MEMORANDUM

TO: Council, SSC and AP Members

FROM: Clarence G. Pautzke
Executive Director

DATE: February 1, 2000

SUBJECT: Steller Sea Lions

ESTIMATED TIME
2 HOURS

ACTION REQUIRED

(a) Receive status report on implementation of RPAs.
(b) Review regulatory amendment for research on effects of closures.

BACKGROUND

In December, NMFS staff provided an update on the status of litigation on two claims pertaining to the Endangered Species Act and the potential effects of groundfish fisheries on Steller sea lions. First, the Plaintiffs challenged the "no jeopardy" finding of the Biological Opinion on 1999 TAC specifications (referred to by the court as BiOp2). On January 25, 2000, Judge Zilly denied NMFS's motion to dismiss the claim, or in the alternative, for a temporary stay of litigation pending completion and issuance of a comprehensive groundfish consultation. The Judge granted the plaintiffs' motion for summary judgment (Item C-2(a)). NOAA General Counsel will be on hand to discuss Judge Zilly's decision.

The Plaintiffs have also challenged the merits of the Revised Final Reasonable and Prudent Alternatives (RFRPAs) issued by NMFS. The parties met to mediate these matters, as requested by the Court, and we will receive a report on the outcome.

NMFS issued an emergency interim rule implementing the RPAs necessary to avoid the likelihood that the Alaska pollock fisheries will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. The FR notice of the emergency rule is attached as Item C-2(b). Comments on the rule are due February 24.

NMFS has prepared a regulatory amendment to examine the effects of fishery closures on Steller sea lions. The study will require two actions: establishing a ban on all trawl fishing in the Chiniak Gully region off the eastside of Kodiak Island and allowing the reopening of the 10 nm no trawl zone around Gull Point and Cape Barnabas to conduct experiments on the effects of fishing in nearby waters. It is expected that this action will be in effect from August 1st to a date no later than September 20th during the years 2000 to 2003. An executive summary of the analysis is included as Item C-2(c).

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

GREENPEACE, AMERICAN OCEANS CAMPAIGN, and SIERRA CLUB,

Plaintiffs,

v.

NATIONAL MARINE FISHERIES SERVICE, and WILLIAM M. DALEY, in his official capacity as Secretary of the Department of Commerce,

Defendants,

AT-SEA PROCESSORS ASSOCIATION, UNITED CATCHER BOATS, ALEUTIANS EAST BOROUGH, and WESTWARD SEAFOODS, INC., et al.,

Intervenor-Defendants.

NO. C98-492Z

ORDER

I. Introduction

Greenpeace, American Oceans Campaign, and the Sierra Club ("plaintiffs") have filed suit challenging the National Marine Fisheries Service's (NMFS's) North Pacific Fishery Management Plans for the groundfish fisheries in the Bering Sea and Gulf of Alaska. Plaintiffs claim these fisheries are harmful to the endangered Steller sea lion and seek relief under the Endangered Species Act (ESA) and the National Environmental Policy Act

(NEPA). In a prior order, the Court ruled on various claims under NEPA and the ESA. *See Greenpeace v. National Marine Fisheries Service*, 55 F. Supp.2d 1248 (W.D. Wash. 1999).

The matter is currently before the Court on motions related to plaintiffs' Fifth Claim for Relief. In their Fifth Claim for Relief, plaintiffs challenge the adequacy of a December 22, 1998 biological opinion issued by NMFS pursuant to the Endangered Species Act. The National Marine Fisheries Service moves to dismiss the claim or in the alternative for a temporary stay of litigation pending completion and issuance of a comprehensive "Groundfish consultation." *See* docket no. 285. Intervenor-defendants representing the fishing industry (collectively "industry") join in the motion filed by the National Marine Fisheries Service. *See* docket no. 298. Plaintiffs cross-move for summary judgment. *See* docket no. 299.

In reaching a decision on these motions, the Court has considered the pleadings filed in support of and in opposition to the motions, reviewed the litigation to this point, including the prior representations of the parties and rulings of this Court that impact the current motions, and applied the Endangered Species Act to the complex federal management scheme that regulates the North Pacific groundfish fisheries. The Court now DENIES defendant's motion to dismiss, docket no. 285, and GRANTS plaintiffs' motion for summary judgment, docket no. 299.

II. Background

The Gulf of Alaska (GOA) and the Bering Sea/Aleutian Islands region (BSAI), collectively referred to as the North Pacific ecosystem, is home to the largest commercial fishery in the United States. The ecosystem is also home to the western population of Steller sea lions which in 1990 were listed under the ESA as a threatened species, and in 1997 were reclassified as endangered.[1]

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[1] For a detailed description of the relevant legal and factual background in this case, *see Greenpeace v. National Marine Fisheries Service*, 55 F. Supp.2d 1248 (W.D. Wash. 1999).

A. Fisheries Management in the North Pacific

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson Act) provides the legal framework for federal management of the fisheries in the North Pacific. *See* 16 U.S.C. § 1801 *et seq.* Under the Magnuson Act, the North Pacific Fishery Management Council (Council) prepares Fishery Management Plans (FMPs) that regulate commercial fishing in the GOA and BSAI. *See* 16 U.S.C. §§ 1852(a)(1)(G), (h). These FMPs must be consistent with national standards established in the Magnuson Act, 16 U.S.C. § 1851, and "shall" contain the "conservation and management measures" necessary and appropriate for the conservation and management of the fishery. 16 U.S.C. § 1853(a). "Conservation and management" is defined by the Act to include "all of the rules, regulations, conditions, methods, and other measures" required to rebuild, restore or maintain any fishery resource. 16 U.S.C. § 1802(5). In addition, conservation and management measures must be designed to assure, among other things, that "irreversible or long-term adverse effects on fishery resources and the marine environment are avoided." 16 U.S.C. § 1802(5)(ii).

FMPs must be submitted to the Secretary of Commerce ("Secretary") for review and approval to ensure they are consistent with the dictates of the Magnuson Act and other applicable law. 16 U.S.C. § 1854(a). Similarly, any implementing regulations proposed by the Council under § 1853(c) of the Act are reviewed by the Secretary to determine whether they are consistent with the Act, the FMPs, and other applicable law. 16 U.S.C. § 1854(b).

The groundfish fisheries at issue in this case are regulated under two Fishery Management Plans - one for the Bering Sea and Aleutian Islands and the other for the Gulf of Alaska. S2-350 at 9.[2] According to NMFS, these FMPs "utilize a myriad of interrelated

[2] References in this Order to the Administrative Record are either to "AR" (Administrative Record), or to "S" (Supplement to the record), followed by volume number, document number, and page number. For example, S2-350 at 9 refers to volume number 2, document number 350, at page 9 of the

regulations to manage the fisheries." S2-350 at 9. The FMPs address all the factors affecting when, where, and how the fisheries are conducted and include such measures as optimum yield for each fishery, overfishing, total allowable catch limits for targeted species (TAC), time and area closures, gear restrictions, bycatch limits of prohibited species, and allocations of TACs among vessels delivering to different types of processor groups, gear types, and qualifying communities. 16 U.S.C. § 1853; S2-350 at 9.

Since the time of their original implementation, there have been dozens of formal amendments to the North Pacific groundfish FMPs.[3] In addition, discrete annual decisions such as setting the yearly TAC for each fishery, establishing the prohibited species catch limit, and apportioning the TAC into fishing seasons and among various sectors of the industry are implemented by regulation each year. *See* 50 C.F.R. § 679.

B. Prior ESA Compliance

Under the ESA, all federal agencies must insure that action taken by the agency does not jeopardize the existence or recovery of endangered species or adversely modify their critical habitat.[4] Section 7 of the ESA requires the "action" agency to consult with an "expert" agency to determine whether jeopardy or adverse modification is likely to result from the proposed agency action. The final product of a formal consultation is a biological opinion (BiOp), which sets forth the expert agency's conclusions regarding jeopardy and adverse modification, as well as the reasoning supporting the opinion. *See generally*, 16 U.S.C. § 1536; 50 C.F.R. § 402.14.

Supplement to the record.

[3] The GOA FMP was originally adopted in 1978; the BSAI FMP was originally adopted in 1982. *See* AR4-33 at 2; AR4-34 at 2.

[4] "Jeopardize" means to "engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." 50 C.F.R. § 402.02. "Adverse modification" means "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." *Id.*

Since 1990, when the Steller sea lion was first listed as threatened, NMFS's Office of Sustainable Fisheries (the "action" agency for ESA purposes) has engaged in both informal and formal consultation with NMFS's Office of Protected Resources (the "expert" agency) regarding the effect of the North Pacific groundfish fisheries on the Steller sea lion and other marine mammals. These consultations have varied in scope from addressing the overall effects of the groundfish FMPs in their entirety, to addressing the effects of discrete amendments to the FMPs or annual catch limits. *See* S3-19 at 100-08.

NMFS has twice before consulted on the environmental effects of the BSAI and GOA groundfish FMPs. In April 1991, NMFS issued two biological opinions addressing the overall impacts of the fisheries on the Steller sea lion and other marine mammals listed under the Endangered Species Act. *See* AR4-29; AR4-30. Each opinion expressly stated that the "Activity Considered" was the "Fishery Management Plan (FMP) for the Gulf of Alaska (GOA) Groundfish" and the "Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish." *See* AR4-29 at 1; AR4-30 at 1. According to NMFS, each opinion considered "all aspects of the fishery." AR4-29 at 1a; AR4-30 at 1a. Each opinion concluded that "as currently managed and conducted" the respective groundfish fisheries were not likely to jeopardize or adversely modify the Steller sea lion or its critical habitat. *See id.*

In 1995, NMFS reinitiated consultation and, in January 1996, again issued biological opinions that addressed the overall impacts of the North Pacific groundfish Fishery Management Plans on listed species. Like their 1991 predecessors, the 1996 biological opinions expressly considered the "Fishery Management Plan for the Gulf of Alaska Groundfish Fishery" and the "Fishery Management Plan for the Bering Sea and Aleutian Islands Groundfish Fishery." *See* AR4-33 at 1; AR4-34 at 1. Because it had been more than four years since the "overall" effects of the BSAI and GOA groundfish fisheries had been examined, the express purpose of the 1996 biological opinions was to "reconsider" the overall effects of these fisheries on Steller sea lions, "including the adequacy of fishery management regulations to protect them." AR4-33 at 1-2; AR4-34 at 1-2. As in 1991, the

1996 opinions concluded the groundfish management plans for the GOA and BSAI were not likely to jeopardize Steller sea lions or adversely modify sea lion critical habitat.

In 1997, NMFS reclassified the western population of Steller sea lion from threatened to endangered. Nevertheless, in January 1997 NMFS issued a Decision Memorandum that concluded the 1997 fisheries "were not likely to affect Steller sea lions in a way or to an extent not already considered in previous section 7 consultations." S3-19 at 106. In 1998, NMFS concluded "that the 1996 biological opinion remained valid for the 1998 BSAI groundfish fishery." S3-19 at 107. However, due to a 60% increase in the GOA pollock total allowable catch for 1998, NMFS reinitiated consultation on the GOA groundfish fisheries and, in a March 1998 biological opinion, once again concluded the GOA fishery was not likely to result in jeopardy or adverse modification. *See* AR4-36.

C. Procedural History

In April 1998, plaintiffs filed suit in this Court. Plaintiffs primary allegation in their initial complaint was that NMFS continued to implement the North Pacific groundfish FMPs in the absence of a comprehensive Environmental Impact Statement (EIS) or adequate biological opinions addressing the full, overall impact of these fisheries on the endangered Steller sea lion. *See* Complaint, docket no. 1. Specifically, plaintiffs challenged the January 1996 biological opinion for the BSAI and the March 1998 biological opinion for the GOA. Complaint at 23-27. Plaintiffs claimed these biological opinions did not meet the requirements of the ESA because the "cumulative impacts of the total groundfish catch of multiple species" were not adequately analyzed in the 1996 BSAI opinion, Complaint at 30, and because the 1998 GOA opinion was "limited to considering a single year, rather than the impacts of the past, present, and reasonably foreseeable fishing under the current management regime." Complaint at 32.

In August of 1998, plaintiffs moved for summary judgment on these claims. Docket 63. In response NMFS moved for a stay of litigation. Docket 68. NMFS argued a stay was proper because it was preparing a new Supplemental Environmental Impact Statement

(SEIS) addressing "the Fishery Management Plan for the Bering Sea and Aleutian Islands Groundfish Fishery (FMP BSAI) and the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP GOA)." Defendant's Memo in Support of Stay at 3, docket 69. In conjunction with the SEIS, NMFS represented to the Court that it was consulting on a biological opinion pursuant to section 7 of the BSA that would "examine all Federally-managed fisheries in the BSAI and GOA," including all "the issues that will be addressed in the SEIS." *Id.* at 4.

The statements of NMFS's legal counsel mirrored those of Steven Pennoyer, the Alaska Regional Administrator of NMFS, who submitted a declaration under oath in support of the motion for stay. *See* Pennoyer Declaration, docket no. 69 ("1998 Pennoyer Decl."). In this declaration, Pennoyer stated the scope of the consultation "will be broad and will examine all Federally-managed fisheries in the Gulf of Alaska and Bering Sea and Aleutian Islands and the manner in which the total allowable catch levels are set as well as the issues referenced in [the SEIS]." 1998 Pennoyer Decl. at 4, docket 69. In other words, the promised biological opinion was to be coextensive with the groundfish FMPs, including "a detailed discussion" of the effects of the fisheries on listed species and critical habitat, analyzing among other things,

> the process by which the annual total allowable catch specifications and prohibited species catch limits are determined as well as methods by which changes to those processes are implemented . . . the locations and timing of each fishery, harvestable amounts, exploitation rates, exploited species, groupings of exploited species, gear types and groupings, allocations, product quality, organic waste and secondary utilization, species at higher and lower trophic levels, habitat alterations, and relative impacts to the environment . . ..

1998 Pennoyer Decl. at 2-3, docket no. 69. NMFS stated it was also engaging in separate consultations under the ESA to address specific changes to the mackerel and pollock fisheries.

Based on these actions, in the fall of 1998, NMFS argued a stay of this litigation was proper because the new "biological opinions and SEIS will supersede and make moot the biological opinions and environmental assessment that are currently the subject of plaintiffs'

complaint." Defendant's Memo in Support of Stay at 2, docket 69. On the strength of NMFS's representations regarding its on-going environmental consultations, this Court granted the requested stay. In view of the forthcoming SEIS and biological opinions, this Court concluded "that if we continued now with the pending motion for summary judgment or any other action in connection with the pending litigation at the present time, it would be largely, if not entirely, an academic exercise." Transcript of Hearing on Motion for Stay at 38, docket no. 98.

In December of 1998, NMFS issued the promised documents: a Supplemental Environmental Impact Statement, a biological opinion dealing specifically with the Atka mackerel and pollock fisheries (hereinafter "BiOp1"), and a biological opinion dealing with the entire groundfish fisheries (hereinafter "BiOp2"). Plaintiffs amended their complaint to challenge the sufficiency of these documents under NEPA and the ESA. *See* Second Amended Complaint, docket no. 147.

The legal sufficiency of the SEIS, of BiOp1, and of the final reasonable and prudent alternatives (RPAs) adopted pursuant to BiOp1, were the subject of prior motions for summary judgment before this Court. In July of 1999, the Court granted in part and denied in part those motions. *Greenpeace*, 55 F. Supp.2d at 1276. The Court ruled that NMFS had properly determined the mackerel fishery as proposed would not result in jeopardy or adverse modification, but that the pollock fishery would. *Id.* at 1276-77. However, the Court held that the RPAs adopted by the Council and approved by NMFS were arbitrary and capricious. *Id.* Furthermore, the Court held that NEPA required the preparation of a comprehensive "programmatic" SEIS. *Id.* The Court remanded for preparation of Revised RPAs and for preparation of a programmatic SEIS.[5] *Id.* at 1277.

[5] NMFS expects a final SEIS by August 2001. *See* docket no. 327 at 2.

III. The Present Motions

BiOp2 is the focus of the current cross-motions now before the Court. In their Second Amended Complaint, plaintiffs made the same challenges to BiOp2 as they did to the January 1996 BSAI FMP biological opinion and the March 1998 GOA FMP biological opinion, both of which were ostensibly superseded by BiOp2. Specifically, in their Fifth Claim for Relief, plaintiffs claimed that BiOp2 was insufficient under the ESA because it analyzed only the 1999 total allowable catch (TAC) specifications "without adequate discussion or consideration of the likely cumulative impacts of all these fisheries on Steller sea lions." Second Amended Complaint at 23, docket no. 147. *See also* Second Amended Complaint at 30 (alleging that BiOp2 fails to address the individual and cumulative impacts of the groundfish fisheries). Plaintiffs now claim they are entitled to summary judgment "because the Endangered Species Act requires a programmatic biological opinion on the entire groundfish fishery management program," and NMFS has not prepared such an opinion. Plaintiffs' Memo in Support of Summary Judgment at 11, docket 300.

NMFS's motion to dismiss[6] is based on the fact that, subsequent to this Court's order of remand for preparation of revised RPAs and a comprehensive SEIS, NMFS has once again reinitiated consultation on the effects of the entire groundfish management scheme. Defendant's Memo in Support of Motion to Dismiss at 2-3, docket no. 286. Because consultation has been reinitiated, NMFS argues dismissal is proper on the theory that BiOp2 has been "taken back" and, thus, there is no longer any "final agency action" and nothing for this Court to review. *Id.* at 2, 7. In the alternative, NMFS asks for yet another stay of this litigation pending the completion of its renewed groundfish consultation. *Id.* at 2. The industry joins in NMFS's motion. Intervenors' Response to Defendant's Motion to Dismiss, docket no. 298.

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[6] NMFS mistakenly titles its moving papers as a Motion to Dismiss Plaintiffs' Fourth Claim for Relief. In fact, plaintiffs' challenge to BiOp2 is its Fifth Claim for Relief.

IV. Discussion

A. Plaintiffs' Motion for Summary Judgment

Plaintiffs' motion for summary judgment is based solely on the claim that NMFS has failed to prepare a biological opinion that is adequate in scope. Plaintiffs assert that, in order to comply with the ESA, NMFS must prepare a comprehensive, programmatic biological opinion equal in scope to the groundfish FMPs. The industry counters that NMFS has already met this obligation in prior biological opinions and was not required to do so again in BiOp2. Conversely, NMFS argues BiOp2 does address all aspects of the fisheries and is, therefore, legally adequate in scope.

1. Scope of Biological Opinions under the ESA

Plaintiffs' correctly assert that NMFS must prepare a biological opinion equal in scope to the FMPs. The Ninth Circuit has unequivocally held that biological opinions under the ESA must be "coextensive" with the agency action. *Conner v. Burford*, 848 F.2d 1441, 1458 (9th Cir. 1988). In *Conner*, the Ninth Circuit rejected the argument that a federal agency could meet its ESA obligations by addressing portions of the agency action incrementally as each portion went into effect. *See id.* at 1455. According to the *Conner* Court, the ESA provides a "clear mandate" that a "comprehensive" biological opinion addressing "all phases of the agency action" must be completed before initiation of the agency action. *Id.* at 1453-55. Although *Conner* was decided in the context of oil and gas leases in national forests, its holding is based on a legal interpretation of the ESA and is applicable here.

The ESA requires a biological opinion to detail how the "agency action" affects the species or its critical habitat. 16 U.S.C. § 1536(b)(3)(A). Consequently, the scope of the "agency action" is crucial "because the ESA requires the biological opinion to analyze the effect of the entire agency action." *Conner*, 848 F.2d at 1453. The meaning of "agency action" under the ESA is a matter of statutory interpretation that is ultimately to be decided by the court. *Pacific River Council v. Thomas*, 30 F.3d 1050, 1053-54 (9th Cir. 1994). *See*

also Conner, 848 F.2d at 1453 (legal adequacy of a biological opinion is tested by matching "agency action" described in biological opinion against a legal definition of the term). The Ninth Circuit has consistently held that "agency action" is to be construed broadly. *See Pacific Rivers Council*, 30 F.3d at 1055 (citing cases). Under the ESA, "agency action" means "all activities or programs of any kind" authorized, funded or carried out by federal agencies, including "the promulgation of regulations." 50 C.F.R. § 402.02. Thus, section 7 of the ESA "on its face" requires the agency to analyze all aspects of the agency action in a biological opinion. *Conner*, 848 F.2d at 1453.

In *Pacific Rivers Council*, 30 F.3d 1050, the Ninth Circuit held that the term "agency action" under the ESA included within its meaning Programmatic Land Resource Management Plans similar in nature to the Fishery Management Plans at issue here. In *Pacific Rivers Council*, the Forest Service argued that its resource management plans constituted "agency action" only at the time of adoption, revision, or amendment. *Pacific Rivers Council*, 30 F.3d at 1055. The Forest Service also argued the plans did not fall within the definition of agency action because the plans did not mandate any action but were merely programmatic documents. *Id.* In rejecting the Forest Service's argument, the Ninth Circuit noted that the management plans at issue affected protected salmon "because the plans set forth criteria for harvesting resources within the salmon's habitat." *Id.* Accordingly, the court held that "[g]iven the importance of the [Land Resource Management Plans] in establishing resource and land use policies for the forests in question there is little doubt that they are continuing agency action under § 7(a)(2) of the ESA." *Id.* at 1056. *See also Lane County Audubon Socy. v. Jamison*, 958 F.2d 290, 294 (9th Cir. 1992) (interim forestry management strategy is agency action under ESA because it sets forth criteria for harvesting owl habitat); *Silver v. Babbitt*, 924 F. Supp. 976, 984 (D. Arizona 1995) (holding that "a programmatic document that guides and constrains the implementation of a tribal timber harvest program" is agency action under ESA).

Similarly, in this case, there is no doubt the FMPs in their entirety constitute agency action subject to consultation under ESA section 7.[7] By law, fishery management plans contain "all of the rules, regulations, conditions, methods, and other measures" required to maintain the fisheries and prevent long-term adverse effects on fishery resources and the marine environment. 16 U.S.C. § 1802(5). All regulations implementing the plans must be consistent with them. 16 U.S.C. § 1854(b). By definition, the rules, regulations and other measures that comprise the Fishery Management Plans constitute "agency action." *See* 50 C.F.R. 402.02. The plans as a whole authorize and regulate all the activities involved in fishing. Thus, these plans not only set forth criteria for harvesting resources within sea lion habitat, but guide and constrain all aspects of the groundfish fisheries in the BSAI and GOA. *See Pacific Rivers Council*, 30 F.3d at 1056; *Silver v. Babbitt*, 924 F. Supp. at 984. As such, they have a significant on-going effect on the ocean environment in general, as well as sea lion habitat in particular.

Based on the foregoing, the Court concludes the BSAI and GOA FMPs in their entirety constitute on-going agency action under the ESA. Consequently, the ESA requires a comprehensive biological opinion coextensive in scope with the FMPs.[8]

2. Required Scope of BiOp2

Nevertheless, the industry argues BiOp2 is properly limited in scope to addressing the authorization of the 1999 fishery only. *See* Intervenors Response to Motion for Summary Judgment at 8-9, docket no. 326. The industry points out that the adoption of the FMPs and

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[7] The Court notes that the Magnuson Act expressly requires fishery management plans to comply with any other applicable law. 16 U.S.C. § 1854(a). NMFS has previously admitted to this Court that these plans must comply with the ESA, S2-350 at 9, and has twice before consulted on them.

[8] Although NMFS argues it is not required to prepare a "programmatic" biological opinion, it does not seriously dispute the fundamental assertion that it is required to prepare a biological opinion equal in scope to the FMPs. Rather, NMFS seeks to distinguish *Conner* and *Pacific Rivers Council* on the basis it has "complied with this case law by preparing a biological opinion on the entire agency action." Defendant's Response at 6, docket no. 325. However, this argument merely begs the question whether, in fact, BiOp2 is equal in scope to the FMPs.

the authorization of the yearly fishery are separate and discrete agency actions. *Id.* They argue that BiOp2 is limited by its terms to the 1999 fishery alone and is not intended to be the comprehensive document that plaintiffs claim is required. *Id.* The industry points out that NMFS addressed the impacts of the FMPs in their entirety in the two January 1996 biological opinions (described above) and claims these opinions were never challenged. *Id.* at 13. The industry contends these prior opinions fulfill NMFS's obligations under the ESA with respect to the FMPs. *Id.* at 14. As such, the industry claims that NMFS was not currently required to consult on the FMPs. According to the industry, therefore, BiOp2 is properly limited to examining the only pertinent agency action: authorization of the 1999 fisheries.[9] *Id.* at 11.

The industry correctly asserts that decision making under the Magnuson Act distinguishes between the longer term management measures contained in the FMPs, and the seasonal catch limits implemented by regulation annually. Intervenor-Defendants' Response at 8, docket no. 326. The full suite of management measures that comprise the FMPs constitute a "framework" plan which regulates the overall conduct of the fisheries. These "framework" management measures are not revisited annually and any proposed modification to a management plan must be made through formal amendment subject to a strict review process. *See* 16 U.S.C. §§ 1852(h); 1854(a). On the other hand, the implementing regulations also require the Council and NMFS to make certain discrete management decisions annually. These measures are essentially limited to setting the harvest specifications for the year. *See* 50 C.F.R. § 679; 64 Fed. Reg. 12094 (final 1999 GOA specifications); 64 Fed. Reg. 12103 (final 1999 BSAI specifications). The harvest specifications, in turn, consist primarily of setting catch limits for both target and prohibited species, and apportioning these quotas among various sectors of the fisheries and between

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[9] This argument necessarily recognizes a difference in the breadth of scope between BiOp2 and the FMPs. Thus, the industry apparently acknowledges that BiOp2 is not coextensive in scope with the FMPs.

seasons. *See id.* Thus, authorization of the yearly fishery is an "agency action" of limited scope and duration and stands in contrast to the broad scope and on-going effect of the FMPs.

Given the well-defined management scheme prescribed by law, the Court agrees with the industry that the adoption of the FMPs and the authorization of the yearly fishery are separate and discrete agency actions. Nevertheless, the Court rejects the industry's claim that NMFS need not have addressed the entire FMPs in BiOp2. The industry's position is contrary to law and ignores the procedural history of this case.

The fact that BiOp2 is limited by its own terms to the authorization of the 1999 fishery is not dispositive of its proper scope. Ultimately, the meaning of "agency action" is determined as a matter of law by the Court, not by the agency. *Pacific River Council*, 30 F.3d at 1054 (the courts, not the agency, are charged with the basic responsibility of defining "agency action" subject to consultation). Thus, an agency may not unilaterally relieve itself of its full legal obligations under the ESA by narrowly describing the agency action at issue in a biological opinion.

Contrary to the industry's assertions, prior biological opinions analyzing the overall effects of the entire groundfish management scheme were specifically challenged by the plaintiffs in this case. As detailed above in the procedural history of this case, more than one year ago this Court granted a stay and concluded that ruling on plaintiffs challenges to these prior opinions would be an "academic exercise" based on sworn statements and legal argument that those opinions would be rendered obsolete by the issuance of BiOp2. At that time, NMFS's legal argument and the sworn declaration of its regional administrator made clear that BiOp2 was to be a broad and comprehensive analysis equal in scope to the proposed SEIS. In other words, BiOp2 was to address the full range of management measures that comprise the FMPs and replace the prior comprehensive 1996 biological opinion for the BSAI and the 1998 opinion for the GOA.

Based on the foregoing, the Court rejects the industry's position that BiOp2 is properly limited in scope to the authorization of the 1999 fishery as opposed to the entire groundfish management plans. To accept the industry's position would, in fairness, require this Court to revive plaintiffs' claims against the January 1996 and March 1998 biological opinions previously challenged, effectively returning this case to a point in the litigation now long since passed. In the process, the Court would have permitted NMFS to manipulate these proceedings and evade judicial review of its fishery management practices by the simple device of failing to live up to the representations it made in open court.

In any event, the January 1996 and the March 1998 biological opinions are no longer legally sufficient. The ESA requires an agency to reinitiate consultation and to issue a new biological opinion when a new species is listed, when the agency action is modified, or when new information reveals the action may affect a listed species in a manner or to an extent not previously considered. 50 C.F.R. § 402.16. In this case, both of the 1996 opinions were issued prior to the listing of the Steller sea lion as endangered. Since the 1996 opinions were issued, significant changes have been made to the fishery management plans and NMFS has concluded the pollock fishery may jeopardize the Steller sea lion. *See Greenpeace*, 55 F. Supp.2d 1248. These changes alone render continued reliance on the 1996 biological opinions legally impossible. Similarly, the March 1998 biological opinion is out-dated. Although it ostensibly reviewed the fishery plan for the GOA in its entirety, the opinion is only 10 pages in length and was necessary only because of a 60% increase in the TAC for 1998. *See* March 2, 1998 Biological Opinion at 7, S4-36.

Based on the law and the prior history of this case, the Court concludes the proper subject of consultation in BiOp2 should have been the overall groundfish Fishery Management Plans for the BSAI and GOA in their entirety. Given the foregoing, the only remaining question is whether BiOp2 is legally adequate in scope.

3. Legal Adequacy of BiOp2

Despite the fact that BiOp2 is limited by its terms to consideration of the 1999

flathead sole, rock sole, Greenland Turbot, yellow fin sole, Arrowtooth flounder, at least 8 other species of flatfish (e.g., Alaska paice, rex sole, Dover sole, story flounder, English sole, butter sole, sand sole, and deep sea sole), sablefish, numerous species of rockfish, and squid. *See* BiOp2 at 13-57, S3-19.

NMFS's regional administrator has previously indicated to this Court that the scope of a comprehensive biological opinion coextensive with the FMPs would include analysis of the processes by which the annual total allowable catch specifications and prohibited species catch limits are determined, the methods by which changes to those processes are implemented, the locations and timing of each fishery, harvestable amounts, exploitation rates, exploited species, groupings of exploited species, gear types and groupings, allocations, product quality, organic waste and secondary utilization, species at higher and lower trophic levels, habitat alterations, and relative impacts on the environment. 1998 Pennoyer Decl. at 2-6, docket no. 69.

In support of its current motion to dismiss, NMFS's regional administrator declares NMFS is now in the process of preparing a "comprehensive consultation" that will evaluate "the cumulative effects of the fisheries over a multi-year period on listed species and critical habitat," including "the individual and cumulative impacts of all activities relating to groundfish fisheries authorized and managed under the FMPS, and all amendments thereto," as well as "overfishing levels; distribution of fishing effort over time and space; fishery methods; direct impacts on target species; incidental impacts on other species including those protected under the Endangered Species Act; cumulative effects of individual fisheries; combined cumulative effects of all fisheries; and mechanisms for assessment of environmental effects." 1999 Pennoyer Decl. at 2-3, docket no. 287.

Given the broad and complex nature of the FMPs and the numerous significant issues NMFS itself recognizes these management plans raise, a comprehensive biological opinion addressing the full scope of the FMPs should, at the very least, identify all the relevant management measures and explain how these measures individually, and in combination,

affect the listed species and its marine environment. While BiOp2 does mention many of the relevant management measures, it does so only in the context of a general, background discussion. Although useful, general background information does not substitute for focused and meaningful analysis of how the numerous individual management measures, or the management scheme as a whole, affect listed species. Of the issues identified by NMFS itself, BiOp2 fails to meaningfully analyze such things as the processes by which annual catch limits are determined, the methods by which changes to these processes are implemented, the distribution of the fishery over time and space, exploitation rates, overfishing levels, groupings of exploited species, habitat alterations, relative impacts on the environment, individual and cumulative effects of all activities related to the fisheries, direct impacts on target species, incidental impacts on other species, and mechanisms for assessing environmental impacts. *See* 1998 Pennoyer Decl.; 1999 Pennoyer Decl.[16] Rather than discussing each area in which BiOp2 may be lacking, the Court examines several important issues in which BiOp2's analysis is deficient.

BiOp2 fails to critically analyze how core management measures such as the processes for deriving acceptable biological catch, overfishing, and total allowable catch, impact endangered species. While BiOp2 does include a description of these processes, the discussion is general in nature and does not explain how these measures, or the processes for deriving them, relate to the conservation of the Steller sea lion. *See* BiOp2 at 6-12, S3-19. A proper analysis in this area seems important and necessary. Acceptable biological catch and overfishing levels are based on stock assessment techniques. *See* BiOp2 at 7-9; AR4-34 at 14 (1996 BSAI FMP biological opinion). These levels, in turn, constrain the TAC. *See id.* At least theoretically, therefore, the process ensures that no fish stock will be overfished. *See id.* Nevertheless, in its 1996 BSAI FMP biological opinion, NMFS concluded that "these processes cannot ensure that the amount of food available to sea lions will not be diminished

[16] This list is not intended to be exclusive. There may be other issues not mentioned in this opinion that require analysis.

by fishing." AR4-34 at 15. The 1996 biological opinion also stated that the "management process does not adequately incorporate broader ecosystem interactions in determining TAC levels." AR4-34 at 16. As a consequence, the 1996 opinion noted that the only way the management measures can ensure an adequate forage base for marine mammals is to ensure that fish stocks do not fall below historical levels. AR4-34 at 16. Although the 1996 BSAI FMP biological opinion ultimately concluded that TAC setting process probably would not jeopardize the Steller, it did so only after identifying the issues implicated by these measures and discussing them. In contrast, BiOp2 contains no such discussion. BiOp2 does not revisit these questions, does not discuss any changes in the management process that obviate the concerns previously raised, and does not raise potential new concerns, if any.

Similarly, the 1996 BSAI FMP biological opinion noted that the TAC setting process then in place did "little to improve knowledge of the ecosystem (particularly its responses to management actions) or to test methods to aid the recovery of Steller sea lions." AR4-34 at 16. Perhaps in light of this observation, in his 1998 Declaration to this Court, the regional administrator of NMFS stated that a comprehensive biological opinion (ostensibly referring to BiOp2 itself) would contain analysis of how the methods by which changes to the processes for deriving the TAC and the prohibited species catch limit are implemented. In his 1999 Declaration, NMFS's regional administrator also indicates that mechanisms for assessing environmental impacts should be analyzed. Unfortunately, BiOp2 contains no discussion of these issues.

The overall, cumulative effects of the groundfish fisheries on the sea lion has been a primary issue throughout this litigation. The ESA specifically requires a cumulative effects analysis.[11] Although BiOp2 states that its conclusions are based on a "cumulative effects analysis," BiOp2 at III, S3-19, and even contains a section titled "Cumulative Effects,"

[11] The ESA requires agencies to evaluate the "effects of the action and cumulative effects on the listed species or critical habitat" and to formulate its biological opinion to determine whether the action, "taken together with cumulative effects," is likely to jeopardize the listed species or adversely modify its critical habitat. 50 C.F.R. § 402.14(g)(3) & (4).

BiOp2 at 118, in fact this section contains no analysis whatsoever and is nothing more than a list of the fisheries regulated by the state of Alaska or granted by treaty to Native Americans. BiOp2 at 118-19. The section contains no explanation of how the various groundfish fisheries and fishery management measures interrelate and how the overall management regime may or may not affect Steller sea lions. Significant changes affecting the fisheries and the marine environment have occurred since 1996, when NMFS last consulted on the overall effects of its North Pacific management regime. These changes include reclassification of the western population of Steller sea lions from threatened to endangered, as well as numerous amendments to the FMPs and, for the first time, the issuance of a biological opinion concluding that the pollock fishery could jeopardize the continued existence or recovery of the Steller. As this Court noted with regard to the preparation of a comprehensive SEIS, even minor changes to the FMPs could result in a cumulative significant impact on the environment. *Greenpeace*, 55 F. Supp.2d at 1274. The regional director of NMFS has himself indicated that the individual and cumulative effects of the fisheries require analysis. Yet, BiOp2 fails to address this issue at all.

The requirement that an agency evaluate the effects of its actions on critical habitat is mandatory under the ESA. With respect to this crucial issue, BiOp2 contains no meaningful analysis. BiOp2 states its analysis of this issue was "limited by the lack of available information on the distribution of fishing effort relative to Steller sea lions [sic] rookeries and haulouts and designated critical habitat." BiOp2 at 115. As a consequence, BiOp2 does not even include such basic information as the estimated level of fishing in critical habitat, information that is key to analyzing the effects of fishing in those areas NMFS itself has designated as critical to sea lion recovery and survival. Moreover, NMFS admits that at least some of the information it needed "could be developed after several months of analysis" but the needed analysis "could not be completed in the time allowed for this consultation." BiOp2 at 115. Thus, it appears that necessary data was available but simply not analyzed.

As far as the Court can ascertain, the focus of BiOp2 is limited to analyzing whether the fisheries compete with the sea lion for prey. In particular, BiOp2 focuses on the potential for localized depletions of prey caused by the fisheries. BiOp2 at 90, 112. Even with respect to this limited topic of discussion, meaningful analysis is virtually non-existent. NMFS itself repeatedly concludes in BiOp2 that it simply lacks the information to make any determination one way or the other. *See* BiOp2 at 111-118. Thus, NMFS's analysis is admittedly incomplete and its conclusions inconclusive. Although inconclusive data does not necessarily render a particular scientific conclusion invalid, the limited scope and quality of analysis that is contained in BiOp2 serves to highlight its overall inadequacy. For example, NMFS relies substantially on its conclusion that many of the target groundfish species are not important sea lion prey, despite uncertain evidence. BiOp2 at 114. That many of the target species may not individually constitute a major prey source, however, does not mean the cumulative impact of these fisheries is insignificant. In other words, limited analysis which suggests the fisheries do not jeopardize the sea lion does not obviate the requirement that NMFS address the full scope of the FMPs in order to ascertain their overall effects.

In sum, BiOp2 is limited in scope, heavy on general background information, and deficient in focused and meaningful discussion and analysis of how these large fisheries, and the complex management measures which regulate them, affect endangered Steller sea lions. That NMFS now finds it necessary to undertake yet another "comprehensive consultation" is a final indication to this Court that BiOp2 is not the broad and in-depth consultation it was purported to be by NMFS, much less coextensive in scope with the FMPs as required under the ESA.

A biological opinion which is not coextensive in scope with the identified agency action necessarily fails to consider important aspects of the problem and is, therefore, arbitrary and capricious. Here, BiOp2 not only fails to consider important aspects of the problem, the analysis it does contain is simply not adequate. Although an agency need not

rely on conclusive scientific proof in a biological opinion, its conclusions must be based on "the best scientific and commercial data available." 16 U.S.C. § 1536(a)(2). Thus, an agency "cannot ignore available biological information or fail to develop projections" which may indicate potential conflicts between the proposed action and the preservation of endangered species. *Conner*, 848 F.2d at 1454.

In this case, NMFS admits that at least some of the information it needed was available but could not be analyzed in the time allowed. BiOp2 at 115. A federal agency, however, is not "excused from [fulfilling the dictates of the ESA] if, in its judgment, there is insufficient information available to complete a comprehensive opinion and it takes upon itself [a more limited analysis]." *Conner*, 848 F.2d at 1455. This is not a situation where NMFS fully addressed the problem based on uncertain scientific data. *See Greenpeace Action v. Franklin*, 14 F.3d 1324, 1337 (9th Cir. 1993). Rather, NMFS entirely ignored relevant factors and admittedly failed to analyze and develop projections based on information that was available.

In sum, the ESA requires a comprehensive biological opinion that addresses the full scope of the agency action - in this case the groundfish fishery management plans in their entirety. BiOp2 was to be that opinion. It is not. Because these management plans constitute on-going agency action, *see Pacific Rivers Council*, 30 F.3d at 1053, the Court concludes NMFS is in continuing violation of the ESA until such time as a comprehensive opinion adequately addressing the full impact of the FMPs is completed.

B. Defendant's Motion to Dismiss

Notwithstanding the merits of plaintiffs' challenge to BiOp2, NMFS argues plaintiffs' claim should be dismissed as non-justiciable because it has reinitiated consultation on the overall impacts of the groundfish fisheries and has "withdrawn" BiOp2. NMFS takes a shot-gun approach in its briefing, arguing virtually every doctrine of justiciability applies to prevent this Court from providing the relief plaintiffs seek. *See* Defendant's Memo in Support of Motion to Dismiss, docket no. 286.

As an initial matter, the Court notes that on the one hand NMFS seeks to defend against plaintiffs' motion for summary judgment by pointing to the merits of BiOp2. On the other hand, NMFS argues BiOp2 has been "withdrawn" and plaintiffs' claim should be dismissed. NMFS cannot have it both ways.

Under Article III § 2 of the Constitution, federal courts are limited to deciding "Cases" or "Controversies." *Arizonans for Official English v. Arizona*, 520 U.S. 43, 137 L. Ed. 2d 170, 191 (1997). Standing to sue is an aspect of the case or controversy requirement. *Id.* Generally speaking, in order to have standing, a plaintiff must show an invasion of a legally protected interest that is concrete and particularized as well as actual or imminent. *Id.* *See also, Resources Limited, Inc. v. Robertson*, 35 F.3d 1300, 1302 (9th Cir. 1994 (standing is satisfied where plaintiff has (1) suffered injury in fact, (2) caused by the conduct complained of, and (3) likely to be redressed by a favorable decision). Similarly, ripeness and mootness bear close affinity to standing. A claim is ripe where it has matured sufficiently to warrant judicial intervention. *Idaho Conservation League v. Mumma*, 956 F.2d 1508, 1519 (9th Cir. 1992). A claim is moot where the issues presented are no longer "live" or do not present a controversy as to which effective relief can be granted. *Northwest Environmental Defense Center v. Gordon*, 849 F.2d 1241, 1244 (9th Cir. 1988).

A substantive or procedural violation of the ESA gives rise to a legally redressable injury. *See Sierra Club v. Marsh*, 816 F.2d 1376, 1384 (9th Cir. 1987). Thus, there is no question that at the time the complaint was filed in the present action a live case or controversy existed and plaintiffs had standing to sue. However, a plaintiff must maintain a live case throughout the litigation. *Doe v. Madison School District No. 321*, 177 F.3d 789, 797 (9th Cir. 1999). Where subsequent events deprive a claim of its character as a live case or controversy, the question is one of mootness. *See id.* at 797-98. *See also Gordon*, 849 F.2d at 1244 ("We have described moot cases as those which have lost their character as present, live controversies."). Appropriately focused, therefore, NMFS's arguments raise

only one question: whether NMFS's decision to reinitiate consultation on the groundfish fisheries renders plaintiffs' Fifth Claim for Relief moot.

The burden of demonstrating mootness "is a heavy one." *Id.* at 1244. Because courts of equity have broad discretion in shaping relief, "in deciding a mootness issue, the question is not whether the precise relief sought at the time of the application for an injunction was filed is still available. The question is whether there can be *any* effective relief." *Northwest Environmental Defense Center*, 849 F.2d at 1244-45 (emphasis original). Thus, the fact that the alleged violation has itself ceased is not sufficient to render a case moot. *Id.* at 1245. "As long as effective relief may still available to counteract the effects of the violation, the controversy remains live and present." *Id.*

The primary fallacy with NMFS's position is its preoccupation with the APA's requirement of final agency action. *See* Defendant's Memo in Support at 7, docket no. 286 (issue is no longer live because NMFS has "taken back" BiOp2 for review); Defendant's Reply at 2, docket no. 313 (issue is no longer "live" because NMFS has reinitiated consultation and, thus, "there is no final agency action" for this Court to review). NMFS provides no legal authority for the proposition that an agency's decision to reinitiate consultation results in the "withdrawal" of a previously completed and issued biological opinion. Even if this were so, that fact would not remove this Court's authority to enjoin any failure on the part of NMFS to comply with the ESA. *See Sierra Club*, 816 F.2d at 1389 (failure to comply with the substantive or procedural provisions of ESA may be redressed through injunctive relief). *See also ONRC v. Bureau of Land Management*, 150 F.3d 1132, 1137 (9th Cir. 1998) (failure to comply with statutory duties is "an exception to the final agency action requirement" under the APA).

In this case, the ESA requires a comprehensive biological opinion addressing the full scope of the FMPs. To the extent BiOp2 remains in place, the Court finds it legally inadequate. To the extent it has been withdrawn, then NMFS has nothing in place that

fulfills the dictates of the ESA. Either way, NMFS is in violation of the ESA until such time as a comprehensive biological opinion is in place.

Nor does reinitiation of consultation moot plaintiffs' claim. During consultation or reinitiation of consultation, an agency can take no action that constitutes an irreversible or irretrievable commitment of resources which has the effect of foreclosing the formulation or implementation of reasonable and prudent alternatives. 16 U.S.C. § 1536(d); *Sierra Club v. Marsh*, 816 F.2d at 1389; *Silver v. Babbitt*, 924 F. Supp. at 982-83. Thus, until such time as a comprehensive opinion is in place, this Court retains the authority to determine whether any continuing action violates the ESA and can provide effective relief by enjoining it or remedying its effects.

Accordingly, plaintiffs' claim is not moot because the Court retains the ability to provide effective relief.

V. Concluding

More than one year ago NMFS declared it was preparing a comprehensive biological opinion addressing the full scope of the North Pacific groundfish FMPs, as required under the ESA. Having failed to live up to its obligations under the law, NMFS once again invites the Court to withhold judicial review while it undertakes to do what should have been done long ago. The Court declines the invitation.

Defendant's motion to dismiss, docket no. 285, is DENIED. Plaintiffs' motion for summary judgment, docket no. 299, is GRANTED.

IT IS SO ORDERED.

DATED this 25th day of January, 2000.

THOMAS S. ZILLY
UNITED STATES DISTRICT JUDGE

date of this rule for 30 days is unnecessary.

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

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 18, 2000.

Andrew R. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 00–1700 Filed 1–24–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000119015–0015–01; I.D. 010500A]

RIN 0648–AM32

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

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

ACTION: Emergency interim rule; revision to 2000 interim harvest specifications; request for comments.

SUMMARY: NMFS issues an emergency interim rule implementing reasonable and prudent alternatives (RPAs) to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. This emergency rule implements three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort; measures to spatially disperse fishing effort; and measures to provide sufficient protection from fisheries competition for prey in waters adjacent to rookeries and important haulouts. These emergency measures are necessary to avoid jeopardy and adverse modification.

DATES: Effective January 20, 2000, through July 19, 2000. Comments must be received by February 24, 2000.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK, 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion (BiOp) on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands subarea, the Revised Final Reasonable and Prudent Alternatives (RFRPAs), and the Environmental Assessment/Regulatory Impact Review (EA/RIR) prepared for the emergency interim rule may be obtained from the same address. The BiOp and the RFRPAs are also available on the Alaska Region home page at *http://www.fakr.noaa.gov*. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Shane Capron, 907–586–7228 or shane.capron@noaa.gov

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

Background

In 1990, NMFS designated the Steller sea lion as a threatened species under the Endangered Species Act of 1973 (ESA). The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include (among other areas), the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species west of 144° W long. In 1997, NMFS recognized two separate populations, and reclassified the western population (west of 144° W long.) as endangered.

NMFS first began collecting information on the abundance of Steller sea lions during the 1950s and 1960s. However, the first counts based on reliable data were not available until the late 1970s; these counts reported approximately 109,800 animals. During the 1980s, a precipitous decline of Steller sea lions was observed. By 1996, counts declined to only 22,000 animals, a decline of 80 percent from the late 1970s. Counts of adult and juvenile Steller sea lions have continued to decline over the last few years, but at a lower rate. Due to the small population size, these recent reductions may be a serious obstacle to the recovery of the western population of Steller sea lions.

Multiple factors have contributed to the decline, but considerable evidence indicates that lack of available prey is a serious problem. Foraging studies confirm that Steller sea lions depend on pollock as a major prey source, and that they may be particularly sensitive to any reduced availability of prey during the winter. The significance of pollock in the diet of sea lions may have increased since the 1970s due to shifts in the Bering Sea ecosystem related to atmospheric and oceanographic changes. Pollock are also the target of the largest commercial fisheries in Alaska, fisheries that have grown increasingly concentrated in time and area. This concentration of effort occurs largely in areas designated as Steller sea lion critical habitat and may reduce prey availability during critical times in the life history of sea lions. Additional information on Steller sea lions and the pollock fisheries of the BSAI and GOA is contained in the BiOp and in the EA/RIR prepared for this action (see **ADDRESSES**).

Purpose and Need for Action

In accordance with the requirements of the ESA, the NMFS Office of Protected Resources issued a BiOp dated December 3, 1998, revised December 16, 1998, on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands subarea. The BiOp concluded that the BSAI and GOA pollock trawl fisheries, as projected for 1999 through 2002, were likely to jeopardize the endangered western population of Steller sea lions and destroy or adversely modify critical habitat designated for this population. "To jeopardize" means "to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species" (50 CFR 402.02). The clause "adversely modify its critical habitat" means "a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to

be critical" (50 CFR 402.02). The BiOp also concluded that the Atka mackerel fishery, as modified by recent regulatory changes (64 FR 3446; January 22, 1999), was not likely to jeopardize the endangered western population of Steller sea lions or destroy or adversely modify its critical habitat.

The BiOp did not prescribe a single set of RPAs for the BSAI and GOA pollock fisheries but rather established a framework to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or adversely modifying its critical habitat. The framework consisted of three principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) protection from fisheries competition for Steller sea lion prey in waters adjacent to rookeries and important haulouts. For each of these principles, the BiOp provided guidance on the development of management measures to meet the objectives and, ultimately, to avoid jeopardy and adverse modification. The BiOp stated that certain conservation measures could be phased in over a 2-year period.

In December 1998, NMFS staff briefed the Council on the BiOp. The Council then prepared recommendations for alternative management measures based on the RPA guidelines to avoid jeopardy and adverse modification. The Council's recommendation did not contain Bering Sea subarea (BS) B and C season specifications. However, the Council planned to recommend B and C season measures prior to the second half of 1999. The Council also recommended closing all but nine of the haulout zones specified by the BiOp in the BSAI and GOA. NMFS determined these recommendations to be acceptable as part of a 2-year phase-in strategy, in which equivalent or better protections would be extended for those areas for 2000 and beyond.

On December 16, 1998, NMFS adopted the measures recommended by the Council (with modifications) into the BiOp as part of an RPA for the fisheries. NMFS published an emergency interim rule implementing RPAs in the **Federal Register** on January 22, 1999 (64 FR 3437), amended on February 17, 1999 (64 FR 7814) and on February 25, 1999 (64 FR 9375), which was effective through July 19, 1999. The preamble to the emergency rule provides a detailed description of the purpose and need for the implementation of emergency measures in 1999.

The Council met again in February, April, and June 1999, to consider recommendations for extending the emergency rule for the second half of 1999, and, at its June meeting, voted to extend the emergency rule. Using the Council's recommendation, NMFS extended the emergency rule through December 31, 1999 (64 FR 39087, July 21, 1999; technical amendment 64 FR 43297, August 10, 1999), with revisions to include specifications for the B and C seasons in the BS.

In June 1999, the Council also deliberated on various management measures to implement permanently the RPA guidelines as described in the BiOp for 2000 and beyond. After significant debate and public comment, the Council voted to recommend a series of conservation measures to protect Steller sea lions.

Greenpeace, the American Oceans Campaign, and the Sierra Club challenged the BiOp in the U.S. District Court for the Western District of Washington. In an Order issued on July 9, 1999 (and amended on July 13, 1999), the Court upheld NMFS' no-jeopardy conclusion for the Atka mackerel fishery and the jeopardy conclusion for the pollock fisheries. However, the Court also found that "the Reasonable and Prudent Alternatives * * * were arbitrary and capricious * * * because they were not justified under the prevailing legal standards and because the record does not support a finding that they were reasonably likely to avoid jeopardy." On August 6, 1999, the Court remanded the BiOp back to NMFS for further analysis and explanation.

To comply with the Court's Order, NMFS conducted additional analyses and developed revised final RPAs (RFRPAs, October 15, 1999). The RFRPAs describe management measures that will avoid the likelihood that the pollock fisheries authorized by NMFS' regulations will jeopardize the continued existence of the endangered western population of Steller sea lions or adversely modify its critical habitat.

NMFS has determined that the Council's recommended measures, with certain modifications to season dates, haulout protections, and spatial dispersion in the Bering Sea, achieve the principles identified in the BiOp and the RFRPAs. The Council's recommendation, modified as necessary to avoid jeopardy and adverse modification, therefore forms the basis for the management measures contained in this emergency interim rule.

Elements of the Emergency Rule

Pollock Trawl Exclusion Zones

Under this emergency interim rule, directed fishing for pollock is prohibited within either 10 or 20 nm of rookeries and haulouts in the BS and GOA. The location, size, and period of each exclusion zone are set out in Tables 12, 13, and 20 of 50 CFR part 679. Table 20 for the Aleutian Islands subarea (AI), is reprinted to be consistent in format with Tables 12 and 13, however, no substantive changes were made (see the following discussion).

NMFS approved these exclusion zones on the basis of 10 Steller sea lion counts conducted since 1979, during the reproductive season (summer) and non-reproductive season (winter). NMFS used the following criteria to identify sites that require exclusion zones and to determine the period of the closure and the radius of the zone:

1. *Rookeries* If the site is a rookery, a 10 or 20-nm year-round pollock trawl exclusion zone.

2. *Summer haulouts* If the site is a summer haulout, with greater than 200 sea lions in a summer survey since 1979, and less than 75 sea lions in winter surveys since 1979, a 10 or 20-nm pollock trawl exclusion zone from June 1 through November 1.

3. *Winter haulouts* If the site is a winter haulout, with less than 200 sea lions in summer surveys since 1979, and greater than 75 sea lions in a winter survey since 1979, a 10 or 20-nm pollock trawl exclusion zone from November 1 through June 1.

4. *Year-round haulouts* If the site is a year-round haulout with greater than 200 sea lions in a summer survey since 1979, and greater than 75 sea lions in a winter survey since 1979, a 10 or 20 nm year-round pollock trawl exclusion zone.

The size of the exclusion zones in each area reflects the relative widths of the continental shelf. In the BS, the shelf is relatively wide and exclusion zones have radii of 20 nm. In the GOA, the shelf is narrower and exclusion zones have radii of 10 nm.

The BiOp allowed for a 2-year phase-in schedule for certain RFRPA measures including rookeries and haulout trawl exclusion zones. In the BSAI, under the emergency rule provisions for 1999, all exclusion zones had a 20-nm radius except for the Cape Sarichef zone, which had only a 10-nm raduis. For 2000 and beyond, the Council has recommended that the Cape Sarichef zone have a 20-nm radius, consistent with the BiOp. Therefore, under the emergency interim rule, all 25 exclusion zone sites in the BS are closed to trawling for pollock for a radius of 20 nm.

In the GOA, 53 sites qualified for closure to 10 nm, under criteria in the BiOp. However, in recommending management measures for 2000 and

beyond, the Council recommended no closure for the eight sites exempted under the previous emergency rule, and recommended an additional site, Spitz Island, be exempted. The Council's recommendation included no closures around Cape Barnabas, Gull Point, and Cape Ikolik, and modified trawl exclusion zones around Rugged Island, Point Elrington, The Needles, Mitrofania Island, Spitz Island, and Sea Lion Rocks. NMFS has reviewed these sites in the RFRPAs and determined that they require additional protection, and therefore is implementing an alternative suite of management measures.

Sites around Point Elrington and The Needles meet the criteria for pollock trawl exclusion zones but are not established as exclusion zones under this emergency interim rule. The sites lie entirely within Alaska State waters. Pollock fisheries in these areas are not managed under Federal regulations implementing FMPs. The State of Alaska has indicated its intent to develop equivalent protection measures for these haulouts in 2000. However, if the State fails to develop adequate protection measures for these two sites, NMFS will implement additional protection measures in these areas in 2001 under the authority of the ESA.

This emergency interim rule closes Sea Lion Rocks for a radius of 10 nm to all vessels greater than 60 ft (18.3 m) length overall (LOA). Due to safety concerns for small boats in the region and the relatively lower levels of harvests by these vessels, the area is not closed to vessels less than or equal to 60 ft (18.3 m) LOA. Historically, from 1994 through 1998, vessels longer than 60 ft (18.3 m) LOA have accounted for 72 percent of total harvests in this area. The RFRPAs concluded that excluding vessels greater than 60 ft (18.3 m) LOA from fishing within 10 nm of Sea Lion Rocks, and the subsequent harvest reductions under this closure, would provide sufficient protection against localized depletions of pollock.

Cape Barnabas, Gull Point, Rugged Island, Cape Ikolik, Spitz Island, and Mitrofania Island were proposed by the Council to be included as pollock trawl exclusion zones for 2000 and beyond with a variety of exemptions. However, this emergency rule closes these areas because they have been determined to be critical to the recovery of the western population of Steller sea lions.

In the Bering Sea, the Walrus Island rookery also meets the requirements under the RPA guidelines for closure to 20 nm. However, because this site falls entirely within the Pribilof Island Area Habitat Conservation Zone (see § 679.22(a)(6)), which is closed to trawling year-round, a 20-nm closure of this area would be redundant and is not necessary.

Aleutian Islands Closure

The RFRPA guidelines require that the AI be closed to directed fishing for pollock to protect the waters surrounding rookeries and major haulouts of Steller sea lions. This closure was implemented in 1999, by a reduction in TAC allocated to this subarea that provided for incidental catch only, and then by emergency interim rule. The closure of the AI is continued by this emergency interim rule.

Bering Sea Management Measures

Steller sea lion conservation area (SCA). This emergency interim rule establishes a conservation area to regulate total removals of pollock. This area was previously referred to as the combined Critical Habitat/Catcher Vessel Operation Area in previous emergency rulemaking and in supporting documents. The SCA includes the portion of Bering Sea critical habitat known as the Bogoslof foraging area and the portion of the Catcher Vessel Operational Area (CVOA) that extends eastward from the Bogoslof foraging area. This eastern block of the CVOA overlaps with the pollock trawl exclusion zone for Sea Lion Rocks (Amak Island). Inclusion of this eastern block in the SCA is necessary to provide sufficient protection from concentrated fishing and resulting localized depletions of sea lion prey in (1) the narrow corridor between the Bogoslof foraging area and the Sea Lion Rocks (Amak Island) trawl exclusion zone and (2) these adjacent portions of critical habitat.

The SCA consists of the area of the BS between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed: 55°00′ N lat. 170°00′ W long.; 55°00′ N lat. 168°00′ W long.; 55°30′ N lat. 168°00′ W long.; 55°30′ N lat. 166°00′ W long.; 56°00′ N lat. 166°00′ W long.; 56°00′ N lat. 163°00′ W long.

This emergency interim rule restricts pollock harvests within the SCA to a percentage of each sector's seasonal directed fishing allowance (DFA) according to the percentages set forth in Table 2 of the preamble. In the Bering Sea, the DFA is the amount of pollock available for harvest by each industry sector after subtracting the incidental catch allowance (ICA).

NMFS will monitor catch by each industry sector and close the SCA to directed fishing for pollock by sector when NMFS determines that the specified SCA limit has been reached. In accordance with the Council's intent, inshore catcher vessels less than or equal to 99 ft (30.2 m) LOA are exempt from SCA closures during the fall and winter months unless the cap for the inshore sector has been reached. Under the authority of the American Fisheries Act (AFA), NMFS will separate the inshore fishery into cooperative and non-cooperative sector allocations. For each sector, NMFS will announce the closure of the SCA to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector SCA limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the SCA that is sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the inshore sector opening. This measure will be implemented during the fall and winter seasons only because of vessel safety concerns during these time periods of severe weather.

Fishing seasons. This emergency interim rule establishes new fishing seasons for the four sectors of the Bering Sea pollock fishery that are defined in the AFA. These new fishing seasons are summarized in Table 1 or the preamble. This emergency rule also repeals existing "fair start" provisions that required vessels fishing for pollock in the BS to cease fishing for groundfish during the week preceding each pollock season or face a mandatory stand-down period during the first week of the pollock season. The Council has determined that these fair start requirements are no longer necessary and has recommended an exclusive seasonal system (see Table 1 in the preamble).

The Council recommended a complex suite of seasons, stand-downs, and SCA limits. Under the RFRPAs, NMFS determined that stand-downs between the A/B and C/D seasons were unnecessary outside the SCA. However, NMFS also determined that the SCA was of special concern and that lengthening the seasons to attain spatial and temporal dispersion was a priority in this area. Therefore, the season dates as proposed by the Council have been altered to reflect these requirements. All sectors now have the same fishing season dates as described in the following Table 1.

TABLE 1.—BERING SEA SUBAREA POLLOCK FISHING SEASONS FOR ALL SECTORS

Bering Sea Subarea	Season [1]			
	A	B	C	D
Outside the SCA [2]	January 20—June 10 (combined A/B season)		June 10—November 1 (combined C/D season)	
Inside the SCA	Jan. 20–April 1	April 1–June 10	June 10–Aug. 20	Aug. 20–Nov. 1

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.
[2] For the area outside the SCA, there will be two seasonal pairs, A/B and C/D, that are allocated the annual Bering Sea subarea directed fishing allowance by sector. Fishing inside the SCA is authorized as a limit of the directed fishing allowance allocated to the area outside the SCA.

Temporal and Spatial Apportionment of DFA. The pollock DFA allocated to each industry sector is apportioned to the fishing seasons previously identified according to the formula set out in Table 2 of the preamble. The RFRPAs specify the amount of the total annual pollock TAC that can be taken from the SCA in each season: A season, 15 percent; B season, 5 percent; C season, 4.5 percent; D season, 7.5 percent. These limits are expressed as percentages of each sector's seasonal allocation of its DFA.

For example, if the inshore sector received an annual DFA allocation of 100,000 mt, 40 percent (40,000 mt) would be apportioned to the combined A/B season for the inshore sector. Of this amount, 42 percent (16,800 mt) could be taken within the SCA during the A season, and 14 percent could be taken within the SCA during the B season (5,600 mt).

Overages and underages of SCA amounts may be "rolled over" from the A season SCA limit to the B season SCA limit so that no single season exceeds 15 percent of the annual TAC, and that the combined A/B limit inside the SCA of 20 percent is not exceeded.

TABLE 2.—BS APPORTIONMENTS OF POLLOCK DFA IN PERCENT BY SEASON AND AREA

Industry sector	Seasonal DFA apportionment and harvest limits within the SCA (in percent)			
	A/B (40% of annual DFA)		C/D (60% of annual DFA)	
	A-SCA limit	B-SCA limit	C-SCA limit	D-SCA limit
Inshore	42	14	13.5	22.5
C/P	24.75	8.25	0	0
Mothership	37.5	12.5	0	0
CDQ	62	20.5	14	23

Definition of Directed Fishing for Pollock CDQ

This emergency interim rule adds a definition for "directed fishing for pollock CDQ" that is necessary to enforce directed fishing closures that apply to both the CDQ and non-CDQ pollock fisheries. The CDQ groups are prohibited from exceeding any of their groundfish CDQ allocations and are required to manage the catch of vessels fishing on their behalf within these CDQ allocations. Therefore, NMFS does not use maximum retainable amounts, prohibited species catch status, and announcements of directed fishing closures to manage the CDQ fisheries, as is done to manage the non-CDQ fisheries. The definition of directed fishing for pollock CDQ implemented in this emergency interim rule is based on the percent pollock in each CDQ haul using the 60-percent threshold recommended by the Council at its June 1999 meeting. NMFS is preparing proposed rulemaking that would permanently implement a definition of directed fishing for pollock CDQ. However, that regulatory amendment will not be in place in time for the start of the trawl fisheries in January 2000. Under the definition added by this emergency interim rule, vessels fishing for the CDQ groups in any areas closed to directed fishing for pollock CDQ are prohibited from bringing onboard their vessel any trawl hauls in which pollock is equal to or greater than 60 percent of the total groundfish in the haul. Species composition collected by the observer onboard the vessel will be used to determine the percent pollock in each CDQ trawl haul.

Gulf of Alaska Management Measures

Fishing seasons and TAC apportionments. This emergency interim rule establishes new fishing seasons and pollock TAC apportionments in the Western and Central (W/C) Regulatory Areas of the GOA. These new fishing seasons are summarized in Table 3 of the preamble. The TAC for pollock in the combined W/C Regulatory Areas would continue to be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. Consistent with current regulations, pollock fishing seasons are not implemented for the Eastern Regulatory Area.

TABLE 3.—POLLOCK FISHING SEASONS AND TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Season	TAC Apportionment	Season Dates [1]
A	30%	January 20–March 1.
B	15%	March 15–May 31.
C	30%	August 20–September 15.
D	25%	October 1–November 1.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

2. *Pollock TAC apportionment within the Shelikof Strait conservation area.* Prior to 1999, pollock TAC within the W/C GOA was apportioned on the basis of biomass distribution as determined from triennial bottom trawl surveys. Bottom trawl surveys have been conducted in summer months, and additional hydroacoustic surveys have been conducted in winter months. These winter surveys indicate an extensive and relatively predictable spawning aggregation of pollock in the

winter period in Shelikof Strait. Under the emergency rule in 1999, a cap was set for the harvest from Shelikof Strait based on previous hydroacoustic surveys, and the GOA TAC was distributed to areas 610, 620, and 630 based on the trawl surveys. The cap in Shelikof Strait was determined using the estimated biomass from the most recent hydroacoustic survey divided by the estimated total GOA biomass from population modeling, and the quotient then multiplied by the GOA TAC for the A season.

In the GOA, overall pollock fishery harvest rates have varied from about 5 percent of the total biomass to about 10 percent since 1990. Since 1994, the estimated harvest rate in Shelikof Strait has been on the order of 1 percent to 3 percent of the total biomass, well below the overall harvest rate for the GOA. This discrepancy suggests that the biomass of pollock in Shelikof Strait is under-utilized relative to the biomass of pollock outside the Strait and, relative to the overall harvest rate, pollock biomass outside the Strait must be over-utilized. This relative over-utilization of pollock outside Shelikof Strait may have a detrimental effect on the availability of pollock to Steller sea lions in those outer regions.

The Shelikof Strait conservation area is defined as the area bounded by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.;
58°51′ N lat. 152°00′ W long.; and, the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to 57°00′ N lat. 154°00′ W long.; 56°30′ N lat. 154°00′ W long.; 56°30′ N lat. 155°00′ W long.; 56°00′ N lat. 155°00′ W long.; 56°00′ N lat. 157°00′ W long.; and the intersection of 157°00′ W long. with the Alaska Peninsula.

The Shelikof Strait conservation area TAC apportionment will be determined annually for the A and B seasons during the specification process. A separate TAC will be determined for this area based on winter hydroacoustic survey data. The GOA TAC for areas 610, and areas 620 and 630 outside of the Shelikof Strait conservation area, will be reduced proportionally by this amount. When NMFS determines that the A or B season pollock TAC from within the Shelikof Strait conservation area has been reached, NMFS will prohibit directed fishing for pollock within Shelikof Strait.

GOA Trip limits. The Council recommended that NMFS establish a 300,000-lb (136-mt) trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the GOA to support the temporal dispersion objectives of the RPAs. This emergency interim rule prohibits a catcher vessel fishing for groundfish in the GOA from retaining on board more than 300,000-lb (136-mt) of pollock harvested in the GOA. This trip limit does not exempt vessels from existing regulations that require 100-percent retention of pollock when directed fishing for pollock is open. A vessel would have to stop fishing for pollock during a fishing trip before the 300,000-lb (136-mt) trip limit is reached to avoid a violation of either the 300,000 lb (136-mt) trip limit or the 100-percent retention requirement for pollock.

In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this emergency interim rule also prohibits vessels from operating as tenders in the GOA east of 157°00′ W long. Vessels operating as tenders in the GOA west of 157°00′ W long. are prohibited from retaining on board more that 600,000 lb (272 mt) (the equivalent of two fishing trips) of unprocessed pollock that was harvested in the GOA. The Council recommended that tendering west of 157°00′ W long. is necessary because smaller vessels delivering to Sand Point and King Cove may be more dependent on tenders than the larger vessels that operate east of 157°00′ W long. and deliver primarily to Kodiak.

Catcher Vessel Exclusive Fishing Seasons

The Council recommended that catcher vessels be prohibited from participating in directed fishing for pollock in both the BS and GOA in concurrent seasons, except for catcher vessels less than 125 ft (38.1 m) LOA in area 620 east of 157°00′ W long. and area 630. For example, if a catcher vessel chose to participate in the combined BS A/B season, it would not be eligible to participate in the W/C GOA until the start of the GOA C season. Similarly, if a catcher vessel chose to participate in the GOA A season, it would not be eligible to participate in the BS until the start of the next BS season, which would be the C/D season. The existing 3-day stand-down requirement at § 679.23(h) is revised to remove directed fishing for pollock from stand-down requirements, which would be redundant. However, a 3-day stand-down will remain in effect for vessels directed fishing for Pacific cod.

Revised Interim 2000 Harvest Specifications for Pollock in the BS and GOA

The regulatory changes in this emergency interim rule require revision of the 2000 interim harvest specifications for pollock in the BS and GOA. Existing regulations at 50 CFR 679.20(c)(2) do not require that interim harvest specifications for pollock in the BS and GOA be temporally or spatially dispersed. However, the BiOp concluded that the current program for managing the BS and GOA pollock fisheries could jeopardize Steller sea lions or their critical habitat. Therefore, to allow the Bering Sea and GOA pollock fisheries to commence on January 20, 2000, this emergency interim rule also adjusts the 2000 interim harvest specifications for pollock to comport with the RFRPA management measures outlined above.

The specifications for Bering Sea Subarea pollock in Table 1 of the BSAI 2000 interim harvest specifications (65 FR 60; January 3, 2000) are replaced by the following Table 4 in the preamble. This rule changes the interim specifications for pollock for two reasons: (1) To comport with the temporal and spatial dispersions required by the BiOp; and (2) to incorporate the Council's final 2000 TAC recommendations for pollock, which are increased from the 2000 proposed specifications.

TABLE 4.—REVISED INTERIM 2000 HARVEST AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA

Species & Component	Area	A/B Season (mt)		
		Interim TAC	A–SCA Limit	B–SCA Limit
Pollock: [1]				
CDQ	BS	45,560	28,247	9,339
Incidental Catch Allowance (ICA)	BS	51,255	n/a	n/a
Inshore [2]	BS	194,769	81,803	27,268

TABLE 4.—REVISED INTERIM 2000 HARVEST AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA—Continued

Species & Component	Area	A/B Season (mt)		
		Interim TAC	A–SCA Limit	B–SCA Limit
Offshore catcher/processor[3]	BS	155,815	38,564	12,855
Mothership	BS	38,954	14,608	4,869

[1] The AFA requires that 10 percent of the annual pollock TAC be allocated as a directed fishing allowance for the CDQ sector. Then, NMFS is subtracting 5 percent of the remainder as an incidental catch allowance for pollock, which is not apportioned by season or area. The remainder of this amount is further allocated by sector as follows: inshore, 50 percent; catcher/processor, 40 percent; and motherships, 10 percent.

[2] Under the emergency rule, NMFS will close the SCA to inshore vessels greater than 99 ft (30.2 m) LOA while maintaining a sufficient SCA allowance to support fishing activities by inshore catcher vessels under 99 ft (30.2 m) LOA for the duration of the current opening. However, once the specified SCA limit is reached, all inshore vessels will be prohibited from engaging in directed fishing for pollock inside the SCA.

[3] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

The first seasonal allowances for W/C GOA pollock in Table 1 of the GOA 2000 interim harvest specifications (65 FR 65; January 3, 2000) are replaced by the following Table 5.

TABLE 5.—REVISED FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS OF THE GULF OF ALASKA (GOA)

Species and area	A season interim TAC (mt)
Pollock:	
W (610)	5,465
C (620 outside Shelikof Strait)	3,252
C (630 outside Shelikof Strait)	4,278
Shelikof Strait	14,366
Total	27,361

[1] The pollock catch limit for the Shelikof Strait conservation zone is determined by calculating the ratio of the most recent estimate of pollock biomass in Shelikof Strait (489,900 mt) divided by the most recent estimate of total pollock biomass in the GOA (933,000 mt). This ratio is then multiplied by the pollock TAC in the A season for the Western and Central areas of the GOA (27,361 mt).

Technical Amendment to Steller Sea Lion No-Trawl Zones in the Aleutian Islands Area

This emergency interim rule also makes technical changes to the existing no-trawl zones set out in Table 5 of 50 CFR part 679 by suspending it and by adding Table 20 to 50 CFR part 679. This is due to the availability of new information on the location of haulout sites as determined by NMFS during recent surveys.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Pursuant to the National Environmental Policy Act an EA/RIR was developed for this action. It was determined that this action would not have a significant impact on the human environment. The EA/RIR may be obtained in hard copy from the Alaska Regional Office (see **ADDRESSES**) or via the internet at www.fakr.noaa.gov. NMFS is specifically requesting comments on the EA/RIR. NMFS will respond to those comments in the proposed rule to implement permanent Steller sea lion protection measures in the BSAI and GOA pollock fisheries.

This emergency action has been determined to be significant for purposes of E.O. 12866. This rule contains no reporting, recordkeeping, or compliance requirements, and no relevant Federal rules exist which may duplicate, overlap, or conflict with this rule.

Failure to have the measures contained in this rule in place by January 20, 2000, would force delay of the start of the pollock fisheries of the BS and GOA, with significant costs to industry. As such, NMFS finds that the immediate need to effect the provisions of this emergency interim rule by January 20, 2000, in order to avoid unecessary closures that would cause extensive economic disruption to the pollock fisheries, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. The need for these measures to be in place by January 20, 2000, also constitutes good cause under authority set forth at 5 U.S.C. 553(d)(3) not to delay the effective date of this emergency interim rule for 30 days.

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

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. These regulations have been drafted to comply with that directive. We seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 19, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For reasons set out in the preamble, 50 CFR part 679 is amended as follows:

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, the definition "Directed fishing for pollock CDQ" is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Directed fishing for pollock CDQ means, for purposes of enforcing closures to directed fishing for pollock CDQ elsewhere in this part, retrieving onboard a vessel a haul in which pollock represents 60 percent or more of the total groundfish catch by weight, as determined by the observer's species composition sample for each haul. The groundfish species used to calculate total catch include all the species and

species categories defined in Table 1 of the annual BSAI specifications.

* * * * *

3. In § 679.7, paragraph (b) is suspended and paragraph (j) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(j) *Prohibitions specific to the GOA (applicable through July 19, 2000)*—(1) *Southeast Outside trawl closure.* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Catcher vessel trip limit for pollock.* Retain on board a catcher vessel at any time, more than 300,000 pounds (136 mt) of unprocessed pollock.

(3) *Tender vessel restrictions for pollock.*—(i) Operate as a tender vessel east of 157°00′ W long. for pollock harvested in the GOA.

(ii) Operate as a tender vessel west of 157°00′ W long. while retaining on board at any time more than 600,000 lb (272 mt) of unprocessed pollock.

* * * * *

4. In § 679.20, paragraphs (a)(5)(i)(A) and (a)(5)(ii)(B) are suspended, and new paragraphs (a)(5)(i)(C) and (a)(5)(ii)(C) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(C) *BSAI seasonal allowances (applicable through July 19, 2000)*—(1) *General.* Within any fishing year, the Regional Administrator may add or subtract the under harvest or over harvest of a seasonal allowance, by component, according to the harvest limitations here. The Steller Sea Lion Conservation Area (SCA) is defined at § 679.22(a)(11)(iv).

Bering Sea subarea	Combined A/B season, maximum overall harvest of 40% of annual vcxvccpollock TAC.	Combined C/D season, maximum overall harvest of 60% of annual pollock TAC.		
Inside SCA	Maximum harvest limit of 20% of annual pollock TAC for A+B combined, and 15% for A or B singly.	Maximum harvest limit of 4.5% of annual pollock TAC.	Maximum harvest limit of 7.5% of annual pollock TAC.	
Season	AB	C	D	

(2) *Inshore, catcher/processor, mothership, and CDQ components.* The portion of the Bering Sea subarea pollock directed fishing allowance allocated to each component under sections 206(a) and 206(b) of the American Fisheries Act will be divided into two seasonal allowances corresponding to the two fishing seasons set out at § 679.23(e)(4)(i), as follows: A/B Season, 40 percent; C/D Season, 60 percent.

* * * * *

(ii) * * *

(C) *GOA seasonal allowances (applicable through July 19, 2000).* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(d)(3) as follows: A Season, 30 percent; B Season, 15 percent; C Season, 30 percent; D Season, 25 percent. Within any fishing year, underharvest or overharvest of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment.

* * * * *

5. In § 679.22, paragraphs (a)(7) and (b)(2) are suspended, and new paragraphs (a)(8)(iv), (a)(11) and (b)(3) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iv) *Pollock closure* (applicable through July 19, 2000). Directed fishing for pollock is prohibited at all times within the Aleutian Islands subarea.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea subarea and Bogoslof District (applicable through July 19, 2000)*—(i) *Year-round trawl closures.* Trawling is prohibited within 10 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(ii) *Seasonal trawl closures.* During January 1 through June 10, or a date earlier than June 10 if directed fishing for pollock is prohibited for all sectors under § 679.20, trawling is prohibited within 20 nm of each of the Steller sea lion rookeries shown in Table 12 to this part.

(iii) *Pollock closures.* Directed fishing for pollock, including pollock CDQ, is prohibited within 10 or 20 nm of each of the sea lion haulout and rookery sites shown in Table 12 to this part. The radius in nm and time period that each closure is in effect are shown in Table 12 to this part.

(iv) *Steller sea lion conservation area (SCA)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, motherships in the offshore component, or directed fishing for pollock CDQ is prohibited within the SCA for the duration of a fishing season when the Regional Administrator announces, by notification in the **Federal Register**, that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the table following paragraph (a)(11)(iv)(D) of this section.

(B) *Boundaries.* The SCA consists of the area of the Bering Sea subarea between 170'00' W long. and 163'00' W long., south of straight lines connecting the following points in the order listed: 55°00″ N lat. 170°00″ W long.; 55°00″ N lat. 168°00″ W long.; 55°30″ N lat. 168°00″ W long.; 55°30″ N lat. 166°00″ W long.; 56°00″ N lat. 166°00″ W long.; and 56°00″ N lat. 163°00″ W long.

(C) *Seasons*—Subject to other provisions of this part, directed fishing for pollock within the SCA is authorized only during the following seasons:

(1) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., April 1;

(2) *B season.* From 1200 hours, A.l.t., April 1, through 1200 hours, A.l.t., June 10;

(3) *C season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., August 20;

(4) *D season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., November 1.

(D) *Criteria for closure*— (1) *General.* A directed fishing closure identified in paragraph (a)(11)(iv)(A) of this section will take effect when the Regional

Administrator determines that the harvest of a seasonal limit of pollock within the SCA by an industry component reaches the applicable percentage specified in the following table:

Industry sector	Seasonal directed fishing allowance limits within the SCA by industry component (in percent)			
	A/B season		C/D season	
	A–SCA limit	B–SCA limit	C–SCA limit	D–SCA limit
Inshore	42	14	13.5	22.5
Catcher/processor	24.75	8.25	0	0
Mothership	37.5	12.5	0	0
CDQ	62	20.5	14	23

(2) *Inshore catcher vessels greater than 99 ft (30.2 m) LOA.* The Regional Administrator will prohibit directed fishing for pollock by vessels greater than 99 ft (30.2 m) LOA catching pollock for processing by the inshore component before reaching the inshore SCA harvest limit during the A and D seasons to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) inside the SCA for the duration of the inshore seasonal opening. The Regional Administrator will estimate how much of the inshore seasonal allowance is likely to be harvested by catcher vessels less than or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore SCA allowance to accommodate fishing by such vessels after the closure of the SCA to inshore vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will prohibit directed fishing for all inshore catcher vessels within the SCA when the inshore limit specified in paragraph (a)(7)(iv)(D)(*1*) of this section has been met.

(b) * * *

(3) *Steller sea lion protection areas (applicable through July 19, 2000)*—(i) *Year-round trawl closures.* Trawling is prohibited in the GOA within 10 nm of the Steller sea lion rookeries shown in Table 13 to this part.

(ii) *Pollock closures.* Directed fishing for pollock is prohibited within 10 nm of each of the sea lion haulout and rookery sites shown in Table 13 to this part. The radius in nm and time period that each closure is in effect are shown in Table 13 to this part.

(iii) *Shelikof Strait conservation area.*—(A) *General.* Directed fishing for pollock is prohibited within the Shelikof Strait conservation area during the A and B seasons, defined at § 679.23(d)(3) of this part, when the Regional Administrator announces through notification in the Federal Register that the A or B season catch of pollock from within the Shelikof Strait conservation area reaches the amount determined by paragraph (b)(3)(iii)(C) of this section.

(B) *Boundaries.* The Shelikof Strait conservation area consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order: 58°51′ N lat. 153°15′ W long.; 58°51′ N lat. 152°00′ W long. and the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to 57°00′ N lat. 154°00′ W long.; 56°30′ N lat. 154°00′ W long.; 56°30′ N lat. 155°00′ W long.; 56°00′ N lat. 155°00′ W long.; 56°00′ N lat. 157°00′ W long.; and the intersection of 157°00′ W long. with the Alaska Peninsula.

(C) *Determination of TAC.* NMFS will publish the pollock TAC for the Shelikof Strait conservation area in the annual specifications pursuant to § 679.20(c). The TAC is determined by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the total pollock biomass in the GOA. NMFS will multiply this ratio by the overall pollock TAC for the GOA and then multiply that sum by the seasonal TAC apportionment to determine the Shelikof Strait apportionment.

* * * * *

6. In § 679.23, paragraphs (d)(2) and (e)(2) are suspended, and new paragraphs (d)(3), (e)(5), and (i) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock (applicable through July 19, 2000).* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., March 1;

(ii) *B season.* From 1200 hours, A.l.t., March 15, through 1200 hours, A.l.t., May 31;

(iii) *C season.* From 1200 hours, A.l.t., August 20, through 1200 hours, A.l.t., September 15.

(iv) *D season.* From 1200 hours, A.l.t., October 1, through 1200 hours, A.l.t., November 1.

(e) * * *

(5) *Directed fishing for pollock in the Bering Sea subarea (applicable through July 19, 2000).*—(i) *Inshore, offshore catcher/processor, and mothership components and Pollock CDQ fisheries.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component, catcher/processors in the offshore component, and motherships in the offshore component in the Bering Sea subarea or directed fishing for pollock CDQ in the Bering Sea subarea is authorized only during the following two seasons:

(A) *A/B season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., June 10;

(B) *C/D season.* From 1200 hours, A.l.t., June 10, through 1200 hours, A.l.t., November 1;

(ii) [Reserved]

* * * * *

(i) *Catcher vessel exclusive fishing seasons for pollock (applicable through July 19, 2000).* Catcher vessels are prohibited from participating in directed fishing for pollock under the following conditions. Vessels less than 125 ft (38.1 m) LOA are exempt from this restriction in area 620 east of 157°00′ W. long. and area 630. BS and GOA seasons are provided at § 679.23(d)(3) and § 679.23(e)(4).

If you own or operate a catcher vessel and engage in directed fishing for pollock in the—	During the—	Then you are prohibited from subsequently engaging in directed fishing for pollock in the—
Bering Sea subarea	A/B season	GOA until the following C season.
	C/D season	GOA until the A season of the next year.
GOA	A season	BSAI until the following C/D season.
	B season	BSAI until the following C/D season.
	C season	BSAI until the A/B season of the following year.
	D season	BSAI until the A/B season of the following year.

7. In 50 CFR part 679 Tables 16 through 19 are reserved; Tables 4, 5, and 6 are suspended; and Tables 12, 13, and 20 to 50 CFR part 679 are added to read as follows:

TABLE 12 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE BERING SEA SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within * * * (nm)		Trawling prohibited within (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	Jan. 1 through April 15	Year-round
Walrus	57 11.00 N	169 56.00 W			20	20		10
Uliaga	53 04.00 N	169 47.00 W	53 05.00 N	169 46.00 W		20		
Chuginadak	52 46.70 N	169 41.90 W				20		
Kagamil	53 02.50 N	169 41.00 W				20		
Samalga	52 46.00 N	169 15.00 W				20		
Adugak	52 55.00 N	169 10.50 W			20	20		10
Umnak/Cape Aslik	53 25.00 N	168 24.50 W			20	20		
Ogchul	52 59.71 N	168 24.24 W			20	20		10
Bogoslof/Fire Island	53 55.69 N	168 02.05 W			20	20		10
Emerald	53 17.50 N	167 51.50 W				20		
Unalaska/Cape Izigan	53 13.64 N	167 39.37 W			20	20		
Unalaska/Bishop Pt	53 58.40 N	166 57.50 W			20	20		
Akutan/Reef-lava	54 08.10 N	166 06.19 W	54 09.10 N	166 05.50 W	20	20		
Old Man Rocks	53 52.20 N	166 04.90 W			20	20		
Akutan/Cape Morgan	54 03.39 N	165 59.65 W	54 03.70 N	166 03.68 W	20	20	20	10
Rootok	54 03.90 N	165 31.90 W	54 02.90 N	165 29.50 W		20		
Akun/Billings Head	54 17.61 N	165 32.06 W	54 17.57 N	165 31.71 W	20	20	20	10
Tanginak	54 12.00 N	165 19.40 W			20			
Tigalda/Rocks NE	54 09.60 N	164 59.00 W	54 09.12 N	164 57.18 W	20	20		
Unimak/Cape Sarichef	54 34.30 N	164 56.80 W			20	20		
Aiktak	54 10.99 N	164 51.15 W			20			
Ugamak	54 13.50 N	164 47.50 W	54 13.00 N	164 47.00 W	20	20	20	10
Round	54 12.05 N	164 46.60 W				20		
Sea Lion Rock (Amak)	55 27.79 N	163 12.24 W			20	20	20	10
Amak and rocks	55 24.20 N	163 09.60 W	55 25.90 N	163 09.90 W	20	20		

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA

Management area/island/site [1, 2, 3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
Bird	54 40.16 N	163 17.57 W			10	10	
South Rocks	54 18.14 N	162 41.52 W			10	10	
Clubbing Rocks	54 41.98 N	162 26.74 W	54 42.00 N	162 26.50 W	10	10	10
Pinnacle Rock	54 46.06 N	161 45.85 W			10	10	10
Sushilnoi Rocks	54 49.30 N	161 42.73 W				10	
Olga Rocks	55 00.45 N	161 29.81 W	54 59.09 N	161 30.89 W	10	10	
Jude	55 15.75 N	161 06.27 W			10	10	
Sea Lion Rocks (Shumagins) [4]	55 04.70 N	160 31.04 W			10	10	

TABLE 13 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE GULF OF ALASKA—Continued

Management area/island/site [1,2,3]	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm) (year-round)
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through June 1	June 1 through November 1	
The Whaleback	55 16.82 N	160 05.04 W			10	10	
Chernabura	54 45.18 N	159 32.99 W	54 44.87 N	159 35.74 W	10	10	10
Castle Rock	55 16.47 N	159 29.77 W				10	
Atkins	55 03.50 N	159 18.50 W			10	10	10
Spitz	55 46.80 N	158 53.20 W				10	
Mitrofania	55 50.00 N	158 42.00 W			10	10	
Kak	56 17.30 N	157 50.10 W				10	
Lighthouse Rocks	55 46.79 N	157 24.89 W			10	10	
Sutwik	56 31.05 N	157 20.47 W	56 32.00 N	157 21.00 W		10	
Chowiet	56 00.54 N	156 41.42 W	56 00.30 N	156 41.60 W	10	10	10
Nagai Rocks	55 50.00 N	155 46.00 W			10	10	
Chirikof	55 46.50 N	155 39.50 W	55 46.44 N	155 43.46 W	10	10	10
Puale Bay	57 40.60 N	155 23.10 W			10	10	
Kodiak/Point Ikolik	57 17.12 N	154 48.29 W			10		
Takli	58 01.75 N	154 31.25 W				10	
Cape Gull	58 11.50 N	154 09.60 W	58 12.50 N	154 10.50 W		10	
Sitkinak/Cape Sitkinak	56 34.30 N	153 50.96 W	56 34.20 N	153 51.05 W	10	10	
Kodiak/Cape Ugat	57 52.41 N	153 50.97 W			10	10	
Kodiak/Cape Barnabas	57 10.20 N	152 53.05 W			10	10	
Kodiak/Gull Point	57 21.45 N	152 36.30 W			10	10	
Shakun Rock	58 32.80 N	153 41.50 W			10	10	
Twoheaded Island	56 54.50 N	153 32.75 W	56 53.90 N	153 33.74 W	10	10	
Cape Douglas (Shaw Island)	59 00.00 N	153 22.50 W				10	
Latax Rocks	58 40.10 N	152 31.30 W			10	10	
Ushagat/SW	58 54.75 N	152 22.20 W				10	
Ugak	57 23.60 N	152 17.50 W	57 21.90 N	152 17.40 W		10	
Sea Otter Island	58 31.15 N	152 13.30 W			10	10	
Long	57 46.82 N	152 12.90 W			10		
Kodiak/Cape Chiniak	57 37.90 N	152 08.25 W			10	10	
Sugarloaf	58 53.25 N	152 02.40 W			10	10	10
Sea Lion Rocks (Marmot)	58 20.53 N	151 48.83 W			10	10	
Marmot	58 13.65 N	151 47.75 W	58 09.90 N	151 52.06 W	10	10	10
Perl	59 05.75 N	151 39.75 W			10	10	
Outer (Pye) Island	59 20.50 N	150 23.00 W	59 21.00 N	150 24.50 W	10	10	10
Steep Point	59 29.05 N	150 15.40 W				10	
Chiswell Islands	59 36.00 N	149 34.00 W			10	10	
Rugged Island	59 49.80 N	149 23.30 W	59 51.00 N	149 25.30 W	10		
Point Elrington [4]	59 56.00 N	148 15.20 W					
Wooded Island (Fish)	59 52.90 N	147 20.65 W			10	10	
The Needles [4]	60 06.64 N	147 36.17 W					
Glacier Island	60 51.30 N	147 14.50 W			10	10	
Seal Rocks	60 09.78 N	146 50.30 W			10	10	
Cape Hinchinbrook	60 14.00 N	146 38.50 W				10	
Hook Point	60 20.00 N	146 16.50 W				10	
Cape St. Elias	59 48.00 N	144 35.50 W			10	10	

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.
[4] Vessels less than or equal to 60 ft. (18.3m) LOA are exempt from the 20 nm closure at Sea Lion Rocks.
[5] Restrictions at Point Elrington and The Needles will be considered by the Alaska Board of Fisheries because these areas fall completely within the State of Alaska management area of Prince William Sound.

TABLE 20 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE ALEUTIAN ISLANDS SUBAREA

Management area/island/site [1, 2, 3]	Boundaries to				Trawling prohibited within— (nm) year-round
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Yunaska Island	52 41.40 N	170 36.35 W			10
Kasatochi Island	52 11.11 N	175 31.00 W			10
Adak Island	51 35.50 N	176 57.10 W	51 37.50 N	176 59.60 W	10
Gramp Rock	51 28.87 N	178 20.58 W			10
Tag Island	51 33.50 N	178 34.50 W			10
Ulak Island	51 18.90 N	178 58.90 W	51 18.70 N	178 59.60 W	10

TABLE 20 TO 50 CFR PART 679—STELLER SEA LION PROTECTION AREAS IN THE ALEUTIAN ISLANDS SUBAREA—Continued

Management area/island/site [1, 2, 3]	Boundaries to				Trawling prohibited within—(nm) year-round
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	
Semisopochnoi/Pochnoi Point	51 57.30 N	179 46.00 E			10
Semisopochnoi/Petrel Point	52 01.40 N	179 36.90 E	52 01.50 N	179 39.00 E	10
Amchitka Island/East Cape	51 22.26 N	179 27.93 E	51 22.00 N	179 27.00 E	10
Amchitka Is/Column Rocks	51 32.32 N	178 49.28 E			10
Ayugadak Point	51 45.36 N	178 24.30 E			10
Kiska Island/Lief Cove	51 57.19 N	177 20.41 E	51 57.24 N	177 20.49 E	10
Kiska Island/Cape St. Stephen	51 52.50 N	177 13.00 E	51 53.50 N	177 12.00 E	10
Buldir Island	52 20.38 N	175 53.85 E	52 20.25 N	175 54.03 E	10
Agattu Island/Cape Sabek	52 22.50 N	173 43.30 E	52 21.80 N	173 41.40 E	10
Agattu Island/Gillon Pt	52 24.13 N	173 21.31 E			10
Attu Island/Caper Wrangell	52 55.36 N	172 27.22 E	52 55.34 N	172 27.55 E	10
Seguam Island	52 21.05 N	172 34.40 W	52 21.02 N	172 33.06 W	20
Agligadak Island	52 06.09 N	172 54.23 W			20

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.
[3] Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.

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EXECUTIVE SUMMARY

This Environmental Assessment reviews the potential impacts of passing a regulatory amendment required to permit a sea lion fishery interaction experiment off the eastside of Kodiak Island. This regulatory amendment will expire after 2003.

The goal of this experiment is to identify and quantify the effects of commercial fishing on the availability of potential prey (i.e. pollock) to Steller sea lions within a finite area off the eastside of Kodiak Island. Specifically, the experiment is designed to provide information that will assist in answering the following questions.

1. Are there measurable changes in the distribution and abundance of pollock during the duration of the experiment?

2. Do commercial pollock fisheries cause short-term (days to weeks) changes in the pollock school dynamics.

3. Do pollock fisheries cause reductions in the availability of sea lion forage (i.e. pollock) in localized regions off the eastside of Kodiak Island?

The study location was chosen because the areas fished on the eastside of Kodiak offered generally discrete concentrations of fish separated by topographical features. The concentration of fishing effort in the Gulf of Alaska enables the designation of comparable treatment and control sites, which are essential to the study design.

The purpose of this Environmental Assessment (EA) is to assess the impacts of two actions: establishing a ban on all trawl fishing in the Chiniak Gully region off the eastside of Kodiak Island and allowing the reopening of the 10 nm no trawl zone around Gull Point and Cape Barnabas to conduct experiments on the effects of fishing in nearby waters. It is expected that this action will be in effect from August 1st to a date no later than September 20th during the years 2000 to 2003. This EA addresses potential impacts of changes in the distribution of groundfish harvest on target groundfish species, higher trophic level species, Endangered Species Act (ESA) listed species, marine habitat, other predators and prey. In aggregate these impacts constitute an evaluation of the environmental impacts of the proposed regulatory amendment. This EA will also discuss potential socioeconomic impacts of the proposed action.

This EA relies on the impact analysis of the broader action of groundfish fishing under various levels of TAC specifications that was documented in a supplemental environmental impact statement (SEIS) (NMFS 1998a) prepared to supplement the original Environmental Impact Statements (EISs) for the Fishery Management Plan (FMP) for the Gulf of Alaska (GOA) (NPFMC 1994). This EA relies on the recently completed EA for the interim and final total allowable catch specifications for the year 2000 Alaska groundfish fisheries on the 2000 total allowable catch (NMFS 1999d).

Species listed under the ESA are present in the action area and some may be negatively affected by the fishing action. NMFS is the expert agency for ESA listed marine mammals and anadromous fish. The US Fish and Wildlife Service is the expert agency for ESA listed seabirds. The action, establishment of harvest quotas in the EEZ off Alaska, must be in compliance with the ESA. Re-initiated consultations

under Section 7 of the ESA were completed for ESA listed marine mammals and Pacific salmon using information specific to the year 2000 TAC specifications, and for the endangered short-tailed albatross using the TAC specifications established for calendar year 1999. These new consultations were concluded with determinations of no jeopardy to listed species or adverse impacts to Critical Habitat. A Section 7 Biological Opinion on all ESA listed species present in the fishery management areas for the entire groundfish fisheries program is pending at this time; expected completion date is spring 2000.

DRAFT ENVIRONMENTAL ASSESSMENT

For Regulatory Amendment to Permit an Investigation of the Effect of Commercial Fishing on Walleye Pollock Distribution and Abundance in Localized Areas off the Eastside of Kodiak Island

Implemented Under The Authority Of The
Fishery Management Plans
For The
Groundfish Fishery of the Gulf Of Alaska

February 3, 2000

Lead Agency: National Marine Fisheries Service
Alaska Fisheries Science Center
Seattle, Washington
and the
Alaska Regional Office
National Marine Fisheries Service
Juneau, Alaska

Responsible Official: Steven Pennoyer
Regional Administrator
Alaska Regional Office

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Abstract: This Environmental Assessment provides an analysis of a proposed regulatory amendment. Passing the regulatory amendment would impose a ban on all trawl fishing in the Chiniak Gully region on the eastside of Kodiak Island and allow a temporary reopening of the 10 nm pollock no trawl zone around Gull Point and Cape Barnabas. These fishing regulations would be in effect during the period of August 1st to a period no later than September 20th in the years 2000 - 2003. The changes in fishing regulations are needed to permit NMFS to conduct experiments on the effects of fishing on pollock distribution and abundance, as part of a comprehensive research program on sea lion/fishery interactions. The EA provides an analysis of the expected impacts of proposed regulations on groundfish target species stock status, higher and lower trophic level species, and the physical and socioeconomic environment.

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EXECUTIVE SUMMARY

This Environmental Assessment reviews the potential impacts of passing a regulatory amendment required to permit a sea lion fishery interaction experiment off the eastside of Kodiak Island. This regulatory amendment will expire after 2003.

The goal of this experiment is to identify and quantify the effects of commercial fishing on the availability of potential prey (i.e. pollock) to Steller sea lions within a finite area off the eastside of Kodiak Island. Specifically, the experiment is designed to provide information that will assist in answering the following questions.

1. Are there measurable changes in the distribution and abundance of pollock during the duration of the experiment?

2. Do commercial pollock fisheries cause short-term (days to weeks) changes in the pollock school dynamics.

3. Do pollock fisheries cause reductions in the availability of sea lion forage (i.e. pollock) in localized regions off the eastside of Kodiak Island?

The study location was chosen because the areas fished on the eastside of Kodiak offered generally discrete concentrations of fish separated by topographical features. The concentration of fishing effort in the Gulf of Alaska enables the designation of comparable treatment and control sites, which are essential to the study design.

The purpose of this Environmental Assessment (EA) is to assess the impacts of two actions: establishing a ban on all trawl fishing in the Chiniak Gully region off the eastside of Kodiak Island and allowing the reopening of the 10 nm no trawl zone around Gull Point and Cape Barnabas to conduct experiments on the effects of fishing in nearby waters. It is expected that this action will be in effect from August 1st to a date no later than September 20th during the years 2000 to 2003. This EA addresses potential impacts of changes in the distribution of groundfish harvest on target groundfish species, higher trophic level species, Endangered Species Act (ESA) listed species, marine habitat, other predators and prey. In aggregate these impacts constitute an evaluation of the environmental impacts of the proposed regulatory amendment. This EA will also discuss potential socioeconomic impacts of the proposed action.

This EA relies on the impact analysis of the broader action of groundfish fishing under various levels of TAC specifications that was documented in a supplemental environmental impact statement (SEIS) (NMFS 1998a) prepared to supplement the original Environmental Impact Statements (EISs) for the Fishery Management Plan (FMP) for the Gulf of Alaska (GOA) (NPFMC 1994). This EA relies on the recently completed EA for the interim and final total allowable catch specifications for the year 2000 Alaska groundfish fisheries on the 2000 total allowable catch (NMFS 1999d).

Species listed under the ESA are present in the action area and some may be negatively affected by the fishing action. NMFS is the expert agency for ESA listed marine mammals and anadromous fish. The US Fish and Wildlife Service is the expert agency for ESA listed seabirds. The action, establishment of harvest quotas in the EEZ off Alaska, must be in compliance with the ESA. Re-initiated consultations under Section 7 of the ESA were completed for ESA listed marine mammals and Pacific salmon using

information specific to the year 2000 TAC specifications, and for the endangered short-tailed albatross using the TAC specifications established for calendar year 1999. These new consultations were concluded with determinations of no jeopardy to listed species or adverse impacts to Critical Habitat. A Section 7 Biological Opinion on all ESA listed species present in the fishery management areas for the entire groundfish fisheries program is pending at this time; expected completion date is spring 2000.

1.0 PURPOSE AND NEED FOR ACTION

An EA must include a brief discussion of the need for the proposal, the alternatives considered, the environmental impacts of the proposed action and the alternatives, and a list of document preparers. The purpose and alternatives will be in Sections 1.1 and 1.2. The list of preparers is in Section 7. Section 3 and 4 contain a discussion of the environmental impacts including impacts on threatened and endangered species and marine mammals. Sections 5 and 6 provide the Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis.

1.1 Overview of Groundfish FMP and Need for Action

The groundfish fisheries in the Exclusive Economic Zone (3 to 200 miles offshore) of the Gulf of Alaska (GOA) are managed under an FMP (NPFMC 1994). The GOA FMP was developed by the North Pacific Fishery Management Council (Council) under the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), P. L. 94-265, 16 U.S.C. 1801 (MSFCMA). The GOA FMP was approved by the Secretary of Commerce (Secretary) and became effective in 1978. In response to NMFS stewardship responsibilities identified in the MSFCMA, the Endangered Species Act (ESA) and the Marine Mammal Protection Act (MMPA), fishery regulations were recently changed to ensure that the BSAI and GOA groundfish fisheries neither jeopardize the continued existence of the western population of endangered Steller sea lions nor adversely modify its critical habitat.

Currently the information available to evaluate alternative methods for protecting Steller sea lions and their habitat is very limited. This can result in the use of less effective and less efficient management measures. NMFS has proposed a controlled experiment off Kodiak Island in order to improve the information that can be used to assess further management actions to protect Steller sea lions and their habitat (See Appendix A for full project description).

The goal of this experiment is to identify and quantify the effects of commercial fishing on the availability of potential prey (i.e. pollock) to Steller sea lions within a finite area of interest. Specifically, the experiment is designed to provide information that will assist in answering the following questions.

1. Are there measurable changes in the distribution and abundance of pollock during the duration of the experiment?

2. Do commercial fisheries for pollock cause short-term (days to weeks) changes in the pollock school dynamics.

3. Do pollock fisheries cause reductions in the availability of sea lion forage (i.e. pollock) in localized regions off the eastside of Kodiak Island?

NMFS plans to conduct an echo integration mid-water trawl survey before, during and after a commercial pollock fishery on the eastside of Kodiak Island in the years 2000 - 2003. The experimental design proposes a feasibility study in the first year and three full implementation experiments in 2001 - 2003. The proposal identifies a control site where trawl fishing will be prohibited in federal waters. Implementing a control site is necessary to provide a basis for comparing pollock school dynamics in a fished and unfished condition (addressing question 2 above). The study location was chosen because the areas fished off the eastside of Kodiak offered generally discrete concentrations of fish separated by

topographical features. The concentration of fishing effort in the Gulf of Alaska enables the designation of comparable treatment and control sites, which are essential to the study design.

In 2001 - 2003, it is anticipated that the echo integration mid-water trawl research surveys will be conducted in the same areas as the feasibility survey in 2000, with additional sampling after the fishing season has ended. The consistency in area and season (August - September) will enable researchers to obtain a time series of data and evaluate the effects of interannual variation. Based on information from the pilot study, the NMML will also increase its land-based Steller sea lion work to coordinate with the proposed experiments.

A regulatory amendment is required to allow fishing in all of the treatment site and to prohibit trawl fishing in the control site. The proposed regulatory amendment would: 1) prohibit trawl fishing in the Chiniak Gully region off the eastside of Kodiak Island from August 1st to a date no later than September 20th for four years (2000 to 2003) and 2) reopen the 10-nautical mile no trawl zone around Gull Point and Cape Barnabas during the same periods (Figure 1).

This Environmental Assessment, Regulatory Impact Review and Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) analyzes the impacts of the proposed regulatory amendment. An EA is prepared pursuant to NEPA to determine whether a proposed action will result in significant effects on the human environment. If the environmental effects of the action are determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact are the final environmental documents required by NEPA. If this analysis concludes that the proposal is a major Federal action significantly affecting the human environment, an environmental impact statement must be prepared.

1.2 Purpose of and Need for the Action

The purpose of the proposed regulatory amendment is to allow NMFS to conduct a controlled experiment to provide information that can be used to assess the effectiveness and efficiency of alternative methods for ensuring that the BSAI and GOA pollock fisheries neither jeopardize the continued existence of the western population of endangered Steller sea lions nor adversely modify its critical habitat.

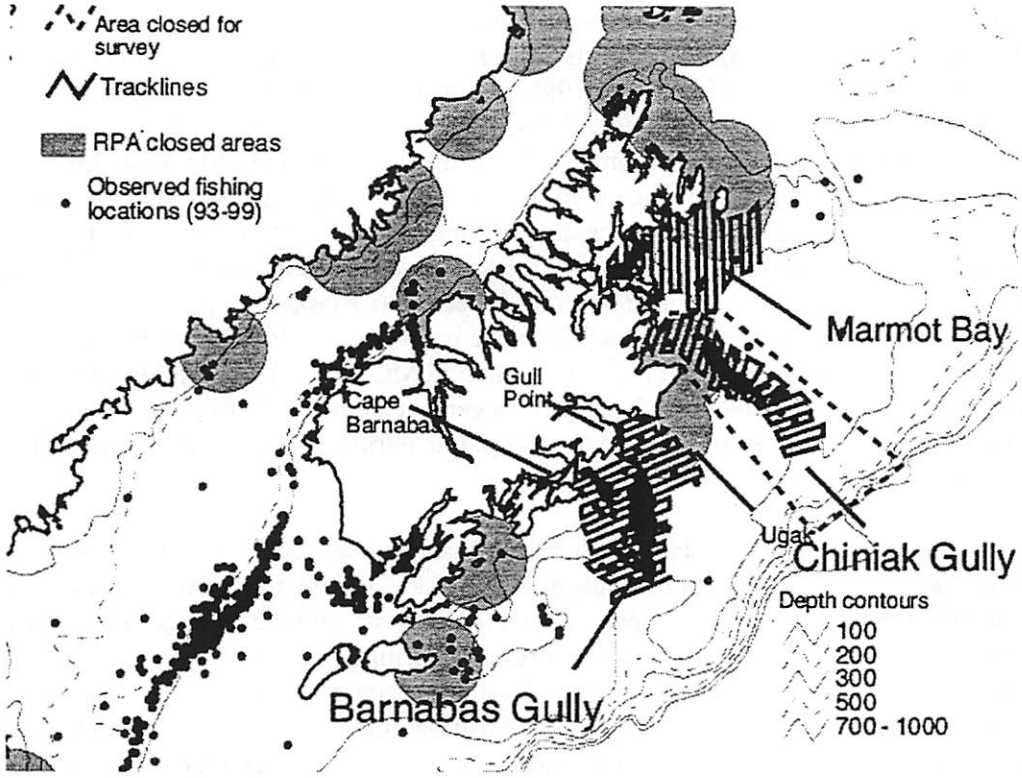
1.3 Alternatives Considered

Alternative 1: Status quo. No regulatory changes would be implemented to allow the proposed controlled experiment.

Alternative 2: Amend the FMP to implement regulations to: 1) prohibit all trawl fishing in the Chiniak Gully region off the eastside of Kodiak Island from August 1st to a date no later than September 20th in four years (2000 to 2003) and 2) reopen the 10 nautical mile no trawl zone for pollock around Gull Point and Cape Barnabas during the same periods.

The affected areas are depicted in Figure 1. The proposed no trawl zone identified as Chiniak Gully is bounded by lines intersecting the following coordinates: 152.37 W Longitude, 57.81 N Latitude, 151.85 W Longitude, 57.81 N Latitude, 150.64 W Longitude, 57.22 N Latitude, 150.64 W Longitude, 57.22 N Latitude, 151.27 W Longitude, 56.98 N Latitude, 151.27 W Longitude, 56.98 N Latitude, 152.16 W Longitude, 57.62 N Latitude.

Fig. 1 Survey trackline for control and treatment sites.



2.0 ENVIRONMENTAL STATUS REVIEW

The GOA groundfish fisheries occur in the North Pacific Ocean in the U.S. EEZ. The proposed experiment will affect groundfish fishing off the eastside of Kodiak Island (Figure 1). Descriptions of the affected environment are given in the SEIS (NMFS 1998a). Substrate is described at section 3.1.1, water column at 3.1.3, temperature and nutrient regimes at 3.1.4, currents at 3.1.5, groundfish and their management at 3.3, marine mammals at 3.4, seabirds at 3.5, benthic infauna and epifauna at 3.6, prohibited species at 3.7, and the socioeconomic environment at 3.10. Additionally, the status of each target species category, biomass estimates, and acceptable biological catch specifications are presented both in summary and in detail in the annual GOA stock assessment and fishery evaluation (SAFE) reports (NPFMC 1999a). The economic status of the groundfish fisheries off Alaska are updated in NPFMC (1999b). Ecosystem considerations relevant to the GOA were presented in NPFMC 1999c. An assessment of impacts to essential fish habitat is contained in NPFMC (1999d). All of this information was available to members of the North Pacific Fishery Management Council (Council), its Scientific and Statistical Committee, and Advisory Panel, and the general public during deliberations on the setting of TAC specifications for the year 2000 (NMFS 1999d).

The environmental impacts generally associated with fishery management actions are effects resulting from: 1) harvest of fish stocks that may result in changes in food availability to predators, changes in population structure of target fish stocks, and changes in community structure; 2) changes in the physical and biological structure of the benthic environment as a result of fishing practices (e.g., gear effects and fish processing discards); 3) entanglement/entrapment of non-target organisms in active or inactive fishing gear; and 4) major shifts in the abundance and composition of the marine community as a result of disproportionate fishing pressure on a small set of species (also known as "cascading effects," National Research Council, 1996). The SEIS comprehensively analyzes these effects at a variety of TAC levels. Only information that is new since preparation of the SEIS is presented in this EA.

2.1 Overview of Groundfish Status

The status of each target species or species group category, biomass estimates, and ABC specification are presented both in summary and in detail in the GOA SAFE reports (NPFMC 1999a). This EA relies on information about target species stock status as it is known in 1999 and recommends appropriate harvest levels in the year 2000 based on that current biological information.

Designated target species and species groups in the GOA are walleye pollock, Pacific cod, deep water flatfish, rex sole, shallow water flatfish, flathead sole, arrowtooth flounder, sablefish, other slope rockfish, northern rockfish, Pacific Ocean perch, shortraker and rougheye rockfish, pelagic shelf rockfish, demersal shelf rockfish, Atka mackerel, thornyhead rockfish, and other species. OFLs, ABC, TAC, and catch (through October 30) in 1999, along with 2000 interim specifications, OFLs, ABCs, and the Council's recommended year 2000 TAC specifications for the GOA area are discussed in the EA for the 2000 TAC Specifications (NMFS 1999d) and shown in Table 1. For detailed life history, ecology, and fishery management information regarding groundfish stocks in the GOA see Section 3.3 of the SEIS.

Table 1. Groundfish harvest specifications for the Gulf of Alaska management area. For the year 1999 these data include: OFLs (revised), ABCs, TAC specifications, and actual catch (January 1, 1999 through October 30, 1999); For the year 2000 these data include: Council recommended interim specifications, OFLs, ABCs, and final TAC specifications. All values are in metric tons.

	1999 Specifications					Year 2000 Council Recommendations				
Species	Area	OFL	ABC	TAC	Catch	Interim Specs	Area	OFL	ABC	Final TAC
Pollock	W (610)		23,120	23,120	23,385		W (610)		38,350	38,350
	C (620)		38,840	38,840	38,129		C (620)		22,820	22,820
	C (630)		30,520	30,520	30,093		C (630)		30,030	30,030
	subtotal	134,100	92,480	92,480	91,607	23,120	WYK (640)		2,340	2,340
	WYK (640)			2,110	1,759	528	subtotal	130,760	93,540	93,540
	SEO(6500			6,330	4	1,582	SEO (650)	8,610	6,460	6,460
	subtotal	12,300	8,440	8,440	1,763	2,110				
	Total	146,400	100,920	100,920	93,370	25,230	Total	139,370	100,000	100,000
Pacific Cod	W		29,540	23,630	23,154	4,726	W		27,500	20,625
	C		53,170	42,935	44,722	8,687	C		43,550	35,165
	E		1,690	1,270	874	254	E		5,350	4,010
	Total	134,000	84,400	67,835	68,750	13,567	Total	102,000	76,400	59,800
Flatfish, Deep Wat	W		240	240	22	60	W		280	280
	C		2,740	2,740	1,865	685	C		2,710	2,710
	WYK		1,720	1,720	389	430	WYK		1,240	1,240
	SEO		1,350	1,350	9	337	SEO		1,070	1,070
	Total	8,070	6,050	6,050	2,285	1,512	Total	6,980	5,300	5,300
Rex Sole	W		1,190	1,190	603	298	W		1,230	1,230
	C		5,490	5,490	2,391	1,373	C		5,660	5,660
	WYK		850	850	41	212	WYK		1,540	1,540
	SEO		1,620	1,620	22	405	SEO		1,010	1,010
	Total	11,920	9,150	9,150	3,057	2,288	Total	12,300	9,440	9,440
Flatfish, Shal Water	W		22,570	4,500	252	1,125	W		19,510	4,500
	C		19,260	12,950	2,282	3,237	C		16,400	12,950
	WYK		250	250	6	62	WYK		790	790
	SEO		1,070	1,070	5	268	SEO		1,160	1,160
	Total	59,540	43,150	18,770	2,545	4,692	Total	45,330	37,860	19,400
Flathead Sole	W		8,440	2,000	184	500	W		8,490	2,000
	C		15,630	5,000	680	1,250	C		15,720	5,000

Species	1999 Specifications					Year 2000 Council Recommendations				
	Area	OFL	ABC	TAC	Catch	Interim Specs	Area	OFL	ABC	Final TAC
	WYK		1,270	1,270	16	318	WYK		1,440	1,440
	SEO		770	70	11	192	SEO		620	620
	Total	34,010	26,110	9,040	891	2,260	Total	34,210	26,270	9,060
Arrowtooth	W		34,400	5,000	3,656	1,250	W		16,160	5,000
	C		155,930	25,000	11,787	6,250	C		97,710	25,000
	WYK		13,260	2,500	382	625	WYK		23,770	2,500
	SEO		13,520	2,500	241	625	SEO		7,720	2,500
	Total	295,970	217,110	35,000	16,066	8,750	Total	173,910	145,360	35,000
Sablefish	W		1,820	1,820	1,487	455	W		1,840	1,840
	C		5,590	5,590	5,896	1,398	C		5,730	5,730
	WYK			2,090	1,709	456	WYK		2,207	2,207
	SEO			3,200	3,158	800	SEO		3,553	3,553
	E subtotal		5,290	5,290		1,256			5,760	5,760
	Total	19,720	12,700	12,700	2,250	3,175	Total	16,660	13,330	13,330
Rockfish, Oth Slope	W		20	20	40	5	W		20	20
	C		650	650	615	162	C		740	740
	WYK		470	470	122	117	WYK		250	250
	SEO		4,130	4,130	12	1,033	SEO		3,890	3,890
	Total	7,560	5,270	5,270	789	1,317	Total	6,390	4,900	4,900
Rockfish, Northern	W		840	840	573	210	W		630	630
	C		4,150	4,150	4,826	1,037	C		4,490	4,490
	E		na	na	na	na	E		na	na
	Total	9,420	4,990	4,990	5,399	1,247	Total	7,510	5,120	5,120
POP	W	2,610	1,850	1,850	850	462	W	1,460	1,240	1,240
	C	9,520	6,760	6,760	7,501	1,690	C	10,930	9,240	9,240
	WYK		1,350	820	610	205	WYK		840	840
	SEO		3,160	3,160		790	SEO		1,700	1,700
	E subtotal	6,360					E subtotal	3,000		
	Total	18,490	13,120	12,590	8,961	3,147	Total	15,390	13,020	13,020
Shortraker/Rough	W		160	160	194	40	W		210	210
	C		970	970	579	242	C		930	930
	E		460	460	536	115	E		590	590
	Total	2,740	1,590	1,590	1,309	397	Total	2,510	1,730	1,730
Rockfish, Pel Shelf	W		530	530	130	132	W		550	550

Species	1999 Specifications					Year 2000 Council Recommendations				
	Area	OFL	ABC	TAC	Catch	Interim Specs	Area	OFL	ABC	Final TAC
	C		3,370	3,370	3,835	843	C		4,080	4,080
	WYK		740	740	672	185	WYK		580	580
	SEO		240	240	21	60	SEO		770	770
	Total	8,040	4,880	4,880	4,658	1,220	Total	9,040	5,980	5,980
Rockfish, DemShelf	SEO	950	560	560	243	140	SEO	420	340	340
Atka Mackerel	Gulfwide	6,200	600	600	262	150	Gulfwide	6,200	600	600
Thornyhead	W		260	260	282	65	W		430	430
	C		700	700	582	175	C		990	990
	E		1,030	1,030	416	257	E		940	940
	Total	2,840	1,990	1,990	1,280	497	Total	2,820	2,360	2,360
Other Species	Gulfwide		NA	15,570	3,698	3,650	Gulfwide		NA	14,270
GULF OF ALASKA	TOTAL	778,890	532,590	327,046	227,454	73,239	TOTAL	581,040	448,010	299,650

2.2 Status of Affected Prohibited Species

Prohibited species taken incidentally in groundfish fisheries include: Pacific salmon (chinook, coho, sockeye, chum, and pink), steelhead trout, Pacific halibut, Pacific herring, and Alaska king, and Tanner crab. The Council recommends prohibited species catch (PSC) limits to control its bycatch of prohibited species in the groundfish fisheries. During haul sorting, these species or species groups are to be returned to the sea with a minimum of injury except when their retention is required by other applicable law. The status of the different prohibited species are summarized as follows:

Pacific salmon are managed by the State of Alaska. A detailed description of its management, production history, and life history are contained in Section 3.7.2 of the SEIS. Salmon run sizes off Alaska have exhibited wide variations throughout its known history and have generally been strongly correlated to environmental factors.

In 1999, salmon harvests in Alaska are estimated at nearly 208 million fish, making it the second largest commercial catch in the State's history. The statewide pink salmon harvest of 140 million fish set a new record high for that species. Southeast Alaska's harvest of nearly 75 million pinks far exceeds the region's previous record of 64 million in 1966. Prince William Sound's harvest of over 40 million pinks is close to the region's record harvest of 44 million achieved in 1990. The overall harvests of nearly 20 million chum salmon also ranks among the three historical largest. Harvests of coho salmon were down in all areas except Southeast Alaska. Of particular concern are poor returns to the Kuskokwim area which reached only 10 percent of expectations. The statewide harvest of 350,000 king salmon is down by nearly a third from 1998.

In the GOA, while PSC limits have not been established for salmon, in previous years the timing of seasonal openings for pollock in the Central and Western GOA have been adjusted to avoid periods of high chinook and chum salmon bycatch. In 1999, the groundfish fisheries of the GOA had a bycatch of 31,232 chinook and 7,225 "other" salmon through October 30, 1999.

Pacific halibut fisheries are managed by a Treaty between the United States and Canada through recommendations of the International Pacific Halibut Commission (IPHC). Pacific halibut is considered to be one large interrelated stock, but is regulated by subareas through catch quotas. The commercial and recreational fishery has a long tradition dating back to the late 1800s . Further details on the management, production history, and life history of Pacific halibut are described in section 3.7.2 of the SEIS.

The halibut resource is considered to be healthy, with total catch near record levels. The current estimate of exploitable halibut biomass for 1999 is estimated to be 227,366 mt. The exploitable biomass of the Pacific halibut stock apparently peaked at 326,520 mt in 1988 (Sullivan, 1998). The long-term average reproductive biomass for the Pacific halibut resource was estimated at 118,000 mt (Parma, 1998). Long-term average yield was estimated at 26,980 mt, round weight (Parma, 1998). The species is fully utilized. Recent average catches (1994-96) were 33,580 mt for the U.S. and 6,410 mt for Canada, for a combined total of 39,990 mt for the entire Pacific halibut resource. This catch was 48 percent higher than long-term potential yield, which reflects the good condition of the Pacific halibut resource. At its January 1999 annual meeting, the IPHC recommended commercial catch limits totaling 35,314 mt (round weight equivalents) for Alaska in 1999, up from 32,580 mt in 1998. Through November 10, 1999 commercial hook-and line harvests of halibut in Alaska totaled 33,377 mt (round weight equivalents).

Fixed PSC mortality limits have been set for the Alaska groundfish fisheries. Each year the IPHC evaluates the performance of the groundfish fisheries and recommends mortality rates for halibut bycatch in each groundfish fishery. PSC amounts for Pacific halibut mortality are actually deducted from the available fishery yields for the directed Pacific Halibut fishery by the IPHC. Therefore, the allowable commercial catch of halibut is reduced on account of halibut bycatch mortality in the groundfish fisheries. The Council uses the best estimate of halibut bycatch mortality rates each year and the groundfish TAC apportionments to project halibut bycatch mortality allowances for each gear and target fishery group. NMFS monitors halibut bycatch performance throughout the fishing season, including the extrapolation of data to unobserved vessels, and closes fishing by gear group before bycatch mortality limits are reached.

In the GOA, the PSC mortality limit for halibut is 2,300 mt (allocated as 2,000 mt for the trawl fisheries and 300 mt to the hook & line fisheries). Since 1996 pot gear and jig gear targeting groundfish, and hook-and-line gear targeting sablefish have been exempted from PSC caps due to relatively low bycatch by these gear types and because the sablefish and halibut IFQ program requires quota share holders to retain halibut. The 2,000 mt of halibut mortality allocated to trawl gear is further apportioned by season throughout the fishing year and to two target fishery complexes; the shallow water complex (consisting of pollock, pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species") and the deep-water complex (consisting of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder). In 1999, the 2000 mt mortality limit for the trawl fisheries was exceeded by 6 % (2,124 mt). The 300 mt of halibut mortality allocated to the hook-and-line fisheries is apportioned as 10 mt to the demersal shelf rockfish fishery and 290 to other hook-and-line fisheries. The 290 mt PSC cap for other hook-and-line fisheries is further apportioned seasonally throughout the fishing year. In 1999, the 290 mt mortality limit for the other hook-and-line fisheries in the GOA was exceeded by 19% (344 mt).

Pacific herring fisheries are managed by the State of Alaska. A detailed description of its management, production history, and life history are contained in Section 3.7.4 of the Final Groundfish SEIS. The fisheries occur in specific areas in the Gulf of Alaska when the stocks come inshore to spawn. In the Gulf of Alaska, spawning concentrations occur mainly off southeastern Alaska, in Prince William Sound, and around the Kodiak Island-Cook Inlet area. From catch records, it is evident that herring biomass fluctuates widely due to influences of strong and weak year-classes. The Gulf of Alaska stocks are currently at moderate to high levels and in relatively stable condition, with the exception of Prince William Sound and Cook inlet. Stock assessments indicated that the herring biomass in Prince William Sound and Cook Inlet were below the minimum threshold needed to conduct a harvest so these fisheries were closed for 1999. Statewide harvests of herring in 1999 were estimated at 34,066 mt; recent statewide harvests have averaged 46,300 mt.

Alaska king, Tanner and Dungeness crab fisheries in the GOA are managed by the State of Alaska, with federal oversight established in the FMP for the BSAI crab fisheries. A detailed description of crab management, production history, and life history are contained in Section 3.7.1 of the SEIS.

2.3 Status of Forage Species

Forage fish species are abundant fishes that are preyed upon by marine mammals, seabirds and other commercially important groundfish species. Forage fish perform a critical role in the complex ecosystem functions of the Gulf of Alaska by providing the transfer of energy from the primary or secondary producers to higher trophic levels. Because of their importance to so many ecosystem components, a

new management assemblage for forage fish was established in 1998 in Amendment 39 to the GOA FMP (63 FR 13009, March 17, 1998). Although ABC and TAC amounts are not specified for species in the forage fish category, the amendments provide protection for forage fish by preventing the development of commercial fisheries for these species. Directed fishing for forage fish species is restricted year-round with a maximum retainable bycatch of 2 percent. This Amendment also established mandatory reporting categories for forage fish species that took effect during 1998.

The following forage species are included in the new forage fish category established in 1998: Osmeridae (which includes capelin and eulachon), Myctophidae, Bathylagidae, Ammodytidae, Trichodontidae, Pholidae, Stichaeidae, Gonostomatidae, and the Order Euphausiacea. For further detailed discussion of forage fish species, see section 3.3.3.13 of the SEIS.

2.4 Status of Marine Habitat

Inclusively all the marine waters and benthic substrates in the management areas comprise the habitat of the target species. Additionally the adjacent marine waters outside the EEZ, adjacent State waters inside the EEZ, shoreline, freshwater inflows, and atmosphere above the waters, constitutes habitat for prey species, other life stages, and species that move in and out of, or interact with, the target species in the management areas. Distinctive aspects of the habitat include water depth, substrate composition, substrate infauna, light penetration, water chemistry (salinity, temperature, nutrients, sediment load, color, etc.), currents, tidal action, plankton and zooplankton production, associated species, natural disturbance regimes, and the seasonal variability of each aspect. Substrate types include bedrock, cobble, sand, shale, mud, silt, and various combinations of organic material and invertebrates which may be termed biological substrate. Biological substrates present in these management areas include corals, tunicates, mussel beds, and tube worms. Biological substrate has the aspect of ecological state (from pioneer to climax) in addition to the organic and inorganic components. Ecological state is heavily dependant on natural and anthropogenic disturbance regimes. The fishery management plans (NPFMC 1994) contain some descriptions of habitat preferences of the target species and projects are underway to systematically present biological requirements for each life history stage that are known (NMFS-Council in progress). Much remains to be learned about habitat requirements for most of the target species.

NPFMC (1999d) contains an assessment of impacts to essential fish habitat as required by amendments to the Magnuson-Stevens Fishery Conservation and Management Act of 1996. This assessment addresses the effects of the authorization of the proposed and final specifications on EFH pursuant to the requirements of 50 CFR 600.920(h) and in coordination with the review procedures required under the National Environmental Policy Act.

The assessment of the impacts on EFH (NMFS 1999d) concludes that fishing actions may have substantial adverse impacts on fish habitat essential to the spawning, breeding, feeding and growth to maturity of managed and un-managed species. In formal response to the assessment dated December 17, 1999, the NMFS Habitat Conservation Division, Alaska Region (HCD) concurred with the assessment that fishing may have adverse impacts on EFH for managed species but concluded that any adverse effects have been minimized to the extent practicable (NMFS 1999a). The actions authorized by the year 2000 harvest specifications have been mitigated, and are continually being mitigated, as a result of protective measures taken by the Council under the Magnuson-Stevens Act. The NPFMC has already set aside areas of essential habitat or has curtailed fishing in a season or location as a result of previous, and ongoing, NPFMC actions, or has taken measures to protect critical habitat for the Steller sea lion that also

benefits EFH for managed species in those areas. The NMFS HCD affirms that these mitigative measures have minimized any substantial impacts on EFH of this Federal action to the extent practicable, and offered no additional EFH recommendations.

Given that an EFH assessment has been completed with the mandatory requirements and components of an EFH assessment as specified in 50 CFR 600.920 (g)(2), and given that 50 CFR Section 600.920(h)(3) states that once a Federal agency has submitted to NMFS an EFH assessment completed in accordance with paragraph (g) of this section that the Federal agency has fulfilled its consultation requirement under paragraph (a), NMFS affirms that the consultation requirements as required under the statute have been fulfilled.

For further information about the habitat and ongoing habitat studies in the fisheries management area, see Section 3.1 and 3.6 of the NMFS 1998 SEIS, and the Ecosystems Considerations Chapter for 2000 (NPFMC 1999c, NMFS 1999d).

2.5 Status of Marine Mammal Species

2.5.1 Whales

Beluga whales

Beluga whales were concentrated in a few dense groups in shallow areas near river mouths in the northern portion of upper Cook Inlet. Very few belugas occurred elsewhere. Over the past three decades, there have been decreases in sightings of beluga whales both in offshore areas and in lower Cook Inlet. Since 1995, there have been no sightings in our surveys south of the upper inlet. An isolated stock of beluga whales is located in Cook Inlet, Alaska.

2.5.2. Pinnipeds

The SEIS (NMFS 1998) contains a detailed analysis on the ecology, population trends, and the impacts of an array of alternative TAC specifications on marine mammals. For further information see Section 3.4 and 4.3.2 of the SEIS (NMFS 1998), and the section on marine mammals in the ecosystems chapter of the 1999 SAFE (NPFMC 1999c). New information on population status and current management concerns for selected marine mammals was summarized in the EA for 2000 groundfish TAC specifications in the following manner (NMFS 1999d).

Steller Sea Lions

Recent reviews of Steller sea lion population status in Alaska are contained in the Section 7 Biological Opinions on ESA listed species (NMFS 1998b, 1998c, and 1999b.) Recent survey data used to monitor population status are summarized below:

NMFS and ADF&G conducted surveys of Steller sea lion pups and non-pups during June and July of 1998 from southeast Alaska to the western Aleutian Islands. Numbers of sea lions counted during a "winter" or "non-breeding season" survey conducted in March 1999 are still being analyzed. In general, numbers of non-pups in the western stock (west of 144°W) continued to decline in 1998 (Table 2). In the Kenai to Kiska area, non-pup numbers at trend sites declined by 12.8 percent from 1994 to 1998 (18,713 to 16,315) and 8.9 percent (17,900 to 16,315) from 1996 to 1998. This compares to a Kenai to Kiska decline of 4.6 percent from 1994 to 1996. The Aleutian Islands as a whole declined by 7.3 percent from

1996 to 1998, as compared to a marginal increase (1.1 percent) from 1994 to 1996. Combined, the western and central Gulf of Alaska declined 12.4 percent from 1996 to 1998, and 4.0 percent from 1997 to 1998. The central Aleutian Islands (Islands of Four Mountains to Kiska) was the one area that did show a marginal increase (4.2 percent) from 1996 to 1998.

Although the numbers for southeast Alaska show a decline, only 18 sites were surveyed in 1998, and other indications, particularly pup count results (below) suggest that the population in this area is stable. Survey coverage in the eastern Gulf of Alaska was too incomplete to provide a reliable trend for non-pups.

NMFS and ADF&G conducted counts of Steller sea lion pups at all rookeries in Alaska, from the Forrester Complex in southeast Alaska to Attu Island in the western Aleutian Islands during 19 June to 5 July 1998. Since 1994, the last range-wide pup count, pup numbers decreased by 10.8 percent (from 14,198 pups to 12,670) at all rookeries (Table 3). For the western stock (reflected by the counts from Kenai to Kiska) the decline was 19.1 percent over 4 years. In general, pup numbers were up slightly in parts of the central Aleutian Islands (8 rookeries from Seguam Island to the Delarof Islands), but down elsewhere. Rookeries in the western Aleutian Islands (particularly those in the Near Islands: 3 rookeries at Attu and Agattu Islands) were counted completely for the first time in 1997. Pup numbers at these three rookeries declined by 18.0 percent in one year (979 pups to 803 pups). The 2 rookeries in the eastern Gulf of Alaska declined 23.7 percent from 1994 to 1998, but increased 13 percent from 1997 (610 pups to 689). Pup numbers in southeast Alaska have increased 12.3 percent from 1994, but showed little change from 1997 to 1998.

Table 2--Counts of Non-pup Steller Sea Lions at Trend Sites (Rookeries and Haulouts) During Aerial Surveys in Alaska, 1994 to 1998.

Region	Non-pup counts at Trend Sites			Percent change	
	1994	1996	1998	1994-98	1996-98
Western Aleutian Islands	2,037	2,190	1,913	- 6.1	-12.6
Central Aleutian Islands	5,790	5,528	5,761	< 1	4.2
Eastern Aleutian Islands	4,421	4,716	3,847	-13.0	-18.4
Western Gulf of Alaska	3,982	3,741	3,361	-15.6	-10.2
Central Gulf of Alaska	4,520	3,915	3,346	-26.0	-14.5
Kenai to Kiska subtotal (Central Gulf of Alaska through central Aleutian Islands)	18,713	17,900	16,315	-12.8	- 8.9

Table 3--Counts of Steller Sea Lion Pups in Alaska, 1994 to 1998.

Region	Number of rookeries	1994	1997	1998	Percent change 94-98	97-98
Western Aleutian Islands	4		979	803		-18.0
Central Aleutian Islands	16	3,162		2,862	-9.5	
Eastern Aleutian Islands	6	1,870		1,516	-18.9	
Western Gulf of Alaska	4	1,662		1,493	-10.2	
Central Gulf of Alaska	5	2,831		1,876	-33.7	
Eastern Gulf of Alaska	2	903	610	689	-23.7	13
Western Stock subtotal (Kiska to Seal Rocks)	33	10,428		8,436	-19.1	
Southeast Alaska	3	3,770	4,160	4,234	12.3	1.8

Harbor seals

The NMFS National Marine Mammal Laboratory (NMML) conducted aerial assessment surveys for harbor seals in the southern portion of southeast Alaska, from Frederick Sound to the US/Canadian border in 1998. The northern portion of southeast Alaska was surveyed in 1997. Two observers worked out of Petersburg and five observers used Ketchikan as their base of operations. From 18 to 28 August, the entire coastline was surveyed from small, single-engine aircraft equipped with floats, at an altitude of 200-250 m (700-800 ft.). Observers estimated the number of seals hauled out and took photographs of all seal haulouts. Results from the two surveys will be combined to produce an overall estimate for southeast Alaska.

When seals are censussed from the air, an unknown number of seals are in the water and not present at the haulout sites. A companion project to the assessment surveys is development of a correction factor for each haulout type (rocky, sandy, and ice) to account for seals not present at the time of the census surveys. This is accomplished by capturing 20-40 seals and attaching a small VHF radio transmitter to the left rear flipper. The proportion of radio-tagged seals hauled during subsequent surveys should be representative of all seals at the haulout. The resulting correction factor is then applied to the population estimates derived in the assessment analysis. The estimates are then adjusted upwards to account for those seals not present during the aerial census surveys.

Correction factors have been developed previously for seals hauling out on rocky and sandy substrates. Little is known about the seals hauling out on glacial ice since no one has been able to successfully capture one. The NMML developed new capture techniques using a variety of net materials and types and net deployment methods. In early August, the NMML successfully captured and radio-tagged 19 seals at Aialik and Peterson Glaciers in the Kenai Fiords National Park near Seward, Alaska. Their movements were tracked from aircraft (22 August to 2 September) and remote data collection computers (19 August to about 8 October). Results from the assessment and correction factor surveys are currently being analyzed and will be used to estimate the number of harbor seals in Alaska and determine key components used in the NMFS annual stock assessment report.

Harbor porpoise and Dall's porpoise

Researchers from the NMML conducted line transect aerial surveys for harbor porpoise and Dall's porpoise from 27 May to 28 July 1998 in the Gulf of Alaska (offshore waters from Cape Suckling to

Unimak Pass), Prince William Sound, and Shelikof Strait. The survey aircraft was a Twin Otter flown at an altitude of 500 ft and an airspeed of 100 knots. Sawtooth lines covered the offshore waters from Cape Suckling to Unimak Pass (offshore of Kodiak Island) from about 15 nm seaward to the 1,000 fathom line. A series of zigzag lines covered Shelikof Strait, between the Alaska Peninsula and Kodiak Island. Larger inlets and bays were also included in the survey. The survey in Prince William Sound consisted of two lines: one covering the central waters and one along the coast with extensions into selected inlets. Two primary observers surveyed from bubble windows on each side of the aircraft. A third observer, viewing directly beneath the aircraft from a belly window, recorded porpoises missed on the trackline by the primary observers.

Poor weather restricted the completion of the entire planned survey. Survey lines were completed in Prince William Sound and an adequate number of survey miles were completed offshore from Cape Suckling west along the Kenai Peninsula, offshore of Kodiak Island, west to Sutwik Island (Alaska Peninsula), and in Shelikof Strait. A total of 5,722 nm were flown, with sightings of 83 harbor porpoise, 69 Dall's porpoise, 13 killer whales, 47 humpback whales, 24 fin whales, 1 Cuvier's beaked whale, 1 northern right whale, 25 harbor seals, 20 Steller sea lions, and 1 northern fur seal. These data are used to estimate annual abundance of harbor porpoise and Dall's porpoise, one of the key pieces of information needed to manage marine mammal-fishery interactions.

2.6 Seabird Species Population Status

Seabirds spend the majority of their life at sea rather than on land. Alaska's extensive estuaries and offshore waters provide breeding, feeding, and migrating habitat for approximately 100 million seabirds. Thirty-four species breed in the Bering Sea/Aleutian Islands (BSAI) and Gulf of Alaska (GOA) regions and number 36 million and 12 million individuals, respectively. Another 6 species breed at other locations in Alaska. In addition, up to 50 million shearwaters and 3 albatross species feed in Alaskan waters during the summer months but breed farther south. Detailed seabird information on species population status, life history, ecology, and bycatch is contained in section 3.5 of the SEIS (NMFS 1998a). The only new information on seabirds since publication of the SEIS concerns the taking of short-tailed albatross and subsequent Section 7 consultations on that species. It is summarized below:

On 22 October 1998, NMFS reported the incidental take of 2 endangered short-tailed albatrosses in the hook-and-line groundfish fishery of the BSAI. The first bird was taken on 21 September 1998, at 57 30'N, 173 57'W. The bird had identifying leg bands from its natal breeding colony in Japan. It was 8 years old. In a separate incident, one short-tailed albatross was observed taken on 28 September 1998, at 58 27'N, 175 16'W, but the specimen was not retained for further analysis. Identification of the bird was confirmed by USFWS seabird experts. The confirmation was based upon the observer's description of key characteristics that matched that of a subadult short-tailed albatross to the exclusion of all other species. A second albatross was also taken on 28 September 1998, but the species could not be confirmed (3 species of albatross occur in the North Pacific). Both vessels were using seabird avoidance measures when the birds were hooked.

The current world population of short-tailed albatross is approximately 1200 individuals. Because it is listed as endangered under the ESA, actions such as these fisheries, which may effect the species, are subject to section 7 consultations. Under terms of the 1999 biological opinion, incidental take statement, a take of up to 4 birds is allowed during the 2-year period of 1999 and 2000 for the BSAI and GOA hook-and-line groundfish fisheries (USFWS 1999). If the anticipated level of incidental take is exceeded,

NMFS must immediately reinitiate formal consultation with the USFWS to review the need for possible modification of the reasonable and prudent measures established to minimize the impacts of the incidental take.

NMFS Regional Office, NMFS Groundfish Observer Program, and the USFWS Offices of Ecological Services and Migratory Bird Management are actively coordinating efforts and communicating with each other in response to the 1998 take incidents and are complying to the fullest extent with ESA requirements to protect this species. Regulations at 50 CFR Parts 679.24(e) and 679.42(b)(2) contain specifics regarding seabird avoidance measures. In February 1999, NMFS presented an analysis on seabird mitigation measures to the Council that investigated possible revisions to the currently required seabird avoidance methods that could be employed by the long-line fleet to further reduce the take of seabirds.

The Council took final action at its April 1999 meeting to revise the existing requirements for seabird avoidance measures. The Council's preferred alternative would: 1) Explicitly specify that weights must be added to the groundline. (Currently, the requirement is that baited hooks must sink as soon as they enter the water. It is assumed that fishermen are weighting the groundlines to achieve this performance standard.); 2) The offal discharge regulation would be amended by requiring that prior to any offal discharge, embedded hooks must be removed; 3) Streamer lines, towed buoy bags and float devices could both qualify as bird scaring lines. (Specific instructions are provided for proper placement and deployment of bird scaring lines.); 4) Towed boards and sticks would no longer qualify as seabird avoidance measures; 5) The use of bird scaring lines would be required in conjunction with using a lining tube; and 5) Night-setting would continue to be an option and would not require the concurrent use of a bird scaring line.

These revised seabird avoidance measures are expected to be effective early in 2000. The avoidance measures affect the method of harvest in the hook and line fisheries, but are not intended to affect the amount of harvest.

2.7 Impacts on Endangered or Threatened Species

The Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq*; ESA), provides for the conservation of endangered and threatened species of fish, wildlife, and plants. The program is administered jointly by the NMFS for most marine mammal species, marine and anadromous fish species, and marine plants species, and by the USFWS for bird species, and terrestrial and freshwater wildlife and plant species.

Twenty-three species occurring in the GOA groundfish management areas are currently listed as endangered or threatened under the ESA (Table 4). The group includes great whales, pinnipeds, Pacific salmon and steelhead, and seabirds.

Table 4. ESA Listed Species. The following species are currently listed as endangered or threatened under the ESA and occur in the GOA and/or BSAI groundfish management areas.

Common Name	Scientific Name	ESA Status
Northern Right Whale	*Balaena glacialis*	Endangered
Bowhead Whale [1]	*Balaena mysticetus*	Endangered
Sei Whale	*Balaenoptera borealis*	Endangered
Blue Whale	*Balaenoptera musculus*	Endangered
Fin Whale	*Balaenoptera physalus*	Endangered
Humpback Whale	*Megaptera novaeangliae*	Endangered
Sperm Whale	*Physeter macrocephalus*	Endangered
Snake River Sockeye Salmon	*Onchorynchus nerka*	Endangered
Short-tailed Albatross	*Phoebaotria albatrus*	Endangered
Steller Sea Lion	*Eumetopias jubatus*	Endangered and Threatened [2]
Snake River Fall Chinook Salmon	*Onchorynchus tshawytscha*	Threatened
Snake River Spring/Summer Chinook Salmon	*Onchorynchus tshawytscha*	Threatened
Puget Sound Chinook Salmon	*Onchorynchus tshawytscha*	Threatened
Lower Columbia River Chinook Salmon	*Onchorynchus tshawytscha*	Threatened
Upper Willamette River Chinook Salmon	*Onchorynchus tshawytscha*	Threatened
Upper Columbia River Spring Chinook Salmon	*Onchorynchus tshawytscha*	Endangered
Upper Columbia River Steelhead	*Onchorynchus mykiss*	Endangered
Snake River Basin Steelhead	*Onchorynchus mykiss*	Threatened
Lower Columbia River Steelhead	*Onchorynchus mykiss*	Threatened
Upper Willamette River Steelhead	*Onchorynchus mykiss*	Threatened
Middle Columbia River Steelhead	*Onchorynchus mykiss*	Threatened
Spectacled Eider	*Somateria fishcheri*	Threatened
Steller Eider	*Polysticta stelleri*	Threatened

[1] The bowhead whale is present in the Bering Sea area only.

[2] Steller sea lion are listed as endangered west of Cape Suckling and threatened east of Cape Suckling.

Of the species listed under the ESA, the proposed action is likely to impact only the Steller sea lion. NMFS is the expert agency for ESA listed marine mammals and anadromous fish species.

Section 7 consultations with respect to actions of the federal groundfish fisheries have been done for all the species listed in Table 12, either individually or in groups.

Steller sea lions and other ESA listed marine mammals.

A Biological Opinion for the action authorizing the pollock and Atka mackerel fisheries for the years 1999 through 2002 was issued December 3, 1998, by the Office of Protected Resources of NMFS (NMFS 1998b.). The scope of the consultation was the Atka mackerel fishery of the BSAI, and the pollock fisheries in the BSAI and the GOA. The conclusions were: 1) the Atka mackerel fishery was not likely to jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat, and 2) the GOA and BSAI pollock fisheries, as they had been proposed in 1998, were likely to cause jeopardy to Steller sea lions and adverse modification of designated Steller sea lion critical habitat. This determination was based primarily on the premise that the two pollock fisheries would compete with Steller sea lions by removing prey items from important foraging areas at crucial times of the year.

To avoid the likelihood of causing jeopardy and adverse modification, NMFS developed a framework of reasonable and prudent alternatives (RPAs) based on three objectives: 1) temporally disperse fishing effort, 2) spatially disperse fishing effort, and 3) provide sufficient protection from fisheries competition in waters adjacent to rookeries and important haulouts. The RPAs contained guidelines for management measures which would achieve these principles. The Council initially provided recommendations for management measures at its December 1998 meeting. NMFS evaluated those recommendations and incorporated them into the RPAs on December 16, 1998. The RPAs were implemented by emergency interim rule for the first half of 1999, published on January 22, 1999 (64 FR 3437), amended on February 17, 1999 (64 FR 7814) and February 25, 1999 (64 FR 9375). The Council met again in February, April, and June 1999, to consider recommendations for extending the emergency rule for the second half of 1999, and at its June meeting, voted to extend the emergency rule (with modifications to the Bering Sea B and C seasons) until December 31, 1999 (July 21, 1999, 64 FR 39087; technical amendment August 10, 1999, 64 FR 43297).

The December 3, 1998, Biological Opinion was challenged in the United States District Court for the Western District of Washington by Greenpeace, the American Oceans Campaign, and the Sierra Club. On July 9, 1999, (amended July 13, 1999), the Court upheld the no-jeopardy conclusion for the Atka mackerel fishery and the jeopardy conclusion for the pollock fisheries. However, the Court also found that "the Reasonable and Prudent Alternatives . . . were arbitrary and capricious . . . because they were not justified under the prevailing legal standards and because the record does not support a finding that they were reasonably likely to avoid jeopardy." On August 6, 1999, the Court remanded the Biological Opinion back to NMFS for further analysis and explanation.

To comply with the Court's Order, NMFS conducted additional analyses and developed Revised Final Reasonable and Prudent Alternatives (RFRPAs) (October 1999). NMFS has initiated rulemaking to implement these conservation measures for the year 2000 and beyond. They will be implemented under an emergency action running parallel with the TAC specifications rules. Although the subject of separate rulemaking, NMFS considers implementation of these conservation measures a necessary part of this action, because without these mitigating measures in place, this action cannot proceed.

A second Biological Opinion on the action of authorization of the BSAI and GOA groundfish fisheries (other than pollock and Atka mackerel) year 1999 TAC specifications was issued December 24, 1998, by the Office of Protected Resources of NMFS (NMFS 1998c). That Biological Opinion examined the year 1999 proposed TAC specifications for the BSAI and GOA and the effect of that action on ESA listed marine mammal species and critical habitat. The conclusion was that mitigation measures recommended by the Council and modified by NMFS, for the BSAI and GOA pollock fisheries and the BSAI Atka mackerel fisheries, were sufficient to avoid jeopardizing the continued existence of the western population of Steller sea lions and avoid adverse modification to its critical habitat.

The December 24, 1998, biological opinion (NMFS 1998c) was also the subject of a Court challenge leading to a reinitiated consultation including preparation of a programmatic consultation to be completed in conjunction with the programmatic SEIS, as well as consultation on the year 2000 TAC specifications. The consultation on the year 2000 TAC specifications was issued December 23, 1999, and contained a determination of no jeopardy and no adverse modification to critical habitat for Steller sea lion. The Biological Opinion examined three actions: 1) authorization of the BSAI groundfish fisheries based on the year 2000 interim and final TAC specifications recommended by the Council, 2) authorization of the GOA groundfish fisheries based on year 2000 interim and final TAC specifications recommended by the

Council, and 3) authorization of BSAI and GOA groundfish fisheries based on implementation of the American Fisheries Act of 1998. The opinion considered the potential effect of these three actions on protected species that occur in the corresponding action areas. The protected species include northern right whales, blue whales, fin whales, sei whales, humpback whales, sperm whales, the eastern population of Steller sea lions, and the western population of Steller sea lions. The opinion concluded that these three actions were not likely to jeopardize the continued existence of protected species in the action areas, nor destroy or adversely modify designated critical habitat for the Steller sea lion (the only relevant protected species for which critical habitat has been designated in the action areas). The conclusions were based, in part, on implementation of conservation measures originating from the Revised Final Reasonable and Prudent Alternatives (RFRPAs) issued by NMFS on October 15, 1999, for the pollock fisheries, and conservation measures for the Atka mackerel fishery recommended by the Council in June of 1998 and being implemented over the period from 1999 to 2002. The opinion also identified important areas for further analysis of potential conflicts between the western population of Steller sea lions and the Pacific cod fisheries in the BSAI and GOA regions, and required that those areas be addressed again in the programmatic consultation to be conducted by NMFS in the year 2000, or in a separate consultation on the cod fisheries in the year 2000. The opinion also included conservation recommendations urging more extensive survey effort to understand the distribution of fished stocks throughout the year, rather than in summer months only, and greater effort to determine the relative importance of various target species to the diet of Steller sea lions. The opinion was accompanied by an Incidental Take Statement setting limits on the number of individuals of each protected species that could be taken before consultation would be re-initiated.

3.0 ENVIRONMENTAL IMPACTS OF THE ALTERNATIVES

An environmental assessment (EA) is required by the National Environmental Policy Act of 1969 (NEPA) to determine whether the action considered will result in a significant impact on the human environment. If the action is determined not to be significant based on an analysis of relevant considerations, the EA and resulting finding of no significant impact (FONSI) would be the final environmental documents required by NEPA. An environmental impact statement (EIS) must be prepared for major Federal actions significantly affecting the human environment.

Alternative 1: No action.

The major impact associated with the no action alternative is the loss of scientific information and understanding regarding the potential mechanisms through which commercial fishing could impact the recovery of Steller sea lion. The proposed experiment has the potential for improving our understanding of sea lion/fisheries competition and the effects of fisheries on sea lion prey. The establishment of buffer zones is predicated on the assumption that commercial fishing activity near rookeries/haulouts will negatively impact Steller sea lions, therefore it is imperative that we increase our understanding of the effects of fishing so that current buffer zone parameters can be evaluated. Such an experiment would increase management's ability to avoid jeopardy and adverse modification in the future.

Alternative 2 Pass Regulatory Amendment.

This alternative would require a displacement of commercial fishing out of Chiniak Gully and a resumption of pollock fishing within the buffer zones around Gull Point and Cape Barnabas. The

potential impact of these actions are discussed separately.

Section 4.0 of the NMFS 1998 SEIS analyzes the possible impacts of the proposed Regulatory Amendment on future groundfish, marine mammals, seabirds, forage species, and prohibited species, as well as other components of the physical and chemical environment.

The expected total groundfish removals for the feasibility year are shown in the table below.

Table 5. Expected total removals of groundfish in Barnabas, Marmot and Chiniak Gullies from August 1st to a date no later than September 20th in the year 2000

Species	Expected Year 2000 Catch (mt)
Walleye pollock	9008.00
Pacific cod	72.62
Arrowtooth flounder	360.69
Flathead sole	59.28
Rex sole	16.98
Shallow water flatfish	218.03
Deep water flatfish	12.72
Rockfish	70.57
Sablefish	31.89
Atka mackerel	0.01

The primary impact of the proposed regulatory amendment (alternative 2) would be a redistribution of catch along the eastside of Kodiak Island. Major changes in expected total removals are not anticipated. The impact of expected total removals within the GOA were addressed in the EA analysis for interim and final 2000 TAC specifications (NMFS 1999d).

3.1 Impacts of Trawl Closures

3.1.1 Federally Managed Fisheries in Central GOA

The proposed trawl closure is not expected to impact on the distribution of groundfish bottom trawl harvest off the eastside of Kodiak Island because of the 3rd seasonal allowance (July 4 to September 30) of halibut. The fisheries that are likely to be operating during the experiment are the mid-water pollock fishery, the sablefish IFQ fisheries using hook-and-line gear, and the year round pot and jig groundfish fisheries that principally target Pacific cod and rockfish. Of the fisheries likely to be open, the fixed gear fisheries will be exempted from the proposed action. Specific impacts of the proposed action on federally managed groundfish are described below.

Groundfish Trawl - Groundfish trawl fisheries are typically closed during large portions of August and

September because the 3rd seasonal allowance (July 4 to September 30) of halibut mortality has been reached. Groundfish trawl fisheries are managed as a deepwater and shallow water complex. The shallow water complex consists of pollock, pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and "other species". The deep-water complex consists of sablefish, rockfish, deep-water flatfish, rex sole, and arrowtooth flounder. The shallow water complex halibut closure exempts vessels using pelagic trawl gear targeting pollock. Closure dates for deep water and shallow water complexes since 1996 were as follows:

1999 deep water complex closed July 21 to Sept 30
shallow water complex closed July 4 to Sept 30
1998 deep water complex closed July 28 to Sept 30
shallow water complex closed August 3 to Sept 30
1997 deep water complex closed July 20 to Sept 30
shallow water complex closed August 11 to Sept 30
1996 deep water complex closed August 7 to Sept 30
shallow water complex closed August 5 to Sept 30

Flatfish

If the halibut allowance did not prohibit flatfish trawl fisheries in 2000 - 2003, the major impact of Alternative 2 would be a displacement of flatfish fishing effort away from Chiniak Gully. This shift in flatfish fishing effort is unlikely to result in adverse impacts to flatfish since the TAC for this species has been, and is likely to remain, well below the recommended Acceptable Biological Catch (ABC).

Pacific Cod

Directed trawl fishing for Pacific cod typically ends in March off the eastside of Kodiak. Therefore, the proposed trawl closure would not impact expected catch from this gear sector of the Pacific cod fishing fleet.

Walleye pollock

The mid-water pollock fishery is the only sector of the shallow water fishery exempted from the shallow water complex closure. Vessel displacement resulting from the establishment of a no trawl zone is likely to be minor. Historical observer and fish ticket data from the months of August and September revealed that in years when vessels operated in both Chiniak and Barnabas gullies, approximately 10% of the effort occurred in Chiniak Gully. These data suggest that the shift of fishing effort to Barnabas Gully, if it occurred, would be on the order of a 10% increase (Table 6). The potential redistribution of mid-water pollock fishing effort due to the Chiniak Gully closure is likely to be minor and would not be sufficient to cause a significant impact on other groundfish. Pollock are capable of broad scale movements well beyond the localized region of Chiniak Gully. At the recommended harvest level for the region, small shifts in the geographic distribution of catch are not likely to significantly impact predator prey or reproductive success of pollock or other groundfish stocks in the region.

Table 6. Summary of pollock fishery in area 630 based on NMFS observer data summarized for August/September*.

Description	1996	1997	1998	1999	Predicted 2000
TAC (630, Sept. 1 season)	6,840	12,274	19,655	7,630	9,008
Observed pollock catch in 630 tons	1,370	3,144	3,475	2,650	
Observed pollock catch in buffer zones tons	99	50	838	0	
Proportion observed catch within buffer zones	0.07	0.02	0.24	0.00	0.08
Observed pollock catch in Chiniak Gully closure tons	0	22	339	785	
Proportion observed catch within closure	0.00	0.01	0.10	0.30	0.10
Daily catch rate	1,552	1,215	1,078	1,601	

* Observer data must be evaluated with caution because only 30% coverage is required for vessels over 65 ft and less than 125 ft. Most of the vessels participating in fisheries off the eastside of Kodiak Island fall into the 30% coverage size category.

Hook-and-line Groundfish - The principal groundfish targeted by hook-line gear in the Central GOA are sablefish and Pacific cod. Provided that some Pacific cod TAC remains in the area and that hook-and-line have not reached their halibut PSC limit, NMFS may open Pacific cod for a brief clean up fishery in the fall. This clean up fishery could be scheduled as early as September 1. In the previous two years hook-and-line cod fisheries exhausted their halibut mortality allowance early in the year (see specific closure dates below).

1999 hook-and-line closed May 18 to Dec 31
1998 hook-and-line closed May 26 to Dec 31
1997 hook-and-line open throughout year
1996 hook-and-line open throughout year

It is likely that the halibut mortality allowance would be exhausted early in the year in 2000 - 2003. Halibut mortality rates have increased (12 % in 1996 and 1997, 14 % in 1998, 16 % in 1999, 17% in 2000) without any reduction in bycatch rates.

Hook and line groundfish fisheries are exempted from the proposed no trawl zone in Chiniak Gully. Therefore, the Chiniak Gully closure is not expected to impact the distribution of hook and line catch.

Pot and jig Groundfish - Pot and jig fisheries for groundfish are open year round. These fisheries would be exempted from the proposed no trawl zone in Chiniak Gully. The principal species targeted by pot and jig fisheries would be Pacific cod and rockfish. It is likely that Pacific cod fisheries would be closed due to halibut caps (see above) thus inactive. Jig gear may also target rockfish open to directed fishing. The proposed action would not influence species taken in these fisheries.

3.1.2 State of Alaska Managed Fisheries in Central GOA

The trawl closure will not impact fisheries within state waters because these fisheries are not included under the closure required under Alternative 2. Federal agencies will discuss the possibility that State

managers consider a similar ban on fishing within state waters of Chiniak Gully. A cooperative fishing ban would improve the quality of the results and would assist federal scientists in distinguishing between natural and human induced changes in pollock abundance and distribution.

The following types of fisheries are likely to be operating within state waters during the experiment.

Salmon - Peak (volume) catches in July. In August and September salmon fishermen target pink, red, and silver salmon. Only purse seine and set nets (gillnets) are used. The fisheries occur entirely in state waters. Frequent openings and closures occur based on escapement to spawning habitat.

Herring - Closed from June 15.

Crab- Tanner and King crab closed and not likely to reopen any time soon. The Dungeness crab fishing season would be open. Although EEZ water are open most of the dungeness fishing occurs in shallow state waters from Cape Gravel (57 35 30 N, 152 09 30 W) to Narrow Cape (57 25 30 N, 152 20 00 W). Pot gear is used.

Pacific cod - Open in state waters. Only jigging and pot gear may be used. Pot gear will most likely be closed at this time (See 4 above for impacts).

Sea cucumbers and urchins - Closed. Only dive gear is used.

Scallops - Closed north of the latitude of Cape Chiniak. Open south of the latitude of Cape Chiniak (58 degrees 31 min N), but could be closed due to crab bycatch. Usually two 16 foot wide dredges are towed hard on the bottom. Most fishing occurs at depths of approximately 40 fathoms, outside state waters.

3.1.3 Effects on Species Prohibited in Groundfish Fisheries Harvest

Alternative 1 would require no change to the expected catch of prohibited species. Fishing at the Council proposed TAC levels in fishing year 2000 (Alternative 1) is not expected to adversely affect stocks of fish or invertebrates prohibited in groundfish fisheries harvest. Catches of Pacific halibut, crabs, salmon, and herring are controlled by PSC limits that are established based in proportion to the biomass estimates of those species. Section 4.3.5 of the NMFS 1998 SEIS describes the possible impacts of a range of total harvest alternatives on prohibited species. New information presented in section 3.2 and the EA for interim and final TAC specifications for 2000 does not demonstrate any impacts that NMFS considers to be significant or that were not already analyzed in the SEIS.

Alternative 2 would not substantially increase the expected bycatch of prohibited species. It is possible that implementation of the no trawl zone would reduce the bycatch of prohibited species. However, it should be noted that the redistribution of catch, if it occurs, would be minor.

3.1.4 Effects on Essential Fish Habitat

The management areas where the fisheries take place are identified as essential fish habitat (EFH) for all the managed species listed in the fishery management plans. NMFS prepared an assessment of impacts to essential fish habitat (NMFS 1999d) and received a letter of consultation in reply (NMFS 1999a). In that letter NMFS stated it concurs with the assessment that fishing may have adverse impacts on EFH for

managed species but concluded that any adverse effects have been minimized to the extent practable. No EFH recommendations were offered. See Section 2.4 for a summary of the consultation.

The potential shifts in trawl effort caused by the temporary no trawl zone in Chiniak Gully is not expected to have a significant impact on essential fish habitat. The proposed regulatory amendment will primarily impact the distribution of the mid-water pollock trawl fishery which has little impact on the benthos. Most bottom trawl fisheries will be closed during the time of this experiment (Section 3.1.1). If bottom trawl fisheries remained open, the displacement of bottom trawl effort due to the no trawl zone in Chiniak Gully would be minor. For example, if the halibut allowance did not prohibit flatfish trawl fisheries in 2000 - 2003, and flatfish fisheries were displaced away from Chiniak Gully, Alternative 2 would decrease the probability of benthic disturbance in Chiniak Gully, and would increase the probability of benthic disturbance in regions outside of the Gully. However, review of historical catch data (1996-1999) shows that in the months of July - September, approximately 4% of catches in area 630 occurred in Chiniak Gully. Historical data also showed that only a small fraction of the flatfish quota (0.5%) was harvested along the eastside of Kodiak Island in August. These minor shifts in the geographic distribution of flatfish trawl effort are not likely to have significant adverse impacts on essential fish habitat.

3.1.5 Effects on Marine Mammals

Beluga whales

An isolated stock of beluga whales is located in Cook Inlet, Alaska. The region impacted by the proposed action is not an area commonly utilized by Beluga whales and no adverse impacts are anticipated.

Steller Sea Lions and Harbor Seals

The effects of trawl closures in Chiniak Gully is not expected to adversely impact Steller sea lions or harbor seals. Closing an area to commercial fishing would reduce the potential for competition between marine mammals and commercial fisheries for sea lion prey. The shift of fishing effort, if it occurred, is not expected to be sufficient to cause adverse impact to Steller sea lion habitat (see section 3.1.1.1). The shift is likely to be within the range of natural variations in pollock abundance within the region.

3.2 Impacts of Re-Opening Buffer Zones Around Gull Point and Cape Barnabas

If fishing is not allowed within the buffer zones around Cape Barnabas and Gull Point, it may compromise the experimental design of the study. For example, it is quite possible that walleye pollock aggregations are distributed throughout the Barnabas Gully area including the buffer zones. If commercial trawling operations are excluded from a portion of this "treatment" area (i.e., within buffer zones) the study would no longer have a straightforward design composed of a topographically separate "fished" or treatment area, and an "unfished" or control area. This would be problematic if a major portion of the fish abundance in the Barnabas area were within the buffer zones and not exposed to fishing, yet later moved to other areas within Barnabas where fishing was or had been allowed over the course of the study. This could result in a situation where one might mistakenly conclude that commercial fishing activity had no effect on the schooling dynamics of pollock within the treatment area (Barnabas Gully) because fish unexposed to fishing operations (from C. Barnabas and Gull Point buffer

zones) mixed with disturbed fish from the rest of Barnabas Gully. Clearly, under this scenario, it would difficult to classify Barnabas Gully as either a treatment or control area or draw meaningful conclusions from the work. Because Chiniak and Barnabas Gullies are more geographically and topographically isolated, one would expect less mixing of fish between these areas and thus more effective control and treatment areas.

The proposed experiment would increase management's ability to avoid jeopardy and adverse modification in the future. The study will provide vital information regarding short-term impacts of commercial fishing on the school dynamics of a principal prey of Steller sea lions in a local region off the eastside of Kodiak. This study is an integral part of a comprehensive research program designed to evaluate effects of fishing on the foraging behavior of Steller sea lions.

3.2.1 Impacts on fish

Re-opening buffer zones around Gull Point and Cape Barnabas is not expected to impact state or federally managed fisheries including prohibited species. Review of observed fishing locations (1996 - 1999) showed the catch within these buffer zones ranged from 0% to 24% of the seasonal TAC with a mean of 8% (Table 6). The pollock quota has been temporal and spatially dispersed into four quarterly openers and four geographic partitions that coincide with the West Yakutat, Kodiak, Chirikof and Shumagin regulatory areas. Pollock exhibit broad movements within these regulatory areas and small shifts in local catch distribution are not likely to significantly impact predator prey or reproductive success of other groundfish stocks.

3.2.2 Impacts on Steller Sea Lions

In the October 1999 "Revised Final Reasonable and Prudent Alternatives for the Pollock Fisheries in the Bering Sea and Aleutian Islands and Gulf of Alaska with Supporting Documentation" (hereafter referred to as the RFRPA report) prepared by NMFS pollock "no trawl zones" were established in waters of the Gulf of Alaska around Steller sea lion rookeries and major haulouts out to 10 nm. Specific sites, location, the size of the closure around each site, and the period of closure are listed on page 59 of the above referenced report. Three exceptions to these closures were described (p. 58). One of these exceptions was for Cape Barnabas and Gull Point, where these sites may be opened for the purpose of conducting experiments to determine the effects of the pollock fisheries on prey resources in this area. NMFS considers this conservation measure, in combination with all of the other conservation measures included in the RFRPA report, to be extensive and comprehensive. NMFS's affirms that with these RFFPAs, the pollock fisheries in Gulf of Alaska (and Bering Sea) will not jeopardize the continued existence of the western population of Steller sea lion or adversely modify its designated critical habitat. NMFS acknowledged that the commercial fishing would be allowed in the no trawl zones around Cape Barnabas and Gull Point in the summer of 2000 as part of a well-designed study to determine the short-term impacts of trawling on: a) changes in the distribution and abundance of pollock during the duration of the experiment; b) the impact of commercial fisheries for pollock on short-term changes in the pollock school dynamics and c) the impact of pollock fisheries on the availability of sea lion forage (i.e. pollock) in localized regions off the eastside of Kodiak Island. NMFS concluded that the commercial fishing allowed in the no trawl zones will not jeopardize the continued existence of the western population of Steller sea lions nor will it adversely modify its critical habitat.

The basis for NMFS's conclusion that these experiments will not result in jeopardy is as follows. The

RFRPAs were based, in part, on the principle that the pollock resources around rookeries and major haulouts must be protected from fishing competition. Thus, a number of areas were closed to fishing. To simply reopen no-pollock trawl zones around Cape Barnabas and Gull Point would violate the principle on which these closures were based: benefits would accrue to the fisheries but the affects on Steller sea lions would be detrimental only. However, closures around rookeries and major haulouts were also based on required assumptions about the nature of sea lion/pollock interactions in these areas. The best available scientific and commercial data are not sufficient to quantify these predator/prey interactions, or the exact nature by which fisheries confound those interactions. By investigating the potential effects of the fisheries on prey abundance, distribution, and behavior, scientists may provide additional information that will enable managers to design better protective measures for sea lions. Such an outcome would advance the cause of sea lion recovery and should be considered beneficial. Therefore, by carefully conducting these studies, NMFS believes that it can achieve potential beneficial effects that outweigh the risk associated with the experiment. To minimize the risks associated with the experiment, NMFS has taken a number of precautionary steps.

The proposed experiment calls for a reconnaissance survey prior to implementation. This survey will inform investigators about the distribution of pollock along the eastside of Kodiak Island in any given year. Historically, the largest concentrations of pollock have been located in Barnabas Gully. However, if pollock schools shifted north to Marmot Canyon, the treatment site would be located in that region. If the experiment is conducted in Marmot Canyon, the buffer zones surrounding Cape Barnabas and Gull Point will remain in force. These considerations demonstrate that the experimental design expressly considers the potential for local shifts in pollock distribution. Thus, if the experiment occurs in Barnabas Gully, the Agency will have demonstrated that large concentrations of pollock are present in the region prior to opening the buffer zones. This type of experimental design will minimize the potential for localized depletion.

If the reconnaissance survey indicates that pollock populations have shifted to Marmot Canyon, NMFS does not plan to re-open existing no trawl zones around Marmot Island. A Steller sea lion rookery is located on Marmot Island. Although peak pupping season is in June and July, some female sea lions will still be tending pups at this site in August. Females tending a pup on the rookery exhibit a more restricted foraging behavior than animals that have left the rookery. Animals that are not tending pups or defending rookeries are capable of moving along the coast to alternative feeding locations at adjacent or distant haulout locations. Therefore, opening the buffer zones for implementation of a research project of known duration is considered an appropriate risk in regions surrounding a haulout but would not be considered appropriate for regions surrounding rookeries.

The experiment will be conducted over a very limited portion of the overall range of the western population of the Steller sea lion range, and may affect only a limited number of haulouts in the central Gulf of Alaska. NMFS provides counts of individual sea lions for nine haulout sites in the RFRPAs. These counts must be evaluated with caution, as animals move among sites in response to factors such as weather, disturbance, and prey availability. This index shows that the number of animals observed on the Gull Point haulout ranged from 40 to 111 animals since 1992 (no summer counts were made in 1993, 1995 and 1999). One animal was observed at Cape Barnabas in 1992, since then, no animals were counted at this haulout in the summer period. Data were consistently collected at selected sites throughout the range of the western stock of Steller sea lions in the years 1991, 1992, 1994, 1996. Of these, the number of animals at Gull Point ranged from 0.1% to 0.3% of all animals counted and the number of animals at Cape Barnabas ranged from 0% to 0.003% of all animals counted. If only counts from haulouts in the region between

Cape St. Elias and Spitz Island are considered, the number of animals at Gull Point ranged from 0.6% to 1.6% and at Cape Barnabas ranged from 0.0% to 0.01%.

The data collected during the pilot study will complement several other initiatives currently being conducted at the NMFS and the University of Alaska. Several of these projects may be conducted simultaneously to enhance final products. The NMML and University of Alaska will coordinate marine mammal behavioral and food habits studies in the same location. The analysis products provided from this survey can be used to develop algorithms to describe pollock movements in IBM modeling. If these studies demonstrate a detectable change in sea lion foraging behavior in response to re-opening the no trawl zone on Cape Barnabas and Gull Point, NMFS scientists will consider alternative survey designs for future studies.

4.0 ENVIRONMENTAL ASSESSMENT CONCLUSIONS

4.1 Finding Of No Significant Impact

The federal action is passage of a regulatory amendment to the FMP that would: 1) prohibit all trawl fishing in the Chiniak gully region off the eastside of Kodiak Island from August 1st to a date no later than September 20th in four years (2000 to 2003) and 2) reopen the 10 nautical mile no trawl zone for pollock around Gull Point and Cape Barnabas during the same periods. NMFS implemented mitigation measures for the walleye pollock fisheries before the start of fishing in the GOA groundfish fisheries. An emergency interim rule implementing the Revised Final Reasonable and Prudent Alternatives for the BSAI and GOA Walleye pollock fisheries as outlined by NMFS in the December 3, 1998, Biological Opinion (NMFS 1998b) and subsequent Revised Final Reasonable and Prudent Alternatives was effective prior to January 20, 2000.

Implementation of the preferred alternative, approval of the Regulatory Amendment, would not significantly affect the quality of the human environment for the following reasons.
Therefore, the preparation of an environmental impact statement is not required by section 102(2)(C) of NEPA or its implementing regulations.

_____ _____

Date

5.0 REGULATORY IMPACT REVIEW

The Regulatory Impact Review (RIR) is designed to respond to the requirements of Executive Order (E.O.) 12866. This includes providing information to determine whether the proposed regulation is likely to be economically significant.

The objective of the proposed action is discussed in Sections 1.0 and 1.1 and the two alternatives are described in Section 1.2 The expected differences in economic effects between the two alternatives are discussed below.

5.1 Impact of the Alternatives

Alternative 1 would prevent NMFS from conducting a controlled experiment off Kodiak Island and, therefore, prevent NMFS from obtaining information that can be used to assess further management actions to protect Steller sea lions and their habitat. Alternative 2 would allow NMFS to conduct the controlled experiment and improve the information available for such assessments. This would be expected to result in the use of more effective and efficient methods to protect Steller sea lions. The other differences between the economic impacts of the two alternatives will be due to differences in the following: 1) the spatial and temporal distributions of catch; 2) the levels of catch and bycatch mortality; and 3) the distribution of catch among the competing fishing operations. Those differences would occur during the 4-year period in which the proposed regulatory amendment would be in effect.

5.1.1 Improved Information

The benefits of the improved information the controlled experiment is designed to provide could be substantial. They would include decreasing the risk of not implementing effective measures to protect Steller sea lions and decreasing the cost of providing a given level of protection.

A very large benefit from the former is implicit in the requirement to prevent the pollock fisheries from either jeopardizing the continued existence of the western population of endangered Steller sea lions or adversely modifying its critical habitat. The latter type of benefit could be substantial due to the size and value of the pollock fisheries.

The recipients of the former type of benefit include more than those who enjoy the non-consumptive uses of Steller sea lions. They also include the participants in the groundfish fisheries and others who benefit from the pollock fisheries. This is because providing timely and effective protection for Steller sea lions can prevent the need for more dramatic and costly controls on the pollock fishery and other groundfish fisheries in the future.

Similarly, those with non-consumptive uses of Steller sea lions and participants in the pollock fishery would benefit from the use of more efficient methods of protecting Steller sea lions. The more efficient methods would allow a higher level of protection but at a lower cost to participants in the pollock fishery.

5.1.2 Changes in the Distribution and Magnitude of Catch and Bycatch

Almost all of the groundfish trawl catch that has occurred in the time and area of the proposed Chiniak Gully closure was taken by catcher vessels with an observer coverage requirement of only 30%. Therefore, groundfish fish ticket catch data by ADF&G stat area were used to estimate the historical catch during the proposed seasonal closure. Catch data from the following five stat areas were used: 505700, 515700, 515730, 525732, and 525733. There are three reasons why the historical catch from these five areas exceeds the catch reduction that would be expected to occur in the Chiniak Gully area during late summer if the proposed closure is implemented (see Fig 2). First, the five stat areas include substantially more area than would be closed. Second, most of the parts of areas 525732 and 525733 that are in the proposed closure would have been closed by the pollock trawl closures that have been in place since 1999. Third, the proposed Federal regulations would not directly affect fishing in the stat area that is in state water (area 525733). However, that stat area is included because the State of Alaska will be asked to close it to assist with the experiment.

The use of catch data for August 1 through September 30 may also introduce an upward bias. But this additional bias is offset, at least in part, by the fact that the late summer pollock fishery is expected to open August 20 beginning this year as opposed to September 1, the opening date in 1996-99.

During the last four years (1996-99), groundfish catch in the five stat areas during August and September accounted for from 1.3 to 22.8% of August and September catch reported on fish tickets for the Central Gulf as a whole and for 0.3 to 4.4% of the corresponding annual catch for the Central Gulf. The expectation is that most of the catch that otherwise would occur in the Chiniak Gully area during August and September would occur elsewhere in the Central Gulf as the result of the proposed regulations. That redistribution of catch is not expected to affect significantly either catch or bycatch in the Central Gulf.

Although approximately 200 fishing vessels are expected to participate in the GOA trawl groundfish fishery in each of the next few year, the number of vessels directly affected by the proposed regulations is substantially less. During the past four years, the number of groundfish trawlers that fished in the five stat areas in August and September ranged from 9 in 1997 to 26 in 1999. The majority of the vessels are between 80 and 100 feet in length (Fig. 3).

For these vessels as a group, catch in the five stat areas during August and September accounted for between 1.2 and 6.5% of the ex-vessel value of their annual groundfish catch. For individual vessels the corresponding statistic typically ranged from less than 0.5 to less than 20% (Fig. 4). However, in 1999 there was one outlier that is not included in Fig. 4. For that vessel, catch in the 5 stat areas during August and September accounted for almost 57% of its annual ex-vessel earnings from groundfish. In making these comparisons, 1997 ex-vessel prices were used for 1997-99 because 1998 and 1999 ex-vessel prices are not available. The data presented in Fig.4 provide upper bound estimates of the percent reduction in groundfish ex-vessel value that would have occurred to individual vessels had the proposed closure been in place in 1996-99. Had the proposed closure been in place, most of the reduction in ex-vessel value from Chiniak Gully in August and September would have been offset by increased catch and value from other areas in the Central Gulf. However, costs would be incurred by being forced to forego fishing in what had been a preferred location. The increased cost would be due in part to the greater distance from Kodiak to the alternative fishing areas.

The proposed regulations are not expected to be economically significant.

6.0 INITIAL REGULATORY FLEXIBILITY ANALYSIS

The Regulatory Flexibility Act (RFA), first enacted in 1980, was designed to require Federal agencies to review all regulations to ensure that, while accomplishing their intended purposes, they do not unduly inhibit the ability of small entities to compete.

The reason why the proposed action is being considered by the agency and the objectives for the proposed action are described in Sections 1.0 and 1.1. The action would be taken under the authority of the MSFCMA.

The proposed regulations would apply to all fishing vessels that participate in the GOA groundfish trawl fishery during August and September 20th of 2000 through 2003. In recent years, approximately 200 trawlers have participated in the GOA groundfish fishery. However, only 9 to 26 trawlers have fished in the proposed closed area during August and September. Most of these vessels probably are small entities

under the $3 million gross earnings criterion.

There are no reporting, record keeping or other compliance requirements of the proposed rule.

There are no relevant Federal rules that may duplicate, overlap or conflict with the proposed rule.

Most of the vessels that would otherwise trawl for groundfish in the proposed closed area during late summer are small entities. Therefore, the creation of an alternative or exemption for small entities that would result in these vessels not adhering to the proposed time/area closure would not be consistent with the intent of the proposed rule to allow a controlled experiment to assess the effects of trawl fishing on the availability of prey for Steller sea lions.

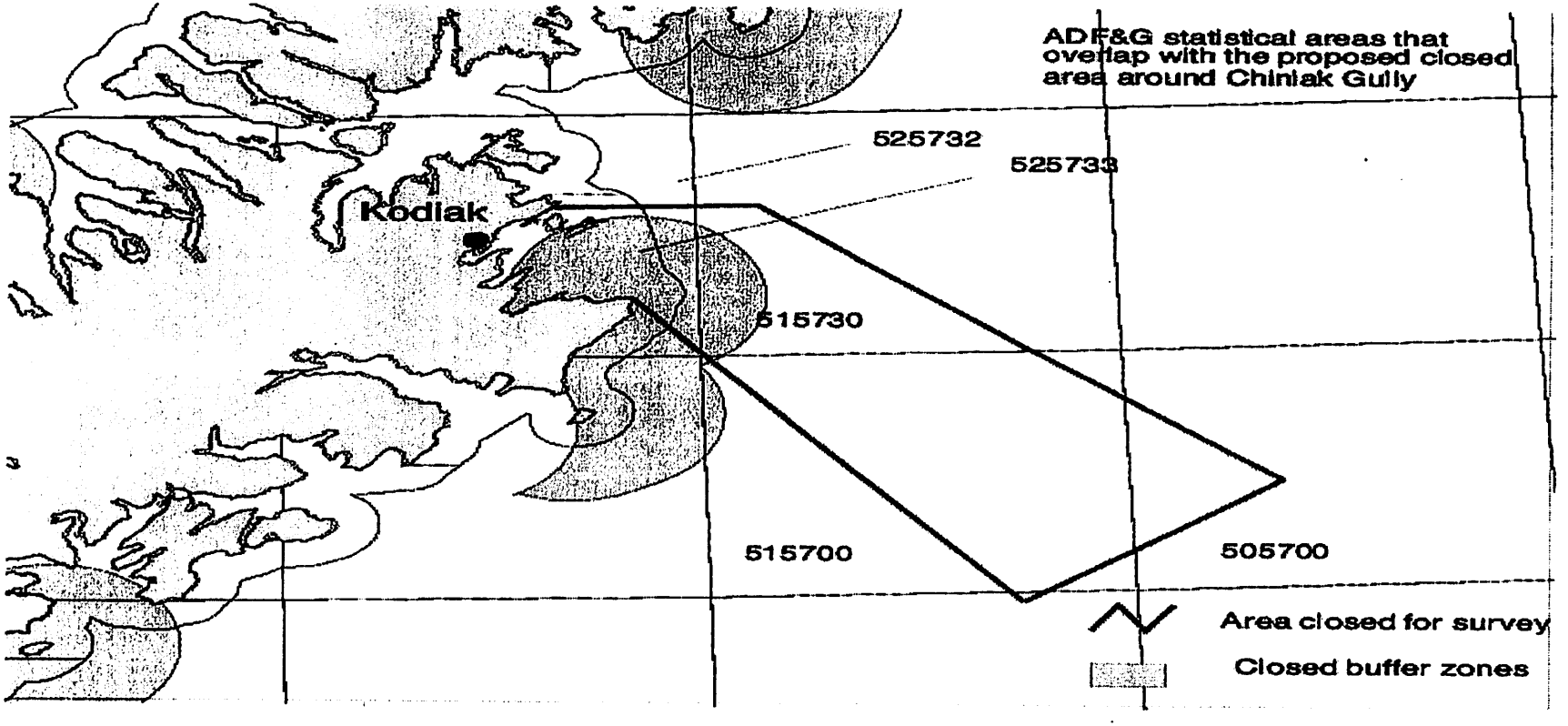


Figure 2 Chiniak Gully area and associated stat areas.

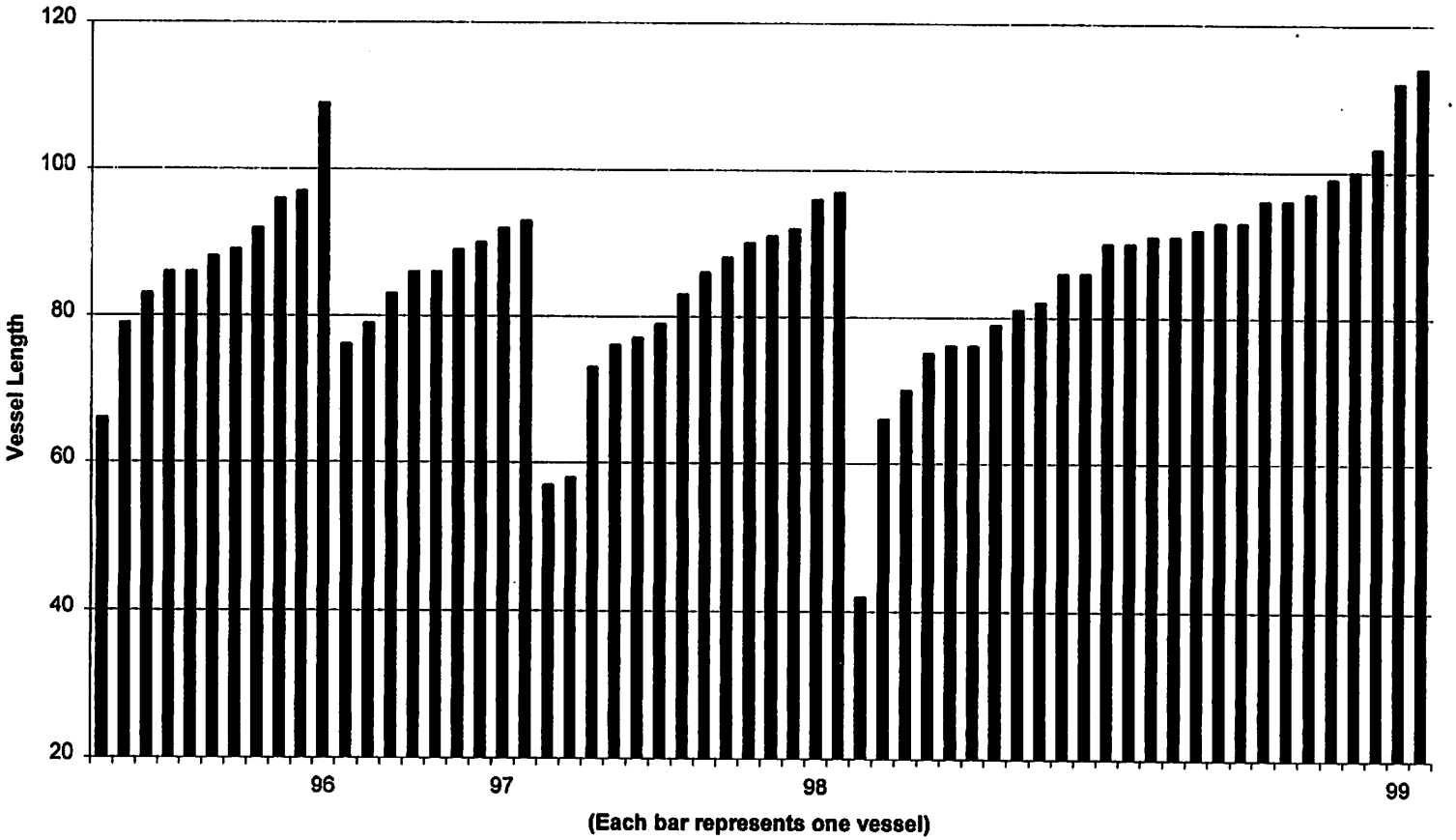


Figure 3 Lengths of vessels with groundfish trawl catch from the Chiniak Gully area during August and September, 1996-99.

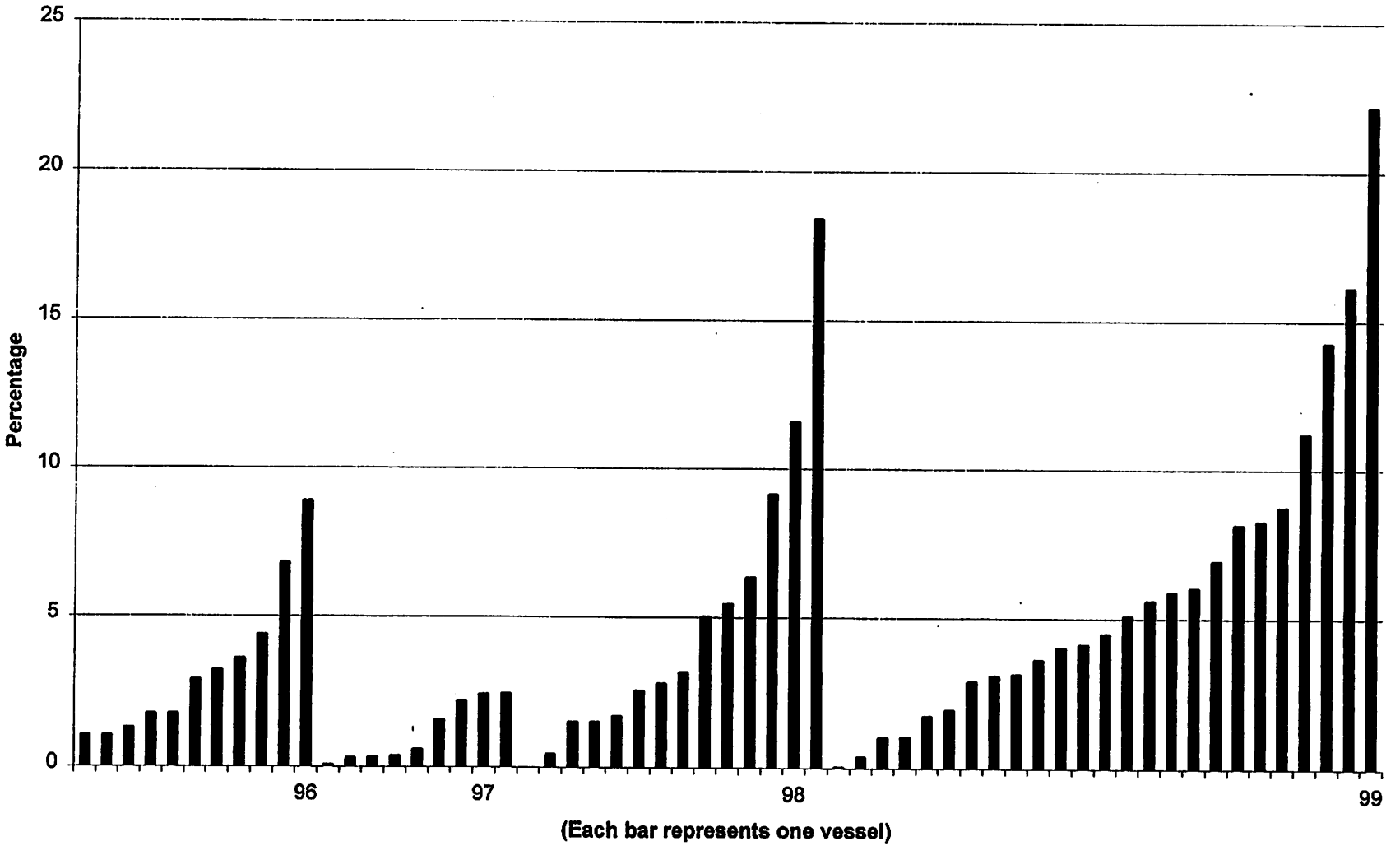


Figure 4 Percent of each vessel's Alaska groundfish ex-vessel value accounted for by trawl catch from the Chiniak Gully area during August and September, 1996-99.

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9.0 LITERATURE CITED

National Marine Fisheries Service (NMFS.) 1999a. Memorandum from the Assistant Regional Administrator for the Office of Habitat Conservation (Alaska Region) to the Assistant Regional Administrator for the Office of Sustainable Fisheries (Alaska Region) Regard Essential Fish Habitat Consultation for year 2000 TAC specifications. December 17, 1999. NMFS Alaska Region, P.O. Box 21668, Juneau, Alaska 99802.

NMFS. 1999b. Endangered Species Act Section 7 Consultation - Biological Opinion: Authorization of TAC specification for the year 2000 groundfish fishery under the BSAI and GOA groundfish FMPs (Marine mammals including Steller sea lion). December 23, 1999. National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802. pp + Tables and Figures.

NMFS. 1999c. Endangered Species Act Section 7 Consultation, Biological Opinion for Take of Listed Salmon in Groundfish Fisheries Conducted under the BSAI and GOA FMPs. December 22, 1999. Available from NMFS, Alaska Regional Office, P.O. Box 21668, Juneau, AK 99802. 61 pp +figures.

NMFS. 1999d. Environmental Assessment for the Interim and Final Total Allowable Catch Specifications for the Year 2000 Alaska Groundfish Fisheries, Dec. 23, 1999. National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. 70 pp + Appendices.

NMFS. 1998a. Final Supplemental Environmental Impact Statement: Groundfish Total Allowable Catch Specifications and Prohibited Species Catch Limits Under the Authority of the Fishery Management Plans for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska. December 1998. National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802. 692 pp + Appendices and Comments.

NMFS. 1998b. Endangered Species Act Section 7 Consultation - Biological Opinion: Authorization of an Atka mackerel fishery under the BSAI groundfish FMP between 1999 and 2002; Authorization of a walleye pollock fishery under the BSAI groundfish FMP between 1999 and 2002; and Authorization of a walleye pollock fishery under the GOA groundfish FMP between 1999 and 2002 (Marine mammals including Steller sea lion). December 3, 1998. National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802. 139 pp + Tables and Figures.

NMFS. 1998c. Endangered Species Act. Section 7 Biological Opinion–Fishery Management Plan for the Bering Sea and Aleutian Islands and Gulf of Alaska Groundfish Fisheries and the 1999 Total Allowable Catch Specification and its effects to Steller Sea lions. December, 24, 1998. National Marine Fisheries Service, Alaska Region, P.O. Box 21668, Juneau, AK 99802.

North Pacific Fisheries Management Council (NPFMC). 1995. Fishery Management Plan for the Bering Sea/Aleutian Islands Groundfish. North Pacific Fishery Management Council, 605 W 4th Avenue, Suite 306, Anchorage, AK 99501.

NPFMC. 1994. Fishery Management Plan for the Gulf of Alaska Groundfish Fishery. North Pacific Fishery Management Council, 605 W 4th Avenue, Suite 306, Anchorage, AK 99501

NPFMC. 1999a. Stock assessment and fishery evaluation report for groundfish resources of the Gulf of Alaska. North Pacific Fishery Management Council, P.O Box 103136, Anchorage, AK 99510.

NPFMC. 1999b. Economic status of groundfish resources off Alaska. *In* Stock assessment and fishery evaluation report for groundfish resources of the Gulf of Alaska. North Pacific Fishery Management Council, P.O Box 103136, Anchorage, AK 99510.

NPFMC. 1999c. Ecosystem considerations. *In* Stock assessment and fishery evaluation report for groundfish resources of the Gulf of Alaska. North Pacific Fishery Management Council, P.O

Box 103136, Anchorage, AK 99510.

National Research Council. 1996. *The Bering Sea Ecosystem.* (National Academy Press, Washington, DC) 307 p.

Sullivan, P. J., and Parma, A. M. 1998. Population assessments, 1997. In: *International Pacific Halibut Commission Report of Assessment and Research Activities, 1997* International Pacific Halibut Commission, P.O. Box 95009, Seattle, WA 98145. pp. 81-107.

USFWS. 1999. Endangered Species Act Formal Section 7 Consultation for 1999-2000 Hook-and-Line Groundfish Fisheries of the Gulf of Alaska and Bering Sea and Aleutian Islands Area (Short-tailed Albatross.) Issued March 19, 1999. U.S. Department of the Interior, Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503-6199. 36pp + Tables and Figures.

APPENDIX A. STUDY TO ASSESS THE EFFECT OF COMMERCIAL FISHING ON WALLEYE POLLOCK DISTRIBUTION AND ABUNDANCE

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Alaska Fisheries Science Center
National Marine Fisheries Service
National Ocean and Atmospheric Administration
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USA

Justification:
There is considerable scientific uncertainty regarding how commercial fishing activity affects the availability of walleye pollock (*Theragra chalcogramma*) to Steller sea lions (*Eumetopias jubatus*). The work proposed here will investigate whether pollock commercial fishing activities cause reductions in the availability or distribution of sea lion prey that could be detrimental to sea lions. This experiment will also examine whether pollock fisheries cause localized depletions in the sea lion forage base.

The goal of this project is to identify and quantify the effects of commercial fishing within a finite area of interest. The study location was chosen because the areas fished on the eastside of Kodiak offered generally discrete concentrations of fish separated by topographical features. The concentration of fishing effort in the Gulf of Alaska enables the designation of comparable treatment and control sites, which are essential to the study design.

Methods:
We propose to conduct a fishery independent echo integration trawl (EIT) survey before, during, and after the August commercial fishing season in the Kodiak region of the Gulf of Alaska (GOA). The proposed work will include a pilot study the first year, followed by 2 years of more comprehensive fieldwork. The pilot study will not include fieldwork following the fishing season. It is designed to evaluate the feasibility of using the methods described herein to collect the information necessary to determine the impact of fishing activity on Steller sea lion prey during August in the GOA. Results from the pilot study will be critical in the planning and final design of the more comprehensive fieldwork proposed for 2001-2002. Ship time for the R/V Miller Freeman has been obtained to conduct the pilot study in FY2000.

Five Kodiak locations to conduct this work were considered based on past commercial fishing activity, as documented in the NMFS observer database and interviews with numerous industry representatives. Because there has never been a fishery for pollock in August, observer data from August, September, and October were combined for 1993-99 to determine the most appropriate locations for the work off Kodiak. Based on these findings, we selected Chiniak Gully as the control site and will assign either Barnabas Gully or Marmot Bay as the treatment site (Fig. 1). The treatment site will be determined based on a reconnaissance survey (discussed below, Fig. 2) during the pilot study. August is an opportune time to conduct this survey as the Steller sea lions appear to exhibit spatially restricted foraging trips and site fidelity to rookeries, which offers the opportunity to monitor individual responses over several years.

It is anticipated that the comprehensive research surveys will be conducted in the same areas and in the same season as the pilot survey, with additional sampling after the fishing season has ended. The consistency in area and season will enable us to obtain a time series of data and evaluate the effects of interannual variation. Based on information from the pilot study, the NMML will also increase its land-based Steller sea lion work to coordinate with our survey.

Except for the reconnaissance work (explained below), all EIT surveys will consist of a uniformly-spaced (2 nmi) parallel transect pattern because this design will provide better spatial descriptions of pollock abundance and variance than the zig-zag pattern, although the latter covers greater area per unit time (MacLennan and Simmonds, 1992). Trawling during all EIT surveys will also be required to confirm the species composition of the echosign and collect biological samples needed to estimate abundance and

distribution patterns. The survey would only be conducted during the daylight hours (about 14 hours/day in August) because backscattering from other species during darkness may confound identification of pollock echosign (J. Stinson, Alaska Draggers Association, pers. comm.). Estimates of pollock abundance and distribution patterns within the study area will be described using standard MACE EIT-trawl survey methodologies (Traynor et al., 1990).

The general distribution pattern of pollock along the eastside of Kodiak at the beginning of the survey will be determined by conducting a reconnaissance EIT survey before the fishery starts. This knowledge will be used to select either Barnabas Gully or Marmot Bay as the most appropriate treatment site. The reconnaissance survey will follow a zig-zag (due to the large area to be covered during a short time period) trackline and require about five days to complete.

After the reconnaissance survey is complete, we will conduct EIT surveys of the control and treatment sites using the uniformly-spaced parallel transect pattern. During the pilot study, the treatment and control sites will each be surveyed twice; once before the fishing season and once during the fishing season. Approximately one week will elapse between surveys. The time to complete the EIT survey for the treatment area will be about 5 days and for the control site of Chiniak Gully, about 4 days.

We anticipate that the subsequent 2 years of comprehensive surveys will follow the same general survey design with added sampling after the fishing season has ended. However, parameters are subject to change depending on information gathered during the pilot study (e.g. transect spacing or size of survey area may be modified). If the R/V Miller Freeman is not available, the after fishery survey will be conducted by a chartered commercial vessel with the appropriate acoustic equipment and trawling capabilities.

It is possible that fish may exhibit avoidance reactions to commercial fishing activities, but may recover to their undisturbed distribution patterns before the EIT survey to describe their "disturbed" distribution patterns is completed. A free-drifting acoustic buoy will be repeatedly deployed for short durations (e.g., 4-12 h) during each field season to investigate whether these types of smaller spatio-temporal fish avoidance reactions occur in response to commercial vessel and trawl noise. In addition, fishing vessels within the area will exhibit vessel-specific underwater-radiated noise signatures. Work with the buoy targeting different vessels will enable us to investigate whether particular avoidance response patterns are associated with vessels having particular noise characteristics. One would hypothesize that "noisier" vessels would initiate a greater fish avoidance response in space and time.

Project Products and Coordination:

Results of the survey in the form of presentations/papers on the distribution and modeling efforts will be presented at annual meetings as well as in peer-reviewed literature. A preliminary report will be presented at the North Pacific Fisheries Management Council in December 2000. Preliminary results should be available by January 2001 followed by more comprehensive results in April-June 2001

The data collected during the pilot study will complement several other initiatives currently being conducted at the NMFS. Several of these projects may be conducted simultaneously to enhance final products. The NMML will coordinate marine mammal behavioral and food habits studies in the same location (PIs: T. Loughlin, K. Wynne). The analysis products provided from this survey can be used to

develop algorithms to describe pollock movements in IBM modeling (PIs: S. Hinckley, M. Dorn, and A. York).

Fig. 1 Reconnaissance survey trackline.

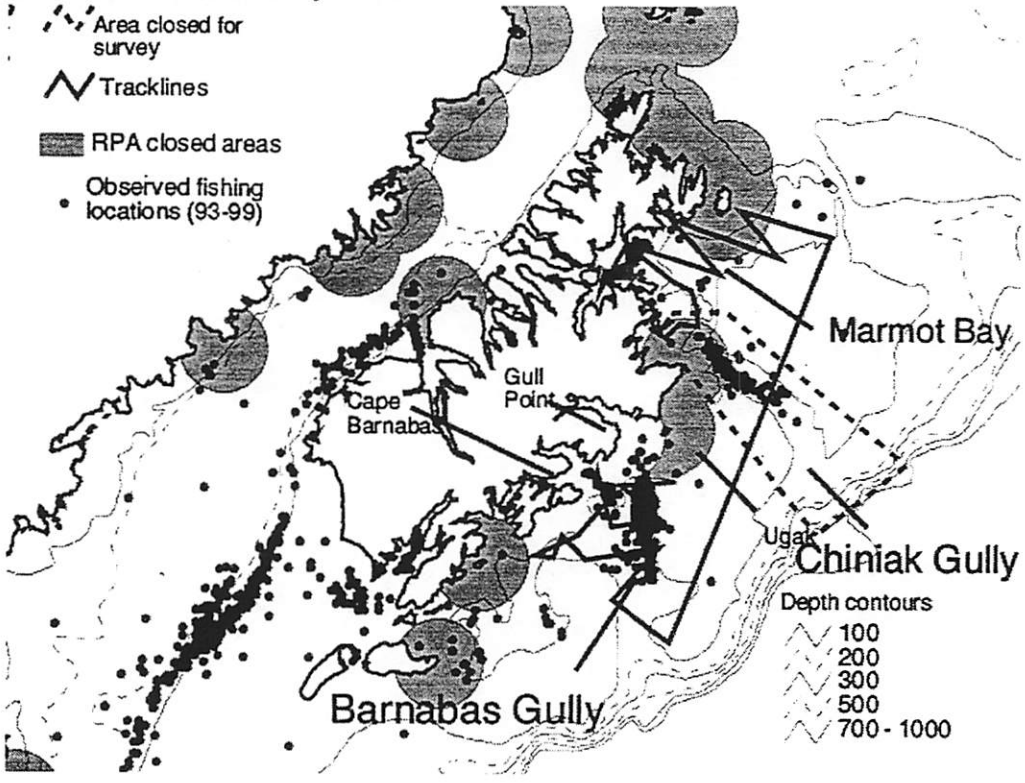
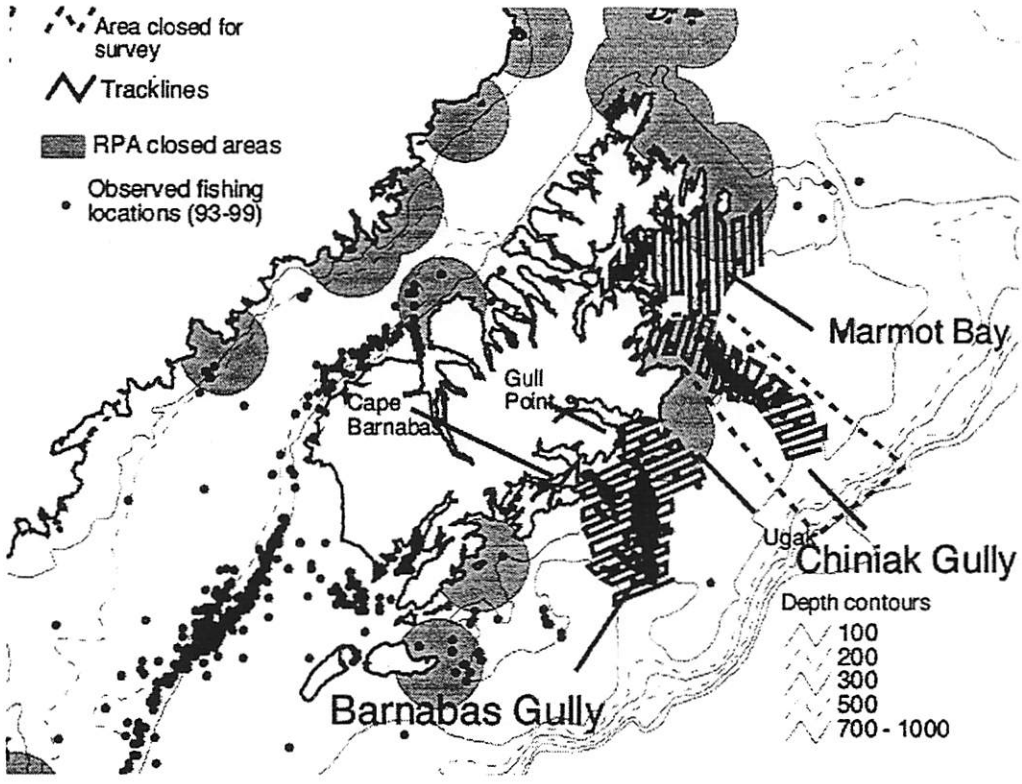


Fig. 2 Survey trackline for control and treatment sites.



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F/V NightWatch

February 1, 2000

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Rick Lauber.
North Pacific Fishery Management Council

RE: Agenda Items C-2, C-4, C-6, and D-2

Dear Sir :

To start with, I am a life long Alaskan and a second-generation fisherman, my father came to Alaska in 1942 and has been fishing ever since. I live in Homer Alaska and fish mostly in and around Sand Point Alaska, Area 610. I first started fishing out of Sand Point in 1986 and have been doing it every year since.

I was one of the first boats to ever start trawling for ground fish and the only one to do it year round in the Sand Point area. My boat is 74ft. , 500 horse power and 30% coverage and packs 130,000lbs. It is not a large boat! Most 58ft. boats in Sand Point carry more people, pack more fish and have more horse power.

The past couple of years I have seen my fishery eaten away by local and out side interests, 25% of my Cod fishery has been given over to pot fisherman with a preference to 58ft. vessels . There was a new Sealion haul-out made of Sealion Rocks with a 10 mile no trawl zone for Vessels over 58ft., 90% of my fall Pollock has come from this area. So as you can see this is a devastating trend for vessels of my size!

With no vessels over 58ft. involved in these fisheries or areas there will be no data for NMFS since 58ft. vessels do not have to carry observer or fill out Log books.

I disagree with Aleutians East Borough positions regarding the allocation of Federal P-cod and Pollock in the GOA particularly in Area 610. I oppose any proposal by the Aleutians East Borough that does not support the position of vessels over 58ft, especially since there are only five of us with any kind of history in the fishery the largest being 96ft. There is no shortage 58ft boats that are fully LLP qualified in area 610. It is totally unfair to long time participants to favor A 58ft. preference .

I support the immediate Comprehensive Rationalization in GOA ground fish fisheries, I support the implementation of Co-ops or ITQ in the GOA. I would like to see Co-ops or ITQs based on a uniform catch history of (96-98).

Charlie C. Parsons
Owner, Operator, F/V NightWatch

Fish is food for life

F/V PRIMUS

February 1, 2000

Mr. Richard P Lauber
North Pacific Fishery Management Council

RE: Agenda Items C-2, C-4, C-6, and D-2

Dear Mr. Lauber,

My name is John de Groen. I am a fish boat owner and fisherman based primarily in Sand Point, AK. I have operated out of Sand Point for seventeen years. My primary fishery is trawling for Pacific Cod and Pollock.

I would like to see immediate Comprehensive Rationalization in the GOA groundfish fisheries. I support either ITQ or Co-op implementation based on a catch history prior to 1999. The AFA years of 95-97 would be just fine for use of catch history.

I am opposed to the Aleutians East Borough plan of allocation based on 58 foot length. Allocation should be based on past history only and not on boat length or ownership. The AEB plan will eliminate four fishing boats from the trawl fishery that have participated in the trawl fishery since its inception here in Sand Point. I would much rather have a GOA wide plan rather than something unique in the Western GOA.

ITQ's or Co-ops will allow for better control over fisheries and management of Sea Lion rules present and future. The AFA act created a fence in the Bering Sea, forcing new participants into open access fisheries in the GOA. This crowding of fishermen cannot be good for Sea Lions and will hasten more rulemaking for Sea Lion protection. Rationalization will allow for slower and more spread out fisheries.

I don't understand the reasoning behind the movement of pollock quota from one area to another in the name of protecting Sea Lions. The rule makers probably have lots of data to back up their decisions but this is what has been done; Before the rule change pollock could be fished in all three areas. After the rule change all area quotas were reduced by approximately half. The removed quota was then moved to the Shelikof Conservation Area for taking by fishermen. This new area is small and has many rookeries and haul-outs. The pollock have not moved into this area for the winter and the large TAC in this small area can only deplete the food source for the Sea Lions. Area 610 has pollock buildup in the wintertime also. Perhaps the managers could start the Sand Point Conservation Area and move the quota there for the winter of 2001. They can move a lot of quota there for starters then after the commotion begins a little quota could be given back to appease the aggrieved fishermen.

Sincerely,

John de Groen

9810 SW 148TH ST. • VASHON, WA • 98070-5608
PHONE: 206-567-4857 • FAX: 206-567-4357

OCEAN STORM FISHERIES INC.
2273 66TH AVENUE SOUTH EAST
MERCER ISLAND. WASHINGTON 98040
206 232 6647

February 2, 2000

Mr. Richard P. Lauber
North Pacific Fishery Management Council
605 West 4th Avenue
Suite 306
Anchorage, Ak. 99501

Re: Agenda Items C-2, C-4, C-6 and D-2

Dear Mr. Lauber,

My name is Mike Alfieri and I own the 58' fishing vessel Ocean Storm and I have been fishing in Alaska since 1976. I leased a vessel in 1992 to trawl for P-cod in area 610 and 620 and I built my vessel that same year to start fishing in 1993. With the decline of Salmon prices my new vessel was built primarily for trawling as its main source of income. In 1993 I participated in the P-cod fishery in areas 610 and 620 and was one of the first 6 vessels to deliver Pollock to the Trident Seafoods Sand Point plant.

Since I have been trawling here I have seen quotas rise and fall but it seems my fishing time has continually decreased either from processors bringing in more boats or the influx of vessels from the Bering Sea. Even under LLP and with sideboards in the Bering Sea there are between 200 – 300 boats that are eligible to fish in areas 610 and 620. There is absolutely no stability in this fishery. The decline of the crab fisheries will only make fishing P-cod more attractive for the 60 or so pot boats that are eligible to fish in area 610.

Take last September for an example. NMFS had no way of predicting the number of boats that would participate in the 610 opening so there was a 6 hour opening on September 1st. I had to fly myself and my crew to Sand Point, fish the 6 hours and fly home. At a round trip ticket cost of $1400.00 per person it was not even worth it to participate. I only really did it to secure any fishing rights in the future. Then we had to fly back here on September 13th to resume the fishery.

Then there is this year, I assumed there was a 11505 ton quota for the A season in Area 610 . I spent approximately $12,000 upgrading my midwater gear to take advantage of this substantial quota. On January 18 the fleet learns that 6040 tons of Pollock, a 54% reduction in our quota, has somehow moved to Shelikof Straits. I called Steven Penoyer on the morning of January 19th and he knew absolutely nothing about the quota shift. To his credit he told me to call back in 30 minutes and he would have an answer for me, which he did provide. Something to do with Sea Lions and the biomass being in Shelikof in the winter. I receive all the NMFS news letters and there was nothing mentioned about this policy in any of them. Trident Seafoods didn't even know about it.

All these things I've mentioned are some of the reasons that I support Comprehensive Rationalization in the GOA groundfish fisheries. I totally support some sort of a Co-Op program. There is also a safety issue of not having to fish in the worst types of weather, and there is the Sea Lion issue. With Co-Ops the fishery can be better managed and stretched out to provide a lesser impact on Sea Lions.

I am against the Aleutians East Borough proposal of what is being called a TURF fishery. It does not slow down the race for fish. There are more LLP qualified vessels not actively in the fisheries now that could become active in the future, thereby making the race for fish even worse.

It seems the biggest environmental issue facing me is the Sea Lion and it could be getting worse in the very near future. While I don't necessarily agree that fishing Pollock or P-cod is as great a threat as it is made out to be, nevertheless I have to deal with any and all regulations. What I keep hearing from Greenpeace is the need to slow down the fisheries and lessen the impact of fishing on the Sea Lions. Co Ops, to me, is the perfect way to accomplish this while not drastically impacting the fisheries with more Haul Out or Rookery restrictions.

Thank you for taking the time to read my letter. I tried to keep it short but as I am very passionate about these issues I could have Gone on a lot longer.

Sincerely,

Mike Alfieri, F/V Ocean Storm

Fairweather Fish, Inc.
F/V Golden Chalice
6320 Rosedale St. N.W.
Gig Harbor, WA 98335

February 1, 2000

Dear North Pacific Management Council Members,

My Husband and I run and own one 58' longline catcher vessel. We have made large investments in the new IFQ fishery and any changes made are of great importance to us and our crew of 5.

We would like to make a few points before your February meeting, we are unable to travel to Anchorage at this time, but would hope that our comments would still be considered similarly.

Halibut Charter: What ever is done concerning this matter, it absolutely cannot infringe on the Commercial Halibut sector, because that fishery has been bought, sold, and mortgaged. Whatever decision, it should be based on abundance. 1995 should be the base year. It is the first year of IFQs, therefor the math that follows will not infringe on the commercial sector. 1995 is a more accurate middle starting point, considering our stable, but declining Biomas of 2000. Charter Boats need to be more reportable and more predictable, and whatever restrictions can produce any amount of either will be helpful. Making decisions today that lead up to limited entry or IFQs for the Commercial Halibut Charter fleet is a good idea. We favor IFQs for the Charter Fleet, because of the species relationship. We feel the council has a more extensive range of options with an IFQ system.

Areas 4, Bering Sea, and Aleutian Islands: A gradual approach to change in these areas seems to be the most sensible. We gave testimony to the council in 1997 on this issue, stating that there were so many small blocks in the westward areas that they were unfishable and unsellable. Further, that even if every deckhand, on every vessel, owned and caught two blocks, there would still be blocks with nowhere to go. This is still true today. That is why we support allowing each individual to own more blocks. It would be a small change, and it still allows the block program to remain in design.

Alaska Gulf Coalition: As former residents of Pelican, Juneau, and Homer, we can feel the changes in the smaller coastal communities. We can *see* the changes, as the vessel makes its way through nearly every regulatory area in Alaska. The Golden Chalice is 58', it *must* makes stops in many of these smaller communities every year. We agree that special attentions should be directed at maintaining the economy of coastal communities, but also believe that IFQs are not entirely responsible for the trend that has brought down the economy in Alaskan coastal communities. Under the IFQ system individuals may receive a TEC, residents should have no problem with that. There is no reason for leasing or corporate ownership. Many fishing charter type operations have developed in these smaller coastal communities, and if limitations are t placed on Halibut Charter Operations, special allocations need to be made to residents and Native Alaskans.

This IFQ system is working, and has generally received quite an amount of praise. We feel that putting changes to this system on a slow track is best. Making small changes one at a time and allowing time to analyze the results. It is reasonable to believe that changes in other fisheries will also effect the IFQ market. We believe that crab fisherman may begin to buy quota share in westward areas, to balance the loss to their industry. We thank you for considering our comments.

Sincerely,

Mark Worley
Lisa Newland

F/V Exodus Inc.
6904 Central Pk. Dr.
Aberdeen WA. 98520
Phone: (564) 538-0751 Fax: (564) 532-6993)

F/V Exodus

February 1, 2000

Dear Mr. Lauber,

Fishing vessel Exodus is 95 ft., 940-horse power that holds 220,000 lbs. Trawler. The vessel & I have been fishing GOA sense 1989. I first started Cod in the summer 1989, Then the plant put in a Pollock line in 1992, and I started that summer fishing Pollock in area 610 & 620 of the GOA. I was the first boat to start Pollock fishing in Sand Point AK.

I disagree with Aleutians East Borough positions in regarding the allocation of Federal P-cod and Pollock in the GOA, especially in area 610. And I also disagree with any proposal by the Aleutian East Borough that doesn't support the position of vessels over 58-ft.

For the last few years I have seen are codfish quota given to the 58-ft and under, it is up to 25% this year. And now they want the Pollock as well. I feel this is unfair to the boats over 60-ft. That depends on this area (610) to make their living at Cod & Pollock. There are 5 vessel over 60-ft in 610. This is all we have Cod & Pollock. We don't have State water cod fish, we don't have Salmon, and we don't have Herring.

That is why I support the immediate Comprehensive Rationalization in the GOA ground fish fisheries, I support the implementation of a Co-ops or ITQ in the GOA. Based on catch history in the GOA ground fish fisheries. Years (1995 to 1997).

There is a new Sea Lion haul out, Sea Lion Rock. This is an another blow to the five vessels in 610 GOA. That is over 60-ft. That takes away a lot of fishing grounds where we can't go and where 60-ft and under can. Why can 19 58-ft go in to a Sea Lion haul out and take 2,200,000 lbs. Pre trip. And five boats that are over 60-ft. that would take 845,000 per trip can't go in this area. If it is a safety issue because of weather. That is one of the reasons I came over in 1989 from the Bering Sea, it is a safer place to fish for a boat my size. Why can't they make theses haul out more seasonal, in the summer & fall you have more fish moving through? Like salmon. I think it is unfair to let one group go in and not another.

I thank you for your time, just remember there are more then just 58 footer down in this area 610 that depend on Cod & Pollock. That's all we have.

David C. Morrill
Owner & operator, F/V Exodus

David Morrill

Mr. Richard Lauber
North Pacific Fishery Management Council

RE: Agenda Items C-2, C-4, C-6 and D-2

Dear Mr. Lauber,

My name Paul Holmberg, I am a native born and raised Alaskan native from the Shumagin Islands. I have commercial fished for the past 25 years or more in the western gulf. My primary fisheries are Pacific Cod as well as salmon.

I would like to see an immediate Comprehensive Rationalization in the GOA groundfish fisheries. I am in favor and would therefore stongly support, either ITQ or Co-op implementation based on a catch history prior to 1999. The AFA years on 95-97 would be just fine to use for a catch history.

I have a commecial 56 foot fishing vessel, but I am still not in favor of the Aleutian East Bouroughs plan on allocation based on the 58 foot length. I also strongly support and am in favor of allocation based on past history catch.

I also believe that ITQ'S or Co-ops will be a much easier way to control the fisheries and the concern for management of the Sea Lion curently and in the future. With the Bering Sea having been effected by the AFA act, will force new participation into the GOA. I trust that you will at least acknowledge my concerns and that I am concerned and intrested enough to at least write. Being that the P-cod fishery is currently open hinders me from attending the meetings. Thank you for your time.

Sincerely,

Paul Holmberg
F/V Sea King

John T. Evich
F/V Karen Evich
2051 North Shore Rd.
Bellingham, WA 98226
(360)671-1354
fax (360)671-4681

February 1, 2000

Mr. Richard P. Lauber
North Pacific Fishery Management Council
605 West 4th Avenue Suite 306
Anchorage, AK 99501-2253

RE: Agenda Items C-2, C-4, C-6 and D-2

Dear Mr. Lauber,

I own and operate a 58 foot combination Trawler that is based in Sand Point, Alaska. I have been involved with different fisheries on the Alaska Peninsula and Sand Point for the last 21 years.

My first point is that you need to realize the management of Pollock and, to a lesser extent, Pot Cod **is in absolute chaos** right now. As I hope you are aware by now, last September we were given a **six hour Pollock opening** because of over-harvest threats from the Bering Sea fleet. Then two weeks later we were given 7 ½ days to harvest what little remained form the original Area 610 quota.

Then again in January, 24 hours before the beginning of the season, 50% of our quota was re-allocated to Shelikof for reasons I still do not understand. However, over the weekend, 50% of that was re-allocated back to us, again for reasons I can't even begin to comprehend. Now with the Bering Sea Crab season delayed, (for what are probably good reasons) we're threatened with an increased effort by Pot boats in the Western Gulf that have never been there this time of year.

This brings me to my second point. I **strongly support** a Co-op or I.T.Q. catch allocation for the Gulf of Alaska. I **do not support** the Aleutians East Borough's idea for a separate quota, for which I would qualify. I want to stop the *race for fish* even if it is between small boats. With the continued Sea Lion regulations with which we are forced to deal, we need more flexibility than we are afforded now. My understanding is for Sea Lion recovery that "impulse" fishing is being discouraged. If the Borough has it's way,

we will then have impulse fishing and more of the same, but by smaller boats. I am just not sure we could survive the time it would take to build sideboards around such an idea.

Simply put, I want what the Bearing Sea Pollock fleet has now, what most of the Bering Sea Crabers and most of the Ground fish industry in Kodiak wants; I.T.Qs or Co-ops.

Sincerely,

Tom Evich
F/V Karen Evich