


MEMORANDUM

TO: Council, SSC and AP Members
FROM: Chris Oliver 
Executive Director
DATE: November 30, 2005
SUBJECT: Protected Resources Report

ESTIMATED TIME 1 HOUR

ACTION REQUIRED

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

BACKGROUND

A. Northern Right Whale Critical Habitat

On June 14, 2005, U.S. District Court Judge William Alsup remanded to NMFS the matter of revising critical habitat (CH) for the northern right whale. The Judge's order specifies that NMFS shall do one of the following: 1) issue a proposed rule in the Federal Register designating an area of the Pacific Ocean as CH, or 2) issue a FR notice explaining why no CH should be designated due to a more paramount statutory consideration. NMFS published a Proposed Rule in the Federal Register on November 2, 2005 designating two areas in the North Pacific as CH for the northern right whale, one area in the eastern Bering Sea and another area just south of Kodiak Island in the GOA (Item B-6(a)).

At its October 2005 meeting, the Council received a report that a CH designation would be proposed, and the Council asked staff to assemble a package of information on the Council-managed fisheries that occur in the proposed CH areas. Specifically, the Council requested information regarding the economic value of these fisheries to harvesters, processors, and communities. Staff has prepared the attached discussion paper (Item B-6(b)), which the Council may use in their comments on the Proposed Rule. Comments are due by December 19, 2005.

Staff from the NMFS Office of Protected Resources Management will be available to answer questions about the Proposed Rule.

B. Steller Sea Lion Recovery Team

The Steller Sea Lion Recovery Team is tentatively scheduled to meet in March 2006 to finalize the draft Steller Sea Lion Recovery Plan. When the draft Recovery Plan is available, the Council may wish to review and comment on the Plan; copies will be made available to the Council when the Plan is released. NMFS considers the Recovery Plan an important element in the upcoming Section 7 consultation on the Council's FMPs.

C. FMP Level Consultation Under Section 7 of the Endangered Species Act

At its October 2005 meeting, the Council received a discussion paper on the process involved in reinitiating formal Section 7 consultation on the BSAI and GOA groundfish fisheries. The Council decided to ask NMFS' Office of Sustainable Fisheries to request formal Section 7 consultation with the NMFS Office of Protected Resources Management. The Council's letter is attached as Item B-6(c). In response to the Council's request, NMFS has provided a letter that outlines the agency's plans for the consultation process and summarizes the information that needs to be assembled in a consultation package (see Item B-6(d)).

Since the preparation of the 2000 and 2001 Biological Opinions and the 2003 BiOp Supplement, many Steller sea lion-related studies have been completed or are in various stages of completion. To aid the consultation process, the Council commissioned a qualified contractor to compile and synthesize all SSL related research to inform the consultation process. The contractors chosen to do this work have extensive backgrounds in North Pacific groundfish fishery management and marine mammal issues, Dr. Thomas Loughlin (TRL Wildlife Consulting) and Dr. Jack Tagart (Tagart Consulting). Together, Drs. Loughlin and Tagart will prepare a compendium of Steller sea lion related research, a synthesis of this scientific information, and copies of the full research papers referenced in the compendium report by April 2006.

D. Marine Mammal Commission Meeting

The U.S. Marine Mammal Commission held its annual meeting October 12-14, 2005 in Anchorage (the meeting agenda is Item B-6(e)). The Commission focused its meeting on marine mammal conservation issues in the North Pacific. Executive Director Chris Oliver was invited to present to the Commission an overview of the Council process and highlights of current marine mammal/fishery issues. The Commission also received status reports on marine mammal stocks from State and Federal agencies and heard comments on these programs from several conservation organizations.

E. Humane Society Lawsuit Over Research Permitting

One issue brought to the Marine Mammal Commission that received considerable discussion is the Humane Society lawsuit against NMFS regarding marine mammal research permitting. The lawsuit, filed in July 2005, claims that NMFS has violated the APA, MMPA, NEPA in authorizing research permits and asks that research permits issued in 2005 be vacated and that an EIS be prepared, among other requests (that lawsuit was sent to Council members in a summer mailing – the elements of the lawsuit are included as Item B-6(f)). In response, NMFS has indicated it intends to prepare an EIS; scoping for that EIS is not scheduled yet. Also, NMFS has halted processing of marine mammal research permits and approving grants to support such research until the EIS is prepared. The Council responded to this issue in a letter to Dr. Hogarth dated November 9, 2005 (Item B-6(g)) expressing concern that research necessary to improve marine mammal conservation and to facilitate preparation of fishery regulations will be greatly impeded.

F. Short-tailed Albatross Recovery Plan

On October 27, 2005, the U.S. Fish & Wildlife Service issued a draft short-tailed albatross (STAL) Recovery Plan. The plan was sent to the Council in a mailing earlier this fall. The Recovery Plan sets out criteria for recovery of the STAL as well as the costs and an implementation schedule for actions the agency believes are necessary for recovery. The Council may wish to comment on the Recovery Plan; comments are due by December 27, 2005 (Item B-6(h)).

G. Steller Sea Lion Pup Counts for 2005

The National Marine Mammal Laboratory conducted aerial surveys of Steller sea lion pup production in Alaska, including both the western and eastern stocks, during June-July 2005. The survey results indicate that pup numbers have increased over previous surveys with a total count of 14,768. Pup production at survey "trend sites" in the Kenai to Kiska region has shown a 4% increase from 2001/2002 to 2005. The total western stock, range-wide count also increased over that period of time by about 3%. Pup production in the western Aleutians declined 30% and also declined in the central GOA (4%) and the central Aleutians (2%). Results of the 2005 survey including more details on counting methods are provided in the report (attached as Item B-6(i)).

H. Northern Fur Seal Adult Male Counts for 2005

The NMML conducts counts of northern fur seal bulls annually and pups biennially; 2005 was a count year for bulls only (see report at Item B-6(j)). Bulls are categorized as either idle males or breeding males with attendant harems. Overall, adult male counts increased over 2004 by 3.6% on St. Paul and St. George Islands – total count was 10,865. NMML personnel also visited Bogoslof Island and counted 1,123 adult males in July 2005. Taking advantage of the visit to Bogoslof, NMML also completed a pup count. The 2005 total pup count was 12,631. The trend of increasing abundance of northern fur seals on Bogoslof continued with the pup abundance more than doubling from the last count in 1997 (5,096 pups).

I. State Water Pollock Fishery Proposals

On October 15-16, 2005 the Alaska Board of Fisheries (BOF) met in Girdwood to take action on three proposals for State pollock fisheries (combined as Proposal #455). The Council has previously expressed concern to the BOF about these proposals since they would be partially prosecuted in Steller sea lion critical habitat and could trigger formal Section 7 consultation under the Endangered Species Act. The Council's motion from the October 2005 meeting, recommending an FMP-level consultation, was transmitted to the BOF prior to their meeting (Item B-6(k)).

The BOF separated their Proposal #455 (Item B-6(l)) into three separate actions. On Proposal #455-A, a proposed pollock fishery in the Adak and Atka areas, the BOF voted to table this action until their October 2006 work session. On Proposal #455-B, a proposed pollock fishery in the Shumagin Islands area of the Western GOA around Jude Island, the BOF voted to not approve this fishery. And on Proposal #455-C, a proposed pollock fishery near Seward between 149 and 150 degrees West, the BOF voted to table this action until their October 2006 work session. During the BOF meeting, various Board members expressed their support of the Council's action to move forward with a formal FMP-level consultation and their interest in participating in the process through the Council's Steller Sea Lion Mitigation Committee. The summary page on this issue from the BOF web site is Item B-6(m).

J. Update on ESA Section 7 Consultation on Salmon Bycatch

Under the terms of the Incidental Take Statement in the 2000 Biological Opinion authorizing the groundfish fisheries of the BSAI and GOA, a bycatch limit of 55,000 Chinook salmon was established for the BSAI groundfish fisheries. This limit was set so that the potential take of threatened or endangered salmonid Evolutionarily Significant Units (ESUs) would be minimized. These ESUs are native to streams in Oregon and Washington but may occur during their marine phase in waters of the GOA and occasionally the BSAI. During the 2004 BSAI groundfish fishery, the bycatch of Chinook salmon exceeded 55,000 Chinook salmon (catch was approximately 62,500), thereby triggering a reinitiation of Section 7 consultation under the ESA, which was completed on July 27, 2005. The Northwest Region concluded that the Alaska Region should continue monitoring of Chinook bycatch in

the BSAI groundfish fisheries and continue consultation on this matter with the Northwest region to stay current with ongoing developments and take further action as appropriate. In their letter, the Northwest Region supports the Council's recent efforts to develop alternative ways to reduce salmon bycatch in the BSAI groundfish fisheries.

Chinook bycatch in the 2005 BSAI groundfish trawl fisheries was 70,012 salmon as of November 19. NMFS staff will be available to discuss the implications of the 2005 Chinook salmon bycatch.

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

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by removing Channel 288A at Franklin, and by adding Addis, Channel 288A.

Federal Communications Commission.
John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-21551 Filed 11-1-05; 8:45 am]
BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 05-2699; MB Docket No. 04-350; RM-10815]

Radio Broadcasting Services; Oroville, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a petition filed by Linda A. Davidson, requesting the allotment of Channel 272A at Oroville, California, as its second local service. See 69 FR 55547, published September 15, 2004. This document also dismisses the counterproposal filed by Deer Creek Broadcasting, LLC, proposing the allotment of Channel 272A at Quincy, California, as its sixth local service.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rolanda F. Smith, Media Bureau, (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Report and Order*, MB Docket No. 04-350, adopted October 12, 2005, and released October 14, 2005. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW., Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC, 20054, telephone 1-800-378-3160 or <http://www.BCPIWEB.com>. This document is not subject to the Congressional Review Act. (The Commission, is, therefore, not required to submit a copy of this Report and

Order to GAO, pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A) because the proposed rule was dismissed.

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.
Federal Communications Commission.
John A. Karousos,
Assistant Chief, Audio Division, Media Bureau.

[FR Doc. 05-21552 Filed 11-1-05; 8:45 am]
BILLING CODE 6712-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 051018271-5271-01; I.D. 101405C]

RIN 0648-AT84

Endangered and Threatened Species; Revision of Critical Habitat for the Northern Right Whale in the Pacific Ocean

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Proposed rule; request for comment.

SUMMARY: National Marine Fisheries Service (NMFS) proposes to revise the current critical habitat for the northern right whale (*Eubalaena glacialis*) by designating additional areas within the North Pacific Ocean. Two specific areas proposed for designation, one in the Gulf of Alaska and another in the Bering Sea, comprise approximately 95,200 square kilometers (36,750 square miles) of marine habitat. Based upon the impacts analysis prepared for this action, NMFS has concluded that the benefits of exclusion of any area from the proposed critical habitat designation do not outweigh the benefits of inclusion. Consequently, no exclusions are proposed.

NMFS must consider the broad effects of this designation (revision). NMFS solicits comments from the public on all aspects of the proposal, including information on the economic, national security, and other relevant impacts of the proposed designation. NMFS may revise this proposal and solicit additional comments prior to final designation to address new information received during the comment period.

DATES: Comments on this proposed rule must be received by close of business on

January 3, 2006. Requests for public hearings must be made in writing by December 19, 2005.

ADDRESSES: Send comments to Kaja Brix, Assistant Regional Administrator, Protected Resources Division, Alaska Region, NMFS, Attn: Lori Durall. Comments may be submitted by:

• E-mail: 0648-AT84-

NPRWCH@noaa.gov. Include in the subject line the following document identifier: Right Whale Critical Habitat PR. E-mail comments, with or without attachments, are limited to 5 megabytes.

• Webform at the Federal eRulemaking Portal: www.regulations.gov. Follow the instructions at that site for submitting comments.

• Mail: P. O. Box 21668, Juneau, AK 99802

• Hand delivery to the Federal Building : 709 W. 9th Street, Juneau, Alaska.

• Fax: (907) 586-7012

The proposed rule, maps, stock assessments, and other materials relating to this proposal can be found on the NMFS Alaska Region website <http://www.fakr.noaa.gov/>.

FOR FURTHER INFORMATION CONTACT: Brad Smith, (907) 271-3023, or Marta Nammack, (301) 713-1401.

SUPPLEMENTARY INFORMATION: The Endangered Species Act of 1973, as amended, [16 U.S.C. 1531] (ESA) imposes requirements upon Federal agencies regarding endangered or threatened species of fish, wildlife, or plants, and habitats of such species that have been designated as critical. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) share responsibility for administering the ESA. Endangered or threatened species under the authority of NMFS are found in 50 CFR 222.102 and 224.101, and include the northern right whale.

Background

The northern right whale is a member of the family Balaenidae. It is found in the Pacific and Atlantic Oceans and is closely related to the right whales that inhabit the Southern Hemisphere. Right whales are large baleen whales which grow to lengths and weights exceeding 18 meters and 100 tons, respectively. They are filter feeders whose prey consists exclusively of zooplankton (notably copepods; see below). Right whales attain sexual maturity at an average age of 8 to 10 years, and females produce a single calf at intervals of 3 to 5 years (Kraus *et al.*, 2001). Their life expectancy is unclear, but they are known to reach 70 years in some cases (Hamilton *et al.*, 1998; Kenney, 2002).

Right whales are generally migratory, with at least a portion of the population moving between summer feeding grounds in temperate or high latitudes and winter calving areas in warmer waters (Kraus *et al.*, 1986; Clapham *et al.*, 2004). In the North Pacific, the feeding range is known to include the Gulf of Alaska, the Aleutian Islands, the Bering Sea and the Sea of Okhotsk. Although a general northward movement is evident in spring and summer, it is unclear whether the entire population undertakes a predictable seasonal migration, and the location of calving grounds remains completely unknown (Scarff, 1986; Scarff, 1991; Brownell *et al.*, 2001; Clapham *et al.*, 2004; Shelden *et al.*, 2005). Further details of occurrence and distribution are provided below.

In the North Pacific, whaling for right whales began in the Gulf of Alaska (known to whalers as the "Northwest Ground") in 1835 (Webb, 1988). Right whales were extensively hunted in the western North Pacific in the latter half of the 19th century, and by 1900 were scarce throughout their range. Right whales were protected worldwide in 1935 through a League of Nations agreement. However, because neither Japan nor the former USSR signed this agreement, both nations were theoretically free to continue right whaling until 1949, when the newly created International Whaling Commission endorsed this ban. Following this, a total of 23 northern right whales in the North Pacific were legally killed by Japan and the former USSR under Article VIII of the International Convention for the Regulation of Whaling (1946), which permits the taking of whales for scientific research purposes. However, it is now known that the USSR illegally caught many right whales in the North Pacific (Doroshenko, 2000; Brownell *et al.*, 2001). In the eastern North Pacific, 372 right whales were killed by the Soviets between 1963 and 1967; of these, 251 were taken in the Gulf of Alaska south of Kodiak, and 121 in the southeastern Bering Sea. These takes devastated a population that, while undoubtedly small, may have been undergoing a slow recovery (Brownell *et al.*, 2001).

As a result of this historic and recent hunting in both the Pacific and Atlantic Oceans, northern right whales today are among the most endangered of all whales worldwide. Northern right whales were listed in 1970 following passage of the Endangered Species Conservation Act (ESCA) of 1969, and automatically granted endangered status when the ESCA was repealed and

replaced by the ESA. Right whales were also protected under the Marine Mammal Protection Act of 1972. NMFS issued a Recovery Plan for the northern right whale in 1991, covering animals in both the North Atlantic and North Pacific (NMFS, 1991). Brownell *et al.* (2001) noted that there was no evidence for exchange between the western and eastern Pacific, and that the two populations had different recovery histories; consequently, they argued that these stocks should be treated as separate for the purpose of management, a division which has been duly recognized by NMFS in Stock Assessment Reports (Angliss and Lodge, 2004).

In the western North Pacific (the Sea of Okhotsk and adjacent areas), current abundance is unknown but is probably in the low to mid-hundreds (Brownell *et al.*, 2001). There is no estimate of abundance for the eastern North Pacific (Bering Sea, Aleutian Islands and Gulf of Alaska), but sightings are rare; most biologists believe the current population is unlikely to exceed 100 individuals, and is probably much smaller. Prior to the illegal Soviet catches of the 1960s, an average of 25 whales was observed each year in the eastern North Pacific (Brownell *et al.*, 2001); in contrast, the total number of records in the 35 years from 1965 to 1999 was only 82, or 2.3 whales per annum.

Since 1996, NMFS and other surveys (directed or otherwise) have detected small numbers of right whales in the southeastern Bering Sea, including an aggregation estimated at 24 animals in the summer of 2004. Photo-identification and genetic data have identified 17 individuals from the Bering Sea, and the high inter-annual resighting rate further reinforces the idea that this population is small. Right whales have also been sighted in the northern Gulf of Alaska, including a sighting in August 2005. However, the overall number of right whales in the North Pacific using habitats other than the Bering Sea is not known.

The taxonomic status of right whales worldwide has recently been revised in light of genetic analysis (see Rosenbaum *et al.*, 2000; Gaines *et al.*, 2005). Applying a phylogenetic species concept to molecular data separates right whales into three distinct species: *Eubalaena glacialis* (North Atlantic), *E. japonica* (North Pacific) and *E. australis* (Southern Hemisphere). NMFS formally recognized this distinction for the purpose of management in a final rule published on April 10, 2003 (68 FR 17560), but subsequently determined that the issuance of this rule did not comply with the requirements of the

ESA, and thus rescinded it (70 FR 1830; January 11, 2005) prior to beginning the process anew. At this time North Atlantic and North Pacific right whales are thus both officially considered to be "northern right whales" (*Eubalaena glacialis*) under the ESA.

Critical Habitat Designation History

Section 3 of the ESA defines critical habitat (CH) as "(i) the specific areas within the geographical area occupied by the species, at the time it is listed,.... on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination by the Secretary that such areas are essential for the conservation of the species." Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms "conserve," "conserving," and "conservation" to mean "to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary."

Section 4 of the ESA requires that before designating CH, NMFS must consider economic impacts, impacts on national security and other relevant impacts of specifying any particular area as CH, and the Secretary may exclude any area from CH if the benefits of exclusion outweigh the benefits of inclusion, unless excluding an area from CH will result in the extinction of the species concerned. Once CH is designated, section 7(a)(2) of the ESA requires that each Federal agency shall, in consultation with and with the assistance of NMFS, ensure that any action authorized, funded or carried out by such agency is not likely to result in the destruction or adverse modification of CH.

Three areas in the North Atlantic Ocean were designated as CH for northern right whales in 1994; the Great South Channel, Cape Cod Bay, and waters of the Southeastern United States off Florida and Georgia. NMFS is currently analyzing the physical and biological features essential to the conservation of the northern right whale in the Atlantic Ocean, and has outlined steps it will take to propose any revisions to that designated CH that might be supported by new information and analysis (68 FR 51758; August 28, 2003).

Previous Federal Action and Related Litigation

In October 2000, NMFS was petitioned by the Center for Biological Diversity to revise the CH for the northern right whale by designating an additional area in the North Pacific Ocean. In February 2002, NMFS announced its decision that CH could not be designated in the North Pacific at that time because the essential biological requirements of the population were not sufficiently understood. However, in June 2005, a Federal judge found this reasoning invalid and ordered the agency to take action with respect to designating CH for the northern right whale in the North Pacific Ocean no later than October 28, 2005 (*Center for Biological Diversity v. Evans*, Civ. No. 04-04496, N.D. Cal. June 14, 2005). In compliance with that order, NMFS is proposing to revise the current CH for this species by designating areas within the Gulf of Alaska and Bering Sea as CH under the ESA. The range of the northern right whale extends to waters of the western North Pacific. These waters are outside the United States, and because CH is not to be designated within foreign countries or outside of U.S. jurisdiction [50 CFR 424.12(h)], NMFS has not considered designation of CH for that region.

Critical Habitat

Geographical Area Occupied by the Species

The ESA defines CH (in part) as areas within the geographical area occupied by the species at the time it was listed under the ESA. Because this geographical area has not been previously described for the northern right whale in the Pacific Ocean, it is necessary to establish this range when proposing to designate CH. The northern right whale was listed as endangered in 1973. Prior to the onset of commercial whaling in 1835, right whales were widely distributed across the North Pacific (Scarff, 1986; Clapham *et al.*, 2004; Sheldon *et al.*, 2005). By 1973, the northern right whale in the Pacific Ocean had been severely reduced by commercial whaling. Sighting data from this remnant population are too sparse to identify the range of these animals in 1973. However, no reason exists to suspect that the right whales that remain alive today inhabit a substantially different range than right whales alive during the time of the Soviet catches; indeed, given the longevity of this species, it is likely that some of the individuals who survived that whaling episode remain extant.

Both the southeastern Bering Sea and the western Gulf of Alaska (shelf and slope waters south of Kodiak) have been

the focus of many sightings (as well as the illegal Soviet catches) in recent decades. In general, the majority of northern right whale sightings (historically and in recent times) in the Northeast Pacific have occurred from about 40° N to 60° N latitude (lat.). There are historical records from north of 60° N lat., but these are rare and are likely to have been misidentified bowhead whales. Right whales have on rare occasions been recorded off California and Mexico, as well as off Hawaii. However, as noted by Brownell *et al.* (2001), there is no evidence that either Hawaii or the west coast of North America from Washington State to Baja California were ever important habitats for right whales. Given the amount of whaling effort as well as the human population density in these regions, it is highly unlikely that substantial concentrations of right whales would have passed unnoticed. Furthermore, no archaeological evidence exists from the U.S. west coast suggesting that right whales were the target of local native hunts. Consequently, the few records from this region are considered to represent vagrants. The geographical area occupied by the northern right whale at the time it was listed under the ESA extends over a broad area of the North Pacific Ocean as depicted in Figure 1.

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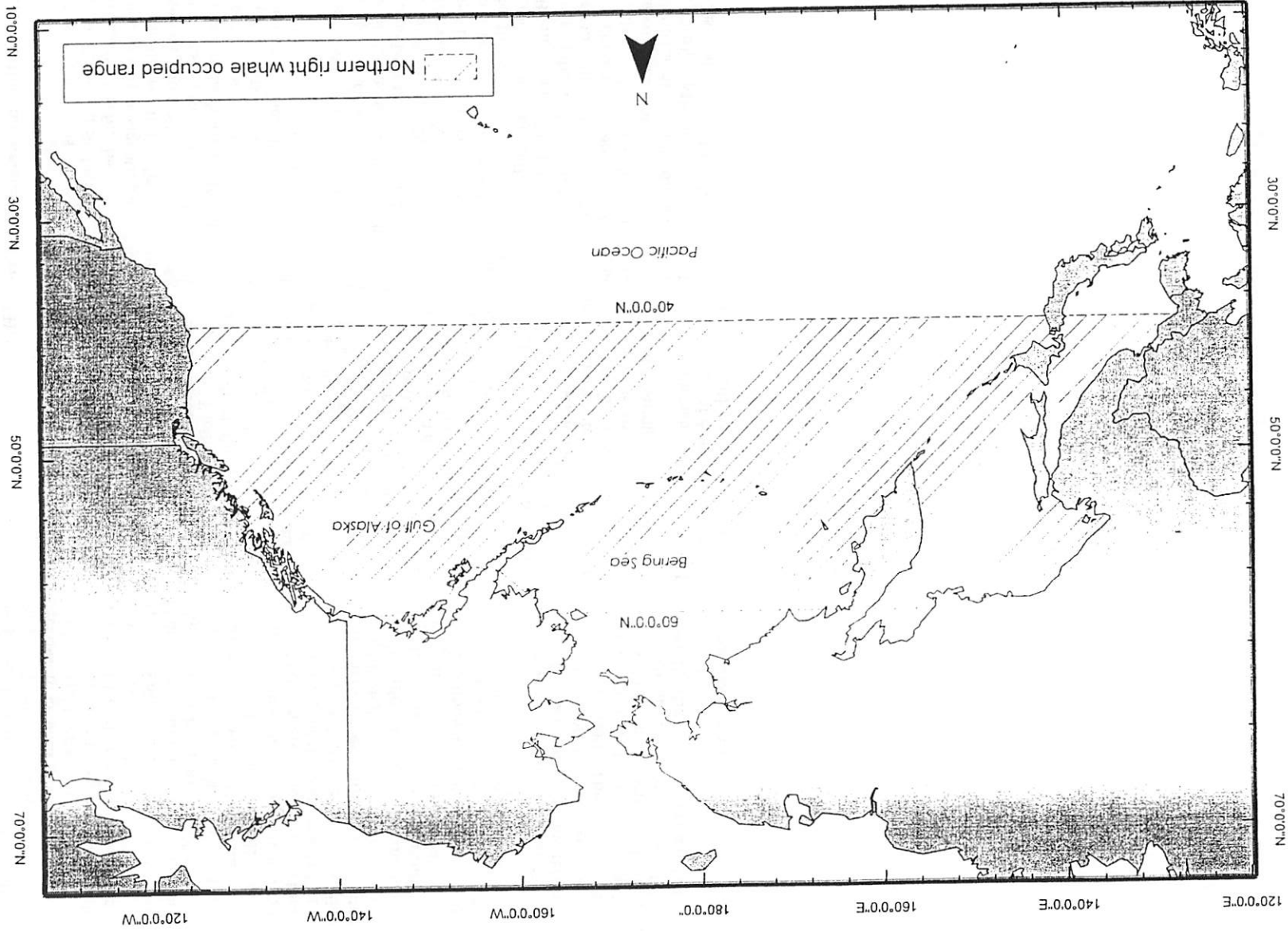


Figure 1. Occupied range of Northern right whales in the North Pacific at time of listing under the Endangered Species Act.

Unoccupied Areas

ESA section 3(5)(A)(ii) further defines CH to include "specific areas outside the geographical area occupied" if the areas are determined by the Secretary of Commerce (Secretary) to be "essential for the conservation of the species." 50 CFR 424.12(e) specifies that NMFS "shall designate as critical habitat areas outside the geographical area presently occupied by a species only when a designation limited to its present range would be inadequate to ensure the conservation of the species." NMFS is not proposing to designate any areas not occupied at the time of listing because any such areas are presently unknown (if they exist), and the value of any such habitat in conserving this species cannot be determined. Future revisions to the CH of the northern right whale may consider new information which might lead to designation of areas outside the occupied area of these whales.

Physical or Biological Features Essential to the Conservation of the Species (Primary Constituent Elements)

In determining what areas are CH, 50 CFR 424.12(b) requires that NMFS consider those physical or biological features that are essential to the conservation of a given species and that may require special management considerations or protection, including space for individual and population growth and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, and rearing of offspring; and habitats that are protected from disturbance or are representative of the historical geographical and ecological distribution of a species. The regulations further direct us to "focus on the principal biological or physical constituent elements . . . that are essential to the conservation of the species," and specify that the "[K]nown primary constituent elements shall be listed with the critical habitat description." The regulations identify primary constituent elements (PCE) as including, but not limited to: "roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dryland, water quality or quantity, host species or plant pollinator, geological formation, vegetation type, tide, and specific soil types." An area must contain one or more PCEs to be eligible for designation as CH; an area lacking a PCE may not be designated in the hope it will acquire one or more PCEs in the future.

NMFS scientists considered PCEs for the northern right whale in the Pacific

Ocean during a workshop held during July 2005. Unfortunately, many data gaps exist in our knowledge of the ecology and biology of these whales, and very little is known about the PCEs which might be necessary for their conservation. The life-requisites of these whales for such factors as temperatures, depths, and substrates are unknown, or may be highly variable. One certainty is the metabolic necessity of prey species to support feeding by right whales. Examination of harvested whales in the North Pacific and limited plankton tows near feeding right whales in recent years show that several species of large copepods and other zooplankton constitute the primary prey of the northern right whale in the North Pacific Ocean.

The PCEs for the northern right whale in the North Pacific Ocean are large copepods in areas where right whales are known or believed to feed. Specifically, these are: *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*, and *Thysanoessa raschii*, a copepod whose very large size, high lipid content and occurrence in the region likely makes it a preferred prey item for right whales (J. Napp, pers. comm.). A description of the proposed CH areas (below) establishes the presence of these PCEs within those areas proposed as CH. In addition to the physical presence of these PCEs within the proposed CH, it is likely that certain physical forcing mechanisms are present which act to concentrate these prey in densities which allow for efficient foraging by right whales. There may in fact be critical or triggering densities below which right whale feeding does not occur. Such densities are not presently described for the right whales in the North Pacific. The PCEs, essential for the conservation of the northern right whale in the North Pacific and these physical forcing or concentrating mechanisms contribute to the habitat value of the areas proposed for designation.

Special Management Considerations or Protection

An occupied area may be designated as CH if it contains physical and biological features that "may require special management considerations or protection." 50 CFR 424.02(j) defines "special management considerations or protection" to mean "any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species." NMFS considered whether the copepods and other zooplankton in feeding areas, which have been identified as the PCEs for the

northern right whale in the North Pacific Ocean, may require special management considerations or protection.

Copepods can be affected by physical and chemical alterations within the water column both by natural processes such as global climate change or the Pacific Decadal Oscillation, as well as by pollution from various potential sources, including oil spills and discharges resulting from oil and gas drilling and production. The outer continental shelf (OCS) oil and gas exploration and development permits or authorizations already are routinely conditioned with operational restraints, mitigative measures, or technological changes to protect the marine environment from these impacts. While such management measures and protections are not necessarily designed to protect copepods or zooplankton in right whale feeding areas per se, they could be useful in protecting these PCEs for the conservation of northern right whales in the North Pacific Ocean.

NMFS specifically requests comment on the extent to which the designated PCEs may require special management considerations or protection.

Proposed Critical Habitat

The current abundance of northern right whales in the North Pacific Ocean is considered to be very low in relation to historical numbers or their carrying capacity (not determined). The existence of a persistent concentration of right whales found within the Southeastern Bering Sea since 1996 is somewhat extraordinary in that it may represent a substantial portion of the remaining population. These areas of concentration where right whales feed are characterized as containing the copepod PCEs described above. NMFS considers these feeding areas, supporting a significant assemblage of the remaining right whales in the North Pacific, to be critical in terms of right whale conservation. For the reasons given below, NMFS has based designation of CH on these areas, rather than where right whales have appeared sporadically or in transit. NMFS has been able to substantiate the assumption that these areas are right whale feeding areas by observations of feeding behavior, direct sampling of plankton near feeding right whales, or records of stomach contents of dead whales. These assumptions underlie the proposed CH areas shown in Figure 2 and described below. Two areas are proposed, as depicted in Figure 2: an area of the southeastern Bering Sea and an area south of Kodiak Island in the Gulf of Alaska.

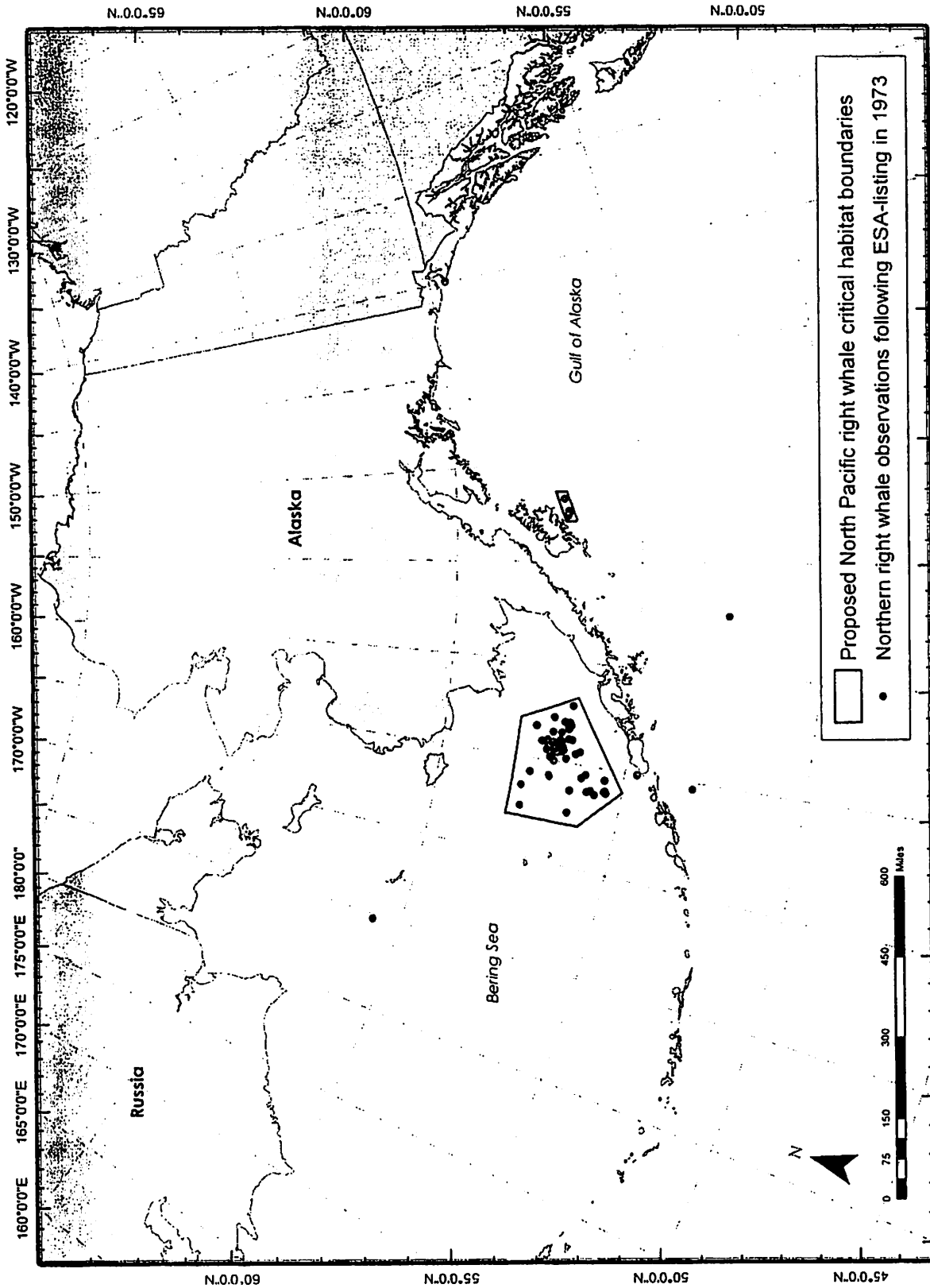


Figure 2. Proposed critical habitat for Northern right whales in the North Pacific.

Shelden *et al.* (2005) reviewed prey and habitat characteristics of northern right whales in the North Pacific. They noted that habitat selection is often associated with features that influence abundance and availability of a predator's prey. Right whales in the North Pacific are known to prey upon a variety of zooplankton species. Availability of these zooplankton greatly influences the distribution of the small North Pacific population on their feeding grounds in the Southeastern Bering Sea (SEBS) and Gulf of Alaska (GOA). Right whales are known to feed on copepod patches of very high density, and these patches may typically be small and unpredictably distributed over space and time (Mayo and Marx, 1990).

Typical zooplankton sampling is too broad-scale in nature to detect patches of these densities, and directed studies employing fine-scale sampling cued by the presence of feeding right whales are the only means of doing this (Mayo and Marx, 1990). Accordingly, there may be no obvious correlation between the abundance and distribution of copepods (as measured by broad-scale oceanographic sampling) and the distribution of right whales (M. Baumgartner, in prep.) In light of this, NMFS must rely upon the whales themselves to indicate the location of important feeding areas in the North Pacific.

Aggregations of right whales in high latitudes can be used with high confidence as an indicator of the presence of suitable concentrations of prey, and thus of feeding behavior by the whales. Right whales feed daily during spring and summer, and studies in the North Atlantic have consistently found an association between concentrations of whales and feeding behavior, with dense copepod patches recorded by oceanographic sampling around such groups of whales (Mayo and Marx 1990, Baumgartner *et al.* 2003, 2003b). In the North Atlantic, an analysis of sighting data by NMFS indicated that a density of 4 or more right whales per 100 nm² was a reliable indicator of a persistent feeding aggregation (Clapham and Pace 2001), and this has been used for Dynamic Area Management fisheries closures to reduce the risk of right whales becoming entangled in fishing gear. While this metric is a reliable indicator of the presence of persistent feeding aggregations in the North Atlantic, it is not necessarily the only metric suitable for application in the North Pacific; the much smaller population of right whales in the eastern North Pacific Ocean typically results in sightings of

single animals or pairs. Unlike with larger groups, such small numbers sometimes indicate transient passage through an area and thus cannot be unequivocally linked with feeding behavior. However, while sporadic sightings of right whales in such small numbers generally would not be considered a reliable indication of a feeding area, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over a long period of time is sufficient indication that the area is a feeding area containing suitable concentrations of copepods.

Therefore, in the absence of data which describe the densities, as well as presence, of the PCEs themselves, the distribution of right whales is used here as a proxy for the existence of suitably dense copepod patches and thus to identify the areas proposed herein for designation as CH. NMFS has used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling.

Southeastern Bering Sea

NMFS proposes to designate CH in the Bering Sea (Figure 2) to be described as an area delineated by a series of straight lines connecting the following coordinates in the order listed: 58°00' N/168°00' W; 58°00' N/163°00' W; 56°30' N/161°45' W; 55°00' N/166°00' W; 56°00' N/168°00' W and returning to 58°00' N/168°00' W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone, outside of waters of the State of Alaska. State waters extend seaward for 3 nautical miles; very few sightings occurred within this area. Right whale encounters occurring after ESA-listing in 1973 totaled 182 within this area, out of 184 encounters north of the Aleutian Islands during this time period.

Gulf of Alaska

NMFS proposes to designate CH in the Gulf of Alaska (Figure 2), to be described as an area delineated by a series of straight lines connecting the following coordinates in the order listed: 57°03' N/153°00' W, 57°18' N/151°30' W, 57°00' N/151°30' W, 56°45' N/153°00' W, and returning to 57°03' N/153°00' W. The area described by these boundaries lies completely within the waters of the United States and its Exclusive Economic Zone. Right

whale encounters occurring after ESA-listing in 1973 totaled 5 within this area, out of 14 encounters in the Gulf of Alaska during this time period.

Existence of the PCEs Within the Proposed Critical Habitat

Southeastern Bering Sea Slope Waters

The Bering Sea slope is a very productive zone, sometimes referred to as the 'Greenbelt,' where annual primary production can exceed that on the adjacent shelf and basin by 60 percent and 270 percent, respectively (Springer *et al.*, 1996). Physical processes at the shelf edge, such as intensive tidal mixing, eddies and up-canyon flow, bring nutrients to the surface, thereby supporting enhanced productivity and elevated biomass of phytoplankton, zooplankton, and fish. Northern right whales in the western North Pacific have been observed in association with oceanic frontal zones that produce eddies southeast of Hokkaido Island, Japan, and southeast of Cape Patience (Mys Terpeniya), Sakhalin Island, in the Okhotsk Sea (Omura *et al.*, 1969). Whether or not the Bering Slope Current, or eddies shed from it, support production or entrain right whale prey is unknown.

From August to October in 1955 and 1956, Soviet scientists observed aggregations of *Calanus* between the Pribilof Islands and the Aleutian Islands (around 170° W long.) that were identified as *C. finmarchicus*, though, as mentioned above, were probably *C. marshallae* (Klumov, 1963). Flint *et al.* (2002) also report high concentrations of *C. marshallae* at frontal zones near the Pribilof Islands, with especially high biomass noted for the subthermohaline layer. This oceanographic front effectively separates slope and outer shelf *Neocalanus* spp. from the inshore middle shelf community of *C. marshallae* (Vidal and Smith, 1986). Right whales were found on both sides of this frontal zone (that coincides with the shelf break at 170 m) during both the 19th and 20th centuries. This is similar to the habitat described by Baumgartner *et al.* (2003a) for right whales feeding in the North Atlantic. Six right whales that were caught under scientific permit in late July-early August 1962-63 in Bering Sea slope waters had exclusively consumed *Neocalanus cristatus* (*Calanus cristatus*: Omura *et al.*, 1969). Although oceanic species such as *Neocalanus* usually enter diapause and migrate to depths greater than 200 m by late summer in the slope waters of the Bering Sea (Vidal and Smith, 1986), right whales may still be able to use these resources by targeting regions

where the bottom mixed layer forces the zooplankton into shallower, discrete layers (e.g. Baumgartner *et al.*, 2003a).

Southeastern Bering Sea (SEBS) Middle-Shelf Waters

The SEBS shelf has been the focus of intense oceanographic study since the late 1970s (e.g. Schumacher *et al.*, 1979; Coachman, 1986, Napp *et al.*, 2000; Hunt *et al.*, 2002a; Hunt *et al.*, 2002b), largely due to the considerable commercial fishing effort in the area (National Research Council, 1996). Coachman (1986) described the now well-established hydrographic domains of the inner-, middle- and outer-shelf, separated by a front or transition zone at roughly the 50-m (inner front) and 100-m (outer front) isobaths. During the 1990s, research focused on these domains demonstrated dynamic advection of nutrient-rich Bering slope water onto the shelf in both winter and summer, via eddies, meanders and up-canyon flow (Schumacher and Stabeno, 1998; Stabeno and Hunt, 2002). These intrusions of nutrient-rich water, physical factors related to water column stratification, and long summer day length result in a very productive food web over the SEBS shelf (e.g., Livingston *et al.*, 1999; Napp *et al.*, 2002; Coyle and Pinchuk, 2002; Schumacher *et al.*, 2003). Specifically, copepod species upon which right whales feed (e.g. *Calanus marshallae*, *Pseudocalanus* spp. and *Neocalanus* spp.) are among the most abundant of the zooplankton sampled over the middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Small, dense patches (up to densities greater than 500 mg/m³) of euphausiids (*Thysanoëssa raschii*, *T. inermis*), potential right whale prey, have also been reported for waters near the SEBS inner front (Coyle and Pinchuk, 2002).

Zooplankton sampled near right whales seen in the SEBS in July 1997 included *C. marshallae*, *Pseudocalanus newmani*, and *Acartia longiremis* (Tynan, 1998). *C. marshallae* was the dominant copepod found in these samples as well as samples collected near right whales in the same region in 1999 (Tynan *et al.*, 2001). *C. marshallae* is the only "large" calanoid species found over the SEBS middle shelf (Cooney and Coyle, 1982; Smith and Vidal, 1986). Concentrations of copepods were significantly higher in 1994–98 than in 1980–81 by at least an order of magnitude (Napp *et al.*, 2002) and Tynan *et al.* (2001) suggest that this increased production may explain the presence of right whales in middle shelf waters. However, at least three right whales were observed in 1985 in the

same location as the middle shelf sightings reported in the late 1990s (Goddard and Rugh, 1998).

Gulf of Alaska

The central GOA is dominated by the Alaskan gyre, a cyclonic feature that is demarcated to the south by the eastward flowing North Pacific Current and to the north by the Alaska Stream and Alaska Coastal Current, which flow westward near the shelf break. The bottom topography of this region is rugged and includes seamounts, ridges, and submarine canyons along with the abyssal plain. Strong semi-diurnal tides and current flow generate numerous eddies and meanders (Okkonen *et al.*, 2001) that influence the distribution of zooplankton.

Copepods are the dominant taxa of mesozooplankton found in the Gulf of Alaska and are patchily distributed across a wide variety of water depths. Three large herbivorous species comprise more than 70 percent of the biomass: *N. cristatus*, *N. plumchrus*, and *Eucalanus bungii* (Cooney 1986, 1987). In northern GOA shelf waters, the late winter and spring zooplankton is dominated by calanoid copepods (*Neocalanus* spp.), with a production peak in May; this is a cycle that appears resistant to environmental variability associated with El Niño/Southern Oscillation (ENSO) (Coyle and Pinchuk, 2003). In oceanic waters (50° N lat., 145° W long.), *N. plumchrus* dominate (Miller and Nielsen, 1988; Miller and Clemons, 1988) and have demonstrated dramatic shifts in the timing of annual peak biomass from early May to late July (Mackas *et al.*, 1998). From late summer through autumn, *N. plumchrus* migrate to deep water ranging from 200 m to 2000 m depending on location within the GOA (Mackas *et al.*, 1998). The three right whales caught under scientific permit on August 22, 1961, south of Kodiak Island had all consumed *N. plumchrus* (*Calanus plumchrus*: Omura *et al.*, 1969), potentially by targeting areas where adult copepods remained above 200 m (e.g. Baumgartner *et al.*, 2003a).

The area proposed as CH within the SEBS presents several similarities to that proposed within the Gulf of Alaska. Both areas are influenced by large eddies, submarine canyons, or frontal zones that enhance nutrient exchange and act to concentrate prey. These areas lie adjacent to major ocean currents (the ACC and the Aleutian ocean passes) and are characterized by relatively low circulation and water movement (P. Stabeno, pers. com.).

Right Whale Sightings as a Proxy for Locating the PCEs

As noted above, consistent sightings of right whales - even of single individuals and pairs - in a specific area in spring and summer over an extended period of time can be used with high confidence as an indicator of the presence of the PCEs in a feeding area. NMFS has used sighting records since the time of listing to make this determination because these records are more recent and are taken to be a more reliable indicator of current distribution of feeding whales than historical sightings, especially given that most of the latter relate to animals that were removed from the population by whaling and are thus no longer extant. Of the 184 post-listing right whale sightings reported north of the Aleutian Islands, 182 occurred within the specific area proposed as critical habitat in the Bering Sea. Since 1996, right whales have been consistently sighted in this area over a period of years during the spring and summer feeding seasons. For example, NMFS surveys alone recorded between two and four sightings in 1996 (Goddard and Rugh, 1998), 13 sightings in 2000 (Le Duc, *et al.*) and over 23 sightings in 2004. Single right whales as well as pairs and aggregations up to five animals were sighted during this period, and all sightings were within 100 nm² of one another. Based on consideration of these factors, NMFS concludes that the right whale sightings in the specific area in the Bering Sea described in Figure 2 are a suitable proxy for the presence of the PCEs and therefore proposes this area as critical habitat for the northern right whale in the North Pacific Ocean.

Recent sightings of right whales are fewer in number in the GOA than in the Bering Sea. However, three individuals were sighted recently in the specific area proposed as critical habitat in the GOA. These sightings occurred at a time when right whales typically feed in the North Pacific Ocean. In July 1998, a single right whale exhibiting behavior consistent with feeding activity was observed among a group of about eight humpback whales (Waite, Wynne and Mellinger, 2003). In August 2004, a NMFS researcher observed a single right whale among a group of humpbacks. In August 2005, a NMFS researcher reported yet another sighting of a right whale within 250 to 500 meters of groups of humpback and fin whales. Acoustic monitoring of the area conducted in summer 2000 recorded what appeared to be right whale calls in the area on September 6 (Waite, Wynne and Mellinger, 2003). Compared to the

Bering Sea sightings, the GOA right whale sightings do not provide as strong an indication of feeding right whales. However, individual right whales have been directly observed in 1998, 2004, and 2005 and detected acoustically in 2000 during the spring and summer feeding seasons in the specific area in the GOA described in Figure 2. It is also instructive that one of these animals was exhibiting feeding behavior at the time it was observed. Based on consideration of these factors, NMFS proposes that the right whale sightings in the specific area in the GOA described in Figure 2 are a reasonably reliable proxy for the presence of the PCEs and therefore proposes this area as critical habitat for the northern right whale in the North Pacific Ocean.

Activities Which May be Affected by This Revision

Section 4(b)(8) of the ESA requires that NMFS describe briefly and evaluate, in any proposed or final regulation to revise critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect CH and, when carried out, funded, or authorized by a Federal agency, require that an ESA section 7 consultation be conducted. Such activities include, but are not limited to, oil and gas leasing and development on the Outer Continental Shelf, Federal fisheries management, pollutant discharges authorized by the Environmental Protection Agency, and military training exercises and other functions of the U.S. armed forces.

This proposed designation of CH will provide these agencies, private entities, and the public with clear notification of proposed CH for northern right whales in the North Pacific and the boundaries of the habitat. This proposed designation will also assist these agencies and others in evaluating the potential effects of their activities on CH and in determining if ESA section 7 consultation with NMFS is needed.

Exclusion Process

Section 4 (b)(2) of the ESA states that CH shall be designated on the basis of the best scientific and commercial data available and after taking into consideration the economic impact, impacts to national security, and any other relevant impact. Any area may be excluded from CH if the benefits of exclusion are found to outweigh those of inclusion, unless such exclusion would result in the extinction of the species. NMFS will apply the statutory provisions of the ESA, including those

in section 3 that define "critical habitat" and "conservation," to determine whether a proposed action might result in the destruction or adverse modification of CH.

Based upon the best available information, it appears that the probability of oil or gas exploration activities within (or immediately adjacent to) proposed right whale critical habitat is very low, certainly within the 10-year timeframe of NMFS' assessment. Likewise, there are no commercial production facilities in operation, currently under development, nor 'permitted' for future development, within these critical habitat areas. Unless contrary information emerges suggesting exploration and development are imminent, there is little expectation that Federal actions in the oil and gas sector will have the potential to "destroy or adversely modify" critical habitat as proposed under this action, within the analytical time horizon.

However, during the preparation of this proposed rule we became aware that the oil and gas industry has expressed current interest in exploring and developing oil and gas resources in the North Aleutian Basin OCS Planning Area. We also understand that the State of Alaska announced support for this activity. NMFS lacks specific information regarding this potential exploration and development activity and was unable to gather information in the time available to prepare this proposed rule. Therefore, NMFS specifically requests comment on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of impacts and the exclusion process under section 4(b)(2) of the ESA. Prior to the issuance of any final rule, NMFS will attempt to gather information on this topic. Any information NMFS acquires and public comments received on these issues will be considered in analyzing the impacts of the designation of critical habitat and in the section 4(b)(2) exclusion process.

While NMFS expects to consult annually on fishery related proposed actions that "may affect" the proposed CH, none of these consultations would be expected to result in a finding of "adverse modification," and thus none would be expected to result in imposition of costs on commercial fishery participants. Because fisheries

do not target or affect the PCEs for northern right whales, it then follows that no fishing or related activity (e.g., at-sea processing, transiting) would be expected to be restricted or otherwise altered as a result of critical habitat designation in the two areas being proposed. NMFS did not find any specific areas in which the costs exceed benefits for activities that may affect CH, and has therefore not proposed the exclusion of any areas from designation.

This action is anticipated to result in consultations on seafood processing waste discharges with EPA; Department of Defense (DoD) authorized military "underway training" activities; and USCG oil spill response plan approval, among others. It is unlikely that these activities will result in an "adverse modification" finding and, thus, no mandatory modifications would be imposed. It must follow then that no "costs" are imposed as a result of designation beyond the small costs attributable to inter-agency (occasionally intra-agency) consultation. As explained in the impacts analysis prepared for this action, some larger benefit accrues to society as a result of designation, including the educational value derived from identification and designation of the critical habitat areas within which the PCEs are found. Thus, NMFS believes that the benefits of exclusion are outweighed by the benefits of inclusion.

The NMFS analysis (available on the NMFS Alaska Region website <http://www.fakr.noaa.gov/>) did not find any specific areas which merit exclusion in consideration of economic impacts, nor have we determined that National security interests or other relevant impacts warrant the exclusion of any specific areas from this proposed designation. NMFS solicits comments on these benefits and costs as well as our determinations.

Public Comments Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this proposed rule to revise CH for the northern right whales in the North Pacific. This proposed action would amend the current regulations by adding CH in the North Pacific Ocean to the CH already designated along the Atlantic seaboard (Great South Channel, Cape Cod Bay, and the Southeastern United States). This proposed rule is responsive to the June 14, 2005, Northern District of California order and concerns only CH designation in the North Pacific Ocean. Comments or suggestions from the public, other concerned governments and agencies, the scientific community,

industry, or any other interested party concerning this proposed rule are solicited. Comments particularly are sought concerning:

(1) Maps and specific information describing the amount, distribution, and use type (e.g., feeding, calving, migration) of northern right whale habitat in the North Pacific Ocean;

(2) Information as to the identification of physical or biological features which may be essential to the conservation of the northern right whale in the North Pacific Ocean;

(3) Information on whether the copepods in feeding areas identified by NMFS as PCEs, or any other physical or biological features that may be essential to the conservation of the northern right whale in the North Pacific Ocean, may require special management considerations or protection;

(4) Information regarding the benefits of excluding any portions of the proposed CH, including the regulatory burden designation may impose;

(5) Information regarding the benefits of designating particular areas as CH;

(6) Current or planned activities in the areas proposed for designation and their possible impacts on proposed CH;

(7) Any information regarding potential oil and gas exploration and development activities in the North Aleutian Basin OCS Planning Area, including information on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of impacts and the exclusion process under section 4(b)(2) of the ESA;

(8) Any foreseeable economic or other potential impacts resulting from the proposed designations; and

(9) Whether specific unoccupied areas not presently proposed for designation may be essential to the conservation of the northern right whale in the North Pacific Ocean.

You may submit your comments and materials concerning this proposal by any one of several methods (see ADDRESSES). The proposed rule, maps, fact sheets, and other materials relating to this proposal can be found on the NMFS Alaska Region website at <http://www.fakr.noaa.gov/>. NMFS will consider all comments and information received during the comment period on this proposed rule for preparing the final rule. Accordingly, the final decision may differ from this proposal.

Public Hearings

50 CFR 424.16(c)(3) requires the Secretary to promptly hold at least one public hearing if any person requests one within 45 days of publication of a proposed regulation to revise CH. Requests for public hearing must be made in writing (see ADDRESSES) by December 19, 2005. Such hearings provide the opportunity for interested individuals and parties to give comments, exchange information and opinions, and engage in a constructive dialogue concerning this proposed rule. NMFS encourages the public's involvement in such ESA matters.

Classification

Regulatory Planning and Review

This proposed rule has been determined to be significant for purposes of Executive Order 12866. As part of our exclusion process under section 4(b)(2) of the ESA, the economic benefits and costs of the proposed critical habitat designations are described in our draft economic report (NMFS, 2005). This approach is in accord with OMB's guidance on regulatory analysis (OMB Circular A-4, Regulatory Analysis, September 17, 2003).

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). NMFS has prepared an initial regulatory flexibility analysis (IRFA) and this document is available upon request (see ADDRESSES). This IRFA evaluates the potential effects of the proposed CH designation on federally regulated small entities. The reasons for the action, a statement of the objectives of the action, and the legal basis for the proposed rule are discussed earlier in the preamble. A summary of the analysis follows.

The small entities that may be directly regulated by this action are those that seek formal approval (e.g., a permit) from, or are otherwise authorized by, a Federal agency to undertake an action or activity that "may affect" CH for the northern right whale. Submission of such a request for a Federal agency's approval, from a small entity, would

require that agency (i.e., the 'action agency') to consult with NMFS (i.e., the 'consulting agency').

Consultations vary, from simple to complex, depending on the specific facts of each action or activity for which application is made. Attributable costs are directly proportionate to complexity. In the majority of instances projected to take place under the proposed CH designation, these costs are expected to accrue solely to the Federal agencies that are party to the consultation. In only the most complex of "formal consultations" might it be expected that a private sector applicant could potentially incur costs directly attributable to the consultation process itself. Furthermore, if destruction or adverse modification of CH is found at the conclusions of formal consultation, the applicant must implement modifications to avoid such effects. These modifications could result in adverse economic impacts.

An examination of the Federal agencies with management, enforcement, or other regulatory authority over activities or actions within, or immediately adjacent to, the proposed CH area, resulted in the following list. Potential action agencies may include: the EPA, U.S. Coast Guard (USCG), DoD, Minerals Management Service (MMS), and NMFS. Activities or actions with a nexus to these Federal agencies that are expected to require consultation include: EPA permitting of seafood processing waste discharges at-sea; USCG oil spill response plan approval, as well as emergency oil spill response; DoD authorization of military training activities in the Bering Sea and Aleutian Islands (BSAI) and GOA; MMS oil and gas exploration and production permitting; and NMFS fishery management actions in the BSAI and GOA.

A 10-year "post-CH designation" analytical horizon was adopted, during which time NMFS may reasonably expect to consult an estimated 27 times on CH-related actions with one or more of the action agencies identified above. The majority of the consultations are expected to be "informal," projected to represent approximately 52 percent of the total. The more complex and costly "formal" consultations are projected to account for, perhaps, 37 percent; while the simplest and least costly "pre-consultation" are expected 11 percent of the time. These figures reflect the best estimates information and experience can presently provide.

On the basis of the underlying biological, oceanographic, and ecological science used to identify the PCEs that define CH for the right whale

in the Pacific, as well as the foregoing assumptions, empirical data, historical information, and accumulated experience regarding human activity in the BSAI and GOA, it is believed that only one federally authorized activity (among all those identified in the analyses and referenced above) has the potential to "destroy or adversely modify" northern right whale CH. This one class of activity is Outer Continental Shelf (OCS) oil and gas exploration and production.

As previously indicated, MMS has authority over OCS oil and gas permitting. An examination of published information from the MMS Alaska Region reveals that three MMS OCS planning areas overlap some portion of the proposed northern right whale CH areas. Further, MMS sources indicate that in only one of these has there been any exploratory well drilling (i.e., St. George Basin). A total of 10 exploratory wells were permitted, all of which were completed in 1984 and 1985 (with no subsequent associated exploration activity). It appears that there has been no activity on the part of the lease holders in this or the other four referenced areas to seek authorization to undertake additional exploratory activity or develop production facilities. MMS reports no planned or scheduled OCS lease sales for these areas, at least through 2007 (the latest projected date MMS has published on its web site). This suggests that the only private sector entities that potentially could be directly and adversely impacted by the proposed designation would be those entities that own the lease rights to develop oil and gas production facilities in these areas. However, during the preparation of this proposed rule NMFS became aware that the oil and gas industry has expressed current interest in exploring and developing oil and gas resources in the North Aleutian Basin OCS Planning Area and that the State of Alaska announced support for this activity. NMFS lacks specific information regarding this potential exploration and development activity and was unable to gather information in the time available to prepare this proposed rule. Therefore, NMFS specifically requests comment on the type of exploration and development activities under consideration and the likelihood for such activities to occur, a description of the areas in the North Aleutian Basin that may be affected by any such activities, the extent to which the activities may affect the proposed critical habitat, and any other issues that may be relevant to the analysis of

impacts and the exclusion process under section 4(b)(2) of the ESA. Prior to the issuance of any final rule, NMFS will attempt to gather information on this topic. Any information NMFS acquires and public comments received on these issues will be considered in analyzing the impacts of the designation of critical habitat and in the section 4(b)(2) exclusion process.

When MMS records were consulted as to the identity of the entities holding leases to the wells in the St. George Basin, six businesses were listed for the 10 permitted exploratory wells. These include: SHELL Western E&P Inc. (2 wells); ARCO Alaska Inc. (3 wells); EXXON Corp. (2 wells); Mobile Oil Corp. (1 well) (now merged with EXXON); GULF Oil Corp. (1 well); and CHEVRON USA Inc. (1 well). These data were last updated, according to the MMS website, March 17, 2005. It would appear that none of these entities could reasonably be characterized as "small," for RFA purposes. All are widely recognized multi-national corporations and employ more than "500 full-time, part-time, temporary, or any other category of employees, in all of their affiliated operations worldwide" (the criterion specified by SBA for assessing entity size for this sector).

Under the Regulatory Flexibility Act, the preferred alternative was compared to the "No Action" (or status quo) alternative and an alternative proposed by the petitioner, the Center for Biological Diversity. NMFS rejected the "No Action" alternative because it did not comply with the remand order in *Center for Biological Diversity v. Evans*, Civ. No. 04-04496 (N.D. Cal. June 14, 2005) or satisfy the agency's obligations under the ESA. NMFS rejected the petitioner's alternative because the best scientific information available did not support a finding that the physical or biological features essential for conservation of the right whale in the North Pacific Ocean are found throughout the area identified by the petitioner, and thus the area did not meet the ESA definition of critical habitat.

Because NMFS' analysis did not identify costs to any small entities attributable to the CH designation action, there is no identified alternative that imposes lesser impacts on this group while achieving the requirements of the ESA and the objectives of this action.

The action does not impose new recordkeeping or reporting requirements on small entities. The analysis did not reveal any Federal rules that duplicate, overlap or conflict with the proposed action.

Military Lands

The Sikes Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete, by November 17, 2001, an Integrated Natural Resource Management Plan (INRMP). The recent National Defense Authorization Act for Fiscal Year 2004 (Public Law No. 108-136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the ESA (16 U.S.C. 1533(a)(3)(B)(i)) now provides: "The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation." NMFS has determined no military lands would be impacted by this proposed rule.

Executive Order (E.O.) 13211

On May 18, 2001, the President issued an Executive Order on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking any action that promulgates or is expected to lead to the promulgation of a final rule or regulation that (1) is a significant regulatory action under E.O. 12866 and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy.

NMFS has considered the potential impacts of this action on the supply, distribution, or use of energy and finds the designation of critical habitat will not have impacts that exceed the thresholds identified above.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act, NMFS makes the following findings:

(a) This proposed rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute or regulation that would impose an enforceable duty upon State, local, tribal governments, or the private sector and includes both "Federal intergovernmental mandates" and "Federal private sector mandates." These terms are defined in 2 U.S.C. 658(5) (7). "Federal intergovernmental

mandate" includes a regulation that "would impose an enforceable duty upon State, local, or tribal governments" with two exceptions. It excludes "a condition of Federal assistance." It also excludes "a duty arising from participation in a voluntary Federal program," unless the regulation "relates to a then-existing Federal program under which \$500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority," if the provision would "increase the stringency of conditions of assistance" or "place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding" and the State, local, or tribal governments "lack authority" to adjust accordingly. (At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement.) "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program." The designation of CH does not impose a legally binding duty on non-Federal government entities or private parties. Under the ESA, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify CH under section 7. While non-Federal entities who receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of CH, the legally binding duty to avoid destruction or adverse modification of CH rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would CH shift the costs of the large entitlement programs listed above to State governments.

(b) Due to the prohibition against take of this species both within and outside of the designated areas, we do not anticipate that this proposed rule will significantly or uniquely affect small governments. As such, a Small

Government Agency Plan is not required.

Takings

In accordance with E.O. 12630, the proposed rule does not have significant takings implications. A takings implication assessment is not required. The designation of CH affects only Federal agency actions. Private lands do not exist within the proposed CH and therefore would not be affected by this action.

Federalism

In accordance with E.O. 13132, this proposed rule does not have significant federalism effects. A federalism assessment is not required. In keeping with Department of Commerce policies, we request information from, and will coordinate development of, this proposed CH designation with appropriate state resource agencies in Alaska. The proposed designation may have some benefit to state and local resource agencies in that the areas essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the survival of the northern right whale are specifically identified.

Civil Justice Reform

In accordance with E.O. 12988, the Department of the Commerce has determined that this proposed rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the E.O. We are proposing to designate CH in accordance with the provisions of the ESA. This proposed rule uses standard property descriptions and identifies the PCEs within the designated areas to assist the public in understanding the habitat needs of the northern right whale.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This proposed rule does not contain new or revised information collection for which OMB approval is required under the Paperwork Reduction Act. This proposed rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

NMFS has determined that an environmental analyses as provided for under the National Environmental

Policy Act of 1969 for CH designations made pursuant to the ESA is not required. See *Douglas County v. Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Government-to-Government Relationship With Tribes

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. E.O. 13175 - Consultation and Coordination with Indian Tribal Governments - outlines the responsibilities of the Federal Government in matters affecting tribal interests.

NMFS has determined the proposed designation of CH for the northern right whale in the North Pacific Ocean would not have tribal implications, nor affect any tribal governments or issues. None of the proposed CH occurs on tribal lands or affects tribal trust resources or the exercise of tribal rights. The northern right whale is not hunted by Alaskan Natives for traditional use or subsistence purposes.

References Cited

A complete list of all references cited in this rulemaking can be found on our website at <http://www.fakr.noaa.gov/> and is available upon request from the NMFS office in Juneau, Alaska (see ADDRESSES).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: October 27, 2005.

William T. Hogarth,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend part 226, title 50 of the Code of Regulations as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation of part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. In § 226.203, paragraphs (a), (b), and (c) are redesignated as paragraphs

(a)(1), (a)(2), and (a)(3), respectively; new paragraphs (a) heading and (b) are added; and the section heading and the introductory text are revised to read as follows:

§ 226.203 Critical habitat for northern right whale (*Eubalaena glacialis*).

Critical habitat is designated in the North Atlantic Ocean, Bering Sea, and the Gulf of Alaska for the northern right whale as described in paragraphs (a) and (b) of this section. The textual descriptions of critical habitat are the definitive source for determining the critical habitat boundaries. General location maps are provided for critical habitat in the North Pacific Ocean for general guidance purposes only, and not

as a definitive source for determining critical habitat boundaries.

(a) *North Atlantic Ocean.*

* * * * *

(b) *North Pacific Ocean*—(1) *Primary Constituent Elements.* The primary constituent elements essential for conservation of the northern right whale are the copepods *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*, and *Thysanoëssa raschii* in areas of the North Pacific Ocean in which northern right whales are known or believed to feed, as described in paragraphs (2) and (3).

(2) *Bering Sea.* An area described by a series of straight lines connecting the following coordinates in the order listed:

58°00' N/168°00' W
58°00' N/163°00' W
56°30' N/161°45' W
55°00' N/166°00' W
56°00' N/168°00' W
58°00' N/168°00' W.

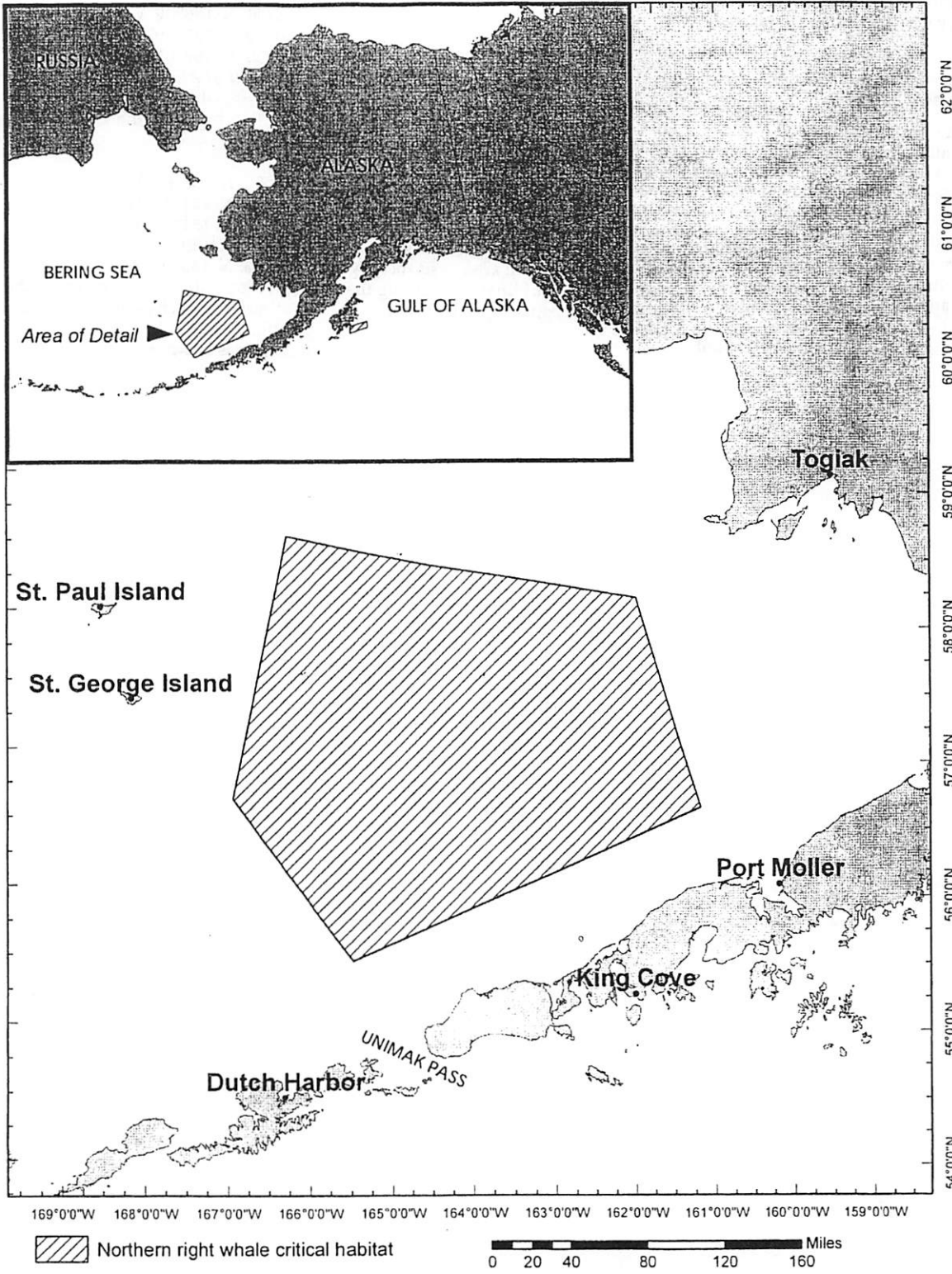
(3) *Gulf of Alaska.* An area described by a series of straight lines connecting the following coordinates in the order listed:

57°03' N/153°00' W
57°18' N/151°30' W
57°00' N/151°30' W
56°45' N/153°00' W
57°03' N/153°00' W.

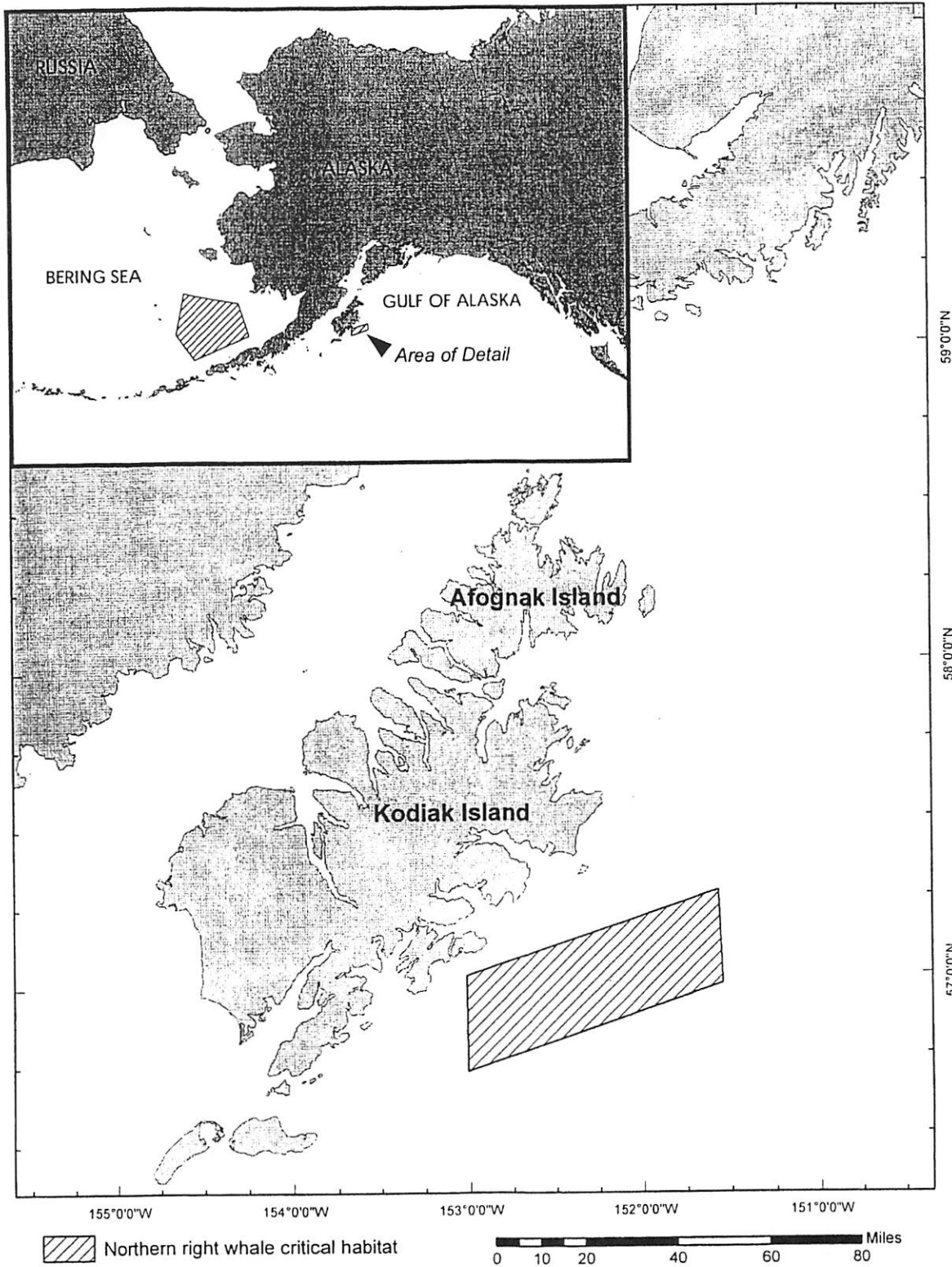
(4) Maps of critical habitat for the northern right whale in the North Pacific Ocean follow:

BILLING CODE 3510-22-S

BERING SEA



GULF OF ALASKA



Marine Fisheries in Areas Proposed as Critical Habitat for the North Pacific stock of the Northern Right Whale

Discussion Paper

Prepared for:

North Pacific Fishery Management Council
December 2005

Introduction

At its October 2005 meeting, the National Marine Fisheries Service informed the Council that it would be publishing a Proposed Rule designating areas in the North Pacific as Critical Habitat (CH) for the northern right whale (*Eubalaena glacialis*).¹ NMFS was prompted to take this action by a remand order from U.S. District Court judge William Alsop that the Agency designate CH for this species or issue a notice explaining why no CH should be designated due to a more paramount statutory consideration. NMFS published the Proposed Rule on November 2, 2005 (70 FR 66332) (see attached). Comments on the proposed CH designation are due no later than January 3, 2006.

In October, the Council expressed its concern over potential future impacts this CH designation might have on Council-managed fisheries, and requested staff to prepare a package of information that summarizes the nature of fisheries that occur in areas designated as CH (see attached). Specifically, the Council's motion requested socioeconomic data on fisheries including species, gear types, locations, seasons and values for harvesting, processing, and communities. The Council intends to use this information in their response to the Proposed Rule.

Northern Right Whale Critical Habitat

Two specific areas in the North Pacific Ocean are proposed for designation as Critical Habitat for the northern right whale, one in the eastern Bering Sea and another in the Gulf of Alaska south of Kodiak Island. These areas were selected based on right whale sightings and assumed presence of high density patches of important planktonic food items for right whales, specifically

¹ The population of right whales present in the North Pacific Ocean is considered a separate species of northern right whale based on genetic analyses of tissue samples. The North Pacific right whale (*Eubalaena japonica*) has been proposed as a separate species from the North Atlantic right whale. The Endangered Species Act currently recognizes both the North Atlantic and North Pacific right whale as a single species, *Eubalaena glacialis*, the northern right whale. NMFS is taking action to re-classify the North Pacific right whale as a separate species, *Eubalaena japonica*. But until a separate listing of that species under the ESA is published, the North Pacific and North Atlantic Ocean right whales currently are officially called the northern right whale, *Eubalaena glacialis*. The November 2, 2005 FR notice is actually a proposed redesignation of critical habitat for northern right whales that includes two areas in the North Pacific in addition to the areas already designated in the North Atlantic.

four species of copepods. Combined these areas encompass approximately 36,800 sq mi² of the North Pacific.

Fisheries in Proposed Critical Habitat

Crab, groundfish, and halibut fisheries occur in the two areas proposed as Critical Habitat for the northern right whale. The attached maps show locations of fishing effort for most species harvested in the BSAI and GOA for 2004. The economic values of the 2004 harvests from within the areas designated as CH for the northern right whale are provided below.

Economic Information

This section summarizes the catch from the proposed critical habitat in 2004, presenting estimated catch of and revenues from groundfish harvests in the Bering Sea and Gulf of Alaska, followed by the estimated catch of and revenues from crab harvests in the Bering Sea. Catches from the proposed critical habitat for both groundfish and crab were estimated by identifying all statistical areas that are all or partially contained in the proposed critical habitat. All catch from these statistical areas are included in the estimations in that follow.

Halibut

The harvest of halibut in the IFQ fisheries of the BSAI and GOA for 2004 was 58,987,937 lbs. Of the harvest in the BSAI, approximately 0.27 percent was from the BSAI right whale critical habitat area. In the GOA, approximately 3.2 percent was from the GOA critical habitat area. The data presented below are for the year 2004 and are for the combined CDQ and non-CDQ fisheries; these data exclude subsistence harvested fish.

Entire BSAI (4A,4B,4C,4D,4E)	8,963,258 lbs
From Critical Habitat in the BSAI	24,499 lbs
Entire GOA (2C,3A,3B)	50,024,679 lbs
From Critical Habitat in the GOA	1,604,978 lbs

The GOA harvest from within the critical habitat area was by 56 vessels; 3 vessels harvested halibut from the critical habitat area in the BSAI. Total catch for 2004 for IPHC Regulatory Area 4A (3,392,035 lbs) is included in the BSAI data above; 4A straddles the NMFS BSAI and GOA Statistical Areas. The table shows that slightly more than 3 percent of the Gulf of Alaska harvest is from the proposed critical habitat, while less than 1 percent of the BSAI harvest is from the proposed critical habitat.

Registered buyer standard ex vessel prices for halibut in the Gulf ranged from \$2.75 per pound to \$3.15 per pound. Based on these prices, the estimated ex vessel revenues generated by Gulf halibut catch from the proposed critical habitat range from \$4.4 million and \$5.1 million. In the Bering Sea and Aleutian Islands, registered buyer standard ex vessel prices for halibut ranged from \$1.75 to \$2.88. Based on these prices, estimated ex vessel revenues from Bering Sea halibut catch from the proposed critical habitat range from approximately \$43,000 to \$71,000.

² Updated data from NMFS, AKR, PRD (36,750 sq mi in the FR notice). CH in BSAI=35,630 sq mi, GOA=1,170 sq mi (Brad Smith, NMFS, 12/01/05, pers comm.).

The primary communities that receive halibut harvested from these areas are likely to be Dutch Harbor, Sand Point, and King Cove in the BSAI area and Kodiak and Homer in the Gulf of Alaska.

Groundfish

Table 1 below summarizes fixed gear catch (including CDQ catch) from the proposed right whale critical habitat in the Bering Sea and Aleutian Islands in 2004. Catches with hook-and-line and pot gear are combined in the table, as the number of processors participating in these fisheries prevents the release of separate data for the different gear types. The table also includes estimates of ex vessel revenues and first wholesale revenues from that catch. Ex vessel revenue estimates are based on estimated ex vessel prices for the fixed gear sector for all processor types. First wholesale revenue estimates are based on first wholesale prices for the processor type. For the fixed gear sector, first wholesale revenue estimates likely undervalue the catch. For example, estimates of first wholesale revenues for rockfish and flatfish are less than the estimated ex vessel revenues. These discrepancies in revenues exist for all species, but are likely the greatest for species for which trawl catch greatly exceeds fixed gear catch, as prices are weighted by amounts of catch within the processor type. Estimates of the percent of total fixed gear catch from the proposed critical habitat rely on gear reports for total catch estimates. These catch amounts include discards, so the estimate of percent of total catch from the proposed critical habitat likely underestimates the dependence of participants on catch from critical habitat.

Table 1. Estimated retained catch, ex vessel revenues, and first wholesale revenues from proposed right whale critical habitat by fixed gear in the Bering Sea and Aleutian Islands, 2004.

	Catch from proposed critical habitat						Total fixed gear catch (both in and out of proposed critical habitat) (mt)	Percent of total fixed gear catch that came from critical habitat	
	Catcher processors		Shoreside			Total			
	Catch (mt)	First wholesale revenues (\$)	Catch (mt)	Ex vessel revenues (\$)	First wholesale revenues (\$)	Catch (mt)			First wholesale revenues (\$)
Atka mackerel	0	0	*	*	*	*	*	141	*
Flatfish	118	100,228	10	3,506	964	128	101,192	4,395	2.9
Other species	550	192,633	5	2,690	7,461	555	200,094	16,643	3.3
Pacific cod	19,762	22,370,221	681	381,238	652,908	20,443	23,023,128	113,788	18.0
Pollock	955	775,212	*	*	*	955**	775,212**	5,350	0.2
Rockfish	3	2,039	1	1,086	536	3	2,575	368	0.9
Sablefish	12	62,989	20	91,501	119,603	33	182,592	1,461	2.2

Ex vessel price is based on the prices for all fixed gear sectors in the Bering Sea and Aleutian Islands.

First wholesale prices are based on the prices in the respective processing sector for all gears in Bering Sea and Aleutian Islands.

* Confidential

** Excludes confidential amount

Sources: NMFS Blend data

NMFS Gear reports

Tables 18 and 22, Economic status of the groundfish fisheries off Alaska, 2004, SAFE report.

The table shows that approximately 18 percent of the Pacific cod catch in the Bering Sea and Aleutian Islands is from critical habitat. Over 95 percent of this catch is by catcher processors. The estimated first wholesale revenues from the catch exceed \$22 million. Estimate catch of most other species is relatively small, in no case exceeding 1,000 metric tons. Estimated ex vessel revenues for the inshore sector for all species combined are approximately \$500,000.

Estimated first wholesale revenues for the sector are slightly less than \$800,000. Combined catch of all species is approximately 22,000 metric tons, which is estimated to generate slightly more than \$24 million in first wholesale revenues.

Table 2 shows the monthly distribution of 2004 fixed gear catch of Pacific cod from the proposed critical habitat in the Bering Sea and Aleutian Islands. Data from April to July are aggregated to protect confidentiality. Table 3 shows the percentage of the 2004 fixed gear catch of Pacific cod from proposed critical habitat in each month by species.

Table 2. Monthly distribution of 2004 retained fixed gear catch of Pacific cod from proposed critical habitat in the Bering Sea (in metric tons).

	January	February	March	April - July	August	September	October	November	December	Total
Pacific Cod	5,388	3,697	862	443	2,291	3,693	2,465	968	636	20,443

Source: NMFS Catch Accounting data

Table 3. Percent of 2004 retained fixed gear catch of Pacific cod from proposed critical habitat in the Bering Sea by month.

	January	February	March	April - July	August	September	October	November	December	Total
Pacific Cod	26.4	18.1	4.2	2.2	11.2	18.1	12.1	4.7	3.1	100.0

Source: NMFS Catch Accounting data

The tables show that almost 50 percent of the 2004 Pacific cod fixed catch gear harvests were made between January and March. Very little of the harvest was made between April and July; however, over 40 percent of the harvest was made between August and October.

Table 4 shows the estimated catch (including CDQ catch), ex vessel revenues, and first wholesale revenues of the fixed gear sectors in the Gulf of Alaska. As in the previous table, estimated first wholesale revenues appear to be underestimated, because of the aggregation of price estimates across all gear types.

Table 4. Estimated retained catch, ex vessel revenues, and first wholesale revenues from proposed right whale critical habitat by fixed gear in the Gulf of Alaska, 2004.

	Catch from proposed critical habitat						Total fixed gear catch (both in and out of proposed critical habitat) (mt)	Percent of total fixed gear catch that came from critical habitat	
	Catcher processors		Shoreside			Total			
	Catch (mt)	First wholesale revenues (\$)	Catch (mt)	Ex vessel revenues (\$)	First wholesale revenues (\$)	Catch (mt)			First wholesale revenues (\$)
Atka mackerel	0	0	0	0	0	0	0	20	0.0
Flatfish	1	1,666	1	152	422	2	2,088	347	0.6
Other species	<1	98	28	15,900	6,081	28	6,179	2,182	1.3
Pacific cod	0	0	1,444	798,793	1,801,546	1,444	1,801,546	25,254	5.7
Pollock	0	0	3	408	2,098	3	2,098	166	1.9
Rockfish	3	2,567	2	3,680	1,827	5	4,395	1,323	0.4
Sablefish	78	386,921	68	320,421	358,424	147	745,345	14,080	1.0

Ex vessel price is based on the prices for all fixed gear sectors in the Gulf of Alaska.

First wholesale prices are based on the prices in the respective processing sector for all gears in Gulf of Alaska.

Sources: NMFS Blend data

NMFS Gear reports

Tables 18 and 22, Economic status of the groundfish fisheries off Alaska, 2004, SAFE report.

The table shows that a relatively small portion of the fixed gear catch in the Gulf of Alaska is from the proposed critical habitat. Approximately 1,500 metric tons (or 6 percent) of the Pacific cod catch of the fixed gear vessels is from critical habitat, all of which is harvested by the shoreside sector. This catch generated estimated ex vessel revenues of approximately \$800,000 and first wholesale revenues of approximately \$1.8 million. Approximately 150 metric tons of sablefish was caught by fixed gear vessels in proposed Gulf critical habitat, slightly more than half of which was caught by catcher processors. This catch was estimated to have generated approximately \$800,000 in first wholesale revenues. In total, approximately 1,700 metric tons of fixed gear catch (which is estimated to have generated approximately \$2.7 million in first wholesale revenues) was from the proposed Gulf critical habitat.

Table 5 shows the monthly distribution of 2004 fixed gear catch from the proposed critical habitat in the Bering Sea and Aleutian Islands. **Table 6** shows the percentage of the 2004 fixed gear catch from proposed critical habitat in each month by species.

Table 5. Monthly distribution of 2004 retained fixed gear catch of Pacific cod from proposed critical habitat in the Gulf of Alaska (in metric tons).

	January - March	April - August	September	October - November	Total
Pacific cod	1,127	6	283	28	1,444

Source: NMFS Catch Accounting data

Table 6. Percent of 2004 retained fixed gear catch of Pacific cod from proposed critical habitat in the Gulf of Alaska by month.

	January-March	April-August	September	October-November	Total
Pacific cod	78.1	0.4	19.6	2.0	100.0

Source: NMFS Catch Accounting data

The tables show that a large majority of the catch of Pacific cod in Gulf proposed critical habitat is taken from January to March. Harvests in September, when the B season opens, were approximately 20 percent of the annual catch from proposed critical habitat.

Table 7 shows the estimated catch, ex vessel revenues, and first wholesale revenues by trawl gear in proposed critical habitat in the Bering Sea and Aleutian Islands. As noted in the previous tables, estimates of first wholesale revenues may be biased, because those estimates are based on all gear types within a processing sector. The error in trawl estimates is likely the greatest for sablefish and Pacific cod, species for which fixed gear catch exceeds trawl catch.

Table 7. Estimated retained catch, ex vessel revenues, and first wholesale revenues from proposed right whale critical habitat by trawl gear in the Bering Sea and Aleutian Islands, 2004.

	Catch from proposed critical habitat									Total trawl catch (both in and out of proposed critical habitat) (mt)	Percent of total trawl catch that came from critical habitat	
	Catcher processors		Motherships			Shoreside			Total			
	Catch (mt)	First wholesale revenues (\$)	Catch (mt)	Ex vessel revenues (\$)	First wholesale revenues (\$)	Catch (mt)	Ex vessel revenues (\$)	First wholesale revenues (\$)	Catch (mt)			First wholesale revenues (\$)
Atka mackerel	17	10,266	1	174	411*	289	73,348	173,585*	307	184,263	55,823	0.6
Flatfish	41,873	35,466,753	222	80,710	187,931*	1,759	639,747	1,489,627*	43,854	37,144,312	161,571	27.1
Other species	482	172,227	0	13	357**	395	49,640	606,369	887	778,954	10,464	24.9
Pacific cod	10,791	12,215,974	406	195,877	423,960	7,886	3,797,751	7,543,471	19,083	20,183,405	81,946	23.3
Pollock	258,710	210,072,871	73,143	17,092,668	43,447,084	377,723	88,269,110	257,228,166	709,576	510,749,110	1,327,308	53.5
Rockfish	149	118,769	0	82	161**	240	81,056	159,562	390	278,492	16,162	2.4
Sablefish	19	98,806	0	30	94**	0	610	1,941	20	100,842	304	6.5

* Based on catcher processor sector price.

** Based on shoreside sector price.

Notes: Except where noted, first wholesale prices are based on the prices in the respective processing sector for all gears in Bering Sea/Aleutian Islands.

Ex vessel price is based on the prices for all trawl sectors in the Bering Sea/Aleutian Islands.

Sources: NMFS Blend data

NMFS Gear reports

Tables 18 and 22, Economic status of the groundfish fisheries off Alaska, 2004, SAFE report.

The table shows that a substantially greater share of the Bering Sea and Aleutian Islands trawl catch is from the proposed critical habitat than fixed gear catch. Over half of the trawl catch of pollock, which is estimated to have generated in excess of \$500 million in first wholesale revenues, was from critical habitat in 2004. Approximately 450,000 metric tons of this catch was by the catcher vessels (in the mothership and shoreside sectors), while approximately 250,000 mt of the catch was by catcher processors. Approximately one-fourth of the trawl-harvested flatfish, Pacific cod, and other species harvested from the Bering Sea and Aleutian Islands in 2004 was harvested from the proposed critical habitat. Most of this flatfish harvest was by the catcher processor sector, while substantial portions of the Pacific cod and other species were harvested by both catcher vessels and catcher processors. Overall, the estimated first wholesale revenues generated by the trawl harvest from proposed critical habitat was approximately \$560 million.

Table 8 shows the monthly distribution of 2004 trawl catch from the proposed critical habitat in the Bering Sea and Aleutian Islands. **Table 9** shows the percentage of the 2004 trawl catch from proposed critical habitat in each month by species.

Table 8. Monthly distribution of 2004 retained trawl catch of flatfish, Pacific cod, and pollock from proposed critical habitat in the Bering Sea (in metric tons).

	January	February	March	April	May	June	July	August	September	October	November	Total
Flatfish	4,768	11,288	7,484	10,718	1,236	378	1,754	1,678	223	1,767	2,560	43,854
Pacific cod	3,082	5,488	3,111	2,360	479	509	1,018	1,916	913	108	88	19,083
Pollock	93,971	211,851	99,915	2,104	273	40,324	147,119	43,175	64,422	6,317	106	709,576

Source: NMFS Catch Accounting data

Table 9. Percent of 2004 retained trawl catch of flatfish, Pacific cod, and pollock from proposed critical habitat in the Bering Sea by month.

	January	February	March	April	May	June	July	August	September	October	November	Total
Flatfish	10.9	25.7	17.1	24.4	2.8	0.9	4.0	3.8	0.5	4.0	5.9	100.0
Pacific cod	16.2	28.8	16.3	12.4	2.5	2.7	5.3	10.1	4.8	0.6	0.4	100.0
Pollock	13.2	29.9	14.1	0.3	0.0	5.7	20.7	6.1	9.1	0.9	0.0	100.0

Source: NMFS Catch Accounting data

The tables show that over half of the harvests of each of these species are made between January and March. Almost 90 percent of the flatfish harvests are made by the end of August. Approximately 30 percent of the pollock harvests are made in the summer months (June, July, and August); approximately 17 percent of the Pacific cod harvests are made in the summer; and slightly less than 10 percent of the flatfish harvests are made during the summer. **Table 10** shows the estimated catch, ex vessel revenues, and first wholesale revenues by trawl gear in proposed critical habitat in the Gulf of Alaska. Although catcher processors harvested all species in the proposed critical habitat during 2004, none of this catch may be reported independently due to confidentiality protections. To allow all catch in proposed critical habitat to be shown, catch by catcher processors is combined with catch from shoreside processors. Since more shoreside processors processed landings of the different species, shoreside prices were used for estimating first wholesale revenues.

Table 10. Estimated retained catch, ex vessel revenues, and first wholesale revenues from proposed right whale critical habitat by trawl gear in the Gulf of Alaska, 2004.

	Catch from proposed critical habitat		Total trawl catch (both in and out of proposed critical habitat) (mt)	Percent of total trawl catch that came from critical habitat
	Catch (mt)	First wholesale revenues (\$)		
Atka mackerel	*	*	797	*
Flatfish	5,676	2,957,413	22,301	25.5
Other species	319	68,583	2,131	15.0
Pacific cod	3,188	3,978,956	17,351	18.4
Pollock	4,404	3,302,842	60,772	7.2
Rockfish	1,181	913,880	19,230	6.1
Sablefish	62	323,121	1,166	5.3

* Confidential

First wholesale prices are based on the prices in the shoreside processing sector for all gears in Gulf of Alaska.

Sources: NMFS Blend data

NMFS Gear reports

Tables 18 and 22, Economic status of the groundfish fisheries off Alaska, 2004, SAFE report.

The table shows that a substantial portion of the Gulf harvests of several species were from the proposed critical habitat. Approximately one-fifth of the trawl Pacific cod harvest in the Gulf was taken from the proposed critical habitat. Slightly more than one-fourth of the flatfish harvest was from critical habitat. Together this catch is estimated to have generated approximately \$7 million in first wholesale revenues. In addition, approximately 7 percent of the trawl caught pollock in the Gulf was from the proposed critical habitat. This catch is estimated to have generated more than \$3 million in first wholesale revenues. Combined, the total trawl catch from proposed Gulf critical habitat was approximately 14,000 metric tons, which is estimated to have generated approximately \$12 million in first wholesale revenues.

Table 11 shows the monthly distribution of 2004 trawl catch from the proposed critical habitat in the Bering Sea and Aleutian Islands. **Table 12** shows the percentage of the 2004 trawl catch from proposed critical habitat in each month by species.

Table 11. Monthly distribution of 2004 retained trawl catch of flatfish, Pacific cod, and pollock from proposed critical habitat in the Gulf of Alaska (in metric tons).

	January	February	March	April	May	June - July	August	September	October	Total
Flatfish	52	676	666	2,673	238	555	141	480	195	5,676
Pacific cod	438	72	64	100	28	223	26	2,219	19	3,188
Pollock	172	135	27	69	7	37	1,760	767	1,430	4,404

Source: NMFS Catch Accounting data

Table 12. Percent of 2004 trawl retained catch of flatfish, Pacific cod, and pollock from proposed critical habitat in the Gulf of Alaska by month.

	January	February	March	April	May	June - July	August	September	October	Total
Flatfish	0.9	11.9	11.7	47.1	4.2	9.8	2.5	8.5	3.4	100.0
Pacific cod	13.7	2.3	2.0	3.1	0.9	7.0	0.8	69.6	0.6	100.0
Pollock	3.9	3.1	0.6	1.6	0.2	0.8	40.0	17.4	32.5	100.0

Source: NMFS Catch Accounting data

The tables show that approximately 90 percent of the trawl pollock harvests from the proposed Gulf critical habitat are made in August, September, and October. Almost 70 percent of the Pacific cod harvests from the proposed critical habitat are made during September, when the B season opens. Almost half of the flatfish harvests are made in April, after the second quarter halibut allowance comes available.

Time constraints have prevented a detailed examination of the distribution of landings among communities. In any case, the limited number of processors will prevent the disclosure of most of the data describing community landings of catch from critical habitat. In the Bering Sea, groundfish processing facilities in Dutch Harbor, King Cove, and Akutan are likely the primary facilities that process landings from proposed critical habitat. In the Gulf of Alaska, facilities in Kodiak are likely the primary facilities that process landings from proposed critical habitat.

Table 13 shows the number of vessels that have catch in the proposed critical habitat by gear and vessel type.

Table 13. Number of vessels with harvests from the proposed critical habitat by gear and vessel type, 2004.

	Bering Sea/Aleutian Islands		Gulf of Alaska	
	Catcher processors	Catcher vessels	Catcher processors	Catcher vessels
Hook and Line	37	6	3	75
Pot	1	7	0	3
Pelagic trawl	18	85	0	35
Non-pelagic trawl	24	51	1	45
Total (unique)	77	108	4	122

The table shows that substantial numbers of catcher processors have participation in the proposed critical habitat in the Bering Sea, while substantial numbers of catcher vessels have participation in the Bering Sea and the Gulf of Alaska. Few catcher processors have participated in the proposed critical habitat in the Gulf of Alaska.

Crab

The proposed right whale critical habitat in the Bering Sea is centered in Bristol Bay. Only one crab fishery is prosecuted in this area, the Bristol Bay red king crab fishery. In 2004, approximately 15,353,000 pounds (approximately 99.9 percent of the harvest of this fishery) was from the proposed critical habitat. Approximately \$72.5 million in ex vessel revenues are estimated to have been generated by this catch. Since the grounds of the fishery have shown little variability in recent years, it is anticipated that the harvest will continue to come from the proposed critical habitat area. For the 2005 season, the TAC is 18,329,000 pounds (16,496,100 pounds for the general fishery and 1,832,900 pounds for the CDQ fishery).

The distribution of processing shares and the application of the “cooling off period” association of those shares to specific communities allows us to link much of the projected catch to communities in which it will be landed. The cooling off period is a two year period during which a limited amount of crab may be landed outside of the communities in which processing historically occurred. After the two year period, the cooling off provision would no longer apply. A right of first refusal is granted to the community that would apply to shares after the cooling off period. The right of first refusal is likely to have a limited effect since exemptions permit shares to be moved from the community under certain circumstances and the right applies to any items included in a sale (not just the processing shares). Additional analysis of these provisions is available in the Bering Sea/Aleutian Islands crab fisheries Final Environmental Impact Statement, August 2004. Notwithstanding the flexibility to move shares among communities after the cooling off period, it is likely that landings will continue to benefit some or all of the communities currently active in the processing sector.

Table 14 shows the percent of PQS landed to each community under the “cooling off” protection. Since PQS are allocated for 90 percent of the allocated QS, that portion of the landings can be assigned to the different designated communities. Most of the additional catch from the fishery is also likely to be landed in the same communities, although the distribution of those landings cannot be predicted.

Table 14. Portion of PQS pool and estimated amount (pounds) of the 2005 harvest subject to cooling off provisions, by community.

	Percent of PQS pool	Estimated amount of 2005 harvest
Aluetians East Borough	39.9	5,985,886
Kodiak and Kodiak Island Borough	3.8	567,857
St. Paul	2.6	383,774
Unalaska	52.8	7,921,861

The table shows that the Aleutian East Borough and Unalaska are the primary beneficiaries of the cooling off provision in the Bristol Bay red king crab fishery, with a large portion of the 2005 TAC subject to the cooling off landing requirements in those communities. Although the distribution of other landings is uncertain, it is likely that a substantial portion of the CDQ catch and "Class B share" landings (that are not subject to PQS landing requirements or the cooling off provisions) will also be landed in these communities, although the distribution may differ from the distribution of cooling off provision landing requirements. In recent years, approximately 250 vessels have participated in the Bristol Bay red king fishery annually. Under the new rationalization program, this year only 88 vessels have participated in the fishery to date.

In addition, some portion of the Bering Sea *C. bairdi* fishery has been and is likely in the future to be prosecuted in proposed critical habitat. This fishery was closed for several seasons prior to 2005, preventing any recent reporting of the catch from proposed critical habitat. Historically, the *C. bairdi* fishery has been an important component of the Bering Sea and Aleutian Island crab fisheries. The fishery is currently managed as two stocks, under which separate TACs are established for east of 166° west longitude and west of 166° west longitude. The proposed critical habitat is contained in the area east of 166° west longitude. In 2005, only the area west of 166° west longitude will be open.

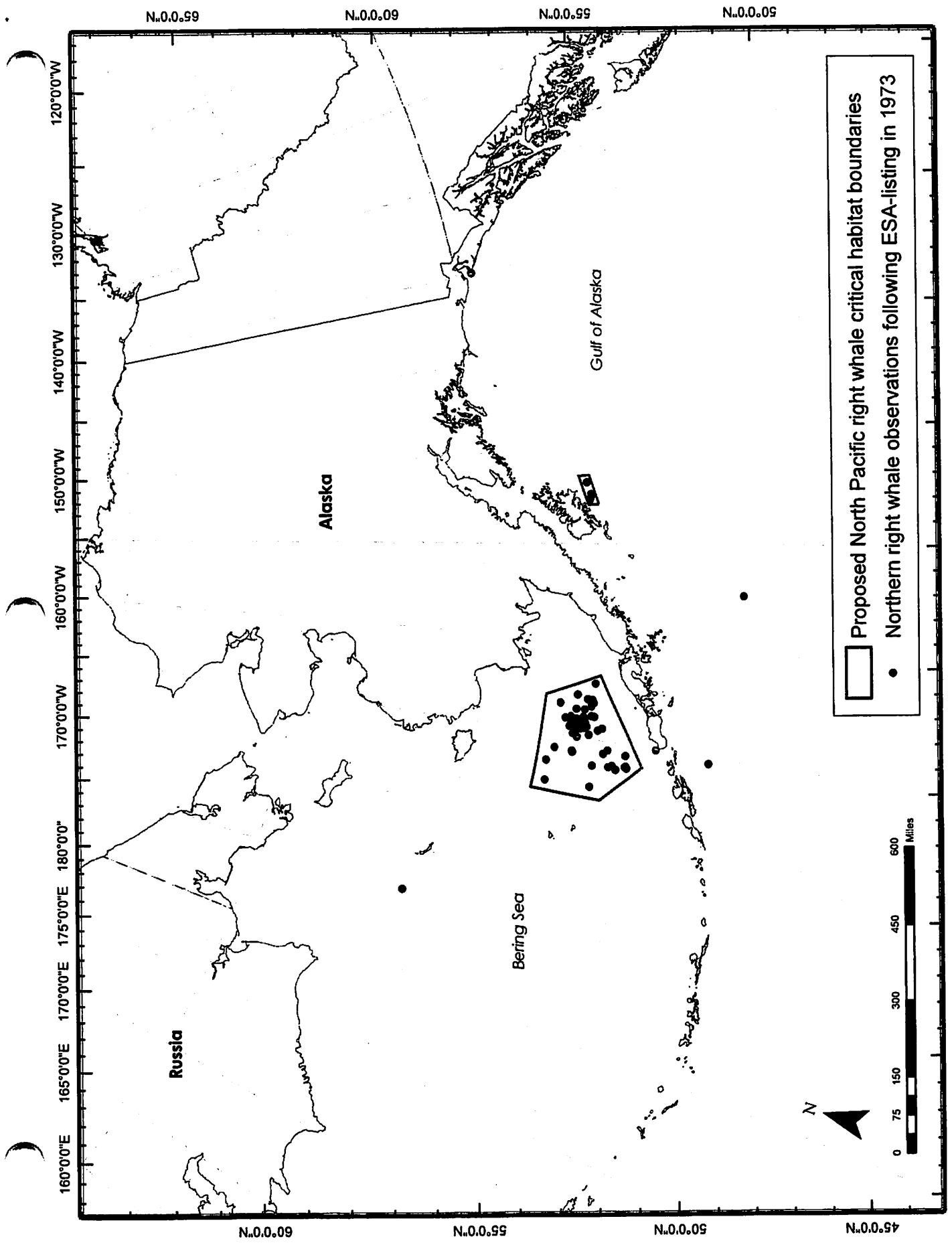


Figure 2. Proposed critical habitat for Northern right whales in the North Pacific.

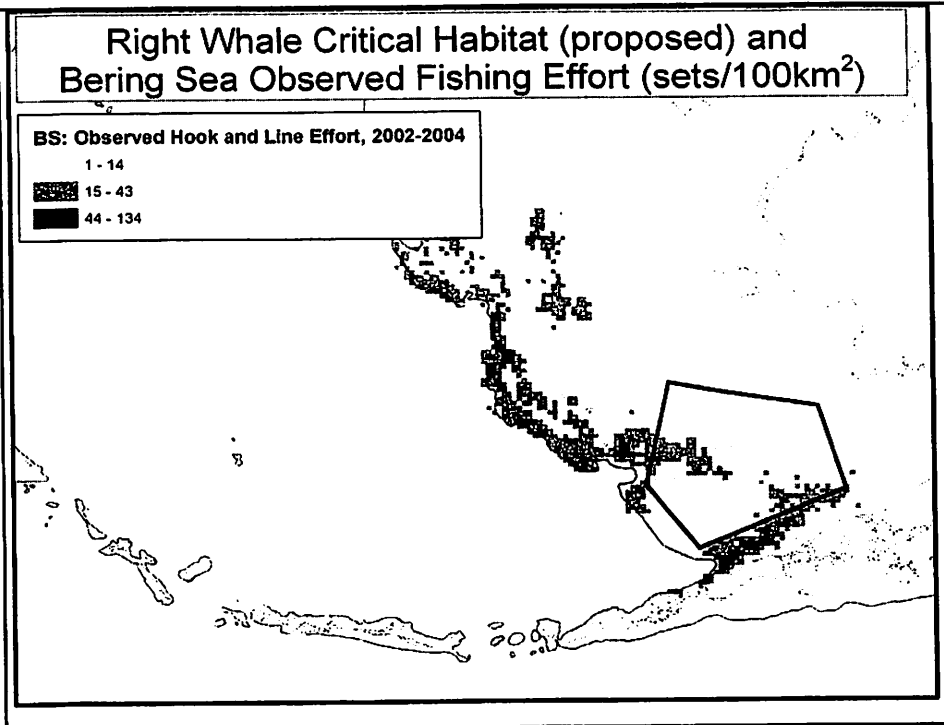
Right Whale Critical Habitat (proposed) and
Bering Sea Observed Fishing Effort (sets/100km²)

BS: Observed Hook and Line Effort, 2002-2004

1 - 14

15 - 43

44 - 134



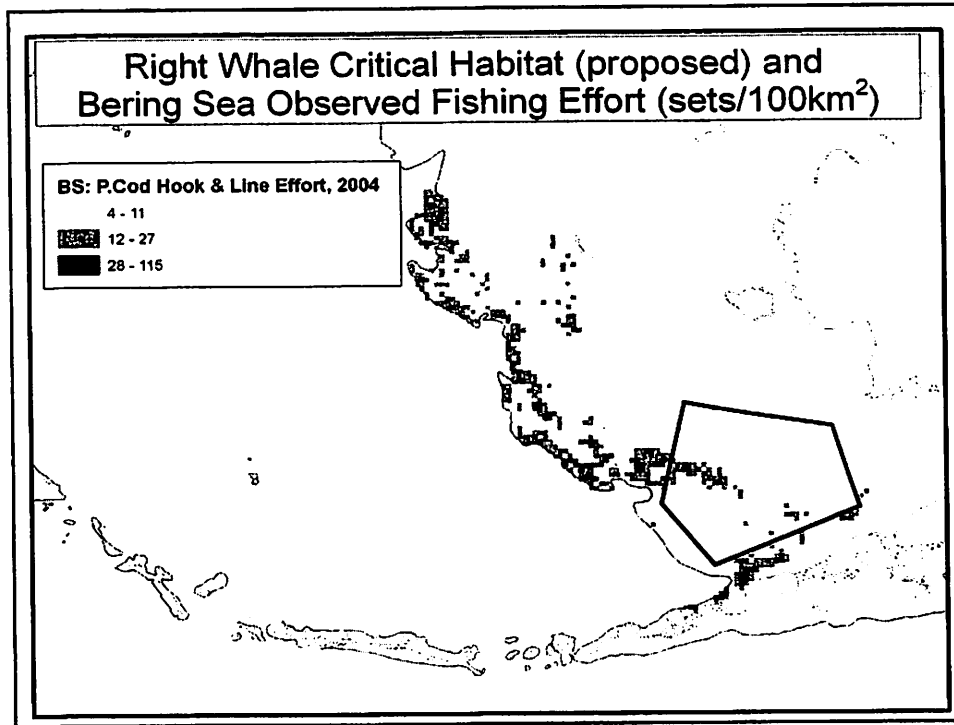
Right Whale Critical Habitat (proposed) and
Bering Sea Observed Fishing Effort (sets/100km²)

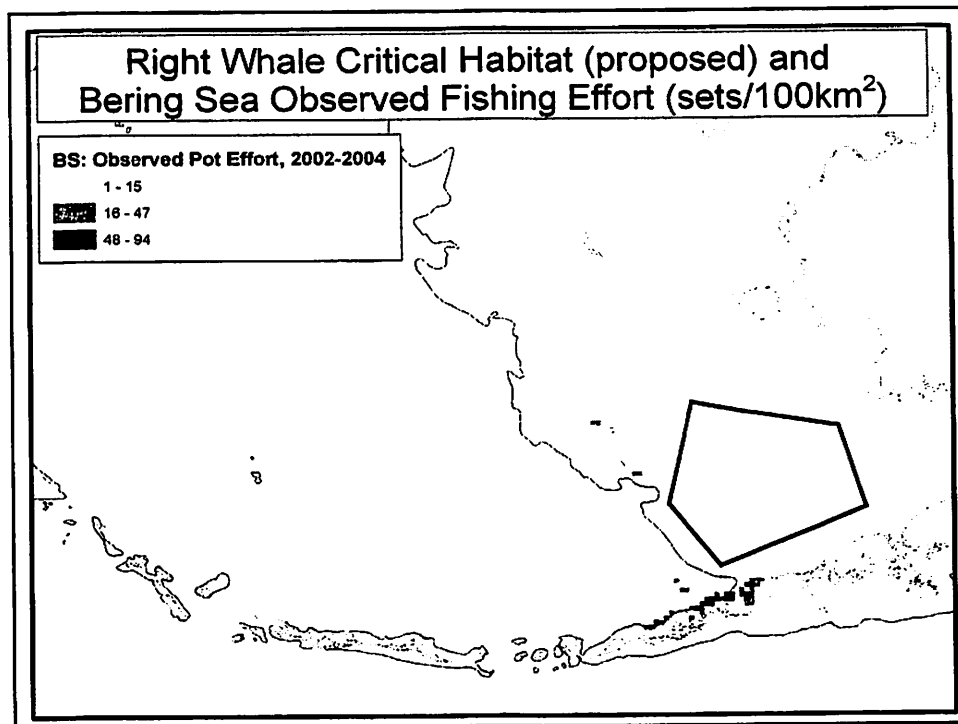
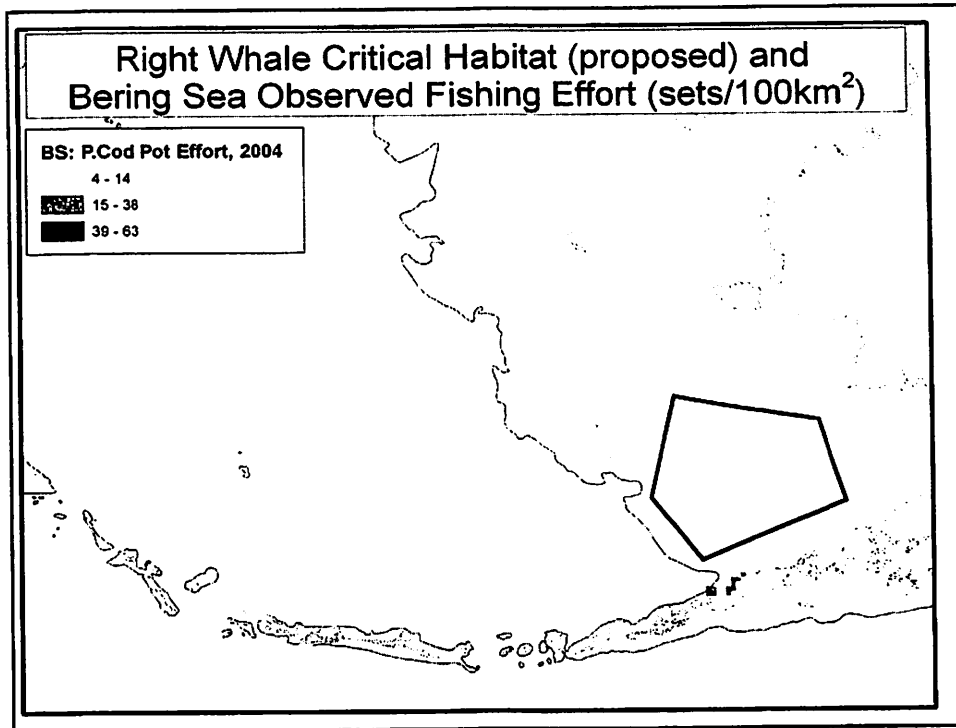
BS: P.Cod Hook & Line Effort, 2004

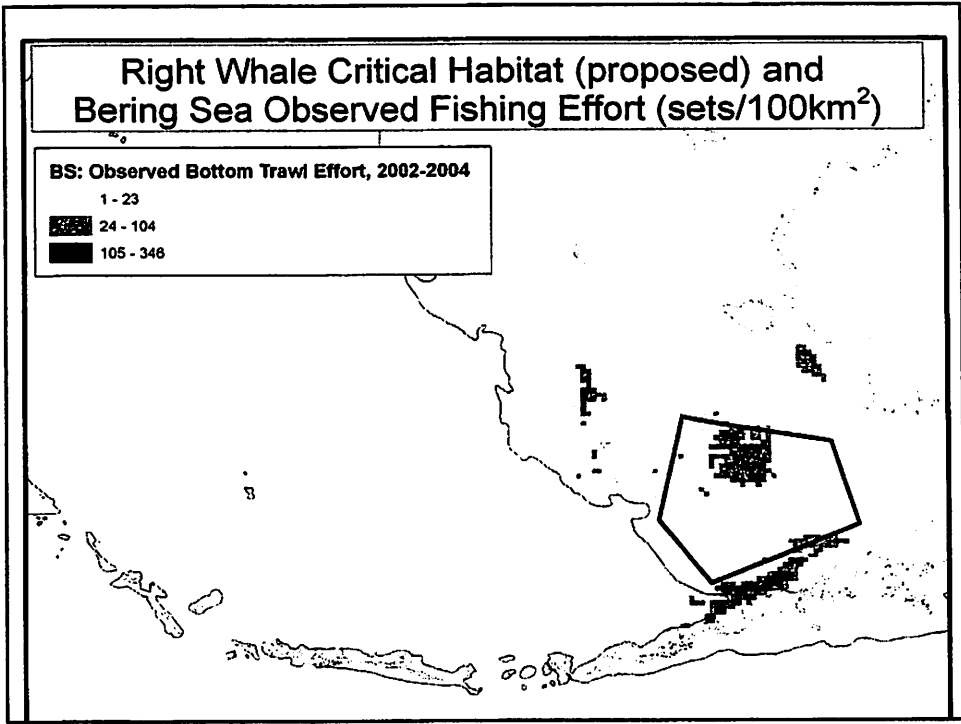
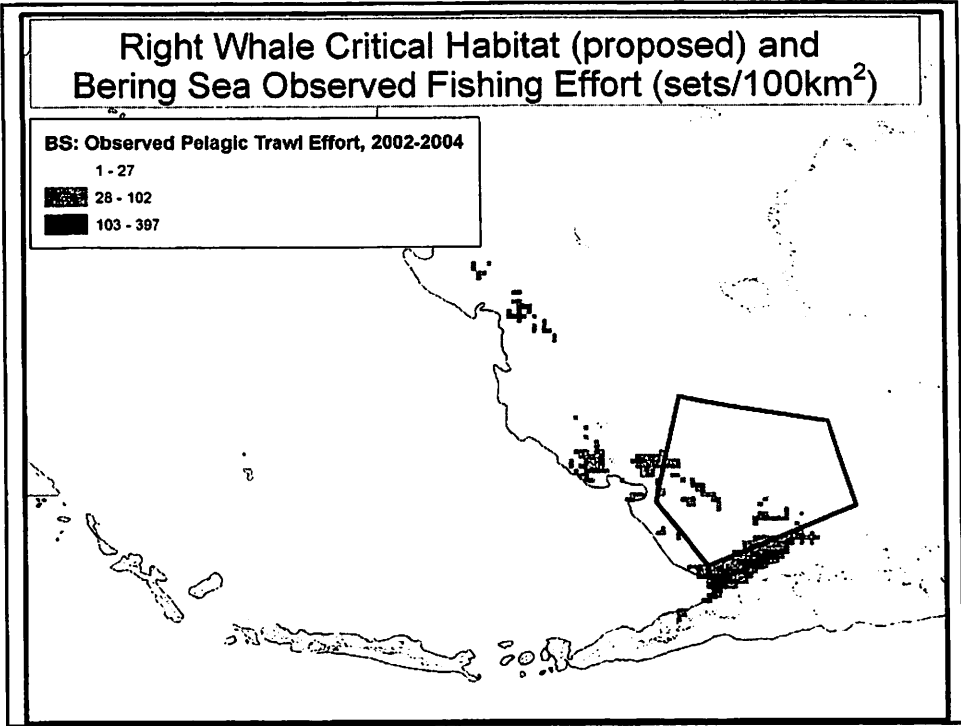
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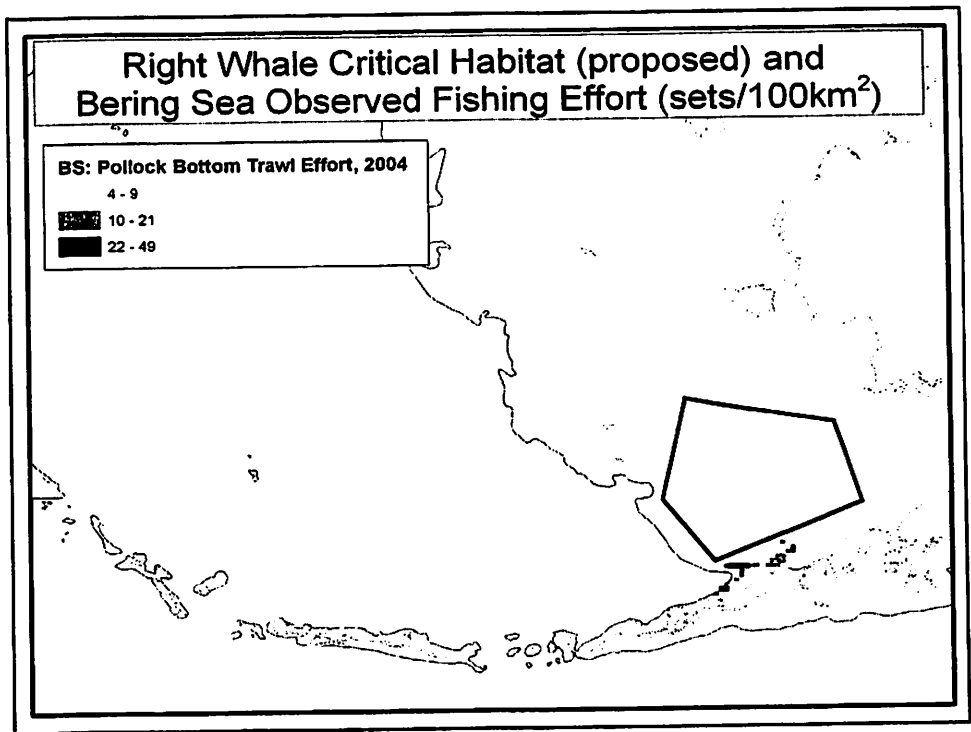
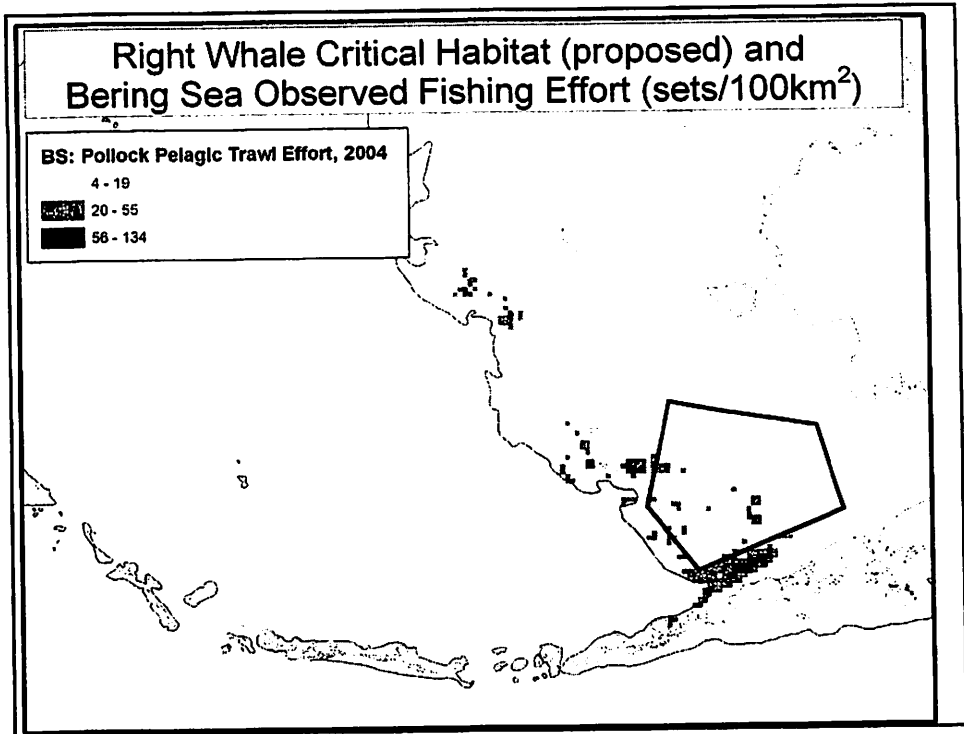
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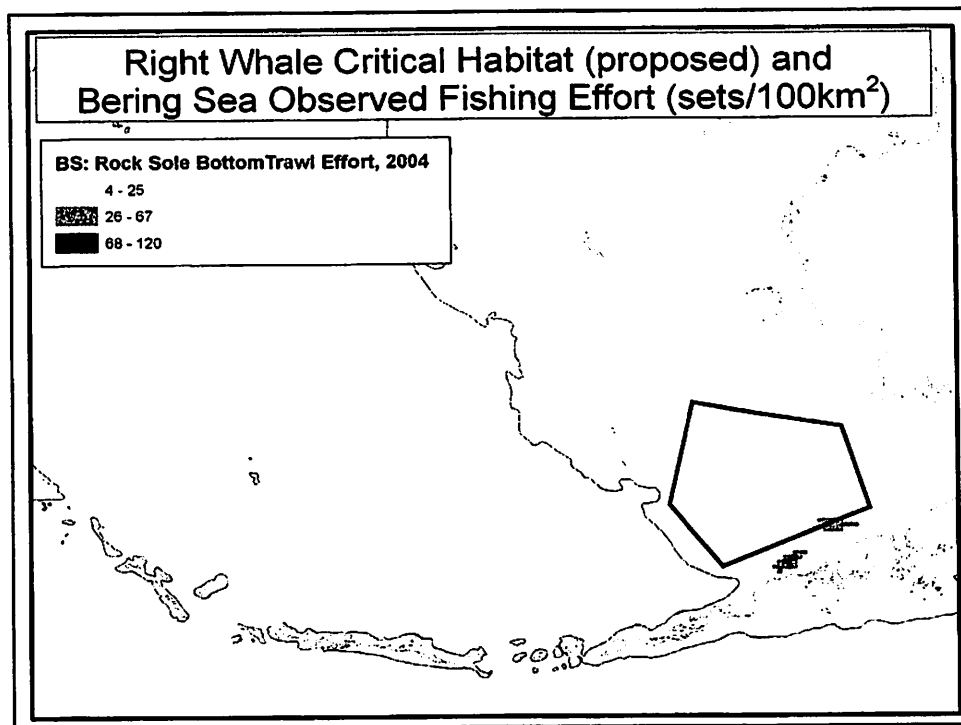
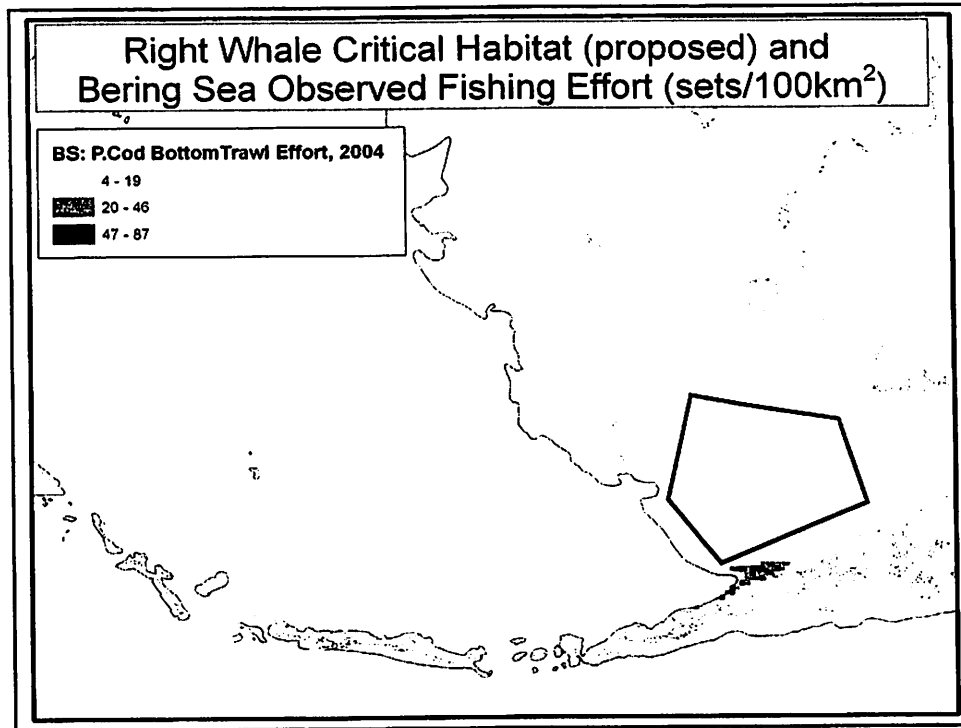
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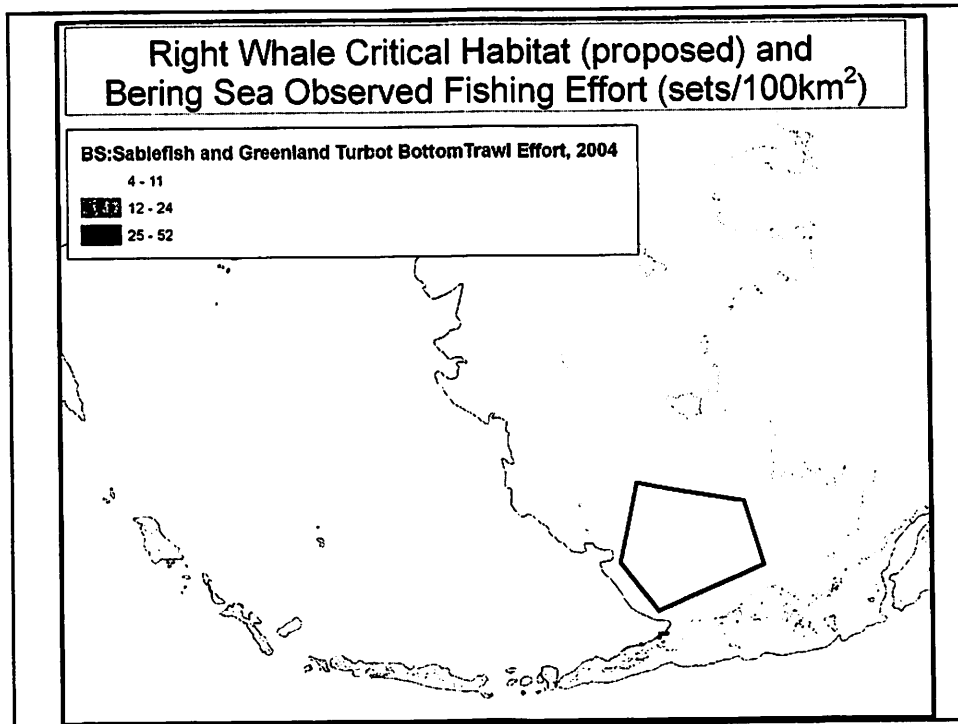
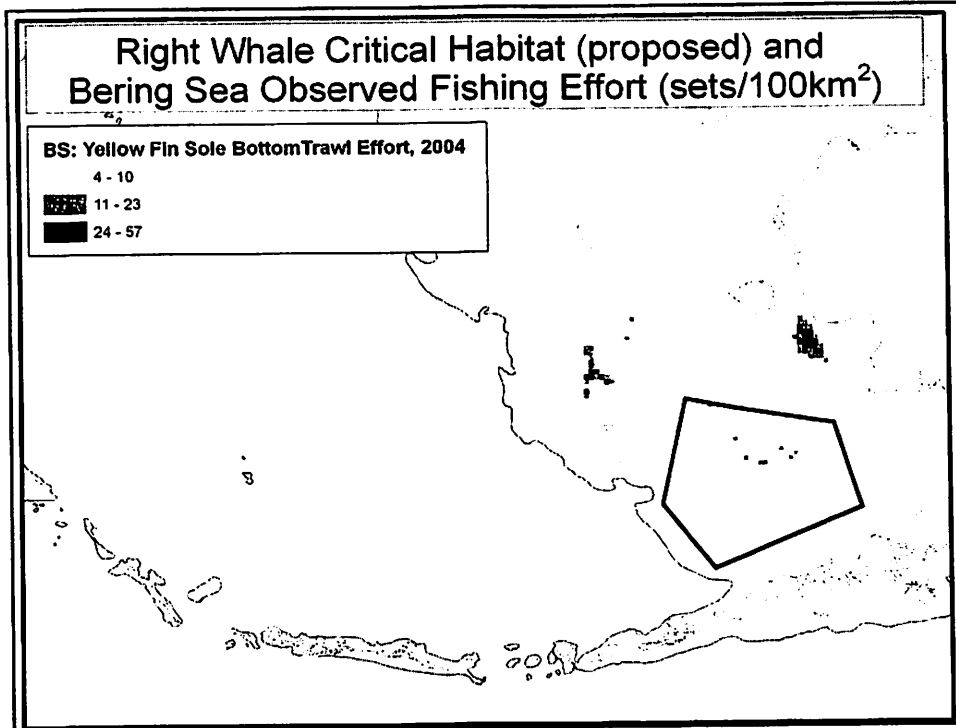








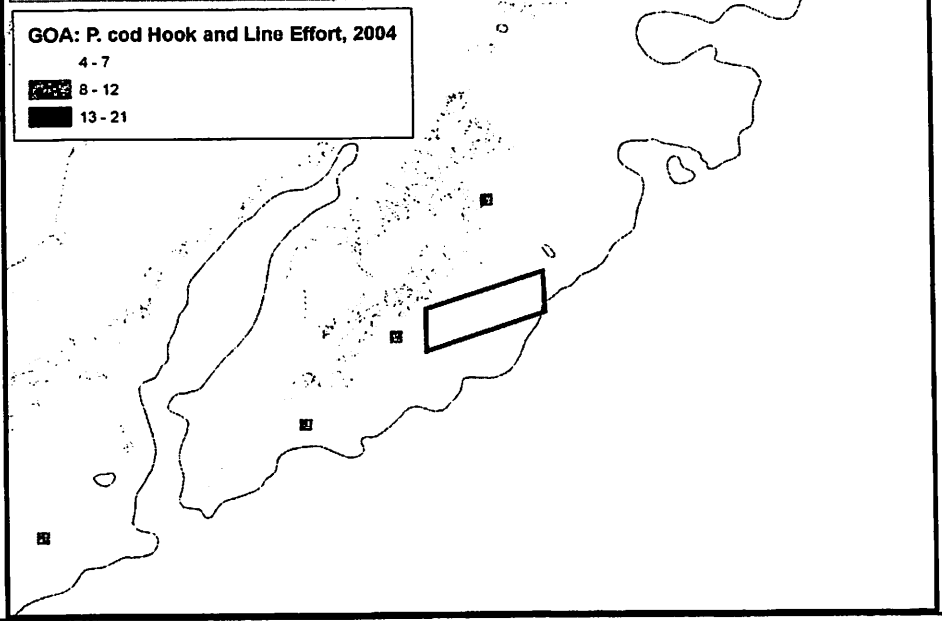




Right Whale Critical Habitat (proposed) and
Gulf of Alaska Observed Fishing Effort (sets/100km²)

GOA: P. cod Hook and Line Effort, 2004

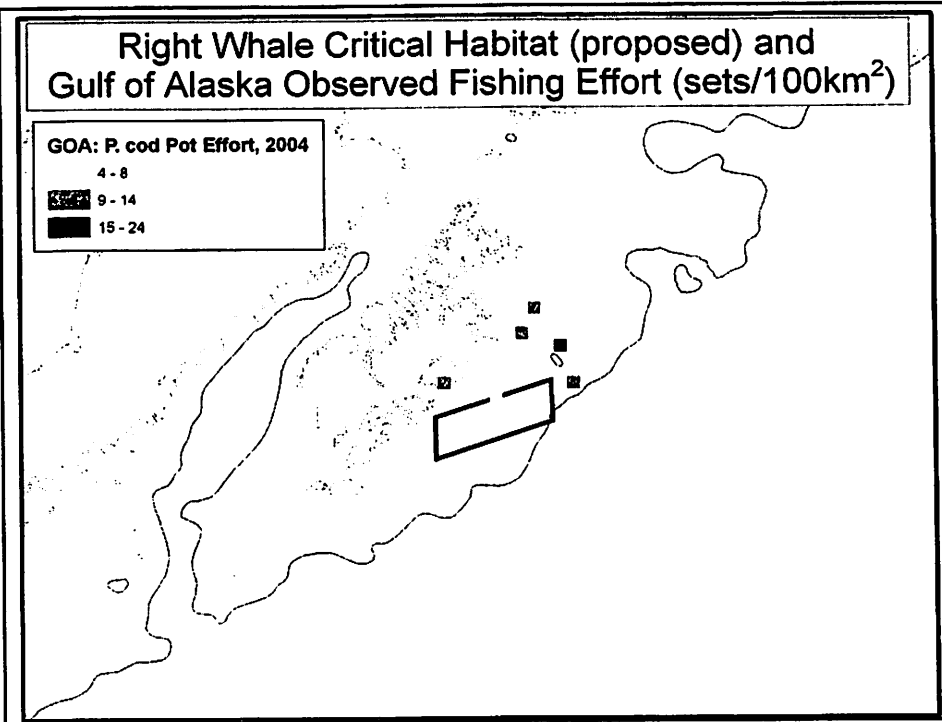
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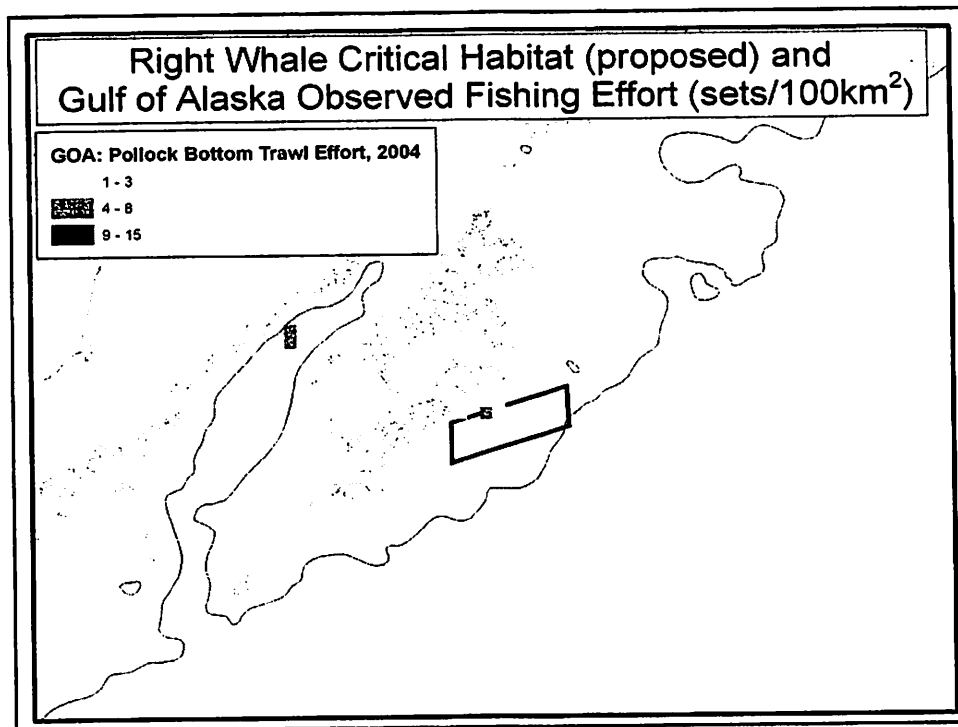
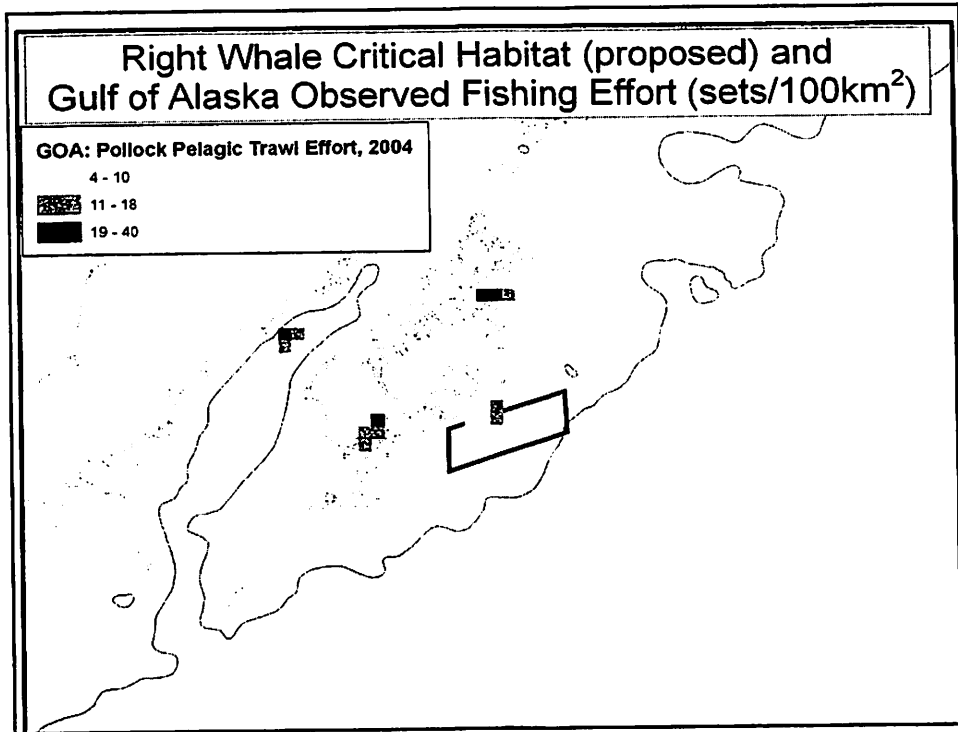


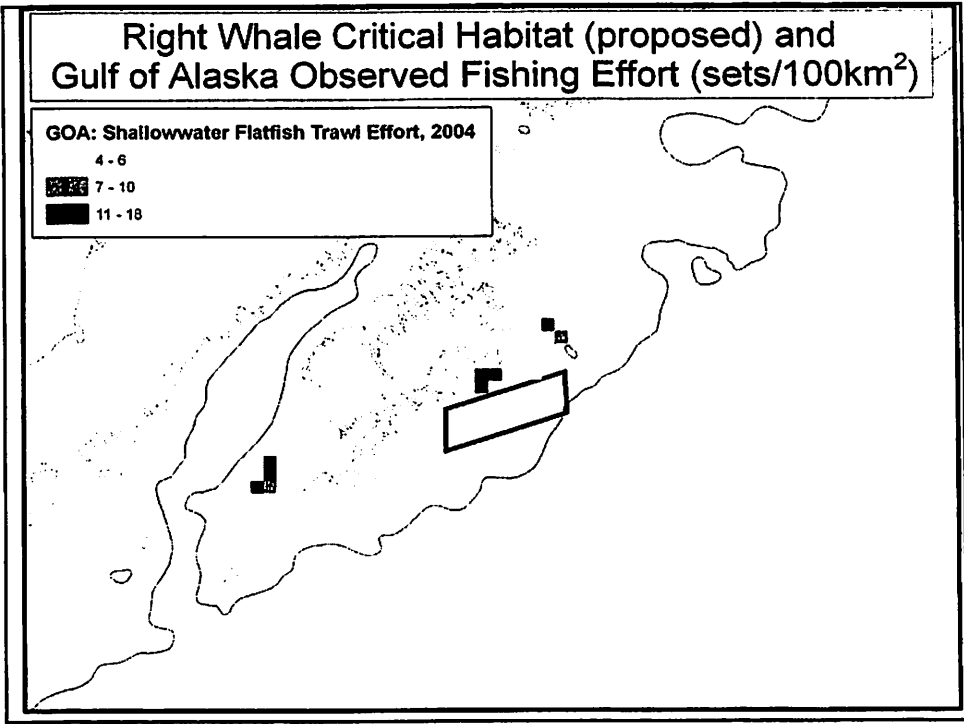
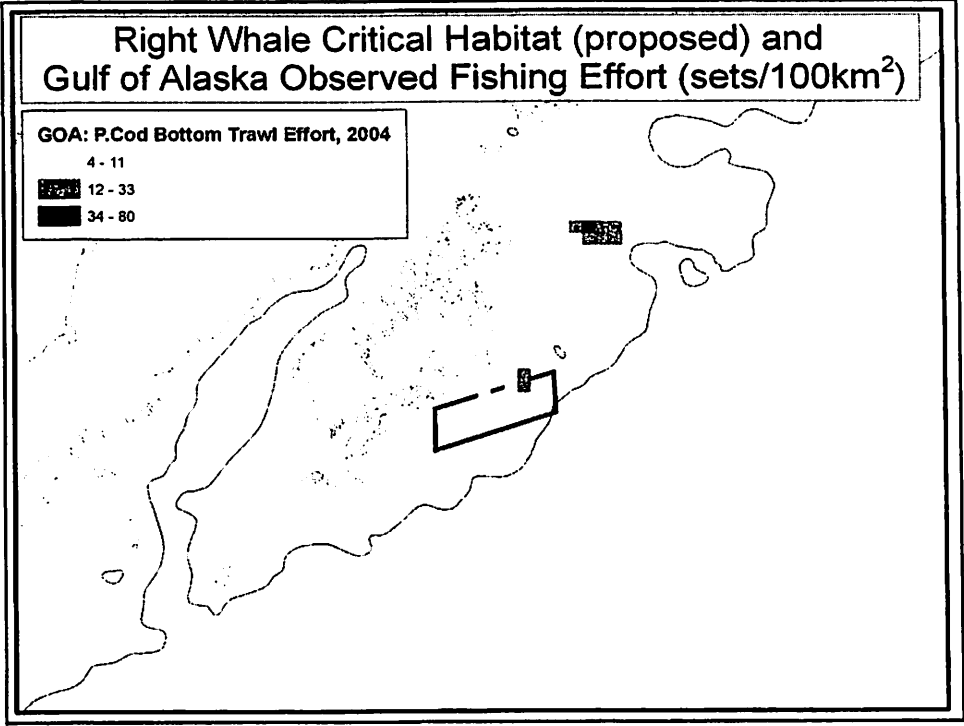
Right Whale Critical Habitat (proposed) and
Gulf of Alaska Observed Fishing Effort (sets/100km²)

GOA: P. cod Pot Effort, 2004

- 4 - 8
- 9 - 14
- 15 - 24







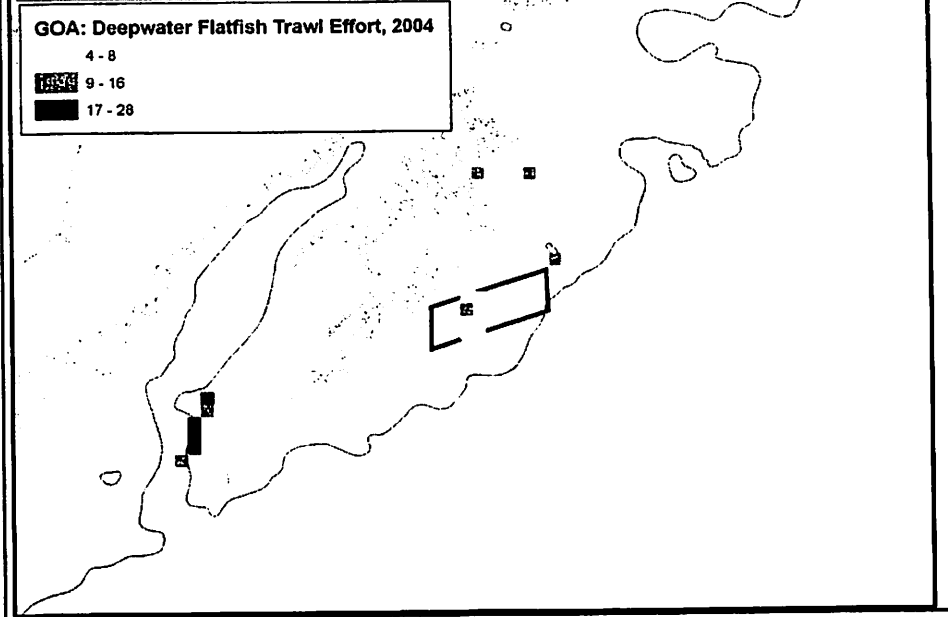
Right Whale Critical Habitat (proposed) and Gulf of Alaska Observed Fishing Effort (sets/100km²)

GOA: Deepwater Flatfish Trawl Effort, 2004

4 - 8

9 - 16

17 - 28



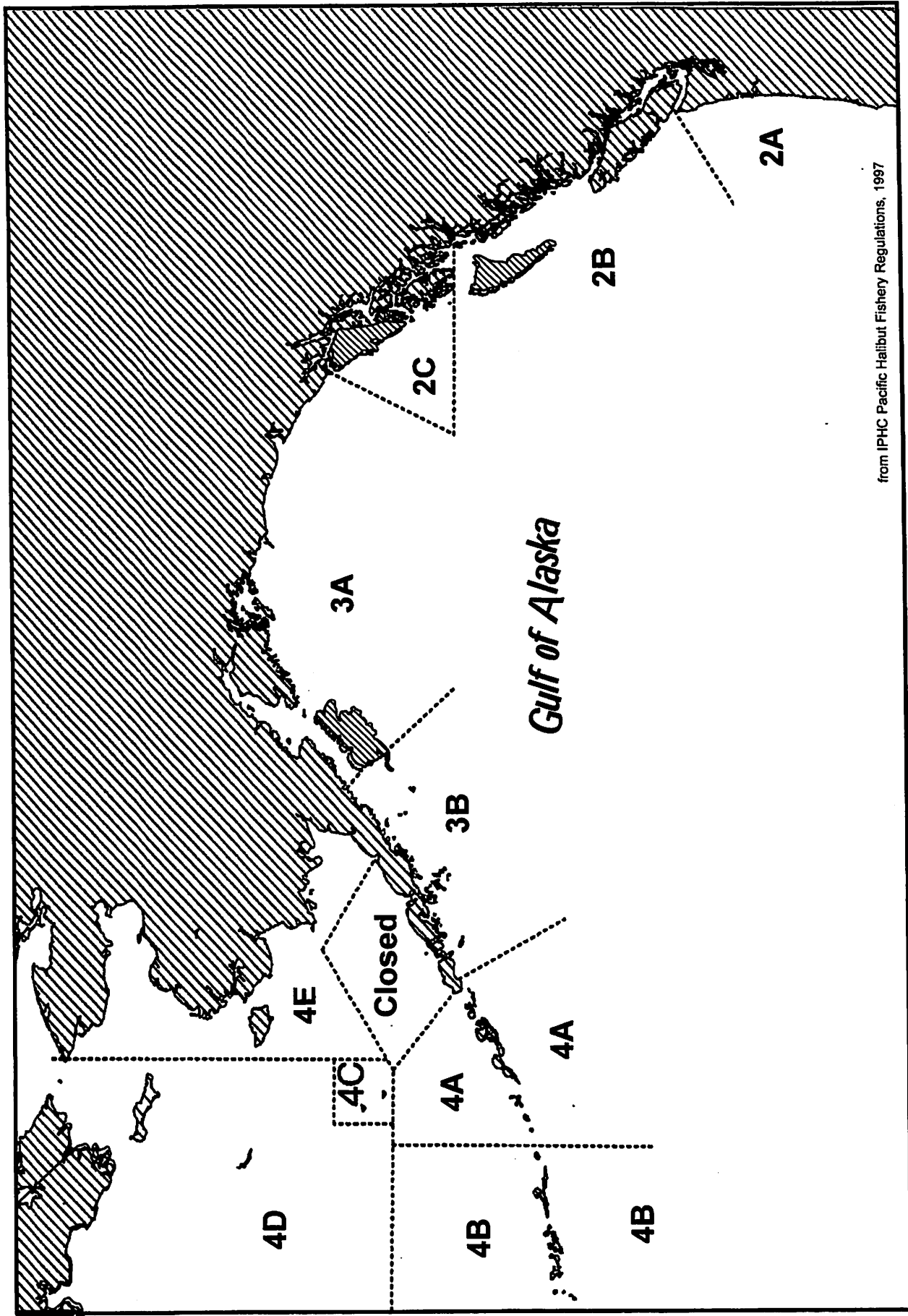


Figure 15 to Part 679. Regulatory Areas for the Pacific Halibut Fishery
 a. Map

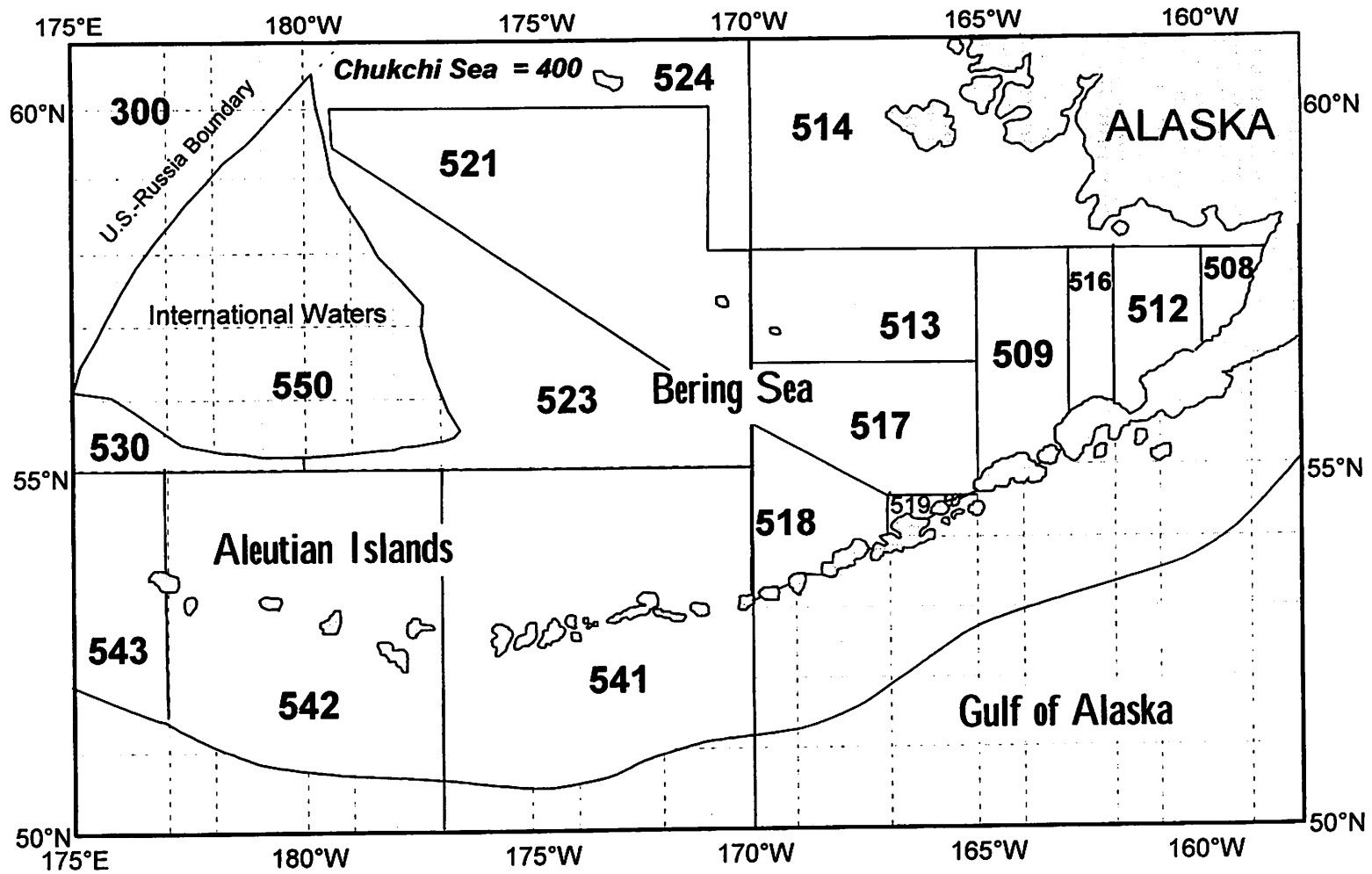


Figure 1 to Part 679--Bering Sea and Aleutian Islands statistical and reporting Areas
a. Map

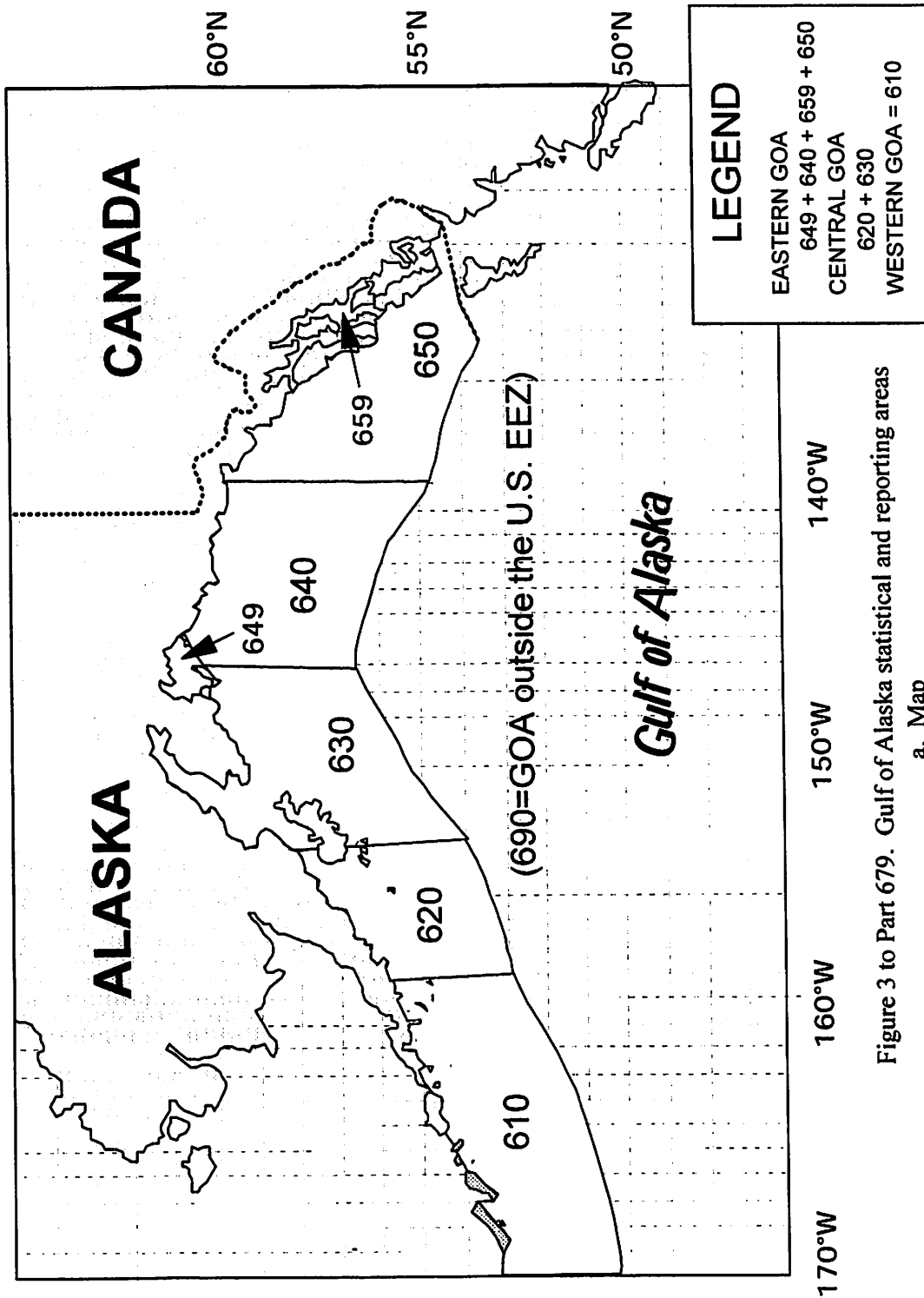


Figure 3 to Part 679. Gulf of Alaska statistical and reporting areas
a. Map

North Pacific Fishery Management Cou

AGENDA B-6(c)
DECEMBER 2005

Stephanie Madsen, Chair
Chris Oliver, Executive Director



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October 18, 2005

Doug Mecum
Acting Assistant Regional Administrator
National Marine Fisheries Service – Alaska Region
P.O. Box 21668
Juneau, AK 99802

Dear Mr. Mecum,

At its October 2005 meeting, the Council took action to recommend that the National Marine Fisheries Service (NMFS) commence the process to reinitiate a Fishery Management Plan-level formal Section 7 consultation under the Endangered Species Act (ESA). This consultation would be on the effects of Federal groundfish fisheries on ESA-listed species, including particularly the Steller sea lion. The Council intends to work closely with NMFS, as well as the Alaska Board of Fisheries, in this reconsultation process. The full text of the motion reads as follows:

The North Pacific Fishery Management Council requests that the NMFS Alaska Region Sustainable Fisheries Division reinitiate formal consultation, under Section 7 of the Endangered Species Act, with the NMFS Alaska Region Protected Resources Division on the effects of the groundfish fisheries in the EEZ off the coast of Alaska on Steller sea lions and other ESA listed species under U.S. Department of Commerce jurisdiction. The Council requests that the consultation begin on the 2000 FMP Biological Opinion covering the FMPs for groundfish in the Bering Sea/Aleutian Islands, and Gulf of Alaska, and that the consultation review all new scientific information since the completion of the FMP-level Biological Opinion. The Council requests periodic briefings on progress. The Council intends to consider, in 2006 to 2007, possible revisions to the management measures currently in place and evaluate them under a separate project-level Biological Opinion. The Council requests that NMFS also work closely with the State of Alaska in this process and include impacts on State fisheries in the analysis and resulting Incidental Take Statement.

The Council would like to be closely involved in the consultation process, and to that end plans to review the membership of its Steller Sea Lion Mitigation Committee and then use that committee as a forum for information exchange, discussion, and public input to the process. I hope that NMFS can begin the consultation process as soon as possible. Please contact me if you have questions.

Sincerely,

Chris Oliver
Executive Director

CC: Ms. Sue Salvesson, Office of Sustainable Fisheries, NMFS
Ms. Kaja Brix, Office of Protected Resources, NMFS

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

November 29, 2005



Mr. Chris Oliver
Executive Director
North Pacific Fishery Management Council
605 West 4th Avenue, Suite 306
Anchorage, Alaska 99501-2252

Re: Reinitiation of Endangered Species Act (ESA) Section 7 Consultation for the Alaska Groundfish Fisheries

Dear Chris,

Thank you for your letter summarizing the North Pacific Fishery Management Council's (Council's) October 2005 action to recommend that the National Marine Fisheries Service (NMFS) reinitiate consultation under section 7 of the ESA. The consultation would concern the possible effects of the fishery management plans (FMPs) for groundfish of the Bering Sea and Aleutian Islands management area and Gulf of Alaska on listed species and their critical habitat under the jurisdiction of NMFS. This letter explains our approach for reinitiating formal consultation, describes the consultation process, and includes a request to the Council for concurrence on our recommended scope of the consultation.

Reinitiation of consultation

All Federal actions that may affect listed species under the ESA, including management of the Alaska groundfish fisheries, must be reviewed under section 7(a)(2) of the ESA. In doing so, each Federal agency must insure that its actions do not jeopardize the existence of threatened or endangered species or destroy or adversely modify their critical habitat. Federally managed groundfish fisheries in Alaska have been formally consulted on under section 7 at both the fishery management plan level and at the fishery specific project level. The Federal and State parallel groundfish fisheries in Alaska currently operate under the following series of formal section 7 consultations:

- November 2000 Biological Opinion on the fishery management plans and associated regulations for the groundfish fisheries in the Bering Sea and Aleutian Islands Area and the Gulf of Alaska (FMP BiOp);
- October 2001 Biological Opinion on the federally managed pollock, Pacific cod, and Atka mackerel fisheries in the Bering Sea and Aleutian Islands Area and the Gulf of Alaska and parallel fisheries for pollock, Pacific cod, and Atka mackerel as authorized by the State of Alaska within 3 nm of shore (2001 BiOp); and
- June 2003 Supplement to the October 2001 Biological Opinion on the pollock, Pacific cod, and Atka mackerel fisheries in the Bering Sea and Aleutian Islands Area and the Gulf of Alaska.

Regulations at 50 CFR 402.16 describe a series of triggers, which when met, would require the Federal agency to reinitiate consultation under section 7 of the ESA: (a) the amount or extent of taking specified in an incidental take statement is exceeded; (b) new information reveals effects of the action that may affect listed species or critical habitat in a manner or to an extent not previously considered; (c) the identified action is subsequently modified in a manner that causes an effect to the listed species or critical habitat that was not considered in a biological opinion; or (d) a new species is listed or critical habitat



designated that may be affected by the identified action. Since the FMP BiOp, all subsequent modifications to the action were considered at the project level either through informal or formal consultations, and thus have already undergone review under the ESA. However, even if none of the triggers for reinitiation of consultation has been met, an agency still has the discretion to reinitiate consultation on a biological opinion should the agency believe such a review is warranted.

NMFS agrees that reinitiation of the FMP BiOp is appropriate in order to provide a comprehensive review of all relevant information and the numerous project level changes that have been made to the action since review in 2000. The purpose of the reinitiation would be to assess how these previously reviewed individual actions affect listed species when taken together as a whole in light of the best scientific and commercial information available. A complete, formal review at the FMP level will provide an appropriate foundation to consider future project level actions.

The scope of the proposed action, listed species, and their critical habitat

The FMP BiOp considered only the Federal component of the groundfish fisheries. The State of Alaska parallel groundfish fisheries were included as part of the action in the 2001 BiOp. **NMFS recommends that the State parallel groundfish fisheries be included as part of the action in the FMP level consultation with the concurrence of the State of Alaska and the Council.**

The consultation would address all ESA-listed species under NMFS jurisdiction including Steller sea lions, species of whales, turtles, and salmon evolutionary significant units (ESUs). The consultation also would address the proposed critical habitat for northern right whales (70 FR 66332, November 2, 2005), potential new listings for right whales in 2006, and newly listed salmon ESUs. NMFS is exploring whether the consultation for ESA-listed salmon should be conducted on a separate but parallel track with the consultation for all other listed species. The Salmon consultation also would address the need to reinitiate consultation for Chinook salmon based on exceeding the incidental take statement in 2005.

Consultation process

In order to initiate consultation, the action agency (NMFS/Sustainable Fisheries Division (SFD)) must provide to NMFS/Protected Resources Division (PRD) the following information as required by 50 CFR 402.14(c):

1. A description of the action to be considered;
2. A description of the specific area that may be affected by the action;
3. A description of any listed species or critical habitat that may be affected by the action
4. A description of the manner in which the action may affect any listed species or critical habitat and an analysis of any cumulative effects;
5. Relevant reports, including any environmental impact statements, environmental assessments, or biological assessments prepared; and
6. Any other relevant available information on the action, the affected listed species, or critical habitat.

The consultation cannot begin until NMFS/PRD agrees that these items have been received. At that point, the consultation must conclude within 90 days (50 CFR 402.14(e)) unless extended by mutual agreement between NMFS/PRD and NMFS/SFD. At the end of the consultation phase, NMFS/PRD then has 45 days in which to provide a BiOp (50 CFR 402.14(e)(3)). In this case, NMFS/PRD likely would request additional time to complete the consultation and BiOp.

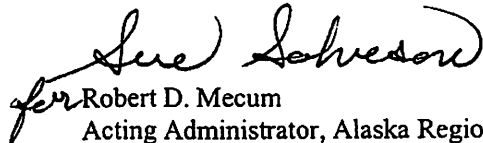
NMFS/SFD intends to provide all of the initiation documents to NMFS/PRD by February 2006, which would officially begin the consultation (Table 1). The consultation is likely to extend into the summer of 2006 with public review of a draft BiOp likely in August 2006. Initial Council review would take place

in October 2006. The Steller Sea Lion Mitigation Committee (SSLMC) may have opportunity to review the BiOp in September before the Council meeting in October. NMFS anticipates numerous meetings with both the Council and the SSLMC to review and provide comments on the draft BiOp. This may include modification of the proposed action. If the Council considers changes to the action, then the final BiOp would not likely be available until late 2007. Assuming the proposed action avoids jeopardy and adverse modification, a final rule to implement those changes to the Steller sea lion protection measures would be implemented by the end of 2007.

One or more incidental take statements likely would be part of the BiOp for this consultation. For marine mammals, a negligible impact determination under section 101(a)(5)(e) of the Marine Mammal Protection Act will need to be in place before an incidental take statement is provided.

The Council is an important participant in the ESA consultation process, and NMFS would strive to include the Council in all important aspects in the development of a BiOp for which participation is allowed under the ESA. The FMP BiOp likely would be considered influential scientific information under the Information Quality Act (IQA). As such, specific peer review requirements under the IQA may be necessary. In addition, as was the approach in 2000, NMFS likely would pursue an independent review the draft BiOp by an outside panel of experts before making any final determinations.

Sincerely,


for Robert D. Mecum
Acting Administrator, Alaska Region

Enclosure

Table 1. Potential timeline for the FMP-level consultation and related Council activities.

Time	Activity
December-January	<ul style="list-style-type: none"> • Develop § 404.14(c) requirements (State/Council/SFD) • Develop biological assessment (§ 402.12) • Develop major issues for the consultation phase
February 2006	<ul style="list-style-type: none"> • Consultation ends for some species and their critical habitat with a “not likely to adversely affect” decision based on a biological assessment • SFD initiates consultation with § 402.14(c) requirements completed for species or their critical habitat likely to be adversely affected
February-April	<ul style="list-style-type: none"> • Background development of BiOp; incorporate information from § 402.14(c) (description of the action, action area, status of species, environmental baseline, cumulative effects) • Consultation with SFD/AFSC
April 15, 2006	<ul style="list-style-type: none"> • Responses to questions/issues raised during consultation due (AFSC/SFD)
April-August	<ul style="list-style-type: none"> • Develop draft BiOp (effects of the action, draft conclusions, reasonable and prudent alternative if necessary, develop negligible impact determination(s) and incidental take statement(s) conservation recommendations), and conduct internal review (HQ)
August 15, 2006	<ul style="list-style-type: none"> • Draft BiOp available for public review
September 1, 2006	<ul style="list-style-type: none"> • SSLMC review BiOp and develop workplan/comments
October 2006	<ul style="list-style-type: none"> • Council Review BiOp and SSLMC recommendations
December 2006	<ul style="list-style-type: none"> • Council initial review of potential changes to the action • Comments due on draft BiOp
February 2007	<ul style="list-style-type: none"> • Council further review of proposed action
April 2007	<ul style="list-style-type: none"> • Council takes Final Action on amendment/regulations
August 2007	<ul style="list-style-type: none"> • Final BiOp completed
January 1, 2008	<ul style="list-style-type: none"> • Regulations effective

AGENDA

FORTY-FOURTH MEETING OF THE MARINE MAMMAL COMMISSION
AND
THIRTY-EIGHTH MEETING OF
THE COMMITTEE OF SCIENTIFIC ADVISORS ON MARINE MAMMALS

12-14 October 2005
Anchorage Hilton Hotel

WEDNESDAY, 12 OCTOBER 2005

- 8:30-8:45 WELCOME AND INTRODUCTIONS
- 8:45-9:00 REVIEW OF MEETING FORMAT AND GOALS
- 9:00-11:00 CLIMATE CHANGE
- I. The effect of climate change on Alaska Native communities
 - II. Overview of major changes expected and research underway to investigate them
 - III. NOAA's climate program
 - IV. NMFS species
 - V. Polar bears and walruses
 - VI. Discussion
- 11:00-11:15 Break
- 11:15-12:15 COASTAL DEVELOPMENT
- I. General overview of coastal development activities and issues
 - II. Current and planned oil and gas activities
 - III. Cook Inlet development and potential impact on beluga whales
 - IV. Tourism, marine mammal watching, and cruise ships
 - V. Development of a code of conduct for tour operators and viewing handbook
 - VI. Discussion
- 12:15-1:30 Lunch
- 1:30-2:30 CONTAMINANTS AND DISEASE
- I. Agency perspective, NOAA's Oceans and Human Health Program
 - II. Overview of contaminants and disease
 - III. Alaska sea otter disease catalog
 - IV. Discussion
- 2:30-2:45 Break

2:45-5:45

ALASKA NATIVE SUBSISTENCE AND CO-MANAGEMENT

- I. Agency perspectives
- II. Introduction of Native groups
 - A. Alaska Beluga Whale Committee
 - B. Alaska Eskimo Whaling Commission
 - C. Alaska Native Harbor Seal Commission
 - D. Aleut Marine Mammal Commission
 - E. Bristol Bay Marine Mammal Council
 - F. North Slope Bureau Dept. of Wildlife Management
 - G. Eskimo Walrus Commission
 - H. Alaska Nanuuq Commission
 - I. Traditional Council of St. George Island and Aleut Community of St. Paul Island
 - J. Sitka Marine Mammal Commission
 - K. Southeast Inter-tribal Fish & Wildlife Commission
 - L. Ice Seal Committee
 - M. Alaska Sea Otter and Steller Sea Lion Commission
 - N. Cook Inlet Marine Mammal Commission
- III. Panel Discussion

5:45-6:00

DISCUSSION AND WRAP-UP

6:00 PM

ADJOURN FOR THE DAY

THURSDAY, 13 OCTOBER 2005

08:15-8:30 Review of previous day's discussions

08:30-10:45 MARINE MAMMAL INTERACTIONS WITH COMMERCIAL FISHING

- I. Overview of fisheries/marine mammal interactions and ecosystem considerations in the North Pacific
- II. Direct takes - status and trends in marine mammal bycatch
- III. Indirect takes
 - A. Scientific review of the harvest strategy used in the Bering Sea/Aleutian Islands and Gulf of Alaska
 - B. Ecosystem interactions and modeling
 - C. Spatial and temporal effects of fishing
 - D. Ecosystem-directed research
- IV. Fisheries perspective
- V. NGO perspectives
- VI. Discussion

10:45-11:00 Break

SPECIES OF SPECIAL CONCERN

11:00-11:45 STELLER SEA LIONS

- I. Update on population abundance and trends
- II. Recent and planned research; recent findings
- III. Revised recovery plan
- IV. Fisheries-related concerns
- V. Status of Humane Society lawsuit

11:45-12:15 NORTHERN FUR SEALS

- I. Current and planned research
- II. Management concerns

12:15-12:45 HARBOR SEALS

- I. Population abundance and trends
- II. Identification of stocks or management units

12:45-2:00 Lunch

2:00-2:30 ICE SEALS

- I. Population abundance, status and trends
- II. Recent and planned research
- III. Management concerns

- 2:30-3:15 PACIFIC WALRUSES
I. Program overview
II. Plans for range-wide survey and updating study plan
III. Tagging program
- 3:15-3:45 POLAR BEARS
I. Program overview
II. Imports of trophies from Canada
III. Beaufort Sea population; mark/recapture study
- 3:45-4:00 Break
- 4:00-4:30 SOUTHWEST ALASKA SEA OTTERS
I. Population status and ESA listing
II. Development of recovery plan
III. Handicraft rules
IV. Research into reasons for decline
- 4:30-5:00 COOK INLET BELUGA WHALES
I. Population status and trends
II. ALJ rulemaking process
III. Conservation plan and ESA listing
IV. Management priorities, research plans, and funding
- 5:00-5:15 NORTH PACIFIC RIGHT WHALES
I. Research results and future plans
II. Re-examination of critical habitat designation
- 5:15-5:30 BOWHEAD WHALES
I. Ongoing and planned research
II. IWC and subsistence whaling quota
- 5:30-6:00 DISCUSSION AND WRAP-UP
- 6:00 ADJOURN FOR THE DAY

FRIDAY, 14 OCTOBER 2005

08:15-8:30 Review of previous day's discussions

08:30-10:00 STATUS OF MAJOR ECOSYSTEMS IN THE NORTH PACIFIC

- I. Overview of significant ecosystem trends and issues and major research and management needs
 - A. Arctic Ocean
 - B. Bering Sea/Aleutian Islands
 - C. Gulf of Alaska, including southeast Alaska
- II. Discussion: What role should the Marine Mammal Commission play in promoting ecosystem-based management in the North Pacific and elsewhere

10:00-10:15 Break

10:15-11:30 FUNDING FOR MARINE MAMMAL AND ECOSYSTEM RESEARCH AND CONSERVATION

- I. Results of a survey of research/management programs for marine mammals in the North Pacific, FY 2003-2007
 - A. Missions and priorities
 - B. Distribution of discretionary and non-discretionary funding
 - C. Major gaps
 - D. "Outside" funding opportunities
- II. Panel Discussion
 - A. NOAA/AFSC programs
 - B. NOS/Oceans and Human Health Program
 - C. FWS/USGS programs
 - D. North Pacific Research Board
 - E. North Pacific Universities Marine Mammal Research Consortium
 - F. Alaska SeaLife Center
 - G. State of Alaska
 - H. University of Alaska School of Fisheries and Ocean Sciences
 - I. Indigenous People's Council for Marine Mammals

11:30-12:00 COMMISSION SPECIAL PROJECTS

- I. Ecological role of killer whales
- II. Cost-effectiveness of research and recovery programs
- III. Impact of anthropogenic sound

12:00-1:15 Lunch

1:15-1:45 EVALUATION OF THE MARINE MAMMAL COMMISSION

1:45-2:45 MANAGEMENT TOOLS FOR MARINE MAMMAL CONSERVATION

2:45-3:00 Break

3:00-4:00 DISCUSSION OF RECOMMENDATIONS

4:00-4:15 CLOSING REMARKS

4:15 PM ADJOURN THE MEETING

4:30-6:00 Executive Session (Commissioners, Committee of Scientific Advisors, staff)

RECEIVED
U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

2005 DEC 12 PM 6:00

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

HANCOCK
MAYER-VENTURA
LLP

THE HUMANE SOCIETY OF THE
UNITED STATES,
2100 L Street, N.W.
Washington, DC 20039

WILL ANDERSON
2122 8th Avenue North, #201
Seattle, WA 98109

and

SHARON YOUNG
22 Washburn Street
Sagamore Beach, MA 02562

Plaintiffs,

v.

DEPARTMENT OF COMMERCE,
14th & Constitution Avenue, N.W.
Washington, DC 20230

Carlos M. Gutierrez,
Secretary of the United
States Department of Commerce
14th & Constitution Avenue, N.W.
Washington, DC 20230

Conrad C. Lautenbacher, Jr.,
Administrator, National Oceanic
and Atmospheric Administration
14th & Constitution Avenue, N.W.
Washington, DC 20230

William T. Hogarth,
Assistant Administrator, National
Marine Fisheries Service
1315 East-West Highway

Civil Action No. _____

COMPLAINT

Silver Spring, MD 20910)

and

NATIONAL MARINE FISHERIES
SERVICE,
1315 East-West Highway
Silver Spring, MD 20910

Defendants.

1. Plaintiffs, The Humane Society of the United States (“HSUS”), Mr. Will Anderson, and Ms. Sharon Young, bring this action to challenge the issuance by the Secretary of Commerce (“Secretary”), via the National Marine Fisheries Service (“NMFS”), of multiple scientific research permits authorizing intrusive research activities involving, and the associated killing of, endangered and threatened Steller sea lions. The government has approved research activities that will result in Steller sea lion mortality that exceeds the very threshold established by Congress in determining whether a given impact to an endangered or threatened marine mammal species could have irreversible effects (namely, the Potential Biological Removal Level or “PBR Level”). In other words, the Secretary has approved activities that, by definition, could have a significant, irreversible impact on the ability of this protected species to survive.

2. The government has also approved these questionable research activities without the required environmental review. By law, when a federal agency undertakes actions that could result in a significant impact to the environment (here, the Steller sea lion species), it must prepare an Environmental Impact Statement (“EIS”) evaluating the impacts of its

proposed action. In this case, the government has conceded that it, too, is concerned by the research activities on the Steller sea lions and has expressed its plan to prepare an EIS that will evaluate the impacts to the species resulting from research and other activities that threaten the sea lions' existence. The government's expression of concern, however, is too little, too late. An EIS was mandated by law in connection with the proposed action *before NMFS took final action, not after the action when the impacts giving rise to the EIS will have already occurred.*

3. The government has no legal basis for taking a "kill first, study later" approach, particularly where, as here, the species suffering the impact is protected by law precisely because any further decline in its number could result in its extinction. In short, the Secretary has violated the law by issuing multiple research permits to a wide variety of entities that allow intrusive, duplicative, uncoordinated, and unnecessary research on Steller sea lions – marine mammals protected by the Marine Mammal Protection Act and the Endangered Species Act because of their rapidly declining populations. By (i) issuing scientific research permits allowing so many incidental mortalities that the research actually threatens the survival of this species, (ii) failing to conduct an adequate cumulative effects analysis of the effects of its proposed action, (iii) ignoring the cumulative effects of the authorized research activities in the Final Environmental Assessment ("EA"), (iv) failing to adequately evaluate alternative actions; (v) issuing a legally indefensible Biological Opinion ("BO"), (vi) failing to prepare an EIS before issuing the permits, and (vii) refusing to suspend the effectiveness of the research permits prior to the completion and issuance of an EIS, the Secretary has violated the National

Protection Act (“MMPA”), 16 U.S.C. § 1374, et seq., and the Administrative Procedure Act (“APA”), 5 U.S.C. § 706, et seq.

Jurisdiction and Venue

4. The Court has jurisdiction to hear this matter pursuant to 29 U.S.C. § 1331 relating to its original jurisdiction to hear civil actions arising under the Constitution, laws or treaties of the United States.

5. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(e) and 16 U.S.C. § 1374(d)(6).

Parties

6. Plaintiff, The Humane Society of the United States (“HSUS”), is a non-profit organization headquartered in Washington, D.C. The HSUS is the largest animal protection organization in the United States, with over nine million members and constituents, 178,647 of whom reside in the State of Washington and 14,813 of whom reside in the State of Alaska. The HSUS is committed to the goals of protecting, conserving, and enhancing the nation’s wildlife and wildlands, and fostering the humane treatment of all animals. In furtherance of its goals and objectives, HSUS and its members have demonstrated a strong interest in the preservation, enhancement, and humane treatment of marine mammals.

7. In recent years, HSUS has invested considerable organizational resources in the protection of Steller sea lions. In addition to participating in numerous comment periods concerning the issuance of scientific research permits, HSUS has also regularly submitted

North Pacific Fishery Management Cou

AGENDA B-6(g)
DECEMBER 2005

Stephanie Madsen, Chair
Chris Oliver, Executive Director



605 W. 4th Avenue, Suite 306
Anchorage, AK 99501-2252

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Visit our website: <http://www.fakr.noaa.gov/npfmc>

November 9, 2005

William Hogarth, Ph.D.
Assistant Administrator for Fisheries
NOAA Fisheries
1315 East West Highway
Silver Spring, Maryland 20910

Dear Bill:

I am writing to underscore a critical problem raised in the recent letter from the North Pacific Research Board (NPRB) – that is the inability to process and approve marine mammal research permits in a timely fashion. We are particularly concerned that yet another NEPA-based litigation exercise is once again thwarting our best efforts at responsible resource management, and question the agency's decision to respond to this litigation threat by allowing important research to be delayed indefinitely while undertaking another, perhaps unnecessary and ill-advised, NEPA compliance exercise. The remainder of this letter simply echoes the arguments from the November 4 NPRB letter, but I wanted the North Pacific Fishery Management Council to be on record in full support of those arguments.

NOAA is uniquely responsible, on the one hand, for developing biological opinions and reasonable and prudent alternatives under the ESA, and on the other, for promulgating restrictive fisheries regulations under the MSFCMA. Decisions under both acts must be balanced and informed by current, scientific information on the status, migration, behavior, and feeding patterns of marine mammals, particularly as they may be impacted by fisheries. Examples of current, simmering marine mammal issues off Alaska include designation of critical habitat for Northern right whales, recovery of Steller sea lions, and potential fisheries impacts on northern fur seals.

The lack of information on those and other species of marine mammals likely may lead to excessively precautionary management and the attendant burden of overly restrictive regulations on the fisheries. It doesn't have to be that way. Let's not be forced down the same painful path that we all traveled to protect Steller sea lions when every scrap of information was challenged. We need robust marine mammal research and scientific information in advance, not at the time of crisis.

Our Alaska fisheries have been lauded by the U.S. Commission on Ocean Policy as well managed and sustainable. To continue these practices, especially as we move toward fishery ecosystems plans, more and better scientific information will be required. We must maintain the flow of such information if we are to be successful. We must be able to field large research programs now to provide information 3-5 years hence that will underpin resource management off Alaska.

We believe that a major impediment to achieving that understanding is developing in the Office of Protected Resources. We have always found the OPR staff to be highly professional and dedicated. However, despite their dedication, hard work and good intentions, we believe the office is woefully understaffed to timely process permits and unnecessarily conservative regarding the implementation of

NEPA and ESA requirements. For example, we now are being informed that new permits for marine mammal research for several ESA listed species may be held in abeyance for two years or longer while a comprehensive EIS is being developed. This one-two punch has the potential to bring field research up here to a screeching halt.

This situation already is directly impeding marine mammal research supported by the North Pacific Research Board. Several projects cannot get started for lack of permits, or worse yet, may be delayed indefinitely while NEPA analyses are completed. Our legislative mandate requires us to provide information to address pressing fishery management issues or marine ecosystem information needs. And yet we are being placed in the awkward position of not being able to do the research needed to address either priority. This lack of permits also is impacting the ability of federal and state agencies, universities, and other research centers to do their research.

We urge you to take the actions necessary to (1) alleviate the situation within OPR that is delaying marine mammal research permits and (2) provide for ongoing and new field research programs while environmental analyses are being prepared under NEPA, if indeed you conclude that such analyses are necessary. We simply cannot hold critical marine mammal research in abeyance. Environmental analyses, biological opinions, and fisheries regulations all must be informed by the best available information on marine mammals and their interactions with fisheries. Management decisions under the ESA must be appropriately precautionary. Therefore, reducing uncertainty through research is a very important element in balancing the management of living marine resources in Alaska with the needs of coastal communities dependent on these resources. Resolving this issue is critical to the fishing industry, other marine industries, subsistence users, and everyone who is trying to manage for sustainable and healthy ecosystems off Alaska.

Thank you for your serious consideration of these comments.

Sincerely,



Stephanie D. Madsen
Chair

and associated regulatory analyses, including economic and environmental analyses.

Once the study is completed, we will publish a notice in the *Federal Register* advising that the study's results are available and requesting public comment.

To view documents mentioned in this preamble as well as other documents being available in the docket, go to <http://dms.dot.gov> at any time, click on "Simple Search," enter the last five digits of the docket number for this notice, and click on "Search."

Dated: October 14, 2005.

Howard L. Hime,
Acting Director of Standards, Marine Safety, Security and Environmental Protection.
[FR Doc. 05-21560 Filed 10-26-05; 8:45 pm]
BILLING CODE 4910-15-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-4971-N-55]

Notice of Submission of Proposed Information Collection to OMB; Inspector Candidate Assessment Questionnaire

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This is a request for approval for a new questionnaire to aid HUD in determining the qualifications of prospective applicants to conduct Uniform Physical Condition Standards inspections.

DATES: Comments Due Date: November 28, 2005.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2577-Pending) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-6974.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, AYO, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; or Lillian Deitzer at Lillian_L_Deitzer@HUD.gov or telephone (202) 708-2374. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins or Ms Deitzer.
SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information

collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Inspector Candidate Assessment Questionnaire.

OMB Approval Number: 2577-Pending.

Form Numbers: None.

Description of the Need for the Information and its Proposed Use:

This questionnaire aids HUD in determining the qualifications of prospective applicants to conduct Uniform Physical Condition Standards inspections.

Frequency Of Submission: On occasion.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	700	1		1		700

Total Estimated Burden Hours: 700.
Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: October 20, 2005.

Wayne Eddins,
Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.
[FR Doc. E5-5958 Filed 10-26-05; 8:45 am]
BILLING CODE 4210-72-P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Draft Recovery Plan for the Short-Tailed Albatross (*Phoebastria albatrus*)

AGENCY: U. S. Fish and Wildlife Service, Interior.

ACTION: Notice of document availability for review and comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the availability of the Draft Recovery Plan for the Short-tailed Albatross (*Phoebastria albatrus*) for public review and comment.

DATES: Comments on the draft recovery plan must be received on or before December 27, 2005.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by

appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Anchorage Fish and Wildlife Field Office, 605 W. 4th Avenue, Anchorage, AK 99501 (telephone: 907-271-2888). Requests for copies of the draft recovery plan should be addressed to the Field Supervisor, at the above Service address. An electronic copy of the draft recovery plan is also available at <http://endangered.fws.gov/recovery/index.html#plans>.

If you wish to comment, you may submit your comments and materials by any one of the following methods:

1. You may submit written comments and information by mail to: Short-tailed Albatross Draft Recovery Plan Comments, U.S. Fish and Wildlife Service, 605 W. 4th Avenue, Anchorage, AK 99501.

2. You may hand-deliver written comments and information to our Anchorage Fish and Wildlife Field Office, 605 W. 4th Avenue, Room G-62.

3. You may fax your comments to 907-271-2786.

4. You may send your comments by electronic mail (e-mail) to STARP_Comments@fws.gov. Please include "Attn: Short-tailed Albatross" in the beginning of your message, and do not use special characters or any form of encryption. Electronic attachments in standard formats (such as .pdf or .doc) are acceptable, but please name the software necessary to open any attachments in formats other than those given above. Also, please include your name and return address in your e-mail message (anonymous comments will not be considered). If you do not receive a confirmation from the system that we have received your e-mail message, please submit your comments in writing using one of the alternate methods described above. In the event that our internet connection is not functional, please submit your comments by the alternate methods mentioned above.

All comments and materials received will be available for public inspection, by appointment, during normal business hours at our Anchorage Fish and Wildlife Field Office at the above address.

FOR FURTHER INFORMATION CONTACT: Judy Jacobs, U. S. Fish and Wildlife Biologist, at the above Service address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of our endangered species program. Recovery planning is an integral component of endangered species conservation. Recovery plans describe actions considered necessary for the conservation and recovery of the species, establish criteria for downlisting or delisting them, and estimate time and costs for implementing the recovery measures needed.

Section 4(f) of the Endangered Species Act, (16 U.S.C. 1531 *et seq.*) requires that public notice, and an opportunity for public review and comment, be provided during recovery plan development. We will consider all information received during the public comment period on each new or revised recovery plan. Substantive technical comments may result in changes to a recovery plan. Substantive comments

regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to the appropriate Federal agency or other entities so that they can take these comments into account during the course of implementing recovery actions. Individual responses to comments will not be provided.

The short-tailed albatross, the largest of the three North Pacific albatross species, is federally listed as endangered. Prior to its exploitation, the short-tailed albatross was likely the most abundant of the three albatross species in the North Pacific. Millions of these birds were harvested by feather hunters prior to and following the turn of the 20th century, resulting in the near-extirpation of the species by the mid-20th century. Presently, fewer than 2000 short-tailed albatrosses are known to exist.

The short-tailed albatross is known to breed on two remote islands in the western Pacific. Torishima, Japan, where the majority of short-tailed albatrosses breed, is an active volcano. The natural colony site on this island is also susceptible to mud slides and erosion. A smaller colony exists in the Senkaku Islands, southwest of Torishima, where volcanic eruption is not a threat; however, political uncertainty and the potential for habitat alteration exist. Short-tailed albatrosses apparently require remote islands for breeding habitat. They nest in open, treeless areas with low, or no, vegetation. The species also requires nutrient-rich areas of ocean upwelling for their foraging habitat.

The major threat of over-exploitation that led to the species' original endangered status no longer occurs. The Short-tailed Albatross Recovery Team considers small population size, limited number of breeding sites, and potential volcanic eruptions to be the current major threats to the species. Other threats include incidental catch in commercial fisheries, ingestion of plastics, contamination by oil and other pollutants, the potential for competition, predation, or habitat alteration associated with non-native species, and adverse effects related to global climate change.

The international group of experts comprising the Short-tailed Albatross Recovery Team has unanimously agreed that establishment of additional colonies on safe (*i.e.* not subject to volcanic activity and protected) sites will be a recovery prerequisite. Downlisting to threatened may be considered when: (1) The total breeding population of short-tailed albatrosses reaches a minimum of 750 pairs; and (2)

the 3-year running average growth rate of the population as a whole is ≥ 6 percent for ≥ 7 years; and (3) at least three successful breeding colonies (> 5 breeding pairs each) exist, at least two of which occupy non-volcanic (or extinct volcanic) islands.

Delisting of the short-tailed albatross may be considered when: (1) The total breeding population reaches a minimum of 1000 pairs; and (2) the 3-year running average growth rate of the population as a whole is ≥ 6 percent for ≥ 7 years; and (3) a total of at least 250 breeding pairs exist on at least 2 non-volcanic islands; and (4) a minimum of 10 percent of these (*i.e.* ≥ 25 pairs) occur on a site or sites other than the Senkaku Islands. In addition, a post-delisting monitoring plan and agreement to continue post-delisting monitoring must be in place and ready for implementation at the time of delisting. Monitoring populations following delisting will verify the ongoing recovery and conservation of the species and provide a means of assessing the continuing effectiveness of management actions.

Public Comments Solicited

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. If you wish us to withhold your name or address, you must state this request prominently at the beginning of your comments. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: October 19, 2005.

Rowan Gould,

Regional Director, Region 7, U.S. Fish and Wildlife Service.

[FR Doc. 05-21430 Filed 10-26-05; 8:45 am]

BILLING CODE 4310-55-P



United States Department of Commerce
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Alaska Fisheries Science Center
National Marine Mammal Laboratory
7600 Sand Point Way NE
Seattle WA 98115
206-526-4246 FAX: 206-526-6615
20 October 2005 F/AKC3:lwf

Memorandum For: The Record
From: Lowell Fritz and Tom Gelatt, NMML
Charles Stinchcomb and Wayne Perryman, SWFSC
Subject: Steller Sea Lion Pup Counts, June-July 2005

An aerial survey to assess Steller sea lion pup production in Alaska (from Dixon Entrance at 133°W to Attu Island at 172°E) was conducted by NMFS from 21 June to 10 July 2005. This was the first, Alaska-wide survey conducted using medium format, vertical photogrammetric techniques to assess Steller sea lion pup production. As in previous years, pups were also counted directly during visits to selected rookeries from the eastern Aleutian Islands (169°W) to Prince William Sound (147°W) during a pup branding and assessment cruise conducted by NMFS from 20 June to 7 July 2005 aboard the US Fish and Wildlife Service RV *Tiglox*. For counting pups, rookery visits have two disadvantages compared to aerial surveys: (1) only a subset of rookeries can be visited each year, precluding an Alaska-wide count; and (2) most adult Steller sea lions are cleared from the rookery beach into the water. The aerial survey conducted in 2005 provided the first Alaska-wide Steller sea lion pup count and with less disturbance on rookeries.

From photographs taken during the 2005 aerial survey, a total of 14,768 Steller sea lion pups were counted on 63 rookery and haulout sites; 5,510 on 9 sites in SE Alaska at the northern end of the range of the eastern stock, and 9,258 on 54 sites in the Alaskan range of the western stock (east of Prince William Sound at 144°W to Attu Island; Table 1; Figures 1 and 2). Two rookeries within the range of the western stock in Alaska on Akun Island (at Billings Head) and on Yunaska Island were not photographed in 2005 because of weather and terrain constraints. However, these rookeries were visited and pups were counted on the 2004 RV *Tiglox* pup cruise.

A total of 3,555 Steller sea lion pups were counted from the beach (or skiff) at 19 sites during the 2005 RV *Tiglox* cruise (Table 1). Sixteen of these 19 sites were also photographed during the aerial survey.

Time series of pup counts at rookeries in 6 regions have been used to determine trends in pup production in the western stock in Alaska (Figure 1). Thirty-one trend rookeries were chosen because of their size (trend rookeries had 89% of the total number pups counted at all western sites in 2005) as well as the consistency of data collection over time. Because not all trend rookeries have been surveyed in a single year prior to 2005, counts were aggregated for multiple years by region (Table 2). In cases where

multiple counts were available from a trend rookery in a single year (medium format photograph and a beach count), the maximum pup count at the site was used. For trend rookery sites missed in 2005 (Billings Head on Akun Island, and Yunaska Island), 2004 counts were used. Thus, a single 2004 count at Akun Island (85 pups) was used in both the 2003/2004 and 2005 eastern Aleutian Islands totals.

Steller sea lion pup production at western stock trend rookeries in the Kenai to Kiska area (Figure 1) declined 40% in the 1990s (Table 2; Figure 3). However, from 2001 to 2005, there were small increases in pup numbers of 4% (+265 pups) at trend rookeries in the Kenai to Kiska area and 3% (+239 pups) across the range of the western stock in Alaska. These recent trends in pup counts, while encouraging, are less than those observed in non-pup counts from 2000 to 2004, which increased between 10% and 18% depending on the group of sites chosen (Fritz and Stinchcomb 2005). More research is necessary to determine if this due to declines in fecundity (Holmes and York 2003) or changes in the age structure of the Steller sea lion population (e.g., greater proportion of juveniles).

There were strong spatial differences in the recent trends in pup counts, suggesting that the magnitude or number of factors affecting the western stock of Steller sea lions also varied regionally (Figure 3). Large increases of over 20% were observed in the eastern Gulf of Alaska (+129 pups) and eastern Aleutian Islands (+360 pups), while a smaller increase of only 2% (+36 pups) was seen in the western Gulf of Alaska. The largest decline in pup counts (30% or -145 pups) occurred in the western Aleutian Islands, while smaller declines were observed in the central Gulf of Alaska (4% or -70 pups) and central Aleutian Islands (2% or -61 pups). The time series of regional aggregate pup counts (Figure 3) suggests that annual pup production has been stable since 2001 in 4 of the 6 regions: each of the three Gulf of Alaska regions and the central Aleutian Islands. In the remaining two regions, pup counts have been increasing since 1998 in the eastern Aleutian Islands, but were the smallest on record at the four rookeries in the western Aleutian Islands.

Counts of Steller sea lion pups on Walrus Island (near St Paul Island in the Pribilof Islands) in 2005 were also the smallest on record. Several hundred pups were born each year on Walrus Island in the late 1980s (Table 2), but even these levels represented a nearly 90% decline from 1960, when 2,866 pups were born. By the early 1990's, annual pup production dropped under 100 at Walrus Island, and this decline has continued through 2005, when fewer than 30 were counted.

The SE Alaska sites were surveyed from the air most recently in 2002, when a total of 4,866 pups were counted. The 2005 total of 5,510 represents an increase of 13% in 3 years at the 9 locations surveyed (Table 1). The largest Steller sea lion rookery in the world is located in SE Alaska at the Forrester complex, where a total of 3,429 pups were counted on 5 sites, which is over 20% of all pups counted from Dixon Entrance to Attu Island in Alaska in 2005. The largest single site was Lowrie Island within the Forrester complex, where an estimated 1,508 pups were born (10% of the Alaskan total).

Literature Cited

Fritz, L. W., and C. Stinchcomb. 2005. Aerial, ship, and land-based surveys of Steller sea lions (*Eumetopias jubatus*) in the western stock in Alaska, June and July 2003 and 2004. U.S. Dep. Commer., NOAA Tech. Memo. NMFS-AFSC-153, 56 p.

Holmes, E. E., and A. E. York. 2003. Using age structure to detect impacts on threatened populations: a case study with Steller sea lions. *Conservation Biology* 17: 1794-1806.

Table 1. Number of Steller sea lion pups counted on terrestrial sites in Alaska in June-July 2005. Counts from medium-format photographs taken during an aerial survey and from direct observation on the beach or from a skiff are shown, along with the maximum count at each site. Sites are arranged by genetic stock (eastern and western) and categorized by region (SEAK=southeast Alaska; EGOA, CGOA, WGOA=eastern, central and western Gulf of Alaska; EAI, CAI, WAI=eastern, central and western Aleutian Islands; BERING=eastern Bering Sea) and type (R=rookery; H=haulout). Site names in bold font are rookeries used for trend analysis.

Site Name	Region	Type	Aerial Survey			Beach or Skiff			Comment	Maximum # of Pups
			Month	Day	Pups	Month	Day	Pups		
Eastern Stock										
WHITE SISTERS	SE AK	R	7	10	520					520
BIALI ROCK	SE AK	R	7	10	100					100
HAZY	SE AK	R	7	10	1,286					1,286
FORRESTER/SEA LION RK	SE AK	R	7	10	533					533
FORRESTER/EAST RK	SE AK	R	7	10	134					134
FORRESTER/NORTH	SE AK	R	7	10	951					951
FORRESTER/C HORN RK	SE AK	R	7	10	303					303
FORRESTER/LOWRIE	SE AK	R	7	10	1,508					1,508
GRAVES ROCK	SE AK	R	7	10	175					175
Western Stock										
SEAL ROCKS	EGOA	R	6	21	508	7	2	556		556
WOODED (FISH)	EGOA	R	6	21	96	7	3	159		159
CHISWELL ISLANDS	EGOA	H	6	21	44					44
OUTER (PYE)	CGOA	R	6	21	104					104
SUGARLOAF	CGOA	R	6	21	559					559
USHAGAT	CGOA	H	6	21	55					55
SEA OTTER	CGOA	H				6	30	1		1
LATAK ROCKS	CGOA	H				6	30	1	skiff	1
MARMOT	CGOA	R	6	23	433					433
TWOHEADED	CGOA	H	6	23	16	6	29	1	skiff	16

Table 1 (continued).		Aerial Survey				Beach or Skiff			Maximum	
Site Name	Region	Type	Month	Day	Pups	Month	Day	Pups	Comment	# of Pups
CHOWIET	CGOA	R	6	23	432	6	28	309		432
CHIRIKOF	CGOA	R	6	23	123					123
NAGAI ROCKS	CGOA	H	6	23	31					31
LIGHTHOUSE ROCKS	WGOA	H	6	23	11	6	28	5	skiff	11
ATKINS	WGOA	R	6	23	328	6	27	75	skiff	328
CHERNABURA	WGOA	R	7	9	153	6	27	115	skiff	153
THE WHALEBACK	WGOA	H	6	23	24	6	27	23	skiff	24
JUDE	WGOA	H	6	23	168	6	26	206		206
SUSHILNOI ROCKS	WGOA	H	6	25	12					12
PINNACLE ROCK	WGOA	R	6	25	643					643
CLUBBING ROCKS	WGOA	R	6	25	528	6	25	583		583
SOUTH ROCKS	WGOA	H	7	9	44					44
SEA LION ROCK (AMAK)	EAI	R	6	23	158					158
UGAMAK/NORTH	EAI	R	6	25	404	6	23	426		426
UGAMAK/UGAMAK BAY	EAI	R	6	25	239	6	24	298		298
UGAMAK/ROUND	EAI	R	6	25	44	6	24	45		45
AKUTAN/CAPE MORGAN	EAI	R	6	25	485	6	22	657		657
AKUN/BILLINGS HEAD*	EAI	R						85	in 2004	85
UNALASKA/CAPE IZIGAN	EAI	H	7	9	21					21
BOGOSLOF	EAI	R	6	23	225					225
OGCHUL	EAI	R	7	9	78	6	21	65		78
ROOTOK/NORTH	EAI	H				6	22	1		1
ADUGAK	EAI	R	7	9	185					185
YUNASKA*	CAI	R						145	in 2004	145
SEGUAM/SADDLERIDGE	CAI	R	6	28	530					530
AGLIGADAK	CAI	R	7	9	0					0
SEGUAM/TURF POINT	CAI	H	7	9	7					7
AMLIA/SVIECH. HARBOR	CAI	H	7	9	28					28

Table 1 (continued).		Aerial Survey				Beach or Skiff			Maximum	
Site Name	Region	Type	Month	Day	Pups	Month	Day	Pups	Comment	# of Pups
KASATOCHI	CAI	R	6	28	372					372
ADAK/LAKE POINT	CAI	R	7	8	311					311
ADAK/CAPE YAKAK	CAI	H	7	8	0					0
KANAGA/SHIP ROCK	CAI	H	7	6	221					221
GRAMP ROCK	CAI	R	7	6	387					387
TAG	CAI	R	7	6	144					144
ULAK/HASGOX POINT	CAI	R	7	8	338					338
SEMISOPOCHNOI/POCHNOI	CAI	R	7	8	16					16
AMCHITKA/EAST CAPE	CAI	R	7	8	24					24
AMCHITKA/COLUMN										
ROCK	CAI	R	7	5	44					44
AYUGADAK	CAI	R	7	5	83					83
KISKA/CAPE ST STEPHEN	CAI	R	7	5	82					82
KISKA/LIEF COVE	CAI	R	7	5	115					115
BULDIR	WAI	R	7	8	26					26
AL Aid	WAI	H	7	2	27					27
AGATTU/CAPE SABAK	WAI	R	7	2	113					113
AGATTU/GILLON POINT	WAI	R	7	2	157					157
ATTU/CAPE WRANGELL	WAI	R	7	8	47					47
AIKTAK	WAI	H	6	25	8					8
WALRUS	BERING	R	6	27	27	7	26	29		29
ST. PAUL/SEA LION ROCK	BERING	H	6	27	0					0

Table 2. Counts of Steller sea lion pups at selected rookeries (bold in Table 1) in seven sub-areas of the western stock in Alaska from 1985-89 to 2005. The maximum count during each period at the selected rookeries (n) was used. Blank cells indicate incomplete counts in the period and sub-area. Percentage change in counts between periods is also shown. Data prior to 2005 were from Fritz and Stinchcomb (2005). EBS=Eastern Bering Sea.

Period	Gulf of Alaska			Aleutian Islands			Kenai to Kiska	EBS Walrus Island	Western Stock in Alaska
	Eastern n = 2	Central n = 5	Western n = 4	Eastern n = 5	Central n = 11*	Western n = 4			
1985-1989		10,254		4,778	9,428			250	
1990-1992		4,904	1,923	2,115	3,568		12,510	63	
1994	903	2,831	1,662	1,756	3,109		9,358	61	
1997	611					979		35	
1998	689	1,876	1,493	1,474	2,834	803	7,677		9,169
2001-2002	586	1,721	1,671	1,561	2,612	488	7,565	39	8,678
2003-2004	716	1,609	1,577	1,731					
2005	715	1,651	1,707	1,921	2,551	343	7,830	29	8,917
Percent Change									
1985-89 to 2001-2002		-83%		-67%	-72%			-84%	
1990-92 to 2001-2002		-65%	-13%	-26%	-27%		-40%	-38%	
2001-2002 to 2005	22%	-4%	2%	23%	-2%	-30%	4%	-25%	3%

* 1985-89 CAI count does not include Amchitka/Column Rocks (n = 10).

Figure 1. Steller sea lion survey regions from Dixon Entrance to Attu Island and the location of the principal rookeries in Alaska. Kiska Island, the Kenai Peninsula, the Eastern Bering Sea in the eastern Bering Sea are also noted, along with the boundary between the breeding ranges of the eastern and western sea lion stocks.

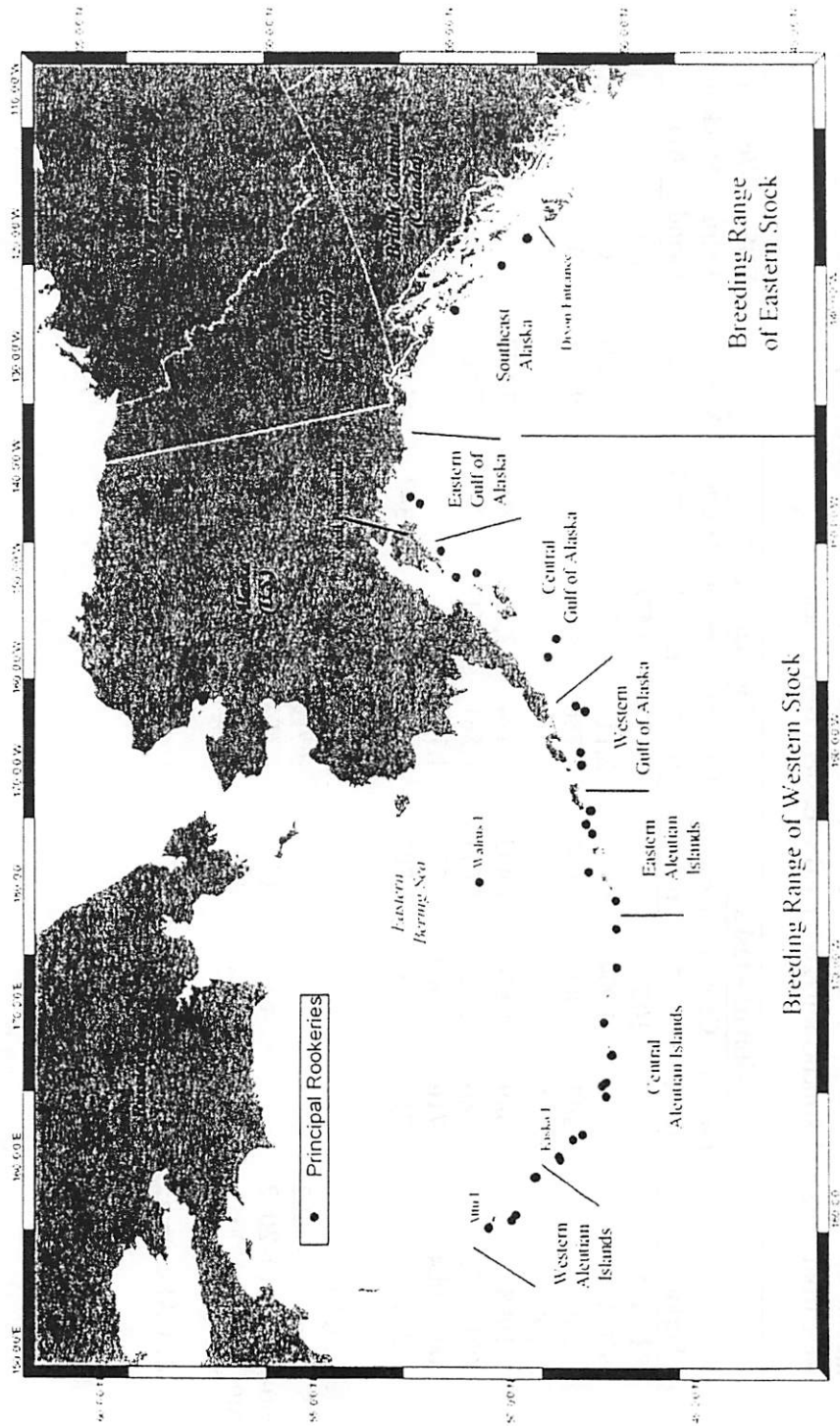
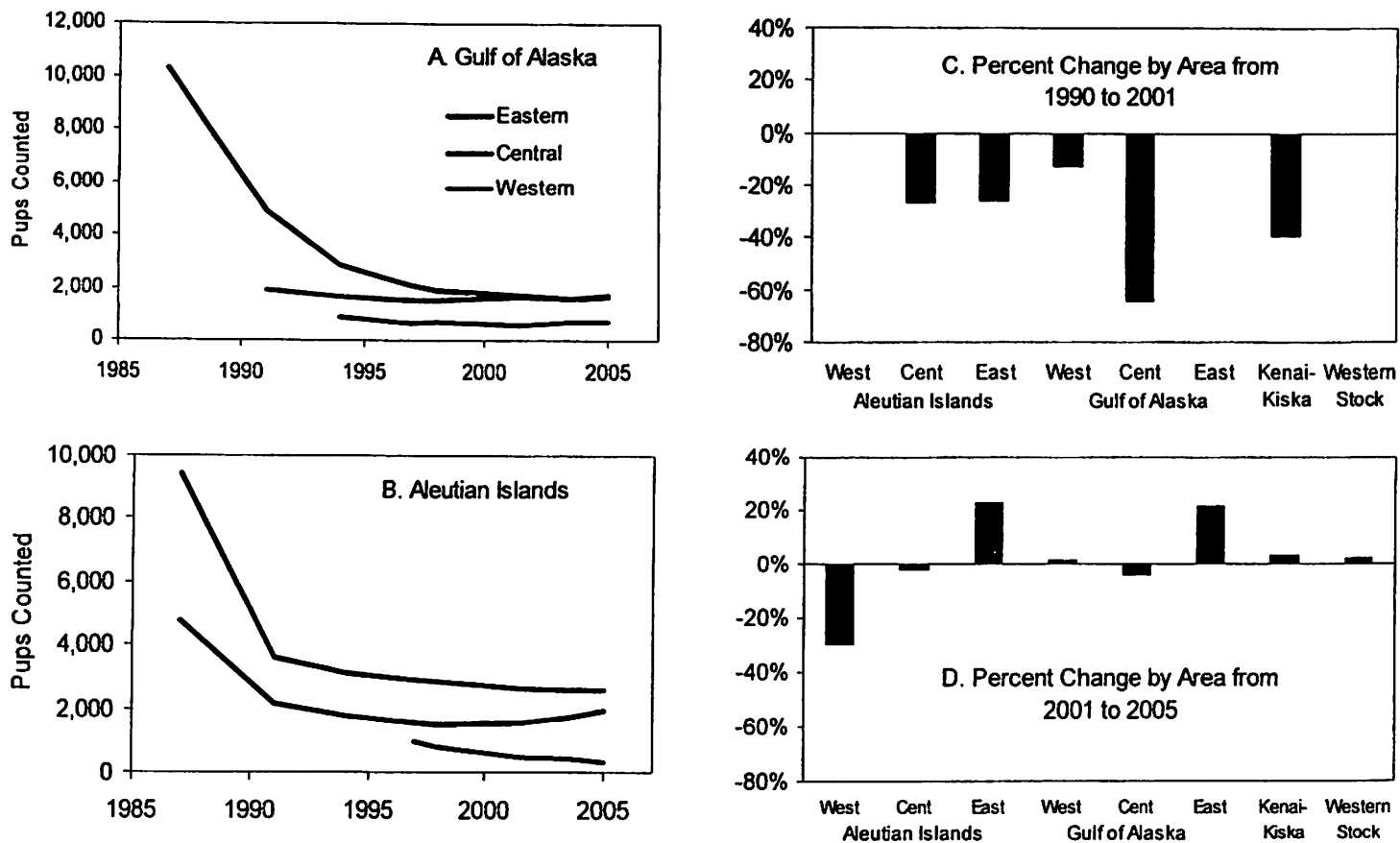


Figure 2. Detail of a medium-format aerial photograph of the Steller sea lion rookery on Atkins Island taken on 23 June 2005. Examples of four size-age classes of sea lions are circled: pups (blue), juvenile (yellow), adult females (purple), and adult males (bulls; red).



Figure 3. Steller sea lion pup counts at trend rookeries in the range of the western stock in Alaska by region from the late 1980s to 2005 in the Gulf of Alaska (A) and Aleutian Islands (B). Percent change in counts between 1990/92 and 2001/02 (C) and 2001/02 and 2005 (D) are also shown (data from Table 2).





UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE

AGENDA B-6(j)
DECEMBER 2005

Alaska Fisheries Science Center
National Marine Mammal Laboratory
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Seattle, Washington 98115-6349

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FAX: (206)526-6615

August 8, 2005

F/AKC4:CWF

MEMORANDUM FOR: John Bengtson

FROM: Chuck Fowler/Lowell Fritz/Rod Towell

SUBJECT: Report of Field Work - Pribilof Islands, July, 2005

Adult male northern fur seals on Bogoslof, St. Paul, and St. George Islands were counted over the period July 9 to 22, 2005. Counts for St. Paul and St. George are summarized in the attached tables (Tables 1 - 5). Counts of territorial males with females ("harem" males) on St. George increased 19% compared to 2004. Idle males on St. George declined in comparison to last year (30%). All categories of adult males on St. Paul increased (Figure 1). Overall, the total number of adult males on the Pribilof Islands was 10,865, an increase of 3.6% from 2004. The observed increases are not to be interpreted as a reversal of recent population declines, however, as they may simply represent interannual variation in the number of adult males ashore during counts.

On Bogoslof Island, 1,123 adult male northern fur seals counted on July 22 (168 territorial without females, 415 territorial with females and 540 non-territorial). The total for Bogoslof is nearly as large as the total for St. George Island and the number of territorial males with females is almost half that of St. George. The number of territorial males with females on Bogoslof is approximately the same as that for Reef rookery on St. Paul.

Little Polovina rookery on St. Paul, still the smallest rookery on the Pribilof Islands, gained one territorial male with females for a total of three in 2005.

A sample of adult females was counted during the counting of adult males on St. Paul in 2005 to determine the rate of entanglement, following established protocol. This year the results produced an estimated entanglement rate of 0.02% (Table 6).

Steller sea lions were noted ashore at only one location on St. Paul and two locations on St. George in 2005. Twenty four were seen on the tip of North East Point between Morjovi and Vostochni fur seal rookeries on St. Paul, while one was seen on both East Cliffs and South rookeries on St. George.



Photographs were taken at various spots on St. Paul Island for comparison with similar photos taken in 1948. These will be used to produce a PowerPoint presentation to show the visual impact of the decline in fur seal numbers in the last half century.

Several catwalk and tripod repair projects are necessary on the various rookeries of St. Paul for 2006. Where feasible, double plank catwalks with railings are preferred. Specific needs include (in rough order of importance):

1. The break in the catwalk (section removed in erecting a new ladder prior to the 2004 season) at the north end of section 5 on Zapadni needs to be repaired so that the catwalk is continuous and accessible with a ladder at the end. The catwalk needs to be about 4 sections long and a railing would be very desirable.
2. An inland extension of catwalk (~12 ft) with a ladder is needed at the north end of section 5 on Reef rookery (north of the mud pond). The footings of an old inland catwalk are visible where the new extension is needed and mark the end of section 5 (near a ladder on the seaward side of the catwalk - a ladder too close to territorial males to be safe).
3. The tripod at the north end of section 8 on Reef needs to be rebuilt and anchored in place.
4. A crossbar is needed to support one section of catwalk in section 6 of Vostochni.
5. There are weak spots in the catwalk in section 7 on Vostochni. Terry Spraker reported that he nearly broke through a section of catwalk in section 7.
6. A ladder is needed for access to the catwalk at the east end of section 2 on Reef. This should be placed several sections inland on the inland portion of catwalk at tripod #2 (east end of section #2). This catwalk itself needs repair. The catwalk west of tripod #2 also needs to be tested and reinforced where needed.
7. Rungs at the top of the ladder at the north end of section 9 (Reef) need to be added or made more secure.
8. A new tripod is needed at the north end of section 5 on Tolstoi.
9. Rungs at the top of the ladder for access to the catwalk at the north end of section 2 on Morjovi need to be made more secure.
10. The ladder on tripod #4 (at the north end of section 4) on Morjovi needs to be replaced (or, at the minimum, have rungs reinforced).
11. The tripod at the north end of section 3 on Zapadni needs a new ladder (consider replacing the entire tripod).
12. A railing on the catwalk at the north end of section 6 on Zapadni would be very useful.

As in all years, if any of the existing structures are damaged by the weather over winter, such damage would need to be repaired. It would be advisable to inspect all catwalks and tripods and any weakness found should be repaired.

The field crew for the work during the counts conducted and reported above (in addition to Fowler, Fritz and Towell) consisted of the following individuals as they accompanied us on various occasions.

John Bengtson	John Melovidov	Mike Williams
Rebecca Bengtson	Haretina Porath	Sadie Wright
Justine Kibbe	Rolf Ream	Samantha Zacharof
Aquilina D. Lestenkof	Peter Gabe Tetoff	Sophia Zacharof
Pamela Lestenkof	Jim Thomason	Phillip A. Zavadil
Max Malavansky, Jr.		

cc: Angliss, R	Merculief, B.	Sundseth, K.
Brix, K.	Merculief, A.	Swetzof, S.
Fadely, B.	Merculief, J.R.	Towell, R.
Fritz, L.	Philemonoff, R.	Williams, M.
Gelatt, T.	Ream, R.	Zacharof, R.
Lestenkof, A.	Sinclair, B.	Zavadil, P.
McGlashan, G.	Sowles, A.	

Table 1.--Number of adult male northern fur seals (seals that are seven years old or older) counted, by rookery, St. Paul Island, Alaska, July 2005. Classes of males are: 2-territorial males with no females, 3 - territorial males with females ("harem"), 5 - non-territorial males.

Rookery	Date (July)	Class of adult male			Total
		2	3	5	
Lukanin	9	55	105	165	325
Kitovi	9	91	157	226	474
Reef	11	182	441	464	1,087
Gorbatch	11/15	139	259	592	990
Ardiguen	11	18	54	3	75
Morjovi	12	109	296	425	830
Vostochni	12/15	200	724	550	1,474
Little Polovina	10	3	3	236	242
Polovina	10	31	73	174	278
Polovina Cliffs	10	129	307	130	566
Tolstoi	9	157	305	441	903
Zapadni Reef	14	52	167	179	398
Little Zapadni	14	101	241	269	611
Zapadni	13/14	199	383	491	1,073
Island total		1,466	3,515	4,345	9,326

Table 2.--Number of adult male northern fur seals counted, by rookery, St. George Island, Alaska, July 2005. See Table 1 for definition of classes of seals.

Rookery	Date (July)	Class of adult male			Total
		2	3	5	
Staraya	10	20	48	101	169
Zapadni	11/14	25	81	46	152
South	11	53	188	38	279
East Cliffs	12	68	188	59	315
East Reef	12	20	60	29	109
North	13	87	340	88	515
Island Total		273	905	361	1,539

Table 3.--Number of harem and idle male northern fur seals counted in mid-July, Pribilof Islands, Alaska, 1996-2005. "Harem" males are class 3 males and "Idle" males are class 2 and 5 combined (Tables 1 and 2).

Year	St. Paul Island		St. George Island		Total	
	Harem	Idle	Harem	Idle	Harem	Idle
1996	5,643	9,239	1,248	790	6,891	10,029
1997	5,064	8,560	910	1,503	5,974	10,063
1998	4,718	8,280	1,113	1,081	5,831	9,361
1999	3,801	7,589	1,052	916	4,819	8,505
1999	3,801	7,589	1,052	916	4,819	8,505
2000	3,646	6,998	869	1,295	4,515	8,293
2001	3,388	7,174	779	1,477	4,167	8,651
2002	3,669	7,877	899	1,235	4,568	9,112
2003	3,652	7,572	716	1,158	4,368	8,730
2004	3,286	5,027	760	905	4,046	5,932
2005	3,515	5,811	905	634	4,420	6,445

Table 4. – Number of adult male northern fur seals counted, by class^a and rookery section, St. Paul Island, Alaska, 9-15 July, 2005. A dash indicates no section.

Rookery and class of male	Section														Total
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	
Lukanin															
2	38	17	-	-	-	-	-	-	-	-	-	-	-	-	55
3	51	54	-	-	-	-	-	-	-	-	-	-	-	-	105
5	148	17	-	-	-	-	-	-	-	-	-	-	-	-	165
Kitovf															
2	8(6)	15	12	20	30	-	-	-	-	-	-	-	-	-	91
3	15(8)	27	37	43	27	-	-	-	-	-	-	-	-	-	157
5	(33)	10	8	8	167	-	-	-	-	-	-	-	-	-	226
Reef															
2	22	31	24	11	19	21	3	27	16	8	0	-	-	-	182
3	35	64	46	32	57	64	1	70	36	29	7	-	-	-	441
5	21	27	15	41	107	7	28	13	3	112	90	-	-	-	464
Gorbatch															
2	40	14	37	7	17	24	-	-	-	-	-	-	-	-	139
3	70	42	58	9	39	41	-	-	-	-	-	-	-	-	259
5	377	2	33	155	11	14	-	-	-	-	-	-	-	-	592
Ardiguin															
2	18	-	-	-	-	-	-	-	-	-	-	-	-	-	18
3	54	-	-	-	-	-	-	-	-	-	-	-	-	-	54
5	3	-	-	-	-	-	-	-	-	-	-	-	-	-	3
Morjovf															
2	8(9)	21	18	17	22	14	-	-	-	-	-	-	-	-	109
3	37(34)	55	47	26	58	39	-	-	-	-	-	-	-	-	296
5	295(13)	32	6	14	15	50	-	-	-	-	-	-	-	-	425
Vostochni															
2	12	6	10	8	14	21	13	14	8	5	11	22	35	21	200
3	35	21	28	62	41	77	40	39	25	27	24	50	163	92	724
5	31	8	8	25	85	31	8	4	30	10	6	41	97	166	550
Little Polovina															
2	3	-	-	-	-	-	-	-	-	-	-	-	-	-	3
3	3	-	-	-	-	-	-	-	-	-	-	-	-	-	3
5	236	-	-	-	-	-	-	-	-	-	-	-	-	-	236
Polovina															
2	21	10	-	-	-	-	-	-	-	-	-	-	-	-	31
3	43	30	-	-	-	-	-	-	-	-	-	-	-	-	73
5	146	28	-	-	-	-	-	-	-	-	-	-	-	-	174
Polovina Cliffs															
2	20	7	8	16	14	38	26	-	-	-	-	-	-	-	129
3	48	27	20	51	39	58	64	-	-	-	-	-	-	-	307
5	72	12	14	7	5	7	13	-	-	-	-	-	-	-	130
Tolstoi															
2	13	18	18	5	18	23	26	36	-	-	-	-	-	-	157
3	27	28	31	39	44	65	43	28	-	-	-	-	-	-	305
5	2	0	8	25	6	39	17	344	-	-	-	-	-	-	441
Zapadni Reef															
2	42	10	-	-	-	-	-	-	-	-	-	-	-	-	52
3	128	39	-	-	-	-	-	-	-	-	-	-	-	-	167
5	53	126	-	-	-	-	-	-	-	-	-	-	-	-	179
Little Zapadni															
2	8	11	22	16	19	25	-	-	-	-	-	-	-	-	101
3	19	34	44	46	41	57	-	-	-	-	-	-	-	-	241
5	31	21	9	13	12	183	-	-	-	-	-	-	-	-	269
Zapadni															
2	16	21	28	30	26	35	31	12	-	-	-	-	-	-	199
3	24	37	55	50	58	70	64	25	-	-	-	-	-	-	383
5	6(65)	8	12	8	9	24	49	310	-	-	-	-	-	-	491

^a See Table 1 and Glossary of previously published Fur Seal Investigation reports for a description of the classes of adult male seals.

^b Numbers in parenthesis are the adult males counted in Kitovi Amphitheater.

^c Numbers in parenthesis are the adult males counted on the second point south of Sea Lion Neck.

^d Numbers in parenthesis are the adult males counted on Zapadni Point Reef.

Table 5. – Number of adult male northern fur seals counted, by class^a and rookery section, St. George Island, Alaska, 10-14 July, 2005.
A dash indicates no section.

Rookery and class of male	Section					Total
	1	2	3	4	5	
<u>Staraya</u>						
2	13	7	-	-	-	20
3	22	26	-	-	-	48
5	99	2	-	-	-	101
<u>Zapadni</u>						
2	10	11	4	-	-	25
3	18	39	24	-	-	81
5	46	0	0	-	-	46
<u>South</u>						
2	16	17	20	-	-	53
3	60	60	68	-	-	188
5	34	3	1	-	-	38
<u>East Cliffs</u>						
2	48	20	-	-	-	68
3	114	74	-	-	-	188
5	29	30	-	-	-	59
<u>East Reef</u>						
2	20	-	-	-	-	20
3	60	-	-	-	-	60
5	29	-	-	-	-	29
<u>North</u>						
2	12	26	26	11	12	87
3	66	109	87	48	31	340
5	35	8	22	6	17	88

^a See Glossary of previously published Fur Seal Investigation reports for a description of the classes of adult male seals.

Table 6. Summary of entanglement observed among adult female northern fur seals on St. Paul Island, Alaska, 1991 - 2005.

Year	Total count	Number entangled	Number scarred	Total (entangled + scarred)	entanglement rate (%)
1991	16,009	3	7	10	0.019
1992	25,089	3	6	9	0.012
1993	31,638	3	11	14	0.009
1994	30,269	7	10	17	0.023
1995	29,109	3	8	11	0.010
1996	30,426	4	7	11	0.013
1997	30,406	2	9	11	0.007
1998	28,461	3	8	11	0.011
1999	22,820	2	6	8	0.009
2000	7,746	3	5	8	0.039
2001	5,917	3	0	3	0.051
2002	9,607	1	1	2	0.010
2003	6,426	1	1	2	0.016
2004	19,701	2	7	9	0.010
2005	8,643	2	3	5	0.023

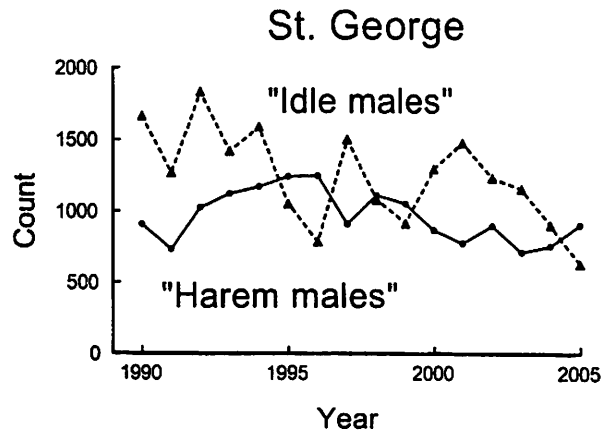
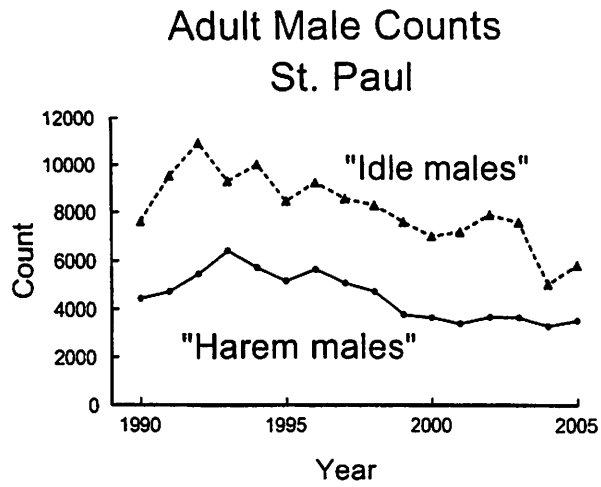


Figure 1. Temporal dynamics of the counts of adult male northern fur seals on St. Paul and St. George Islands, 1990-2005, showing territorial males with females (filled circles) and idle males (territorial without females and non-territorial combined, filled triangles).

North Pacific Fishery Management Council

Stephanie Madsen, Chair
Chris Oliver, Executive Director



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October 13, 2005

RC3

Art Nelson
Chairman, Alaska Board of Fisheries
Alaska Department of Fish & Game
PO Box 25526
Juneau, AK 99802

Dear Mr. Nelson,

In order to further facilitate our continued cooperation on issues related to the State and Federal co-management, I am writing to update you on actions taken this week by the North Pacific Fishery Management Council. At its October 2005 meeting, the Council took action to recommend that the National Marine Fisheries Service (NMFS) commence the process to reinitiate a Fishery Management Plan-level formal Section 7 consultation under the Endangered Species Act (ESA). This consultation would be on the effects of Federal groundfish fisheries on ESA-listed species, including particularly the Steller sea lion. The Council intends to work closely with NMFS, as well as the Alaska Board of Fisheries, in this reconsultation process. The full text of the motion reads as follows:

The North Pacific Fishery Management Council requests that the NMFS Alaska Region Sustainable Fisheries Division reinitiate formal consultation, under Section 7 of the Endangered Species Act, with the NMFS Alaska Region Protected Resources Division on the effects of the groundfish fisheries in the EEZ off the coast of Alaska on Steller sea lions and other ESA listed species under U.S. Department of Commerce jurisdiction. The Council requests that the consultation begin on the 2000 FMP Biological Opinion covering the FMPs for groundfish in the Bering Sea/Aleutian Islands, and Gulf of Alaska, and that the consultation review all new scientific information since the completion of the FMP-level Biological Opinion. The Council requests periodic briefings on progress. The Council intends to consider, in 2006 to 2007, possible revisions to the management measures currently in place and evaluate them under a separate project-level Biological Opinion. The Council requests that NMFS also work closely with the State of Alaska in this process and include impacts on State fisheries in the analysis and resulting Incidental Take Statement.

Given the Council's recent action to request reinitiation of formal consultation, this provides an opportunity for the State to participate in the consultation and to help craft long-term future fishery management regimes for State parallel groundfish fisheries, including the current pollock fishery proposals that are before the BOF, that will avoid the jeopardy and adverse modification concerns. The consultation process discussed above would begin immediately and would likely continue through 2007, with any new management measures effective for the 2008 fishing season. The Council believes that this comprehensive review of all information on ESA-listed species, including the Steller sea lion, will lead to an updated Biological Opinion and authorization of the Federal groundfish fisheries, including those parallel fisheries that occur in State waters.

We recognize that the Board of Fisheries intends to consider at its October 15-16, 2005 meeting several State water pollock fisheries. Three of these proposed fisheries would be prosecuted partially in Steller sea lion critical habitat which is closed to pollock fishing under Federal regulations and with previous concurrence from the State. As you know, the Council and NMFS have expressed in previous meetings between the BOF and Council concerns over ESA issues associated with two proposed State water pollock fisheries and if approved by the BOF the potential immediate triggering of the formal consultation process. The primary concerns would be the need to consult under a very stringent time frame as well as the potential impacts on Federal groundfish fisheries if the result of such a consultation is a jeopardy or adverse modification finding in the Biological Opinion, relative to federally managed fisheries.

Again, the Council looks forward to working closely with you and NMFS on groundfish fishery management issues of mutual interest. We will likely be reactivating our Steller sea lion mitigation committee to begin crafting potential new management measures on a parallel track to the consultation process, and we will be in further contact with you regarding your participation in that process. Please feel free to contact me or the Council's Executive Director, Chris Oliver, if you have further questions.

Sincerely,

Stephanie D. Madsen

Stephanie D. Madsen
Chair

CC: Ms. Sue Salvesson, Office of Sustainable Fisheries, NMFS
Ms. Kaja Brix, Office of Protected Resources, NMFS

Alaska Board of Fisheries
Proposal 455, as amended
March 2005

Proposal 455 – Substitute Language

Amend 5 AAC 28.087 (Management plan for parallel groundfish fisheries) and other applicable regulations to the effect that the Commissioner's existing emergency order closing state waters to fishing for pollock, cod, and Atka mackerel surrounding various Stellar sea lion (SSL) rookeries and haulouts does not have to exactly "match federal fishery management measures for protecting Stellar sea lions."

More specifically, closures in state waters surrounding sea lion rookeries and haulouts in the following areas may be altered, and other regulations amended, as follows:

In the Aleutian Islands: from 174 to 178 degrees W. longitude, state waters surrounding SSL haulouts would be opened to fishing for walleye pollock, however, state waters within ten miles of SSL rookeries would be closed to pollock fishing. Also, fishing for pollock within state waters of the Aleutian Islands from 174 to 178 degrees W. longitude would be opened only to vessels equal to or less than 58 feet in length.

In the western Gulf of Alaska (South Alaska Peninsula): state waters within 20 miles, but outside a 10-mile radius, of Jude Island would be opened to pollock fishing. Also, fishing for pollock within state waters of the western GOA would be limited to only vessels equal to or less than 58 feet in length. Also, catcher vessels in the western GOA would be limited to daily deliveries of pollock of no more than 300,000 pounds (136 mt) and tender vessels would be limited to receiving or retaining onboard no more than 600,000 pounds (272 mt) of unprocessed pollock harvested in the western GOA per day.

In the central Gulf of Alaska (North Gulf District of the Cook Inlet area): from 149 and 150 degrees W longitude, state waters beyond a three-mile radius of SSL haulouts would be opened to pollock fishing under provisions of a Commissioner's permit.

The scenarios outlined above pertain to parallel fisheries for pollock in the Aleutian Islands, the western GOA, and the central GOA. Seasons, TACs, allocations, and other management actions, other than those specified above, would continue to parallel those imposed by the federal government. The federal government would actively manage harvests against federally-established TACs and allocations, would open and close seasons, would establish gear restrictions, etc. The state would not actively manage the harvests; rather, ADF&G would treat this fishery similar to other parallel fisheries through the global E.O.

This proposal will be deferred to the agenda of the October 2005 meeting of the Board of Fisheries for further action. In addition, the board intends to refer this amended proposal to the Board/Council joint protocol committee for discussion and coordination with the North Pacific Fishery Management Council.

SUMMARY OF ACTIONS
ALASKA BOARD OF FISHERIES

State Waters Pollock / Trawl
October 15-16, 2005
Girdwood, Alaska

DESIGNATED REPORTERS: Sherry Wright

This summary of actions is for information purposes only and is not intended to detail, reflect or fully interpret the reasons for the board's actions.

Note: The board divided the original proposal 455 from March 2005 into three proposals according to the area and fishery, as follows:

PROPOSAL "A"

ACTION: Tabled to October 2006

DESCRIPTION: Develop management options for pollock harvest in state waters near Adak, in the Aleutian Islands

DISCUSSION: The board is interested in helping develop a fishery that benefits the area, but intends to avoid harming other parts of the industry, and to construct a sound fishery that does not violate provisions of the Endangered Species Act (ESA) in relation to Steller sea lion protection. The board received testimony from National Marine Fisheries Service (NMFS) on the specific requirements of biological opinions under the ESA, and potential timing of various analyses and actions.

The board, through an Interim Joint Protocol Committee, received information regarding potential effects of various state actions from the department and from NMFS in committee meetings from May 2005 through August 2005. The information detail provided at these meetings was submitted to the full board for its consideration.

At this meeting, the board received information from the North Pacific Fishery Management Council (NPFMC) on the projected timeline of review and action on federal groundfish fisheries in the Bering Sea and Gulf of Alaska. In October, the NPFMC recommended that NMFS reinstate a formal consultation on the effect of federal groundfish fisheries on ESA-listed species, particularly Steller sea lions, and that NMFS work closely with the State of Alaska to include analyses on impacts of state fisheries. The NPFMC requested that the consultation review all new scientific information since the completed of the 2000 FMP biological opinion (BiOp). The NPFMC also intends to consider possible revisions to management measures currently in place and evaluate them under a separate BiOp.

Board discussed the option of postponing action on this proposal, versus taking action but using a delayed implementation date of 2007. The timeline that NMFS envisions in performing the requested consultation was given as follows:

February 2006: NMFS complete recovery plan

March 2006: Through NPFMC, reconstruct BiOp, analyze trade-offs, etc.

April 2006: Mitigation Committee begins analyzing options

Dec. 2006/Jan. 2007: Finalize BiOp and Mitigation Committee finalizes its analysis

Approximately April 2007: NPFMC begins work to approve management measures

Approximately June – October 2007: NPFMC begins deliberations on management measures in order to be effective by January 2008

After NPFMC action in 2007: NMFS begins federal regulatory process that may lead to prosecution of a fishery in early 2008.

Board believes it is prudent to table the proposal to October 2006 to allow FMP BiOp review and Steller Sea Lion Mitigation Committee review process to occur, rather than to attempt to design a state waters fishery with a delayed implementation date, without the benefit of the additional information that the BiOp review will provide. The board was initially concerned that the 2000 BiOp process provided little opportunity for the board to have input. Board will now have a seat on the Mitigation Committee and can bring state concerns through that process. The board also discussed whether to narrow down and be specific on options identified in the proposal. The board decided it would be beneficial to have NMFS consider all of the options in its analysis in order to have full information prior to taking action.

PROPOSAL "B"

ACTION: Failed

DESCRIPTION: Develop management options for pollock harvest in state waters in the Western Gulf of Alaska

DISCUSSION: The board noted that it received very little testimony in favor of this proposal, but did hear testimony that taking action may jeopardize efforts for groundfish rationalization in the Gulf.

PROPOSAL "C"

ACTION: Tabled to October 2006

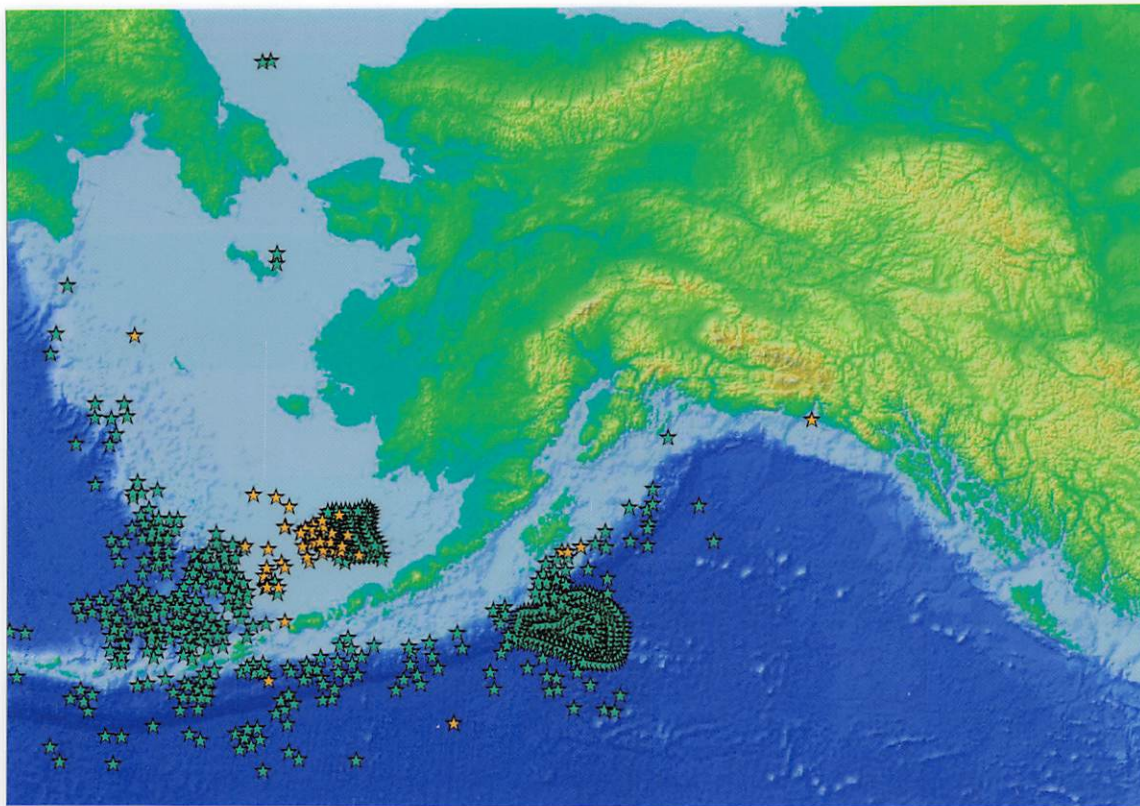
DESCRIPTION: Develop management options for pollock harvest in state waters in the Central Gulf of Alaska

DISCUSSION: A small experimental fishery occurred in this area under a commissioner's permit in 2004. The board recognized that any amount of fish it set as a limit for state waters would come off of the top of the total TAC, and that since this is a fully-allocated fishery, it may mean the fish are taken from one group and given to another. The board also heard that some vessels might register to participate under a Commissioner's Permit without actually intending to fish. If registration numbers indicated considerable or excessive effort that could potentially create difficulties in managing anything but an equal shares approach, the department indicated it would probably not allow a fishery to occur. NMFS previously communicated to the board that the fishery described in this proposal would not cause consultation or reconsultation under the ESA. Because the department originally brought this request to the board, and the board did not hear from the area in support of the proposal, it decided to table the proposal to October 2006.

North Pacific Right Whales

MARINER ADVISORY

The right whale population in the eastern North Pacific is the most endangered stock of whales in the world, with fewer than 100 individuals remaining. Right whales are slow swimmers that sometimes feed at or near the surface. They show little or no instinct to avoid vessels and are vulnerable to ship strikes. They also tend to roll when they meet an obstacle, which may result in gear entanglement. North Pacific right whales have been observed over the central Bering Sea shelf and off Kodiak Island in recent years.



★ sightings from 1979 – 2004

★ sightings from 1941 – 1967

DO

1. Look out for whales.
2. Log the time and location of right whale sightings.
3. Immediately notify federal fisheries observer of right whale sightings.
4. If no federal fisheries observer, photograph whale for sighting confirmation and send sighting report to address on reverse side.
5. Notify nearby vessels and ask them to stay away.
6. Remain at least 100 yards from whales.
7. If a whale approaches your vessel, take the vessel out of gear (neutral) and allow the whale to pass.
8. Leave the area at a slow, safe speed, ASAP.



DON'T

1. Set or haul gear of any type close to whales.
2. Approach within 100 yards of any whale.
3. Place your vessel in the path of oncoming whales, forcing them to surface.
4. Remain near a right whale.
5. Operate your vessel at anything greater than a slow, safe speed near whales.



Marine Conservation Alliance
promoting sustainable fisheries to feed the world



RIGHT WHALE



V-shaped, bushy blow



Callosities on head



No dorsal fin, smooth back



Triangular, all-black tail

HUMPBACK WHALE



Tall, slender and/or low, bushy



Grooves and knobs on head

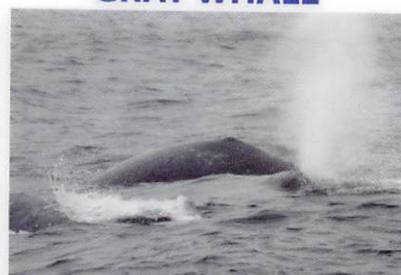


Dorsal fin, hump sometimes with knuckles



Scalloped edge on tail

GRAY WHALE



Bushy, heart shaped



Barnacles all over



No dorsal fin, prominent knuckles



Broad and rounded tail

Right whales may be confused with humpback and gray whales. Look for these important differences.

Right whales are baleen (filter-feeding) whales. They have bowed lower lips that enfold a narrow arching rostrum, the narrow upper jaw. North Pacific right whales grow to about 60 feet (18.3 meters) in length, and adults average 50 tons. They have robust bodies with large heads that are one fourth of the body length. There are a series of callosities – areas of raised, roughened, white-colored skin – on the chin, above the eyes, on the lower lip, behind the blowholes and on the rostrum. The skin is usually black, with white patches on the belly. Right whales have no dorsal (back) fin, and no throat grooves. They have large paddle-like flippers and very broad triangular tails with straight edges. Their blow is V-shaped and up to 16 feet (5 meters) high. Note: never use blow shape alone to identify whales because this characteristic will change depending on weather conditions and whale behavior.

Take photos if possible! Right whales can be individually identified by the pattern of callosities on their head and by other features, so photographs - especially of the head and any scars - are of great value to researchers. At a minimum: report date, number of animals, location (lat/long).

REPORT SIGHTINGS AND SEND PHOTOGRAPHS TO:

Director
National Marine Mammal Lab
Alaska Fisheries Science Center
NMFS, NOAA
7600 Sand Point Way N.E.
Seattle, WA 98115-6349

(206) 526-4045 voice

(206) 526-6615 fax

<http://nmml.afsc.noaa.gov/>





Threatened and Endangered Species

START 2: Short-tailed Albatross Recovery Team Meeting; 2004

Despite a long and rocky road to obtaining foreign travel authorization, the Short-Tailed Albatross Recovery Team (START) managed to pull off its second international recovery meeting in Chiba, Japan, just outside Tokyo, on May 25-28, 2004. The meeting kicked off in usual Japanese style with a lavish reception full of dignitaries, formal introductions, mind-boggling platters of sushi and sashimi, toasts, and lovely beverages. The dignitaries at this particular reception were especially dignified, and included Japan's Imperial Highness Prince Akishino and Princess Norinomiya. Both the Prince and Princess are trained biologists and are closely affiliated with the Yamashina Institute for Ornithology, the non profit institute that takes the lead in many short-tailed albatross recovery actions in Japan.

The team had the pleasure of hosting a number of observers at the meeting, including Hisanaga Shimazu, the Chairman of the Yamashina Institute, and Satoshi Yamagishi, the General Director of the Institute. Koji Hasebe of the Yomiuri Newspaper was present for a portion of the meeting as well. Kazui Horikoshi and Hajime Suzuki from the Institute of Boninology (the Bonin Islands are the presumed site of the next short tailed albatross colony) sat through the entire meeting. They were extremely helpful in helping the team



*Attendees of START2 Welcome Reception (team members in bold). Back row, left to right, Kyouko Yoshiyasu, **Shiho Kanie**, **Kiyoaki Ozaki**, Judy Jacobs, Lynnette Sievert, **Kim Rivera**, Haruo Uchiyama, **Ed Melvin**, **Kim Trust**, **Beth Flint**, Shigeki Asai, **Kathy Kuletz**, Takao Baba, Takashi Hiraoka, Yoshimitu Shigeta, E. Urano, Miyako Turumi, Sayaka Kobayashi, Noboru Nakamura, Ryo Maeyama, Front Row, left to right: Princess Norinomiya, **Paul Sievert**, Greg Balogh, Prince Akishino, **Thorn Smith**, Hisanaga Shimazu, Satoshi Yamagishi, **Haruo Ogi**. Team members, observers, and translators not in photo: Hajime Suzuki, Kazuo Horikoshi, Shinjiro Sasaki, Koichi Kamiga, Ysuyuki Arai, Koji Hasebe, **Rob Suryan**, **Hiro Yoshi Higuchi**, **Hiroshi Hasegawa**, **Graham Robertson**, and John Fries.*

recognize which proposed recovery tasks on the Bonin Islands were impractical. John Fries, a familiar presence in the Japanese avian community, served as our interpreter. In addition, we had the good fortune of having a new Yamashina Institute talent, Noboru Nakamura, present to aid Dr. Fries in interpreting. All team members took joy in meeting Hiroshi Hasegawa's new bride, Nagi Hasegawa.

The spirit of the meeting was one of true collaboration in the interest of the resource. Chairman Shimazu captured the atmosphere of the meeting well when he said "There are no national boundaries to the short-tailed albatross. Likewise, there are no national boundaries to the field of ecological research. It is

very important and appropriate that Pacific Rim biologists gather to discuss the future of the short-tailed albatross."

The Service had two main objectives for this 4-day meeting, a meeting of unprecedented length in Japanese business culture. These were: 1) development of recovery and reclassification criteria for the species; and 2) listing of, *and prioritization of*, all recovery tasks. These two criteria alone would make for an ambitious meeting. In addition to accomplishing both of these main objectives, the team received updates on albatross investigations that have occurred during the 1.5 years since our last meeting.

We did not explicitly discuss

proposals for use of recovery funds (a third objective). However, much of the groundwork for this discussion was laid in the prioritization of recovery tasks. We now know which proposal topics will rise to the top of the funding priority list, and which will need to wait for future funding opportunities. A final objective, the formation of subcommittees to deal with a number of more specialized recovery topics, was not met. But of all objectives, this one is most easily dealt with via e-mail and telephone.

Other topics not among our original objectives, but that were discussed in an open forum, included restructuring of the team and whether to invite delegates from Russia and Canada onto the START.

All team members understand that START may be substantially restructured once this recovery plan is finalized and approved. At that time, we may seek to trim down the size of the team somewhat to reign in meeting costs. The team currently consists of 14 individuals and two liaisons.

Recovery Criteria:

The START Team recommends the following criteria for delisting and reclassification:

Delisting:

1000 breeding pairs, with ≥ 250 pairs on ≥ 2 non-volcanic islands, AND $\geq 10\%$ of these (i.e. ≥ 25 pairs) on site/s other than the Senkaku Islands, AND with a 3-year running average growth rate of $\geq 6\%$ for ≥ 7 years.

Endangered to Threatened:

750 breeding pairs, AND ≥ 5 breeding pairs on each of 3 or more different island groups, AND with a 3-year running average growth rate of $\geq 6\%$ for ≥ 7 years.

Threatened to Endangered:

<750 breeding pairs, with a negative



Working together, START interpreters Noburo Nakamura and John Fries ensured that nothing is lost in translation. Pictured from left: Kiyooki Ozaki, Nakamura Noboru, John Fries, Hiroshi Hasegawa, Haruo Ogi, and Beth Flint.

growth rate for ≥ 3 years; OR breeding colonies on < 3 island groups.

The Team prioritized 53 individual recovery tasks. In addition, it prioritized general categories of recovery efforts to provide managers with additional guidance. The detailed, task-specific, priority list is not included here, but the more general list of recovery task groupings is as follows, ordered from highest to lowest priority:

1. Continue existing Torishima population work.
2. Establish new colonies on Ogasawara Island and Hatsune-zaki colony site.
3. Continue Tsubame-zaki habitat work to enhance fledging success.
4. Establish regular monitoring of colony in the Senkaku Islands.
5. General bird distribution and movement research.
6. Other research (ex. Food habits, genetics, population modeling).
7. Fishery-Related Interactions and bycatch reduction.
8. Outreach and education.
9. Development of sampling, field handling, and carcass-retention protocols.

10. Contaminants sampling and research.

11. Other management (establishment of quick response fund, addition of representative from Japanese Fisheries Agency to the team).

The team was sharply divided on the question of whether to recommend addition of team members from Russia and Canada during the recovery planning stage (which is winding down). They seemed quite receptive, however, to adding representatives from these two countries to the recovery team after the final recovery plan is released and when recovery implementation begins in earnest.



Until recently, Dr. Hiroshi Hasegawa was considered by many to be "married" to the albatross. His new wife, Nagi Hasegawa, provides strong evidence that this is not the case.

2004 Fishery Values from Proposed Right Whale CH

	BSAI	GOA
Halibut		
Pounds	24,499	1,604,978
Ex vessel Value	\$43,000	\$4,400,000
Groundfish - Fixed Gear		
MT	22,117	1,629
First Wholesale Value	\$24,284,793	\$2,561,651
Groundfish - Trawl Gear		
MT	774,097	14,830
First Wholesale Value	\$569,419,378	\$11,544,795
Crab		
Pounds	15,353,000	
Ex vessel Value	\$72,500,000	

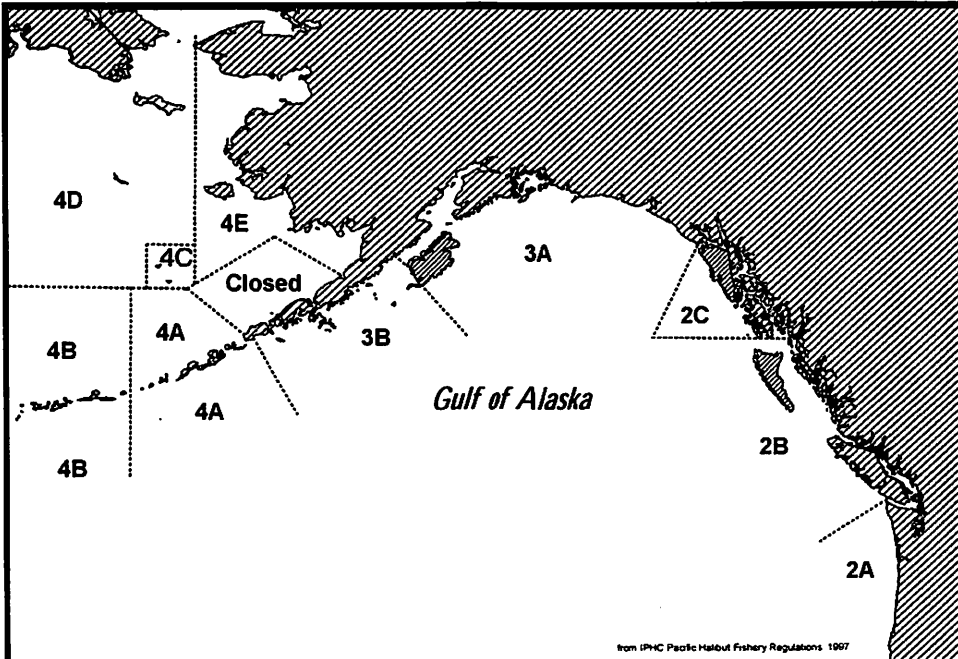
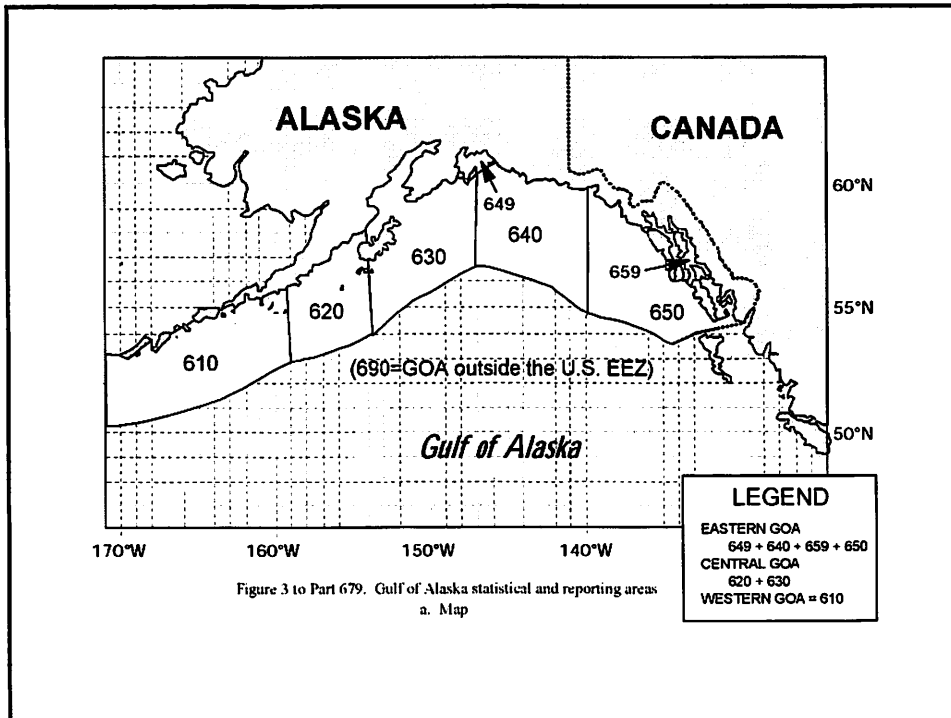
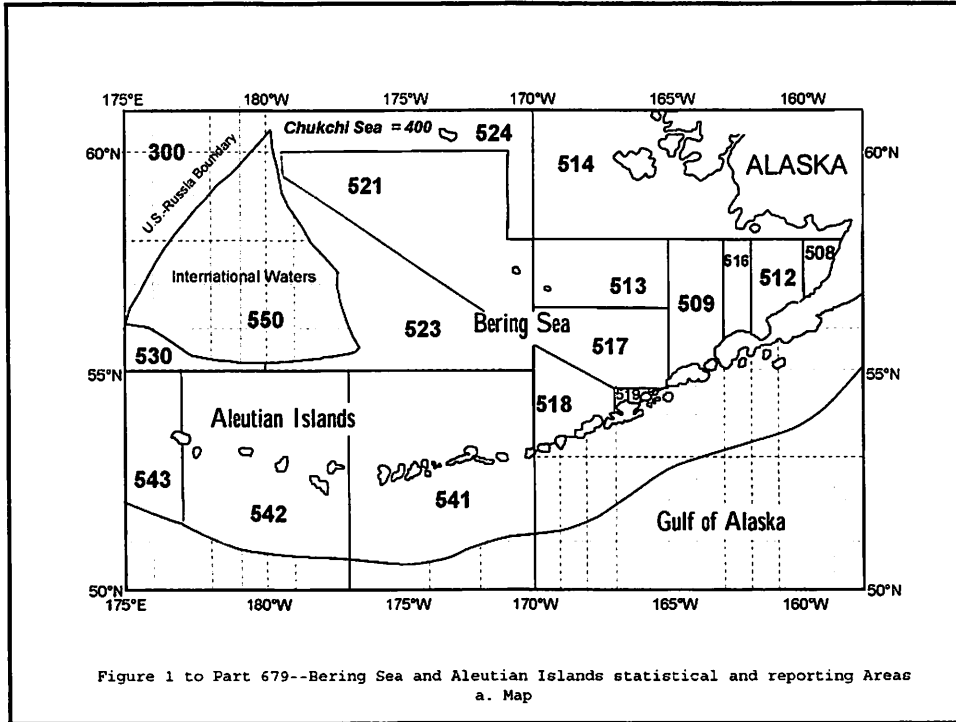
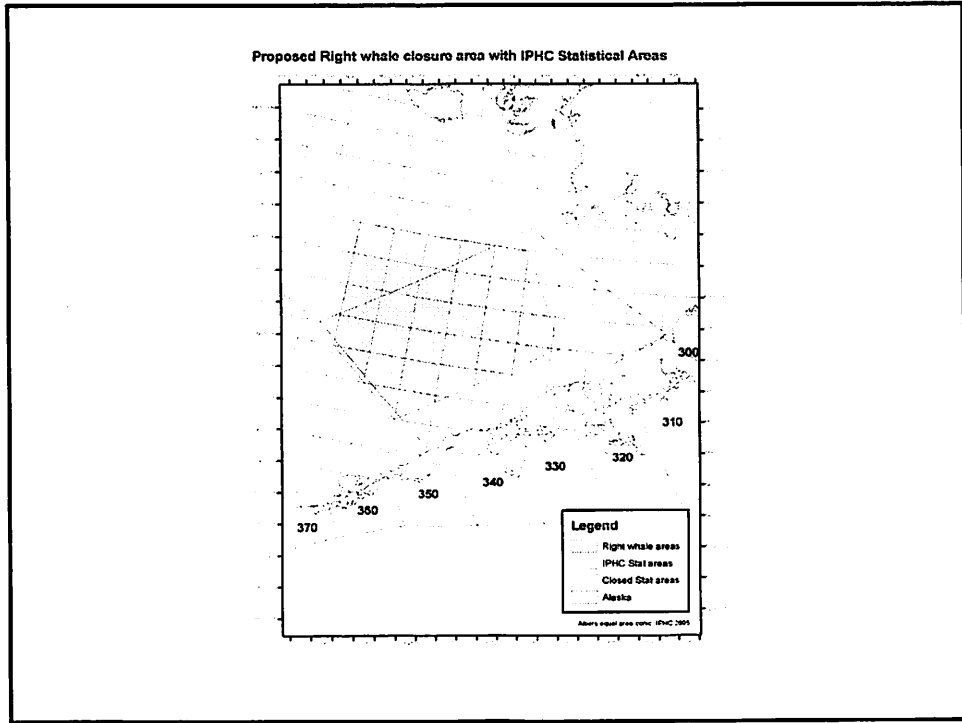
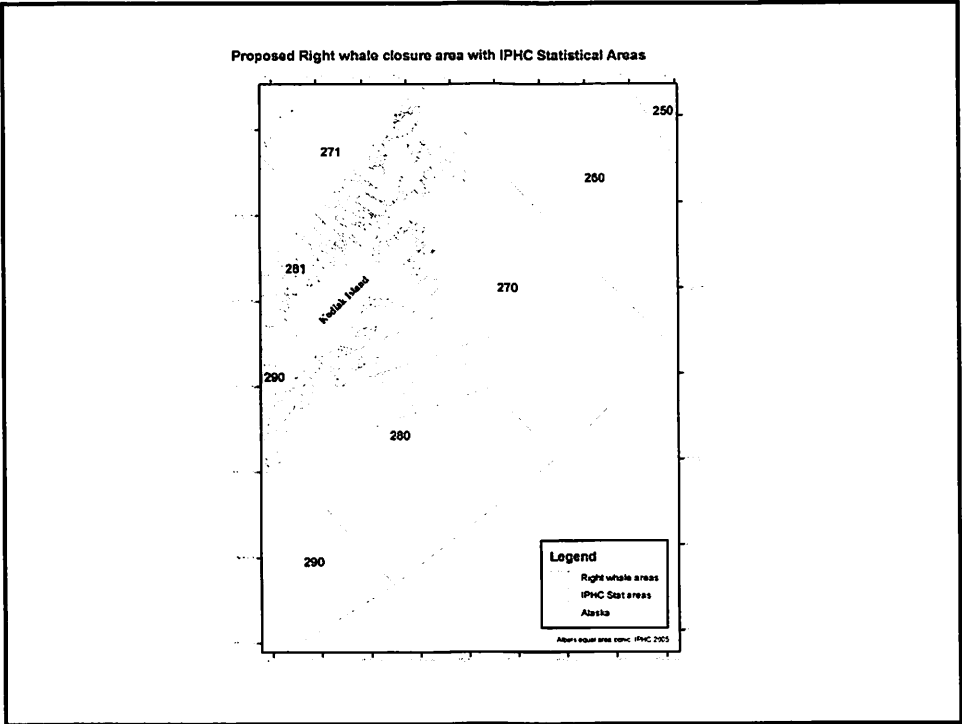
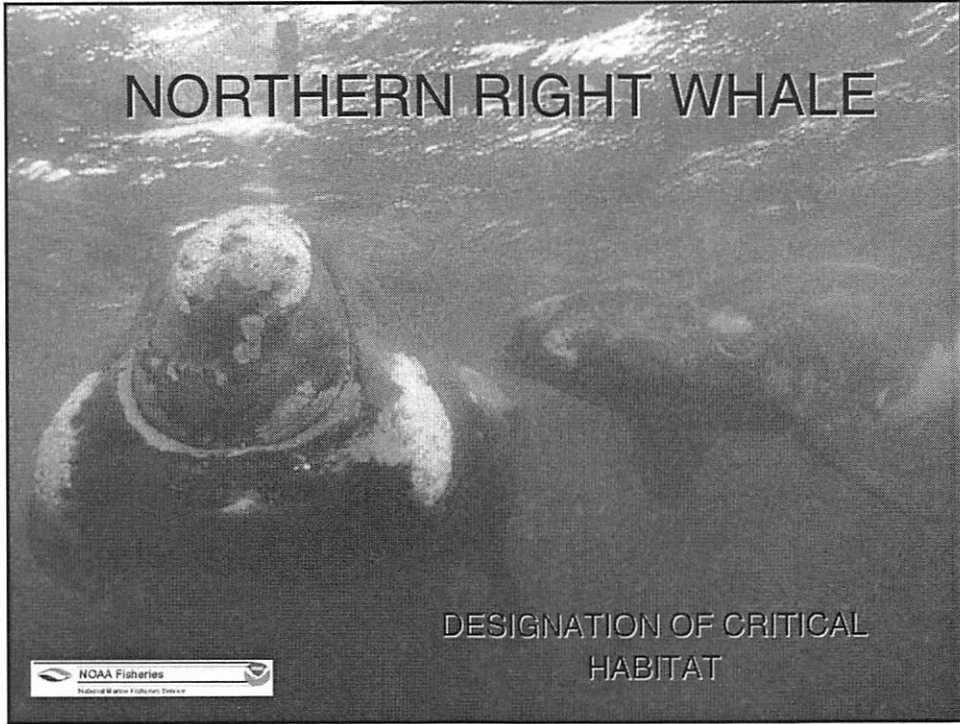


Figure 15 to Part 679. Regulatory Areas for the Pacific Halibut Fishery
a. Map







CRITICAL HABITAT

- Is normally specified when listing a species, unless doing so is not prudent or not determinable.

Not prudent means identification of CH would increase the threat to the species.

Not determinable means information insufficient to perform analysis of the impacts of designation, or biology of species is not sufficiently known to identify CH.

- Shall be based on the best scientific data available.

Right Whale Critical Habitat

- NMFS petitioned in 2000 to designate CH
- Finding: CH "Not Determinable"
- Decision appealed: District Court remand includes orders for NMFS to use the best available evidence to do one of the following by October 28, 2005:
 - (a) Issue a proposed rule in the Federal Register designating an area of the Pacific Ocean as critical habitat for the right whale, or
 - (b) Issue a Federal Register notice explaining why no Pacific Ocean critical habitat should be designated due to a more paramount statutory consideration (e.g. commercial or national security interests), if the statutory standards can be met.



Critical Habitat

- The specific areas within the geographical area occupied by a species at the time it is listed... *on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection,*
- and other areas essential to the conservation of the species (unoccupied habitat)

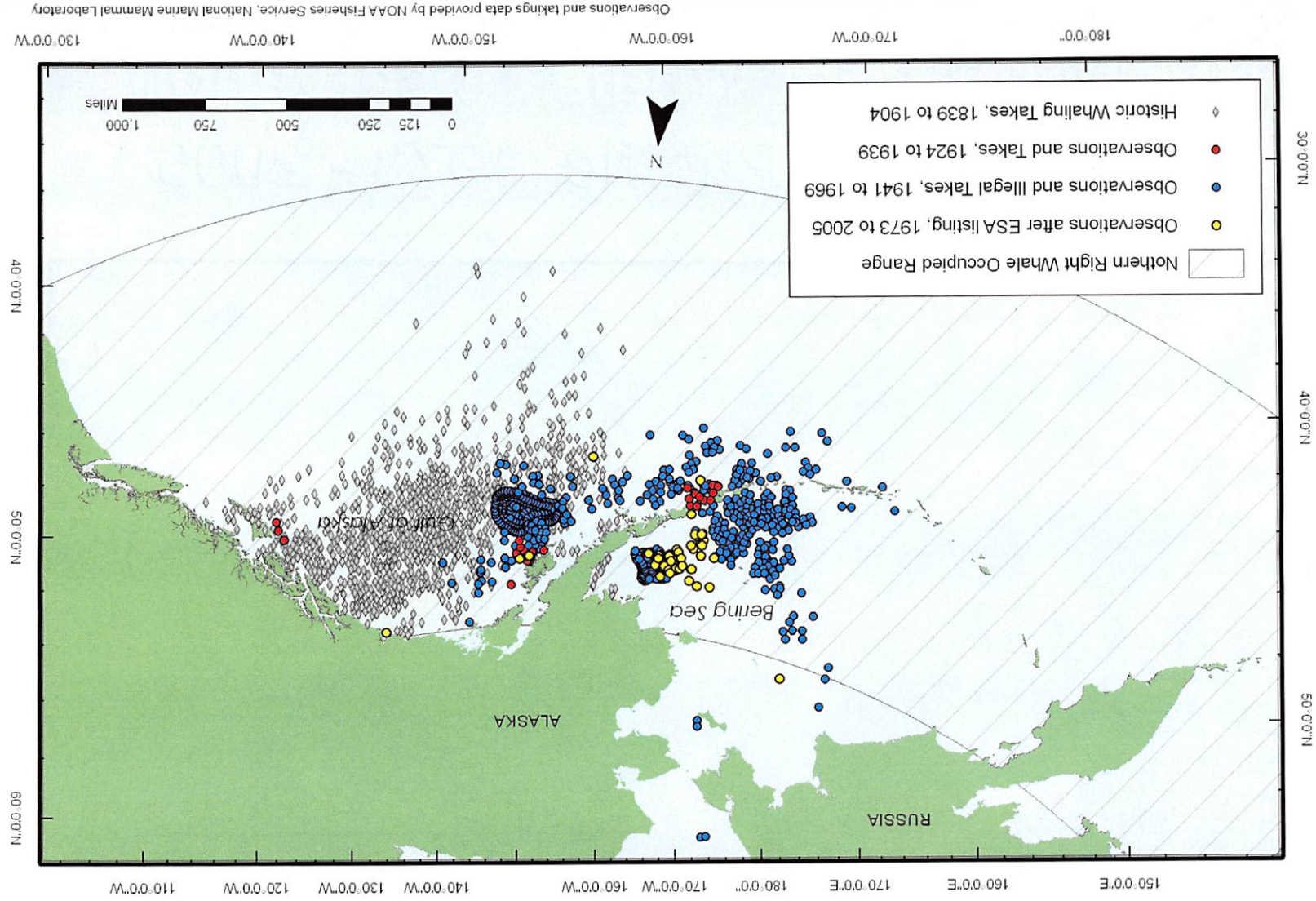
Essential Biological or Physical Features May Include:

- Nesting Grounds/Spawning Sites
- Feeding Sites*
- Water Quality
- Geological Formations (Substrate)
- Vegetation Types
- Tides

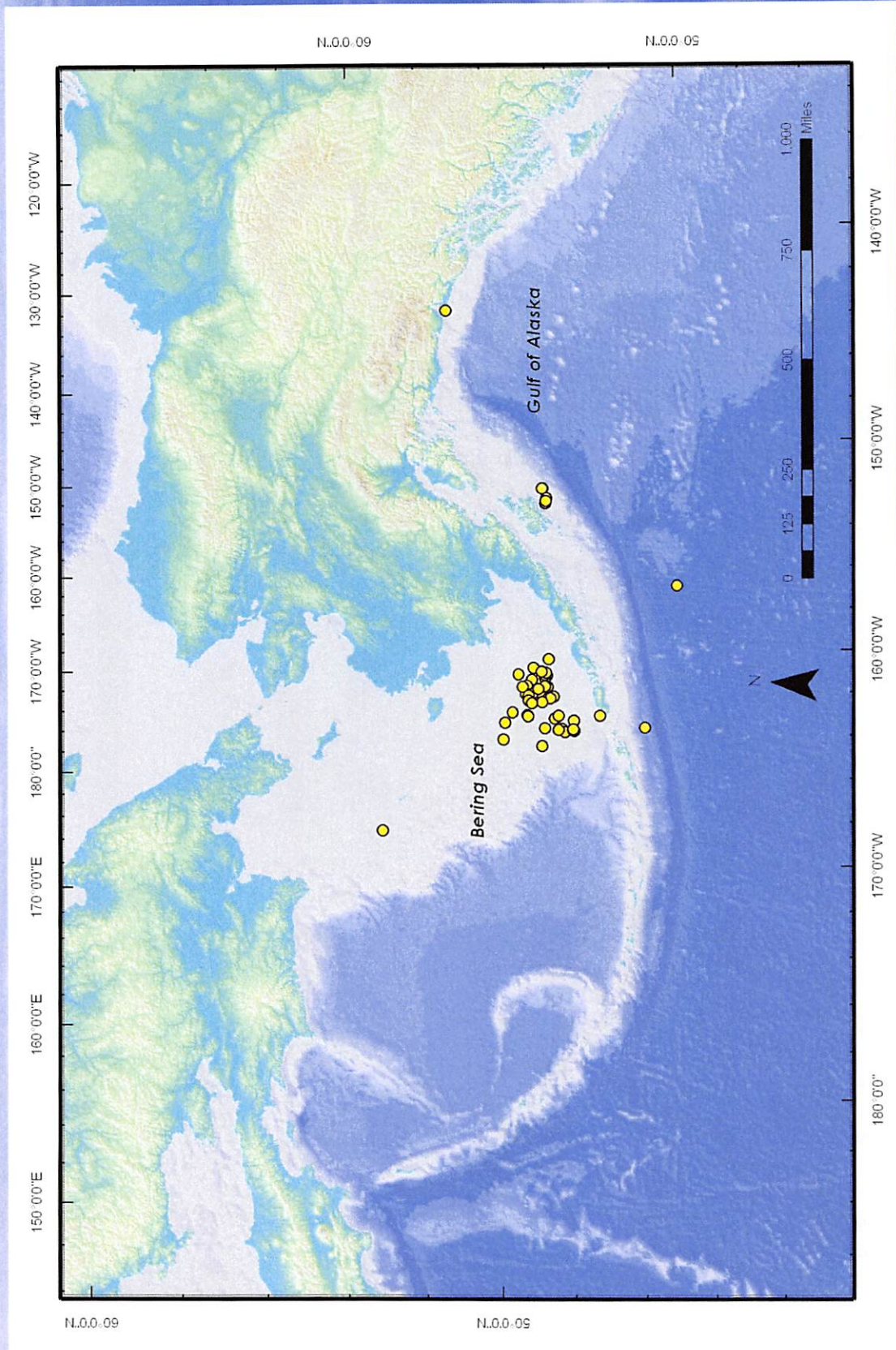
Essential Features for the North Pacific Right Whale

- The Primary Constituent Elements (essential features) are large copepods in areas where right whales are known or believed to feed, specifically *Calanus marshallae*, *Neocalanus cristatus*, *N. plumchris*, and *Thyanoessa raschii*.

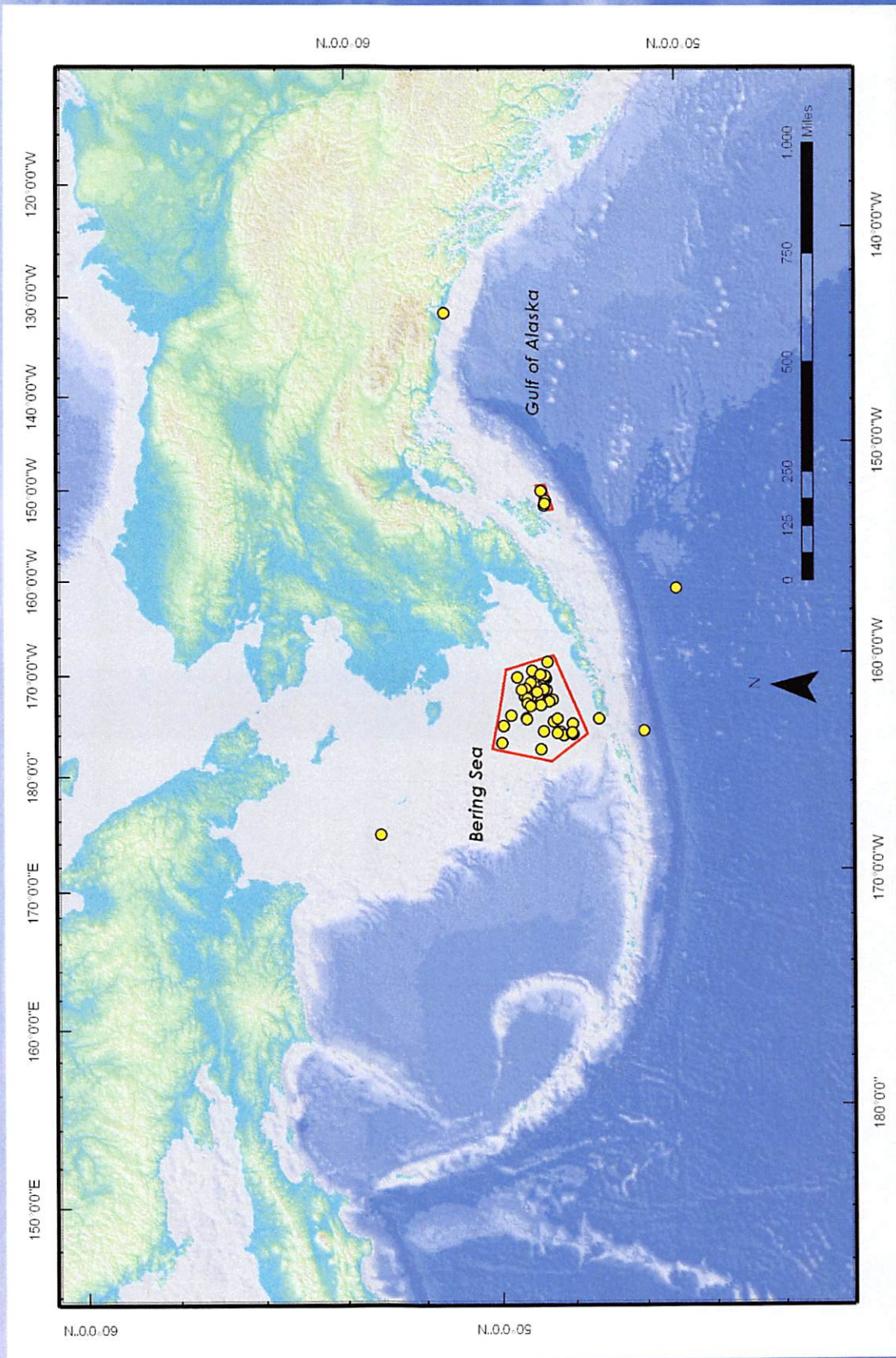
Northern Right Whale Observations and Takes, 1839 - 2005



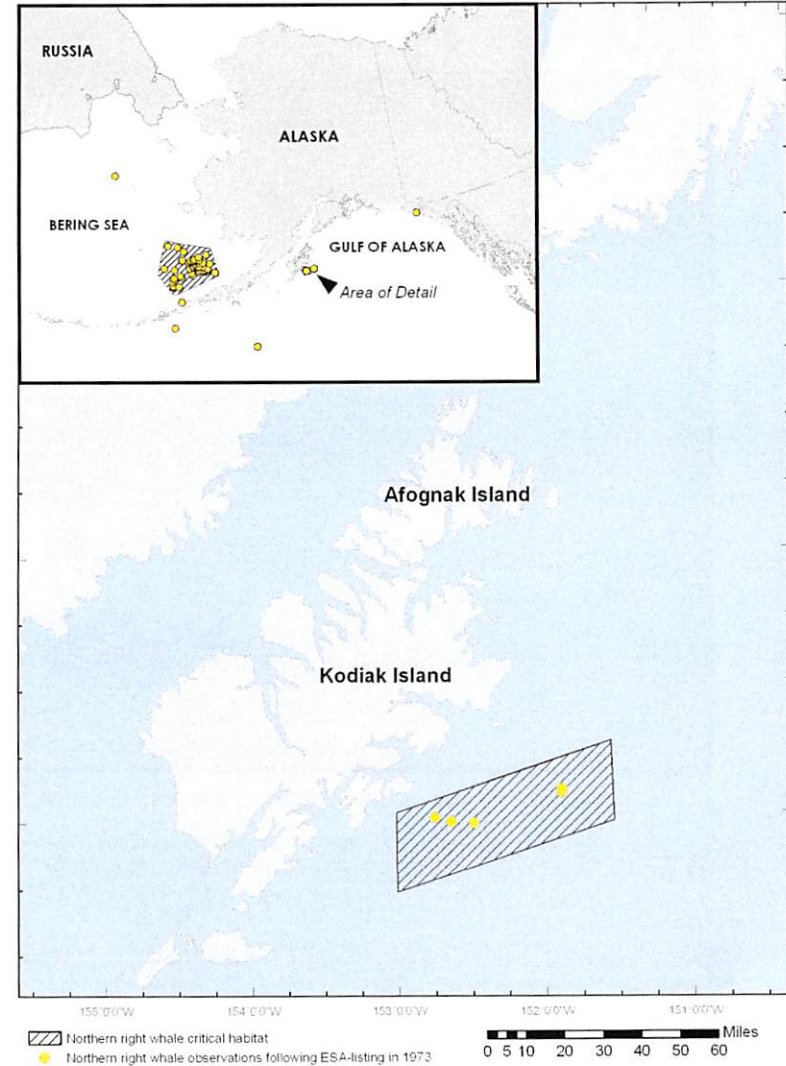
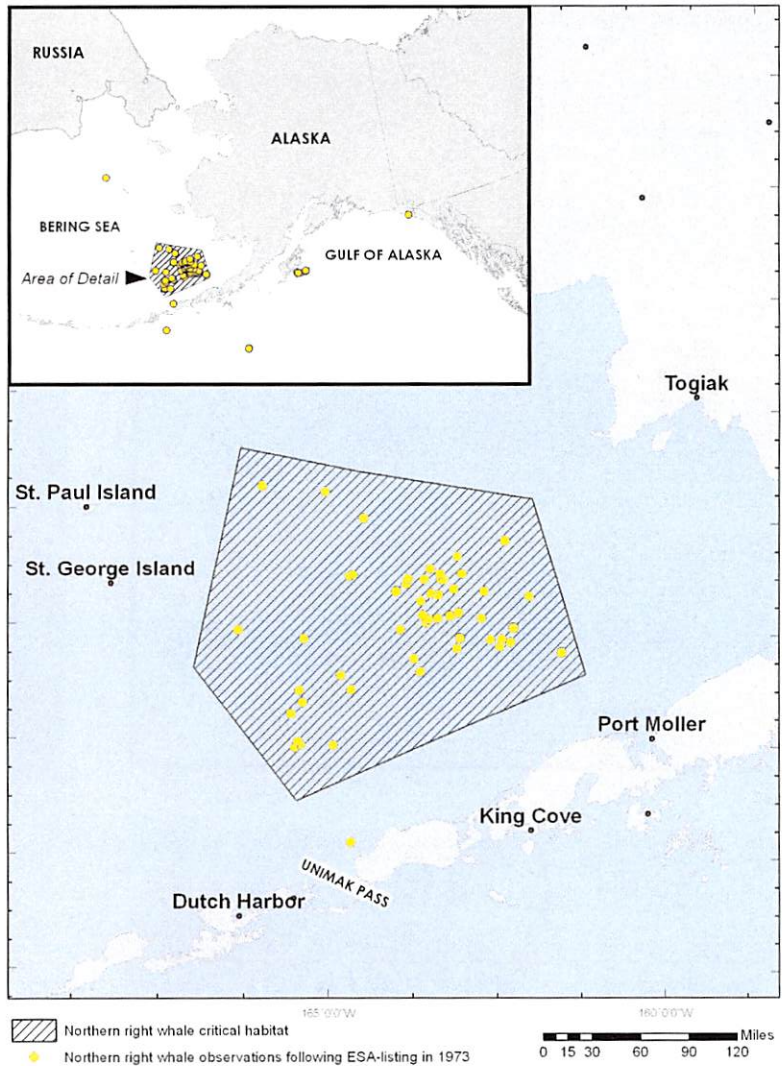
Northern Right Whale Observations in the North Pacific, 1973 - 2005



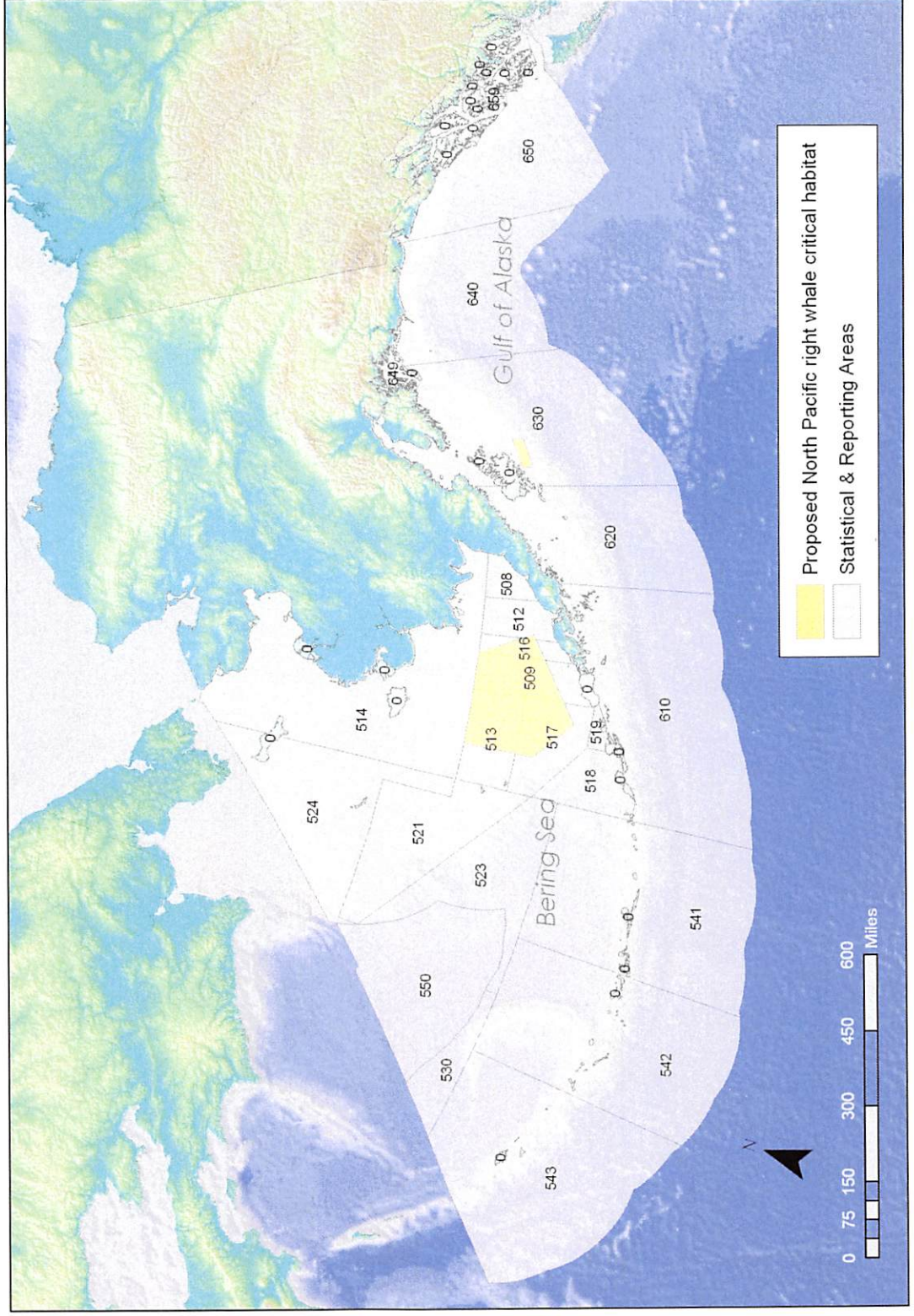
Proposed Critical Habitat Delineations for Northern Right Whales



Proposed Critical Habitats in the Eastern Bering Sea and Gulf of Alaska



Locations of Proposed Critical Habitats in Relation to Federal Reporting Areas



Exclusion Process

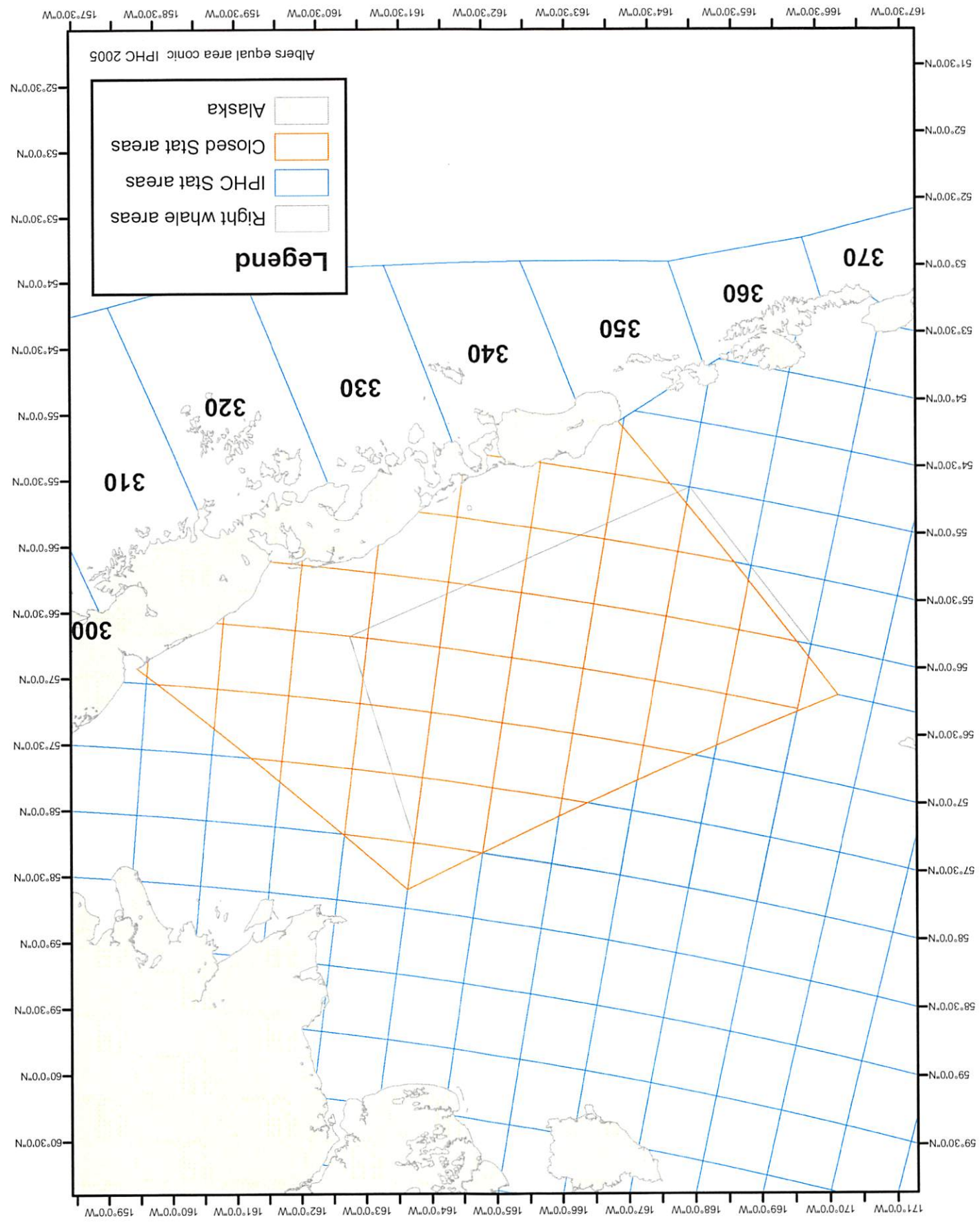
Sec 4(b)(2)

The Secretary may exclude areas of CH if the benefits of such exclusion outweigh the benefits of inclusion.

Destruction or Adverse Modification

- **ESA Consultation requirements**
 - For federal actions taking place within CH, NMFS must evaluate the effects of the action on the physical and biological features (the copepods).

 - eg. Do the PCEs remain functional?
 - eg. Do the PCEs continue to serve the intended conservation role for the species?



Proposed Right whale closure area with IPHC Statistical Areas

B-6