOP NET FISHERIES:</u>		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal
<u>POUND NET FISHERIES:</u>		
Virginia pound net	187	Bottlenose dolphin, WNA coastal
Category III		
<u>GILLNET FISHERIES:</u>		
Caribbean gillnet	>991	Dwarf sperm whale, WNA West Indian manatee, Antillean
Chesapeake Bay inshore gillnet	45	None documented
Delaware River inshore gillnet	60	None documented
Long Island Sound inshore gillnet	20	None documented
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet	32	None documented
<u>TRAWL FISHERIES:</u>		
Atlantic shellfish bottom trawl	972	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX outer continental shelf Bottlenose dolphin, Northern GMX continental shelf edge and slope
Gulf of Mexico mixed species trawl	20	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	>18,000	Bottlenose dolphin, WNA coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian Manatee, FL
<u>MARINE AQUACULTURE FISHERIES:</u>		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
<u>PURSE SEINE FISHERIES:</u>		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal
U.S. Atlantic tuna purse seine	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
U.S. Mid-Atlantic hand seine	>250	None documented
<u>LOGLINE/HOOK-AND-LINE FISHERIES:</u>		
Northeast/Mid-Atlantic bottom longline/hook-and-line	46	None documented
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	26,223	Humpback whale, WNA
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	None documented
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
<u>TRAP/POT FISHERIES</u>		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
Florida spiny lobster trap/pot	2,145	Bottlenose dolphin, Eastern GMX coastal

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot	4,453	None documented
U.S. Mid-Atlantic eel trap/pot	>700	None documented
<u>STOP SEINE/WEIR/POUND NET FISHERIES:</u>		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	Gray seal, Northwest North Atlantic Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the North Carolina roe mullet stop net)	751	None documented
<u>DREDGE FISHERIES:</u>		
Gulf of Maine mussel	>50	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	233	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	100	None documented
<u>HAUL/BEACH SEINE FISHERIES:</u>		
Caribbean haul/beach seine	15	West Indian manatee, Antillean
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic, haul/beach seine	25	None documented
<u>DIVE, HAND/MECHANICAL COLLECTION FISHERIES:</u>		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented

Fishery Description	Estimated # of vessels/persons	Marine mammal species and stocks incidentally killed/injured
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	None documented

List of Abbreviations Used in Table 2: FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; NC - North Carolina; SC - South Carolina; TX - Texas; WNA - Western North Atlantic

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Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. For convenience, the factual basis leading to the certification is repeated below.

Under existing regulations, all fishers participating in Category I or II fisheries must register under the MMPA, obtain an Authorization Certificate, and pay a fee of \$25. Additionally, fishers may be subject to a take reduction plan and requested to carry an observer. The Authorization Certificate authorizes the taking of marine mammals incidental to commercial fishing operations. NMFS has estimated that approximately 41,600 fishing vessels, most of which are small entities, operate in Category I or II fisheries, and therefore, are required to register. However, registration has been integrated with existing state or Federal registration programs for the majority of these fisheries so that the majority of fishers do not need to register separately under the MMPA. Currently, approximately 5,800 fishers register directly with NMFS under the MMPA authorization program.

Though this proposed rule would affect a number of small entities, the \$25 registration fee, with respect to anticipated revenues, is not considered a significant economic impact. If a vessel is requested to carry an observer, fishers will not incur any economic costs associated with carrying that observer. As a result of this certification, an initial regulatory flexibility analysis was not prepared. In the event that reclassification of a fishery to Category I or II results in a take reduction plan, economic analyses of the effects of that plan will be summarized in subsequent rulemaking actions. Further, if a vessel is requested to carry an observer, fishers

will not incur any economic costs associated with carrying that observer.

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648-0293 (0.25 hours per report for new registrants and 0.15 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648-0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see ADDRESSES).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA (1995 EA). The 1995 EA concluded that implementation of those regulations would not have a significant impact on the human environment. This proposed rule would not make any significant change in the management of

reclassified fisheries, and therefore, this proposed rule is not expected to change the analysis or conclusion of the 1995 EA. If NMFS takes a management action, for example, through the development of a Take Reduction Plan (TRP), NMFS will first prepare an environmental document as required under NEPA specific to that action.

This proposed rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under section 7 of the ESA for that action.

This proposed rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs or take reduction teams.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: November 26, 2004.

John Oliver,
Deputy Assistant Administrator for
Operations, National Marine Fisheries
Service.

[FR Doc. 04-26577 Filed 12-1-04; 8:45 am]

BILLING CODE 3510-22-S

DRAFT
MINUTES
SCIENTIFIC STATISTICAL COMMITTEE
December 6-8, 2004

The Science Statistical committee met December 6-8, 2004 at the Anchorage Hilton in Anchorage, AK.

Members present:

Rich Marasco, Chair	Gordon Kruse, Vice Chair	Keith Criddle
Steve Hare	George Hunt	Pat Livingston
Seth Macinko	Franz Mueter	Terry Quinn
David Sampson	Farron Wallace	Doug Woodby

Members absent:

Mark Herrmann	Sue Hills	Ken Pitcher
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B-1(e) Plan Team Nominations

It is recommended that Ms. Michele K. Culvar, Washington Department of Fish and Game, be appointed to both the Bering Sea/Aleutian Islands and Gulf of Alaska Groundfish Plan Teams. In addition, it is recommended that Mr. Scott Miller, NMFS, be appointed to the Alaska Scallop Plan Team.

B-7 Protected Species Reports

Bill Wilson (NPFMC) presented information regarding progress in the development of a Steller sea lion recovery plan, preparations for a conference on Northern fur seals, and a proposal to consider changes in the trawl enclosures around St. George Island. Robin Angliss (NMFS) presented information and responded to questions about the MMPA List of Fisheries for 2005. Public testimony was provided by Paul McGregor (At-Sea Processor Association), Gerry Merrigan (Prowler Fisheries), Thorn Smith (North Pacific Longline Association), and Donna Parker (Arctic Storm Fisheries).

A. List of Fisheries (LOF). The SSC was provided with a white paper, "Summary of Analysis for the Proposed List of Fisheries for 2005", to review in advance of the meeting. Three additional documents were provided to the SSC immediately before presentation of this agenda item: a supplement to the white paper that provides a more detailed description of the mortality/severe injury incidents; a NOAA technical memorandum "Compilation of Marine Mammal Incidental Take Data from the Domestic and Joint Venture Groundfish Fisheries in the US EEZ of the North Pacific, 1989-2001" (Perez, M.A. 2003); and, a draft NOAA technical memorandum "Analysis of Marine Mammal Bycatch Data from the Trawl, Longline, and Pot Groundfish Fisheries of Alaska, 1998-2003, Defined by Geographic Area, Gear Type, and Target Groundfish Catch Species" (Perez, M.A., 2004). SSC comments are based on the Summary Analysis, supplemental table, and staff analysis, alone.

It ain't what we don't know that gets us in trouble; it's what we know that ain't so.
Will Rogers (1879-1935).

The LOF determination process poses several challenges. While the analysts have used a reasoned approach to address these challenges, the robustness of the analysis is conditional on the reasonableness of the assumptions and methods used in the analysis. Consequently, the reasonableness of the approach should be explicitly examined. Three critical issues that should be explored are:

1. Incidents of serious injury and mortality in commercial fisheries are rare. Sampling rare events is problematic. In practice, unusual observations are often characterized as “outliers” and omitted from data used for estimation. While incidents of mortality and serious injury are unusual, it would not be appropriate to treat observed incidents as “outliers”. When unusual observations are retained in data used for estimation, they can have a pronounced influence on the resulting estimates. The best defense against unusual observations exerting undue influence on the resulting estimates is to increase sample size as much as practicable. This would argue for basing the estimates on an average of the full time series of observations.
2. Data used in the LOF determination may have been generated under conditions that are not characteristic of current fisheries. For federally managed fisheries, this problem involves a tradeoff of increased observations over a longer time series and changes in the characteristics of fishing gear, and how and where that gear is used. The choice of a 5-year window is reasonable, but so would a longer or shorter window. The problem with many state-managed fisheries is the lack of recent verifiable information about marine mammal mortalities and serious injuries. Unless new information is developed for these fisheries through a verifiable sampling program, there does not seem to be a good alternative to continued use of estimates based on old information. Because estimated mortalities and serious injuries in state-managed fisheries affect overall estimates of mortality-serious injury for the state fisheries and related federally managed fisheries, it may be expedient to use funding earmarked for management of federal fisheries to develop a monitoring or sampling program for marine mammal mortalities in the state-managed fisheries.
3. Scaling from observed mortality to estimated mortality necessitates specific assumptions regarding the representativeness of observed hauls. These assumptions and the limitations of these assumptions are not unique to scaling observed mortality to estimates mortality; similar assumptions and limitations are at play in the estimation of target and incidental catches of fish. Specifically, it is assumed that the likelihood of incidence of serious injury or mortality is invariant across vessel size, fishing location, fishing time, gear configuration, etc. Concern about these types of limitations was instrumental to the decision to segregate the six fisheries defined in 2003 into the 22 fisheries defined for 2005. Because the area fished by unobserved vessels are not coincident with the areas fished by observed vessels, scaling observed mortality-serious injury incidents to include catches by unobserved vessels may not provide good estimates of overall mortality-serious injury incidents. Scaling observed incidents of mortality and serious injury from observed hauls to unobserved hauls on observed vessels may be less problematic. However, if observers are notified by crew whenever mortality-serious injury incidents occur, it may be that all hauls are, in effect, observed for mortality and serious injury to marine mammals. If all hauls are, in effect, observed for mortality and serious injury to marine mammals, the observations are for the population of hauls and should not be expanded for unobserved hauls on observed vessels. (These issues may be considered in the Perez (2003) and Perez (2004), but these documents have not yet been reviewed by the SSC.)

Because some marine mammal stocks may overlap in space and time, and because the patterns of overlap are not well-understood, the analysts were not comfortable with assigning particular mortality-serious injury events to either the transient or resident sub-units of Eastern North Pacific killer whale stocks. Similarly, the analysts were not comfortable with assigning particular mortality-serious injury events to the western or central sub-units of North Pacific humpback whale stocks. In October, the SSC suggested that one approach to this dilemma would be to weight the mortality-serious injury events by the probability that they involved marine mammals from particular population sub-units. The analysts have instead taken the stance that because they cannot rule out the possibility that particular mortality-serious injury events involved animals from particular population sub-units, the LOF determination with respect to each population sub-unit should allow for the possibility that mortality-serious injury event involved animals from that population sub-unit. While the approach taken by the analysts is not inappropriate for

estimating the mortality-serious injury incidence for particular population sub-units, the Summary of Analysis should clearly note that it would not be consistent to sum the mortality-serious injury incidence across population sub-units. Samples taken from marine mammals killed incidental to fishing may help to assign particular mortality-serious injury incidents to particular population sub-units. While on-going research on the distribution of marine mammal stocks may help assign particular mortality-serious injury incidents to particular population sub-units, the lack of information about the stability of stock distributions over time may preclude using new information to assign historic mortality-serious injury incidents. In addition, we note that research on the distribution of marine mammal stocks may lead to the definition of additional population sub-units.

The SSC recommends that the Council consider asking NMFS to extend the comment period on the proposed LOF for 2005. An extended comment period will permit time for the SSC and public to review the Technical Memoranda (Perez 2003, Perez 2004) that document mortality-serious injury incidents, how observed mortalities are assigned to target fisheries, and how observed mortalities are scaled to estimated mortalities.

B. Steller Sea Lion Recovery Plan. It is anticipated that the Steller seal lion recovery team will complete work on a draft recovery plan in February or March, 2005.

C. Northern Fur Seal. The Pribilof Islands Collaborative Northern Fur Seal working group has scheduled a 3-day scientific workshop on Northern fur seals for January 28-30, 2005.

D. Steller Sea Lion—Trawl Closures Around St. George Island. The Council has received a request to reexamine the size of trawl enclosure zones around the Pribilof Islands.

C-4 EFH and Habitat Areas of Particular Concern

The SSC received presentations from Cathy Coon (NPFMC) and John Olson (NMFS) on the following: alternative 5B options analysis, review of the HAPC process and the proposed Dixon entrance HAPC. Ben Entiknap (Alaska Marine Conservation Council), Jon Warrenchuk (Oceana), John Gauvin (Groundfish Forum) and Whit Sheard (Ocean Conservancy), gave public comment.

The SSC provides the following comments and recommendations.

C-4a. Alternative 5B options analysis and finalize alternatives

There are now three sub-options for the Aleutian Islands portion of alternative 5b of the EFH EIS including the original, an option revised by Oceana and an option revised by the fishing Industry. The revised alternative proposed by Oceana targeted bottom trawl fisheries and proposed open/closed areas based on historic bottom trawl effort. This proposal was then modified by the fishery industry to account for important fisheries area where bottom trawl groundfish catch is greater than or equal to 200 mt, based on observer data for 1991-2003.

The SSC recommends that future analyses of alternative 5B options include, if possible, overlays of coral and sponge catch data and coral and sponge areas previously identified by the industry for each of the sub-options. Further, the analysis should include an overlay with specific areas recently identified to contain endemic species and areas of high diversity. This would help the evaluation of the ability of the alternatives to meet the purpose of the action. The SSC recommends that GIS maps be provided that clearly display differences in area coverage between each sub-option to aid

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Indiana, is amended by removing Channel 275C3 and adding Channel 289A at Cannelton and by removing Channel 289A and adding Channel 275C3 at Tell City.

Federal Communications Commission.

John A. Karousos,

Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-117 Filed 1-4-05; 8:45 am]

BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 041108310-4362-02; I.D. 100104H]

RIN 0648-AS78

List of Fisheries for 2005

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: On December 2, 2004, the proposed List of Fisheries (LOF) for

2005 under the Marine Mammal Protection Act (MMPA) was published in the Federal Register. NMFS is extending the comment period on this proposed LOF to March 4, 2005.

DATES: Comments must be received by March 4, 2005.

ADDRESSES: Send comments to Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via email to 2005LOF.comments@noaa.gov or the Federal eRulemaking portal: <http://www.regulations.gov> (Follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in the proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at David_Rostker@omb.eop.gov or by fax to 202-395-7285.

FOR FURTHER INFORMATION CONTACT:

Kristy Long, Office of Protected Resources, 301-713-1401; Kim Thounhurst, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION: On December 2, 2004, the proposed List of Fisheries for 2005 under the Marine Mammal Protection Act was published in the **Federal Register** (69 FR 70094).

NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based on the level of serious injury and mortality of marine mammals that occurs incidental to the fishery. NMFS must publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment. In the proposed LOF for 2005, NMFS proposed several fishery classification, fishery name, and organizational changes. In particular, NMFS proposed to reclassify the California/Oregon thresher shark/swordfish drift gillnet (≥14 in. mesh) from Category II (occasional incidental mortality and serious injury) to Category I (frequent incidental mortality and serious injury) and to reclassify the Northeast bottom trawl, Mid-Atlantic bottom trawl, and five Alaska fisheries from Category III (remote likelihood of or no known incidental mortality and serious injury) to Category II. The five Alaska fisheries include the following: Bering Sea and Aleutian Islands (BSAI) flatfish trawl, BSAI Greenland turbot longline, BSAI pollock trawl, Bering Sea sablefish pot, and Gulf of Alaska Pacific cod longline. Because the comment period coincides with the holiday season, several commenters have already requested an extension of the comment period to adequately review NMFS' proposed changes to the LOF. In addition, NMFS intends to prepare an environmental assessment on the LOF. Therefore, NMFS is extending the public comment period on the proposed LOF for 2005 from January 3, 2005, to March 4, 2005.

Dated: December 29, 2004.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 05-214 Filed 1-4-05; 8:45 am]

BILLING CODE 3510-22-S

AGENDA
Pribilof Islands Collaborative (PIC)
Promoting a Strong Economy and a Healthy Ecosystem
Northern Fur Seal Meeting
January 28 - 30, 2005
UAA Commons; Anchorage, Alaska

DAY ONE: FRIDAY, JANUARY 28

- 8:00 am Meeting Overview
- Introductions
 - Purpose of Collaborative
 - Review of Previous Meetings and Timeline
 - Meeting Purpose, Agenda and Groundrule Review
 - Review formal participants/caucus structure
 - Meeting Notebook and Supplemental Materials Review
 - Conceptual Model Orientation

Meeting Purpose:

Continue to work together on one of the agreed primary issues, Northern Fur Seals (NFS). Do this by creating a common base of understanding on both NFS and fisheries in the Bering Sea area, experiment with a conceptual model as a tool to help reflect the stakeholders' common understanding, and to focus on building agreement on specific research needs and possible conservation actions for the NFS.

I. NORTHERN FUR SEALS

- 9:15 am Northern Fur Seal: Status and Life History
Lead Presenter: Rolf Ream, National Marine Mammal Lab - NMML
LTKW Perspective: From Survey Findings (if applicable) Karin Holser, St. George Island and Aquilina Lestenkof, St. Paul Island
Other Resource Experts Available:
- Andrew Trites, University of British Columbia
 - Bob Delong, NMML

TOPICS

Overview: Status of northern fur seal and life history parameters (including pup mortality rates, pup weight/ condition, juvenile survival rates, pregnancy rates, etc); population trends (including history of experimental harvest); and foraging and migration patterns (including where they forage, at what depth, on which species, prey size, etc.) by age, sex and rookery. Specific information to include, presented by Rolf Ream:

- Pup production and trends in pup production from 1950 to 2004 by island and rookery (1964 to 2004).
- Pup weight and trend data from 1957 to 1971 and 1984 to 2004 by island.
- Food habits data based on scat from 1987- 2000 by island and rookery.
- Summary of foraging locations of northern fur seals during most of 1995 - 2003.
- Summary of seasonal movements and migration timing of northern fur seals 2002.
- NFS count data and trends from 1911 to 2004 by island.

Age structure summary of subsistence (1993-2003) and commercial (1956 - 1972 for St. George and 1956 - 1984 for St. Paul).

- 10:30 am BREAK

10:45 am Questions and Answers on NFS Overview

11:15 am

Comparisons of Pribilof NFS population with other populations

Co-Lead Presenters: Rolf Ream, NMML and Vladimir Burkanov, private consultant providing Russian Perspective

LTKW Perspective: From Survey Findings (if applicable) Karin Holser, St. George Island and Aquilina Lestenkof, St. Paul Island

Other Resource Experts Available:

-Bob DeLong, NMML

-Doug Demaster, Alaska Fisheries Science Center- AFSC

TOPICS

Comparison of Pribilof populations and rookery characteristics to San Miguel, CA and Commander Islands, Russia.

- Position relative to shelf, forage populations, etc. with other Bering Sea populations and rookeries;
- Bogoslof Island pup production and trend data from 1980 to 1997; and
- Comparison of northern fur seal population trends with those of Steller sea lion and other marine mammals in the Bering Sea.

11:45 am Questions and Answers

12:00 am

Conceptual Model Exercise

12:30 pm

LUNCH

1:30 pm

Northern Fur Seals: Nutritional Stress Discussion

Co-Presenters: Andrew Trites, University of British Columbia, and Bob DeLong and Lowell Fritz, NMML

LTKW Perspective: From Survey Findings (if applicable) Karin Holser, St. George Island and Aquilina Lestenkof, St. Paul Island

Other Resource Experts Available:

-Alan Springer, University of Alaska Fairbanks – UAF

-Terry Spraker, Colorado State University (CSU)

-Sara Iverson, Dalhousie University

TOPICS

- Nutrition/indices of nutritional stress (A. Trites)
- What evidence suggests that a population is exhibiting food stress (e.g. pup weight time series data, pup production numbers)? (A. Trites)
- Bottleneck Hypothesis (A. Trites)
- Discussion should include data from presumably historically food-stressed pinniped populations, e.g. San Miguel CA fur seals during El Niño years. (B. DeLong)
- Steller Sea Lion: Regime Shift and Nutritional Junk Food Hypothesis (L. Fritz/A. Trites)

2:15 Questions and Answers

II. POTENTIAL CONTRIBUTING FACTORS to FUR SEAL POPULATION CHANGES

A. Factors we have little/no control over

2:30 pm Environmental Effects, Predation and Diseases

TOPICS

2:30 North Pacific oceanography and ecosystem overview.

Presenters: Phyllis Stabeno, Pacific Marine Environmental Laboratory, NOAA
Ecosystem Effects on Bering Sea Crab Populations, Gordon Kruse, UAF
Alan Springer, University of Alaska Fairbanks

3:15 Questions and Answers

3:30 BREAK

3:45 Predation: The potential role of killer whale and other predation in northern fur seal population declines.

Leads: Alan Springer, UAF and Doug Demaster, AFSC

LTKW Perspective: From Survey Findings (if applicable) Karin Holser, St. George Island and Aquilina Lestenkof, St. Paul Island

4:15 Diseases:

Lead: Terry Spraker, CSU

4:30 Questions and Answers

4:45 pm Continue Conceptual Model Exercise

REVIEW of FIRST DAY

6:00 pm SOCIAL AT THE NATURE CONSERVANCY - 715 L Street

DAY TWO: SATURDAY, JANUARY 29

8:30 am Reconvene and Review Day 2

B. Factors We Have Some/More Control Over

8:45 am Fisheries in the North Pacific: Overview

Areas of Prey Concentration, Bruce Robson, private consultant

Co-Presenters for Fisheries: Dave Ackley, NMFS Juneau, Libby Logerwell, AFSC; Gordon Kruse, UAF; Lowell Fritz, NMML and Karl Haflinger, SeaState, Inc.

LTKW Perspective: From Survey Findings (if applicable) Karin Holser, St. George Island and Aquilina Lestenkof, St. Paul Island

Other Resource Experts Available:

-Andrew Trites, University of British Columbia

TOPICS

Background/Maps: Prey species distribution maps of Bering Sea forage fish species; Non-commercially fished species (prey items like capelin, smooth tongue, smelt, etc.) (Bruce Robson)

Fisheries Overview

What fisheries exist (target species, gear and boat type, by-catch rates and biomass, and species taken), and how fisheries occur in eastern Bering Sea over space and time – a historical profile.

- Temporal trends in species diversity in the region. (Libby Logerwell)
- Status and trends of key prey species in the EBS, sub-arctic, and California Current (WA and OR Coasts/fur seal migration corridor) (L. Logerwell)
- Socio-economic considerations including value of fisheries, communities using fish resources. (L. Logerwell)
- Herring fishery (Gordon Kruse)
- Spatial and temporal trends in commercial fisheries removals including shifts in target species, area closures, and gear. (Dave Ackley: from 1991 – 2004)
- Bycatch over time of prey species important to NFS. (D. Ackley 2003-2004)
- Recent (1999 - 2004) spatial and temporal trends in the pollock fishery, (Karl Haflinger)
- Overview of current management regulations (D. Ackley)
 - Management considerations (including bycatch, sea lions and AFA-related) affecting the Pollock fishery (K. Hafinger)
- Spatial and temporal trends of Pollock catch and biomass in NFS foraging area (L. Fritz)

10:40 am BREAK

10:50 am Questions and Answers

11:15 am Continue Conceptual Model Exercise

11:30 am Subsistence Takes

Presenter: Aquilina (Debbie) Lestenkof, Co-Director, Ecosystem Office, Tribal Government of St. Paul

TOPICS

The northern fur seal subsistence harvest:

- How it is conducted
- Its importance
- Shortfalls and future outlook

Supplemental Information: Annual subsistence harvest reports/draft subsistence harvest EIS.

11:40 am Questions and Answers

11:45 pm Contaminants
Shannon Atkinson, Alaska Sea Life Center

11:55 pm Questions and Answers

NOON LUNCH

12:45 pm

Development, Research and Activities on and around the Islands (other than subsistence)

On-Islands Lead Presenter: Char Kirkwood, City of St. Paul Development Director

Other Resource Experts Available

-Aquilina Lestenkof, Co-Director, Ecosystem Office, Tribal Government of St. Paul

-John R. Mercurieff, City Manager of St. Paul

-Karin Holser, Coordinator, Pribilof Islands Stewardship Program, St. George Tribal Council

Off-Islands Lead Presenter: Steve Insley, University of California-Santa Cruz

TOPICS

12:45 pm 1982 – Forward (C. Kirkwood)

1:00 pm Acoustic Tracking of NFS in the Bering Sea (S. Insley)

1:15 pm Questions and Answers

1:30 pm

Entanglement and Marine Debris

Co-Presenters: Chuck Fowler, NMML and Mike Williams, LGL

TOPICS

History & current status of northern fur seal take resulting from (a) entanglement in marine debris, including debris and gear type and

Specific information to include:

- Entanglement data from 1967 to 1991 (St. Paul Island only). (C. Fowler)
- Correlation between entanglement rates and changes in pup numbers, lagged 4-6 years (C. Fowler)
- Entanglement data from 1998 forward. (M. Williams)

1:50 pm Questions and Answers

2:05 pm

Incidental Take of Marine Mammals

Presenter: Doug Demaster, AFSC/NMFS

TOPICS

- History and current status of incidental take by US commercial fisheries: Groundfish, near shore and high seas.
- Summary of fisheries related bycatch mortality by year and gear type in Alaska.

2:20 pm Questions and Answers

2:30 pm

BREAK

2:45 pm

Conceptual Model Exercise: (presenters in round-table configuration)

1. With presenters and experts, review, revise and complete boxes in Conceptual Model
2. Presenters discuss strength of data, data gaps/needs, importance of factors, potential linkages

Experts and presenters will be asked:

- to reconfirm that the major points and/or factors they presented were captured on the Conceptual Model by the lead for this exercise, and
- to add those factors that were missed

In addition, experts and presenters will then be asked to discuss various factors in the Conceptual Model, in order to assist the PIC to synthesize the information by reflecting on:

- Potential links between factors
- Potential relevance of the factors, keeping in mind the following criteria:
 - Level of influence the factor has on the health of the Northern Fur Seal population
 - Level of credibility in the data
 - To what degree there is control over the factor

Experts and presenters will only be requested to provide reflections on those areas with which they are professionally familiar. The scientists will not be expected to arrive at conclusions for which they believe there is insufficient information.

5:00 pm Dinner at the UAA Commons or on your own

6:30 pm Fur Seal Conservation Plan Overview
NMFS report on Draft Fur Seal Conservation Plan
Presenter: Kaja Brix, NMFS Protected Resources

6:45 pm Questions and Answers

7:00 pm Endangered Species Act, including Steller sea lion history (biological and political lessons learned)
Presenter: Doug Demaster, AFSC
Other Resource Experts Available: Kaja Brix, NMFS

TOPICS

- Endangered Species listing process
- How close is this population to being classified as threatened or endangered?
 - What is the process?
- Is there a PVA that estimates extinction probability?
- How would a listing effect the subsistence harvest and fishing harvests?

7:15 pm Questions and Answers

7:25 pm Stretch Break

7:30 pm Conceptual Model Discussion

Stakeholders will use the Conceptual Model to begin to identify:

1. Those areas in which stakeholders can agree there is a need for additional information. This exercise is expected to lead to eventual agreement on support for research programs.
2. Those areas in which stakeholders can agree there is potential interaction or linkage of factors.

(If stakeholders can agree on potential linkages, further discussion may take place regarding the possibility of additional action. This exercise may lead to consideration, this evening or the following day, of potential actions and analysis, experimental management or conservation programs involving all sectors.)

9:00 p.m. Close

DAY THREE: SUNDAY, JANUARY 30

III. POTENTIAL RESPONSES TO ADDRESS DECLINE

8:30 am Review agenda

8:40 am Research Needs

Co-Presenters: Tom Gelatt, NMML; Don Calkins, Alaska Sea Life Center; Andrew Trites, University of British Columbia

- NMFS - NFS Research Needs, Presenter: Tom Gelatt, NMML
- NPRB Funded Research on NFS Bogoslof/Pribilof foraging area, Presenter: Tom Gelatt, NMML
- Alaska Sea Life Center Research, Presenter: Don Calkins
- North Pacific Universities Marine Mammal Research Consortium, Andrew Trites, University of British Columbia
- St. George Research Plans/Proposals, Karin Holser, Coordinator, Pribilof Islands Stewardship Program, St. George Tribal Council
- St. Paul Research Plans/Proposals, Aquilina Lestenkof, Co-Director, Ecosystem Office, Tribal Government of St. Paul

9:45 am Questions and Answers

10:00 am BREAK

10:15 am Align research needs with Conceptual Model and agree on a list of research needs

10:30 am Resume discussion from previous evening regarding potential linkages, potential areas of agreement and potential actions

NOON LUNCH

1:00 pm Resume discussion from previous evening, and potentially agree on concluding statements

3:30 pm Next Steps for the Pribilof Islands Collaborative

-Next meeting date and agenda topic

-General feedback on Conceptual Model and if it should be used at next meeting

4:00 pm Close



**ALASKA DEPARTMENT OF
FISH & GAME**
DIVISION OF COMMERCIAL FISHERIES

NEWS RELEASE
December 13, 2004

STATE OF ALASKA

CENTRAL REGION

Dept. of Fish & Game
Wayne Regelin, Acting Commissioner
Robert D. Mecum, Director
Division of Commercial Fisheries

Contact: Charlie Trowbridge
Regional Groundfish/Shellfish
Management Biologist
3298 Douglas Place
Homer, Alaska

Seabird Avoidance Regulations

Federal regulations (50 CFR 679.24) require certain commercial hook and line fishing vessels to use seabird avoidance measures to reduce the incidence of seabird bycatch. Regulation 5 AAC 28.055, adopts by reference the federal regulations and **requires seabird avoidance measures in all longline fisheries for groundfish in state waters**. This affects previously exempt vessels in Prince William Sound and Cook Inlet state waters fisheries for sablefish, parallel Pacific cod, and miscellaneous groundfish. Vessels fishing for IFQ halibut in state waters were previously covered under the federal regulations. The new regulations are summarized below. The full text of the federal rule is available at: <http://www.fakr.noaa.gov/frules/fr1930.pdf>

Seabird Avoidance Plan

All vessels greater than 26 feet length overall (LOA) are required to have a current, signed seabird avoidance plan on board and are required make it available for inspection. A plan template can be downloaded from the NMFS website at:
<http://www.fakr.noaa.gov/protectedresources/seabirds/torilines/form.pdf>

Seabird Avoidance Gear

The type of avoidance gear required depends on vessel size. Most vessels over 32 feet are required to use "streamer lines", also called tori lines or bird scaring lines. There are specific design requirements and performance standards for the lines. Detailed information, including diagrams can be found at the NMFS website: <http://www.fakr.noaa.gov/protectedresources/seabirds/guide.htm>

While fishing for groundfish with longline gear in state waters of Cook Inlet and Prince William Sound vessels must have on board, make available for inspection, and use while deploying longline, the following gear:

Vessel LOA (feet) and type	Avoidance Gear
Under 26	none
26 – 55 without masts or rigging	Minimum of 1 buoy bag line
26 – 32 with masts or rigging	Minimum of 1 buoy bag line
32 – 55 with masts or rigging	Minimum of a single streamer line
Over 55	Minimum of a single streamer line

Exceptions: In winds over 45 knots, use of gear is optional.

Other Requirements

In addition to the required seabird avoidance plan and gear, the regulations specify that fish waste (offal) must be discharged aft of the hauling station or on the opposite side of the vessel. All hooks must be removed from the offal. No offal or residual bait may be intentionally discharged while setting gear.

All groundlines must be weighted and setting gear at night or using a lining tube (a device that deploys gear underwater) does not exempt the vessel from use of seabird avoidance gear.

Obtaining Seabird Avoidance Gear

While supplies last, free streamer lines are available at the following locations. It is important to contact them by telephone to arrange receipt of the lines.

THE AUCTION BLOCK
770 FISH DOCK ROAD #7
HOMER, AK 99603
Phone: 907-235-7267

RESURRECTION BAY SEAFOODS
200 LOWELL POINT ROAD
SEWARD, AK 99664
Phone: 907-224-3366

For additional information on Cook Inlet or Prince William Sound groundfish regulations, contact ADF&G in Homer, at 907-235-8191 or in Cordova at 907-424-3212.

END



United States Department of the Interior

FISH AND WILDLIFE SERVICE
911 NE. 11th Avenue
Portland, Oregon 97232-4181

COPY FOR YOUR
INFORMATION

IN REPLY REFER TO:

AES-Listing

DEC 3 2004

Paul H. Achitoff
Earthjustice
223 South King Street, Suite 400
Honolulu, Hawaii 96813-4501

Dear Mr. Achitoff:

This letter is in regard to your petition dated September 28, 2004, which requested that we, the U.S. Fish and Wildlife Service, list the black-footed albatross (*Phoebastria nigripes*) as threatened or endangered pursuant to the Endangered Species Act of 1973, as amended (Act). We received your petition on October 1, 2004.

When reviewing a petition, we must first make an initial finding as to whether or not the petition to add a species to the endangered species list presents substantial information indicating that the requested action may be warranted. Section 4(b)(3)(A) of the Act provides that, to the maximum extent practicable, this finding be made within 90 days.

We reviewed your petition for this species to determine whether an emergency listing is warranted at this time. Although there are apparent threats to the species, they do not appear to be of such a magnitude to warrant emergency listing at this time. However, if at any time conditions change, and we determine that emergency listing is warranted, an emergency rule will be developed.

We are currently required to complete a significant number of listing and critical habitat actions in Fiscal Year 2005, pursuant to court orders and judicially approved settlement agreements. Complying with these court orders and settlement agreements will require us to spend nearly all of our listing and critical habitat funding for Fiscal Year 2005. Therefore, we are not able to address your petition to list the black-footed albatross at this time.

If you have any questions concerning this matter, please contact Barbara Behan or Scott McCarthy at (503) 231-6131.

Sincerely,

ACTING Regional Director

cc:
Honolulu FWO
DC-ES, Attn: Linus Chen

or we finalize the companion proposal to authorize the State's changes to its hazardous waste program, we may, at a later date, amend 40 CFR part 272, subpart HH to codify New York's authorized program.

L. Statutory and Executive Order Reviews

This rule only authorizes hazardous waste requirements pursuant to RCRA 3006 and imposes no requirements other than those imposed by State law. Therefore, this rule complies with applicable executive orders and statutory provisions as follows.

1. *Executive Order 12866: Regulatory Planning Review*—The Office of Management and Budget has exempted this rule from its review under Executive Order 12866 (56 FR 51735, October 4, 1993).

2. *Paperwork Reduction Act*—This rule does not impose an information collection burden under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

3. *Regulatory Flexibility Act*—After considering the economic impacts of today's rule on small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

4. *Unfunded Mandates Reform Act*—Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act (Pub. L. 104-4).

5. *Executive Order 13132: Federalism*—Executive Order 12132 (64 FR 19885, April 23, 1997) does not apply to this rule because it will not have federalism implications (*i.e.*, substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government).

6. *Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*—Executive Order 13175 (65 FR 67240, November 6, 2000) does not apply to this rule because it will not have tribal implications (*i.e.*, substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes).

7. *Executive Order 13045: Protection of Children from Environmental Health*

& *Safety Risks*—This rule is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and it is not based on health or safety risks.

8. *Executive Order 13211: Actions that Significantly Affect Energy Supply, Distribution, or Use*—This rule is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action as defined in Executive Order 12866.

9. *National Technology Transfer Advancement Act*—EPA approves State programs as long as they meet criteria required by RCRA, so it would be inconsistent with applicable law for EPA, in its review of a State program, to require the use of any particular voluntary consensus standard in place of another standard that meets the requirements of RCRA. Thus, section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note) does not apply to this rule.

10. *Congressional Review Act*—EPA will submit a report containing this rule and other information required by the Congressional Review Act (5 U.S.C. 801 *et seq.*) to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective on March 14, 2005.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended (42 U.S.C. 6912(a), 6926, 6974(b)).

Dated: November 23, 2004.

Kathleen C. Callahan,
Acting Regional Administrator, Region 2.
[FR Doc. 05-504 Filed 1-10-05; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222, 224 and 226

[Docket No. 041221357-4357-01; I.D. 113004A]

RIN 0648-AS94

Endangered Marine and Anadromous Species; Final Rule to Remove Technical Revisions to Right Whale Listing Under the U.S. Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to remove two technical revisions made in an April 2003 final rule to the northern right whale (*Eubalaena sp.*) listing under the Endangered Species Act (ESA). The technical revisions purported to change: the way right whales are listed by splitting the endangered northern right whale into two separate endangered species - North Pacific right whale and North Atlantic right whale; the definition of "right whale" as it applies to the right whale approach regulations; and the section heading for right whale critical habitat. NMFS has determined that issuance of the 2003 final rule did not comply with the requirements of the ESA. This final rule corrects these mistakes by removing these technical revisions to 50 CFR and reinstating the language that existed before April 2003. **DATES:** This rule takes effect on January 11, 2005.

ADDRESSES: Supporting documentation is available by request from the Chief, Endangered Species Division, NMFS, 1315 East-West Highway, F/PR3, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, Endangered Species Division, (301) 713-1401, ext. 180.

SUPPLEMENTARY INFORMATION:

Background

Right Whale Listing

From 1970 through 1975 the endangered and threatened species lists maintained by NMFS (50 CFR 224.101(b)) and the U.S. Fish and Wildlife Service (FWS) both identified endangered right whales as "Right whales (*Eubalaena spp.*)." In 1980 the FWS list identified the listing as "Whale, right...*Balaena glacialis*" and in

1993, as "Whale, right...*Balaena glacialis* (inc. australis)," but the NMFS list continued to identify the listed entities as "Right whales (*Eubalaena* spp.)." Through the years taxonomists have had different opinions on the proper genus name for right whales and on the number of species of right whales, but NMFS interpreted the listing to mean that two separate species were listed as endangered: northern right whale (*Eubalaena glacialis*) and southern right whale (*Eubalaena australis*). This was consistent with the view of most taxonomists at the time of listing.

April 2003 Technical Revision

On April 10, 2003, NMFS (henceforth, we) published a final rule (68 FR 17560) that purported to split the single endangered northern right whale species listed in 50 CFR 17.11 (Whale, right - *Balaena glacialis*) into two endangered species - North Atlantic right whale (*Eubalaena glacialis*) and North Pacific right whale (*Eubalaena japonica*). The intent of replacing the genus *Balaena* with *Eubalaena* was to correct the genus name in the FWS listing, a technical change. The intent of changing the listing from one northern right whale species to two species North Pacific right whale and North Atlantic right whale was to recognize the best available scientific information, which indicated that the population in the North Atlantic was genetically distinct from the population in the North Pacific. At the time, we considered this second change also to be a technical change that did not require a notice and comment period. We did not make the same change to 50 CFR 224.101(b) because we believed that "Right whales (*Eubalaena* spp)" would already include any species that is subsequently recognized within the same genus.

To be consistent with the changes described above, we also amended: (1) the definition of "right whale" in 50 CFR 222.102 so that the approach regulations in 50 CFR 224 would apply only to western North Atlantic right whales; and (2) the heading of 50 CFR 226.203 to indicate that critical habitat was designated only for the North Atlantic right whale.

The technical revision did not purport to affect the status or taxonomy of the southern right whale.

ESA Section 4 Listing Procedure

The process for determining whether species should be added to the Federal list of threatened and endangered species under the ESA is specified in section 4 of the ESA and informed by the definition of "species," "endangered

species," and "threatened species" found in section 3. However, the final rule we published in April 2003 was procedurally and substantively flawed. First, we did not follow the public notice and comment procedural requirements outlined in section 4 for listing a species as endangered or threatened. Second, we did not meet the ESA's substantive requirements of conducting a review of the status of the species to determine whether each species is endangered or threatened as a result of any of the five listing factors in that section.

In addition, we did not have the authority to make any changes to 50 CFR 17.11 because 50 CFR part 17 is solely within the jurisdiction of the FWS. Because we did not have the authority to amend 50 CFR 17.11, the changes we purported to make in that part are not valid. The status of right whales reverts to the pre-April 2003 status such that all right whales are endangered either as *Eubalaena glacialis* (Northern right whales) or *Eubalaena australis* (Southern right whales). We will request that FWS remove the changes to eliminate confusion regarding the listed entities.

Final Rule

We also are removing the April 2003 technical revisions to 50 CFR 222.102 and 50 CFR 226.203 so that they revert to the pre-April 2003 language. This will amend the definition of "right whale" as used in the right whale approach regulations found at 50 CFR 224 to read, "Right whale means, as used in § 224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (*Eubalaena glacialis*)." This will also amend the heading in 50 CFR 226.203 to read, "§ 226.203 Critical Habitat for northern right whales--Northern Right Whale (*Eubalaena glacialis*)." For the sake of consistency, we are also changing the heading of 50 CFR 224.103(c) from "Approaching North Atlantic right whales--(1) Prohibitions" to "Approaching right whales--(1) Prohibitions."

Next Steps under Section 4

In order to be eligible for listing under the ESA as either endangered or threatened, a group of organisms must constitute a "species," which the ESA defines to include "any subspecies of fish or wildlife or plants, and any distinct population segment of any species or vertebrate fish or wildlife which interbreeds when mature." Under section 4 of the ESA, the listing determination must be made "solely on the basis of the best scientific and

commercial data available." When considering a species for listing under the ESA, NMFS considers whether a species is endangered or threatened as a result of any of five statutorily enumerated factors: (1) the present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; and (5) other natural or manmade factors affecting its continued existence.

We plan to conduct a status review of the northern right whale to determine whether it consists of more than one species as defined by the ESA. If we make that determination, we will evaluate the status of each species to determine whether it is endangered or threatened as a result of any of the five listing factors, publish a summary of our conclusions regarding the listing factors, and, if warranted, publish a proposed rule to list each entity in accordance with section 4 of the ESA and 50 CFR 424.16. In addition, the notice of a proposed rule to list any species would contain the complete text of the proposed rule, a summary of the data on which the proposed rule is based (including, as appropriate, citation to pertinent information sources), and the relationship of such data to the proposed rule.

In addition, section 4(a)(3) of the ESA requires that, to the maximum extent prudent and determinable, critical habitat be designated for a species concurrent with making a determination that it is endangered or threatened. Therefore, if we determine that we should list species of right whales different from the northern right whale, we will also designate, to the maximum extent prudent and determinable, any habitat determined to be critical habitat of each of the new species proposed for listing. We will issue proposed and final rules to make the necessary determinations regarding critical habitat for any new species to be listed. We plan to complete this process by the end of 2006.

Classification

Administrative Procedure Act

The Assistant Administrator for Fisheries, NMFS, finds good cause exists to waive the requirement for prior notice and the opportunity for comment pursuant to 5 U.S.C. 553(b)(B) as well as the requirement for a delay in the effective date pursuant to 5 U.S.C. 553(d)(3). Such procedures are unnecessary because this rule merely

removes changes in the CFR that are not valid because they were never promulgated properly.

Executive Order 13132 - Federalism

Executive Order 13132 requires agencies to take into account any federalism impacts of regulations under development. It includes specific consultation directives for situations where a regulation will preempt state law, or impose substantial direct compliance costs on state and local governments (unless required by statute). Neither of those circumstances is applicable to this rule.

Executive Order 12866

This final rule is exempt from review under Executive Order 12866.

Regulatory Flexibility Act

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., are inapplicable.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, endangered and threatened species, exports, imports, reporting and recordkeeping requirements, transportation.

50 CFR Part 224

Administrative practice and procedure, endangered and threatened marine species, exports, imports, reporting and recordkeeping requirements, transportation.

50 CFR Part 226

Endangered and threatened species.

Dated: January 4, 2004.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 222, 224 and 226 are amended as follows:

PART 222—GENERAL ENDANGERED AND THREATENED MARINE SPECIES

■ 1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531 et seq.; 16 U.S.C. 742a et seq.; 31 U.S.C. 9701.

■ 2. In § 222.102, the definition for “Right whale” is revised to read as follows:

§ 222.102 Definitions.

* * * * *

Right whale means, as used in § 224.103(c), any whale that is a member of the western North Atlantic population of the northern right whale species (*Eubalaena glacialis*).

* * * * *

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 et seq.

■ 4. In § 224.103, section heading of paragraph (c) is revised to read as follows:

§ 224.103 Special prohibitions for endangered marine mammals.

* * * * *

(c) *Approaching right whales*—(1) *Prohibitions.*

* * * * *

PART 226—DESIGNATED CRITICAL HABITAT

■ 5. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 6. In § 226.203, the section heading and the introductory text are revised to read as follows:

§ 226.203 Critical habitat for northern right whales.

Northern Right Whale (*Eubalaena glacialis*)

* * * * *

[FR Doc. 05–527 Filed 1–10–05; 8:45 am]

BILLING CODE 3510–22–S

AGENDA CHANGE REQUEST: Aleut Enterprise Corporation, Walleye Pollock Fishery

PRESENT SITUATION: Walleye pollock fisheries in state waters target the same stocks harvested under federal regulations in adjacent waters of the Exclusive Economic Zone (EEZ). The department manages the state-waters portion of the walleye pollock fishery as a parallel fishery. During the parallel walleye pollock fishery the state adopts the seasons, bycatch limits, allowable gear types, and closed waters as promulgated in adjacent waters of the EEZ.

The Alaska Board of Fisheries has delegated to the Commissioner of ADF&G the authority to adopt by emergency order the federal Steller sea lion protection measures into the parallel fishery for walleye pollock. The Commissioner has adopted the Steller sea lion protection measures by emergency order. State waters are closed to fishing for walleye pollock in sea lion rookeries and haulouts.

WHAT THE PROPOSAL SEEKS TO CHANGE This agenda change requests the Alaska Board of Fisheries to revise walleye pollock closures for Steller sea lion protection in state waters of the Gulf of Alaska from 157 to 163° W. long., and waters of the Aleutian Islands from 170 to 180° W. long. If adopted, all state waters, within these longitudes, near sea lion haulouts and critical habitat would be opened to fishing for walleye pollock. State waters surrounding sea lion rookeries within these longitudes would remain closed.

BOF - generate proposal (include KC 56).

Passed 7-0.

STAFF ASSESSMENT OF THE AGENDA CHANGE REQUEST CRITERIA AS THEY RELATE TO THIS REQUEST:

1. Is there a fishery conservation purpose or reason? No.
2. Does the proposal correct an error in regulation? No.
3. Does the proposal correct an effect on a fishery that was unforeseen when a regulation was adopted? No.
4. Is this proposal predominately allocative in nature? No.
5. Does the department have new information with respect to the allocative nature of this proposal? Yes.

ADDITIONAL INFORMATION: The Policy For Changing Board Agenda, 5 AAC 39.999 (b) allows an agenda change based upon coordination with federal law. The ACR cites federal law, PL 108-199, as new information for the Board to consider. This federal law applies to the recent allocation of Aleutian Islands walleye pollock to the Aleut Corporation. The Aleutian Islands walleye pollock fishery has been closed since 1999, however the North Pacific Fishery Management Council recently established a Total Allowable Catch of Aleutian Islands pollock in 2005 for the development of Adak.

Staff does not have additional information regarding the walleye pollock fishery in the Gulf of Alaska within 157 -- 163° W. long.

PROPOSED BY: Aleut Enterprise Corporation

STATE OF ALASKA

DEPARTMENT OF FISH AND GAME DIVISION OF COMMERCIAL FISHERIES

FRANK H. MURKOWSKI,
GOVERNOR

RC 56

3298 Douglas Place
Homer, AK 99603-7942
PHONE: (907) 235-8191
FAX: (907) 235-2448

MEMORANDUM

TO: Earl Krygier and Director Mecum

THRU: Jim Browning

FROM: Charles Trowbridge

DATE: January 7, 2005

SUBJECT: Cook Inlet Area Pollock harvest request

The department has received a request, under regulation 5 AAC 28.379 PERMIT FOR MISCELLANEOUS GROUND FISH, to permit a pollock midwater trawl fishery in state waters of the Cook Inlet Management Area between 149° and 150° W. longitude (Figure 1) in northern Gulf of Alaska waters near Seward. The permit regulation authorizes the commissioner to specify such elements as depth of fishing, seasons or periods, areas, minimum harvestable sizes, type and configuration of gear, logbooks, and other conditions the commissioner deems are necessary for conservation or management purposes. A draft permit is attached for review. Other regulations affecting this harvest include a pollock catcher vessel trip limit of 136 metric tons (5 AAC 28.073), a requirement for a vessel monitoring system (VMS), and a provision allowing the commissioner to impose via emergency order, area closures, gear restrictions, vessel size limits, and monitoring and enforcement requirements to match federal fishery actions to protect Steller Sea lions (5 AAC 28.087).

It is the department's intent to manage this as a parallel fishery. This would include restricting the fishery to the area described above, adhering to pollock trawl season dates for federal Central Gulf of Alaska regulatory area 630, and adopting parallel gear requirements (other Chapter 28 provisions notwithstanding). The requested fishing area is partially contained within 10 nm pollock fishing area closures designed to protect Steller sea lions (SSL) at three haulouts and adopted by the commissioner via emergency order. Seal Rocks (Kenai) and Chiswell Islands are identified as critical habitat haulouts while Rugged Island is identified as an RPA (reasonable and prudent alternative) haulout. This latter designation indicates the site has not been identified as critical habitat.

The state is proposing to permit the requested activity with the stipulations indicated, except that the fishery closure area would be reduced to 3 nm surrounding SSL haulouts. In addition, a department observer would be required for at least 75% of tow hours, bycatch restricted to 5% of the pollock aboard.

ALASKA DEPARTMENT OF FISH AND GAME
COOK INLET AREA MISCELLANEOUS GROUND FISH (5 AAC 28.379)
COMMISSIONER'S PERMIT

Please Print

REGISTRATION YEAR 2005

VESSEL NAME: _____ ADF&G NUMBER: _____

VESSEL LENGTH: _____ GEAR TYPE: Pelagic Trawl CFEC PERMIT NUMBER: M _____

CFEC PERMIT HOLDER: _____

ADDRESS OR P.O. BOX: _____

CITY-STATE-ZIP: _____ PHONE NO. _____

CONDITIONS OF PERMIT

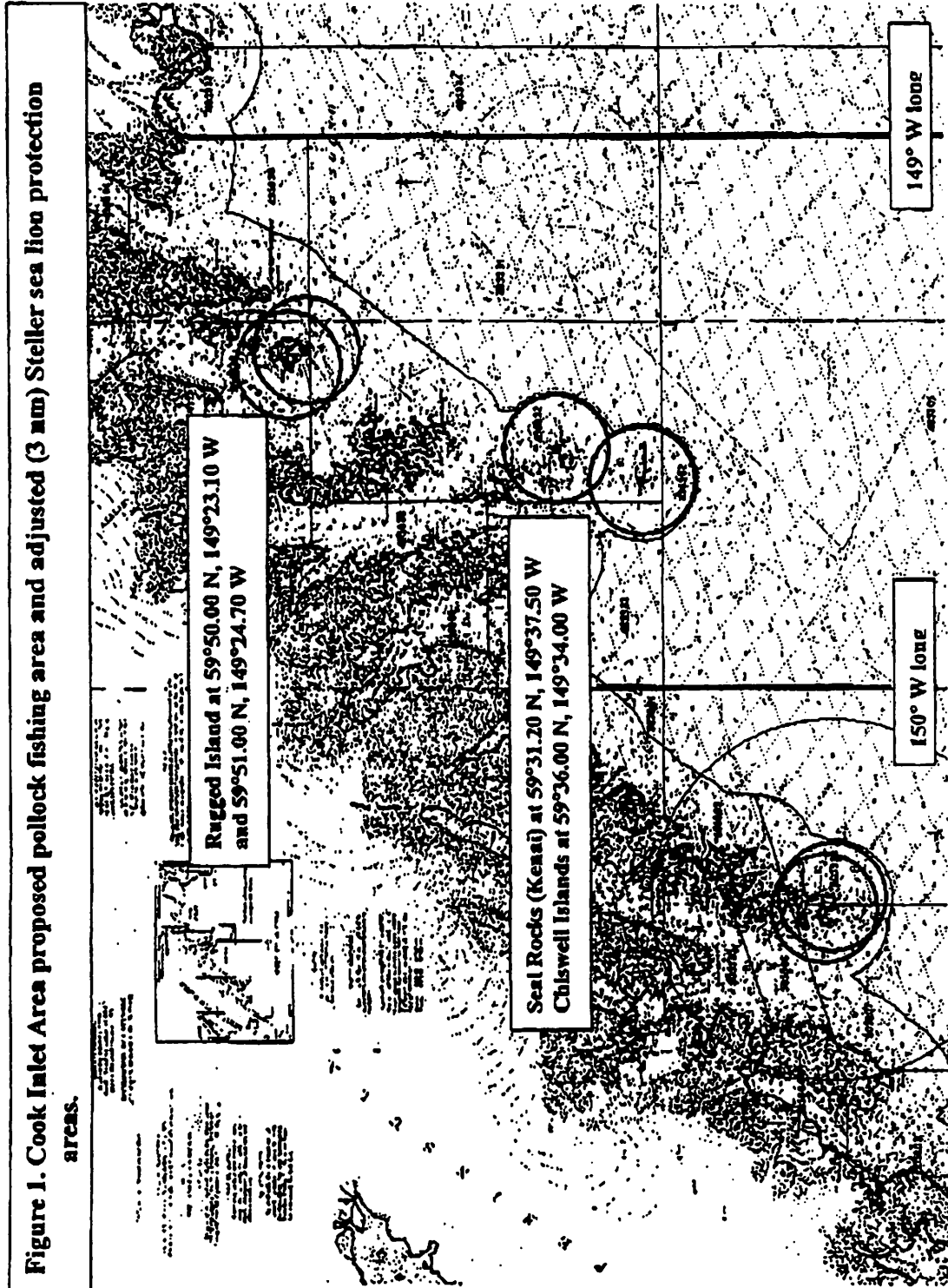
1. This permit is valid from noon Month xx, 200X to noon Month xx, 200X for walleye pollock and only when the federal Central Gulf of Alaska waters (Area 630) are open to target pollock and only if the gear type being used is also open.
2. This permit is valid only in state waters of the COOK INLET AREA (H) between 149 and 150 degrees longitude except those waters within 3 nautical miles of Steller sea lion haulouts at Rugged and Chiswell Islands and Seal Rocks (see attached page for lat./long. locations).
3. Only pelagic trawl gear may be used and only one gear type may be aboard at any time.
4. Fishing logbook pages, provided by ADF&G, must be maintained following each tow and the completed logbook pages must be submitted with the fish ticket at the time of landing regardless of where fishing occurs.
5. Prior to landing pollock, fishermen must provide a minimum of 2 hours notice by telephoning (907) 235-1743 during regular business hours (8:00 - 4:30 Mon-Fri) and reporting the location of landing, buyer or processor, estimated time of arrival, and estimated number of pounds of pollock onboard.
6. The permittee agrees to accomodate an ADF&G onboard observer upon request by the department and to have 75% of tows and tow hours observed.
7. This permit may be rendered invalid if ADF&G determines the level of bycatch exceeds 5% of pollock caught during any one tow or at a single landing or if any other unanticipated management needs arise.
8. Failure to complete all requested fields in the fishing logbook, notify ADF&G of deliveries, or comply with the other permit conditions will result in revocation of this Commissioner's permit and the permittee may be subject to prosecution under state regulation.
9. After being signed by an authorized Alaska Dept. of Fish and Game (ADF&G) representative, this permit must be retained on board your vessel during fishing operations, and shall be shown on request to a representative of ADF&G or the Alaska Dept. of Public Safety.

SIGNATURE OF PERMITTEE

LOCATION OF ISSUE

DEPARTMENT REPRESENTATIVE

DATE



STATE OF ALASKA

ALASKA BOARD OF FISHERIES

FRANK H. MURKOWSKI, GOVERNOR

AGENDA B-7(i)
FEBRUARY 2005

P.O. BOX 25526
JUNEAU, AK 99802-5526
PHONE: (907) 465-4110
FAX: (907) 465-6094

January 28, 2005

Ms. Stephanie Madsen, Chair
North Pacific Fishery Management Council
605 W. Fourth Ave., Suite 306
Anchorage, AK 99501-2252

Dear Ms. Madsen:

As you are aware, the Board of Fisheries added to its March 2005 meeting agenda consideration of state waters pollock fisheries in the Cook Inlet area and in areas of the Aleutian Islands around Adak. A copy of the proposal generated by the board is enclosed.

The protocol agreement between the board and the North Pacific Fishery Management Council calls for a consultation between the two bodies prior to either taking final action on groundfish issues. Considering upcoming meeting schedules, the board suggests a joint meeting with the council on February 15, 2005, in Anchorage. If this date is not possible, I will work with your executive director Chris Oliver to find a mutually acceptable time.

In addition, the board would appreciate participation of council staff and NMFS staff when it addresses the proposal at its March meeting. The agenda will be drafted by mid-February.

I look forward to hearing from you.

Sincerely,

Diana Cote, Executive Director
Alaska Board of Fisheries

Enclosure

cc: Art Nelson, Chair, Board of Fisheries
Wayne Regelin, Acting Commissioner, ADF&G
Jim Balsinger, Director, National Marine Fisheries Service

PROPOSAL 455. 5 AAC 28.087. Management Plan for Parallel Groundfish Fisheries.

Amend this regulation to provide the following:

Revise walleye pollock closures for Steller sea lion protection in state waters of the Aleutian Islands from 170° to 180° W. long., in state waters of the Western Gulf of Alaska for Steller sea lion protection from 157° to 163° W. long., and in the Cook Inlet Management Area between 149° and 150° W. long., to facilitate harvesting of walleye pollock.

PROBLEM: This proposal is generated by the board at the January 2005 board meeting.

Federal Steller sea lion protection measures have been adopted for state waters under authority of regulation 5 AAC 28.087. The sea lion protection areas apply to vessels fishing for walleye pollock.

The Aleutian Islands walleye pollock fishery has been closed since 1999, however the North Pacific Fishery Management Council recently established a total allowable catch (TAC) of Aleutian Islands pollock in 2005 for the development of Adak. The Aleut Enterprise Corporation seeks to revise walleye pollock closures for Steller sea lion protection in state waters of the Aleutian Islands from 170° to 180° W. long. to facilitate harvesting of the recently-adopted TAC for Aleutian Islands walleye pollock. If adopted, all state waters, within these longitudes, near sea lion haul-outs and critical habitat would be opened to fishing for walleye pollock. State waters surrounding sea lion rookeries within these longitudes would remain closed.

The Aleut Enterprise Corporation also seeks to revise walleye pollock closures in state waters of the Western Gulf of Alaska for Steller sea lion protection from 157° to 163° W. long. If adopted, all state waters, within these longitudes, near sea lion haul-outs and critical habitat would be opened to fishing for walleye pollock. State waters surrounding sea lion rookeries within these longitudes would remain closed.

The department and board have also received a request to issue a permit to allow fishing for walleye pollock in the Cook Inlet Management Area between 149° and 150° W. long. The permit would allow fishing in portions of state waters currently closed to protect Steller sea lions. Under the proposed permit, the 10 nm pollock fishing closures surrounding haul-out protection areas at Chiswell Islands, Seal Rocks (Kenai) and Rugged Island would be reduced to 3 nm. No other haul-outs or rookeries would be affected.

WHAT WILL HAPPEN IF NOTHING IS DONE? Fishing in state waters for walleye pollock will remain closed in Steller sea lion protection areas.

WILL THE QUALITY OF THE RESOURCE HARVESTED OR PRODUCTS PRODUCED BE IMPROVED? Unknown.

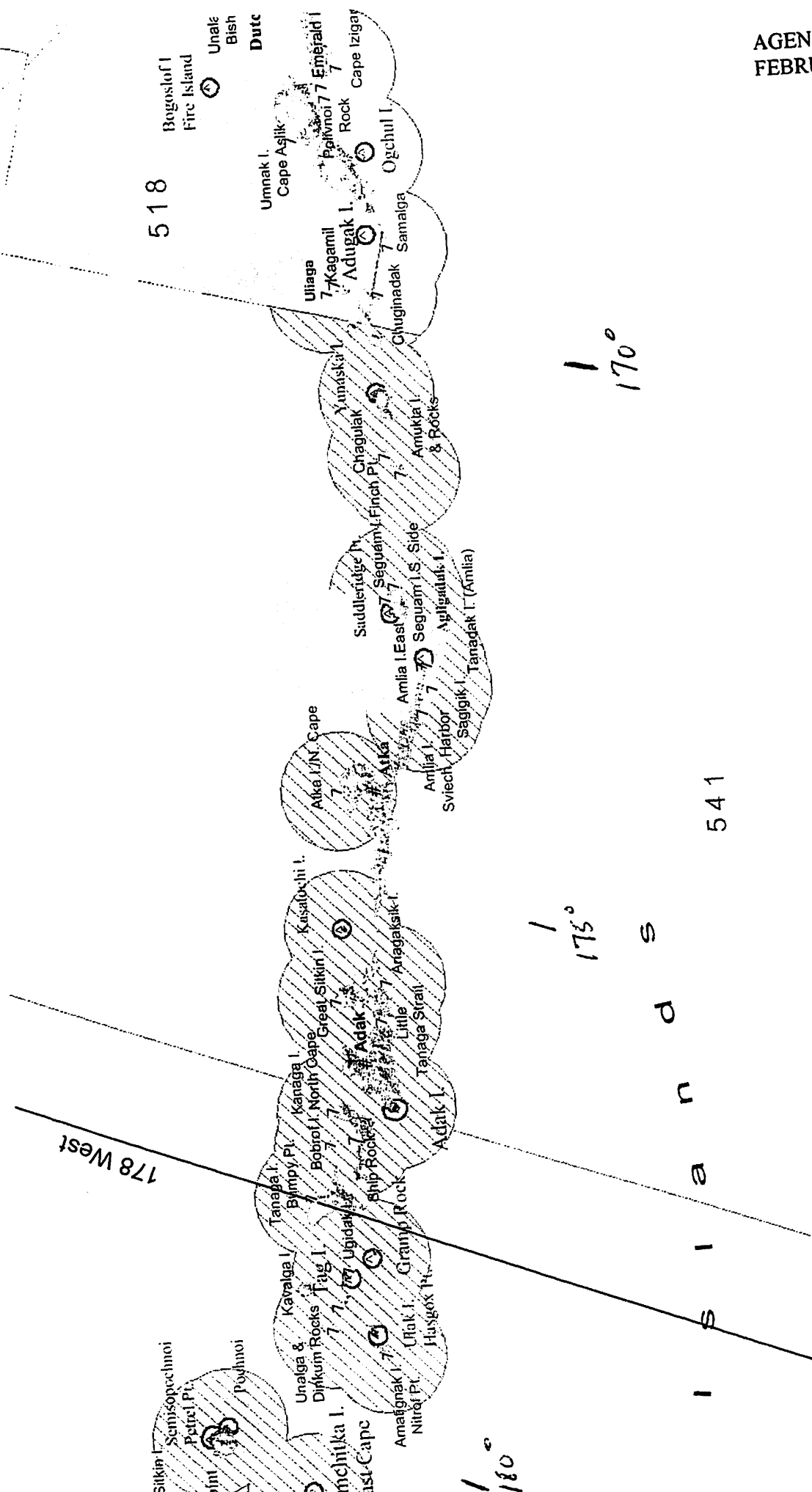
WHO IS LIKELY TO BENEFIT? Fishermen harvesting walleye pollock in state waters that are currently closed, processors that currently have little or no opportunity to purchase pollock, and coastal communities that are economically affected by large-scale pollock fishing closures will benefit from access to the pollock resource.

WHO IS LIKELY TO SUFFER? Unknown.

OTHER SOLUTIONS CONSIDERED? None.

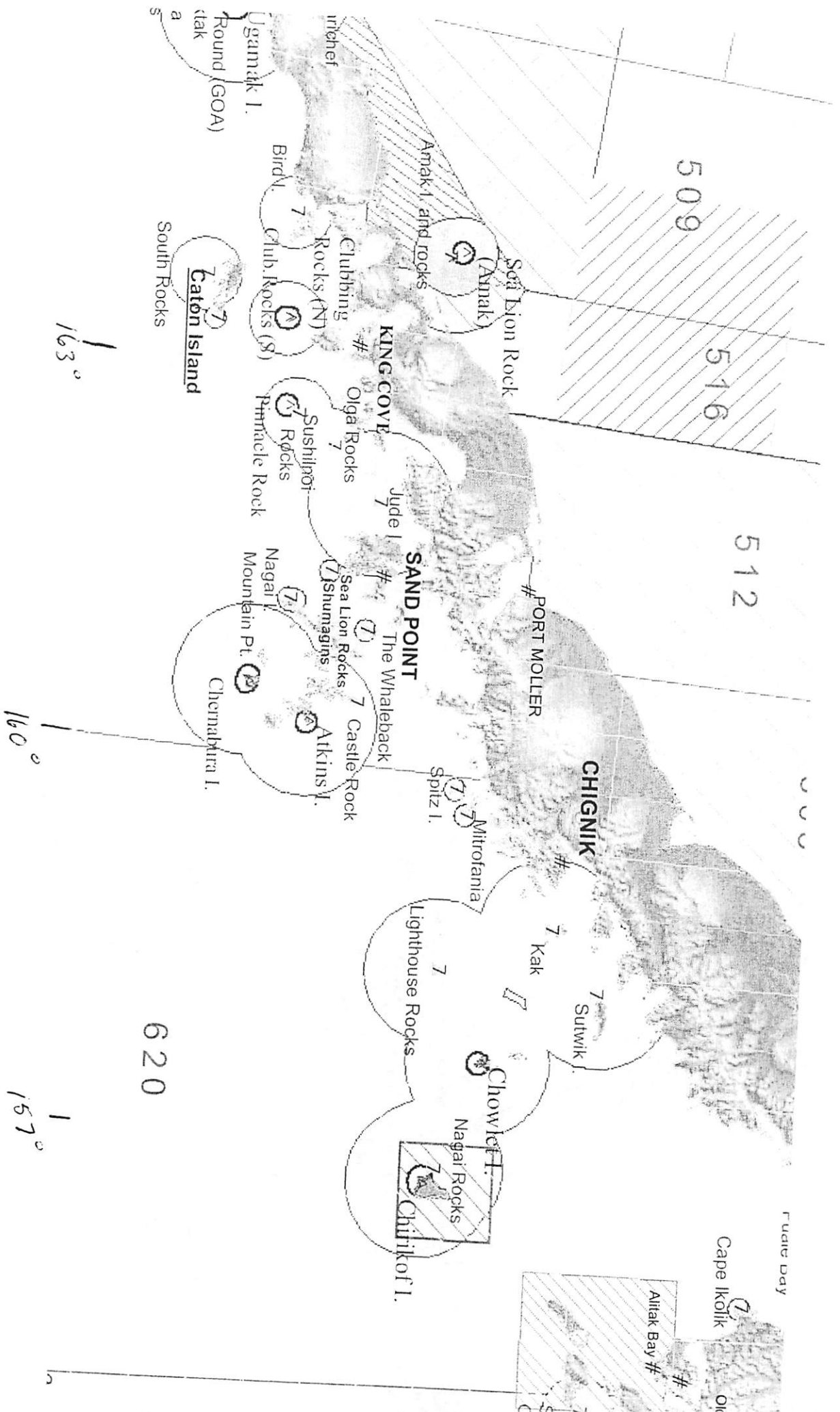
PROPOSED BY: ADF&G on behalf of the Alaska Board of Fisheries

(HQ-04-F-350)



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Caton Island

Amak I. and rocks
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Olga Rocks
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Nagai
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Mountain Pt.
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Castle Rock
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Atkins I.
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Chernakura I.

Jude I.
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SAND POINT
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The Whaleback
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Sea Lion Rocks
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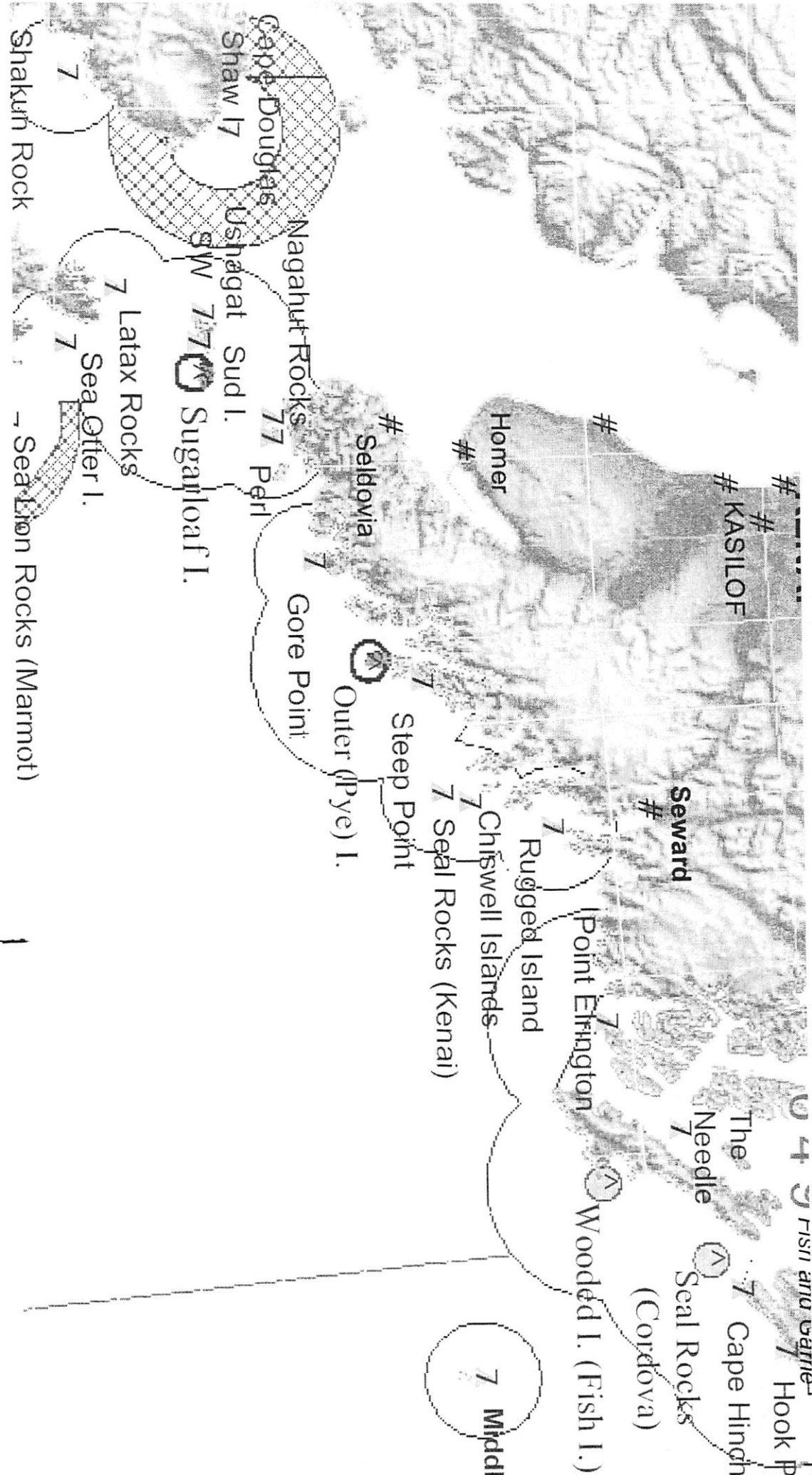
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Cape Ikoik
7
Alliak Bay #
7
Oil

163°

160°

157°

1/2



1
150°

1
149°



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
P.O. Box 21668
Juneau, Alaska 99802-1668
February 1, 2005

RECEIVED
FEB - 1 2005
N.P.F.M.C.

Chris Oliver
North Pacific Fishery Management Council
605 West 4th Avenue, Room 306
Anchorage, AK 99510

Dear Mr. Oliver:

This letter expresses the concerns of NMFS regarding a proposal being considered by the Alaska Board of Fisheries to open a state parallel fishery for pollock in Steller sea lion protected areas. NMFS has reviewed Proposal 455. 5 AAC 28.087 'Management Plan for Parallel Groundfish Fisheries' submitted by the Alaska Department of Fish and Game, on behalf of the Alaska Board of Fisheries (BOF). This proposal requests a revision to walleye pollock fishing closures instituted for the protection of Steller sea lions in Alaska state waters, 0-3 nm from shore. Three areas are proposed for a state parallel pollock fishery: the Aleutian Islands from 170° to 180° W longitude, the Western Gulf of Alaska between 157° to 163° W longitude, and the Cook Inlet Management Area between 149° and 150° W longitude. NMFS has several concerns regarding this proposal.

This proposal would open more than 93% of designated Steller sea lion critical habitat to trawl fishing for pollock in the three regions noted above. It includes numerous rookeries (25), haulouts (55), and the Seguam Pass Foraging Area that are critical to reproduction and survival of Steller sea lions. Although the proposal indicates that areas around rookeries would remain closed, this offers little protection during the winter months when animals are extensively using haulouts.

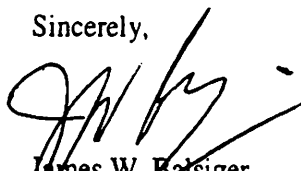
The NMFS 2001 Biological Opinion on the Steller sea lion Protection Measures (BiOp) explicitly states that trawl fishing is the most likely fishing activity to negatively impact Steller sea lions both indirectly by removing large quantities of pollock from foraging areas and directly by entanglement in fishing gear. A trawl fishery for pollock within the primary foraging zones of juveniles and adult females has a high potential to negatively impact both age groups. The 0-3 and 3-10 nm closure zones are believed to be the primary foraging areas for juvenile sea lions and adult females. Juvenile sea lions foraging in the Aleutian Islands and Western Gulf of Alaska spend between 70 and 95% of their time within 10 nm of shore (40-63% of their time between 0-3 nm). Furthermore, adult females also forage in this zone up to 40% of the time. Because they forage close to shore, juveniles and adult females have been defined as the most likely groups to be negatively impacted by competition with fisheries. A decline in juvenile survival has been identified as one of most likely causes for the population decline, and lower reproductive success of adult females due to reduced prey availability was identified as a



possible cause for the decline. Low juvenile survival and reproductive success of adult females due to reduced prey availability have also been identified as factors that could impede recovery.

The "no jeopardy" and "no adverse modification of critical habitat" findings by NMFS in its 2001 BiOp was based on a proposed action that included management of the parallel fisheries for Pacific cod, pollock, and Atka mackerel according to federal regulations within waters managed by the State of Alaska (0-3 nm from shore). The BiOp specifically states: 'The proposed action would close most of this zone (from 0-3 nm around rookeries and haulouts) to directed fisheries for pollock, Pacific cod, and Atka mackerel, including State parallel fisheries.' NMFS requires a more detailed proposal to adequately assess the potential impacts of the proposed action on Steller sea lions. NMFS' preliminary assessment, however, is that this proposal provides new information that would result in a change in the Action as described in the 2001 BiOp, and that it would likely result in re-initiation of a formal Section 7 Consultation of the 2001 BiOp (i.e. the federal fisheries for pollock, Atka mackerel and Pacific cod).

Sincerely,



James W. Balsiger
Administrator, Alaska Region

Public Testimony Sign-Up Sheet

and

**Handouts Received During the
Meeting on this Agenda Item**

Transcription on B-7 SSL/ADAK - February 9, 2005 - 11:26am - 1:25pm

Madsen: It was my thought, whether Chris and I should explicitly list this as an agenda item, the purpose was to understand the basis of the agency's indication that a formal Section 7 would likely be required, what the effect is to us and our fisheries and if the BOF acts, takes this up and moves forward with this, so I think that would be the intent of the meeting for us to discuss this, so if the BOF does move forward, what does that mean as far as the BiOp and Section 7 consultation, that we kinda have been through this a little bit. Further if we do move to consultation, what does that mean and relationship to our ongoing fisheries and ability to keep those fisheries ongoing in the matter that we know today. That was my thought how we could move forward in this presentation. If no objection, then our next step is recognizing the agency has determined that a formal Section 7 is likely. We need to bring Mr Pollard up and understand what that means from here forward.

Pollard: As you learned from the letter, the fisheries service believes that if the Board proceeds with this action to open up a new pollock fishery in critical habitat in the AI, that reinitiation of formal consultation in the federal fisheries will be required, and it would likely be required under our reinitiation criteria, the criterion being, new information in a fishery, reviewing effects of an action that may affect the listed species or the critical habitat in a manner or to an extent not previously considered. So, it is very likely, that if this occurs, we will have a re-initiation of formal consultation on at least the pollock, P.cod, and Atka mackerel groundfish fisheries in the AI, Bering Sea, and GOA. I believe if we look at the current Biological Opinion, you'll find that the effects of the action on the Western population and critical habitat is considered globally, all the fisheries together, so it's likely we'll reexamine all the fisheries together, in light of a new fishery taking place in what would be the heart of critical habitat in the Aleutian Islands. It is also important to note that the scope of re-initiation will be comprehensive. We would need to examine all the best, scientific and commercial fishery data available, all the changes that have occurred in the way the fisheries operate since the initial, since the completion of the last consultation, last formal consultation. All the new information on the listed species in the critical habitat that we can glean about the effects on sea lions and their habitat. So it is the same process that we went through before. Madam Chair you raised an issue about how the federal fisheries will be affected by this new initiated consultation. I think that is a question we will have to look at very closely. There is a provision 7d of the ESA that prohibits, after re-initiation of consultation, the agency to make an irreversible or irretrievable commitment of resources with respect to the agency action, in that case the fisheries, that we'll want to have ongoing during consultation. What you might recall, when the situation, some years ago when we lost BiOp 2 on the groundfish fisheries, in front of Judge Zilly, who found it inadequate in scope. The fisheries service immediately initiated consultation, argued that the fisheries could continue during the consultation, because it was not likely that serious harm would be caused in one year of fishing while we completed the consultation. You might recall the argument was rejected by Judge Zilly, when the injunction against all trawl fisheries in federal waters was implemented, the judge believed that was the requirement of the ESA.

There is a question about takes of SSL in State waters, as a result of a new state fishery. Section 9 of the ESA prohibits the take of listed species, subject to some exceptions. One of those

exceptions is that takes can be authorized by an incidental take statement issued in a biological opinion, so long as the action conforms with the terms and conditions of the take statement. In some situations, such as the salmon fishery in SE Alaska, which takes place in State and Federal waters, the incidental take statement for the Federal fishery can include coverage for takes that occur in adjacent state water fisheries, provided that the adjacent state water fishery is managed in a way that complies with the terms of the incidental take statement. That's not the only way that takes in State waters can be granted safe harbor from the Section 9 take prohibition. Another way is to have a Section 10 permit issued either by the US Fish & Wildlife Service and NMFS, in this case, the SSL case, it would be NMFS. An incidental take permit is issued under Section 10 of the ESA and can only be issued if NOAA finds that the taking is incidental to an otherwise lawful activity in a State water fishery. But to the maximum amount practicable, taking shall be minimized, monitored, and mitigated. There is also a requirement that the taking will not appreciably reduce the likelihood of survival and recovery of the species, and that the applicant for that permit has submitted an amended habitat conservation plan to include measures not originally proposed, but that NOAA finds are necessary and appropriate for conserving the critters. So I think there is a significant question if the State should authorize a new fishery that is not covered by the current consultation and not by the initial consultation, just what the take coverage would be. If there is a likelihood of take, Section 10 permits would provide an opportunity to get safe harbor for the takes that would occur. That's probably all I have to say. I'll try and answer questions.

Benson: The thing that you described last about Section 9 and incidental take statement and the getting of a permit through Section 10 for a new state water fishery, brings to mind when the BOF created the state water P. cod fishery in the Gulf of Alaska. I don't recall that coming up at that time. Has there ever been an examination of that fishery in these terms?

Pollard: I'm not aware of any.

Madsen: But the P. cod fishery was initiated prior to our BiOp. When the BiOp was developed and approved, the P. cod State water fishery was included with understanding what the impacts are to the whole Steller sea lion and Federal fisheries, so the Section 10 wasn't triggered when they established the P. cod fishery, but it was considered during the develop of the BiOp on all the federal fisheries. We knew that fisheries were occurring and that those fisheries were taken into account when we looked at the removals and the effect of those removals on Steller sea lions. So it's a little bit of the chicken and the egg, because of the timing of when we did the BiOp and the time that fishery was initiated.

Pollard: Madam Chair - I cannot recall whether the existing BiOp covers under its incidental take statement, those takes, if any were to occur.

Mr. Benson: Guess that begs the question, if you go through this process for a state water pollock fishery, would you also have to examine the state water P. cod fishery or has that opportunity sort of gone by and you don't have to deal with that. I think you mentioned in your presentation about having to look at all the species that are being fished in state waters.

Pollard: We have to look at the effects of the action in the current environment, to evaluate all the effects of the actions and cumulative effects on listed species. We need to look at effects of present, past impacts of all federal, state or private actions and other human activities in the area. You look at everything, all the factors that affect, do affect the list of species in its habitat, as a part of this comprehensive examination. The answer is yes, you need to look at those effects. All the effects need to be considered, not only those, but the effect of future, state or private activities that are reasonably certain to occur in future. So you need to look a little bit at the crystal ball and what kind of effects we can reasonably expect to occur.

Benson: So if you determine that an incidental take permit is required for this new pollock fishery, then that will also be required for the state P. cod fishery?

Pollard: The incidental take permit is really not a NOAA responsibility. That would be for the State to look at first. Our takes will presumably be covered by the Biological Opinion. And we are talking about what the State might do if takes are likely to occur as a result of its activities in state waters. One way we dealt with this in the past, cover those takes under our BO incidental take statement, provided that the fisheries, both state and federal, are managed in a way that complies with the terms and conditions of the incidental take statement. Another way that is possible is an incidental take permit, issued under Section 10. A decision whether it goes into a Section 7 permit, a Section 7 consultation, and a take statement, a Section 10 permit, still depends on some factors and a matter of discretion with federal agencies. Whether it includes non federal takes and certainly an incidental take statement and terms and conditions must be met before the takes will be covered under the BiOp.

Madsen: So to follow up on this, because this is getting confusing and I guess we are just going to have to be patient as we work through this. My understanding is when we did the BiOp, that the incidental take statement in that BiOp covered the P. cod state fishery, all of our federal fisheries, because we knew all those were going on. And so in your presentation you identified that we knew that the P. cod fishery in state water was occurring and we covered that in the Federal BiOp, because it was adjacent waters and that fishery must comply with the conditions in the incidental take statement. If it doesn't, then we are back into not having a valid BiOp, which I think is exactly where we are with the Adak pollock fishery. Although the difference is that the State managed P. cod fishery was not an action that the Council took. This situation is, it was an action that the Council took, but the State modified their waters for the prosecution of that fishery, which now throws us into not complying with the terms and conditions that were under the BiOp.....or incidental take statement, so I think that where we are as far as incidental take and how the other fisheries were covered in the original BiOp. And that is why we haven't had to deal with it before, because it was a comprehensive look before and now it's different.

Mecum: You talk about in this letter to be sure and initiate a Section 7 consultation from the agency, but that's not what I get from you. What I get from you, well it kind of depends, depends on what the state action was, doesn't it?

Pollard: I think the uncertainty you have picked up from me, it's hard to tell from the written proposal, just what kind of fishery is proposed. But I think we'll find that any kind of fishery

that's worth prosecuting in this part of critical habitat is probably going to require us to re-initiate formal consultation. But until you really see what's on the table, it difficult to say that with certainty.

Madsen: Mr Mecum, we have been through this slightly, about what is going to trigger a Section 7 and what isn't. We were requested by the Steller Sea Lion Mitigation Committee whether they could continue to work and try to find an area in this area (the Aleutian Islands) that we could change the rules to allow them in. And at that time, we were told the same thing, it was likely going to trigger a Section 7 and it was not going to be able to be done informally. But it would have to be a formal consultation and the Council's choice at that time was not to move forward and not to have the SSLMC to have that work done, for a couple of reasons. One is we looked at the time line, the first reason. One of the premises that the process then had for us to allow them to continue to work in trying to find open areas, is because they believed that they were not going to be able to prosecute that fishery outside critical habitat, which is the way that we set the fishery up. And the discussion that we had was that we are not willing to jeopardize or put the other the fisheries at risk, until we actually had demonstrated that fish are unable to be caught outside critical habitat, out in the Aleutians, because we never had fishery that been required to fish outside critical habitat in the Aleutians. So we have been down that path of understanding. It might be a little bit grey, but in my mind that is very clear, it will be a formal Section 7 and once that's triggered, there will be a series of events that are outlined very clearly, about what the requirements of the agency are going be when it looks at continuing other fisheries and those fishery effects on the listed species that were under consultation with. So now what we have done in my mind is come full circle. We are going to have the same discussion, only it is not an action we're going to take. Now we are responding to a potential action that the BOF is going to take. That leads us to the same place where we were at when we decided not to let the SSLMC continue to work on trying to find ways they could modify that fishery, because we were concerned about this very thing. So I know it seems like it's grey, but to the Council members that concurred, the effect of that was not grey. We knew what formal Section 7 meant and what the domino effect.....that would trigger.

Mecum: As an example, one aspect of this proposal would be to be in the Seward area and the department has already allowed a person to do this, under the terms of the Commissioner's permits. I don't know if I should say that or not. But, you said any fishery worth prosecuting out there would likely, possibly, result in a consultation. In this case it is already something that already happened and it did not result in consultation. Is it a matter of scale?

Madsen: We are talking about two different areas, Mr Mecum. We are talking about the areas up there.

Mecum: Maybe, we can speak to it in terms of just general principles then. Doesn't it depend, I just keep coming back to the fact - it depends on what this take is, in the state waters and whether or not that take has occurred, and the state can demonstrate that take has been mitigated and monitored in such a way that it didn't, for lack of a better term, cause problems?

Madsen: Will I guess once you get into consultation, you might then look at the details, when you are under consultation, about the true effect of what every fishery that is developed out there. I guess where the difficulty is, the triggering of the Section 7 and what happens to all the rest of the fisheries once you trigger that Section 7. And what action the Council or agencies would have to take on all the other fisheries, and the GOA, and the potential, I guess, if the incidental take statement is invalid for the P. cod state managed fisheries, because it is included in a BiOp that has now been reopened, what the effect is on that P. cod fishery while we are under consultation. I think that your questions are correct. The results of the Section 7 consultation depends on the details of the specific area in the fisheries, but I don't think, what I'm not hearing Mr. Pollard say, is the details. I think what he has said, and what we were told before we were looking at the mitigation, is that our preliminary looks at an area in the Aleutians with pollock, it's likely going to trigger a formal Section 7 regardless, because of the area and the importance of the area to the Steller sea lions and the premise of the BiOp or the details in the BiOp. I think you're correct. The consultation, we may get, that's when the details of the fishery will come up under consultation, it's effect on the sea lions. Ms. Brix.

Brix: Madam Chair, perhaps I can just add a couple of points to address Mr. Mecum's question. There are four re-initiation criteria, two of which we are looking at.....that we think will result in..... likely to re-initiate. Those two are: a significant change to the action, have we changed the action that was originally considered in the biological opinion, and the other one is new information. At this point we believe that those two re-initiation criteria are likely met. The significance of this particular opening to Sea lions is enough that we would consider that (action) a significant change to the action that has already been analyzed. So I think those are the two things that need to be considered when we are to help you think about whether or not we meet the re-initiation criteria - whether a new formal consultation would be needed.

Mecum: New information on improving health of sea lions then can also trigger re-consultation?

Brix: If that new information was significant enough, that is, wasn't previous information that we didn't look at.

Mecum: What was the agency's thinking in terms of re-consultation down the road, one year, two years, three years down the road?

Brix: We are waiting for the Recovery Team to finish the recovery plan and at that point we had intended to take another look at the consultation that has already been done.

Mecum: And that is likely to occur when?

Brix: Well, I assume within a year or so, the Recovery Team will be finished with the recovery plan.

Bundy: Madam Chair, my question was the same as Mr. Mecum's. Maybe it's been answered. Just to see if I can get any other clarification, my understanding is that we do have a re-consultation at some point, and without forcing one due to something we do or the BOF does.

So, say again at what point.....when is this general re-consultation going to happen? What did you say?

Brix: We had been taking a look at this a little while ago and we had decided that we would, we weren't for sure going to do a new consultation, but we would take a look at the need for a new consultation once the Recovery Team is finished with their recovery plan. But a lot of the information that is going to be pulled into that would be critical to our decision making as far as whether or not a new Biological Opinion would be necessary. And we are also waiting upon results that have come out of the recent SSL initiative funding, funding initiative, that created a lot of new research. So those are the two things that we are factoring into our decisions as to when we would perhaps re-initiate consultation and do a new Biological Opinion. But that is notwithstanding the fact that an action could change and that in itself would result in re-initiation of consultation.

Fuglvog: Couple questions: Jon, does it make a difference if it's a state or Federal action, as far as initiating a Section 7? If the BOF where to go forward and act on this, is this a federal action or a state action?

Pollard: Madam Chair, Arne, I think you asked two separate questions. I think in this case, what you have is a BiOp on groundfish fisheries, the federal groundfish fisheries, that in its evaluation of effects relies explicitly on the continued closure of State waters - critical habitat areas - to pollock fishing and also concludes that at certain times of the year, these areas are the most critical of critical habitat. And so looking at that continued closure, our analyses then proceeded to conclude that the federal fisheries that were being conducted, which was the focus on the BiOp, didn't adversely modify the critical habitat or jeopardize the population. The concern here is that having relied on the continued closure and the mitigative impact of that closure on our evaluation of the federal fishery effects, take that away and you have a new situation. We never looked at how federal fisheries would affect sea lion critical habitat with a fishery going on for pollock, and what in the BiOp analyses is the most critical, critical habitat. So while you don't do a Section 7 consultation from State action, the opening of that area is, could be, significant new information we want to consider in a new formal consultation. Does that help you?

Fuglvog: There are three separate areas that the BOF is going to look at, the Central Gulf Area, the area in the Western Gulf, and an area in the Western Aleutians. Would you evaluate each one of these individually to see if they would trigger a Section 7?.....maybe an action in the Aleutians, but maybe the action in the Central Gulf near Seward would not trigger Section 7?..... or is it, or do they have to be considered collectively?

Brix: Mr Fuglvog, Madam Chair - I think it would kind of depend on how, what decisions the board made, and how this would move forward. Any one of these openings could potentially cause enough of a change in the action that was considered under the federal arena, that it would re-initiate another formal consultation, and collectively the same, but I guess we wouldn't want to look at them piece meal. But if they only chose one of them, then we would look at that, but if they chose two, then we would consider them together. I don't think we would piece meal and

say that..... I guess it would really depend. I'm not really sure I can give you a very good answer on what exactly the decision was for which openings. We would take a look at that decision and try to come to some determination as to whether it is significant enough to cause re-initiation of formal consultation.

Freezing????????????????????//

Madsen: To follow up on Mr Fuglvog's question, the little bit of frustration I have about this is that the federal action that has now triggered the Section 7. It is the federal pollock allocation that we did to the Aleut Corporation that has now triggered it, in a sense. It is our action, that the BOF..... all they are doing, this is a parallel fishery, this is not a new state water fishery. All they are doing is opening up their waters to allow our Federal fishery to occur inside 3. That's my understanding. It's not a new State water..... Mr Tillion is maybe going to correct me, but when I look at the proposal, it says parallel fishery. It is not a new state water pollock fishery, it is a parallel fishery, which in my mind is very similar to the way we conduct parallel fisheries, where it is a federal program. The state allows that federal program to occur inside their waters. The federal people manage it, the federal participants have to follow our rules, and when they are inside three, because the state doesn't have the authority to limit that, there they are participants that fish off the federal TAC, but don't follow all our rules because they don't have an LLP. So this is the same situation and it actually is recorded on the agenda as a change request recommendation. You'll note that when staff looked at the qualifications.....whether the agenda change request met the criteria, the only yes in that staff recommendation was there was new information and that the new information was that the Council and the agency had allocated fish to the Aleut Corporation in the Aleutian Islands. So in my mind, and I need to be corrected if I am wrong....in my mind it is the federal allocation to the Aleut Corporation, but the State is going to allow it to occur in their state waters, that has triggered the Section 7 consultation. Now if the State BOF had just opened up State water fisheries for pollock in the Aleutians, the effect would have been the same. But my frustration is that we had a great debate here at the Federal level about where that fishery needed to occur, not to cause a Section 7, so it is our Federal action that is in a default way triggering this, because we are the ones that allocated the fish to Adak under certain conditions and that was outside critical habitat. The State BOF action potentially would be just to open the waters in these areas to allow that fishery to occur. It is unclear to me how that works in the Shumagins or up in Cook Inlet, because that's not new information. Those fisheries have been occurring, but they were included in the proposals, so I don't know to exactly fit that in my comments, because it's kind of a different colored animal or something. But that's my frustration, is that we were very clear and we talked a lot of times about the need and where the BiOp was and what it would mean if we triggered a Section 7 consultation for the rest of us. So I just want to make sure the people understood, it is not a State managed pollock fishery in the Aleutians that they are considering at this time. It is to allow a federal fishery to occur inside state waters. So am I incorrect, Mr. Mecum?

Mecum: I guess with the ACR criteria, the BOF can change their agenda any time they want. I wouldn't say that's a moot point, but it's pretty close to it, in terms of why they wanted to take this up. And your point is well taken, but I'm unclear too. Are we talking about, would the board be talking creating a state water fishery, or fishing of the federal TAC in the parallel

fashion. I'm not clear on that either and I guess that's an open question and again I think it depends, doesn't it, on what the board does?

Madsen: All I know is what was given to us and I realize the agenda change can happen at any time. I think there are criteria for that, but it's very clear the Aleut Corporation proposal, that they are asking to fish that federal TAC in that water. I didn't read anywhere in there that they are creating a state water fishery. When I see the BO F proposal say parallel up there, to me that kinda triggers something different than a state managed pollock fishery up there. I guess, all of that is moot, because the effect is the same. My frustration I guess is this Council and Board spent a lot of time reviewing that request and going through this whole exercise of what that means and we didn't want to go there, but we find ourselves there. Now we have to figure out where we go from here.

Lunch

Nelson : Just a clarification..... Jonathan had referenced provision 7 d of the ESA and then quoted some of the legal language and I didn't catch it all; all I recall is irretrievable.

Madsen: Mr Pollard, if you can go back to the presentation on 7d and some of the language that describes the constraints the agency may be under on allowing the fisheries to occur, the specific language that is in the act.

Pollard: Madam Chair, Hazel - that was 7 d generally states that if consultation was reinitiated, the Federal agency may not take any actions during the consultation that amount to irretrievable, irreversible commitment of resources that might foreclose the development of protective action should they be determined to be necessary at the end of the consultation. The key language is irreversible, irretrievable commitment of resources.

Nelson: Hearing those words irreversible and irretrievable, I wanted to know what, I guess, how does irreversible apply in this instance, because we could always change the law.

Pollard: We have argued, this came when we lost BiOp 2, which was our invalid comprehensive consultation, and the agency argued that a fishery could continue on as before as we were engaged in consultation for the reasons you stated: first that the sea lion was not going to be jeopardized during the course of the consultation by the fishery, and at the end of the day, when we completed our consultation, we could and would change the regulations for which the fishery is conducted in a way that sea lions would be adequately protected. The court evaluated that and rejected that argument saying that the conduct of the fishery when consultation was ongoing was a substantial procedural violation of the ESA and the harm wasn't really the question. The question was, had the agency committed a substantial procedural violation of the ESA and that, once the fishery was conducted and Sea lions suffered whatever effect they were going to suffer while consultation was going on, you couldn't take that back. That effect would be inflicted at the time the fishery occurred, and perhaps you don't know, perhaps the consultation would have concluded and determined that those effects should not have been inflicted, if they weren't adequately protected.

Benson: I think the way we did the Adak allocation was on an annual specs process; I'm looking to Dr. Balsiger for that. So when we go through that process in December, we have our ABC in front of us, and we can allocate TAC or not; in the past we have not. But is it still continued to be set up that way?

Madsen: Our action on Adak pollock - it's a percentage, based on ABC, and so the TAC gets generated based on the calculation of ABC, remember, because we didn't want to have to revisit that decision every year. That was an option that was available to us - it was to just take care of it under the TAC setting process. We don't want to have to revisit that decision every year. What we did was base it on the biomass estimate, a percentage of the biomass estimate with the ABC and split 40/60. That generates a TAC. Now I'm confused; I know it has something to do with the ABC, but it is also fixed in our motion, so it capped, it is a percentage of the ABC, but it's capped. I'll stop taking because I got myself totally confused. Dr. Balsiger.

Balsiger: I think it will be calculated every year, because there is a formula, but I forgot about the cap..... looks like Mr Wilson.....

Wilson: Madam Chairman - you approved a TAC of a certain amount, I believe it was 17 or 19 thousands tons, but the caveat is that it would not be any more than 40% of the ABC and that relates to the 40-60 split between the A and B seasons. So the total TAC apportioned to that area could not be more than 40% of ABC, but you actually allocated a specific number, recognizing that 10% would come off the top for CDQ and another block would come off for the ICA allowance.

Madsen: So it's kind of a two trigger decision point: we fix the amount that goes to the Adak corporation, but to comply with Steller sea lion rules, we also said never at any time would it exceed 40% of the ABC, which is the Steller sea lion rule.

Benson: I want to be clear, so we did fix the amount, so it is not an option to have 0 TAC on an annual specs basis?

Madsen: My understanding is if you wanted to do away with the Adak pollock fishery, you would repeal Amendment 82, which we just passed. Because that's what set up the, provided the regulations to initiate the Adak fishery.

Benson: If consultation is initiated, if the BOF goes ahead and relaxes the restrictions in State waters, consultation is re-initiated and then if the Council chose not to allocate any TAC out in the Aleutians, then what happens? What I'm hearing is, it's automatically 40% of the ABC, not to exceed 19,000.

Madsen: It the other way, you're right. Are there any other questions, because I have a follow on to that. My follow on to that is that, I lost it. Mr. Fuglvog.

Fuglvog: My question for staff is, right now we have a joint meeting scheduled for February 25. What would you be presenting, if it is appropriate to ask. What would you be presenting at this joint meeting?

Madsen: I think that kind of is up to us, because.....the BOF, and I actually had a discussion with Mr. Dersham about how the presentation should occur, so I know that Mr Wilson will be there on our behalf, Mr Pollard on NOAA GC behalf, and Ms Brix will you be able to attend that meeting? (Brix - yes I will). So there does need to be a discussion how the presentation occurs, and I think that will be a joint discussion between Ed or the Chairman of the BOF and Chris and I. If you have any suggestion on how it should go, I think that will be helpful to try and lay it out in a stepwise process.

Brix: Madam Chair, I do have a suggestion in terms of what we need in order to present you with adequate information and that is some further definition of the action. At this point, I don't know that it is that clear to us to be able to provide you with a whole lot of information on the impacts, so that would be one thing that I would suggest could be helpful and I don't know if that possible, short of the Board actual taking a action, but if any way it is possible to define the action more specifically, that would help us provide details.

Madsen: My reaction is the same as yours. That presentation and that discussion is probably going to more appropriate at the BOF, because they are the ones that will at there at their March meeting, what that fishery will look like, and maybe in a more specific way than their proposal's outline. And I'm not sure they are going to have public comment and their process won't be available to us to understand what kind of thinking there is. The one thing I remember I wanted to follow up on, just a little bit of timing about how this is going to occur, to make sure I'm thinking correctly. And we had a NMFS report that said the Federal fishery to the Aleut Corporation we acted on last year, or when ever it was, will be set to open and will be available to the Aleut Corporation in March. That fishery will occur under Federal rules, because the Board will not have acted to allow that fishery to occur inside 3. It's my understanding if the Board acts in March, then there is a regulatory process that goes with the BOF action that may take 30 days or whatever the regulatory process is for a board action, because they would have to initiate regulations. So when you think about it, the federal fishery according to the way that we envision that federal fishery will open in March and continue until there is an overlay of the Board action that relaxes those restrictions inside state waters, which is, right now, the April-May time frame. So I just want it to be clear, that the federal fishery is going to open and it's going to open under what we had anticipated and that's outside critical habitat, until there is action by the board to change their state water portion of that. Access to state waters, ok, so I think we'll just kinda work on how we are going to present it and lay out how the presentation will go. Additionally, I need feed back ultimately on what other agenda items you think might be necessary for that meeting. Anything else under B-7 reports?

DRAFT SSC Comments on B-7 Protected Species

B-7 Protected Species

Bill Wilson (Council staff) presented eight reports on protected resource issues. Robyn Angliss (NMML) presented additional information on the list of fisheries, and Ann Edwards (NRC Research Associate and visiting scholar at UW) presented information on the seabird – offal project. Public testimony was presented by Gerry Merrigan (Prowler Fisheries), Thorn Smith (North Pacific Longline Association), and Ed Richardson (Pollock Conservation Cooperative).

List of Fisheries for 2005

The SSC previously commented on the analyses and assumptions that went into the List of Fisheries for 2005 report in our October and December 2004 minutes. Four main issues were highlighted: (1) the sampling of incidents of serious injury and mortality of marine mammals, which are rare events, and the appropriate length of time series of observations to use to estimate the frequency of these rare events, (2) the need for observers to estimate the frequency of serious injury and mortality in state-managed fisheries, (3) the assignment of observed mortalities to more than one marine mammal stock per occurrence, and (4) the appropriateness of procedures used to estimate incidents of serious injury and mortality for unobserved hauls and fisheries. **The SSC feels that these issues remain to be addressed, but they are not easily resolved and the SSC intends to continue a dialogue with analysts to provide advice on their long-term solution.** Here, the SSC adds additional comment on these issues.

Measures of Fishing Effort

The SSC discussed the appropriateness of the use of total catch as a proxy for fishing effort. Given the data availability, it is understandable that catch has been used in this way, especially when aggregating across diverse gear types. However, now that some aggregate fisheries are being disaggregated into finer, discrete fishery units based on target species and gear, direct estimates of fishing effort units might be used. **The SSC encourages the analysts to explore the use of direct measures of fishing effort (instead of using catch as a proxy for effort) in future analyses at least when and where possible.**

Sample Size

There is a trade off between sample size and precision of estimates of rates of incidents of serious injury and mortality. On the one hand, estimation of rates of occurrence by fishery has the potential to discriminate differential rates among various fisheries. On the other hand, splitting of limited data into finer fishery units leads to the possibility to generate biased estimates associated with small sample sizes. The same goes for the length of the time series used to estimate the frequency of rare events. The analysts provided good justifications for selecting a 5-year period (rather than, say, a 10-year period); one reason is that fisheries change over time so that historical rates may not apply to contemporary fisheries. However, use of a shorter time period can increase the influence of a single rare observation on the average used for estimation. **The SSC recommends that the analysts further consider the tradeoff between the desire for finer spatial and temporal resolution of incidental take estimates and the potential for introduced bias associated with small sample sizes used to make these estimates.**

Assignment of Individual Incidental Takes to more than One Stock

The SSC reconsidered the issue of assigning a particular take (e.g., killer whale) to more than one stock (e.g., transient vs. resident ecotype) for the affected fishery when it is uncertain to which marine mammal stock the take belongs. The approach taken was to assign the take to both stocks when the stock origin was uncertain. In such instances, another approach would be to apportion the take among stocks from a probabilistic weighting based on the observed proportions of the two ecotypes in the region in which the take occurred. The SSC noted that the particular approach used depends on the purpose of the analysis. For instance, if the goal is to estimate best estimates of takes by stock and fishery, then the probabilistic approach may be most appropriate, but if the goal is to estimate the maximum possible number of takes of a particular stock by a particular fishery, then the dual-assignment approach may be best because it is most conservative. **The SSC urges the analysts to clearly note the procedure used and its caveats, so that others using summary tables do not mistakenly double count the number of actual number of takes when stock of origin is uncertain.** Robyn Angliss noted that when genetic samples are taken, the take can be correctly assigned appropriately to the correct stock and the take is not listed under both ecotypes. The SSC anticipates that this “double-counting issue” will become less of a problem as the database of genetic samples is built and the database of confirmed stock identifications becomes more adequate.

Estimation Procedure for Total Take

Most of the SSC discussion concerned the statistical methods used to estimate the number of takes and the confidence interval for those estimates. **The SSC recommends that future analyses should address some additional considerations, including assumptions about the statistical distribution (e.g., discrete versus continuous, symmetrical versus asymmetrical) from which the sample is drawn. For instance, the common assumption that samples are taken from a continuous normal distribution can lead to a negative lower bound on the confidence interval. Of course, the number of takes cannot be less than zero. So, the analyst might want to consider a lognormal distribution or a censored normal distribution to ensure that the confidence interval does not include negative numbers. Because the upper bound on the number of takes is the primary issue that determines the placement of a fishery in category 1 or category 2, the analysts should consider the use of a one-tailed test rather than a two-tailed test. A one-tailed test is a more appropriate test to determine whether the level of takes fall below some critical value than a two-tailed test. The choice of one- or two-tailed test could affect the designation of particular fisheries into Category 1 or 2.**

The SSC also discussed the effect of rounding the estimated number of takes to an integer (i.e., whole number of animals). **This procedure makes sense from a practical standpoint, but the SSC notes that this rounding requires that adjustments to the confidence interval need to be made. Moreover, the SSC would like to see an explicit statement of the rounding rule used to rounding up to a whole number of animals.**

Finally, the SSC recommends that a more detailed discussion of strata (page 9 of Perez 2003) is needed, particularly regarding how the analysts calculated regional and annual estimates of incidental takes. The SSC was especially uncomfortable with the way in which unobserved takes were combined with observed takes. The SSC understands that takes volunteered by vessel crew during unobserved hauls occurred on vessels with observers only. The SSC is comfortable with the approach to extrapolate estimates of takes from the observed portion of a fishery to the unobserved portion of the same fishery, but the addition of volunteered (unobserved takes) is problematic and alters the statistical properties of the

estimates in unknown ways, because the number of hauls represented by these volunteered accounts is undefined.

Other Issues

The SSC received public comment on the need to use the most recent estimates of killer whale abundance for the area west of Kodiak. The SSC agrees that this is appropriate. The estimates, based on considerable survey effort, indicate much larger populations than previously thought. Inclusion of these data would increase the estimate of PBR and might effect the classification of some fisheries.

The two documents reviewed by the SSC do not address the issue of serious injuries associated with entanglement and escape of marine mammals in active and discarded fishing gear and marine debris. Steller sea lions and northern fur seals are particularly vulnerable. This source of serious injury or mortality occurs regularly but the extent is unknown and difficult to estimate. It is likely this source of mortality could be much greater than the incidental take in commercial fisheries. Common entanglements include fragments of netting, packing bands, loops of line around the neck and ingested hooks from long-line fisheries and commercial and sport trolling. **The SSC recommends that future documents should discuss the cumulative effects of these other sources of serious injury and mortality on the affected populations to the extent possible.**

The SSC received brief informational reports on the following items concerning protected species:

1. When the EIS on the harvest and management regulations for northern fur seals on the Pribilof Islands was released, NMFS indicated that they would be doing a second EIS on the general management of northern fur seals, including fishery interactions. It now appears that the second EIS will be put off for an unknown length of time.
2. Northern fur seal biologists and other marine scientists met with the Pribilof Islands Cooperative in Anchorage during January 28-30 for a comprehensive review of northern fur seal information.
3. The State of Alaska has adopted by reference the federal regulations for use of sea bird avoidance measures for longline fishing in state waters.
4. A petition was received to list black-footed albatross under the ESA. The U.S. Fish and Wildlife Service determined that an emergency listing is not appropriate.
5. A report on a new research program to evaluate discards and offal effects on seabirds was presented by Ann Edwards (NRC Research Associate and visiting Scholar at UW). The study will look at cumulative impacts of fishing on seabirds. The study will consider the negative effects of direct take (increased mortality) and the potential positive of offal (improved feeding) on these birds. Pending the results of stable isotope analysis from museum specimens of albatross, a number of additional research items could be addressed with field research such as evaluating effects of offal on bird behavior and consumption in Alaska waters. Other data sources that could be used to understand offal availability include estimates of offal from shoreside processors that is taken offshore, and the groundfish food habits database. Tagging could provide additional valuable

information on the distribution on birds at sea in relation to the fisheries and their discards.

6. NMFS has rescinded its decision to designate North Atlantic and North Pacific stocks of right whales.
7. A petition for a parallel pollock trawl fishery in state waters will be addressed during the March meeting of the Alaska Board of Fisheries. Aleut Enterprise Corporation has asked for pollock openings in state waters within Steller sea lion protected zones. NMFS has indicated that such fisheries could reopen formal consultation on jeopardy to Steller sea lions.